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Photo: Suthep Kritsanavari

LABOR ABUSE COMPLAINT MECHANISMS IN THAILAND

RESEARCH REPORT

**USAID THAILAND COUNTER TRAFFICKING IN PERSONS
MARCH 2020**



Photo: Misty Keasler

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ACRONYMS

ACILS	American Center for International Labor Solidarity
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
AMLO	Anti-Money Laundering Office
CSO	Civil Society Organization
DLPW	Department of Labor Protection and Welfare
ESG	Environmental, Social, and Governance
FRN	Fisher Rights Network
HR	Human Resources
ILO	International Labour Organization
ILRF	International Labor Rights Forum
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex
LPA	Labor Protection Act
LPN	Labour Rights Protection Network Foundation
LRC	Labor Relations Committee
MoL	Ministry of Labor
MoI	Ministry of Interior
MOU	Memorandum of Understanding
MRC	Migrant Resource Center
MSDHS	Ministry of Social Development and Human Security
MWAC	Migrant Worker Assistance Center
MWRN	Migrant Worker Rights Network
NAP	National Action Plan
NGO	Non-Governmental Organization
NHRCT	National Human Rights Commission of Thailand
OSSC	One Stop Crisis Center
PIPO	Port In/Port Out
RLPD	Rights and Liberties Protection Department
RTG	Royal Thai Government
RTP	Royal Thai Police
SSO	Social Security Office
SME	Small and Medium-Sized Enterprise
TMFUG	Thai and Migrant Fishers Union Group
TIP	Trafficking in Persons
TATIP	Thailand Anti-Trafficking in Persons Task Force
THB	Thai Baht
UN	United Nations
UNGP	United Nations Guiding Principles
USAID	United States Agency for International Development
USD	United States Dollar



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EXECUTIVE SUMMARY

Context

As a middle-income country with a relatively stable economy, Thailand attracts millions of migrants from neighboring countries to fill the low-skill labor needs of sectors such as fishing, agriculture, hospitality, domestic work and manufacturing. Today, there are an estimated 3.9 million migrant workers from neighboring countries (Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam) living and working in Thailand. Of these, about 800,000 are thought to hold irregular status,¹ with the majority coming from just three countries – Cambodia, Lao People's Democratic Republic, and Myanmar.²

While they bring considerable benefits to the Thai economy, many migrant workers do not receive adequate protection of their basic labor rights and are particularly vulnerable to exploitation and abuse. Thailand's *Labor Protection Act (LPA)* entitles migrant workers to the same labor rights as Thai nationals; however, this is not always the case in practice. Due to their low socioeconomic status and lack of proper documentation, many irregular migrants face obstacles to decent work opportunities, access to health care, and civil rights.³ In recent years the country has come under scrutiny from major trade partners such as the European Union and the United States, as well as international labor rights organizations and the international press, for failing to combat human trafficking, especially in its lucrative seafood industry. Due to discrimination, stateless persons, women, and Lesbian, Gay, Bisexual, Transgender, Queer, Intersex (LGBTQI+) individuals also constitute an at-risk group that are vulnerable to exploitation in Thailand.

- 1 Thailand Migration Report 2019. (2019). [online] Bangkok, Thailand: United Nations Thematic Working Group on Migration in Thailand, p.11. Available at: https://thailand.iom.int/sites/default/files/document/publications/Thailand%20Report%202019_22012019_HiRes.pdf [Accessed 1 Sep. 2019].
- 2 Thailand International Organization for Migration. (n.d.). *Migration Context, IOM Thailand*. [online] Available at: <https://thailand.iom.int/migration-context> [Accessed 1 Sep. 2019].
- 3 Huguet, J., Chamrathirong, A. and Natali, C. (2012). *Thailand at a Crossroads: Challenges and Opportunities in Leveraging Migration for Development*. Issues No. 6. [online] Bangkok and Washington D.C.: International Organization for Migration and Migration Policy Institute, p.1. Available at: https://publications.iom.int/system/files/pdf/mpi_issue6_10oct2012_web.pdf [Accessed 25 Nov. 2019].

Complaint mechanisms in Thailand

In this context, complaint mechanisms used by workers to report instances of abuse to the relevant stakeholders (e.g. employers, labor authorities, or third parties) are an important tool for identifying instances of labor exploitation and providing remediation. This research reviewed international standards and regional frameworks for state and non-state complaint mechanisms and mapped Thailand's existing grievance channels against them. The **state complaint mechanisms** are meant to respond to complaints regarding labor rights and other violations, including trafficking in persons, and include: a) Department of Labor Protection and Welfare within the Ministry of Labor and the related hotline #1546 and #1506; b) One Stop Crisis Centers and #1300 hotline under the Ministry of Social Development and Human Security; c) Royal Thai Police, (including its Anti-Human Trafficking Division) and the #1191 hotline; and d) Local Damrongham Centers under the Ministry of Interior, including the #1567 hotline.

There are also **multi-stakeholder complaint mechanisms** that connect state agencies and civil society in offering advice and assistance to migrant workers, such as Migrant Worker Assistance Centers (MWAC) and Migrant Resource Centers (MRC). The **non-state complaint mechanisms** are usually set up at places of work and function to receive labor-related complaints and provide for remedies and remediation. They include labor welfare committees, company-based complaint mechanisms, and labor unions.

Obstacles to utilizing complaint mechanisms in Thailand

Despite the abundance of channels to lodge labor complaints in Thailand, there are many obstacles that prevent workers from accessing and utilizing them. Migrants are reluctant to file complaints due to lack of awareness of their rights and grievance procedures, language barriers, fear of retaliation from their employers, discriminatory attitudes of government officials, and concerns about their immigration status. The key obstacles to using existing complaint mechanisms include:



Lack of incentives due to inadequate remedies. Lack of clarity around compensation calculations and the ability to collect any form of financial remedy as a result of criminal litigation, even when compensation orders are rendered, discourage potential victims of trafficking from spending significant amounts of time and effort in testifying in trafficking cases. To initiate civil actions, abuse victims must pay significant court fees, which many cannot afford due to the uncertainty of and length of case proceedings and outcomes. Finally, moral and punitive damages are rare in the Thai legal system. Under these circumstances, initiating a complaint for unpaid wages through the labor court remains the easiest, albeit inadequate, means to obtain financial redress: received back wages usually amount to a small fraction of the amount workers are owed.



Migrant workers' distrust toward government agencies undermines the legitimacy of complaint mechanisms. Police have been reported to extort both registered and irregular migrants, which makes victims and those around them reluctant to report abuses. There is also a widespread belief that the government would side with Thai employers if a case were lodged. Fears concerning immigration status can also dissuade workers from making a complaint: while officially identified Trafficking in Persons (TIP) victims are protected from being prosecuted under immigration law, undocumented migrants who are not identified as TIP victims face deportation back to their country of origin. Finally, the distrust of authorities may originate from migrants' home countries, where people have long been afraid of speaking out against authorities, such as in Cambodia.



Complaint mechanisms are not accessible due to workers' *lack of awareness, physical location and language barriers*. Despite governmental and nongovernmental agencies' efforts to spread information and labor rights and complaint reporting, **large migrant worker population are still not reached by these awareness campaigns.** **Lack of language skills** also undermine agencies' ability to conduct effective outreach. Awareness raising often relies on local community leaders, potentially undermining the accuracy and depth of the information communicated. Finally, the mandated pre-departure trainings for workers migrating through the memorandum of understanding (MOU) system often do not happen or are not car-

ried out as designed. Employment agencies who are often tasked with these trainings, are not interested in communicating information about labor complaints as it may later turn against them. The effectiveness of post-arrival training is uncertain, too.

In addition, migrant workers cite **language barriers** as an important obstacle preventing them from making a complaint through official channels: those who are not fluent in Thai cannot fill out the forms and may be intimidated by the prospect of approaching government officials. Although the Royal Thai Government (RTG) has taken measures to supply interpreters for hotlines and frontline officials, the capability remains insufficient, particularly for the Ministry of Labor (MoL) departments. This is further complicated by the fact that migrant workers speak many ethnic minority languages, and maintaining a sufficient roster of interpreters is challenging.

Service providers in provincial capitals are often inaccessible to undocumented migrant workers, who often work in remote, isolated, and informal workplaces, such as fishing boats, plantations, and private homes. Even workers located in more urban areas may not be able to seek assistance from government offices as these are mainly only open between 8.00 am to 4.00 pm, Monday through Friday.



Process and procedures for labor complaints are impractical. Labor complaint hotlines remain underutilized because callers often face long waits to reach a person on the other end, are asked to follow multiple prompts and make selections using a dial pad –which is difficult for migrants with low levels of technological literacy. Language barriers also pose a problem for the submission of official written complaints. While some offices have translated the complaint forms into migrant languages (e.g. Burmese or Cambodian), the form must then be translated into Thai before it can be officially submitted. As a result, migrant workers who do not speak fluent Thai or have low levels of literacy or education are unlikely to be able to file a formal complaint on their own without the help of a third party.

Women, LGBTQI+, and stateless people face additional barriers to accessing complaint mechanisms.

According to non-governmental organization (NGO) testimonies, state-based complaint mechanisms often re-victimize female workers through discriminatory treatment as a result of their gender, nationality, or ethnicity. Migrant women also face difficulties in accessing official complaint channels given that they are disproportionately employed in the informal sector as domestic workers, agricultural workers, or sex workers and are less likely to file a complaint out of fear of arrest and deportation. Domestic workers are especially vulnerable to labor rights abuses as they do not benefit from protection of rights: domestic workers are not entitled to overtime compensation, maternity leave, working-hour limitations, or minimum wage under Thai law. Finally, women are also exposed to sexual harassment at the workplace that goes unreported due to fear of reprisal from the employer and stigma.



LGBTQI+ individuals face obstacles in accessing and using complaint mechanisms when they experience harassment in the workplace as their complaints are often seen as a personal matter. Transgender individuals who are engaged in sex work are particularly vulnerable to physical violence and exploitation and face specific challenges in accessing official government complaint channels. There are reports that police officers may not always accept complaints of sexual abuse from transgender individuals because they don't take the complaints seriously.

Stateless people, including hill tribes, refugees, migrant workers who are denied nationalities by their original countries, and orphans without family roots, face economic and structural marginalization. Employers may deny stateless people employment on the grounds of citizenship, offer them lower wages than Thai citizens, or violate their labor rights. Stateless people are found to be less likely to report violations when they do occur as their employers may report them to the police if they left their assigned geographic areas (stateless people cannot travel outside of the province they are registered in without permission from the provincial governor). Stateless people may also be reluctant to file a complaint regarding labor abuse or exploitation because of language barriers, lack of education or awareness about labor rights, as well as discriminating attitudes of government officials.



Photo: Luke Duggleby

The role of third parties in worker access to labor complaint mechanisms

This research revealed that migrant workers have difficulty accessing official complaint mechanisms without personal relationships with local civil society organizations (CSOs) or community leaders. Further, that NGOs serve as an important intermediary in mediating with employers, liaising with local authorities, providing interpretation and translation support and legal advice. This is in part due to complicated bureaucracy and varied practices in implementation of laws between regions, as well as migrant workers' greater trust toward nongovernmental service providers compared to the state ones. Migrant workers usually contact NGOs recommended through their personal networks in order to lodge official complaints with the government. Authorities also prefer to deal with CSOs who understand the system and are easier to communicate with.

Volunteer migrant networks also play an important role in organizing workers, providing referrals, advice and advocating for their rights. Some community leaders have already received paralegal training and counsel their peers when needed. However, the strength of migrant networks depends on the industry, nationality, ethnic background and the type of migration these workers are under (e.g. seasonal migrants are less likely to be organized compared to those who are in Thailand for longer periods of time). Some migrant networks are more organized than others and take the form of informal unions with membership and related infrastructure, although they cannot officially register as current Thai law prohibit migrant-led labor unions. Aside from referring workers to NGOs or government agencies, informal unions can help directly resolve grievances through mediation.

Conclusions

The findings of this report suggest that both Thai and migrant workers continue to face obstacles in effectively lodging and resolving work-related complaints. Both government-based and company-operated complaint channels remain underutilized, ineffective and difficult to access. Migrant workers face particular obstacles in accessing grievance mechanisms due to language barriers, lack of awareness, fear of dismissal and deportation. The Royal Thai Government is aware of these challenges and has already taken positive measures to strengthen government and private sector-based complaint mechanisms.

It is the authors' hope that the report will increase policymakers', service providers', and employers' understanding of the options for filing complaints, and the obstacles workers face in obtaining redress for labor abuse, allowing them to make informed adaptations of current policies and programs and facilitate more effective complaint mechanisms.

The findings of this report can be addressed in part by strengthening the policies, along with increasing informational and supportive services for vulnerable workers, improving relations and collaboration between government agencies and civil society, and promoting inclusion, ultimately leading to a positive environment for labor rights of migrants and other at-risk populations in Thailand. Only when access to justice and awareness of labor rights for workers is improved at a systems-wide level can the prevalence of trafficking and forced labor be reduced.

RESEARCH METHODOLOGY

The research was carried out in Bangkok and the following provinces: Trat, Chiang Rai, Sa Kaeo, and Surat Thani. Data was collected from government officials, experts and staff of NGOs, as well as current and returned migrant workers through key informant interviews, in-depth interviews with beneficiaries, and focus group discussions.

The study relied primarily on qualitative research methods, making use of the following data collection tools:

Data Collection Tools	Methodology
<p>Secondary Research</p>	<ul style="list-style-type: none"> • This study analyzed international and local research reports on the use of grievance mechanisms to resolve worker complaints and mitigate instances of labor abuse. • Key literature reviewed include publications from the IOM and ILO, Thai labor rights legislation, as well as anti-trafficking reports from the Thai and U.S. governments.
<p>Key informant interviews</p>	<ul style="list-style-type: none"> • Interviews were conducted with key staff of organizations and institutions engaged in resolving migrant worker grievances (the government, private sector, CSOs). • Interviews with Department of Labor Protection & Welfare (DLPW) officials were conducted in all target provinces given the agency' status as the primary agency responsible for receiving labor-related complaints in Thailand. • The NGOs and labor rights organizations contacted as part of this study were selected based on their in-depth understanding of migrant rights issues at the national or provincial level. • The managers of human rights or sustainability programs within large multinational corporations and the management staff of small and medium-sized enterprises (SMEs) were approached given their knowledge about corporate grievance mechanisms.
<p>Focus group discussions</p>	<ul style="list-style-type: none"> • Discussions were generated among target groups of workers of different nationalities, ethnicities, genders, sexual orientations (including LGBTQI+ individuals), legal statuses, and employment sectors on their experience with labor complaint mechanisms.
<p>In-depth beneficiary interviews</p>	<ul style="list-style-type: none"> • Interviews were conducted with workers of different nationalities, ethnicities, sexual orientations, employment sectors and legal statuses on their experiences filing complaints either to their employer, to NGOs, or to the relevant labor authorities. • The migrant workers interviewed for this study were identified through existing civil society networks based on their experience working in low-skill sectors in the target provinces in question.

Ethical research methods

Several measures were taken to ensure that information was collected from research participants in a transparent, consensual manner. Research participants were explained the objectives of the investigation and how the information will be used to ask for their consent. In addition, special care was given not to make any reference of participants' name in the research or disclose any information that might help identify the informants in question. Lastly, the length of interviews were kept to a minimum (60 minutes individual interviews and 90 minutes for focus group discussions) to be mindful of their time constraints and potential discomfort.



Photo: Luke Duggleby

INTERNATIONAL STANDARDS FOR LABOR COMPLAINT MECHANISMS

Complaint mechanisms (also commonly referred to as grievance mechanisms) are processes that can be used by individuals and communities adversely affected by the activities or operations of a business or organization. Grievance mechanisms may exist at the company, sector, national, regional and international levels and may address “a company’s behavior and responsibilities, a government’s obligation to protect citizens or an institution’s duty to comply with its policies and procedures”.⁴ The United Nations Guiding Principles (UNGP) on Business and Human Rights, a set of guidelines developed for states and companies to prevent, address and remedy negative impacts on human rights by businesses, defines an operational-level grievance mechanism as “a formalized means through which individuals or groups can raise concerns about the impact an enterprise has on them—including, but not exclusively, on their human rights—and can seek remedy”.⁵ Complaint mechanisms vary considerably in their objective, target group, approach, and structure depending on whether they are judicial or non-judicial, formal or informal, are operated by state, civil society or private sector actors or exist at the state, interstate, or international level. State-based judicial mechanisms are most often available through court systems while non-judicial grievance mechanisms provided by the state may include ombudsmen, national human rights institutions, labor tribunals, multi-stakeholder initiatives, or relevant international frameworks. Non-State-based, non-judicial mechanisms, on the other hand, typically refer to company-operated complaint mechanisms.⁶

International standards on complaint mechanisms serve as an important benchmark to assess and evaluate both state-based and non-state-based complaint systems in Thailand. The UNGP for Business and Human Rights and the core International Labour Organization (ILO) conventions form the basis of international law for how complaint mechanisms should operate. While Thailand is not a signatory to any of these International conventions or instruments,⁷ they provide guidelines that can be used as reference points to understand the different complaint outlets available to workers in Thailand, assess the strengths and weaknesses of each system, and point to best practices regarding the handling of grievances.

4 SOMO. (n.d.). *Types of grievance mechanisms - SOMO*. [online] Available at: <https://www.somo.nl/hrgm/types-grievance-mechanisms/> [Accessed 1 Sep. 2019].

5 Business-humanrights.be. (n.d.). *What is an operational-level grievance mechanisms?*. [online] Available at: <https://business-humanrights.be/tool/9/what> [Accessed 1 Sep. 2019].

6 SOMO (2015). *The Patchwork of Non-Judicial Grievance Mechanisms*. Human Rights & Grievance Mechanisms. [online] Amsterdam, Netherlands: SOMO, pp.1,2. Available at: <https://www.somo.nl/wp-content/uploads/2014/12/The-Patchwork-of-Non-Judicial-Grievance-Mechanisms-1.pdf> [Accessed 1 Sep. 2019].

7 Ilo.org. (2019). *Up-to-date Conventions not ratified by Thailand*. [online] Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11210:0::NO::P11210_COUNTRY_ID:102843 [Accessed 26 Sep. 2019].

In terms of international legislation, several ILO and United Nations (UN) conventions are relevant to the establishment of complaint mechanisms for labor rights violations against migrant workers, including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143), and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families. The non-binding principles and guidelines provided within the ILO Multilateral Framework on Labor Migration also include provisions on complaint mechanisms for workers. The framework specifically outlines the provisions for protecting migrant worker rights that should be included in national laws and regulations with its principle 11.5 calling for the establishment of mechanisms for migrant workers to lodge complaints and seek remedies without intimidation or retaliation.⁸ The ILO's conventions on migrant rights also extend to the protection of migrant worker in the recruitment process, which is relevant to the Thai context given the country's heavy reliance on employment agencies to recruit foreign workers.

The Private Employment Agencies Convention, 1997 (No. 181) recognizes the role private employment agencies play in well-functioning labor markets. C181 seeks to improve their efficiency by providing comprehensive guidance on the regulation of labor recruitment. The convention establishes an institutional framework for regulating temporary work agencies and calls for the enforcement of measures to prevent the abuse of migrant workers and ensure fair practices. Article 10 under the convention establishes the basis in international law for enacting recruitment complaint mechanisms: "The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies."⁹

The UNGPs are a "global authoritative standard that provide a blueprint for the steps all states and businesses should take to uphold human rights".¹⁰ They encompass three pillars outlining how states and businesses should implement the "Protect, Respect and Remedy" framework. The first pillar affirms that states have the duty to protect against human rights abuses by third parties, including businesses. The second pillar, "corporate responsibility to respect human rights", states what is expected of businesses with regards to human rights, e.g. by conducting due diligence, enacting policy commitments to respect human rights, and addressing adverse human rights impacts of their business activities. The UNGPs' third pillar on 'access to remedy', lists the eight criteria for both state-based



INTERNATIONAL INSTRUMENTS

Regulation or Law

- [ILO Migration for Employment Convention, 1949 \(Convention No. 97\)](#)
- [ILO Migrant Workers Convention, 1975 \(Convention No. 143\)](#)
- [The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families](#)
- [ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration](#)
- [The ILO's Private Employment Agencies Convention, 1997 \(Convention No. 181\)](#)



THAI LEGISLATION

Regulation or Law

- [Act on the Establishment of and Procedure for Labor Court, B.E. 2522 \[1979\]](#)
- [Labor Protection Act, B.E. 2541 \[1998\] \(revised in 2008\)](#)
- [Thai Labor Relations Act B.E. 2518 \[1975\]](#)
- [The Thailand Civil and Commercial Code, B.E. 2468 \[1925\] \(up until Amendment Act \(No. 20\) B.E. 2557. \(2014\), revised in 2017\)](#)
- [Damages for the Injured Person and Compensation and Expenses for the Accused in Criminal Case Act, B.E. 2544 \(2001\)](#)
- [Anti-Trafficking in Persons Act, B.E. 2551 \[2008\]](#)
- [Home Workers Protection Act, B.E. 2553 \[2010\]](#)
- [Human Trafficking Criminal Procedure Act, B.E. 2559 \[2016\]](#)
- [Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 \[2017\]](#)
- [Employment and Job Seekers' Protection Act, B.E. 2528 \[1985\]](#)
- [Occupational Safety, Health and Environment Act B.E. 2554 \[2011\]](#)
- [Social Security Act, B.E. 2533 \[1990\]](#)
- [Workmen's Compensation Act B.E. 2537 \[1994\]](#)
- [The State Enterprise Labor Relations Act B.E. 2543 \[2000\]](#)
- [Gender Equality Act, B.E. 2558 \[2015\]](#)

8 *Ibid*

9 International Labor Organization. C181 - *Private Employment Agencies Convention*, 1997 (No. 181). Article 10.

10 Gerard Ruggie, J. (2017). *The Social Construction of the UN Guiding Principles on Business and Human Rights*. Working Paper No. 67. [online] Cambridge, Massachusetts: Corporate Responsibility Initiative, the John F. Kennedy School of Government, or Harvard University, p.1. Available at: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/workingpaper_67_0.pdf [Accessed 8 Nov. 2019].



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and non-state-based non-judicial grievance mechanisms to be effective under UNGP Principle 31's effectiveness criteria for complaint mechanisms. According to the principle, complaint mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.¹¹ This study will examine in which areas both state-based and non-state-based complaint mechanisms fall short of Principle 31's effectiveness criteria and how different categories of workers (e.g. documented versus undocumented, men versus women) face different obstacles to access. This study's target group is migrant workers from Myanmar and Cambodia, the primary sending countries of labor into Thailand.

Regional Frameworks and Standards

Association of Southeast Asian Nations (ASEAN) has established a regional framework for cooperation on labor migration through two instruments, which include provisions on access to justice for migrant workers. These are the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007 (Cebu Declaration) and the ASEAN Consensus on the

Protection and Promotion of the Rights of Migrant Workers, 2017. The Committee on the Implementation of the (Cebu) Declaration generates discussions on key issues facing migrant workers in South-East Asia, including on complaint mechanisms, through the annual ASEAN Forum on Migrant Labor (AFML). In 2013, the 6th Forum ASEAN Forum on Migrant Labor was held on the theme "Enhancing Policy and Protection of Migrant Workers Through Data Sharing, and Adequate Access to the Legal and Judicial System During Employment, Including Effective Complaints Mechanisms"¹² and included specific recommendations for ASEAN member states on how to "promote effective complaint mechanisms and grievance handling mechanisms". With regards to human rights complaint mechanisms at the regional level, ASEAN's human rights body, the ASEAN Intergovernmental Commission on Human Rights (AICHR), does not have the mandate to receive human rights complaints. Inaugurated in 2009, the AICHR is bound by strict terms of reference and is more of a consultative than investigative body. It cannot "make remarks or even recommendations with regards to any human rights violation if there is no unanimity".¹³ In addition, it does not have a regional court, unlike most human rights commissions.¹⁴

- 11 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 31*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-31/> [Accessed 1 Sep. 2019].
- 12 *THE 6th ASEAN FORUM ON MIGRANT LABOUR*. [online] ASEAN, p.3. Available at: <https://asean.org/storage/2012/05/Recommendations-of-the-6th-AFML-26-27-November-2013-Bandar-Seri-Begawan-Brunei-Darussalam.pdf> [Accessed 4 Nov. 2019].
- 13 Kliem, J. (2019). *Human Rights in Southeast Asia and the ASEAN Intergovernmental Commission on Human Rights (AICHR) | German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG)*. [online] Cpg-online.de. Available at: <http://www.cpg-online.de/2019/07/01/human-rights-in-south-east-asia-and-the-asean-intergovernmental-commission-on-human-rights-aichr/> [Accessed 4 Nov. 2019].
- 14 Eby Hara, A. (2019). *The struggle to uphold a regional human rights regime: the winding role of ASEAN Intergovernmental Commission on Human Rights (AICHR)*. [online] Revista Brasileira de Política Internaciona, p.7. Available at: <http://www.scielo.br/pdf/rbpi/v62n1/1983-3121-rbpi-62-1-e011.pdf> [Accessed 4 Nov. 2019].

LABOR COMPLAINT MECHANISMS IN THAILAND

LEGEND:

Green

Mechanism enjoys a relatively high rate of use

Orange

Mechanism is not widely or consistently used

Red

Mechanism suffers from very low level of use

According to the UNGPs,¹⁵ complaint mechanisms may be state-based or non-state based and judicial or non-judicial. This categorization has been used to review and assess the different complaint mechanisms available to workers in Thailand. Below is a summary of the various agencies, institutions, bodies, or organizations responsible for receiving complaint along with an overview of the purpose of each mechanism.

State-Based Judicial Complaint Mechanisms

THAI LABOR COURT

- The labor court is a specialized court that is one of the three Courts of First Instance in Thailand.
- They are responsible for resolving and adjudicating labor disputes between employees and employers and will encourage mediation between the parties.
- There are two ways for workers to bring a case to the labor court:
 1. The aggrieved party takes a case to court within 30 days of the DLPW having investigated the complaint and found that a transgression was committed (assuming the parties involved cannot agree on a monetary settlement).
 2. The aggrieved party files a litigation directly to the labor court from their own initiation

Accessible to: Thai workers, documented migrant workers.

THAI CRIMINAL COURT

- The court in the district where an offence has been committed, alleged to have been committed, or where an accused resides or is arrested, or where an inquiry official conducts an inquiry, has jurisdiction over the case.¹⁶
- The Municipal Court handles criminal cases where the maximum possible imprisonment sentence for the offense is three years and/or the maximum possible fine for the offense does not exceed Baht 60,000.
- The most common way to bring a case to court is for the aggrieved party to make a report of a criminal incident to the police. The police then proceed to investigate the alleged crime and submit its findings before the Office of the Prosecutor. The Office of the Prosecutor then files the appropriate criminal case in court.¹⁷
- While this is a more expedient choice, the private party bears the cost of the private case filing. The second method is a private criminal prosecution. Under this method, crime victims have the right to file a case against the accused perpetrator directly without having to report the case to the police or involve the public prosecutor. The attorneys of the plaintiff will assist in the investigation of the case to strengthen the victim's charge. It should be noted that in this case the aggrieved party must bear the cost of the private case filing.¹⁸

Accessible to: Thai workers, documented migrant workers.

State-Based Non-Judicial Complaint Mechanisms

MINISTRY OF LABOR (BANGKOK)/DEPARTMENT OF LABOR PROTECTION & WELFARE (PROVINCIAL LEVEL)

- Principal agency responsible for receiving complaints on a wide range of offences including violations around working hours, holidays, annual leave, payment of wages, disciplinary action, discrimination, harassment, job duties during pregnancy, and child labor.¹⁹

Hotlines: # 1546, 1506 (Ext. 3) (available from 7am until 7pm weekdays and from 8.30am until 4.30pm on weekends and holidays)
Accessible to: Thai workers, documented and undocumented migrant workers in person or over the phone.

15 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 25*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-25/> [Accessed 7 Nov. 2019].

16 Court of Justice of Thailand. (n.d.). *The Court of Justice System*. [online] Available at: <https://www.coj.go.th/th/content/page/index/id/91994> [Accessed 8 Nov. 2019].

17 Siam Legal International. (2019). *Criminal Law in Thailand*. [online] Available at: <https://www.siam-legal.com/litigation/thailand-criminal-cases.php> [Accessed 22 Nov. 2019].

18 *Ibid*

19 Thailand Migration Report 2014. (2014), p.139.

DEPARTMENT OF EMPLOYMENT

- Issues work permits, registers employment and receives complaints regarding changes in employment
- Hotline: # 1694, 1506 ext. no 2 (available from 7am until 7pm weekdays and from 8.30am until 4.30pm on weekends and holidays)**
Accessible to: Thai workers, documented migrant workers in person or over the phone.

MINISTRY OF SOCIAL DEVELOPMENT AND HUMAN SECURITY (MSDHS)

- The MSDHS is the primary agency responsible for providing government assistance to trafficking victims
- The One Stop Crisis Center (OSCC) 1300 hotline assists people with a range of issues from violence against children and women, physical disability, child labor, human trafficking, pregnancy discrimination
- The hotline offers coordination and referral to relevant government agencies
- Complaints can also be made in person to the relevant provincial MSDHS office

Hotline: # 1300 (OSCC) (available 24/7)

Accessible to: trafficked Thai and migrant workers (documented or undocumented) in person or over the phone.

SOCIAL SECURITY OFFICE (SSO)

- Accepts complaints regarding non-compliance with the Social Security Act (1990) and the Workers' Compensation Act (1994)

Hotline: # 1506 Ext. 1 (available from 7am until 7pm weekdays and from 8.30am until 4.30pm on weekends and holidays)

Accessible to: Thai workers, documented migrant workers in person or over the phone.

ROYAL THAI POLICE (INCLUDING ANTI-HUMAN TRAFFICKING DIVISION)

- Responds to and investigates complaints involving forced labor and human trafficking
- Can screen and refer trafficking victims to the MSDHS

Hotline: # 1191 (available 24/7)

Accessible to: Thai workers, documented migrant workers, undocumented trafficked persons in person or over the phone.

EMBASSIES OF LABOR-SENDING COUNTRIES

- Responsible for dealing with complaints, assisting with compensation claims and assisting migrants who have been victims of exploitation or trafficking

Accessible to: Documented or undocumented migrant workers in person or over the phone.

MOI DAMRONGTHAM CENTERS

- Receives complaints from the general public on a wide range of issues at the district and provincial levels

Hotline: # 1567 (available 24/7)

Accessible to: Thai workers, documented migrant workers in person or over the phone.

PORT-IN-PORT-OUT AUTHORITY (PIPO)

- Operates inspection centers in coastal ports; 30 PIPO control centers and 21 Forward Inspection Points (FIP) have been set up across 22 coastal provinces in Thailand. The PiPo Centers are under the supervision of Thailand Maritime Enforcement Coordinating Center (Thai MECC)
- Inspections at PIPO centers are carried out by multiple government agencies including the Thai Ministry of Labour, Royal Thai Navy, Department of Fisheries
- Labour inspections are conducted by the DLPW of the Ministry of Labour (MoL) to ensure compliance with Thai labor law and uncover potential cases of labor rights violations.
- Special arrest teams for fishery-related and human trafficking crimes can respond to complaints regarding fisheries or labour law violations at sea

Accessible to: Thai workers, documented migrant workers in person.

NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND (NHRCT)

- Examine acts of human rights violation or those which do not comply with the country's international human rights obligations
- Proposes remedial measures to individuals or organizations concerned
- Can file criminal lawsuits on behalf of victims who are unable to do so themselves

Call center: # 1377 (available during office hours)

Accessible to: Thai workers, documented or undocumented migrant workers either in person, writing or online via the commission's website.

Multi-Stakeholder Complaint Mechanisms

MIGRANT WORKER ASSISTANCE CENTERS (MWAC)

- Provides migrant workers with information and advice on employment benefits, changing employment or workplaces, registering employment
- Coordinates with relevant agencies for assistance and to address labor complaints

Accessible to: Documented or undocumented migrant workers in person or over the phone.

MIGRANT RESOURCE CENTERS (MRC)

- Provides migrant workers with information to help them protect and assert their labor and human rights and avoid exploitative working conditions
- Works in partnership with government institutions, trade unions and civil society organizations

Accessible to: Documented or undocumented migrant workers in person or over the phone.

Non-State-Based Non-Judicial Complaint Mechanisms

LABOR WELFARE COMMITTEE

- Engage in discussions with management regarding “welfare arrangements of employees”
- Give advice and make recommendations to the employer regarding the provision of welfare for employees
- Receive labor-related complaints from employees

Accessible to: Thai workers, documented migrant workers.

COMPANY-BASED COMPLAINT MECHANISMS

- May be formal or informal and reporting mechanisms take on a variety of different forms depending in the issues (e.g. health and safety, complaints to management, whistle-blower policies etc.)
- Labor complaint mechanisms receive labor-related complaints from workers through dedicated complaint channels and provide remedy and remediation

Accessible to: Thai workers, documented migrant workers through a variety of channels depending on the company.

STATE-ENTERPRISE LABOR RELATIONS COMMITTEE

- Consists of five employee and five employer representatives appointed by the Minister of Labor as well as government members *ex officio*
- Resolves labor disputes and discusses employment conditions in state enterprises

Accessible to: Thai workers.

LABOR UNIONS

- “Labor Union Committees” act as the representative of employees and can engage in discussions with the employer on different affairs
- DLPW-registered union advisors can participate in subsequent negotiations

Accessible to: Thai workers, documented migrant workers.

STATE-BASED JUDICIAL COMPLAINT MECHANISMS

According to principle 26, “states should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses.”²⁰ Judicial complaint mechanisms are fundamental, as the “legal and judicial systems provide clarity for all actors”,²¹ provides disincentives for actors to perpetrate abuses, and “provides incentives for improved and expanded due diligence within companies”.²² In addition, judicial mechanisms are the most appropriate channel to address gross labor rights or human rights violations. Effective judicial mechanisms are also the best means to ensure access to remedy, which may include: “apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition”.²³

In Thailand, victims of labor rights violations (e.g. non-payment of wages, occupational hazards, no holidays, excessive working hours, issues related to social security coverage) can file a labor complaint to the Thai labor court. The specialized Labor Court was established under the Act on the Establishment of and Procedure for the Labor Court B.E. 2522 (1979) and is responsible for “settling disputed matters involving rights and duties under employment contract or conditions of employment”.²⁴ The act required that labor courts mediate disputes and only initiate court proceedings when a settlement cannot be reached.²⁵ For more serious complaints of a criminal nature (e.g. physical abuse, detention, forced labor, human trafficking, etc.), the most common way to bring a case to court is for the aggrieved party to make a report of a criminal incident to the police. The police then proceed to investigate the alleged crime and submit its findings before the Office of the Prosecutor. The Office of the Prosecutor then files the appropriate criminal case in Court.²⁶

There were a total of 445 human trafficking cases brought before the Courts of Justice across Thailand in 2018. The Courts of First Instance or trial courts completed 305 cases (68.54%) and disposed of 46 cases

(15.08%), while 140 cases (31.46%) were still pending. The Courts of Justice in 2018 were able to complete a greater percentage of human trafficking cases within a year (i.e. 96.39% as compared to 88.75, 89.92 and 68.32% in 2017, 2016, and 2015 respectively). In addition, the prosecution of human trafficking cases in all steps took a shorter time period in 2018 in comparison to the last three years. Inquiry officers have been able to finish cases in 68 days on average in 2018, compared to the average of 69 days in 2017 and 72 days in 2016.²⁷ The RTG has made significant efforts over the past several years to improve the effectiveness and efficiency of trafficking cases. The Human Trafficking Criminal Procedure Act, B.E. 2559 (2016) has helped to streamline the prosecution of human trafficking cases by requiring the Court to have a more proactive role in the fact-finding process and making adjudication procedures more victim-friendly through the use of pre-trial deposition, trial proceedings, and court hearings via video conference out of the courtroom.

The establishment of specialized anti-human trafficking divisions within the Bangkok Criminal Court and the Office of the Attorney General in 2015 has also helped speed up the judicial process. However, as will be discussed in further detail in the section on “obstacles to access”, state-based judicial complaint mechanisms in Thailand are severely limited in their effectiveness as they do not provide a means for trafficking survivors, or other aggrieved workers, to obtain effective remedy. According to a recent report by the Thomson Reuters Foundation, human traffickers in Thailand are ignoring 99% of court orders to compensate their victims,²⁸ with compensation only paid in five out of 1,335 cases since 2014. Judicial channels may also not be the preferred means for trafficking survivors to seek redress for rights abuses as officially identified foreign victims must stay in government-run shelters during the length of legal proceedings (unless they are offered the possibility of providing testimony in writing or via video) with limited income-earning opportunities.

- 20 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 26*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-26/> [Accessed 6 Nov. 2019].
- 21 Rees, C. (2008). *Grievance Mechanisms for Business and Human Rights Strengths, Weaknesses and Gaps*. Working Paper No. 40. [online] Cambridge, Massachusetts: John F. Kennedy School of Government, Harvard University, p.3. Available at: <https://www.business-humanrights.org/sites/default/files/reports-and-materials/Rees-Existing-grievance-mechanisms-Jan-2008.pdf> [Accessed 6 Nov. 2019].
- 22 Rees, C. (2008). *Grievance Mechanisms for Business and Human Rights Strengths, Weaknesses and Gaps*, p. 4.
- 23 Office of High Commissioner for Human Rights (2011). *Guiding Principles on Business and Human Rights*. [online] New York and Geneva: United Nations, p.27. Available at: https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf [Accessed 6 Nov. 2019].
- 24 Stasi, A. (2016). *Elements of Thai Civil Law*. Leiden, The Netherlands: Koninklijke Brill NV, p.19.
- 25 Huttasan, S. (2013). *Mediation and Justice in Labor Court Cases*. *Newsletter: Access to Justice and Rights Protection for Migrant Workers in Thailand*, [online] (2), p.16. Available at: https://issuu.com/hrdfoundation/docs/_6e637fdc3cd81d/30?ff=true&e=80 [Accessed 7 Nov. 2019].
- 26 Siam Legal International. (2019). *Criminal Law in Thailand*. [online] Available at: <https://www.siam-legal.com/litigation/thailand-criminal-cases.php> [Accessed 22 Nov. 2019].
- 27 Thailand's Country Report on Anti-Human Trafficking Response. (2019), p. 8.
- 28 FreedomUnited.org. (2019). *Thailand's traffickers flout 99% of court orders to compensate victims*. [online] Available at: <https://www.freedomunited.org/news/thailands-traffickers-flout-99-of-court-orders-to-compensate-victims/> [Accessed 6 Nov. 2019].



Photo: Misty Keasler

STATE-BASED NON-JUDICIAL COMPLAINT CHANNELS

According to Guideline 27 of the UNGPs, “States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.”²⁹ State-based non-judicial complaint mechanisms (e.g. labor dispute systems or government agencies) can play an important role in complementing judicial mechanisms.

While effective judicial mechanisms are at the core of ensuring access to remedy,³⁰ they may not be the most effective or preferred way for complainants to resolve a grievance. Interviews conducted with Thai and migrant workers and CSOs have found that the legal process can be lengthy, expensive, and often does not result in adequate compensation for survivors. In addition, criminal prosecutions may not always be in survivors’ best interest if they are under pressure or are forced to act as witnesses, are exposed to retaliation at the hands of their abusers or forced to stay in shelters as is the case with trafficked migrant victims.

The following are the key non-judicial state-based agencies and institutions that are responsible for receiving and resolving labor complaints from Thai and migrant workers in Thailand.

Ministry of Labor’s Department of Labor Protection and Welfare

Thai labor laws and regulations apply to all workers, regardless of their nationality and irrespective of their legal status in the country. In accordance with Chapter 12 of the Labor Protection Act (LPA), B.E. 2541 (1998), Thai nationals and migrant workers – including undocumented migrants – have the right to file a complaint with the MoL’s DLPW for a wide range of offences including violations around working hours, holidays, annual leave, payment of wages, disciplinary action, discrimination, harassment, job duties during pregnancy, and child labor.³¹ Petitions made to the MoL are lodged with the provincial or district-level Labor Inspector, who is required to investigate the complaint.

Concurrently, the Labor Inspector must issue an order for the employer to comply with the Labor Protection Law within 60 days from the date when a complaint is received. If the inquiry finds that a transgression has been committed and the parties involved cannot agree on a monetary settlement, they can bring the case to the labor court within 30 days.³² Alternatively, workers can file a litigation directly to the labor court from their initiation. Although it does not handle workplace disputes, the Department of Employment is another MoL agency mandated to assist Thai documented migrant workers with employment-related issues. Its main role is to issue work permits and register employment as well as changes of employment.

29 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 27*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-27/> [Accessed 6 Nov. 2019].

30 Phase III: Enhancing the effectiveness of non-State-based grievance mechanisms. (2018). OHCHR Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses. [online] Office of the UN High Commissioner for Human Rights, p.12. Available at: <https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf> [Accessed 7 Nov. 2019].

31 Thailand Migration Report 2014. (2014), p.139.

32 *Labor Protection Act, B.E. 2541 (1998)*. Sections 120, 124. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/49727/125954/F-1924487677/THA49727%20Eng.pdf>

Complaints can be made by workers to the relevant MoL agencies listed above through several dedicated government hotlines. Hotline No. 1546 is operated by the DLPW and serves as a channel for receiving complaints from both employers and employees and supported Cambodian, Burmese, and English speakers. Generally, Laotian speakers do not require interpretation services given the similarities between Laotian and Thai. While no government statistics are publicly available for 2018, records show that 89,681 calls were received in 2017 involving cases of “termination of employment, wages, punishments and holidays”.³³ The Department of Employment accepts complaints via its Hotline No. 1694 with interpretation services available in Burmese, Cambodian, and English. According to the most recent government statistics, 131,924 calls were received in 2017, mostly related to questions on work permits and changes of employers.³⁴ Hotline No. 1506, which is operated by the MoL, receives complaints from both Thai and foreign employers and employees and offers interpretation services in Burmese, Cambodian, and English. The call center processed 339,833 cases in 2018.³⁵ Out of these, 124,599 cases involved labor protection violations and 305 cases were related to the employment of undocumented migrant workers, with 93 cases prosecuted. Also, 124,599 cases were related to labor protection violations, with 628 cases prosecuted.³⁶

LIMITATIONS

The DLPW may be limited in its ability to deliver redress to victims of labor rights violations as it often gives priority to the successful mediation of labor disputes over the provision of adequate remedy to aggrieved workers. Victims of labor rights violations often pursue mediation or accept out-of-court settlements that are well short of the amount they expect or could have reasonably obtained if they had won their case. One Burmese migrant interviewed in Chiang Rai recounted how his employer failed to pay him 5,000 THB (approx. \$165 USD) for a construction job building a hospital: *“I went to the provincial Department of Labor Protection and Welfare office, but they never got me my wages back. When I went there to complaint, they negotiated with the employer and offered me half of what I was owed and said it was the best I was going to get.”*

Field research conducted for this study found that only a small percentage of labor complaint cases presented to the DLPW by either Thai or migrant workers ended going to trial in the labor court. To give an example, only three out of a total of the 39 cases received by the Sa Kaeo DLPW went to court in 2018. In Chiang Rai, the director of the provincial

DLPW estimated that only two or three individuals filed suit that same years out of a total of 223 complaints. Many workers prefer mediation over taking their case to the labor court because of the length, uncertainty and cost associated with legal proceedings. Taking a case to trial in the labor court is cost-prohibitive for many workers, particularly migrants, who cannot afford to wait several months or longer for adjudication.

As stated in a recent report by the ILO, “the time period between registering a complaint and settlement is often crucial for migrant workers, as their permission to stay in destination countries is often tied to their employment. Delays in adjudication can mean that they are denied remedies, as migrants must return home regardless of whether a resolution was reached.”³⁷ This can undermine the “equitability” criterion for effective complaint mechanisms outlined under Principle 31. The fact that many workers cannot afford to go to trial because of their financial situation or legal status, and consequently decide to accept a settlement without having sufficient legal knowledge or expertise to understand whether it is fair, can undermine the fairness and equitability of the grievance process.

Ministry of Labor’s Social Security Office

The Occupational Safety, Health and Environment Act of 2011 allows private sector or public sector employees to file complaints in relation to occupational safety and health violations. The Social Security Office (SSO) of the MoL is responsible for handling claims for injury or illness, maternity, disability, death, children, old-age, and unemployment benefits mandated by the Social Security Act of 1990. Documented migrants in Thailand are also covered by the act and workers can file a complaint with the SSO when their employer fails to provide these benefits. In addition, the Workers’ Compensation Act 1994 requires employers to provide compensation for any employee who becomes injured, ill, or dies during or as a result of their work duties. The SSO is responsible for administering the provisions of the Workers’ Compensation Act.

LIMITATIONS

Workers employed in industries as agriculture, fishing, forestry, and livestock, industries where employment is often seasonal in nature are excluded from social security coverage and unable to apply from compensation directly from the fund. Migrant workers have even more difficulty in accessing the fund as they must be formally registered, carry a

33 Thailand’s Country Report on Anti-Human Trafficking Response. (2017). [online] The Thai Ministry of Social Development and Human Security, p. 50. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2014/12/Thailands-TIP-Country-Report-2017-FINAL.pdf> [Accessed 8 August 2019].

34 *Ibid*

35 Thailand’s Country Report on Anti-Human Trafficking Response (2018). The Thai Ministry of Social Development and Human Security, p. 53. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2019/07/Royal-Thai-Government-Report-2018.pdf>

36 *Ibid*.

37 Harkins, B. and Ahlberg, M. (2017). *Access to justice for migrant workers in South-East Asia*, p. XII.

work permit (issued by the government) and be granted the legal right to stay in the country (or have passed the national verification process as per the cabinet meeting resolution of 13 February 2012) in order to qualify for compensation. Even documented workers who are legally entitled to receive social security benefits can experience impediments to access. A passport or nationality verification document is invariably required by the Thai authorities, which not all migrant workers have ready access to. In addition, the employer of the worker in question must have registered and paid into the worker compensation scheme in order to receive worker compensation benefits.³⁸

Ministry of Interior's Damrongtham Centers

Damrongtham Centers (or ombudsman offices) were established on April 1, 1994 by the Ministry of the Interior (MoI) both in the Ministry itself and in many Thai provinces. The word "Dhamrong" is derived from the name of HRH Prince Damrong Rajanubhab, the first Minister of Interior, while the word "tham" means righteousness and justice.³⁹ These centers, operated by the MoI under the supervision of provincial governors, process general complaints from the public 24 hours per days on a wide range of issues from corruption and good governance to environmental degradation and human rights violations. Their hotline No. 1567 received 43 reports of trafficking cases in 2018, mostly related to forced prostitution.

Along with the hotline, complaints can be made in person in the Damrongtham Centers. The National Council for Peace and Order, under the military junta that ruled Thailand between May 2014 and July 2019, issued an order in July 2014, instructing all provinces to establish Damrongtham Centers. Later, in October 2016, the Cabinet approved the setting up of Damrongtham Centers in all districts as well.⁴⁰ Damrongtham centers may be limited in their ability to effectively assist workers that have been victims of labor rights violations as they serve as a referral mechanism to relevant government agencies and do not have the power to investigate or settle labor disputes themselves.

Workers are unlikely to gain any advantage from lodging a labor-related complaint to their provincial or district-level Damrongtham center other than obtaining information on how to lodge their complaint to the proper authority. A professor of labor policy at Thammasat and Mahidol University interviewed for this study remarked: "The Damrongtham Centers are run by the Ministry of the Interior. As such, they privilege a top-down governance approach rather than a bottom-up participatory approach in the way they conduct their operations. I imagine that Damrongtham officers would be unlikely to engage in bargaining or mediation with other government officers on behalf of workers as the MoI is more concerned with state security than labor rights. In addition, the center is not structured in such a way that Damrongtham Center officers are assigned individual cases to follow up on. I think that many labor-related complaints might end up being shelved".⁴¹

The Royal Thai Police

For more serious labor violations that are of criminal nature (e.g. detention, physical abuse, human trafficking), workers can contact the Royal Thai Police (RTP) directly. Its Anti-Human Trafficking Division (AHTD), which operates 'Hotline 1191', receive complaints regarding human trafficking and violence against children and women. This division AHTD is the "main authority for investigating trafficking in persons in Thailand"⁴² and can screen and refer trafficking victims to the MSDHS, which is the government agency responsible for providing victim support. The RTP established the Thailand Anti-Trafficking in Persons Task Force (TATIP) in early 2018 to strengthen the coordination for sex and labor trafficking law enforcement efforts.⁴³ The task force is comprised of law enforcement, social workers, and NGOs (2018 TIP report). The TATIP investigated 29 cases in 2018, resulting in the prosecution of 69 offenders (2019 TIP report).⁴⁴

Ministry of Social Development and Human Security

In 2013, OSCCs, which were focused on domestic violence and health issues affecting women, were expanded to provide urgent care and social services to people with a range of problems (e.g. violence against children

38 Olivier, M. (2018). *Social protection for migrant workers in ASEAN: Developments, challenges, and prospects*. [online] Geneva, Switzerland: International Labor Organization, p.27. Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=55654> [Accessed 8 Nov. 2019].

39 Chumphon Provincial Operation Center. (2013). *Damrongtham Centres*. [online] Available at: <http://www.chumphon.go.th/2013/page/petition> [Accessed 7 Nov. 2019].

40 Thailand Public Relations Department. (2017). *People Urged to Send Complaints about Corruption to Damrongtham Center*. [online] Available at: https://thailand.prd.go.th/ewt_news.php?nid=5173&filename=index [Accessed 6 Nov. 2019].

41 Suttawet, C. (2019). *Questions on the MoI's Damrongtham Centers*.

42 TRAINING MANUAL Countering Human Trafficking in the Thai Fishing Industry. (2016). [online] Bangkok, Thailand: International Organization for Migration, p.84. Available at: <https://thailand.iom.int/sites/default/files/document/publications/%5BEN%5D%20Training%20Manual%20on%20Countering%20Trafficking%20in%20Thai%20Fishing%20Industry.pdf> [Accessed 1 Sep. 2019].

43 United States Department of State (2018). *Trafficking in Persons Report*. [online] United States Department of State. Available at: <https://www.refworld.org/docid/5b3e0a604.html> [Accessed 21 November 2019].

44 Thailand's Country Report on Anti-Human Trafficking Response. (2018). [online] The Thai Ministry of Social Development and Human Security, p. 19. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2019/07/Royal-Thai-Government-Report-2018.pdf> [Accessed 21 November 2019].

and women, physical disability, child labor, human trafficking, pregnancy discrimination) through physical and mental aid, legal assistance, and recovery and rehabilitation.⁴⁵ The crisis centers, which are now operated under the MSDHS, receive complaints, transfer cases, and coordinate responses between government agencies.

The channels for making a complaint to the OSCC include the 1300 hotline of the Social Assistance Centre, a network of around 22,000 OSCCs around the country, and 1,300 mobile units, which “access communities, raise public awareness, and proactively lead interventions in communities where complaints have been received.”⁴⁶ The OSCC’s Social Assistance Center (the 1300 number) is also the primary government hotline for receiving calls about human trafficking. In 2018, the center received 118 calls reporting human trafficking cases, of which 100 calls reported forced prostitution, 13 calls reported forced labor, and 5 calls reported forced begging.⁴⁷ However, it should be noted that the overwhelming majority of complaints received by the hotline involve incidents of violence against children, women, and the elderly.⁴⁸ Given the crisis centers’ traditional focus on violence against women and children, labor trafficking victims may have limited awareness of the OSCC and of the possibility of seeking assistance at one of its centers.

Another major limitation of the OSCCs is that most of the complaints made, particularly those relating to sexual violence, suffer from a high rate of attrition through the criminal justice cycle, from reporting and investigation to prosecution and trial.⁴⁹ If OSCC data is compared against the Thai Royal Police data, only about six percent of the cases reported to the OSCC result in the issuing of an arrest warrant.⁵⁰ A 2017 report by UN Women, UNDC, and UNODC found that the “issue of limited budget and insufficient resources to respond to increasing rates of reported cases and the management of OSCC” was “a major challenge for its effectiveness in helping victims of sexual violence.”⁵¹

Port-In Port-Out Authority

The Port-in-Port-Out (PIPO) authority has inspection centers set up in major ports to ensure compliance with illegal, unreported, and unregulated fishing law and, in theory, has the capacity to hear labor-related complaints, including those involving forced labor and human trafficking. PIPO inspections are comprised of multidisciplinary teams from the MoL, the Royal Thai Navy, and the Department of Fisheries and include mandated DLPW labor inspections. However, a recent report by the ILRF found that “The Ministry of Labor has a limited number of labor inspectors that are involved in monitoring working conditions of fishers during Port-In/Port-Out (PIPO) inspections.”⁵² As a result, PIPO inspections have tended to focus more on the core task of ensuring that vessels comply with Illegal, unreported, and unregulated (IUU) fishing laws. This has caused “fishermen to rarely view PIPO as an ally because they are responsible for checking fishermen’s migration identification documents”⁵³ and may be less concerned with enforcing labor rights. In an effort to complement PIPO inspections, the Department of Employment established coordination centers for fisheries workers in 22 shoreline provinces in 2015 to receive employment-related complaints from workers, ensure that they have been provided with proper work authorization, prosecute employers in violation of labor regulations, and provide assistance to victims of human trafficking.⁵⁴

The National Human Rights Commission

The NHRCT also has the capacity to receive complaints regarding labor rights violations in Thailand. Under the 1999 National Human Rights Commission Act, the NHRCT was mandated “to promote the respect for human rights domestically and internationally; to examine acts of human rights violation or those which do not comply with the country’s international human rights obligations and propose remedial measures to individ-

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- 45 UN Women. (2013). *Thailand launches One-Stop Crisis Centre to respond to violence against women*. [online] Available at: <https://www.unwomen.org/en/news/stories/2013/4/thailand-launches-one-stop-crisis-centre-to-respond-to-violence-against-women> [Accessed 1 Sep. 2019].
- 46 Thailand Institute of Justice (2018). *Towards Gender-Responsive Criminal Justice: Good Practices from Southeast Asia in Responding to Violence Against Women*. [online] Bangkok, Thailand: Thailand Institute of Justice, p.193. Available at: <https://icclr.org/wp-content/uploads/2019/06/Towards-Gender-Responsive-Criminal-Justice.pdf?x12984> [Accessed 21 Nov. 2019].
- 47 Thailand’s Country Report on Anti-Human Trafficking Response. (2018). [online] The Thai Ministry of Social Development and Human Security, p. 53. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2019/07/Royal-Thai-Government-Report-2018.pdf> [Accessed 8 August 2019].
- 48 Thailand’s Country Report on Anti-Human Trafficking Response. (2017). [online] The Thai Ministry of Social Development and Human Security, p. 51. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2014/12/Thailands-TIP-Country-Report-2017-FINAL.pdf> [Accessed 21 November 2019].
- 49 Skinnider, E., Montgomery, R. and Garrett, S. (2017). *The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam*. [online] Bangkok, Thailand: UN Women, UNDP, and UNODC, p.vii. Available at: https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2017-The-Trial-of-Rape.pdf [Accessed 21 Nov. 2019].
- 50 *Ibid*, p. 66.
- 51 *Ibid* p. 91.
- 52 International Labor Right Forum on behalf of the Thai Seafood Working Group (2019). *Comments Concerning the Ranking of Thailand by the United States Department of State in the 2019 Trafficking in Persons Report*. [online] International Labor Right Forum on behalf of the Thai Seafood Working Group, p.10. Available at: https://laborrights.org/sites/default/files/publications/TIP%20Comments_Thailand_2019%20_ILRF_SWG.pdf [Accessed 23 Nov. 2019].
- 53 Blau, G. (2019). Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. Mobile Solidarity. American Center for International Labour Solidarity (ACILS) p. 37.
- 54 Ubonrat.mol.go.th. (2015). *Fishery Worker Coordination Center Open in 22 Shoreline Provinces Ensuring Legality of Workers Specifically in the Fishing Industry to Intercept and Eliminate Human Trafficking Chains* | 013291373015333111. [online] Available at: <http://ubonrat.mol.go.th/en/anonymouse/news/45594> [Accessed 8 Nov. 2019].

uals or organizations concerned.”⁵⁵ Complaints may be submitted to the NHRCT either in person, written, or online via the commission’s website.

LIMITATIONS

However, the NHRCT has had a mixed track record of defending human rights. In 2017, The National Legislative Assembly of Thailand passed the Organic Law on the NHRC B.E. 2560 (2017), which constrained some of its powers. In a revocation of the powers granted to it under the 2007 constitution, the commission can now only file lawsuits on behalf of victims of human rights violations and take cases to the criminal court where the victims are unable to do so.⁵⁶ Official statistics from the NHRCT point to a diminishing case load since the Organic Law was passed. The commission received 232 complaints in 2018, compared to 619 complaints in 2017.⁵⁷ Most of the 232 complaints received — 80 cases or 34.48% — were petitions about personal rights or liberties.⁵⁸

Diplomatic Missions in Thailand

Migrant workers can also file a complaint through their country’s diplomatic missions in Thailand, either at their embassy in Bangkok or at the consulate in Chiang Mai. Labor attachés in ASEAN are usually appointed by the MoL (or equivalent) and are part of the diplomatic mission abroad. They have a mandate to protect their nationals and are responsible for dealing with complaints, assisting with compensation claims and assisting migrants who have been victims of exploitation or trafficking. Migrant workers of any legal status can seek assistance through diplomatic channels, although a study by the Asian Research Center for Migration found that the channel is primarily used by documented migrant workers.⁵⁹ Embassies and consulates can provide basic assistance for labor-related complaints in the form of mediation, interpretation or information services for resolving disputes. The Government of Myanmar has placed two labor attachés in Thailand to respond to issues associated with labor migration.

LIMITATIONS

In practice, however, consulate or embassy personnel have little authority over labor disputes and tend to refer cases to the Thai labor authorities and even directly to the relevant private employment agency for settlement.⁶⁰ In addition, the

integrity and capacity of embassy and consulate officials responsible for migrant workers affairs have sometimes come under scrutiny, affecting workers’ trust in them. For example, in 2019, a Myanmar labor attaché in Thailand was charged by the Anti-Corruption Commission of Myanmar following claims that he asked for about 4.4 million Thai Baht (approx. \$144,600 USD) from 28 overseas employment agencies “in exchange for approving labor demand letters and for sending workers to recruitment agencies”.⁶¹ One NGO respondent who works in Chiang Mai highlighted that the consulate of Myanmar in Chang Mai only handled requests regarding immigration status for documented migrants and was not the appropriate channel for complaints related to trafficking or forced labor situations. A Cambodian national who was hired as an interpreter for this study had experienced exploitative working conditions in Thailand, recounted how he had called the Royal Cambodian Embassy in Bangkok on two separate occasions, once to complain about excessive fees being charged to workers by his employer, and a second time to report physical abuse at the hands of a Thai colleague at his factory. However, when he explained the situation over the phone to a Cambodian embassy official, he was told they could not assist him and was advised to contact the police.

Interviews conducted with Burmese and Cambodian migrant workers for this study also found that the embassies of Myanmar and Cambodia are difficult to reach, with very long holds and that calls that sometime go unanswered. The Cambodian interpreter hired in Trat province was instructed to call the embassy in Bangkok to follow up on a request for information on a Friday afternoon and schedule a meeting with the labor attaché. He had to call a total of 12 times before being able to speak to someone, which is indicative of the difficulty Cambodian migrant workers might experience in calling the Embassy to make a complaint, especially during working hours. One Burmese national who had been trafficked on board a fishing boat in Indonesia complained that the labor officers at the embassy provided obtuse and unclear answers to questions about Thai labor law, echoing some comments from other members of the same focus group discussion.

55 Nhrct.or.th. (n.d.). *National Human Rights Commission of Thailand: About Us*. [online] Available at: <http://www.nhrct.or.th/AboutUs/The-Commission/Mandates.aspx> [Accessed 1 Sep. 2019].

56 Muntarbhorn, V. (2018). *Thai human rights body in state of flux*. [online] <https://www.bangkokpost.com/opinion/opinion/1520618/thai-human-rights-body-in-state-of-flux> [Accessed 1 Sep. 2019].

57 Nhrct.or.th. (n.d.). *National Human Rights Commission of Thailand: Statistical Information on Complaints*. [online] Available at: [http://www.nhrct.or.th/NHRCT-Work/Statistical-information/Statistical-information-on-complaints/Yearly-\(2010-Now\).aspx](http://www.nhrct.or.th/NHRCT-Work/Statistical-information/Statistical-information-on-complaints/Yearly-(2010-Now).aspx) [Accessed 1 Sep. 2019].

58 Nhrct.or.th. (2018). *Performance Report of the Executive Summary Fiscal Year 2018 (1st October 2017 – 30th September 2018)* [online] Available at: <http://www.nhrct.or.th/getattachment/e61a5529-c8dc-4dee-9036-db85e84e1e05/%E0%B8%9A%E0%B8%97%E0%B8%AA%E0%B8%A3%E0%B8%B8%E0%B8%9B%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%9A%E0%B8%A3%E0%B8%B4%E0%B8%AB%E0%B8%B2%E0%B8%A3-2561.aspx> [Accessed 4 Nov. 2019].

59 Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand. (2013), p.38

60 *Ibid*, p. XI.

61 Htwe, Z. (2019). *Myanmar Labor Attaché in Thailand Charged with Corruption*. [online] The Irrawaddy. Available at: <https://www.irrawaddy.com/news/burma/myanmar-labor-attache-thailand-charged-corruption.html> [Accessed 9 Nov. 2019].



Photo: Misty Keasler

Recruitment-Related Complaints

The Employment and Job Seekers Protection Act 1985 is the primary piece of legislation protecting migrant workers during the recruitment process. The Act regulates the recruitment of both domestic Thai workers and outbound Thai migrant workers by private employment agencies. It outlines an established process for handling complaints of outbound Thai migrant workers. Under this mechanism, workers can lodge recruitment-related complaints to the Department of Employment's Inspection and Job-Seekers Protection Division, or a local Provincial Employment Office (PEO), who are responsible for receiving and investigating such grievances. However, the legislation was drafted before the beginning of large-scale migration into Thailand in the 1990s and, as a result, many labor officials interpret the law as only applying to outbound migration from Thailand.

No frameworks clearly provide protection for foreign migrant workers during the recruitment process, including for filing grievances. The law is therefore not aligned with the core ILO conventions on migrant workers' rights cited earlier in this study, which stipulates that states should provide complaint mechanism for all workers, including migrants. This is despite the fact that Article 17 of all three MOUs with Cambodia, the Lao People's Democratic Republic, and Myanmar include provisions for migrant workers to file complaints or seek assistance under Thai law or within the MoL's policies and procedures. While the Thai Council of State issued a letter in February 2013 to address this legislative gap stating that the Act was not just limited

to Thai jobseekers and included any person seeking employment, it does not appear that these guidelines are being implemented in practice.⁶²

The Job Seeker Protection Act 1985 is also limited in its ability to provide recourse to migrant workers as its provisions only cover Thai recruitment agencies, whereas most migrant workers that have used an employment agency to contract employment will have done so in their home country. As one Burmese project officer in Phang Nga province remarked, MOU workers will typically contact the employment agency that recruited them in Myanmar and if they experience a problem with working conditions as they have the name of the agency and its contact information on their contract. However, the use of this channel poses obvious problems as the recruitment agencies in question have a clear incentive to resolve the complaint as quickly and as quietly as possible, especially if they are involved in exploitative labor practices.⁶³ Migrant workers also have the option of making complaints to associative bodies in the recruitment industry in their home countries.

The Myanmar Overseas Employment Federation (MOEF) was founded in 2012 and works with the Ministry of Labor, Migration and Population. It is the governing body of overseas employment agencies and counts over 260-member employment agencies. "Membership is mandatory for overseas employment agencies and disciplinary actions can be taken against members, including revoking licenses of agencies that violate the voluntary Code of Conduct". The Federation has a call center in Thailand and has helped resolved more than 600 complaints since 2012. In Cambodia, the Association

62 Kultalahti, A. and Hall, A. (2016). *Breaking the cycle of exploitation: Recommendations for responsible recruitment of migrant workers in Thailand*. [online] Helsinki: Finnwatch, p.9. Available at: https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf [Accessed 1 Nov. 2019].

63 Breaking the cycle of exploitation: Recommendations for responsible recruitment of migrant workers in Thailand. (2016). [online] Helsinki, Finland: Finnwatch, p.33. Available at: https://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf [Accessed 1 Sep. 2019].

of Cambodian Recruitment Agencies (ACRA) is the main association of recruitment entities in the country. It operates under the Ministry of Labor and Vocational Training and counted 50 private recruitment agencies as members in 2018.⁶⁴ However, it is unclear to what extent the ACRA Association handles complaints received from Cambodian workers in Thailand.

Multi-stakeholder Complaint Mechanisms

Multi-stakeholder complaint mechanisms are a useful framework for addressing grievances given that labor rights-related complaints are often complex and require the assistance or intervention of multiple actors. The complaint bodies described below form part of a collaborative approach between government institutions and civil society actors to provide workers with a wide range of information and assistance and bridge the gap between state-based and non-state-based complaint mechanisms.

Migrant workers in Thailand can seek assistance from Migrant Worker Assistance Centers (MWACs), which were established by a cabinet resolution in 2016 in 10 pilot provinces. MWAC are housed in provincial employment offices and are meant to operate in conjunction with labor protection and welfare offices, as well as social security offices SSOs, social development and human security offices, and NGOs.⁶⁵ According to the 2018 statistics released in the RTG's latest report on its anti-trafficking response,⁶⁶ 113,644 workers "were provided with consultation assistance on workers' benefits, changing or seeking employment, revisions or duplications of registrations; changes or additions of workplaces; changes of types of jobs; coordination with agencies for assistance; and obtaining other services in accordance with the labor laws".

However, a recent report by the ILO acknowledged that while the MWACs showed promise as a model for multidisciplinary collaboration, "additional guidance and training is needed to build the model's effectiveness".⁶⁷ The 2019 TIP Report also noted that these "centers made minimal efforts to increase outreach and build trust with local civil society organizations, which tended to deter NGOs from referring exploited workers to the centers".⁶⁸

Other multi-stakeholder initiatives have been set up by non-government actors to assist migrant workers and process labor-related complaints. The ILO Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE) has set up 27 Migrant MRCs in six countries in the ASEAN region, including six centers in Thailand. MRCs are set up to deliver assistance to migrant workers directly in their communities through partnerships with government institutions, trade unions and CSOs. These MRCs serve as ad hoc complaints departments, "linking migrant workers with legal-aid service providers or official channels for lodging complaints"⁶⁹ as well as assisting them in filing these complaints. Additionally, MRCs provide migrant workers with information to help them protect and assert their labor and human rights. There are a total of six MRCs in Thailand serving workers in five locations: Bangkok, Chiang Mai, Mae Sot, Rayong, and Samut Prakan.⁷⁰ These centers are operated by the Human Rights and Development Foundation (HRDF), the Foundation for AIDS Rights, the MAP Foundation (in two locations), the Thai Allied Committee with Disregarded Burma, and the Thai Trade Union Congress.

The 2017 ILO report on Access to Justice for Migrant Workers in Southeast Asia reviews the statistics compiled by MRCs and provides insights on the nature and outcomes of complaints received in Thailand. A total of 160 complaints were received by MRCs in Thailand in between 2011 and 2015 involving 4,279 complainants. Most complaints (58 per cent) were related to the non-payment or underpayment of wages. Only a small fraction of complaints involved abuses indicative of forced labor, such as withholding of documents (4 per cent), contract substitution (4 per cent), and excessive work hours (2 per cent). Unfortunately, many cases were dropped without providing workers with remedy (28 per cent). Lastly, while financial compensation was provided in the majority of cases resolved in Thailand (59 per cent), it remained challenging for workers to collect compensation after it was awarded if recruitment agencies or employers decide not to respect compensation orders. No information was provided in the report on the mechanisms used by workers to obtain remedy in Thailand "due to small sample sizes".⁷¹

64 Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR. (2019). [online] Amherst, Massachusetts, United States: VERITÉ, p.29. 45. Available at: <https://www.verite.org/wp-content/uploads/2019/05/Thailand-Bound-An-Exploration-of-Migration-Infrastructures-in-Cambodia-Myanmar-Lao-PDR-1.pdf> [Accessed 1 Sep. 2019].

65 Thailand Migration Report 2019. (2019), p. 36.

66 Thailand's Country Report on Anti-Human Trafficking Response. (2019), p. 47.

67 Thailand Migration Report 2019. (2019), p. 12.

68 United States Department of State (2019). Trafficking in Persons Report. [online] United States Department of State, p.457. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> [Accessed 2 September 2019].

69 Migrant Worker Resource Centres: Supporting justice and fair treatment. (2015). [Blog] *Work in Progress*. Available at: <https://iloblog.org/2015/06/23/migrant-worker-resource-centres-supporting-justice-and-fair-treatment/> [Accessed 1 Sep. 2019].

70 Harkins, B. and Ahlberg, M. (2017). *Access to justice for migrant workers in South-East Asia*, p. 4. Available at: <https://www.refworld.org/pdfid/597aec374.pdf> [Accessed 6 Nov. 2019].

71 Harkins, B. and Ahlberg, M. (2017). *Access to justice for migrant workers in South-East Asia*, p. 25, 27, 28, 31.

Non-State-Based Complaint Mechanisms

Non-state-based complaint mechanisms such as those provided by private sector companies present several advantages over state-based mechanisms. They may be “quicker, cheaper and easier to access and may resolve grievances in situations where a dispute does not amount to a legal cause of action”⁷² or when judicial proceedings are not the preferred means of resolving a grievance. In addition, they may “offer a greater range of potential remedies, and greater potential to tailor remedies to the needs of rights-holders”,⁷³ especially in instances where “state-based agencies or institutions may be unwilling or unable to do so.”⁷⁴ John Ruggie, the author of the UNGP on Business and Human Rights, explicitly states that the “most underdeveloped component of remedial systems in the business and human rights domain is grievance mechanisms at company’s operational level”.⁷⁵ Below are examples of non-judicial complaint mechanisms set out in Thai law that can be used by aggrieved workers to resolve labor disputes with their employers at the company-level.

Labor Welfare Committees and State Enterprise Relations Committees

Section 108 of Thailand’s LPA (1998) stipulates that an employer who employs ten or more persons shall provide work rules that include provisions on the lodging of grievances. Section 109 states that these provisions should cover (1) the scope and meaning of grievances; (2) method and steps of dealing with grievances; (3) investigation and consideration of grievances; (4) procedures for settlement of grievances; and (5) protection for the claimant and any involved persons. Section 92 also states that all workplaces with 50 or more employees must have a welfare committee with a minimum of five elected members that represent the workers and meets with the employer at least once every three months.⁷⁶ The committee’s primary responsibility is to engage in discussions with management regarding “welfare arrangements of employees”. Section 97 states that the welfare committee can give advice and make recommendations to the Employer regarding the provision of welfare for Employees and inspect, control and supervise these welfare arrangements and propose guidelines to the employer.⁷⁷ Per Section 93, the committee also interfaces with the MoL with the primary

responsibility of “making comments to the Minister concerning policies, guidelines and measures on labor welfare”.

The welfare required by law includes provisions on having “clean water, restrooms, medical supplies, first aid room, nurse, doctor and a vehicle for taking employees to hospital”.⁷⁸ Thai law provides a similar mechanism for state workers to voice complaints and seek resolution. The State Enterprise Labor Relations Act B.E. 2543 (2000), which outlines procedures governing labor relations with state employees, requires each State Enterprise to establish tripartite committees, called State Enterprise Labor Relations Committee, to set the “minimum standards of the Conditions for Employment in State Enterprises”⁷⁹ and “discuss and reconcile labor issues and disputes with an aim to create positive mutual understanding and peaceful working atmosphere and co-existence...”.⁸⁰

LIMITATIONS

Research conducted in this study suggests that the Labor Welfare Committee is not generally appropriate for resolving complaints about labor rights violations. While the Labor Welfare Committee, in theory, can relay grievances made by workers and promote “engagement and dialogue” in line with Principle 31, these are usually limited to general discussion about worker welfare and are seldom used to resolve disputes regarding labor rights violations. The representative of the seafood products producer interviewed for this study remarked that most of the issues raised by workers in the factory labor welfare committee did not involve complaints but rather suggestions on how to improve the workplace, for example, by providing more comfortable uniforms or offering more parking spaces. This is despite the fact that the company had worked with a local NGO to strengthen its labor welfare committee by raising awareness about its role among workers and providing training to elected representatives.

This study identified other issues limiting labor welfare committees’ ability to serve as an effective complaint mechanism for workers. One senior representative of the State Enterprises Workers Relations Confederation interviewed for this study expressed the view that in many companies, the labor welfare committees’ members are not select-

72 Phase III: Enhancing the effectiveness of non-State-based grievance mechanisms. (2018), p. 12.

73 *Ibid.*

74 Zagelmeyer, S., Bianchi, L. and Shemberg, A. (2018). *Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis*. [online] Manchester, United Kingdom: The University of Manchester Alliance Manchester Business School, p.5. Available at: <https://www.ohchr.org/Documents/Issues/Business/ARP/ManchesterStudy.pdf> [Accessed 6 Nov. 2019].

75 *Ibid.*, p. 4.

76 *Labor Protection Act, B.E. 2541 (1998)*. Sections 108, 109, 92.

77 *Ibid.*, Section 97.

78 Mazars.co.th. (n.d.). *Establishment of a “Welfare Committee” - Mazars - Thailand*. [online] Available at: <https://www.mazars.co.th/Home/Doing-Business-in-Thailand/Legal/Establishment-of-a-Welfare-Committee> [Accessed 1 Sep. 2019].

79 MoL.go.th. (n.d.). *Labour Law*. [online] Available at: http://www.mol.go.th/en/anonymouse/labour_law [Accessed 1 Sep. 2019].

80 *Ibid.*

ed through a transparent and democratic process. Although worker representatives are technically elected, they are in fact hand-picked by the company, undermining the legitimacy of the welfare committee, another key effectiveness criteria listed in Principle 31 of the UNGPs.

The Executive Director of the Migrant Worker Rights Network (MWRN), a migrant rights NGO in Samut Sakhon, recounted how one of the network's members attempted to run for a position with the labor welfare committee in his factory, which processed seafood. When the management of the company discovered he was a member of a labor rights organization, his name was removed from the list of official candidates. This example shows how the effectiveness of labor welfare committees is highly dependent on the goodwill of the employer stakeholders that oversee their operations. While Section 109 of Thailand's LPA (1998) includes provisions requiring employers to receive, investigate, and resolve worker grievances, it is difficult for labor inspectors to determine whether they are effective in practice or sanction a company even if they are found to be deficient. As a result, the robustness of complaint mechanisms is almost entirely at the will and discretion of the employer or the mother company.

Even when labor welfare committees are effective, their ability to safeguard labor rights in a long-term, sustainable manner can also be questioned. A senior representative of the International Labor Rights Forum (ILRF) remarked that the Thai MoL was increasingly instructing large companies that employed many migrant workers to strengthen labor welfare committees to prevent the development of other means of self-organization. She added that the promotion of labor welfare committee is a sensitive topic within trade unions and workers organizations because it is seen as an attempt to replace the union and co-opt genuine worker representation models.

National Action Plan on Business and Human Rights

In addition to the relevant national legal frameworks outlined above, Thailand is in the process of spearheading an initiative on business and human rights based on international standards. The country initiated the drafting of a National Action Plan (NAP) on Business and Human Rights in 2016 to drive forward the implementation of the UNGP following the recommendation made during the Human Rights Council's Universal Periodic Review (UPR) held in Geneva, Switzerland. It is the first country in Southeast Asia to have drafted a NAP on the topic. The final draft of the NAP

was released on February 25, 2019 by the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ). The elaboration of Thailand's NAP has direct implications for the effectiveness of state and non-state-based complaint mechanisms in Thailand as "the provision of mechanisms for workers, individuals and communities who are adversely affected by a business enterprise is a key feature of the UN Guiding Principles on Business and Human Rights".⁸¹ According to the Manushya Foundation, a regional NGO focused on community empowerment that presented joint comments on the final draft of the NAP to the RTG in coordination with the Thai Business and Human Rights network, one of the advantages of Thailand NAP's on Business and Human Rights is that it "provides for the setting up of complaint mechanisms both in public and private sector, and at the local level, by building the capacity of government officials and other implementing officials on how to handle complaints, confidential information and settling of disputes".⁸²

LIMITATIONS

In theory, the NAP's complaint mechanisms could also help fulfill the key criteria of "rights-compatibility" outlined in the UNGP's Principle 31 as its supranational framework would help ensure that outcomes and remedies agree with internationally recognized human rights. However, there is a lack of clarity on exactly which non-state-based and non-based mechanisms are being created or strengthened, for whom, by which stakeholders, and how they will be implemented. Furthermore, the joint comments found that the final draft "did not adequately include state-based non-judicial grievance redress mechanisms".⁸³ Several civil society representatives present at the presentation of the joint comments of the final draft of the NAP also pointed out that efforts to galvanize businesses and employer organization and involve them in the NAP process have been insufficient. These same organizations also remarked that the NAP has generally not been communicated about enough.⁸⁴ Lastly, there are concerns that when implemented, the NAP will have limited enforceability, as the measures outlined for businesses are optional and not legally binding. The RLPD has yet to propose the NAP to the cabinet for its approval and endorsement.

Company-Operated Complaint Mechanisms

As outlined in the framework of the UNGPs, operational-level complaint mechanisms provide aggrieved stakeholders with a formalized means to raise concerns about any negative impacts a company has had on them and seek remedy. Having such mechanisms in

81 Institute for Human Rights and Business (2019). *Concerning the Thai National Action Plan on Business and Human Rights*. [online] Institute for Human Rights and Business, p.5. Available at: https://www.ihrb.org/uploads/submissions/IHRB_Thai_NAP_submission_15-3-19.pdf [Accessed 2 Sep. 2019].

82 MANUSHYA Foundation, Thai BHR Network (2019). *Summary of Joint Comment on the Final Draft National Action Plan on Business and Human Rights in Thailand*. MANUSHYA Foundation, Thai BHR Network, p.3.

83 *Ibid*, p. 2.

84 Business & Human Rights Day (2019) 'Press Conference: 'Peoples over Profit: Towards a strong National Action Plan (NAP) on Business & Human Rights to regulate corporate activity in Thailand'. *Minutes meeting, 27 June 2019*, Atrium Hotel, Bangkok, Thailand.



Photo: Suthep Kritsanavari

place can help companies identify labor issues in their operations early on and take action to remediate problems before harms compound and grievances escalate. Allowing workers to voice their concerns can also help companies track their human rights performance and highlight weaknesses in company policies, procedures, or practices, in turn promoting internal discussions about how to address these and contribute to continuous improvement.

Company-operated complaint mechanisms can take on a variety of different forms, from suggestion boxes and internal hotlines to complaints made to the Human Resources (HR) department or to supervisors. They may be formal or informal and may include “whistle-blower policies, reporting mechanisms for issues such as sexual harassment, employee conflict management programs, health and safety incident-reporting systems, and complaints to management etc.”⁸⁵ While many larger, international companies base their complaint mechanisms on the internationally-recognized standards “effectiveness criteria” outlined in the UNGPs’ principle 31, others may tailor or adapt their own grievance systems based on relevant multi-stakeholder initiatives (e.g. Ethical Trading Initiative, the Fair Labor Association) and

industry-wide standards (e.g. the International Petroleum Industry Environmental Conservation Association community grievance mechanisms). Providing access to remedy and remediation for workers impacted by its business operations is one of the most important features of company-based complaint mechanisms. According to the UNGP’s principle 22, “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”⁸⁶ Remediation at the company-level can take the form of financial compensation or other forms of remedy (e.g. apologies, rehabilitation, administrative remedies and preventative action, etc.).

Thai multinational corporations have made significant progress in the last several years in implementing the UNGPs’ “Protect, Respect, Remedy” framework. According to a 2019 report on *Human Rights Disclosures in ASEAN* by the ASEAN Corporate Social Responsibility Network, the Institute of Human Rights and Peace Studies, Mahidol University and Article 30, Thailand “appears to be trailblazing on human rights disclosure in ASEAN”.⁸⁷ It scores the highest amongst the five countries with 94% of top-listed companies in Thai-

85 Doing Business with Respect for Human Rights. (2016). [online] Global Compact Network Netherlands, Oxfam and Shift, p.106. Available at: https://www.businessrespecthumanrights.org/image/2016/10/24/business_respect_human_rights_full.pdf [Accessed 7 Nov. 2019].

86 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 22*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-22/> [Accessed 6 Nov. 2019].

87 *Ibid*, p. 10.

land make a commitment to human rights (diagnostic Q1)⁸⁸ and 20% of listed companies provide information on remediation processes or mechanisms (diagnostic Q20).⁸⁹ In addition, 20 Thai firms are now among those listed on the Dow Jones Sustainability Index (DJSI), including seven which were named as “industry leaders” in sustainability.⁹⁰ While the Dow Jones Sustainability Index has no indicator on grievance mechanisms, it does expect companies to report on remediation actions taken, including in relation to their supply chains.⁹¹ Thailand’s progress can be attributed to efforts by the RTG to combat human trafficking and promote sustainable fisheries, which have brought attention to the broader issues of corporate governance and Environment, Social and Governance (ESG) practices.⁹²

LIMITATIONS

However, the use of non-state-based complaint mechanisms to deliver redress and remedy to victims of labor rights violations also poses certain challenges. For one, they may “not be sufficiently independent, transparent and predictable for rights-holders to have confidence in them as a potential route to an effective remedy”.⁹³ In addition, these mechanisms should not be used for serious abuse of human rights such as human trafficking, where judicial complaint mechanisms are more appropriate, or when state-based proceedings are already underway.⁹⁴ This study identified several key limitations related to transparency and legitimacy of company-operated complaint mechanisms as outlined under principle 31 of the UNGPs.

Field research conducted across four provinces in Thailand found that company-operated mechanisms are not consistently implemented in private sector companies and may be particularly deficient in small and medium-size enterprises. When asked whether internal grievance mechanisms were effective at his machine tool factory of 1,000 Thai workers in Chonburi province, the chief of the company’s labor union remarked, “*The problem is that the company sets the rule and are the rule, so you cannot expect good results. When they receive complaints from HR, they just ignore them because they don’t want to deal with the problem.*”

Small and medium-sized companies in Thailand may not feel the need to ensure that complaint mechanisms are legitimate, accountable, or offer effective access to remedy if they are not under any serious pressure from their customers to do so. The executive director of a Trat-based business group who owns three SMEs in the aquaculture and hospitality industries acknowledged that while child labor issues in the shrimp processing industry had forced the major established players in his sector to implement Corporate Social Responsibility policies, “*it was beyond their power to enforce these policies at the farm level as small business owners would not readily accept it*”.

International export-oriented companies may have more power to enforce human rights policies in the first tiers of their supply chain. One country manager for responsible sourcing of a large multinational retail corporation explained that his company had a standard code of conduct for suppliers that stipulates that workers be given access to complaint mechanisms. Social compliance audits verify that suppliers comply with the code of conduct and that a minimum number of posters listing complaint channels are put up in every facility. As discussed earlier in this paper, non-state company-based mechanisms also have the potential of providing effective remedy when it is not available through state-based channels.⁹⁵ However, there may also be some confusion as to which company is responsible to providing remediation and redress to an aggrieved party when more than one business enterprise has caused or contributed to abuses.⁹⁶ In such cases, the “allocation of remedial responsibilities between different interested entities in complex cases can present many practical and legal challenges”.⁹⁷ This constitutes an important impediment to companies’ provision of effective non-judicial remedies to workers.

Thai companies, particularly SMEs, may not feel the need to design or implement robust complaint mechanisms under the belief or pretense that they are not used by workers. The Trat-based business owner interviewed for this study remarked that “*Many employers feel that listening to employee issues is a burden because they think that they will*

88 *Ibid.*

89 Human Rights Disclosures in ASEAN. (2019), p. 37.

90 Royal Thai Embassy in Washington D.C. (2019). *Thai firms rising on Dow Jones sustainability index*. [online] Available at: <https://thaiembdc.org/2019/09/25/thai-firms-rising-on-dow-jones-sustainability-index/> [Accessed 7 Nov. 2019].

91 Curtze, L. and Gibbons, S. (2017). *Access to remedy - operational grievance mechanisms An issues paper for ETI*. [online] London, United Kingdom: Ergon Associates, p.8. Available at: https://www.ethicaltrade.org/sites/default/files/shared_resources/ergon_-_issues_paper_on_access_to_remedy_and_operational_grievance_mechanims_-_revised_draft.pdf [Accessed 7 Nov. 2019].

92 ESG Disclosures in Asia Pacific: A Review of ESG Disclosure Regimes for Listed Companies in Selected Markets. (2019). [online] London, United Kingdom: CFA Institute, p.31. Available at: <https://www.arx.cfa/-/media/regional/arx/post-pdf/2019/08/04/esg-disclosures-in-asia-pacific.ashx> [Accessed 7 Nov. 2019].

93 Phase III: Enhancing the effectiveness of non-Statebased grievance mechanisms. (2018), p. 12.

94 Phase III: Enhancing the effectiveness of non-Statebased grievance mechanisms. (2018), p. 13.

95 Phase III: Enhancing the effectiveness of non-Statebased grievance mechanisms. (2018). OHCHR Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses. [online] Office of the UN High Commissioner for Human Rights, p.12.

96 *Ibid.*

97 Phase III: Enhancing the effectiveness of non-Statebased grievance mechanisms. (2018), p. 22.

complain about all kinds of trivial matters and not dare bring up any real problems anyway.” Field research conducted for this study found that even when complaint mechanisms are in place, they tend to be under-utilized by workers. An interview with a Burmese middle manager in the HR department of a seafood company that employed over 1,000 workers in Surat Thani, including over 800 migrants, revealed that only one complaint was received in the suggestion box over the course of an entire year. Interviews also suggested that migrant workers were most likely to speak to a line manager or middle managers that serve as intermediaries between workers and management to voice a complaint. As stated by the Trat business owner, *“It’s easier for business owners to rely on middle managers to find out about any problems affecting their workers in the company.”* However, middle managers hardly meet any of the effectiveness criteria outlined under principle 31.

A recent field study conducted by the American Center for International Labor Solidarity (ACILS) along the Cambodian border, middle managers and line leaders are “in an ambivalent position vis-à-vis workers” as they are a strategic management tool employed by owners” and do not always act in workers’ best interests”.⁹⁸ This observation was corroborated by one Cambodian migrant worker interviewed in Trat province. He recounted how a company he had worked for in the poultry industry was deducting fees from worker salary. When he complained to the Cambodian middle manager, who also happened to own a recruitment agency, he was told *“You have to understand that I work for the company and am on their side”*.

Independent hotlines

Some private companies in Thailand also operate multilingual complaint hotlines in partnership with NGOs through which workers can ask labor rights-related questions or make complaints about working conditions or report labor rights violations. Several multinationals in Thailand operate worker complaint hotlines in partnership with NGOs including CP Foods, Thai Union, Walmart, and Mars Petcare. The use of externally operated complaint mechanisms to supplement internal grievance mechanisms can present a few advantages. As stated in a 2011 pilot study on grievance mechanisms conducted by the Harvard Kennedy School of Government, “NGOs are also often perceived by workers as more independent or unbiased than a corporate, profit-driven entity, and are thus less likely to encounter skeptical responses among workers.”⁹⁹ Formal independent oversight of complaint mechanisms

by NGO partners can help promote the trust of these mechanisms and bolster their legitimacy, one of the key criteria for effectiveness outlined in Guiding Principle 31 of the UNGP. Involving external NGO partners that are trusted by workers and respected by the company in question can also help complaint mechanisms meet Guiding Principle 31’s equitability criteria which states that “aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.”¹⁰⁰ This can help prevent situations where a complainant renews or even escalates a grievance because they believe they have been tricked into agreeing to an inadequate outcome.

LIMITATIONS

While externally operated hotlines may improve worker voice and enhance the trust, transparency, and legitimacy of company-operated complaint mechanisms, many private enterprises are reluctant to involve a third party in their internal labor disputes. Such partnerships present significant risks to companies as any case of labor abuse uncovered by an NGO through its hotline could expose the company to criminal sanctions and cause important damage to its reputation and brand image. As a result, many businesses interested in identifying and remediating potential labor violations in their supply chain will elect to use other tools over which they have greater control. The executive director of a private sector coalition to combat trafficking explained that the preferred means for ensuring labor law compliance for companies in his network was through audits and inspections where businesses used their own employees or trusted third parties to identify labor issues.

Labor Unions

While Thailand has one of the lowest unionization rates in Southeast Asia, at around 1.5%¹⁰¹, the Thai Labor Relations Act B.E. 2518 (1975) does allow Thai nationals to establish unions, which provide mechanisms for workers to file complaints. According to the Act, a union must have at least 10 members and they must be working for the same employer or be engaged in the same type of work to obtain approval from the MoL. According to Section 100, each labor union is required to establish a “Labor Union Committee” to carry out its activities and act as its representative when engaging employers on different affairs. A union is only legally authorized to engage in discussions with the employer if its members amount to at least 20% of the employees at the business location. The union and the employer

98 Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. Mobile Solidarity. American Center for International Labour Solidarity (ACILS), p.26.

99 Rees, Caroline (2011). *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CSR Initiative, Harvard Kennedy School, Cambridge, p. 89.

100 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 31*.

101 ITUC Survey of violations of trade union rights. (2015). *Global Rights Index*. [online] Available at: <https://survey.ituc-csi.org/Thailand.html?lang=en#tabs-3> [Accessed 9 May 2019].



Photo: Suthep Kritsanavari

can each appoint a maximum of two advisors, who must be registered with the DLPW¹⁰², to participate in subsequent negotiations. When these conditions are respected, labor unions provide a vehicle for union members to voice their grievances.

LIMITATIONS

It should be noted that the unions are not authorized to handle complaints from non-members and that this mechanism is therefore reserved only to the private sector union members that make up the 1.5 % of unionized workers in Thailand.¹⁰³ This mechanism is not accessible to migrant workers, are very rarely counted as members of union even though they have the legal right to be a part of union as long as they are not committee members. Furthermore, as an intermediary between workers and their employers, labor unions will tend to negotiate mutually acceptable compromises to avoid court proceedings that may renege on workers' initial demands. Per Section 22 of the Labor Relations Act, B.E. 2518 (1975) a concilia-

tion officer is appointed by the Ministry of Labor when a labor dispute is deemed to have arisen as a result of collective bargaining. If the dispute cannot be settled, the employers and employees may agree to appoint a labor dispute arbitrator according to Section 26. The Labor Relations Act also establishes a tripartite Labor Relations Committee (LRC) comprised of representatives from the union, the employer, and the MoL to adjudicate problems of collective labor relations, as prescribed under Section 23. However, LRCs are only used to resolve private sector disputes that cannot be settled through mediation and arbitration and occur in certain essential services that "affect the general public or the national economy such as transportations, telephone or telecommunications and waterworks".¹⁰⁴ In addition, the LRC's decision "can and are often appealed to the Labor Courts".¹⁰⁵

102 *Labour Relations Act B.E. 2518 (1975)*. Sections 45, 88, 89, 100. [online] Available at: http://www.mol.go.th/sites/default/files/images/other/labourRelation2518_en.pdf

103 Solidarity Center. (2019). *Thailand - Solidarity Center*. [online] Available at: <https://www.solidaritycenter.org/where-we-work/asia/thailand/> [Accessed 22 Nov. 2019].

104 Mayer Brown LLP (2008). *Guide to Employment Law in Thailand*. [online] Mayer Brown LLP, p.6. Available at: https://www.mayerbrown.com/files/Publication/1ed36ca3-a467-4da1-8a05-9264088c9334/Presentation/PublicationAttachment/f1805434-c19c-465e-8a5d-555c2bec7ad1/jsm_thailand_employment_may2008.PDF [Accessed 2 Sep. 2019].

105 International Trade Union Confederation, 2007 *Annual Survey of violations of trade union rights - Thailand*, 9 June 2007, available at: <https://www.refworld.org/docid/4c52ca09c.html> [accessed 2 September 2019]

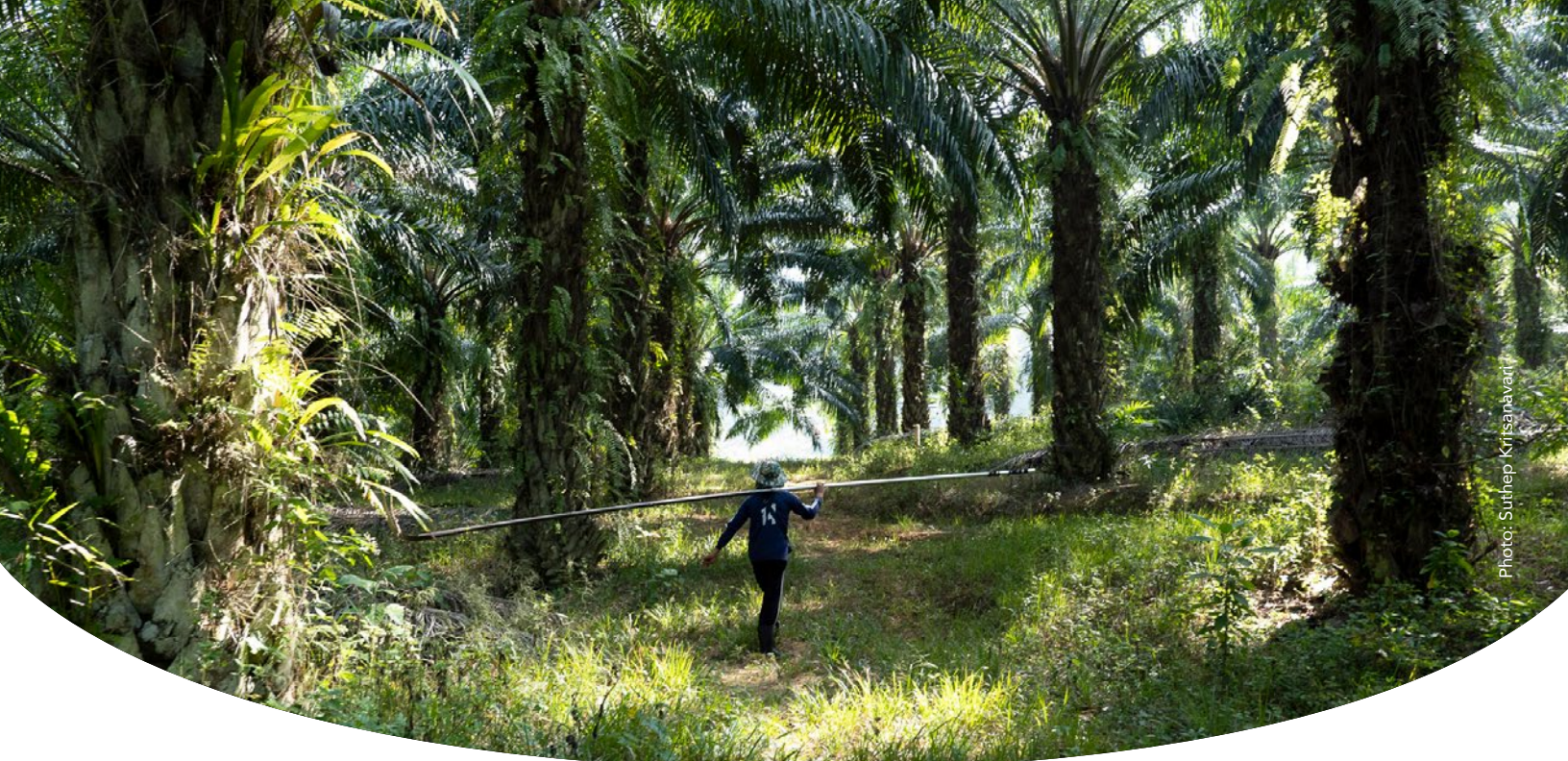


Photo: Suthap Krisnavari

OBSTACLES FACED BY MIGRANTS AND VULNERABLE GROUPS IN ACCESSING GRIEVANCE MECHANISMS

Many migrants are reluctant to file complaints due to language barriers, lack of awareness of grievance channels, fear of retaliation from their employers, discriminatory attitudes of government officials, and concerns about their immigration status. Statistics gathered from interviews with the provincial DLPW in the provinces of Surat Thani, Trat, Sa Kaeo, and Chaing Rai, indicate that official complaint channels remain underutilized by migrant workers, even though migrants are more vulnerable to labor abuse and exploitation than Thais, especially if they are undocumented. In Surat Thani, just 65 of the 330 complaints filed to the provincial DLPW in Surat Thani, or less than 20%, were from migrant workers and of these, only 5% were from undocumented workers. In Trat province, three of the 25 complaints processed that same year were from migrant workers while in Sa Kaeo province, not a single complaint was received from regular or irregular migrant workers in 2018.¹⁰⁶ The number of complaints received from migrant workers is extremely low considering the large number of migrant workers in these provinces. For example, in Surat Thani, where the complaints received from migrant workers represented just 0.00045% of the 145,000 migrants working in the province as of 2014.¹⁰⁷

In addition, provincial DLPW offices appear to receive very few complaints involving cases of labor abuse or labor exploitation, with the vast majority involving wage complaints (over 90% of cases in Surat Thani in 2018). Not a single case of human trafficking or forced labor was reported in either Surat Thani, Trat, Sa Kaeo, or Chiang Rai in 2018. This is mainly due to the fact that the DLPW is not the primary government agency responsible for identifying trafficking victims or investigating trafficking cases. To give one example, 51 cases of forced labor had been referred by the police to the provincial MSDHS office of Chiang Rai in 2019 at the time of this study although not a single forced labor complaint had been lodged at the provincial DLPW office.¹⁰⁸ While no specific statistics are available, the field research conducted for this study consistently found that migrant workers also under-utilize complaint channels made available to them at the company level. Below are several key obstacles to access to state-based and non-state-based complaint mechanism that have been identified based on effectiveness criteria outlined in principle 31 of the UNGPs.

106 Statistics collected from interviews with the provincial Department of Labor Protection and Welfare of Surat Thani, Trat, and Sa Kaeo conducted on July 23rd, August 12th, and August 30th, 2019 respectively

107 Migrant populations as of 2013 (Ministry of Interior) in Archavanitkul, K., *Facts and Figures of Migrant Workers and People having Legal Status Problems (Forthcoming)/Migrant complaints received in 2013 (DOE and DLPW)/Migrant Social Security Fund registrations as of 2014 (SSO).*

108 Statistics collected during an interview with ECPAT International in Chiang Rai on 9/5/19.

Obstacle No. 1: Lack of incentive due to inadequate remedies

While the Thai judicial system does provide means for victims of abuse to seek compensation, these remain inadequate and inaccessible for most victims of labor abuse. The lack of effective remedy for victims of labor exploitation in Thailand undermines Pillar III of the UNGPs on access to remedy, which reminds states to “take appropriate steps to ensure” that those affected by business-related human rights abuses within their territory and/or jurisdiction “have access to effective remedy”.¹⁰⁹ Officially identified trafficking victims are automatically entitled to financial assistance through the Anti-Trafficking in Persons Fund, which covers expenses such as repatriation, medical costs, legal fees, a living allowance, etc. In 2018, victims received around 6.15 million THB (192,789.97 USD) from the fund, compared to 5.64 million THB (USD \$176,802.50) in 2017.¹¹⁰ However, these restitutions are woefully inadequate considering the needs of individuals that have escaped a trafficking situation. The recently amended Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression has “increased the maximum amount of some claimable items, including medical costs and physical and mental rehabilitation”.¹¹¹

Thai trafficking survivors may also obtain compensation through the criminal court system as prescribed under section 35 of the Anti-Trafficking Act and section 13 of the Human Trafficking Criminal Procedure Act. In Thailand, the amount of compensation requested for trafficking victims is determined by the Multi-Disciplinary Team (which includes the Department of Social Development and Welfare, the trafficking survivor or his/her representative, the inquiry official, the public prosecutor, the NGO representing the victim and/ or lawyer of the victim, and the psychologist or social worker) on a case-by-case basis.¹¹² Trafficking survivors are also entitled to receive compensation from The RLPD of the MoJ as prescribed by the Damages for the Injured Person and Compensation and Expenses for the Accused in Criminal Case Act, B.E. 2544 (2001).

Thai trafficking survivors’ ability to obtain effective remedy has been hindered by the lack of clarity around

compensation calculations and the ability to collect compensation from offenders. That said, the RTG has made efforts to improve compensation outcomes for victims of human trafficking. The government amended the Anti-Money Laundering Act in October 2015 to enable the Anti-Money Laundering Office (AMLO) to freeze assets with a court order during trafficking investigations and to allocate a portion of seized assets to victim compensation, although this does not appear to be done in practice. In addition, the 2016 Human Trafficking Criminal Procedure Act B.E. 2559 now allows courts to increase restitution as appropriate in a form of punitive damages for cases of wrongdoings that involve cruelty, detention, imprisonment, physical abuse, or persecution that are deemed inhumane and serious. Finally, the MSDHS launched the Guidelines on Claims to standardize compensation claiming practices in human trafficking cases in 2018 to allow the government to collect compensations from offenders more effectively. This was evidenced by an increasing amount of compensation at a total of 77.56 million THB (2.43 million USD) for 116 victims under section 35 of the Anti-Trafficking Act, compared to 18.44 million THB (0.58 million USD) in 2017, an increase of 76%.¹¹³ However, the government did not report how many victims successfully obtained compensation.¹¹⁴

In practice, it remains extremely difficult for survivors to collect any form of financial remedy as a result of criminal litigation, even when compensation orders are rendered. The compensation process is lengthy, which effectively denies migrant workers from accessing compensation as their right to remain in Thailand will often expire before they can collect a single baht.

The MSDHS has established a sub-unit under its anti-trafficking division to provide victims with legal assistance and file compensation claims, but lacks the expertise and clear legal authority to enforce compensation orders, which are lengthy and complex and involve tracing offenders’ assets and bringing in the Legal Execution Department to seize them.¹¹⁵ In addition, assets seized from traffickers by the AMLO are confiscated by the state and cannot be used for the victim compensation fund. Thailand is in the process of revising the Anti-Money Laundering Act in order to more readily allow seized assets to be used to compensate victims¹¹⁶ through the Anti-Trafficking in Persons Fund or through court-awarded compensation.¹¹⁷ Amend-

109 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 25*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-25/> [Accessed 7 Nov. 2019].

110 Thailand’s Country Report on Anti-Human Trafficking Response (2018), p. 4.

111 Kotecha, A. and Jepson, D. (2018). *Turning Possibilities into Realities: Compensating Victims of Trafficking under Anti-Trafficking Legal Frameworks in Thailand and Cambodia*. [online] Liberty Global Asia, p.5. Available at: https://static1.squarespace.com/static/53038dd2e4b0f8636b5fa8c3/t/5b7fdca60ebbe8d-5b49e25c1/1535106264552/viccompreport_update_0816.pdf [Accessed 7 Nov. 2019].

112 *Ibid*, p. 5

113 Thailand’s Country Report on Anti-Human Trafficking Response (2018), p. 4.

114 United States Department of State (2019). *Trafficking in Persons Report*. [online] United States Department of State, p.456.

115 Wongsamuth, N. (2019). *Exclusive: Thailand’s human traffickers flout 99% of court orders to compensate victims*. [online] Reuters. Available at: <https://www.reuters.com/article/us-thailand-trafficking-compensation-exc/exclusive-thailands-human-traffickers-flout-99-of-court-orders-to-compensate-victims-idUSKBN-1WU00P> [Accessed 7 Nov. 2019].

116 Royal Thai Government’s Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2019). (2019). [online] Royal Thai Government, p.5. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2019/04/Thailands-Progress-Report-2019-January-March.pdf> [Accessed 7 Nov. 2019].

117 Kotecha, A. and Jepson, D. (2018). *Turning Possibilities into Realities: Compensating Victims of Trafficking under Anti-Trafficking Legal Frameworks in Thailand and Cambodia*. P. 45.

ments to Section 15/16 of the Human Trafficking Criminal Procedure Act are also being considered to allow court involved in a human trafficking case to notify the prosecutors and officers in any linked anti-money laundering investigation of the need to freeze the offender's assets to satisfy any possible compensation order for the victim of trafficking.¹¹⁸

Aside from the remedies that may be obtained through successful criminal proceedings, civil actions can be presented to the Court of First Instance in Civil Prosecution. Section 420 of the Civil and Commercial Code entitles plaintiffs to compensation for "injuries the life, body, health, liberty, property or any right"¹¹⁹ for wrongful acts committed against them. However, this option presents a major disadvantage since victims have to pay a court fee equal to 2.5% of the claim (but not exceeding THB 200,000).¹²⁰ It should also be noted that moral and punitive damages are almost unheard of in the Thai legal system.¹²¹ Under these circumstances, initiating a complaint for unpaid wages through the labor court remains the easiest, albeit inadequate means for trafficked fishermen to obtain financial redress. One study conducted on the reintegration of trafficked Thai fishermen assisted by the Labour Rights Protection Network Foundation (LPN) in Samut Sakhon illustrates the challenges workers face in obtaining remedy. Of the 217 fishermen rescued by LPN from Benjina and Ambon islands in 2015 who pursued a wage complaint case with the DLPW between 2015 and 2016, only half has received their unpaid wages from the labor court as of July 2017.¹²² When back wages were received, it amounted to a small fraction of the amount they were owed. These deficiencies create a major disincentive for workers to use judicial government complaint mechanisms to report instances of abuse.

Obstacle No. 2: Complaint mechanisms lack legitimacy

The mistrust of workers, particular migrants, in police or government officials undermines the legitimacy criterion of Principle 31 according to which non-judicial grievance mechanisms should "enable trust from the stakeholder groups for whose use they are intended and be accountable for the fair conduct of grievance processes".¹²³ While the police have a duty to protect workers from physical harm and can help gather evidence and provide legal assistance for trafficking and forced labor cases, they are also known to extort workers. As one Cambodian migrant worker interviewed for this study recounted how police would stop him and his

friends along the Cambodian border asking them for 200 to 300 Thai Baht fines per person despite the fact that they had work permits. When the worker in question recorded the incident and presented the evidence to the provincial DLPW, he was told that the individuals in question were not actually real police.

One documented female Burmese construction worker in the district of Chiang Rai stated that she did not trust that Thai police would help her or take her side if the conflict she had was with a Thai national, recounting a previous experience where her son was injured in a fight with a Thai national and the police refused to press charges. When asked why migrant workers did not feel comfortable making complaints to the authorities, one former Burmese trafficked fisherman interviewed in Samut Sakhon province shared an anecdote of how a group of fishermen he had worked with made a wage complaint to the provincial DLPW office with LPN's help. He recounted that when their employers found out about the complaint, they accused the workers of stealing a set of keys from their workplace and refused to allow them to return to work. He added "We may not feel that it's worth making a complaint because government officials will take the employer's side." A female Cambodian migrant who works in a perfume factory in Trat district expressed similar concerns, stating "We are Cambodians in Thailand. We are poor and have no power. If we complain, Thai people will stick together and say that we are wrong". Reluctance to complain can also be in part be attributed to cultural differences. The same woman went on to explain: "No one speaks out against authority in Cambodia because of our past. If we're too afraid to complain in Cambodia, how can you expect us to complain in Thailand?"

Obstacle No. 3: complaint mechanisms are not accessible

According to the "accessibility" criteria for effectiveness identified by Principle 31 of the UNGPs, non-judicial complaint mechanisms should be known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access".¹²⁴ However, research conducted for this study has identified several key barriers to access including lack of awareness, physical location, and language difficulties.

118 *Ibid.*

119 *Civil and Commercial Code*. Section 420.

120 Bangkok International Associates. (2016). *CHAPTER 26 : CIVIL LITIGATION*. [online] Available at: <http://www.bia.co.th/thailand-legal-guide-2016-update/chapter-26-civil-litigation/> [Accessed 7 Nov. 2019].

121 Siam Legal International. (n.d.). *Tort Cases in Thailand*. [online] Available at: <https://www.siam-legal.com/litigation/torts.php> [Accessed 7 Nov. 2019].

122 Rousseau D, *From Passive Victims to Partners in Their Own Reintegration: Civil society's role in empowering returned Thai fishermen*, *Anti-Trafficking Review*, issue 10, 2018, p. 4. [online] Available at: <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/323>

123 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 31*. [online]

124 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 31*. [online] Available at: <https://globalnaps.org/ungp/guiding-principle-31/> [Accessed 7 Nov. 2019].

Lack of awareness about complaint channels and procedures

Focus group discussions conducted with migrant workers in the four target provinces of this research indicated that migrant workers were insufficiently aware of the different mechanisms at their disposal for making a complaint about working conditions or labor abuse. This is even though the provincial DLPW offices, which are the chief government agencies responsible for receiving complaints about labor rights violations, have made efforts to raise awareness about these channels among migrant workers. A senior representative of the provincial DLPW office in Surat Thani province stated that his agency organized three on-site trainings and workshops per month with Thai and migrant workers at their place of work and within their local communities to raise awareness about labor rights and communicate about the different official complaint mechanisms available to them. He said that his office set up public relations and promotional events every month targeting a total of 500 people.

However, field research conducted for this study suggests that provincial DLPW offices located in provinces with large populations of migrant workers do not have sufficient capacity in terms of staff or resources to reach an adequate share of migrant workers through their direct outreach and awareness-raising activities. The Director of the DLPW office in Sa Kaeo Province stressed the need for more financial resources and more staff to handle their case load and conduct outreach activities. In Chiang Rai, an NGO respondent indicated that the provincial DLPW office had worked with his organization to conduct direct community outreach approximately three years ago but had stopped doing so. A senior program officer at an NGO in Phang Nga that received complaints from workers in Surat Thani asserted that most migrant workers lacked any knowledge about the process of filing a complaint to the provincial government agencies.

Likewise, in Trat, a group of five workers interviewed in Klong Yai were completely unaware of how to lodge a formal complaint at the provincial DLPW, despite the fact that labor authorities in Trat conduct regular workshops and trainings at workplaces and hotel venues in addition to direct community outreach on a monthly basis.

Lack of awareness on complaint mechanisms also extends to government hotlines. A group of seven Burmese migrant workers interviewed in Chiang Rai stated that they were not aware of the existence of RTG hotlines until they were told about them by an NGO. The successful dissemination of information may be further complicated by the fact that many regular and

irregular workers in border provinces such as Sa Kaeo or Chiang Rai are former farmers who have little to no prior experience with working conditions in factory settings and may have very limited understanding of their labor rights and what to expect in the workplace. Lack of information among migrant workers on how to make a complaint undermines the effectiveness of the official complaint mechanisms that are meant to serve them. It also fails to meet the “accessibility” criteria of Principle 31 which stipulates that complaint mechanisms be known to all stakeholder groups for whose use they are intended.”

Mandated pre-departure and post-arrival training is insufficient

Migrant workers’ limited awareness of complaint channels can be attributed in part to gaps in the training provided to migrants when migrating through the MOU system. The mandated pre-departure trainings are meant to raise awareness among migrant workers about their rights and equip them to make complaints about labor conditions to the relevant authorities.¹²⁵ ACILS conducted over 150 interviews with Cambodian migrants in Thailand that suggested that migrants who receive adequate pre-departure trainings are better able to voice their collective grievances to their employers.

However, current research suggests that the pre-departure training conducted in sending countries may not provide workers with enough information. According to a recent report by VERITÉ, the private recruitment agencies in Cambodia that are mandated to conduct pre-departure trainings are not able to conduct the mandatory 13-hours of instruction for Thailand-bound workers on the day of departure “because workers do not want to come to Phnom Penh more frequently than necessary due to the expense” and that “the predeparture training is thus reduced to ensuring that the workers know how to cross the border and call the company’s representative in Thailand if they have problems”.¹²⁶ With regards to the pre-departure trainings organized by recruitment agencies in Myanmar, the VERITÉ report’s research “did not detect the presence of sufficient controls to ensure that the information provided is adequate or accurate”.¹²⁷

These findings were corroborated by the field research conducted for this study. One NGO respondent in Chiang Rai recounted how she had spoken to a group of Burmese migrants waiting in line to cross the border, all of whom were from the same employment agency. When she asked the migrants about their employment in Thailand, she realized that they had little to no idea what work they would be doing, let alone in what re-

125 Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. p.27.

126 Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR. (2019). [online] Amherst, Massachusetts, United States: VERITÉ, p. 32.

127 Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR. (2019). [online] Amherst, Massachusetts, United States: VERITÉ, p. 31 34.

gion, suggesting they had received little to pre-departure training. One Chiang Mai-based migrant rights NGO explained that it was building up the capacity of community-based organizations on the Burmese side of the Mae Sot border crossing to provide complementary trainings to MOU workers out of concern that the trainings being delivered by recruitment agencies were not sufficient. Even when pre-departure trainings are conducted, recruitment agencies may feel that it is not in their interest to teach workers how to lodge official complaints in Thailand, as these can result in legal action against them or their clients and negatively impact their business.

One migrant worker interviewed in Trat province indicated that while he had undergone a three-day pre-departure training with his recruitment agency in Phnom Penh, the training only covered basic Thai language skills as well as information about working conditions at the factory in Thailand and did not include anything on how to access company or government-operated complaint mechanisms. Inadequate pre-departure trainings undermine the equitability criterion of principle 31 of the UNGPs as they do not provide workers with “reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms”.¹²⁸

Upon their deployment to Thailand, regular MOU migrants also receive a second training in one of the RTG’s five post-arrival and reintegration centers in Mukdahan, Ranong, Tak, Nong Khai, and Sa Kaeo where they are provided with information about “labor rights, Thai culture, employment contracts, trafficking awareness, and complaint mechanisms”. In 2018, 442,736 migrant workers received assistance at these centers.¹²⁹ However, one NGO respondent in Chiang Rai indicated that she had visited the post-arrival center in Mae Sot (Tak district) and had found that the few Burmese migrants she spoke to at random had little information on their basic labor rights. As with the pre-departure trainings, it should be noted that post-arrival trainings are only available to regular workers deployed through the MOU system and excludes undocumented workers.

Language barriers in accessing government services

Language barriers pose a major problem for the “accessibility” criteria for effectiveness identified by Principle 31 of the UNGPs. Migrant workers interviewed for this study cited language barriers as an important obstacle preventing them from making a complaint through official channels. Migrant workers who are not fluent in Thai may be unaware of how to file a complaint or may be intimidated by the prospect of approaching government officials.

When asked if they knew about the social security benefits they were entitled to under Thai law, one group of Burmese migrant workers interviewed in Chiang Rai claimed that they knew their rights but would not know what to do if they were denied their benefits. Most workers said that they would either ask their employer or seek the help of an NGO. One female migrant worker commented “I wouldn’t be brave enough to go to social security office on my own because my Thai is not good enough...I would feel too intimidated”.

The RTG recognizes this problem and have taken measures to address the issue by increasing the foreign language capacity of the agencies and departments responsible for receiving grievances. Between 2016 and 2018, the number of interpreters and language coordinators supporting frontline officials, hotlines, and official complaint-receiving mechanisms increased from 72 to 153,¹³⁰ and as of 2018, the MSDHS and MOL operated hotlines with operators fluent in 12 foreign languages.¹³¹

However, field research conducted in the provinces of Surat Thani, Sa Kaeo, and Chiang Rai pointed to persistent shortages of interpreters in MoL agencies. One lawyer for the DLPW in Surat Thani, who is the chief person responsible for receiving labor complaints in the province, cited hiring more qualified interpreters as the most important need to be addressed for his office to be able to carry out its mandate. The DWLP housed just one permanent interpreter on staff to assist with all the complaints received by migrant workers (65 in 2018).

The fact that Burmese migrant workers come from a variety of ethnic groups constitute an additional language barrier. NGO respondents in Chiang Rai and Surat Thani pointed out that most provincial DLPW interpreters only speak Burmese and cannot provide interpretation services in other ethnic minority languages. In Chiang Rai for example, most Burmese migrant workers originate from Shan state and may have low levels of literacy in Burmese.

A lack of interpreters may also undermine the provincial labor authorities’ ability to conduct effective outreach. One NGO representative whose organization assists migrant workers in Sa Kaeo province indicated that because it lacked enough interpreters to conduct direct outreach in migrant worker communities and sometimes relied on local community leaders to disseminate information, they were potentially undermining the breadth and depth of the information communicated. Language barriers also pose a problem for the submission of official written complaints. While some provincial DLPW offices have translated the standard complaint form (๓๖.7) into migrant languages (e.g. Bur-

128 National Action Plans on Business and Human Rights. (n.d.). *Guiding Principle 31*.

129 United States Department of State (2019). *Trafficking in Persons Report*. [online] United States Department of State, p. 457.

130 Thailand’s Country Report on Anti-Human Trafficking Response. (2019), p. 53.

131 United States Department of State (2019). *Trafficking in Persons Report*. [online] United States Department of State, p.456.



Photo: Suthep Kritsanavari

mese or Cambodian), the form must then be translated into Thai before it can be officially submitted. As a result, migrant workers who do not speak fluent Thai or have low levels of literacy or education are unlikely to be able to file a formal complaint on their own without the help of a third party (e.g. NGO, an interpreter, or an agency).

Obstacle No. 4: complaint mechanisms are impractical

Migrants may also be reluctant to use official complaint channels because they perceive them to be impractical. Several migrant workers interviewed for this study expressed the view that the process for making a complaint through government hotlines was too lengthy and complicated. Calling in requires following prompts that involve several steps before a caller can reach the right person and the caller may be put on hold for long periods of time. A Burmese migrant interviewed Samut Sakhon, who had been trafficked in the fishing industry and now volunteers for a volunteer network at an NGO, shared his frustrations: *"I called the MoL hotline once because I had a question about my visa, but no one answered, and I had to keep pressing different buttons. After waiting for a while, I just hung up"*. Several Thai NGO respondents also claimed that they had tried to call government hotline numbers to test the system

and found it to be impractical due to long wait times, a lack of qualified interpreters, and a prompt system that was considered to not be intuitive for many migrant workers.

Migrants face particular challenges using the government hotline system due to language barrier and lack of technological literacy. While many migrant workers may have smart phones, one NGO respondent pointed out that they may be unfamiliar with the process of using a dial pad to make selections based on voice commands. A different NGO representative in Samut Sakhon province remarked that the initial prompts directing callers to select options by pressing numbers when they call may not always be translated into languages used by migrant workers such as, Cambodian or central Burmese. These national hotline numbers may also not be frequently used by workers.

The head of the DLPW in Trat province indicated that the department's national 1546 hotline was seldom used by workers in the province and that complainants would simply call their office instead. The impracticality of making an official complaint also extends to grievances lodged in person. The Director of the Surat Thani DLPW noted that migrants may not know their location or how to travel to government offices. The location of provincial DLPW offices within provincial capitals may be particularly inaccessible to undocumented migrant workers, who often work in remote, isolated, and infor-

mal workplaces such as fishing boats, plantations, and private homes. For instance, migrant workers in palm plantations located in remote corners of the Surat Thani province have to travel several hours to reach a DLPW office, with no possibility of taking public transportation. The inherent obstacles agriculture workers face in accessing complaint mechanisms in rural areas is especially problematic considering that migrants in the agriculture sector are particularly vulnerable to abuse and exploitation.¹³² Even workers located in more urban areas may not be able to seek assistance from government offices as these are mainly only open between 8.00 am to 4.00 pm on Monday to Friday.¹³³

Fears concerning immigration status can also dissuade workers from making a complaint directly to a government office or to the police. While officially identified TIP victims are allowed to remain in the country during the course of legal proceedings and are protected from being prosecuted under immigration law, undocumented migrants who are not identified as TIP victims face deportation back to their country of origin by the immigration police. Undocumented migrant workers who complain about their working conditions are subject to retaliation from their employers, who may threaten to report them to the police if they file a grievance with the Thai labor authorities.¹³⁴

In addition, the vast majority of migrant workers interviewed in focus group discussions around Thailand expressed that they would not feel comfortable voicing a complaint to their employer out of fear of being dismissed. Migrants' reluctance to risk a potential dismissal can also be explained in part by the debt they owe to their employer and or the employment agency that recruited them. Workers often pay the costs associated with the MOU recruitment process and applicable private employment agencies' service fees, which amounts to 18,000 – 20,000 THB on average.¹³⁵ Many migrant workers cannot afford such payments and are reduced to taking out high-interest loans, selling their assets, or having payments automatically deducted from their wages. As a result, "the debt that they incur during recruitment can lead migrants to remain in jobs even when they experience exploitive working conditions".¹³⁶

Research also indicates that documented migrants are reluctant to file a complaint against their employer in the belief that they will lose their work permit and have to leave the country if they are dismissed or forced out of their company. Despite recent amendments to the Royal Ordinance on the Management of Foreign Workers Employment B.E. 2560 (2017), it remains difficult in practice for workers who resign or are terminated from

CASE STUDY: BOREY

The story of Borey (not his real name), a Siam-Reap based tuk-tuk driver, business owner, and freelance interpreter, illustrates many of the challenges faced by Cambodian migrant workers in accessing complaint mechanisms in Thailand. After migrating to Thailand through the MOU system, for which he incurred about 20,000 THB (approx. \$656 USD) in service fees, Borey worked in a frozen chicken distribution factory in Chonburi, which employs over 5,000 migrant workers, mostly from Cambodia. Because he speaks fluent English, Thai, and Khmer, he was quickly promoted to the role of line man. However, Borey soon became indignant with the working conditions at the factory. Workers were advised by the main Thai supervisor that they could only take two 15-minute bathroom breaks per day. Their trips to the bathroom were closely monitored in a logbook and workers who went more than two times received official verbal and written warnings from management. The bathroom was located over 700 meters away from the main building and workers had to run to the bathroom while wearing their cumbersome protective gear, in order to make it back within the 15-minute window. This caused much discomfort to the workers who would purposely deprive themselves of water to avoid going to the bathroom. The lack of adequate hydration, excessive overtime, and long hours spent in chicken freezers with sub-zero temperatures took a physical toll on the workers. Though Borey cannot know for sure what exactly happened, three workers died in their sleep in the employer-provided accommodation within a short time period. Yet, despite these poor working conditions and the death of three of their colleagues, not a single worker complained.

However, this was not Borey's only grievance with the company. The 5,000 migrant workers in the factory, who were all documented, each had a 200 THB per month fee deducted from their salaries, without explanation. Furious that the company was extorting money from the workers already meagre wages, Borey gathered together a group of 100 workers in the company dormitory, urging them to stand for their rights and accompany him to the HR office the very next day to make a complaint. The workers rallied behind him and promised to stand by his side, but when the day came, not a single worker showed up, and he had no choice but to make the complaint alone. According to Borey, they were too afraid of losing their jobs to speak up. When he voiced his concerns to the HR representative and asked the company to stop charging workers an illegal fee, he was told to keep quiet if he wanted to hold on to his job. He called the Embassy to ask for help, but they dismissed him, telling him that they were too busy to handle his complaint and that he should seek assistance elsewhere. Borey was aware that he could make a complaint to the Thai MoL but did not attempt to do so, citing a complete mistrust in the government's ability to handle the complaint effectively. Shortly afterwards, Borey resigned, having no choice but to accept employment for a lesser wage unloading truckloads of sugar at a factory in the province. He claimed to have no knowledge at the time of what NGOs were or that they could even help him.

132 Thailand Migration Report 2019. (2019), p. 60, 68, 160.

133 Thailand Migration Report 2014. (2014), p. 142.

134 Radio Free Asia. (2019). *Lao Migrants Fleeing Poverty Defy Dangers to Work in Thailand*. [online] Available at: <https://www.rfa.org/english/news/laos/migrants-08272019160657.html> [Accessed 2 Nov. 2019].

135 Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand. (2013), p. 36.

136 *Ibid*, p. 12, 47.

employment to change employers under the MOU system in practice. There are only a few specific conditions under which a worker can change employers such as the death of the employer, bankruptcy of the business, completion or cancellation of a contract, proven abuse at the hands of the employer, or employer's non-compliance with the LPA 2541 B.E. (2008).¹³⁷ A second major caveat is that a foreign worker who "resigns before the expiration of the employment contract cannot work for another employer, except when the resignation is due to the employer's fault or if the worker has paid the previous employer for any recruitment-related expenses" and that workers changing jobs "must start working for the new employer within 30 days from the date of resignation from the previous employer, and the new employer must post a guarantee bond".¹³⁸

In the case of employee resignations, one problem is that there are no set guidelines in the Royal Ordinance on how the employer's "fault" is to be determined. In addition, the U.S. Department of State's latest TIP report detailed how "...provincial labor offices required workers recruited under MOUs to present many documents that workers often could not provide without brokers' assistance in order to approve job changes."¹³⁹ Research indicates that there remains confusion around changing jobs under the MOU system. Several Cambodian migrant workers interviewed in Trat province believed that their employer had to provide written permission in order to change employers and that they would have to pay for a new work permit to be issued. One NGO respondent in Chiang Rai stated that his foundation knew of at least 200 Burmese workers in the province that had experienced problems changing jobs, either because their employer did not inform them of their dismissal and they could not extend their visas within the prescribed time period or because their new employer failed to notify the Department of Employment of the workers' change in employment within the 15-day timeframe. The NGO respondent in question noted that there is no enforcement of the requirement for employers to register new employees and that migrant workers are the ones who suffer from the consequences of non-compliance.

Obstacles for Women

The LPA prohibits discrimination in employment based on gender. Thailand passed the Gender Equality Act in 2015 to further combat gender-based discrimination but challenges in implementation remain. While important strides have been made in combatting gender-based discrimination since the 1990s, the World Economic Forum's Gender Gap Index ranks Thailand in 73rd place

out of 149 countries.¹⁴⁰ Research suggests there is also a general lack of awareness of sexual abuse and sexual harassment problems in the workplace in Thailand and there are limited instances of such cases being reported at the company or government level. As explained by the executive director of a national Bangkok-based women's NGO, "Women are reluctant to complain because they are afraid of losing their job. Perpetrators of sexual abuse or sexual harassment are usually persons in position of power and women feel that they are at a disadvantage. Thai culture also teaches women to be docile and deferential, which makes them feel less empowered to speak up, contributing to a culture of impunity." When asked if they would consider making a complaint to their employer or to the authorities about sexual harassment or abuse in the workplace, two Burmese female migrant workers in Chiang Rai responded: "We see many cases of sexual harassment at work, but most girls feel shy and will not complain. Married women in particular will not dare say anything because then their husbands will get into a fight with others".

Women who have experienced sexual harassment or abuse may also be hesitant to make a complaint via state-based channels given the discriminatory attitudes of male police or government officials, who may fail to take their case seriously. They may be equally reluctant to use judicial complaint mechanisms, as sexual harassment or abuse cases often lack physical evidence and are inherently difficult to prove. In addition, bringing a case to court involves providing victim testimony, which can be retraumatizing for survivors. While the Gender Equality Act of 2015 provides protection from gender-based discrimination and offers women the possibility of making complaints to the Department of Women Affairs and Family Development, a non-judicial channel, one NGO respondent noted that this mechanism was still largely under-utilized. Government statistics point to the attrition of sexual violence cases in Thailand. A 2017 joint UN Women, UNDP, and UNODC study referred to earlier in this report found that only 20% of cases reported to the OSCC, an MSDHS grievance channel, reach the reporting stage. And of those cases, only 31% lead to the issuing of an arrest warrant.¹⁴¹

Female migrant workers face additional barriers to accessing complaint mechanisms. The Human Rights and Development Foundation, an NGO headquartered in Bangkok, has provided legal assistance to many female migrant workers that have been the victim of abuse for close to 15 years. According to the organization, state-based complaint mechanisms are not only ineffective in providing access to justice for female migrant workers

137 Travel Smart - Work Smart: A guide for migrant workers in Thailand. (2014). [online] Bangkok, Thailand: International Labour Organization, p.3. Available at: <https://www.ilo.org/dyn/migpractice/docs/214/Thailand.pdf> [Accessed 26 Sep. 2019].

138 Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR. (2019). [online] Amherst, Massachusetts, United States: VERITÉ, p. 16.

139 United States Department of State (2019). Trafficking in Persons Report. [online] United States Department of State, p.457.

140 World Economic Forum (2018). *The Global Gender Gap Report*. [online] Geneva, Switzerland: World Economic Forum, p.9, 332. Available at: http://www3.weforum.org/docs/WEF_GGGR_2018.pdf [Accessed 2 September 2019].

141 Skinnider, E., Montgomery, R. and Garrett, S. (2017). *The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam*, p. 61.

but may re-victimize them through discriminatory treatment as a result of their gender, nationality, or ethnicity.¹⁴²

Migrant women also face difficulties in accessing official complaint channels given that they are disproportionately employed in the informal sector as domestic workers, agricultural workers, or sex workers and are less likely to complain out of fear of arrest and deportation. Female sex workers, in particular, may face discrimination when trying to access state-based complaint mechanisms. While over 85% of sex workers are legally employed in entertainment places and legally entitled to protection under Thai labor law, government officials often use the “assumption that women are violating the prostitution laws justification for withholding labor protection and redress”.¹⁴³ Domestic workers are especially vulnerable to labor rights abuses as they do not benefit from protection of rights provided under the LPA, despite the passing of a ministerial regulation in 2012 granting them the right to paid holiday and sick leave.¹⁴⁴ Domestic workers are not entitled to overtime compensation, maternity leave, working-hour limitations, or minimum wage under Thai law. It may also be especially difficult for domestic workers (either Thai or migrant) to seek assistance from NGOs or the labor authorities given the potential of physical isolation associated with working in private homes and the possible restrictions on movement imposed by their employer.

Obstacles for LGBTQI+

While protected in theory by both the Gender Equality Act and the Constitution of Thailand, which prohibits discrimination based on nationality, age, gender, language, physical or social status, religion, education and political affiliation, the LGBTQI+ community continues to report discrimination in access to services, education, employment and housing.¹⁴⁵ Despite the outward appearance of acceptance, and relatively higher visibility of LGBTQI+ individuals than in many countries, “LGBTQI+ people are not fully accepted by Thai society due to persistent prejudices and lack of understanding about different sexual orientations and gender identities”.¹⁴⁶ Discrimination of LGBTQI+ individuals in the employment cycle occurs

from education for employment, access to employment, refusal of employment, dismissal, and denial of career training and promotion, to access to social security because of their perceived or actual sexual orientation”.¹⁴⁷

LGBTQI+ individuals face obstacles in effectively accessing and using complaint mechanisms when they experience harassment or discrimination in the workplace. Companies’ HR departments often do not take these complaints seriously because they are seen as a personal matter.¹⁴⁸ This is explained in part by the fact that there is a lack of mechanisms in place at the company level to handle complaints involving workplace discrimination¹⁴⁹ and that both LGBTQI+ and non-LGBTQI individuals have limited awareness of anti-discrimination laws.¹⁵⁰ Up until 2017, members of the LGBTQI+ community could use the National Human Rights Commission of Thailand (NHRCT) as an alternative to company-based complaint mechanisms to report discrimination in the workplace. The NHRCT’s sub-committee on the “Rights of the Elderly, Disabled Persons and the Rights to Health” oversees LGBTQI+ rights and has responded to complaints regarding the denial of same-sex marriages, discrimination in the military conscription process,¹⁵¹ the lack of legal-recognized gender identities, dress codes for Male to Female and Female to Male in schools etc.¹⁵² However, the NHRCT does not have the authority to refer cases to the court or issue legally-binding remedies.

After the passing of the organic law on the National Human Rights Commission in 2017, all cases involving gender-based discrimination are now transferred to the Committee on Consideration of Unfair Gender Discrimination of the Department of Women Affairs and Family Development of the MSDHS, which is responsible for receiving gender-related complaint under the 2015 Gender Equality Act. While the executive director of a transgender rights organization lauded the committee for hearing many cases from the LGBTQI+ community, he remarked that little to no cases involved complaints directed at employers for sexual harassment, abuse, or employment-related discrimination. The vast majority of complaints are from university students that have been denied the right to dress according to their gender iden-

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- 142 Harkins, B. and Ahlberg, M. (2017). *Access to justice for migrant workers in South-East Asia*, p. 23.
- 143 Sex Workers and the Thai Entertainment Industry. (2017). [online] Chiang Mai, Thailand: Empower Foundation, p.3. Available at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_NGO_THA_27511_E.pdf [Accessed 7 Nov. 2019].
- 144 Thailand: new Ministerial Regulation offers better protection of domestic workers’ rights. (2013). [online] Geneva, Switzerland: International Labor Office, p.1. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_208703.pdf [Accessed 2 Sep. 2019].
- 145 Sabpaitoon, Patpon (2018). *LGBTI discrimination ‘still prevalent’*. [online] <https://www.bangkokpost.com>. Available at: <https://www.bangkokpost.com/news/general/1435614/lgbti-discrimination-still-prevalent> [Accessed 9 May 2019].
- 146 Suriyasarn, B. (2014). *Gender identity and sexual orientation in Thailand*. [online] International Labour Organization, p. xii. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_356950.pdf [Accessed 23 Nov. 2019].
- 147 Suriyasarn, B. (2014). *Gender identity and sexual orientation in Thailand*. [online] International Labour Organization, p.iii.
- 148 Experts urge action on LGBTI workplace discrimination in Thailand. (2016). In: *Discussion on Employment Discrimination Based on Sexual Orientation, Gender Identity, or Intersex Status of LGBTI Persons in Thailand*. [online] Bangkok, Thailand: United Nations Development Programme (UNDP). Available at: <https://www.th.undp.org/content/thailand/en/home/presscenter/articles/2016/02/04/experts-urge-action-on-lgbti-workplace-discrimination-in-thailand/> [Accessed 25 Nov. 2019].
- 149 *Ibid*.
- 150 World Bank Group (2015). *Economic Inclusion of LGBTI Groups in Thailand*. [online] Bangkok, Thailand: World Bank Thailand, p.3. Available at: <http://pubdocs.worldbank.org/en/174551494904827026/Economic-Inclusion-of-LGBTI-Groups-in-Thailand-English.pdf> [Accessed 25 Nov. 2019].
- 151 Country Reports on Human Rights Practices for 2018. (2018). [online] United States Department of State, Bureau of Democracy, Human Rights and Labor, p.37. Available at: <https://www.justice.gov/eoir/page/file/1145726/download> [Accessed 26 Sep. 2019].
- 152 Suriyasarn, B. (2014). *Gender identity and sexual orientation in Thailand*, p. 31.

tity. The director noted that transgender individuals remained reluctant to lodge complaints against their employer out of fear of being dismissed. He also remarked that little to no complaints related to discrimination based on sexual orientations were being reported.¹⁵³

LGBTQI+ individuals also face challenges in effectively using official complaint mechanisms to report more severe instances of abuse. Transgender individuals who are engaged in sex work are particularly vulnerable to physical violence and exploitation and face specific challenges in accessing official government complaint channels. There are reports that police officers may not always accept complaints of sexual abuse from transgender individuals because they believe “they enjoy sexual attention and don’t take the complaints seriously”.¹⁵⁴ Given the limitations associated with official complaint mechanisms, this study has found that LGBTQI+ individuals will often prefer to make complaints to NGOs or on their own.

Obstacles for Stateless People

According to official statistics, nearly half a million people in Thailand, mainly resident in the Northern region, are stateless. The umbrella term “stateless” includes different categories of people, from ethnic hill tribes along the borders, refugees and migrant workers who are denied nationalities by their original countries, to orphans without family roots.¹⁵⁵ While the exact number of stateless people in Thailand is unknown, it is estimated that well over one million individuals lack Thai citizenship.¹⁵⁶ Many of the individuals without citizenship are members of Thailand’s northern hill tribes, which number around two million. Stateless people face discrimination as well as economic and structural marginalization. Without a legal status they are unable to own land, vote and may have difficulty accessing basic rights such as education, healthcare, and employment. Stateless people are also particularly vulnerable to human trafficking¹⁵⁷ and labor exploitation.

Employers may deny stateless people employment on the grounds of citizenship, offer them lower wages than Thai citizens, or violate their labor rights. In addition, not having legal documentation restricts hill tribe people’s freedom of movement, which may force them to stay in local villages and have no choice but to engage in low-paying, precarious, seasonal work.¹⁵⁸ Stateless people are found to be less likely to report violations when they do occur as their employers may “threaten to report them to the police if they complain (e.g. for leaving the area without permission).”¹⁵⁹ Those that do travel outside of their district or province to find work must do so through illegal means and face risky and exploitative situations.¹⁶⁰ Restrictions on freedom of mobility have been eased in recent years with announcements by the MoI in the Government Gazette in August 2016, but significant constraints remain. Stateless people cannot travel outside of the province they are registered in without permission from the provincial governor and those without government-issued identity cards may not travel at all. Aside from fear of legal status, stateless people may be reluctant to make a complaint regarding labor abuse or exploitation because of language barriers in the case of the older generations of ethnic hill tribe people, lack of education or awareness about labor rights, as well as condescending attitudes of government officials.

However, the Thai government has recently opened a path to citizenship for stateless people, passing a resolution that could allow as many as 80,000 stateless people living in the country to apply for Thai citizenship.¹⁶¹ With this new pathway opened, labor rights of stateless people and their ability to access complaint mechanisms is likely to improve as more hill tribe people are granted citizenship, contributing to the government’s campaign to achieve zero stateless people by 2024. However, in order to apply for citizenship, individuals must navigate complex bureaucratic procedures. This presents a significant obstacle to obtaining citizenship, especially for hill tribes living in remote areas that have low levels of education and lack knowledge about their rights and nationality procedures. Older generations of hill tribe people may not be able to speak or read Thai properly, which can further complicate this already difficult process.

153 Suriyasarn, B. (2014). *Gender identity and sexual orientation in Thailand*, p. 89.

154 Suriyasarn, B. (2014). *Gender identity and sexual orientation in Thailand*. [online] International Labour Organization, p.70.

155 Ekachai, S. (2019). *Prejudice leaves stateless people lying in limbo in Thailand*. [online] TRTWorld. Available at: <https://www.trtworld.com/opinion/prejudice-leaves-stateless-people-lying-in-limbo-in-thailand-25041> [Accessed 26 Sep. 2019].

156 MacGuire, I. (2019). *NCILJ Symposium 2019: The Statelessness of Hill Tribes in Thailand – North Carolina Journal of Int’l Law*. [online] Ncilj.org. Available at: https://ncilj.org/blog_posts/ncilj-symposium-2019-the-statelessness-of-hill-tribes-in-thailand [Accessed 26 Sep. 2019].

157 Institute on Statelessness and Inclusion (2015). *The Nexus Between Statelessness and Human Trafficking in Thailand*. [online] Oisterwijk, The Netherlands: Wolf Legal Publishers (WLP), p.7. Available at: http://www.institutesi.org/Stateless-Trafficking_Thailand.pdf [Accessed 9 May 2019].

158 Institute on Stateless and Inclusion (2015). *Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review*. [online] Institute on Stateless and Inclusion, p.4. Available at: <http://www.institutesi.org/ThailandUPR2015.pdf> [Accessed 14 May 2019].

159 Rijken, C., van Waas, L., Gramatikov, M. and Brennan, D. (2015). *The Nexus between Statelessness and Human Trafficking in Thailand*. [online] Oisterwijk, The Netherlands: Wolf Legal Publishers (WLP), p.34. Available at: https://files.institutesi.org/Stateless-Trafficking_Thailand.pdf [Accessed 2 Sep. 2019].

160 Rijken, C., van Waas, L., Gramatikov, M. and Brennan, D. (2015). *The Nexus between Statelessness and Human Trafficking in Thailand*, p. 34.

161 Rakkanam, P. (2017). *Thailand Opens Citizenship Path for 80,000 Stateless People*. [online] Asia Pacific Migration Network. Available at: <http://apmigration ilo.org/news/thailand-opens-citizenship-path-for-80-000-stateless-people> [Accessed 2 September 2019].



Photo: Luke Duggleby

THE ROLE OF THIRD PARTIES IN WORKER USE OF COMPLAINT MECHANISMS

Migrant workers may have difficulty accessing official complaint mechanisms without personal relationships with local NGOs or community leaders. According to research conducted by the ACILS, the significance of personal relationships in the Thai legal systems leads to great variations in workers' ability to access complaint mechanisms "depending on factors such as the practice of local police enforcement, local employers, local ministry officials, the availability and work practices of local CSOs and NGOs, and the capacity of local worker communities".¹⁶² This is not surprising given the obstacles migrant workers face in accessing official government complaint mechanisms due to language barriers, lack of awareness, legal status, or the daunting prospect of dealing with complicated bureaucracy with which they are not familiar. Below are a few examples of how non-state third party actors can help workers resolve their grievances and better access formal state-based complaint channels.

Complaints made with the help of NGOs

Interviews conducted with migrant workers in all 4 provinces suggest that most migrants wishing to make a complaint through official channels (e.g. the RTP, the MSDHS, the Department of Employment, the DLPW) will first contact an NGO to seek assistance. Interviews with migrants revealed that they were mostly likely to approach NGOs that had been referred to them through their own internal networks or that they had encountered through a specific organization's outreach activities. The representative of the provincial DLPW office in Surat Thani estimated that 90% of migrant workers who filed a complaint did so with the help of an NGO.

Migrants perceive NGOs as more accessible and trust-worthy than government agencies and know that NGOs can serve as an important intermediary with government authorities. They can mediate negotiations with employers, liaise with government authorities, provide legal assistance, and act as language interpreters. As one Burmese trafficked fisherman from LPN stated: "It's simply too difficult for migrant workers to make a complaint to the government without the help of an NGO." The Executive Director of a migrant workers NGO in Chiang Mai also commented "When we walk into a government office with a migrant worker as an official NGO, their attitude changes completely."

162 Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. p. 32.

Authorities tend to prefer to deal with NGO or CSO representatives who know the system and are considered efficient. One NGO respondent in Samut Sakhon said that some provincial DLPW offices may not even accept complaints from migrant workers without the presence of a third-party such as an NGO or lawyer. However, NGOs may be limited in their ability to directly resolve worker grievances in that they cannot act in any official formal capacity and may lack the resources, expertise, or capacity to effectively assist workers. As a result, many tend to focus on obtaining civil restitution rather than pursuing a criminal case against the offending party. The Executive Director of a migrant rights NGO in Samut Sakhon remarked that his organization had made the strategic decision to focus on helping survivors claim unpaid wages from the labor courts rather than pursue trafficking cases in criminal courts, as these were considered too complex, too lengthy and presented victims with very uncertain outcomes. In addition, while migrant workers may be aware of the services NGOs provide through word of mouth or outreach activities in provinces with high concentrations of migrant workers, NGO programs may be much more limited in other provinces.

Migrant Community Networks

While NGOs are an important resource for migrant workers to seek out assistance and access official complaint mechanisms, they may create an overreliance on civil society actors to address work-related grievances that undermines their “capacity for self-representation and prevent the development of solidarity networks that emerge out of self-organized activity and knowledge sharing.”¹⁶³ Migrant community networks increase workers’ agency and ability to collectively organize while improving their access to official complaint mechanisms. Several NGOs in Thailand have begun training migrant workers and migrant community leaders to teach them about their labor rights and build their capacity to receive labor complaints directly from worker within their own community and refer them to the appropriate authorities. To give one example, the MAP Foundation has provided paralegal training to migrant workers in the community in Chiang Mai and Mae Sot to create referral linkages within migrant communities. These paralegals act as a first level of consultation to discuss issues raised by workers and refer cases to the MAP foundation or directly to Thai labor authorities.

However, certain factors may hinder the development of strong social networks among migrant communities in Thailand. One NGO respondent in Sa Kaeo province noted that Sa Kaeo was a transit province for many

workers migrating into other provinces in Thailand with larger labor markets and that many migrants in Sa Kae were short-term workers. As a result of these migration patterns, workers were not likely to organize long-term support networks. Another variable may be cultural. Several respondents from the civil society sector noted that Cambodian migrants have less well-developed social networks than Burmese migrants. A 2015 study on the *Life and Community of Cambodian Migrant Workers in Thai Society* found that “within a community of Cambodians, migrant workers tend to self-segregate and socialize mostly within their kinship group and keep quietly to themselves.”¹⁶⁴ This observation, confirmed by several Cambodian respondents, can in part be attributed to the legacy of trauma from the Khmer Rouge era.

One study on the impact of the Khmer Rouge on the identity, psychology and mental health of post-genocidal Cambodia found that the “Khmer Rouge broke down social and family norms, making people less likely to help one another when they were no longer bound by the former system of obligations.”¹⁶⁵ It is commonly accepted that this culture of self-reliance and self-preservation was passed down to younger generations and may impact the strength of social networks among migrant communities in Thailand. Establishing effective volunteer migrant networks is contingent upon building trust with migrant communities, which is a time-consuming process. One NGO in Chiang Rai province shared its experience training migrant leaders within the Chiang Rai city district. It recounted how Burmese communities expressed skepticism that the NGO would be able to help them as they had mixed experience with local NGOs, which they felt often over promised and underdelivered. It was only after many visits and the NGO assisting a migrant worker with a legal case that the NGO started to gain the trust of the community.

Informal unions

In the absence of the ability to form labor unions under Thai law, migrant workers can undertake collective bargaining or form a worker association.¹⁶⁶ The MWRN in Samut Sakhon, Thailand, has been experimenting with the model of informal unions or pre-unions by which it organizes workers into a labor organization that has a similar structure and functioning as a labor union but does not hold official status. The MWRN currently has over 9,000 members spread throughout six different provinces.¹⁶⁷

Although it acknowledges that ratification of ILO conventions No. 87 on freedom of association and

163 Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. p. 32.

164 Chaisuparakul, S. (2015). *Life and Community of Cambodian Migrant Workers in Thai Society*. Journal of Population and Social Studies, Volume 23 Number 1. [online] Mahidol University, p.12. Available at: [http://www.jpss.mahidol.ac.th/PDF/JPSS-Vol23\(1\)_Sumaree_Cambodian-Migrants.pdf](http://www.jpss.mahidol.ac.th/PDF/JPSS-Vol23(1)_Sumaree_Cambodian-Migrants.pdf) [Accessed 2 Sep. 2019].

165 Ebrahim, S. (2015). *Political Psychology, Identity Politics, and Social Reconciliation in Post-Genocidal Cambodia*. Global Societies Journal, Volume 3, 2015. [online] UC Berkeley, p.62. Available at: http://gsj.global.ucsb.edu/sites/secure.lsit.ucsb.edu.gisp.d7_gs-2/files/sitefiles/Ebrahim.pdf [Accessed 2 Sep. 2019].

166 Blau, G. (2019). *Towards a Migrant Worker Organization for Cambodians in Thailand (Draft)*. p. 26.

167 Interview conducted with Ms. Suthasinee Kaewlekai, Project Coordinator at the Migrant Worker Rights Network (MWRN) on 7 August 2019, Samut Sakhon, Thailand.

convention No. 98 collective bargaining remains the only sustainable, long-term solution to protect worker rights, it hopes that its model of informal unions can be expanded throughout the country to improve access to justice for migrant workers. The International Transport Workers' Federation, a global union federation of transport workers' trade unions, launched the Fisher Rights Network (FRN) in 2018 to combat the abuse and exploitation of fishermen. Although the FRN is not officially registered as a union given restrictions on freedom of association in Thailand, its organization, function, and operation is very similar to that of a union. The FRN has its own constitution and bylaws and campaigns to improve the wages, working conditions and labor rights of all fishers in the Thai fishing industry, including the right to form and join a union.¹⁶⁸ The Thai and Migrant Fishers Union Group (TMFUG), an organization of about 100 formerly enslaved Thai and migrant fishers established by the Samut Sakhon based NGO, the LPN, operates a similar model. The TMFUG helps victims file official complaints and make compensation claims, provides them with vocational training, and publicly advocates for improvements of their livelihood and welfare.

Informal unions can act as an effective referral system for workers, connecting them with official complaint channels that they may have otherwise been unaware of or unable to access on their own. Aside from referring workers to NGOs or government agencies, informal unions can help directly resolve grievances through mediation. The ability of migrant workers to support each other through a pier support system is enhanced when it harnesses the connective power of social media. One TMFUG member, Surichai, has as many as 400,000 followers on Facebook.¹⁶⁹ He posts regular videos on Facebook Live with useful information: a single post can generate up to a half a million views.

Technological platforms as referral mechanisms

Anti-trafficking stakeholders, particularly NGOs and private sector companies, have increasingly developed technological applications to improve victim identification and/or increase workers' access to information and complaint channels. Issara Labs, a Thailand-based migrant rights NGO, developed Golden Dreams, a

Burmese-language smartphone application that allows migrant workers to "learn and exchange information, reviews, ratings, comments, and advice about employers, recruiters, and service providers, in both home and destination countries".¹⁷⁰ Additionally, migrant workers can seek immediate assistance from the Issara team through a free phone helpline or private messaging. Issara worker voice channels (e.g. Golden Dreams, multilingual migrant worker hotline, chat applications such as Viber and Line, and Facebook Messenger) received up to 3,570 calls and messages in some months in 2017.¹⁷¹ This represents more traffic than the US and UK national anti-trafficking hotlines combined,¹⁷² suggesting that these channels may be a more effective means of receiving questions and complaints from workers than traditional state-based complaint mechanisms.

Government actors have also begun to leverage technology to improve referral systems and access to information. The MSDHS has developed the "Protect-U" mobile application to increase assistance for trafficking. The application is destined for individuals at risk of trafficking as well as the general public. It will include an incident reporting feature to relay information to relevant agencies and will also provide information on labor rights.¹⁷³

Other technological platforms have attempted to address the issue of worker connectivity at sea, which also hinders access to information and complaint channels. The ILRF's Independent Monitoring at Sea (IM@Sea) project was launched in 2016 to "enable worker connectivity while at sea, improving forced labor risk assessments, and developing a worker-driven grievance mechanism."¹⁷⁴ The two fishing trawlers that participated in the pilot were fitted with satellite and cellular communications equipment to enable workers to use their smartphones to connect to an onboard WiFi network. Although the IM@Sea project pilot's primary focus was on "testing a suite of technological tools for labor risk assessment purposes" and providing "around-the-clock worker-driven complaint mechanisms was a secondary consideration",¹⁷⁵ it was able to identify several labor rights violations through an onshore, in-person survey and an at sea, mobile phone survey. Eight operational indicators of forced labor were identified among half or more of all workers out of the 32 operational indicators defined against ILO indicators of forced labor.¹⁷⁶ Key issues identified include

168 Itfglobal.org. (2019). *Independent, democratic fishers' union officially launches in Thailand with global union, NGO and industry backing*. [online] Available at: <https://www.itfglobal.org/en/news/independent-democratic-fishers-union-officially-launches-thailand-global-union-ngo-and> [Accessed 23 Nov. 2019].

169 <https://www.facebook.com/ChulalongkornUniversity/posts/1662879127090095/>

170 Issarainstitute.org. (2019). [online] Available at: <https://www.issarainstitute.org/issara-labs> [Accessed 26 Sep. 2019].

171 *Ibid.*

172 *Ibid.*

173 Thailand's Country Report on Anti-Human Trafficking Response (1 January - 31 March 2019) (2019). [online] The Thai Ministry of Social Development and Human Security, p. 14. Available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2019/04/Thailands-Progress-Report-2019-January-March.pdf> [Accessed 26 September 2019].

174 McGill, A. and Shen, A. (2018). *Taking Stock: Labor Exploitation, Illegal Fishing and Brand Responsibility in the Seafood Industry*. [online] Washington D.C., United States: International Labor Rights Forum, p.4. Available at: <https://laborrights.org/sites/default/files/publications/Taking%20Stock%20final.pdf> [Accessed 26 Sep. 2019].

175 *Ibid.* p. 18.

176 *Ibid.* p. 26.



Photo: Suthep Kritsanavari

the non-provision of employment contracts, document retention, advance payment to workers that could lead to debt bondage, and excessive working hours.

While the ILRF negotiated with the vessel operators to provide remediation to the concerned workers in collaboration with the MWRN, its NGO partner, it remained “unclear at the time of the publication of the report whether the issues raised at the two vessel operator meetings were remediated”¹⁷⁷. Drawing on the challenges encountered during the pilot, the ILRF provided several recommendations for the design of future vessel-based complaint mechanisms, including: using affected workers and employers’ input in the design phase of the operational-level grievance mechanism, using an independent third party to administer the complaint mechanisms, and making sure the partner worker organizations used to develop the complaint mechanism are “sufficiently resourced to monitor implementation of remedial actions and engage in arbitration if needed”.¹⁷⁸

Similar initiatives around workers connectivity at sea have been experimented with in the private sector. In 2017, Thai Union Group PCL and Mars Petcare’s recently launched a digital traceability pilot program that included ‘Fish Talk’, a mobile phone chat application used by crew members, captains and fleet owners to stay in contact with family and loved ones through sat-

ellite communication.¹⁷⁹ In a March 2018 assessment report, the USAID Oceans and Fisheries Partnership found that the application “contributes to crew welfare as it is used frequently and enables incidents to be reported to a partner or relative” and that the chat application had the potential to serve as a channel for fishers to report any incidents to local PIPO officers, government agencies, CSOs, trade unions, and others in real time.¹⁸⁰

While all of the referral actors described above address some of the main obstacles preventing workers from voicing complaints to NGO or relevant authorities, such as physical isolation and lack of awareness about labor rights or grievance channels, the fact remains that their effectiveness remain limited unless parallel investments are made to strengthen the formal or informal complaints mechanisms they are meant to connect workers to. In addition, several CSO and private sector respondents pointed out that while smartphone applications represent a powerful new tool in combatting trafficking, the proliferation of applications that serve similar functions (e.g. screening victims, reporting incidents of trafficking) can lead to redundancies that may undermine the overall effectiveness of such technologies.

177 *Ibid.*, p. 39.

178 *Ibid.*, p. 41.

179 Inmarsat. (n.d.). *Fleet One brings worker voice at sea to Thai fisheries - News - Inmarsat*. [online] Available at: <https://www.inmarsat.com/news/inmarsat-fleet-one-brings-worker-voice-at-sea-to-thai-fisheries/> [Accessed 26 Sep. 2019].

180 Srinivasan, C. (2018). *Thai Union eCDT and Crew Communications Pilot*. [online] The USAID Oceans and Fisheries Partnership (USAID Oceans), p. 28, 53. Available at: https://seachangesustainability.org/wp-content/uploads/USAID-Oceans_Thai-Union-eCDT-and-Crew-Communications-Pilot-Assessment_March-2018.pdf [Accessed 7 Nov. 2019].



Photo: Luke Duggleby

CONCLUSIONS AND RECOMMENDATIONS

The findings of this report suggest that both Thai and migrant workers continue to face obstacles in effectively lodging and resolving work-related complaints. Both government-based and company-operated complaint channels remain underutilized, ineffective and difficult to access. Workers often lack information on how to file complaints through official channels such as the DLPW or may be reluctant to lodge complaints due to complex bureaucratic procedures, impractical access points, and a mistrust in government ability to deliver remedy in a timely manner. Workers may be equally reluctant to report complaints through company-operated mechanisms such as labor welfare committees and internal grievance channels as they lack legitimacy, transparency and are not based on genuine engagement and dialogue.

Migrant workers face particular obstacles in accessing grievance mechanisms due to language barriers, lack of awareness, fear of dismissal, and deportation. Women and the LGBTQI+ community may face specific challenges in lodging complaints due to the informal nature of much of their employment in Thailand, the very real threat of arrest in the case of sex workers, and the physical isolation of working in private homes in the case of domestic workers.¹⁸¹ Stateless people in the Northern region of Thailand also struggle to make effective use of complaint channels to voice their grievance and seek redress given their lack of legal status and restrictions on freedom of movement.

NGO, volunteer migrant networks, and informal unions can help improve access to justice for workers by acting as a referral mechanism to official government channels and serving as a source for information on labor rights. However, the effectiveness of existing state-based mechanisms needs to be strengthened before investments in referral systems can be worthwhile. The lack of ability for workers to obtain effective redress through judicial complaint mechanisms is an important deficiency that needs to be addressed. Businesses have an important role to play in complementing state-based complaint mechanisms given their responsibility for labor rights violations and their potential to deliver quicker, cheaper, and more effective redress.

The RTG is aware of these challenges and has already taken positive measures to strengthen government and private sector-based complaint mechanisms. Over the past few years, the government has increased the number of interpreters and language coordinators across complaint-receiving agencies, centralized and streamlined the government hotline system, raised awareness of migrant workers' labor rights through the opening of post-arrival and reintegration centers, clarified national policy on migrant workers' equal protection under Thai labor law, encouraged large private sector companies to increase workers' voices through the strengthening of existing labor welfare committees and rolled out a NAP on Business and Human Rights to drive forward the implementation of the UNGP on Business and Human Rights. However, more needs to be done by government, NGOs, and private sectors actors to increase workers' access to justice. Only when complaint mechanisms are strengthened at a systems-wide level can the prevalence of trafficking and forced labor be reduced. Below is a list of recommendations for state, civil society, and private sector stakeholders to improve complaint mechanisms in Thailand.

181 Harkins, B. and Ahlberg, M. (2017). *Access to justice for migrant workers in South-East Asia*, p. 25.

Recommendations:

Incentives and Remedies

- The laws and practices should be reviewed and amended to prevent undocumented workers that have been victims of crimes (other than TIP) from being arrested and deported prior to their having access to judicial review and remedies.¹⁸² Such a change in policy would improve incentives for migrant laborers to use complaint mechanisms.
- It is also recommended to update court processes to allow compensation be awarded even when victims return to their home countries.
- For criminal cases, RTG should consider alternatives to confinement in government shelters during legal proceedings and more effective compensation award procedures, to incentivize more potential victims to come forward.
- In line with Thailand's NAP on Business & Human Rights, the private sector stakeholders should expand the development of internal grievance mechanisms that meet the criteria of Principle 31 of the UNGP.

Human-Rights Based Approach and Inclusiveness

- Labor rights and other protections should be extended to migrant workers in all sectors of employment, including domestic and seasonal agriculture, to prevent their victimization and improve access to official complaint channels.
- Access to rights and complaint mechanism information for migrant workers should be improved prior to their departure in their home countries, upon arrival in Thailand at the post-arrival and reintegration centers, and within their communities and workplaces.
- Migrant-serving NGOs may benefit from additional legal capacity and connections to pro-bono lawyers to be able to assist more migrant laborers and do it more effectively.
- The RTG could train and recruit additional female officers in Thai government agencies to improve gender-responsiveness of services and increase women's access to official complaint channels. Relevant complaint-receiving officials should also be provided with discrimination and gender diversity training to improve sensitivity and awareness in dealing with LGBTQI+ individuals. The legal capacity and awareness of provincial officials could also be improved.

Accessibility and Language

- The multiplicity of government hotlines dedicated to receiving complaints on human trafficking or labor rights violations can cause confusion for workers. A centralized hotline with a strong referral system to connect callers with the appropriate government agencies or service providers, through "warm transfers", would help in streamlining the communications channels and make it easier for a complainant to remember and dial the number in case of need.
- Polaris' Global Toolkit on Hotlines¹⁸³ can be used to improve the existing system in several key areas, including: a) making better use of existing resources through streamlined scheduling based on identified patterns of call volumes; b) Developing additional channels for making a report including text messaging, email, websites, and apps and making the current prompt-system simpler and more user-friendly; c) establishing MOUs with referral partners; d) improving collection, organization and interpretation of hotline data to identify patterns; and e) developing more targeted outreach campaigns to increase awareness about government hotlines.
- Given the shortage of qualified interpreters in certain provinces, a database of qualified interpreters in specific provinces may assist with timely responses to worker needs.
- Migrant community leaders can be better organized, informed and equipped to detect and advise on labor rights issues, help workers file complaints to relevant authorities and/or access NGO services.

182 Officially identified victims of TIP that collaborate on criminal cases are entitled to protections from prosecution and deportation

183 BUILDING THE GLOBAL SAFETY NET FOR VICTIMS OF HUMAN TRAFFICKING: A TOOLKIT FOR HOTLINES. (n.d.). [online] Polaris. Available at: <http://BUILDING THE GLOBAL SAFETY NET FOR VICTIMS OF HUMAN TRAFFICKING: A TOOLKIT FOR HOTLINES> [Accessed 2 Sep. 2019].

LIST OF ORGANIZATIONS CONSULTED

Government representatives

No.	Agency	Period of Interview
	Surat Thani Department of Labour Protection and Welfare	July 2019
	Trat Department of Labour Protection and Welfare Ms. Saithip Saengfai, Director	August 2019
	Sa Kaeo Department of Labour Protection and Welfare Mr. Gantapit Pradubkan, Director	August 2019
	Chiang Rai Department of Labour Protection and Welfare Mr. Veeradach Inthawong, Director	September 2019
	Provincial office of the MSDHS of Surat Thani Province (via email) Ms. Ratchada Rakkanam, Professional Social Worker	September 2019

Civil society

No.	Key informants	Date of Interview
	Labour Protection Network, Samut Sakhon Mr. Sompong Srakew, Executive Director	July 2019
	MAP Foundation, Chiang Rai (phone interview) Mr. Brahm Press, Executive Director	July 2019
	Human Rights and Development Foundation, Bangkok Ms. Sugarnta Sookpaita, Advisor	July 2019
	Foundation for Education and Development, Phang Nga (phone interview) Mr. Min Oo, Migrant Development Team Coordinator	July 2019
	Migrant Worker Rights Network, Samut Sakhon Ms. Suthasinee Kaewleklai, Project Coordinator	August 2019
	World Vision International, Sa Kaeo (phone interview) Ms. Nipaporn Chaikiran, Field Coordinator	August 2019
	Friends International, Sa Kaeo (phone interview) Mr. Vuthy Reth, ChildSafe Alliance Coordinator	August 18
	Foundation for Women, Bangkok (phone interview) Ms. Usa Lertsrisantat, Director	September 2019
	Thai Freedom Story, Chiang Rai Mr. Veerawit Tianchainan, Executive Director	September 2019
	Mekong Minority Foundation, Chiang Rai Mr. Chatree Rungsriskhit, Project Rights Coordinator	September 2019
	ECPAT International, Chiang Rai Mr. Ketsanee Chantrakul, Program Manager	September 2019
	Highland People Education and Development Foundation Ms. Trilada Sangarun	September 2019
	Thai Transgender Alliance (phone interview) Dr. Ronnapoom Sammakkarom, Executive Director	September 2019
	ADRA Foundation (phone interview) Ms. Lalita Yawangsarn, Project Coordinator	September 2019

Workers

No.	Key informants	Date of Interview
	Focus group discussion with Burmese migrant workers and Thai workers in Samut Sakhon	July 2019
	Focus group discussion with Cambodian migrant works in Khlong Son, Trat	August 2019
	Focus Group with Cambodian migrant workers in Aranyaprathet	August 2019
	Focus group with Burmese migrant workers in Chiang Rai	September 2019

Academia

No.	Key informants	Date of Interview
	Mahidol University	August 2019

Labor Unions

No.	Key informants	Date of Interview
	International Transport Workers' Federation, Songkhla	August 2019
	State Enterprise Workers Relation Confederation, Bangkok	August 2019
	International Labor Rights Forum, Bangkok	August 2019
	YMP Print and Dye Workers Union of Thailand, Chonburi	August 2019

Private Sector

No.	Key informants	Date of Interview
	Thai Union Group PLC, Bangkok	July 2019
	Asian Seafood Cold Storage, Surat Thani	July 2019
	The Mekong Club, Hong Kong, China	July 2019
	Walmart Responsible Sourcing, Bangkok	August 2019
	KSD Group	September 2019
	Grace Foods, Co.	September 2019

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ETHICAL CONSIDERATIONS

This research has been conducted in accordance with Winrock International's Research Policy and Standards, including:

No.	Research Policy and Standards	Practice of research team
	Voluntary participation	Research participants who do not want to participate in the research can decide not to and are free to leave the interview at any time.
	Informed consent	Research participants will be explained about the objectives of the research and how the information will be used; participants will give their verbal consent for the information to be used in the paper.
	Confidentiality and anonymity	The reference of research participants not be done by using individuals' or the name of any company or organization unless explicit verbal consent has been given.
	Steps to minimize discomfort and harm including intervention and support	Keep research instruments short and focused and try to avoid overlapping or repetitive questions. Aim for 60 minutes (at most) for an individual interview and not more than 90 minutes (two hours) for group discussions.
	Feedback of study findings to participants/communities	The team will discuss with Winrock on the possibility of providing feedback to research participants

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