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1. Introduction

1.1 In this submission, the Thai BHR Network, Women Workers for Justice Group (WJG), Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR examine the compliance of Thailand with the recommendations it received during its 2nd UPR Cycle, particularly in relation to business and human rights (BHR). In this context, we analyse the efforts made by Thailand to implement recommendations received related to compliance with human rights treaties, rights of marginalized groups affected by business operations and trade agreements, right to public participation, and the protection of human rights defenders.

1.2 During the 2nd UPR cycle, Thailand received 52 recommendations related to BHR. Of these recommendations, 44 were supported and 8 were noted. Our assessment demonstrates that the government partially implemented 6 recommendations. However, it persistently failed to implement 46 recommendations since its last UPR.

1.3 We are deeply concerned with Thailand's economic growth strategies, as the government prioritises economic growth over the lives, livelihoods, and human rights of local and marginalized communities. Business activities and development project disproportionately benefit the wealthy, while often harming the environment and local communities due to lack of legal framework regulating business activities, lack of enforcement of protective labour laws and exclusion of sex workers and migrant workers from such protection laws, and the absence of or inadequately conducted impact assessments and community participation in decision-making processes. We are further alarmed by the restrictions on freedom of expression, assembly, and association in Thailand, which results in harassment of human rights and environmental defenders opposing business activities and raising awareness of or seeking remedy for bad working conditions in order to protect their rights.

1.4 This submission indicates that business activities and development projects are not carried out in a sustainable manner, resulting in violations of human rights, in the following manner:

Section 2 discusses the lack of legal framework to regulate business activities

Section 3 discusses the rights violations faced by sex workers due to the nature of their work

Section 4 discusses the rights violations faced by migrant workers in the context of BHR

Section 5 discusses the adverse impacts of business activities on natural resources and the environment

Section 6 discusses the adverse impacts free trade agreements (FTAs) may have on the livelihoods of local communities

Section 7 includes recommendations to the Thai government, addressing the challenges and rights violations discussed in foregoing sections

2. Lack of legal framework to regulate business activities



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- 2.1 During the 2nd UPR cycle, the Thai government received a recommendation from Sweden to ‘develop, enact and implement a National Action Plan (NAP) on BHR in order to implement the UN Guiding Principles on BHR (UNGPs), which it committed to do so. However, as evidenced below, it can be concluded that the government only partially implemented this recommendation. Moreover, instead of strengthening its legal framework to ensure that businesses respect human rights, the Thai government amended and drafted legislation loosening restrictions and requirements for business actors aiming to pursue businesses and projects.
- 2.2 Thai developed a NAP on BHR, but it fails to (1) implement the UNGPs on the ground, (2) ensure that business activities do not infringe upon human rights, (3) hold businesses accountable for rights violations caused by their operations, and (4) ensure that those whose rights are violated have access to effective remedies.¹ While prior to the drafting of the plan, the Thai government, particularly the Ministry of Justice (MoJ), consulted with local communities in all regions of the country to listen to their concerns related to BHR as well as to their community-led recommendations and solutions,² the government failed to integrate their concerns in the final NAP and left the issues faced by some communities unaddressed. The NAP is also ineffective to protect rights as it makes no mention of sex workers and indigenous peoples, despite being among the most severely affected. Moreover, the NAP does not consist of a mix of mandatory and voluntary measures, as prescribed by the UNGPs. Instead, it only consists of weak voluntary measures, which are unlikely to bring about change and regulate businesses.³ Due to the Thai government’s failure to adequately implement the UNGPs on the ground, marginalized communities remain vulnerable to corporate abuses, without having access to effective remedies.
- 2.3 The Thai government also amended existing legislation and loosened restrictions and requirements for business actors to comply with. For example, in the Factory Act (No. 2) of 2019, which amends the Factory Act of 1992, ‘factory’ is redefined as ‘a building, place or vehicle using machinery of 50 horsepower or more or having a minimum of 50 workers’. The Act also stipulates that a factory license will not expire until the factory ceases operations.⁴ Regulations are relaxed compared to the Factory Act of 1992, which defines a ‘factory’ using the threshold of five horsepower and seven workers and requires a factory needs to renew its license every five years.⁵ Problematically, following the new definition, many companies are no longer considered a factory and do not have to comply with strict requirements, providing more room for exploitation. With the abolition of the license renewal requirements, factories no longer have to show their continued compliance with provisions under the Act to continue carrying on their business operations.

3. Rights violations faced by sex workers due to the nature of their work

- 3.1 During its 2nd UPR cycle, Thailand received one recommendation directly addressing rights of sex workers, which it supported. The Thai government committed to ‘increase its efforts to ensure the right to the highest attainable standards of health also to sex workers by ensuring them access to healthcare and services and comprehensive sexuality education’. The Thai government also received 30 recommendations related to prevention of discrimination and protection of marginalized groups, of which it supported 28, and noted two. Among others, the Thai government committed to ‘continue its efforts in strengthening policies and measures to promote and protect the human rights of its people, in particular those of vulnerable groups such as women, children, poor people, and migrants’. In order to



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ensure the rights of sex workers are being upheld and protected, it is significant that sex work is recognised as work, and that sex workers will be protected under labour laws and have access to social security systems. However, as evidenced below, this is not the case: sex workers continue to be criminalized and are subject to stigma, violence, exploitation, discrimination, and marginalization, in their daily lives and at the workplace. Therefore, the Thai government failed to implement the recommendations.

- 3.2 In Thailand, about 300,000 individuals earn a living through engaging in sex work. Altogether, they contribute to 10% to 12% of Thailand's GDP.⁶ Even though sex workers are not recognised as 'workers', sex work is criminalized under the Prevention and Suppression of Prostitution Act of 1996. The Act is applied in a discriminatory manner, punishing sex workers for selling sex, while punishing customers who purchase sex. To enforce the Act, police resort to violent means, including the use of entrapment and raids of entertainment establishments employing sex workers.⁷ Violent use of police power continues to be perpetrated because of a lack of policy prohibiting and sanctioning it. Moreover, during raids, police use possession of condoms as evidence against sex workers, which discourages sex workers from using condoms and thereby increases their vulnerability to HIV/AIDS.
- 3.3 Because sex work is being criminalized and considered 'illegal', sex workers are often forced to pay bribes for accessing basic rights and to be able to continue their work. Under Article 5 of the Prevention and Suppression of Prostitution Act, a fine not exceeding THB 1,000 is imposed on 'any person who, for the purpose of prostitution, solicits, induces, introduces herself or himself'. Police officers utilize the Act to demand a fine from sex workers, and often keep the money for themselves. Consequently, in some places in Thailand, 10% to 17% of sex workers' earnings go towards paying bribes to police. Migrant sex workers even pay 26% of their monthly earnings in bribes to authorities.⁸
- 3.4 Sex workers are often subject to unfair employment practices because entertainment establishments do not abide by Thai labour law. A study EMPOWER Foundation, a leading sex workers rights' organization in Thailand, found that 87% of those employed in the entertainment industry work in conditions that fail to meet national legal standards for labour protection or the ILO criteria for decent work. The unfair employment practices are explained below. First of all, although the Entertainment Places Act of 1966 requires entertainment venues to acquire operating licenses from local police, this does not ensure meaningful health and safety protections for entertainment workers. Public health officials admit that the Ministry of Public Health's auditing units only focus on the structure and facilities of these businesses, and not the occupational safety and health of workers. Moreover, because of the criminalisation of sex work, harassment and arrest workers are subject to by law enforcement authorities, sex workers do not report or file complaints about work-related injuries.⁹ Accordingly, many experience poor work and living conditions, with a lack of adequate toilets, dirty workplaces, loud noises, lack of privacy in shared sleeping quarters, absence of ventilation, fire exits, fire escapes, and iron bars or fixtures on doors and windows in some workplaces. Sex workers also experience excessive working hours with insufficient rest days, ranging from zero to two per month, and a lack of paid leave. They also face unfair wage deductions, ranging from THB 100 to 2,000, imposed by employers and managers for taking sick leave, failing to undergo mandatory health checks, or if they do not take a client to a place designated by the establishment.¹⁰ Additionally, sex workers face challenges because they often lack formal employment contracts. Often, no agreements are made between the worker and employer, and services and targets are

unilaterally decided by the employer or manager. Lastly, sex workers face unfair termination of employment if they are found HIV/AIDS positive or pregnant, disregarding ILO Recommendation No. 200 and 183.

- 3.5 While facing numerous violations, sex workers face barriers to collective bargaining for better working conditions: they do not have a form of workers' organisation or association.¹¹ While there is no legislation officially restricting Thai sex workers from unionising, there are barriers for sex workers: the right to association is being restricted to Thai nationals, excluding migrant sex workers, and due to stigma, sex workers are not recognised as important stakeholders in decision-making processes affecting them. Consequently, they are excluded from the development of policies and its implementation.
- 3.6 Due to the criminalization of sex work, workers have little to no access to state-based judicial remedies whenever their labour rights are violated. Fearing being charged under the Prevention and Suppression of Prostitution Act of 1996, sex workers are often reluctant to report crimes or rights violations they experience. Instead of an avenue for remedy, sex workers perceive the judicial system as a way to prosecute them. Accessing justice is even more challenging for sex workers with intersecting identities belonging to marginalized groups, ethnic minorities or indigenous communities. Not being able to report crimes and exploitative conditions they experience, they are forced to work under exploitative conditions.¹²
- 3.7 During the outbreak of COVID-19, 300,000 sex workers were severely affected, being the first ones to lose their jobs, and the last ones to return back to work. While they were left unemployed, unable to support themselves and their families,¹³ they were also excluded from the Thai government's so-called 'No One Left Behind' COVID-19 fund, established in May 2020. Some but not all sex workers, not belonging to ethnic minority groups, indigenous groups or being of migrant status, are able to register and apply for government aid. While some say this shows that the Thai government has acknowledged sex work as an economic activity, with some groups of sex workers left behind, discrimination and lack of acknowledgment still plagues sex work, particularly based on the ethnic identity and nationality of the sex worker.

4. Rights violations faced by migrant workers in the context of business and human rights

- 4.1 During its 2nd UPR cycle, Thailand received various recommendations directly addressing rights of migrants in Thailand, including in the context of BHR. The Thai government received three recommendations regarding the ratification of the International Convention on the Protection of the Rights of Migrant Workers and their Families (ICRMW) of which it supported two and noted one. The Thai government committed to 'consider ratifying the ICRMW'. Moreover, the Thai government received five recommendations directly addressing protection of migrant workers' rights, which it all supported. Among others, the Thai government committed to 'put in place legislations to protect migrant workers from abuse and exploitation'. The Thai government also received 25 recommendations addressing the protection of vulnerable populations in Thailand, of which it supported 23 and noted two. However, as evidenced below, the Thai government failed to implement these recommendations and has made insufficient efforts to protect the rights of migrant workers residing in Thailand.



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- 4.2 As of December 2019, Thailand counted 2,788,316 registered migrant workers, who are mostly from neighbouring countries, Myanmar, Lao PDR, and Cambodia, and are employed in low-skilled jobs, such as agriculture, fisheries, domestic work, and construction.¹⁴ Moreover, Thailand hosted approximately three million unregistered migrant workers in 2017. Together, they make up more than 10% of the country's workforce. While Thailand is home to many migrant workers, its current migration policy has proven unable to manage the growing number of migrant workers. The Thai government has not ratified the ICRMW or ILO Conventions 87 and 98, all of which set out international standards for workers' rights. At the national level, Thailand has also not implemented legislation guaranteeing that migrants' rights are being upheld. Policies are often ineffective and ever-changing, keeping migrants vulnerable to human rights violations and in a precarious legal status.¹⁵ Problematically, due to the growing belief among Thais that migrant workers are a social, economic, and political burden, the Thai government is not likely to pass legislation protective of migrant workers.
- 4.3 Migrant workers in Thailand face challenges to register themselves and obtain legal status, due to complex procedures and barriers. First of all, due to language barriers, they are unable to undergo procedures themselves and have to rely on the assistance of agents or employers. Moreover, due to financial barriers, migrants are unable to bear costs for workers' registration. Therefore, workers prefer using irregular channels to enter Thailand. For example, in 2018, 90% of Cambodian overseas workers worked in Thailand, but due to the complex documentation procedure, costs, and limited information available about the process, only 30% of them used the official Memorandum of Understanding (MoU) system.¹⁶ Migrant workers unable to register themselves are considered 'illegal immigrants' and are subject to arrest and deportation.¹⁷
- 4.4 As a result of registration, workers may also face debt bondage. In accordance with the Foreigners' Working Management Emergency Decree, the Thai government must provide for the registration of all foreign employees that were not previously recognised as such, and it indicates a timeline for registration to take place. Due to the high volume of foreign workers in Thailand, the timeline has been extended several times. The Decree also stipulates that employers who hire foreign workers from their home countries are to carry out the worker's registration process. Employers requesting excessive money from workers could face imprisonment of no more than six months, and a fine no more than twice the amount requested from the worker.¹⁸ However, employers, middleman, and brokers regularly inflate the costs, leaving migrant workers with large debts, which in turn leads to violations of their rights, such as harsh working conditions, wage deductions, and confiscation of personal documents. For example, the Myanmar government estimates that the migrant registration programme costs THB 3,550.¹⁹ Yet, it appears that on the ground migrant workers from Myanmar have to pay a much higher price, ranging between THB 8,000 and 16,000 or even more.
- 4.5 According to the 2016 Global Slavery Index, it is estimated that around 425,000 individuals are living in conditions of modern slavery in Thailand.²⁰ Once migrant workers arrive in Thailand as unregistered immigrants, they face detention, deportation, and a lack of social services, legal protection, aid, and other support they might require. Migrants often enter workplaces without accurate information about the type of work, working hours and conditions, and wages. They face exploitation at the workplace: many fail to receive fair wages, are overworked, and are dismissed without receiving early notice or compensation.²¹



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- 4.6 Migrants employed in the sex industry face even more challenges, due to the nature of their work, nationality, and lack of legal status. As a result of international pressure to combat human trafficking, the Thai government implemented the Prevention and Suppression of Human Trafficking Act of 2008, and wrongly conducted raids of entertainment establishments to ‘rescue migrant sex workers’, who are often believed to be victims of human trafficking, regardless of their consent to enter sex work. Consequently, these ‘rescued’ sex workers are left without work or means to provide for themselves and their families. These misguided ‘rescue operations’ led to reduced access to remedies, confinement in immigration detention centers, protracted lawsuits, and deportation.²²
- 4.7 Although Thailand has laws in place that safeguard workers’ labour rights, which apply to all workers, regardless of their nationality and legal status, such as the Labour Protection Act of 2019, the Social Security Act of 2015, and the Workmen’s Compensation Act of 1994, these laws are insufficient to protect migrant workers’ rights, as their rights are being restricted in the context of employers being exempted from complying with their obligations under the law, and labour laws being poorly implemented and enforced. Migrant workers are also not guaranteed all the rights outlined in the Social Security Act of 2015, and due to the lack of registration and legal status, they do not enjoy the same minimum wage and safety protections guaranteed to other workers. According to the Mekong Migration Network’s study, more than half of the migrants employed in the agricultural sector lacks proper documentation and is therefore not paid minimum wages: 46% of the workers on corn farms received less than THB 4,500 per month.²³ Additionally, although the Workmen’s Compensation Fund offers compensation to migrant workers, it does not cover unregistered workers, and does not cover some sectors in which migrant workers are disproportionately employed, such as fishing, agriculture, and domestic work.
- 4.8 Migrant workers also face challenges to engage in collective bargaining in order to achieve better working conditions. In the Labour Relations Act of 1975, migrant workers’ right to form unions is restricted, as the law specifies that labour unions can only be established by persons with Thai nationality, while others can only be members.²⁴ Subsequently, migrant workers are unable to fight against injustices particularly faced by them. The lack of bargaining power has led to low wages, poor employment conditions, and substandard welfare benefits.
- 4.9 Migrant workers often fall victim of forced labour and, when seeking judicial remedy, they may face defamation lawsuits and Strategic Litigation Against Public Participation (SLAPP) cases from businesses which allegedly violated their rights. For instance, in October 2016, the Thammakaset Farm filed defamation charges against 14 migrant workers who submitted a complaint to the National Human Rights Commission of Thailand (NHRCT), accusing the company for forcing them to work 20 hours a day and to sleep in chicken rearing areas. The charges were accepted by the court in August 2017 and the case started in October 2017. In July 2018, the court dismissed the case against the workers.²⁵ Thammakaset appealed the decision, which was upheld by the Appeal Court in May 2019. However, the company did not give up and continued to file cases against the migrant workers and against those who stood up against the company and supported the migrant workers.
- 4.10 During the COVID-19 pandemic, migrant workers have been severely affected: due to business closures and suspension of operations, many migrant workers have lost their jobs

and income sources and are thus unable to sustain their livelihoods and that of their families. However, the Thai government failed to provide sufficient assistance to those who were forced to remain in Thailand due to border closures. Those who lost their jobs received no unemployment support from the Social Security Office (SSO), as employers had failed to notify the SSO about the workers' termination.²⁶ During the second COVID-19 outbreak in January 2021, the Thai government announced that a COVID-19 relief package of THB 4,000 could be approved by employees covered under the social security system. However, the beneficiaries would only include 11 million employees of private firms, who are covered under Section 33 of the Social Security Act of 2015. Despite migrant workers being covered under Section 33 of the Act, they are ineligible for the relief package, as one of the criteria to be eligible is to be a Thai national.²⁷ Therefore, migrant workers are once again discriminated against on the basis of their nationality and excluded from the Thai government's response.

5. The adverse impacts of business activities on natural resources and the environment

- 5.1 As noted, Thailand largely focuses on achieving economic development, such as through industrial expansion, large infrastructure projects, and the establishment of special economic zones (SEZs) and economic corridors. Problematically, economic development is conducted in an unsustainable way and leads to exploitation of the country's natural resources and environment, on which local communities are dependent for their livelihoods.
- 5.2 During its 2nd UPR cycle, Thailand received one recommendation specifically addressing natural resources and the environment, i.e., to 'monitor enforcement of environmental legislation to protect the rights of local communities and prevent environmental degradation', which it supported. Moreover, it received 14 recommendations that are related to the protection of rights of vulnerable populations, which it supported. Among those recommendations, the Thai government committed to 'address the issue of human rights in the pursuit of economic growth in local areas'. However, as evidenced below, the Thai government failed to implement these recommendations, as the rights of local communities have been continuously violated through businesses and development projects, and they have lost their access to natural resources and environment.
- 5.3 Under Section 43 of the Constitution of 2017, communities have the right to 'manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner.' However, in reality, communities do not have this right and are unable to do so. Legislation enacted to manage natural resources and achieve and regulate economic development cause violations of the rights of communities and limit their access to and ability to manage natural resources. For example, such laws: (1) allow for flexible land use, (2) do away with laws perceived as an 'obstacle' to the Eastern Special Development Zone, (3) provide room for businesses to exploit natural resources and violate human rights, and (4) limit communities' rights to manage natural resources. For example, in order to 'obtain maximum benefits to the local community and ensure effective land use,' the Eastern Special Development Zone Act of 2018 allows the Department of Public Works and Town and Country Planning to change city zoning plans from rural to industrial land use, so that the Easter Economic Corridor project can be implemented. Problematically, this will severely impact the environment and communities who are dependent on farming and fishing activities for their livelihoods. Section 9 of the Act also provides that in the case that a law, rule, regulation, or notification 'causes inconvenience or delay or creates any obstacle



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to the development of the Eastern Special Development Zone’, the law, rule, regulation or notification can be amended or new legislation can be enacted. This is problematic, as communities opposing harmful projects are often perceived as the ‘enemy of the state,’ so any legislation aimed to enhance their rights might be deemed as an obstacle to the project.²⁸

- 5.4 Section 58 of the Constitution of 2017 states that activities that may severely affect natural resources, environmental quality, health, sanitation, quality of life, or any other essential interest of the people or the environment, must conduct a study and assess impacts of activities prior to receiving permission to implement activities. This includes the arrangement of public hearings. Under Section 41, communities also have the right to access public data or information in possession of the State. However, in reality, communities are unable to participate in decision-making processes of projects that affect them and their natural resources. Communities are also not informed of projects, their consent is not sought, and Environmental Impact Assessments (EIAs) and Environmental and Health Impact Assessments (EHIAs) are often not properly conducted. Often times, community members opposing projects are barred from entering public hearings, and public hearings are not conducted in a language that local communities can understand or are held at far away locations.²⁹ Moreover, in recent years, the Thai government passed legislation restricting communities’ right to public participation and eased the process of EIAs in particular cases. For example, in 2016, the National Council for Peace and Order (NCPO) issued NCPO Order 9/2016 to speed up the review process for certain projects by allowing project approval to be sought from the Cabinet prior to completion of an EIA.³⁰ In addition, according to Section 8 of the Eastern Special Development Zone Act of 2018, EIA reports will be approved within 120 days of the completion of the report.³¹ This might be too short to carefully review the report and the impacts a project may have.
- 5.5 As no proper EIAs are conducted before development projects are being established, these projects adversely affect the environment, natural resources, and livelihoods, health, and well-being of communities. Examples of negative impacts faced include pollution, threats to water supplies, and transformation of fertile farm lands into industrial areas. One example is the Eastern Economic Corridor (EEC) supporting industrial sectors in three provinces: Rayong, Chon Buri, and Chachoengsao. The most essential watershed of Eastern Thailand, the low riverplain of the Bangpakong River, is located in the western part of Chachoengsao. According to the World Resources Institute, the EEC will pose risks to the Bangpakong River basin’s water and food security by 2030, which will lead to further consequences across the region.³² As there is insufficient water, local communities are the ones suffering from unfair allocation of water resources, as the Thai government prioritises providing water to the industrial sector over communities. In January 2020, the Thai government already reclaimed over 200,000 rai of land in Chanthaburi province to build four reservoirs to supply EEC project with 300 million cubic metres of water.³³ The large water supply required for EEC projects is particularly problematic for communities as Thailand is also experiencing the worst drought in 40 years.³⁴ Not having access to water, communities will not be able to cope with the droughts and will not have sufficient water for domestic purposes.
- 5.6 To protect the rights of their communities, environment, and natural resources, numerous human rights and environmental defenders undertake actions to stop harmful projects. However, authorities and businesses often use intimidation tactics to silence HRDs and opponents of development projects. Intimidation tactics frequently used include physical

threats and judicial harassment in the form of SLAPP cases. For example, in 2018, villagers opposing the Thepa coal-fired power plant, which would be constructed in Thepa district in Songkhla province, participated in a march against the project. Consequently, 17 of them were charged for allegedly violating the Public Assembly Act of 2015 by blocking traffic, marching on a public highway, fighting with police, carrying weapons in public, and staging an illegal demonstration.³⁵

- 5.7 Problematically, when communities lose their access to natural resources on which they are dependent for their livelihoods, they do not receive compensation for the harm suffered. Companies often deny that they have caused any harm, and cases of community members who seek remedy through the judicial system often get dismissed. Even when courts rule in favor of the communities and orders companies to pay them compensation, it might take years before communities receive compensation. For example, in Kanchanaburi province, in 2007, 151 villagers sued Lead Concentrates Co. Ltd. for violating environmental laws, as the company and its mining operations caused pollution to the Klity Creek, harming locals. Ten years later, in 2017, the case is finally concluded with the Supreme Court's Environmental Division ruling in favour of the villagers, ordering the company to pay THB 36.05 million to the plaintiffs. In 2018, the Kanchanaburi court also ruled that the company has pay for the cleaning up of the Creek, undertaken by the Pollution Control Department, which is estimated to cost THB 500 million.³⁶ As of yet, despite the court orders, villagers have not received compensation, and the Creek has not been restored.

6. The adverse impacts of FTAs on the livelihoods of local communities

- 6.1 In the context of BHR, the authors are also concerned about Thailand's economic growth and market expansion through negotiations and signing of FTAs. During its 2nd UPR Cycle, Thailand did not receive any recommendation directly addressing the impacts of FTAs. However, it received 30 recommendations related to the adverse impacts of bilateral and regional trade agreements on public health, agriculture, food security, and livelihoods, of which it supported 28 and noted two. Among others, the Thai government committed to 'implement measures to promote and protect the rights of peasants and other people working in rural areas' which are the ones most affected by FTAs. However, as evidenced below, the Thai government failed to implement these recommendations. FTAs and economic policies in Thailand benefit the central government, private sector, and elite, while infringing on the rights of local communities.
- 6.2 Thailand is a member of the World Trade Organisation (WTO), and is currently engaged in bilateral and regional FTAs. The Thai government is currently in the process of negotiating additional bilateral FTAs, such as with the European Union, for which a meeting will take place in December 2020.³⁷ Moreover, after extensive negotiations, the Thai government signed the Regional Comprehensive Economic Partnership (RCEP) on 15 November 2020,³⁸ which would need to be signed by all countries within two years before it can take effect.³⁹ The country is also considering being part of the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP). However, in August 2020, the Thai government noted that it was not adequately prepared and lacked consensus to join the agreement. In May 2020, the Parliament established subcommittees to study the cost and benefits of joining the CPTPP in relation to (1) agriculture and seeds; (2) economy; (3) trade and investment, and (4) public health.⁴⁰



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- 6.3 Section 41 of the Constitution of 2017 states that communities have the right to “be informed and have access to public data or information in possession of a State agency as provided by law”. Moreover, Section 59 requires the State to “disclose any public data or information in the possession of a State agency, which is not related to the security of the State or government confidentiality, and shall ensure that the public can conveniently access such data or information.” While communities have the constitutional right to information, in reality, local communities and the public at large do not have access to information regarding the drafting and negotiations of FTAs. Instead, FTAs are being negotiated by the central government and the private sector. What is being negotiated is not disclosed to the public and is not opened up for public consultation to gather the input of all who might be affected by the FTAs. This is problematic because local communities could be severely affected by such agreements. Not being informed or consulted, the voices of communities are not being listened to and their concerns are not addressed or taken into consideration. Consequently, the livelihoods of communities could be severely violated. In July 2018, CSOs have requested the Thai government to stop joining CPTPP because it will have severe impacts on local people, but also because negotiations were secretly conducted and had restricted the meaningful participation of civil society actors, while favouring businesses’ participation.⁴¹
- 6.4 As a result of FTAs, such as RCEP, the Thai government’s ability to impose restrictions on foreign investors will be limited, including on labour laws and wage policies. This will negatively affect workers, who may be subject to longer working hours and unsafe working conditions. Moreover, due to FTAs, Thailand will become economically reliant on other countries, such as China. In the past decade, Chinese investments in Thailand have increased by about 46 times,⁴² and, given the poor human rights records of China and Chinese investments abroad, this might adversely affect the rights of local communities in Thailand, who could face for example increased land-grabbing and reduced working conditions. RCEP’s chapter on Investment and Services further stipulates that RCEP members cannot discriminate against foreign companies that want to buy farmland. This could potentially lead to increased land grabbing, as land will be transferred from small food producers to big agribusinesses. If foreign companies would be allowed to own farmland in Thailand, local communities might face evictions from their land due to land-grabbing activities. This leads to destruction of their livelihoods and it negatively affects their health and access to food security. The communities most affected will include farmers, people living in rural areas, and indigenous peoples.⁴³
- 6.5 The RCEP agreement includes allowances of reduced tariffs and duty-free imports for particular farming products. This will negatively affect the livelihoods of Thai people dependent upon the production of such products, as increased imports will reduce locally produced products. RCEP may also lead to e-commerce and ICT farming, posing a threat to small traders and retailers. Those who will be most affected include women, small-scale farmers, and those employed in the informal sector, as they comprise a large percentage of workers in export industries.⁴⁴ They are likely to experience reduced wages, working conditions and labour rights and protections resulting from RCEP.
- 6.6 RCEP and CPTPP are also likely to exploit and damage small scale farmers, as both agreements could allow MNOs to claim ownership over Thailand’s rich biodiversity, as they might include International Union for the Protection of New Varieties of Plants (UPOV) of 1991, which extends intellectual property over seeds and plants, preventing farmers from



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saving and sharing protected seeds. This is problematic as it will restrict farmers' ability to save seeds of certain varieties, even though they have been using these seeds for generations. As a result of UPOV 1991, in the case that farmers would like to save certain seeds, they will have to pay royalties. Consequently, seed prices could rise 200 to 600%,⁴⁵ and the number of seed varieties will decrease due to increased monopolisation of seeds. Those found guilty could face fines up to THB 400,000 and/or up to two years in jail, as well as have their crops destroyed. Preventing local communities from saving and exchanging seeds will severely affect the lives of farmers, rural communities, and indigenous peoples, especially women, who play a central role in ensuring food security by saving, preserving, and diversifying seeds, and by feeding their family and community. Having limited access to seeds will also decrease the number of crop varieties, and may lead to mono-cropping, which results in the loss of food security, loss of biodiversity, loss of traditional farming methods, and loss of livelihoods, food security, and sovereignty.⁴⁶

- 6.7 Many FTA negotiations, including RCEP, include an arbitration clause for Investor-State Dispute Settlement (ISDS), which can be invoked only by private actors against host States for allegedly violating investors' benefits. This occurs even when States have laws in place to promote and protect health and public interest. The ISDS mechanism in RCEP would prevent the Thai government from protecting the needs of its people, setting impunity for corporations and elites at the expense of its people and the environment. In Thailand, in March 2018, the Australian company Kingsgate brought a claim under the Thailand-Australia Free Trade Agreement (TAFTA) claim because the Thai government had allegedly violated the bilateral trade agreement through closing the gold mine of its Thai subsidiary, Akara Resources PLC, in Phichit province. The Thai government allegedly violated the agreement as it used its unchecked powers under Article 44 of the Interim Constitution of 2014 to close the mine, which is not recognised internationally. While the Thai government had closed the mine due to the disastrous impacts the mine had on the livelihoods of local communities living in the surrounding area, the company could still sue the Thai government for violating the agreement. The arbitration case is currently ongoing, and its first hearing took place in Singapore in February 2020. As the proceedings are kept secret, the current status of the case is unknown. However, problematically, ISDS often base their decisions on international investment law, ignoring environmental and human rights issues. Noticeably, if the Thai government loses the case against Kingsgate, it will need to pay compensation to the company. In August 2020, it was revealed that the Thai government planned to use THB 111 million to fight the case, which will be paid from taxpayers' money. Consequently, it will put Thai people further into poverty and widen social and economic inequality in the country.⁴⁷

7. Recommendations

7.1 Regarding the lack of legal framework to regulate business activities

- a. In line with Principle 1 and 2 of the UNGPs, Thailand should protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises, and take appropriate steps to prevent, investigate, punish and redress such abuse through effective polices, legislation, regulations and adjudication.
- b. In accordance with Principle 13 of the UNGPs, Thailand should ensure that business enterprises address negative impacts when they occur; and prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by



their business relationship.

7.2 Regarding the rights violations faced by sex workers due to the nature of their work

- a. According to Article 23 of the Universal Declaration of Human Rights (UDHR), guarantee that everyone has the right to work, free choice of employment, just and favourable conditions of work and protection against unemployment. As per the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2020), repeal all laws criminalizing sex work and practices around it, and establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled.
- b. In accordance with Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure a remuneration which provides all workers with fair wages; equal remuneration for work of equal value without distinction of any kind and a decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
- c. According to Concluding Observation 27 (c) of the Concluding observations by the Committee on the Elimination of Discrimination against Women (CEDAW) on the combined sixth and seventh periodic reports of Thailand (2017), investigate and punish individuals who exploit women in sex work, including government officials.
- d. In accordance with General Comment No. 22 of the CESCR, take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination.
- e. In line with Article 25 and 68 of ILO Convention No. 102 on Social Security (Minimum Standards) (1952), secure to Thai national and non-national residents protected the provision of unemployment benefit, particularly during the pandemic.

7.3 Regarding the rights violations faced by migrant workers in the context of BHR

- a. According to article 33 of the ICRMW, Thailand should ensure migrant workers and members of their families' right to be informed by the State of origin, the State of employment or the State of transit about their rights arising out of the Convention, the conditions of their admission, and their rights and obligations under the law.
- b. Ensure that migrant workers enjoy remuneration, working conditions and social security no less favourable than that applying to Thai nationals.
- c. In line with Article 26 of ICRMW, provide migrant workers and members of their families the right to freely join trade unions and take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organisation concerned.

- d. In line with Concluding Observation 37 (e) of the Concluding observations by the CEDAW on the combined sixth and seventh periodic reports of Thailand (2017), strengthen efforts to protect migrant women workers from abusive and exploitative conditions, including by prosecuting and punishing those responsible, ensuring access to health-care and essential services without fear of arrest or deportation, and providing effective channels for seeking protection and redress for violations of their rights.
- e. Adopt urgent measures to protect migrants and take steps towards the regularisation of undocumented migrants whenever necessary, in view of facilitating their access to health services during the fight against the pandemic.

7.4 **Regarding the adverse impacts of business activities on natural resources and the environment**

- a. In line with the Human Rights Committee General Comment on freedoms of opinion and expression (2011), ensure the right of access to information held by public bodies, regardless of the form in which the information is stored, its source and the date of production.
- b. In line with the CESCR's General Comment on State obligations in the context of business activities (2017), deny the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights under the ICESCR.
- c. In accordance with the UN Working Group on BHR Statement at the end of visit to Thailand (2018), adopt a more holistic approach of sustainability impact assessments that include social and human rights dimensions and take into account sector-specific risks.
- d. In accordance with the CESCR's Concluding Observation 31 (2015), take steps to comprehensively regulate environmental protection and ensure strict enforcement of its environmental legislation, so as to prevent harmful effects on health of the population.
- e. In accordance with the CESCR's Concluding Observation 11 (2015), adopt all measures necessary to protect human rights activists, including those working to defend economic, social and cultural rights, from any and all acts of intimidation, harassment and killings and to ensure that perpetrators of such acts are brought to justice.

7.5 **Regarding the adverse impacts FTAs may have on the livelihoods of local communities**

- a. a. In line with article 11, paragraph 2 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas adopted by the Human Rights Council on 28 September 2018, for which Thailand voted in favour, the Thai government must ensure that documents and dialogue relating to trade deals are well translated into the Thai language or appropriate dialect in order that all members of the public can have access to information.



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- b. Incorporate mechanisms stated in Article 190 of the 2007 Constitution into the new Constitution, in order to ensure transparency and public participation in bilateral and regional trade agreement negotiations. Also, allow for these agreements to be scrutinised by the Parliament.
- c. The Thai government must sustain and increase funding to protect Thai farmers from foreign imports.
- d. In line with UNDRIP Article 11, the Thai government should protect indigenous peoples' right to practice their cultural traditions, including maintaining the past, present, and future manifestations of their cultures. This also includes their traditional ways of farming, freely using the seeds they have been using for generations.
- e. In line with the CESCR's General Comment No.7,48 the Thai government must formulate clear national legislation that protects Thai citizens against forced evictions at the behest of MNOs involved in trade deals with Thailand.



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