
Submission to the Government of Thailand's Department of Rights and Liberties Protection

Concerning the Thai National Action Plan on Business and Human Rights

March 2019

Introduction

The Institute for Human Rights and Business (IHRB) welcomes this opportunity to provide comments and input for the National Action Plan on Business and Human Rights (NAP), which has been proposed by the Royal Thai Government. IHRB played a proactive role in facilitating stakeholder consultations undertaken as part of the process to develop the first version of the United Kingdom NAP in 2012/13. Since then, IHRB has contributed to a range of other NAPs across a number of countries. Whilst the number of states to develop such National Action Plans remains small, such plans have been seen to be important tools to demonstrate government commitments to promote human rights in line with international standards, and a key way to strengthen policy coherence and the effective implementation of laws in support of those objectives. Of particular significance is ensuring effective remedies for victims of corporate-related abuses consistent with the UN Guiding Principles on Business and Human Rights. An NAP also clearly sets out government expectations of businesses to support and promote human rights whilst seeking to create the level playing field needed by law-abiding business enterprises to operate to high standards. We therefore welcome the fact that expectations and obligations on business are matched by clear commitments from the Government.

As noted in the proposed Thai Government NAP, migrant workers are a significant and ubiquitous feature of all business sectors in Thailand. The

hard work and skills of this migrant workforce adds significantly to the economic vitality of Thailand and, through their remittances home, of many other countries in SE Asia. We note and commend the importance that the NAP places on this migrant workforce, and concerns relating to migrant workers will constitute the main focus of this submission.

We focus our comments in this submission on three key areas:

- Responsible recruitment
- Discrimination and inclusion of migrant workers
- Access to grievance mechanisms

Responsible Recruitment

A major cause of forced labour in today's global supply chains is the charging of recruitment fees to migrant workers. Attention to this issue is increasing globally and businesses and [governments](#) are working to promote a different business model based on the Employer Pays Principle. The Employer Pays Principle affirms that no worker should pay for a job: the costs of recruitment should be borne not by the worker but by the employer. Employer Pays models of recruitment, consistent with ILO Convention 181, allow business and workers to benefit from professional and ethical recruitment services.

Developed as an initiative of IHRB and launched in May 2016, the [Leadership Group for Responsible Recruitment](#) is a collaboration between leading companies and expert organisations to drive positive change in the way that migrant workers are recruited. The Leadership Group operates as a company-led collective advocacy platform harnessing the leverage of 14 major international brands to promote responsible recruitment practices amongst businesses, the recruitment industry, and governments. Members of the Leadership Group include: The Coca Cola Company, GE, HP, Hewlett Packard Enterprises, Ikea, Marks & Spencer, Mars, Nestlé, Nike, Target, Tesco, Unilever, Vinci, and Walmart, and all are publicly committed to the Employer Pays Principle. The group is also supported by Verité, the Interfaith Center for Corporate Responsibility, the ILO, IOM, and Migrant Forum in Asia.

In March 2018 members of the Leadership Group, facilitated by the IOM, met with representatives from the Thai Government for strategic dialogue that considered how the Government and businesses could work together

to promote responsible recruitment within recruitment corridors in to Thailand. [The Global Forum for Responsible Recruitment 2019](#) will take place in Bangkok 9 – 10th July, bringing together global brands and Thai businesses, suppliers, recruitment agencies and civil society organisations for discussions on how all stakeholders can work together to promote professional and ethical recruitment practices. Connected to the Forum, we would welcome further strategic dialogue between participants from the Leadership Group, the IOM and representatives of the Thai Government. Such a meeting could include specific discussion on how business could aid the Thai Government with implementation of the proposed NAP. Further information and resources related to responsible recruitment can be found via the [Responsible Recruitment Gateway](#).

The Protocol to the ILO Forced Labour Convention was agreed in June 2014 and its ratification by the Government of Thailand is a welcome and significant step. The Protocol specifically states the importance of ensuring responsible recruitment as a critical way of preventing forced labour and human trafficking and it recommends that both governments and business undertake relevant due diligence in their operations and supply chains. Positioning the Protocol as a crucial component of the National Action Plan offers the opportunity to set out a clear framework outlining the Thai Government's expectations of business and how it will support their efforts through effective regulation and consistent enforcement of the law.

We welcome acknowledgement within the Plan that businesses recruiting migrant workforces be responsible for the costs of recruitment, in line with the Employer Pays Principle, which is increasingly referenced by a large number of stakeholders and is effectively the default way of describing and promoting responsible recruitment. If adhering to the Employer Pays Principle, companies should be able to demonstrate that they have paid the costs of worker recruitment themselves via service-level agreements, invoices and receipts. Requiring companies to produce such evidence should form part of labour inspection activities.

Delivery of an 'employer pays' model of recruitment will require an integrated approach aligned with all other aspects of migrant worker management. The proposed control and monitoring system and migrant workers management information system will be instrumental in the successful implementation of this policy. The establishment of such monitoring systems also sends a strong message to all stakeholders about the importance that the Thai Government places on responsible recruitment. We recommend that the first tasks of those initiatives be to

undertake a comprehensive baseline assessment of migrant worker recruitment in to Thailand. Building on previous research undertaken by the Thai Government, this will allow an accurate understanding of migration flows and practices and where interventions are needed to support Government policy.

The draft NAP highlights the importance of supply chain transparency with a particular requirement for larger Thai companies hiring migrant workers to report on the efforts they are taking to prevent forced labour. As identified in the draft NAP this due diligence should also include outsourced services and sub-contacting IHRB would recommend the explicit inclusion and mention of recruitment agencies in the section on outsourced services. To be consistent with similar legislation elsewhere, for instance in the UK under the UK Modern Slavery Act, we believe that producing such a transparency report should be an annual requirement to ensure consistent progress over time. Such reports should be signed at executive level within the company concerned. We would recommend the establishment of a Government-managed central register in an easily accessed searchable database for these reports to allow easy access for civil society, academic and government scrutiny.

The Thai government should offer clear, unambiguous guidance for Thai companies about how they should undertake effective due diligence on their operations and how that should be reported against a given set of criteria. If crafted effectively, the due diligence guidance relating to the supply chain sections of the National Action Plan could become a standard for other states, particularly within the ASEAN region as they ratify the ILO Protocol.

Successful implementation of these policies will require capacity-building of migration services and adequate resources being allocated to ensure adherence to regulation and formal recruitment structures. Noting the vulnerability to forced labour and trafficking caused by flawed recruitment processes we would anticipate that servicing these requirements should be considered a key component of the anti-human trafficking budget mentioned in the first part of this NAP. Related to budget allocation the Plan should also include more comprehensive details of where departmental responsibility for delivery should reside. Reference to a comprehensive and costed implementation plan will enable effective government planning and accountability.

Promoting Inclusion of Migrant Workers and Addressing Specific Challenges

Migrant workers may face numerous challenges when working abroad. In particular, they may be discriminated against due to their nationality, ethnicity, social status or religion. Female migrant workers may face additional discrimination and further exploitation including sexual harassment. For many migrant workers, their vulnerability is compounded by lack of accurate information and in some cases by deliberate misinformation about their rights.

The National Action Plan contains a number of commendable measures to tackle discrimination and promote inclusion. It also seeks to promote ways in which migrant workers can be safely and effectively managed through clear and transparent formal processes.

As proposed in the draft Plan, worker orientations, both for those entering Thailand or for Thai Nationals travelling abroad to work, are a vital way to ensure that workers are fully aware of their rights. The plan should make clear how such orientations will take place, when and who they will be delivered by. Whilst operational inductions or onboarding of new workers are the responsibility of the company, details of rights should be delivered by a credible third party or government department. Information should also be delivered via provision of workplace posters etc, online and via social media and mobile phone apps. The Government of Thailand should engage with governments in countries of origin to ensure consistent and effective communication. In Thailand regular briefings for embassy staff/labour attachés could also be used as effective methods of disseminating information. Delivery of this information could also be undertaken as part of the Thai Government's proposal to offer adequate healthcare services to migrant workers.

Access to Effective Grievance Mechanisms

The provision of credible and trusted grievance 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. As well as being a way through which issues may be addressed and remedy sought, such mechanisms also encourage better

stakeholder engagement and human rights due diligence by business. They also provide useful feedback points for businesses to develop more effective and professional practices improving operational efficiency, avoiding reputational risk and enhancing brand reputation.

The provisions for risk assessment, due diligence and grievance mechanisms therefore are important parts of this National Action Plan. If implemented they will greatly enhance its effectiveness in preventing human rights violations or in providing access to remedy to individual or communities.

The Thai Government should work with business across all sectors and with trade associations and other business stakeholders to promote the benefits of grievance mechanisms and provide guidance on how to establish them. The Plan should place a requirement on larger businesses to develop clear internal processes for managing grievances. Details of these systems should be a feature of all transparency reports.

In Conclusion

The UN Guiding Principles make clear the importance of companies to respect human rights. Globally companies are increasingly realising that it makes good sense to do so. In Thailand a number of promising business-led initiatives are being undertaken. There are many benefits of companies undertaking these initiatives but in many sectors there is a limit on the ability of companies to effect real change particularly at the bottom of supply chains. It is vital therefore that the state also undertakes its duties to protect and ensures effective enforcement of the law. We would like to see the National Action Plan contain more information about how the Thai Government will tackle non-compliance. What sanctions will it apply to companies failing to respect rights. In this way, as well as preventing exploitation, the government will deliver a safe operating arena for law-abiding companies to compete fairly and thrive. We welcome the inclusion of both state and business obligations in the draft Plan along with guidance on access to effective remedy. The Thai National Action Plan on Business and Human Rights provides a timely and useful overview of the priorities for both businesses and the Government to prevent exploitation and to positively promote human rights. These rights are a vital component in delivering sustainable development and a positive economic future for Thailand.