

## EQUALITY & DISCRIMINATION

### COMBATING THE WORST FORMS OF CHILD LABOUR IN SHRIMP AND SEAFOOD PROCESSING AREAS OF THAILAND THA/10/50/USA

Equality and fair treatment are among the key pillars of harmonious societies. Equal opportunity and treatment allows all in society to contribute fully to development and share equitably in the benefits deriving from their labour. However, discrimination based on bias and prejudices still pervades all spheres of life, especially in the workplace. Discrimination in the workplace occurs when a person or group of persons is excluded from an opportunity, preferred over another, or treated differently on the basis of personal characteristics not related to genuine job requirements.

Equality and discrimination are like two sides of the same coin.

Equality means absence of discrimination and discrimination means absence of equality

**Equality** is a human right for all people in work and in life. It is about equal opportunity, remuneration and treatment.

**Equality at work** means that all workers are entitled to develop their abilities and benefit from opportunities on an equal footing, without being limited by stereotypes or prejudice.

**Discrimination** refers to “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” — ILO Convention No. 111, Article 1 (1) (a).

Discrimination violates basic human rights and has wider social and economic consequences. By stifling opportunities and not using all available human resources, discrimination hampers economic progress and accentuates social tensions and inequalities. Promoting equal opportunity, remuneration and treatment in employment makes good business sense, means drawing from a pool of diverse talents, helps to alleviate poverty and achieve the goal of decent work for all. This brochure highlights international labour standards on equality and non-discrimination and the law and practice on equality and discrimination in Thailand.

#### International standards

Equal protection under the law and equality before the law constitute the general principles relating to the protection of human rights in the Universal Declaration of Human Rights (UDHR) (1948) and the nine core United Nations (UN) human rights treaties. Freedom from discrimination in employment belongs to the fundamental principles and rights at work which also include the abolition of forced labour and child labour, freedom of association and the right to organize. The Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) set the fundamental standards for the elimination of discrimination and the promotion of equality in all workplaces. Together these two Conventions provide for equal opportunity, remuneration and treatment and prohibit discrimination on the grounds listed in Convention No. 111 and any other grounds as provided in national legislation or policies. Thailand ratified Convention No. 100 in 1999 and is exploring ratification of Convention No. 111.\* ILO Convention No. 111 calls upon member States to adopt and implement a national policy to promote equality of opportunity and treatment with a view to eliminating discrimination in all aspects of employment and occupation for all workers. This requires a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation. The realities of discrimination can be complex and may involve more than a single ground of discrimination. Some individuals or groups may face multiple forms of discrimination due to multiple dimensions of their identity. For example, women may be discriminated against based on their sex/gender, as well as their race, ethnicity, sexual orientation or disability.

\*Thailand has ratified seven of the nine treaties, including the International Covenant on Civil and Political Rights (ICCPR) (1966), the International Covenant on Economic, Social and Cultural rights (CECSR) (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment (CAT) (1984), the Convention on the Rights of the Child (CRC) (1989) and the Convention on the Rights of Persons with Disabilities (CPRD) (2006). The treaties not yet ratified by Thailand are the International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) (1990) and the International Convention for the Protection of All Persons from Enforced Disappearance (2006).<sup>1</sup> Thailand has also ratified the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), which aims at guaranteeing equal access of people with disabilities to employment and occupations.

## Convention No. 100 (1951)

### Equal Remuneration Convention

- The Convention's purpose is to ensure that the work done by women and men is valued fairly and to eliminate pay discrimination on the ground of sex. With the adoption of Convention No. 111, discrimination in remuneration is to be prohibited not only on the basis of sex, but on all seven grounds in Convention No. 111 and as provided in national legislation and policies.
- Remuneration covers all payments and benefits: the ordinary, basic or minimum wage, salary or earnings and any other benefits arising out of the worker's employment, such as overtime and bonus payments, allowances related to cost of living, marital or family status, housing or transportation or seniority, shares in profit and payments in kind. Equal remuneration is also known as equal pay or pay equity.
- Equal pay for work for equal value applies to cases where men and women undertake the same work and to the common situation where men and women carry out work that is different in content but of equal value.
- The value of jobs can be measured by comparing job characteristics, such as:
  - Qualifications and skills needed
  - Physical, mental and psycho-social effort
  - Responsibility for equipment, money and people
  - Working conditions, including physical and stress.

"Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted."

— *Constitution of Thailand (2007)*(Sec. 30, para. 3)

## Convention No. 111 (1958)

### Discrimination (Employment and Occupation)

- The Convention's purpose is the elimination of all discrimination in employment and occupation through the progressive development of equality of opportunity and treatment in law and practice.
- The Convention sets out seven grounds of discrimination: race, colour, sex, religion, political opinion, national extraction and social origin, and foresees the inclusion of any other grounds, after consultation with representative employers' and workers' organizations and other appropriate bodies.
- It applies to all sectors of activity and covers all occupations and employment in both the public and private sectors, as well as in the informal economy. It covers not only wage-employment, but also unpaid, contributing family work, and independent and own-account work.
- It protects not only those who are employed or engage in an occupation, but also those who prepare for work, seek work or risk losing their work. The protection covers all stages of the employment cycle.
- Special measures of protection or assistance designed to meet the particular requirements of people recognized to require such measures due to, for example, sex, age, disablement, family responsibilities or social or cultural status, are not deemed to be discrimination.
- Harassment based on any of the grounds in the Convention or in national legislation or policy, is discrimination. Actions constituting harassment may be physical, verbal or non-verbal that create an intimidating, hostile or humiliating working environment for the recipient.

## National legislation

The Constitution of Thailand B.E. 2550 (2007) guarantees equality for all persons and between men and women, and prohibits discrimination on 12 grounds. The ground of sex includes 'gender' 'sexual identity', and 'sexual diversity.' The Labour Protection Act B.E. 2541, 2551 (1998, 2008), which provides protection for workers in the private sector, contains provisions that guarantee equal treatment for male and female workers with some exceptions. The Act also contains special protection provisions for women workers, women in maternity, subcontracted workers, and child and young workers.

### LABOUR PROTECTION ACT (1998, 2008) Equality and non-discrimination

- ü Equal treatment for male and female workers unless such treatment is not possible due to the characteristics or the nature of the work (Sec. 15).
- ü Equal pay for male and female workers for work of the same characteristics (Sec. 53).
- ü Prohibition of sexual abuse, harassment or nuisance against all (female and male) workers (Sec. 16).
- ü Special protection for pregnant workers (Sec. 39, 41, 42, 43).
- ü Protection for subcontracted workers (Sec. 11/1).
- ü Prohibition of child labour and special protection for young workers (Sec. 44-52).

The Ministry of Labour Regulation on Thai Labour Standards, Social Responsibility of Thai Businesses B.E. 2550 (2007) covers payment of wages, provision of benefits, opportunity for training and development, job grading or promotion, employment termination or age of retirement. It prohibits discrimination against workers on numerous grounds, including nationality, race, religion, language, age, sex, marital status, personal sexual attitude, disability, labour union membership, political party affiliation or any other personal opinion.

The Persons with Disabilities Education Act B.E. 2551 (2008) ensures access to education services and other resources at all levels to enhance quality of life and independent living through empowerment for persons with disabilities (PWDs). The Promotion and Development of Quality of Life of Persons with Disabilities Act B.E. 2550 (2007) defines quotas for hiring workers with disabilities on public and private sector employers (Sec. 33). Tax incentives are provided to employers (Sec. 38) and a levy and penalty are imposed in case of non-compliance (Sec. 33-36). A 2011 Ministerial Regulation issued under the Rehabilitation of Disabled Persons Act, B.E. 2534 (1991) requires employers to hire PWDs in a ratio of 1 PWD to every 100 other employees or pay an annual donation to the Rehabilitation of Disabled Persons Fund equal to the minimum wage a worker with disabilities would have been paid.

A **gender pay gap** exists in the Thai labour market, with women earning less than men across all sectors. There is also occupational segregation by sex—(women in 'women's jobs' and men in 'men's jobs')—including **overrepresentation of women in informal, low-level and low-paying jobs**. The proportion of female clerks rose from around 50 per cent in the early 1990s to 60 per cent by 2000 and nearly 70 per cent by 2010.

**Prejudices against people of diverse sexual orientations and gender identities** also limit employment options and job advancement opportunities of many LGBTs, in particular transgender persons, who are often excluded from mainstream jobs.

**Women and LGBT workers enjoy fewer job opportunities and social security benefits and have less job security than men.** Older and pregnant women are particularly disadvantaged. Traditional gender roles also limit advancement to leadership positions among women and LGBT workers. Although there are now many women managers and executives in the private sector, the proportion of women and LGBT executives in the public service remains low.

A November 2012 National Social Welfare Promotion Commission (NSWPC) regulation under the Promotion of Social Welfare Management Act B.E. 2550 (2007) identifies 13 population categories deemed disadvantaged, vulnerable to discrimination and requiring special assistance to access social services and rights protection, including: (1) children and youth, in particular those facing difficulties; (2) women, victims of sexual violence and their families; (3) the elderly; (4) persons with disabilities; (5) urban communities, the urban poor and homeless; (6) foreign migrant workers and alien workers; (7) workers in the informal economy; (8) populations facing violence in southern provinces; (9) HIV and AIDS victims and affected families; (10) persons lacking legal status and ethnic minorities; (11) Thai nationals working and facing difficulties abroad; (12) persons and groups requiring assistance during the judicial process; and (13) persons of diverse sexual orientations and gender identities (i.e., lesbian, gay, bisexual, transgender persons or LGBT).

## Discrimination in Thailand

Despite recent legislative progress in equality protection, discrimination occurs on virtually all grounds prohibited under Thai laws, and in various stages and aspects of employment and occupation. Sex and gender discrimination is widespread, often affecting women and LGBT persons. Job advertisements that discriminate against applicants based on sex and age, and admission rules to professional institutions that discriminate against persons with disabilities or transgender persons are still common.

Discrimination on the grounds of race, ethnicity, colour, religion, national extraction and social origin affects indigenous minorities such as highlanders, forest dwellers and 'sea gypsies' who often lack legal status and land rights, Thai-Malay Muslims in southern provinces, and the rural poor, many of whom migrated to the cities for work and form the urban poor. They are engaged in agriculture and in home work as subcontracted workers, in deep-sea fishing, domestic work, petty trade and street vending, in self-employment or in small and micro enterprises, which are not or only partially covered by labour and social security laws.

Foreign migrant workers (FMWs), who provide vital contributions to the Thai economy, face multiple and systematic forms of discrimination and violations of their human and workers' rights. They are often subject to travel and employment restrictions beyond the province of registration, denial of driving licenses, confiscation of identify documents, arrest, extortion and deportation even when they have registration documents and work permits. FMWs working in factories at the bottom of supply chains, deep-sea fisheries and domestic work are particularly vulnerable to abuse and forced labour.

FMWs receive much lower pay than Thai workers, often lower than the minimum wage, while working in poorer conditions. They are also far more vulnerable to non-payment of wages than Thai workers. In principle, regular, registered FMWs have access to the same social security benefits that Thai workers enjoy. However, undocumented FMWs have no access to the social security system and are not even protected against employment injury.

Children and youth of indigenous and ethnic minorities without Thai citizenship, stateless and foreign migrant children still have limited education opportunities despite government policy to expand access to education to all children. As a result, these groups of children and youth are disproportionately vulnerable to human trafficking and exploitation. Discrimination due to disability and HIV status still prevails despite new laws and policies promoting the rights of persons with disabilities (PWDs) and persons living with HIV and AIDs (PLHIV) who face stigma and discrimination in life and at work.

At present Thailand has no law prohibiting discrimination in employment on the ground of HIV status. While significant improvements have been made in access to antiretroviral treatment (90 per cent have access), PLHIV in Thailand continue to face problems being denied employment, from HIV screening for job application, involuntary HIV screening and violation of confidentiality at work, and job termination or loss of job advancement opportunity due to HIV-positive status. People of diverse sexuality, especially gay and transgender persons, often face stigma and discrimination due to real or perceived HIV status.

The **stringent rules on employment of FMWs**—FMWs have only seven days to find a new employer—leave FMWs beholden to the employer and their job security and legal status easily jeopardized, which in turn opens them up to exploitation. These practices are contrary to the non-discrimination principle.

Nationality is not a ground covered in Convention No. 111 and countries have a sovereign right to regulate labour flows into the country. However, once admitted to the labour market, FMWs should be entitled to equal opportunity, remuneration and treatment. FMWs, like citizens, are entitled to protection against discrimination on at least all the seven grounds set out in the Convention. Undocumented workers who cannot be regularized should still enjoy equality of treatment in respect of rights arising out of past employment as regards to remuneration, social security and other benefits (Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)). However, from this they cannot derive a right to stay and continue employment in the host country.

**Persons with disabilities (PWDs) continue to face severe barriers to education, training and employment.** Only 18 per cent of PWDs in Thailand were enrolled in educational institutions, with just 0.5 per cent in higher education in 2007. Over 65 per cent of PWDs are unemployed, and the situation is especially dire for women with disabilities.

PWDs have few employment options besides stereotypical, low-paying and insecure jobs. PWDs are still excluded from employment in the public service and many professions such as medicine, nursing, law and military service. Access and facilities for PWDs are also largely inadequate in Thai society and in most workplaces.

There are infringements of the right to organize for foreign as well as Thai workers. While Thai law allows non-Thai nationals to join labour unions, they cannot form a labour union themselves or become members of a union committee. These restrictions contravene the fundamental principles and rights at work enshrined in the ILO Constitution. There have also been cases of Thai and non-Thai workers being dismissed due to union membership or activities and expression of political opinion.

Workplace harassment is a problem for women and LGBT persons. Increasing incidences of sexual harassment and rape at the workplace have been reported in recent years in both public and private sectors, with indications that it occurs often in governmental organizations. In 2010, the Office of the Civil Service Commission (OCSC) issued a Regulation prohibiting sexual harassment in the workplace under the Civil Service Act B.E. 2551 (2008), covering state officials in government ministries and governor offices nationwide. The Regulation excludes teachers and educational personnel in schools and universities, police and military officers, and judges.

Discrimination is a constant challenge and eliminating discrimination is a work in progress. More needs to be done to address existing discrimination and promote equality in opportunity and treatment for all in Thai society and the world of work.

Since 2005 the Thai Government has had a policy to **extend education to stateless and migrant children** and instructed all schools to admit all children regardless of nationality or legal identity. However, stateless and migrant children still remain largely outside of Thai schools. In 2009, only 60,000 (29%) of over 200,000 stateless and migrant children attended public schools. The rest were scattered across 130 NGO-run schools.

**Low enrollment rates** are mainly due to lack of appropriate resources to accommodate ethnic and migrant children such as teachers, school curriculums and materials in the children's languages, as well as school administrators denying enrollment due to prejudice and limited resources.