



Spotlight
Initiative



**“Who is going to believe us?”
Work-related sexual harassment
in Thailand, with a focus on
women migrant workers**



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First published 2021

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ISBN: 9789220354193 (Print)
ISBN: 9789220354209 (Web PDF)

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This study was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union.

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Printed in Thailand

Acknowledgements

This study was written by Ms Boonwara Sumano Chenphuengpaw, PhD, and edited by Ms Adriana Seddle and Mr John Maloy. The study was supported by a team of women researchers, including Ms Chatabut Hayook, Ms Anyamanee Tanrattana and Ms Visarkorn Ramangkoon, as well as government officials, employers, unions, change leaders and women migrant workers. Sincere gratitude is due to ILO and UN Women colleagues, Ms Katerine Landuyt, Ms Joni Simpson, Ms Deepa Bharathi, Ms Melissa Alvarado, Ms Younghwa Choi,

Ms Natthanicha Lephilibert, Ms Robin Mauney, Ms Rebecca Napier-Moore, Ms Kohnwilai Teppunkoonngam, Ms Valentina Volpe and Ms Ratna Mathai-Luke for comments and guidance that were the crucial foundations of this study. The data collection process in Bangkok, Chiang Mai, Lumpoon, Samut Sakhon and Nakhon Pathom would not have been successful without cooperation from the people who gave up their valuable time for interviews, particularly women migrant workers who shared their stories and recommendations.

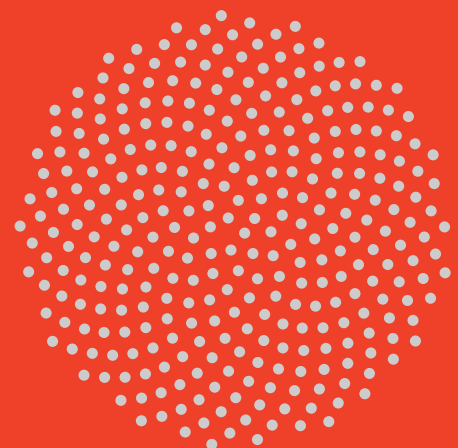


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Abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
GCM	Global Compact for Safe, Orderly and Regular Migration
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NGO	non-governmental organization
OSH	occupational safety and health
UN	United Nations

Key terms

Gender-based violence and harassment	Violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment (Violence and Harassment Convention, 2019 (No.190), Article 1(1)(b)).
Gender norms	Social expectations that define what is considered appropriate behaviour for women and men. Gender norms shape the different roles and behaviours of women and men, and of children as well as adults (UNFPA 2016). ¹
Sexual harassment	Sexual harassment involves sexualized forms of unwanted or unwelcome behaviour or conduct. It has the “purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.” Although anyone may be subject to sexual harassment, women are the overwhelming majority of reported victims (ILO and UN Women 2019b, 6).
Violence against women	Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (United Nations Declaration on the Elimination of Violence against Women, 1993).
Violence and harassment in the world of work	Refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment (Convention No. 190, Article 1(1)(a)).
World of work	Includes places or things linked with or arising out of work: <ul style="list-style-type: none">(a) in the workplace, including public and private spaces where they are a place of work;(b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;(c) during work-related trips, travel, training, events or social activities;(d) through work-related communications, including those enabled by information and communication technologies;(e) in employer-provided accommodation; and(f) when commuting to and from work (Convention No. 190, Article 3).

¹ Gender norms often fail to take into consideration people who identify outside of the gender binary of male and female.

Executive summary

In June 2019, the ILO Conference adopted the Violence and Harassment Convention, 2019 (No. 190), which affirms workers’ right to be free from violence and harassment in the world of work. Convention No. 190 entered into force on 25 June 2021 and is open for ratification.

This is the culmination of decades of social change and campaigning. Women’s contributions to the workforce and public life are increasingly valued. Tolerance for violence against women is increasingly unacceptable. Violence and harassment in the workplace is most often experienced by women, and it devalues their contributions. Freedom from sexual harassment in the world of work is a human right. The time is right to make improvements in law and practice to ensure this right is protected.

Noting the above, the ILO and UN Women (2019b) jointly developed the *Handbook: Addressing Violence and Harassment against Women in the World of Work* with the aim to bring together relevant literature, policies and practices, to provide promising examples from countries across the globe, and to provide guidance on the role of state and non-state actors and social dialogue on how to prevent and respond to violence and harassment in workplaces.

Violence against women includes any act of gender-based violence that could lead to physical, sexual or psychological harm or suffering to women. Sexual harassment is a form of violence against women that is often, but not exclusively, experienced in the workplace.



Sexual harassment takes many forms. However, in all instances, sexual harassment in the workplace makes people feel intimidated or humiliated and prevents them from working to their full capacity, compromising their right to decent work. Sexual harassment may be physical, such as inappropriate touching, but it also encompasses a much broader range of inappropriate behaviours. It may be verbal or written, such as sexual jokes or comments. It may take the form of coercion, where employment or a benefit is made conditional on sexual behaviours. Sexual harassment may be when a worker is put in a hostile environment where, for example, they receive sexual comments or there is pornography displayed in common areas.

Sexual harassment can be from managers or colleagues within a workplace, but it can also be from clients, contractors, or public officers. Sexual harassment can be perpetrated by people of any gender, and while any person can be the target, women are more likely to experience sexual harassment and these experiences tend to be under reported. However, it is important to note that protections against sexual harassment protect all employees, regardless of their gender, race, nationality or employment status.

Sexual harassment is pervasive in workplaces and public spaces globally. A study of Cambodian garment factory workers in 2017 found that sexual harassment is a regular occurrence, with one in three workers having experienced sexual harassment in the previous 12 months (CARE International 2017). A broader 2018 study from Australia found that 39 per cent of women had experienced sexual harassment in the workplace in the last five years (Australian Human Rights Commission 2018, 8).

The most recent numbers on sexual harassment in Thailand are from 2002. In the 2002 Suan Dusit Poll, which involved an opinion survey of 1,153 women, more than one-fifth (22.9 per cent) of the respondents reported to have experienced

sexual harassment in their workplace. Most of the respondents who experienced harassment pointed to their superiors (38.8 per cent) and co-workers (32 per cent) as the offenders (Suan Dusit University 2002). In addition, research conducted in 2014 found that 61 per cent of the surveyed women migrant workers in Tak, Ranong and Samut Sakhon reported that they faced violence in the workplace (Huguet 2014, 102).

This study particularly focuses on women migrant workers in Thailand. It was initiated and completed in 2019, prior to the adoption of the ILO Violence and Harassment Convention, 2019 (no. 190).

Women migrant workers are often in positions of increased vulnerability and experience discrimination on multiple fronts, with gender being just one factor. Depending on their migrant status, as well as the nature of their occupation, women may face language barriers, cultural differences, lack of social support, lack of legal protections, and an increased reliance on their employer's goodwill for their on-going economic security.

An examination of sexual harassment in the workplace needs to be situated within the broader picture of attitudes, norms, social and cultural values, and gender stereotypes in Thailand. In many cultures, including in Thailand, there are pervasive gendered views that women are subordinate to men and should be the followers of men. Sexual harassment behaviours reflect social norms associated with gender roles, and how people believe men and women should behave, which is deeply shaped by culture. This makes sexual harassment a social and cultural problem, not merely an individual or workplace problem, which makes the nature of the issue complicated. Addressing instances of sexual harassment in the world of work and in the community is vitally important. However, dismantling harmful gender norms that lead to unequal

power relationships is also vital to preventing sexual harassment. In addition, protections and support for workers are also needed, as harmful power imbalances in the world of work open up workers to higher risks of all forms of exploitation, objectification and abuse. This is especially critical for women migrant workers.

This study delves into the legal context of sexual violence and harassment experienced by women workers in Thailand. The study reviews laws, policies, and cases, as well as barriers to redress and remediation for those who have experienced sexual harassment. Data for this report comes from the review of international jurisprudence; study of the relevant laws and research in Thailand; interviews with 32 experts from legal, governmental and non-governmental organizations; as well as small group discussions and interviews with 33 women migrant workers.

An analysis of law and policy demonstrates that there are gaps in both the provisions and implementation of legal protections against work-related sexual harassment. This report finds that most survivors of sexual harassment do not choose official legal channels to report their experience. In a male-dominant society like Thailand, with the norm of non-confrontation, women who choose to go public with sexual harassment claims are at risk of public scrutiny. Women survivors face systematic bias and discrimination in the legal process which can discourage them from continuing with their cases (UN Women, UNDP, and UNODC 2017).

The findings of this report indicate that improvements must be made to ensure that every worker in Thailand is free from violence and harassment at work. Making these improvements will be a step towards more gender equality in the workplace, which will mean that women workers in every industry in Thailand will be better able to contribute to their full potential. Thai nationals, regardless of their gender, would benefit from increased protections, as would women migrant workers.

This report consists of three chapters, and there are 26 recommendations arising from the findings. Chapter 1 provides context on sexual harassment by presenting previous literature on the subject, both from Thailand and internationally, and explaining international standards. Chapter 2 gives the legal context, describing laws, policies, and measures relating to the prevention of, and response to, sexual harassment in the workplace in Thailand, as well as the findings from interviews that describe how these laws are enforced. Chapter 3 outlines the gaps and limitations in the prevention of and response to sexual harassment in the workplace in Thailand, and provides recommendations to address such gaps and limitations.

Appendix I outlines the methodology and ethics considerations for this report.

Key messages

- Sexual harassment has been defined in international law as a form of gender-based violence and a form of workplace discrimination. Freedom from violence and harassment is a human right (see section 1.2.1).
- Sexual harassment has many forms – physical, verbal and non-verbal – and can be perpetrated and experienced by any person, but is much more likely to be experienced by women (see section 1.2.2).
- Sexual harassment in Thailand is deeply embedded and enmeshed in society gendered social norms and stereotypes, as well as the particular norms and dynamics of employment arrangements (see section 1.1.1).
- Gendered social norms in Thailand create a high tolerance for sexual violence, and mean that sexual harassment is often seen as a non-serious issue, which in turn leads to it generally going unreported (see section 1.1.2).
- Women migrant workers are particularly vulnerable due to their less secure work, and immigration statuses, and they may

experience sexual harassment alongside other forms of harassment (see sections 1.1.4 and 1.1.5).

- There is limited research on sexual harassment in the workplace in Thailand. The existing research finds that sexual harassment is experienced in many forms and can have serious effects on survivors (see section 1.1.3).
- There are legally-binding international instruments that protect women migrant workers from discrimination, including from sexual harassment; Thailand has agreed to be bound by some of those international conventions including the:
 - Convention on the Elimination of Discrimination Against Women (CEDAW),
 - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),
 - ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- Further, as a member of the Association of Southeast Asian Nations (ASEAN), Thailand has agreed to regional commitments, and also to non-binding international commitments including:
 - Declaration on the Elimination of Violence Against Women in the ASEAN Region, and the ASEAN Regional Plan of Action on the Elimination of Violence against Women,
 - Global Compact for Safe, Orderly and Regular Migration (see section 1.2.4).
- There are a range of options open to States as to how they will address and prevent sexual harassment through workplace and legal measures (see section 1.2.3).
- In Thailand, both the labour law and the criminal law provide protection from some forms of workplace sexual harassment, however there are gaps:
 - The labour law only protects against harassment from a superior directed at a subordinate.
 - Unpaid workers, jobseekers and other groups are not protected under the labour law.
 - Definitions relating to sexual harassment and violence in labour law and criminal law are unclear, and have not been subject to judicial interpretation.
 - Offences under criminal law contain various elements that can be difficult to prove. A number of the more subtle forms of workplace sexual harassment will not meet the definition of a criminal offence, as they may not meet the strict elements required to prove criminal offences.
 - The potential outcomes of court processes may not incentivize genuine complaints to be brought before the law, as the penalties are low, and compensation is difficult to claim (see sections 2.1, 2.2 and 3.1).
- The public sector is leading the way with regards to implementing guidelines in government agencies to prevent and protect against sexual harassment (see section 2.4).
- Legal complaint and grievance procedures are complex and involve reporting through the labour inspection process, to the police or directly to the court (see section 2.3.1).
- There is very little sexual harassment case law available. Interviews conducted as part of this report show that sexual harassment against women migrant workers does occur. However, in very few of those occurrences has there been appropriate legal redress (see section 2.5).
- Even if a sexual harassment complaint is pursued through court processes, there are social, legal, procedural and institutional barriers that prevent women from accessing justice (see section 2.5.3).
- If a survivor is seeking compensation, this must be pursued through court processes and can be expensive, stressful, and time-consuming (see section 2.3.2).

Recommendations to revise laws, policies and measures

Recommendation 1

Review all laws in accordance with international standards

(See p. 42)

That the Government of Thailand engage the relevant ministries and departments, as well as other social partners and stakeholders to embark on a consultative review of all relevant laws, regulations, measures and policies in order to set a law reform agenda to bring national laws into alignment with international standards including the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019. This process should include consultations with workers’ and employers’ organizations, as well as organizations concerned with migrant workers and/or domestic workers.

Recommendation 2

Review definitions of key legal terms

(See p. 43)

That definitions relating to sexual harassment and violence in the labour law and criminal law be reviewed with an aim to clarify and define terms, either in the law or through supporting regulation or guidelines, and in line with international standards or guidance from UN and ILO supervisory bodies. A consultative approach to this review should be taken, and a starting point could be the definitions contained in the Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), issued under the Civil Service Act, B.E. 2551 (2008). There are clear definitions of types of sexual violence and sexual harassment within the regulation. However, the Regulation does not apply to the general public and lacks detail on the remedies available in cases where sexual violence or harassment is proven.

Recommendation 3

Review translations

(See p. 43)

That translations of the law into English and other languages be reviewed for their accessibility in consultation with representatives from communities who specialize in languages other than Thai. Particular focus should be on the native languages spoken by women migrant workers in Thailand.

Recommendation 4

Expand the definition of sexual harassment to include harassment by co-workers

(See p. 44)

That the Labour Protection Act, B.E. 2541 (1998) be amended so that the definition of sexual harassment includes harassment by co-workers.

Recommendation 5

Expand the definition of sexual harassment to include harassment by third parties – Labour law

(See p. 46)

That the Labour Protection Act, B.E. 2541 (1998) be amended so that the definition of sexual harassment includes harassment by third parties, including, but not limited to, recruiters, clients, contractors, and officials with whom employees or others carrying out work for an employer or organization may come into contact with, through the course of their work duties.

Recommendation 6

Bestow vicarious liability on employers

(See p. 46)

That the Labour Protection Act, B.E. 2541 (1998), and Occupational Health, Safety and Environment Act, B.E. 2554 (2011), be amended so that employers are vicariously liable for sexual harassment that occurs in the world of work, unless they can show that they have taken appropriate steps to prevent and protect against sexual harassment. Such steps may include policies and training. Vicarious liability means that one person is held responsible for the actions of another person. In this case, it would mean that an employer could be held responsible for the actions of their employees, customers or third parties.

Recommendation 7

Expand legal coverage to harassment by third parties – Public sector

(See p. 46)

That the Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), be amended to cover sexual harassment by third parties.

Recommendation 8

Improve the implementation of the public sector Guidelines

(See p. 46)

That the Guidelines adopted by government agencies to implement the Measures on Preventing and Combatting Sexual Abuse or Sexual Harassment in the Workplace (2015) be reviewed, with assistance provided to agencies on how they can improve the content and implementation of their Guidelines. Any review could inform the adoption of the Guidelines by the private sector (see Recommendation 19).

Recommendation 9

Expand protection beyond employees – Labour law

(See p. 47)

That the Labour Protection Act, B.E. 2541 (1998), be amended so that unpaid workers, and those who do not have employment contracts – such as jobseekers, interns, apprentices and volunteers – and workers whose employment has been terminated are also protected against sexual harassment. This is in line with Convention No. 190.

Recommendation 10

Expand protection beyond employees – Public sector

(See p. 47)

That the Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), be amended to protect civil servants and persons working for public affairs, irrespective of their contractual status.

Recommendation 11

Expand the coverage of the term “workplace”

(See p. 47)

That the Occupational Safety, Health and Environment Act, B.E. 2554 (2011), be amended to expand the meaning of “workplace” to all aspects of the “world of work” in line with ILO Convention No. 190. This would ensure coverage of work-related transmissions over technology, and work-related places, especially workers’ accommodation, provided by the employer, so that workers’ safety is more broadly protected.

Recommendation 12

Review protections for women living on construction sites

(See p. 48)

That the implementation of the Notification of Labour Welfare Committee on Standard of Labour Welfare on Accommodation for Construction Employees (2016) be reviewed in consultation with the construction sector, with a view to enforcing higher standards to protect women from sexual harassment in their living areas. In addition, similar notifications should be issued for other sectors where employers provide housing for national and migrant workers, for example, manufacturing, domestic work, agriculture, service and fishing.

Recommendation 13

Review penalties

(See p. 48)

That the quantum of penalties for sexual harassment in the Labour Protection Act, B.E. 2541 (1998), and the State Enterprise Labour Relations Act, B.E. 2543 (2000), be reviewed, in consultation with tripartite constituents and relevant stakeholders, to form a view as to whether these penalties reflect the potential severity of sexual violence and harassment.

Recommendation 14

Review compensation arrangements and processes

(See p. 49)

That a review be undertaken into options for streamlining the procedures for compensating a survivor of sexual harassment for offences under the Labour Protection Act, B.E. 2541 (1998), and the State Enterprise Labour Relations Act, B.E. 2543 (2000), so that the survivor does not need to make an expensive, stressful and time-consuming application to the court for compensation.

Recommendation 15

Gender-responsive policies and resources

(See p. 56)

That criminal justice policies, practices and resources be reviewed to ensure that they reflect and encourage gender-responsive and survivor-centred approaches, and that the safety and privacy of survivors of sexual violence and harassment is prioritized.

Recommendation 16

Provide protections for migrant survivors

(See p. 56)

That law reform be considered to ensure that migrant victims of criminal and labour offences, including offences that relate to circumstances of sexual harassment, are entitled to reside in Thailand to access justice. The legal provisions could be modelled on the existing provisions for survivors of human trafficking.

Recommendation 17

Explore options for alternative legal processes

(See p. 57)

That a technical study and review be undertaken to explore the possibility of inquisitorial and/or quasi-judicial processes for sexual violence and harassment matters. The review should consider how procedural fairness for defendants can be maintained, while providing an easier, cheaper and less traumatic experience for victims. The shifting of the burden of proof in discrimination and sexual harassment cases should also be considered in this context.

Recommendations to improve prevention

Recommendation 18

Promote gender balance in workplaces

(See p. 50)

That gender balance in workplaces, especially at the managerial and executive levels, be promoted. Particular attention may be paid to key industries that are particularly men- or women-dominated in order to understand how gender norms are leading to the skewed employee gender ratios in those industries.

Recommendation 19

Encourage private sector accountability

(See p. 50)

That the private sector be encouraged to take action to prevent and protect against sexual violence and harassment, through adopting guidelines. Business associations and employer representatives should play an active role in developing such guidelines to ensure their buy-in and support.

- The guidelines developed for the public sector could be recast for the private sector. Legal reforms that place vicarious responsibility on employers for sexual harassment in their workplaces would complement such guidelines (see Recommendation 8). The adoption of guidelines and training could be used by employers to show that they are serious about preventing sexual harassment in order to fulfil their obligations and to avoid liability.
- The Department of Labour Protection and Welfare could help encourage businesses to adopt such guidelines and support their implementation through concrete responses to sexual harassment, such as warnings, suspensions and termination of licenses.
- The guidelines should be published in a user-friendly and easy-to-read format, with translations in different languages, such as English, Burmese, Khmer, Lao and a few key languages used by minorities in Myanmar migrating to work in Thailand.

Recommendation 20

Promote public awareness about sexual harassment

(See p. 51)

That civil society organizations, trade unions, government and employer associations are all engaged in promoting public awareness about sexual harassment. This may be done through funding for public awareness campaigns and training. The training could be for general audiences to change perceptions about sexual harassment and gender roles; for survivors of sexual harassment to make informed decisions about options for support and redress; and for employers and officials to support survivors.

Recommendations to strengthen enforcement mechanisms

Recommendation 21

Provide gender training for all officials

(See p. 51)

That training and guidance be given to officials who may interact with survivors of sexual harassment (including labour inspectors, police and court officials) to ensure that their approaches are gender-sensitive and survivor-centred without victim-blaming attitudes or any other harmful norms. Gender-sensitivity training can be used to invite individuals to question commonly shared myths and misconceptions on sexual violence.

Recommendation 22

Knowledge of, and access to, victim-supportive resources and services

(See p. 51)

That officials who may interact with survivors of sexual harassment (including labour inspectors, police and court officials) should be able to access direct them to the right resources and support to enable survivors to pursue their legal rights. These include:

- Interpreters – Interpreters for official use must be made available, especially for the languages used by women migrant workers in Thailand.

Social and health support – Officials should be given information and training to be able to refer survivors to local support services and NGOs who can assist them in the process of pursuing their legal rights.

Recommendation 23

Invest in appropriately trained labour inspectors

(See p. 53)

That a review be conducted to ensure that there are enough labour inspectors who are able to conduct high quality, streamlined inspections. The review should consider the overall number of labour inspectors, the skills that they have been equipped with (including on sexual harassment identification), and whether their authority and processes allow them to easily identify and prevent gender discrimination in the workplace.

Recommendation 24

Consider strengthening the anonymous complaint process

(See p. 53)

That sexual-related complaints submitted anonymously receive timely responses by Department of Labour Protection and Welfare. The Department may wish to consider alternative channels of complaint submission, for example, adopting technology such as a chatbot that can collect the necessary information about the incident but at the same time omit personal information when reporting the case to relevant investigators.

Recommendation 25

Invest in appropriately trained police officers and increase the number of women officers

(See p. 54)

That the police force is appropriately resourced and trained to exercise their discretion and decision-making to ensure the best possible experience for all sexual violence and harassment survivors who wish to access justice. This may include:

- Increasing the number of women inquiry officials, with a goal of 50 per cent women inquiry officials within a specified timeframe.
- Continuing to provide all police with training and support so that they can exercise their discretion in a non-discriminatory, gender-sensitive and survivor-centred manner, regardless of the migration status of the survivor.
- Providing police with interpreters and links to community support to ensure access to justice for those who speak another language.
- Considering community policing programmes to build trust between local police and women migrant workers and their communities.

Recommendation 26

Invest in appropriately trained court officials

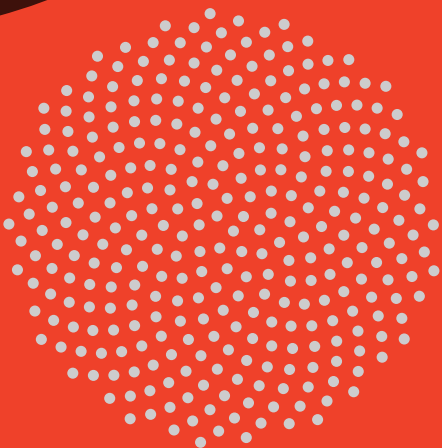
(See p. 57)

That courts and court officials receive training and support to provide a survivor-centred approach for sexual violence and harassment matters, including links to other service-providers. Providing support to survivors without doing any harm to them, including providing mental health support throughout the long legal process, should be seen to be as important as the punishing of offenders.



*“Sexual harassment” first began
to be used by women who were
fighting against discrimination
in the workplace in the 1970s*

(McCann 2005, 1)





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1

Contextualizing sexual harassment in the workplace

The concept of sexual harassment has been addressed in international standards since 1993. However, the term “sexual harassment” first began to be used by women who were fighting against discrimination in the workplace in the 1970s (McCann 2005, 1). It has been a long and hard-fought battle. Yet there remain gaps in protection, and there exist barriers that prevent women from enjoying their right to work, free from violence and harassment.

The ILO Violence and Harassment Convention, 2019 (No. 190), is a landmark convention in this area that explicitly links the issue of violence and harassment in the world of work with gender-based violence. The Convention aims to tackle the underlying causes and risk factors, and seeks to apply an inclusive, integrated and gender-responsive approach. The definitions in the Convention recognize that the boundaries between violence and harassment are blurred, and that violence and harassment can be connected to expressions of gendered social norms. Article 1 states:

(a) the term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

(b) the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

Rape is the most serious form of sexual violence, and a very serious criminal offence. And as seen from the above definitions, sexual harassment lies in the range of behaviours that constitute gender-based violence and harassment.

This chapter situates sexual harassment in the broader context of gendered social norms, with particular attention to literature addressing gender and sexual harassment in Thailand. Second, it provides a review of the literature on international standards relevant to the prevention of, and protection from, sexual violence and harassment.



1.1. Sexual harassment at work and gender norms in Thailand

While it was once thought that sexual harassment was due to “natural attraction-biological forces”,² that theory of sexual harassment has been highly criticized (Tangri et al. 1982). Today, organizational approaches and feminist theories complement each other to explain how sexual harassment may occur in workplaces:

- **Organizational approaches** view sexual harassment as an abuse of power made possible by the structure of organizations or workplaces.
- **Feminist theories** focus on power relations, which understand sexual harassment not simply as individual misconduct but a manifestation of violence against women, which is rooted in patriarchal society (McDonald, Backstrom and Blackstone 2008, 175–76).

² This theory suggests that sexual harassment results from the natural and inevitable feelings of sexual desire expressed by men toward women. See McDonald and Charlesworth 2015, 120.

Taken together, these approaches explain occurrences of sexual harassment as being deeply embedded and enmeshed in society's gendered social norms and stereotypes, as well as in the particular norms and dynamics of an employment arrangement. In Thailand, the existing research points to harmful gender norms that may discourage the reporting of violence and harassment, which is explored later in this chapter. In addition, women workers in Thailand face barriers to equality in the world of work, and women migrant workers even more so.

1.1.1. Sexual harassment and gender norms

Research suggests that sexual harassment can be driven by a motivation to protect sex-based social standing and power (McLaughlin, Uggen and Blackstone 2012). It can be linked to gender norms associated with sexual bravado and posturing and where degeneration of feminine behaviours is sanctioned (McDonald, Charlesworth and Graham 2015, 46). Perpetrators of harassment are not necessarily those with power or authority within an organization, although they might be. Gender, nationality, race, class, migration status, and other social categorizations also matter. These intersectional factors may give perpetrators more informal power in addition to, or in spite of, their position within an organization, and may place survivors of harassment in a position of less relative power (Powell, Sandy and Findling 2015, 7).

Feminist theories view violence and harassment in the workplace as rooted in unequal power relations between men and women in society. Feminist perspectives see the prevention of sexual harassment as being intertwined with the promotion of gender equality. In other words, preventing violence against women requires promoting

gender equality and respect to challenge the underlying norms that perpetuate violence and harassment (Powell, Sandy and Findling 2015, 7).

Since sexual harassment is connected to expressions of gender norms and power, survivors who make complaints about sexual harassment may be perceived as going against these norms, and may face negative reactions that can cause survivors further harm. The term "retaliation" as it applies to sexual harassment has a specific meaning. Retaliation means punishing a person for asserting their rights to be free from sexual harassment. Retaliation can be overt, such as verbal or physical abuse. It can also be subtle, such as making the complainant's work more difficult. Because of the power imbalances in employment arrangements, and the interplay between these workplace power imbalances and gender norms, perpetrators of sexual harassment often already have organizational or social clout with which to intimidate and silence those who experience the harassment.

Unsurprisingly, studies have found that survivors of sexual harassment regularly – and reasonably – fear retaliation for reporting sexual harassment (Bergman et al. 2002, 237). Consequently, sexual harassment is hugely under-reported worldwide. There is a correlation between a greater fear of reporting sexual harassment and a higher prevalence of harassment (Reese and Lendenburg 2003, 184), indicating, conversely, that safe reporting and handling of sexual harassment complaints may counter a culture of fear.

1.1.2. Myths about sexual violence in Thailand

Thailand has traditionally been a strong patriarchal society and "social norms that remain commonly held among both men and women today include that the wife is

the husband’s asset and that women are ‘the hind legs of the elephant’ following men’s front legs” (UN Women 2013, 8).

A 2017 report, *The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam*, examines the experience of women’s access to justice in cases of rape and sexual violence in Thailand and Viet Nam. It also explores social and cultural norms that condone sexual violence. The report finds that there is a high societal tolerance for sexual violence. This makes it less likely for sexual violence to be reported, and even less likely for a survivor to receive justice, due to attrition throughout the legal process and institutional biases against victims (UN Women, UNDP and UNODC 2017, 4). The report highlights a number of commonly held stereotypes about gender that create “myths” about sexual violence, and which apply to sexual harassment as well as crimes such as rape and sexual assault. These myths are as follows:

- **“Real rape” involves strangers, force, physical injury and occurs in public** – Such a view could diminish the likelihood that a survivor of rape in a work context would be believed due to the prior relationship between the two parties, and the fact that coercion may be involved rather than violence.
- **Sexual violence is only a problem when it happens to “good” or “innocent” girls** – Perceptions about the moral character of a woman could impact whether perpetrators feel that it is acceptable to harass her. It could also mean that the complaints of women who are of perceived lower social status, or who are perceived as being sexually promiscuous could be disregarded, making it less likely that complaints would be made or action taken upon them.
- **Some women deserve to be raped and/or sexually assaulted; it is their own fault**
 - This myth could punish women for their perceived failure to live up to gendered norms about how women should dress and act or because of the occupation that they are engaged in.
- **Sexual violence only happens in certain segments of society** – This could reinforce the view that women in vulnerable situations (especially migrant women) are more likely to be victims. It also reinforces the view that “good” or educated men would not be the perpetrators of violence. Sexual harassment protections are for all workers, and they will also be beneficial to Thai national workers, especially women.
- **Husbands cannot rape or sexually assault their wives** – This reflects cultural views about the submission of women to men, and beliefs about the sexual objectification and ownership of women’s bodies. When women are not seen as having sexual agency, and their bodies are seen as objects of desire for men, this can play out in the workplace through acts of sexual harassment.
- **Women seeking to avenge slights or to extort money often fabricate sexual violence charges** – This could mean that women’s experiences are not believed or taken seriously.
- **A victim will report everything at the first available opportunity** – This ignores the significant social stigma and power imbalances that exist in sexual violence or harassment cases, and the vulnerabilities women may face in their employment, especially women migrant workers (UN Women, UNDP and UNODC 2017, 41–46).

1.1.3. Existing research on sexual harassment in Thailand

This section summarizes important findings from existing research on sexual harassment in the workplace in Thailand. The research

covered here addresses different forms of sexual harassment, patterns of sexual harassment, factors leading to sexual harassment, and the effects of sexual harassment on survivors.

Thirty-six research papers, published between 1990 and 2018, were identified as relevant to the subject matter area.³ Many of the papers focus on workers in specific occupations, such as airline crews, hotel employees, university staff, teachers, hospital staff and police officers. None of the studies included women migrant workers in Thailand.

Forms and patterns of sexual harassment

Research papers about sexual harassment in the workplace in Thailand describe common forms of sexual harassment, and indicate that harassment occurs in many forms in workplaces in Thailand and mirrors the types of sexual harassment experienced internationally.

Examples of verbal forms of sexual harassment included lewd criticism about one's body or clothes; using sexually suggestive words to encourage others to engage into a sexual act; telling dirty jokes; and asking about or gossiping about one's sexual behaviour at work. Nonverbal forms of sexual harassment mentioned included staring at one's body; making sexually suggestive gestures; sending texts, emails and notes with obscene words or graphics; and displaying pornographic material in common areas at the workplace. Physical harassment included using body parts to touch another person; hugging or kissing on any body part; as well as sitting or standing unnecessarily close to another person (Yupenkaew 2007; Shibayama 2005; Srithip 1998).

Several research papers reviewed indicate that sexual harassment tends to follow a pattern (Shibayama 2005; Umpa 2010; Ngamchuen 2006; Noonin 2015). These authors argued that sexual harassment at work usually starts with less serious forms of harassment that are subsequently followed with more serious harassment. Physical harassment does not always occur, but when it does, it is usually preceded by other less serious forms of sexual harassment.

These studies suggest that the prevalence of sexual harassment varies across professions. Employees in the service industry tend to be more exposed to sexual harassment than those working in other sectors, as the nature of their work requires them to be in regular contact with many people. Service industry employees include flight attendants (Shibayama 2005), hotel staff (Noonin 2015) and hospital employees (Yupenkaew 2007).

Factors leading to sexual harassment

A number of studies identify factors which may determine how sexual harassment is experienced in a workplace. These factors align with the above approaches to understanding sexual harassment from both feminist and organizational perspectives. They point to sexual harassment as both an expression of patriarchal gender norms and individual vulnerability (feminist theory of sexual harassment), and an abuse of power made possible by the structure of an organization or workplace (organizational theory of sexual harassment).

³ These papers were from two online databases: (i) Thai Library Integrated System (ThaiLIS) and (ii) Thai Journals Online (ThaiJO). Most of the papers are master's degree theses (26 papers). Of all the reviewed papers, 18 employed qualitative research methods; 15 used quantitative methods; and the rest had mixed research methods. These research papers were identified through keyword searches for "sexual harassment", "sexual violence", together with "work" and "workplace" (in Thai language). It should be noted that there is a possibility that there could be more studies about sexual harassment in the workplace in Thailand – for instance, those that are not included or accessible in the online databases, and those that are categorized under different keywords.

Support for the feminist theory of sexual harassment in Thai studies

Several of the research papers point to values, culture and social attitudes that may increase the risk of sexual harassment in the Thai workplace (Umpa 2010; Piriya-pin 2010; Keecharoen 2011; Ounjai, Chunin and Wichian 2012; Tiendee 2004; and Yupenkaew 2007). The research notes structural factors associated with social and cultural norms and values that support men’s dominance and women’s submission, and which affect the attitudes and perceptions of both men and women. Often, expressions of masculinity may involve perpetrating sexual harassment, such as telling dirty jokes or commenting on female body parts. This behaviour can be intensified when men gather in a group.

Tiendee (2004) studied sexual harassment behaviour against women by male police officers in Samut Prakan Province. The research found three factors that affect such behaviour: (i) attitudes about gender, (ii) social values and (iii) the male-dominant culture. The results found that rank, years of work, gender roles in the family, workplace culture, and social norms about sexual behaviour were all related to harassment behaviour. Many respondents believed that men were stronger and more suitable to be family leaders, and thus had the right to teach and punish their wives. Such attitudes towards women can spill over to the workplace. Some respondents believed that certain activities were acceptable for men but prohibited for women, for example, socialising with friends late at night, or married men having sex with other women.

In line with international literature, a study by Piriya-pin (2010) on sexual harassment in Pattaya City found that sexual harassment ultimately stemmed from the structural inequality between men and women. Such findings were also supported in two other studies: Ounjai, Chunin and Wichian (2012), and Yupenkaew (2007).

In addition, the individual circumstances of particular women workers may make them more vulnerable to harassment. Studies indicated that additional vulnerability may be due to age (Net-Aroon 2017; Ungkanungdecha 2003; Chunin and Na Wichian 2012; Wipanarapai 2011); having less experience in the workplace (Net-Aroon 2017; Tiendee 2004); or a lack of confidence or knowledge about their rights (Net-Aroon 2017; Tiendee 2004).

Support for the organizational theory of sexual harassment in Thai studies

Organizational factors are specific to an institution, organization or corporation, and vary across locations and types of institutions. Relevant factors identified in these studies were: physical environment, power structures and sex ratio.

Several papers indicated that an inappropriate physical environment at a workplace could facilitate sexual harassment. Examples include offices with dark walkways and insufficient security measures (Srithip 1998; Tiendee 2004). From the papers examined, there is some evidence to support the theory that hierarchical institutions tend to have more sexual harassment incidents. Examples include nurses working in an infantry hospital (Yupenkaew 2007) and employees in public organizations (Bualar 2001).

Studies by Bualar (2001) and Chunin and Na Wichian (2012) found that sex ratio in workplaces may affect the likelihood of sexual harassment. Those studies found that the higher the ratio of men to women employed in an institution, the higher the chance that sexual harassment would take place.

Overall, the Thai studies examined indicate that both the feminist and organizational theories of sexual harassment provide some explanation behind women’s experiences of sexual harassment at work in Thailand.

Effects of sexual harassment on survivors

The Thai studies reviewed also indicated that sexual harassment has negative psychological and financial effects on survivors. Virojrit (2004) found that sexual harassment is correlated with stress and lower job satisfaction. Yupenkaew (2007) also points out that being the target of sexual harassment can lead to depression, paranoia and shame among survivors. Tragoolvongse (2010) argues that sexual harassment can affect women's decisions to leave workplaces. The experience of sexual harassment can also affect women's decision to stay in the workforce. Intention to stay in employment tends to decrease if workers learn about sexual harassment incidences at work (Yupenkaew 2007; Shibayama 2005; Wipanarapai 2011).

1.1.4. Discrimination at work

In addition to gender norms which may put women at a disadvantage in the workplace, women face an uneven playing field in the world of work in Thailand because they are treated differently to men through the application of the laws that govern employment.

There are regulations in Chapter 3 of the Labour Protection Act, B.E. 2541 (1998) that apply only to women. Employers are prohibited from requiring women workers to perform certain tasks such as underground construction and mining, and pregnant workers cannot be required to work during the hours of 10 p.m. to 6 a.m., or to do overtime work. Employers are also prohibited from terminating a woman's employment because of her pregnancy, and must allow the worker to take maternity leave up to 98 days. While maternity protections are extremely important, the other aspects of these provisions assume that women do not have the same capabilities as men. They

embed gendered stereotypes about women's capabilities and may result in employers being less likely to employ women.⁴ In addition, all workplaces should be made safe so that all men and women can carry out the full range of required tasks.

Women are more likely than men to be in insecure or temporary work. An organizational predictor of sexual harassment has been found to be job insecurity (Chamberlain 2008, 281–282). Temporary workers are more vulnerable to all forms of sexual harassment. Job insecurity lowers harassers' inhibitions and victims' likelihood of seeking redress. Women migrant workers are particularly vulnerable to sexual harassment. Research conducted in 2014 found that 61 per cent of the surveyed women migrant workers in Tak, Ranong, and Samut Sakhon reported that they faced violence in the workplace (Huguet 2014, 102).

1.1.5. Intersectionality, identity and sexual harassment in international literature

As reflected in Thai studies on sexual harassment cited above, the way sexual harassment is perceived and experienced is particular to each person. Given that not many studies in Thailand have focused on sexual harassment experienced by migrant workers, it is important to draw on other international studies that focus on migrants. In a Canadian study, the authors state, "Sexual harassment, like rape and other forms of sexual violence, is embedded in an interlocking system of race, gender and citizenship. ... What is often overlooked in analyses of sexual harassment is how they represent a set of interlocking social arrangements" (Welsh et al. 2006, 89).

4 ILO supervisory bodies have also considered that such protective measures concerning women's employment are gender-biased, and not based on maternity in the strict sense. See ILO 2012a, paras. 838–840.

The study included migrants from the ASEAN region and found that women from minority groups consistently experienced intersectional discrimination, where sexualized harassment was not simply sexual harassment. A Filipina live-in caregiver defined sexual harassment in the following way:

It's like a mix. It's a mix action. You don't know if the person is doing it to you because of the colour of your skin and the type of job that you have, you're doing a dirty job in the house so you don't know if it is harassment or sexual harassment (Welsh et al. 2006, 96).

The study also found that lack of citizenship rights further affected the way harassing behaviours were experienced, and defined by, Filipinas working as domestic workers. Potentially due to their reliance on employers for work permits, many women were uncomfortable defining experiences as sexual harassment. Feelings of isolation were also common amongst this group of women (Welsh et al. 2006, 100, 102). These observations suggest that when people feel powerless to remove themselves from a situation, they may adopt a self-preserving position of refusing to self-identify as victims, facilitating their endurance.

Women migrant workers can have limited connections within the communities in which they are living. This means that they often cannot access social services or rely on public officials. In addition, most migrant workers remit money home to their families. This burden of remittances means that they may feel unable to leave their work despite poor working conditions. Migrant status, community

exclusion and isolation, and heavy pressure to remain employed may similarly impact the way women migrant workers perceive, experience and endure harassment.

1.1.6. The perpetrators of sexual harassment

There is no research into the profiles and motives of those who perpetrate sexual harassment or violence in Thailand. A quantitative study on men and violence in the Asia and the Pacific region (Bangladesh, Cambodia, China, Indonesia, Papua New Guinea and Sri Lanka) found that the most frequently reported motivation to rape is sexual entitlement, which is the belief that men have a right to sex without consent, followed by entertainment-seeking, anger, and punishment (UN Women et al. 2013). Furthermore, the study pointed out that individual level factors associated with violence against women are: genderinequitable attitudes, childhood emotional abuse or neglect, childhood physical abuse, witnessing abuse of their mother, alcohol abuse and drug use.

In addition, a review of international literature by Pina, Gannon and Saunders (2009, 130) on the characteristics of men who engage in sexual harassment at work reported that offenders are often found to “lack social conscience and engage in immature and irresponsible behaviors, or manipulative and exploitative behaviors”. While these studies were not conducted in Thailand, the similarities of human behaviour in relation to violence against women, including sexual harassment, in studies globally indicate that these warrant our attention.



1.2. International standards and practices

Examining the development of the concept of sexual harassment in international law shows the important history of change that has led to the present. This section provides useful explanations and definitions of sexual harassment. It also provides context concerning the expectations around monitoring and enforcing international commitments as well as the instruments that protect the rights of women migrant workers, a group of individuals at particular risk of sexual violence and harassment.

1.2.1. International definitions of sexual harassment

Sexual harassment as gender-based violence

While there is no international binding instrument that defines sexual harassment, the concept has been considered as a form of gender-based violence and harassment.

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations

(UN) General Assembly as an instrument to define what constitutes discrimination against women and to establish an agenda for national action to end such discrimination. Thailand ratified CEDAW in 1985.

In 1992, the Committee on the Elimination of Discrimination Against Women (henceforth, the “CEDAW Committee”) adopted their General Recommendation No. 19, which, for the first time, defined sexual harassment as a form of violence against women (para. 17). The General Recommendation states:

Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment (para. 18).

In 1995 the United Nations held the Fourth World Conference on Women. Workplace sexual harassment was included as a form of violence against women in the communique from that conference, known as the Beijing Declaration and Platform for Action (UN 1995, para. 113).

In 2017, the CEDAW Committee adopted General Recommendation No. 35, which referred to the term “gender-based violence against women” instead of “violence against women”, making the gendered causes and impacts of the violence more explicit. Twenty-five years after the first recognition of gender-based violence, including sexual harassment, in the aforementioned General Recommendation No. 19, the practices of State parties now show that the prohibition of gender-based

violence is a norm of customary international law (General Recommendation No. 35, para.2).

In June 2019, the ILO Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, were adopted, recognizing the right of everyone to a world of work free from violence and harassment, including gender-based violence. Convention No. 190 recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse, and defines violence and harassment as: “[A] range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment” (Art. 1(a)).

Under Convention No. 190, sexual harassment is not defined, but it is explicitly included within the Convention’s definition of “gender-based violence and harassment”, which states: “the term ‘gender-based violence and harassment’ means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment” (Art. 1(1)(b)). Members of the ILO that have ratified the Convention are required to adopt laws and regulations to define and prohibit violence and harassment in the world of work, which includes gender-based violence and harassment.

Sexual harassment as a serious form of sex discrimination in the workplace

The first international ILO instrument that explicitly prohibited sexual harassment was the Indigenous and Tribal Peoples Convention, 1989 (No. 169). However, sexual harassment as a serious manifestation of sex discrimination and

a violation of human rights, is first addressed in the context of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which is a fundamental Convention of the ILO and which Thailand ratified in 2017. Within the framework of its 2002 General Observation on Convention No. 111, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) provided some guidance on defining sexual harassment by noting that definitions tend to contain the following “key elements”:

- (1) (*quid pro quo*): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men which is unwelcome, unreasonable and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; or
- (2) (*hostile work environment*): conduct that creates an intimidating, hostile or humiliating working environment for the recipient.⁵

Later, in its 2012 General Survey, the CEACR addressed the issue, referring back to that General Observation:

Sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. It damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity. Over the years, the Committee has consistently expressed the view that sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, is to be addressed within the context of the Convention. Given the gravity and serious repercussions of sexual

⁵ See: CEACR, General Observation – Discrimination (Employment and Occupation Convention, 1958 (No. 111), adopted 2002, published 91st Session, International Labour Conference, 2003.

harassment, the Committee recalls its general observation highlighting the importance of taking effective measures to prevent and prohibit sexual harassment at work. 1978 Such measures should address both quid pro quo and hostile environment sexual harassment, and the Committee's general observation provides further guidance in this regard (ILO 2012a, para. 789).

The ILO Domestic Workers Convention, 2011 (No. 189), also states in Article 5, "Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence."

In 2006, the ILO launched the Multilateral Framework on Labour Migration which provided principles and guidelines, using a rights-based approach, to detect and identify abusive practices, including sexual harassment, especially in "those sectors that are outside the usual avenues of regulation and protection, such as domestic work" (ILO 2006, 21).

Guidance on sexual harassment in the ASEAN region

The Declaration on the Elimination of Violence Against Women in the ASEAN Region was adopted by ASEAN in 2014. Sexual harassment was not directly addressed in the Declaration, but sexual harassment at work was included as a form of violence against women by referring to the definition in the Beijing Declaration and Platform for Action (ASEAN 2017, 6–7). ASEAN recognizes violence against women as a violation of human rights. In 2010, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children was established.

The ASEAN Regional Plan of Action on the Elimination of Violence against Women was launched covering a ten-year period from 2016

to 2025. Under this plan, Member States are encouraged to initiate or strengthen complaint mechanisms for workplace sexual harassment. The plan also draws attention to initiatives, gaps and challenges in each ASEAN Member State relating to the root causes of violence against women – including social norms, stereotypes about women's roles, and lack of law enforcement (ASEAN 2016).

1.2.2. Understanding sexual harassment

Over time, international jurisprudence has also helped shape and define the meaning of the term "sexual harassment", and different countries have developed their own legal definitions of sexual harassment. Sexual harassment occurs both inside and outside the workplace. However, when it occurs at work, it can threaten a person's right to decent work and economic security.

Behaviours that can constitute sexual harassment

As previously noted, according to the CEACR's 2002 General Observation on Convention No. 111 of the CEACR definitions of sexual harassment generally cover two elements: (i) quid pro quo sexual harassment, and/or (ii) hostile work environment sexual harassment.

Sexual harassment is always unwanted and unwelcome. It is the recipient who defines whether the conduct is friendly behaviour or sexual harassment (Haspel et al. 2001, 19). A wide range of behaviours can be sexual harassment. It can be physical, verbal or non-verbal. Physical sexual violence or harassment in the workplace can be extremely serious, and can include serious crimes such as rape and sexual assault. Physical sexual harassment can also include touching, pinching, forced kissing or hugging. Verbal sexual harassment includes sexual insults, comments on appearance, sexual jokes or stories and sexual advances.

Non-verbal sexual harassment includes whistling, staring, sexual gestures and displaying pornographic material (European Commission 1998, 19; McCann 2005, 2). An ILO (2020) technical brief on sexual harassment in the world of work highlights that sexual harassment may be perpetrated by different individuals, including colleagues, supervisors, subordinates and third parties. Whatever form it takes, sexual harassment results in an unsafe and hostile work environment for the person experiencing it, as well as for witnesses and co-workers. Moreover, the often persistent, “normalized” nature of sexual harassment⁶ can have grinding effects and lead to great personal suffering, damage to reputation, loss of dignity and self-esteem on the part of the victims, and victim blaming from family, friends and peers.

Sexual harassment in the workplace

A 2014 study in the European Union suggests that around 90 per cent of people who are sexually harassed are women, and around one-third of instances of sexual harassment are work-related (European Commission 2017). Women in a subordinate position are more likely to be subjected to workplace sexual harassment than men in the same position (McCann 2005, 7). Moreover, a power imbalance may mean that the person receiving sexual harassment is more likely to endure the behaviour, as they may be in a less secure work position. This may also mean that such cases of workplace sexual harassment against subordinates are not reported.

Sexual harassment can occur across both horizontal and vertical work relationships. The perpetrator can be an employer, an employee, or a colleague or anyone else who is involved

in the workplace, such as clients or contractors (ILO 2018a, 18). Convention No. 190 states that all workers and other persons in the world of work must be protected from violence and harassment “including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer” (Art. 2(1)). In addition, the protection should cover “all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas” (Art. 2(2)). The Convention’s use of the term “world of work” extends the concept of the workplace and meets the reality that sexual harassment can take place at work-related events, during transit, through online platforms or in employer-provided accommodation. Sexual harassment does not occur only in the traditional physical workplace.⁷ Technology is also blurring the boundaries between the workplace and the home, and sexual harassment can be perpetrated via email or social networking websites (Schenk 2008; TUC 2016).

This broad concept of the “world of work” is particularly important for women plantation workers and domestic workers. For such workers, it is difficult to set the boundaries between their workplace and their home. Their working environment can be an environment where they are at risk of sexual harassment at all times. Some women workers in factories, construction and the service sector are also provided accommodation by their employer,

⁶ Sexual harassment is normalized when seen as a normal, or unquestioned, part of daily work (ILO 2018a, para. 91).

⁷ Convention No. 190 “applies to violence and harassment in the world of work occurring in the course of, linked with, or arising out of work: the workplace, including public and private spaces where they are a place of work; in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; during work-related trips, travel, training, events or social activities; through work-related communications, including those enabled by information and communication technologies; in employer-provided accommodation; and when commuting to and from work” (Art. 3).

such as dormitories or hostels where supervisors have access or live together with them. In such accommodations, these women workers can be vulnerable to sexual harassment at all times, not only from supervisors, but also from other workers (Haspel et al. 2001, 23).

The CEACR (2002) has observed that “sexual harassment is a serious manifestation of sex discrimination and that it undermines equality at work by calling into question the integrity, dignity and well-being of workers, and that it damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity”. Sexual harassment results in large monetary costs for governments and employers, particularly in terms of medical care and counselling, lost productivity, case settlement and judicial monetary awards. For employers, sexual harassment can also lead to significant reputation costs. It also creates significant health, economic and career costs for victims (ILO 2020).

1.2.3. Monitoring and enforcement mechanisms

State parties to CEDAW are obligated to enact, implement and monitor legislation addressing violence against women, which includes sexual harassment (CEDAW General Recommendation No. 12, para. 1). State parties are required to report periodically on legislation and policies that implement their obligations and a failure by a State to provide protections may constitute a human rights violation.⁸ As noted above, Thailand is a party to CEDAW.

The ILO Violence and Harassment Convention, 2019 (No. 190), would strengthen these obligations. The Convention requires State parties to monitor and enforce domestic laws and regulations on violence and harassment in

the world of work as well as to provide “easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work” (Art. 10). At the time this report was written, Thailand had not ratified Convention No. 190, but it had expressed its interest and commitment by including in its Decent Work Country Programme a legal gap review for Convention No. 190 which may pave the way for future ratification.

At a national level, protections against sexual harassment are mostly likely to be through legal mechanisms. A 2015 study of 173 countries found 114 countries had specific regulations concerning sexual harassment in employment (Iqbal 2015, 23). However, these protections may not apply to all workers. Those who face intersectional discrimination on the grounds of sex, age, race, language, religion, migrant or refugee status are more likely to fall through the gaps. The UN (2010, 14–15) recommends that regulations should be made specifically, where necessary, to provide appropriate treatment for those women who encounter intersectional discrimination.

In addition, different jurisdictions have different definitions of sexual harassment and offer varying degrees of protection against sexual harassment. Depending on the legal pathway used – labour law, criminal law, civil law, or anti-discrimination and human rights law – there are different mechanisms and processes for protection.

Prevention of sexual harassment as a workplace safety concern

Labour laws generally cover occupational safety and health (OSH) in order to protect workers. ILO OSH instruments cover both

⁸ An example is the case of *A.T. v. Hungary*, Communication No. 2/2003, adopted 26 January 2005. In *A.T. v. Hungary*, through a claim submitted to the CEDAW Committee, it was decided that the obligation of the State party under the CEDAW was not fulfilled due to the lack of legislation combating domestic violence and sexual harassment.

physical and mental health, and as sexual harassment has negative impacts on health, domestic laws covering OSH may also provide protection against sexual harassment (ILO 2018a, 37). Labour laws may require employers to take steps to prevent risks to safety and well-being, such as sexual harassment policies and providing compulsory training about sexual harassment to workers.⁹ Under the Occupational Safety and Health Convention, 1981 (No. 155), workers have the right to not go to work if they feel unsafe. It states that if “a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health” (Art. 19(f)).

Workplace complaint and grievance procedures

Some jurisdictions require employer organizations to have complaint and grievance procedures for sexual harassment (ILO 2018a, 78). Problems can arise with internal complaint procedures when the person experiencing the harassment does not feel comfortable reporting the matter, especially if their supervisor is the perpetrator. Internal complaint procedures on sexual harassment should indicate another person (that is, not the direct supervisor) to whom the complaint can be submitted (McCann 2005, 54).

Complaint procedures may be formal or informal. Informal mechanisms are conciliatory, and usually involve a discussion between the person who alleges sexual harassment, the alleged perpetrator, and the facilitator. Formal procedures are composed of an investigation, interviews of the persons involved, and adjudication. A 2018 ILO study found that in 16 out of 80 countries, after the lodging of a sexual harassment grievance, a formal investigation is often required (ILO 2018a, 78).

Action may be taken at the workplace level to protect complainants from further sexual harassment, such as a change in working hours, transfer, or time off from work. In India, transfer of either the perpetrator or the person who has experienced sexual harassment are some of the available options (Code of Conduct for Workplace, National Commission for Women), while in the Philippines, a worker who has experienced sexual harassment is entitled to take up to ten days of paid leave (Anti-Violence against Women and their Children Act (2004), Act No. 9262, sect. 43).¹⁰

Protection for complainants, witnesses and whistle-blowers

One of the key elements that encourages survivors to speak out about sexual harassment is the promise of confidentiality. Confidentiality and protection from retaliation are vital to ensure that workers who have experienced sexual harassment are not revictimized due to their complaint. In 24 of 80 countries studied by the ILO in 2018, protection from reprisal for the complainants and witnesses are prescribed in regulations (ILO 2018a, 80). The Philippines'

9 In Kenya, for example, an employer policy on sexual harassment must contain the rights of employees and duties of employers, disciplinary measures, and complaint procedures (see the Employment Act, Revised Edition 2012, sect. 6(3)). Employers in the Republic of Korea are required to provide education to prevent sexual harassment at work and to create a safe working environment for workers (see the Act on Equal Employment and Support for Work-Family Reconciliation, Act No. 10339 of 2010 (as amended), art. 13). Affected workers in Germany are entitled to refuse performance if their employer takes no steps (or takes apparently unsuitable steps) to combat sexual harassment in the workplace (see General Act on Equal Treatment (2006), as amended in 2009, sect. 14).

10 In Spain, women workers who have experienced gender-based violence have employment and social security rights to reduce or reorganize their working hours (Organic Act on Integrated Protection Measures against Gender Violence (2004), art. 21).

Department of Labor and Employment issued Administrative Order No. 68 which ensures that a sexual harassment case may continue being investigated, even when the survivor decides to drop the case as a result of being pressured, if the committee sees that it is in the interest of the survivor. The Order also allows preventive suspension of no more than 90 days, if there are reasons to believe that the respondent is guilty, in order to protect survivors and witnesses from retaliation from supervisors. In the United States of America, individuals who participate in a complaint process are protected from workplace retaliation, meaning that the employer is prohibited from giving an unreasonable performance review, denying promotion, or transferring a worker to a lower position (Title VII of the Civil Rights Act of 1964, sect. 701(e)).¹¹

Dispute settlement beyond the workplace

Most of the countries that have regulations on sexual harassment have an external non-criminal dispute resolution mechanism for complaints that cannot be resolved at the workplace level. Complaints can be submitted through non-judicial, quasi-judicial or judicial institutions such as labour inspectors, equality boards, ombudspersons, human rights bodies or courts (ILO 2018a, 79). Various methods can be applied to settle the dispute ranging from non-punitive approaches to punitive approaches.

In some countries conciliation or mediation is used. In Sweden, a restorative approach is applied to resolve workplace harassment conflicts in order to maintain social relationships. Psychological support is made available and talks between the person who has experienced sexual harassment, the employer, and other workers are arranged to seek solutions for a better working environment.

Transfer, or training, may be an option if the dispute cannot be settled (ILO 2018a, 79). Some argue that mediation is a problematic solution in matters of violence against women due to unequal power relations.

Labour inspection processes

A number of countries have independent bodies responsible for implementing and monitoring labour laws and policies. Such bodies may have advisory powers, investigation powers, or quasi-judicial powers (ILO 2018a, 83).

Labour inspectors may be empowered to take action in relation to sexual harassment cases, including issuing interim orders to employers. In some countries, labour inspectors have a duty to raise awareness about workplace harassment. For instance, in El Salvador, a national training module for labour inspectors is provided by the Ministry of Labour and Social Security, and preventive inspection visits are available to identify violence against women, including workplace sexual harassment (ILO 2018a, 81–82). Some jurisdictions provide specific roles to women inspectors. For example, the Office of Women’s Affairs in Ghana, under the Department of Labour, was specifically established to deal with workplace sexual harassment matters (ITC-ILO, n.d., 22).

Sanctions, remedies and victim support

Where sexual harassment is considered criminal behaviour under the law, the ordinary criminal sanctions apply – usually court fines, imprisonment, or both. However, the burden of proof may be extremely difficult if sexual harassment is only addressed through criminal law, or if the burden of proof remains on the complainant. Compensation for victims may also not be awarded in criminal matters, except where prescribed by specific regulations or where a civil action is brought concurrently.

¹¹ However, it should be noted that Title VII of the Civil Rights Act of 1964 does not cover an employer who has fewer than 15 employees, meaning that many domestic workers or farm workers are not protected.

In its 2012 General Survey, the CEACR addressed the disadvantages of sexual harassment being addressed solely through criminal law:

The Committee considers that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or “immoral acts”, and not the full range of behaviour that constitutes sexual harassment in employment and occupation. The Committee also considers that legislation under which the sole redress available to victims of sexual harassment is termination of the employment relationship, while retaining the right to compensation, does not afford sufficient protection for victims of sexual harassment, since it in fact punishes them and could dissuade victims from seeking redress (ILO 2012a, para. 792).

In some jurisdictions, employers may be liable for failing to fulfil their duties of sexual harassment prevention and protection. Penalties for employers may include fines, imprisonment and/or loss of license. Furthermore, employers may be liable for harassment under the doctrine of vicarious liability unless the employer can prove that appropriate measures were taken to combat such harassment (ILO 2018a, 83–84). In Sweden and Finland, for example, compensation is paid by the employer (McCann 2005, 31).

Penalties and remedies for sexual harassment should be such that the perpetrator ceases the behaviour and the person who has been harassed is reasonably compensated. Perpetrators may be obligated to attend training, and in serious cases, may face suspension or termination of employment.

Employers may be required to provide sexual harassment policies, training or counselling for their workers (ILO 2018a, 84).

Those who have experienced workplace sexual harassment may need physical and psychological assistance. Damages for the physical or psychological harm suffered may be appropriate. Some countries provide or fund services such as legal advice, shelters, counselling or other support in one-stop-centres (ILO 2018a, 87). In the Philippines, for example, agencies responding to violence against women are required by law to provide education and training concerning the rights and remedies of complainants and techniques for handling incidents of violence against women (Anti-Violence against Women and their Children Act (2004), Act No. 9262, sect. 42).

1.2.4. The situation of women migrant workers

Some groups of women are on the periphery of the protection measures on offer. CEDAW General Recommendation No. 26 (2008) recognizes that women migrant workers in low-paid jobs are more vulnerable to sexual harassment, and domestic workers are particularly vulnerable to physical and sexual assault (para.20). The international community has for some time acknowledged that women migrant workers are a group whose vulnerability is of deep concern. In 2019, the UN Secretary-General stated:

Migrant women continue to face multiple and intersecting forms of discrimination not only as women and as migrants, but also on the basis of numerous interconnected characteristics, including age, income, race, ethnicity, nationality, religion, marital and family status, sexual orientation and gender identity, disability, health status, HIV status, pregnancy, place of residence and economic and social situation. (UN 2019, para. 10)

The need to combat violence against women migrant workers has been reiterated in resolutions of the UN General Assembly since 2001.¹² In 2008, the UN urged “[g]overnments to adopt or strengthen measures to promote and protect the human rights of migrant girls... regardless of their immigration status, to prevent their labour and economic exploitation, discrimination, sexual harassment, violence and sexual abuse in the workplace, including domestic work” (UN General Assembly 2008, para.9).

To protect the rights of women migrant workers, there need to be monitoring and labour inspection measures to ensure domestic compliance with international obligations; transparent complaint mechanisms for those who seek remediation from economic exploitation, discrimination, sexual harassment, violence and sexual abuse; and protection from retaliation and punishment during such processes.

Protections under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) are also relevant to women migrant workers (see especially Art. 5(e)(i)). For example, periodic reports under ICERD in the Republic of Korea found that almost 40 per cent of all migrant workers are women, and many of them faced sexual harassment in the workplace (OHCHR 2019). Further, it was found that survivors were less likely to report sexual harassment due to the risk of deportation after judicial proceedings. The ICERD Committee recommended that the Republic of Korea should ensure that legal, medical and psychosocial support is sufficiently provided to victims, irrespective of their migration status (OHCHR 2019, paras 11, 19 and 20). Thailand has ratified the ICERD.

In 2018, the Global Compact for Safe, Orderly and Regular Migration (GCM), a non-binding international agreement, was adopted by the UN General Assembly. A commitment within the GCM is that labour laws, employment policies, and programmes at the national level are to be reviewed to protect migrant workers against all forms of abuse and exploitation, including sexual and gender-based violence. It also contains a commitment to protect the human rights of migrants in vulnerable situations, which includes women at risk, victims of sexual and gender-based violence, persons who are discriminated against, and domestic workers. To ensure this, gender-responsive migration policies, and strong partnerships shall be established. In addition, assistance, psychological counselling, access to justice and effective remedies shall be provided. However, the Expert Working Group for Addressing Women’s Human Rights in the Global Compact for Migration (2018) has noted that the GCM does not address issues of multiple and intersecting forms of discrimination faced by migrant women on the grounds of sex, and other relevant characteristics, such as income, age, race, ethnicity, migratory status, are missing. Thailand has signed the GCM.

Disadvantaged by their gender, class and status, women domestic workers, including women migrant domestic workers, are extremely vulnerable to exploitation, violence, harassment and forced labour. More than 67 million domestic workers are isolated behind closed doors and sometimes are not recognized as workers (ILO 2018b). Domestic workers are excluded from some labour laws in 20 out of 80 countries studied by the ILO in 2018 (ILO 2018a, 18). The ILO Domestic Workers Convention, 2011 (No. 189), is the international

12 See the following resolutions on violence against women workers adopted by UN General Assembly on:

- 19 December 2001, A/RES/56/131;
- 18 December 2007, A/RES/62/132;
- 18 December 2013, A/RES/68/137;
- 22 December 2003, A/RES/58/143;
- 18 December 2009, A/RES/64/139;
- 17 December 2015, A/RES/70/130;
- 16 December 2005, A/RES/60/139;
- 19 December 2011, A/RES/66/128;
- 19 December 2017, A/RES/72/149.

standard recognizing them as workers, and it supports their protection against all forms of abuse, harassment and violence (Art. 5). Supplementing the Convention, the Domestic Workers Recommendation, 2011 (No. 201), recommends that Members have protective mechanisms for domestic workers to tackle abuse, harassment and violence, such as accessible complaint mechanisms, appropriate investigation and prosecution, and programmes for relocation and rehabilitation, including accommodation and healthcare support (Para. 7). Thailand has not ratified this Convention, nor has it ratified any of the other ILO Conventions specifically concerning the rights of migrant workers.¹³

Convention No. 190 recognizes the particular vulnerability of migrant workers to violence and harassment, as well as the need to address violence and harassment in relevant domestic policies, including those concerning migration.¹⁴ Supplementing that Convention, the Violence and Harassment Recommendation, 2019 (No. 206) states that legislative or other measures should be taken by Members to protect women migrant workers regardless of their migration status (Para. 10). Members are also encouraged to adopt appropriate measures for those workers who are at a higher risk of violence and harassment, such as domestic workers (Para. 9).

¹³ Thailand has not ratified the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); nor the Private Employment Agencies Convention, 1997 (No. 181).

¹⁴ Article 11(a) provides that each “Member, in consultation with representative employers’ and workers’ organizations, shall seek to ensure that violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health, equality and nondiscrimination, and migration”.



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2

Laws, policies and measures – and their enforcement

Thailand has a number of laws, policies and measures to combat sexual harassment in the workplace. However, many terms used in these laws, policies and measures are missing legal definition. There are opportunities for legal reform to address gaps in the coverage of the law. Legal ambiguities combined with discriminatory social norms and values mean that those laws that could protect against sexual harassment are under-utilized, due to complaints not being made.

This chapter presents the laws, policies and measures related to the prevention of, and response to, sexual harassment in the workplace in Thailand, as well as court cases related to these laws.¹⁵ The following laws, policies and measures are covered:

- labour law;
- criminal and civil law;
- legal processes and remedies;
- laws, policies and measures relating to civil servants and public officials; and
- cases of sexual harassment, reported and unreported.

This chapter presents findings on both reported and unreported incidences of sexual harassment as derived from the interviews conducted for this study. The findings from these interviews show that sexual harassment does occur and is often not reported to, or actioned by, the authorities.



2.1. Labour law

The labour law of Thailand is mainly administered through the Labour Protection Act, B.E. 2541 (1998), which covers general working conditions, such as working hours, leave, and the minimum

wage. The Act is governed by the Ministry of Labour and enforced through the labour inspection process.

2.1.1. Labour Protection Act, B.E. 2541 (1998)

Section 16 of the Labour Protection Act, B.E. 2541 (1998), prohibits sexual harassment by an employer, supervisor, or inspector as follows: “An employer, a person in charge, a supervisor, or a work inspector is forbidden from committing sexual abuse, harassment, or nuisance against an employee.”¹⁶

The original scope of this provision only covered “sexual abuse”, but it has since been extended to also cover “harassment” and “nuisance”. It should be noted, however, that the legal definitions of these terms are unclear. The Act does not include a definition of sexual harassment (including quid pro quo and hostile environment harassment) at work. In addition, there is some ambiguity around the term “abuse”, which is an English translation by the Office of the Council of State from the Thai word “ล่วงเกิน” (*luang-germ*), which literally means “an act of violating or trespassing beyond boundary”.

The penalty for infringement of section 16 is a fine of maximum 20,000 Thai baht (US\$632). There is no distinction between sexual abuse (or violation), harassment, and nuisance in terms of penalty (section 147).

Section 16 only covers sexual harassment by a worker’s superior (employer, supervisor or inspector). The definition of employer is found in section 5:

“Employer” means a person who agrees to employ the employee to work and pay wages therefore and shall also include:

¹⁵ English translations of these laws, policies and measures are those of the Office of the Council of State, where applicable.

¹⁶ The original scope of section 16 was amended in 2008. Originally it only covered harassment against women and children. Over the years, criticism about the narrow scope of protection under section 16 resulted in several amendments. The current provision has been in force since 2008.

(1) A person designated to do work for the employer;

(2) Where the employer is a juristic entity,¹⁷ the term shall include a person authorized to act on behalf of that juristic entity, and a person designated to act on behalf of the person who is authorized to act on behalf of that juristic entity.

Section 11(1) also deems entrepreneurs as “employers” in certain circumstances where they authorize the recruitment of workers, whether or not they pay wages to these workers. The Act does not define “a person in charge”, “a supervisor”, or “a work inspector”.

Case law on sexual harassment under the Labour Protection Act, B.E. 2541 (1998)

The Supreme Court of Thailand has applied section 16 of the Labour Protection Act, B.E. 2541 (1998), in several cases, the details of which demonstrate how the section is interpreted.

In Supreme Court Judgment No. 1372/2557 (2014), the Court determined that requesting a worker go on dates, with a threat to withhold a workplace benefit if they do not, was sexual harassment. In this particular case, the plaintiff was an assistant manager who had the power to decide whether employees passed their probation period. He requested a female employee under his supervision to socialize at night after working hours, and upon her refusal, threatened that he would not allow her to pass probation. It was obvious that he intended to sexually harass the employee. His contract was terminated by the employer, the defendant. The defendant had been in a position to terminate the plaintiff’s employment contract without compensation.

Supreme Court Judgment No. 12939/2558 (2015) held that consent precludes a finding

of sexual harassment. In this case, the plaintiff voluntarily had sex with the defendant in exchange for money to pay off her debt. The defendant did not use his authority as her superior, or threaten her employment in order to have sex with her. The action of the defendant was not considered sexual harassment.

However, social conduct with a work superior does not amount to consent. Supreme Court Judgment No. 1059/2560 (2017) presents a case wherein a supervisor who had been fired for sexual harassment had sued his former employer seeking compensation. As per the case, the supervisor had put his hands on the thigh of Ms A, who was his subordinate, and wrapped his hand around her waist without her consent at a bar where they were drinking together. The next day, while she was driving, Ms A said she had neck pain and the supervisor used his hand to squeeze her neck. Ms A warded off her supervisor’s hand, and then the supervisor said that he had fallen in love with her. Even though Ms A went out to have drinks with the supervisor, this was not considered consent to any physical contact by the supervisor. The supervisor’s behaviour was deemed by the Court to be sexual harassment, and Ms A’s employer was therefore justified in terminating the supervisor’s employment without compensation.

2.1.2. Occupational safety and health standards

The Occupational Safety, Health and Environment Act, B.E. 2554 (2011), stipulates the duties of employers to provide safe and hygienic working conditions. Employers have duties under section 6 of the Act to prevent employees from physical and mental harm. Employees also have duties under the Act. The Act defines “occupational safety, health

¹⁷ This means a “non-human legal entity”, such as a company, which has legal rights and responsibilities.

and environment” as “actions or working conditions which are safe from any cause resulting in danger to life, physique, mentality or health arising out of or related to working”.

Furthermore, section 8 of the Act provides:

An employer shall administer, manage and execute occupational safety, health and environment matters in conformity with the standards prescribed in the Ministerial Regulations. In setting the standards under paragraph one, any documents or reports required to be prepared by the employer shall be examined or certified by a person or a juristic person as prescribed in the Ministerial Regulations. The employee shall have the duty to comply with the criteria on occupational safety, health and environment in accordance with the standards prescribed in paragraph one.

As per section 53 of the Act, an employer who violates or fails to comply with the standards prescribed in the Ministerial Regulations issued under section 8 of the Act shall be liable to imprisonment for a term not exceeding one year, or a fine not exceeding 400,000 baht, or both.

It is to be highlighted that despite section 6 of the Act stating the general duties of employers regarding working conditions, sexual harassment is not yet included in the Ministerial Regulation issued under section 8 of the Act.

There is also a related Ministerial Regulation issued under the Labour Protection Act, B.E. 2541 (1998), that prescribes standards for the administration and management of occupational safety and health. This Ministerial Regulation stipulates the duties of employers as follows:

- to have regulations and guidance on work safety in the workplace which include the processes and procedures for safe working in order to control and prevent danger (sect. 3);

- to organize training and workshops to enable employees to work correctly and safely (sect. 3);
- to arrange training for new employees or employees undertaking new duties or roles before they begin working (sect. 5); and
- to inform employees of the dangers in a new place of work and take preventative measures before they start their work (sect. 6).

In sum, the Occupational Safety, Health and Environment Act, B.E. 2554 (2011), and its associated regulations require employers to ensure a working environment that is not harmful to the physical and mental wellbeing of employees. This should include creating a workplace culture where there is no tolerance for sexual harassment. Arguably, employers’ obligations to create procedures and to train and induct employees on safety could include obligations to prevent and to address sexual harassment. However, the scope of this Act is limited to the physical workplace (that is, where the employees work), and does not cover the broader world of work outlined above.

2.1.3. Labour inspection

Labour inspectors have broad powers to inspect workplaces, receive complaints and conduct investigations. The powers of labour inspectors are contained in the Rules of the Department of Labour Protection and Welfare on Labour Inspection of Establishments, B.E. 2556 (2013), under the Labour Protection Act, B.E. 2541 (1998).

Labour inspectors can enter workplaces and can issue a written order if they find an employer has violated the Labour Protection Act, B.E. 2541 (1998). Under the labour inspection rules, the employer must comply with that order (clause 5). If a labour inspector receives a complaint, and the employer does not comply with the law, they have the power to investigate the facts of the matter

(clause 7). However, for offences under section 16 of the Labour Protection Act, B.E. 2541 (1998) – the sexual harassment provision – a labour inspector is required to submit the case to the inquiry official, without any orders to the employer (clause 9).

An inquiry official has the power and duty to conduct an inquiry under section 2(6) of the Criminal Procedure Code, B.E. 2477.¹⁸ The inquiry can be conducted at any place, and at any time, deemed practical, whether or not in the presence of the alleged offender (sect. 130). The inquiry official can collect all kinds of evidence to ascertain the facts and circumstances relating to the alleged offence (sect. 131).

This means that offences of sexual harassment are treated differently from other breaches of the Labour Protection Act, B.E. 2541 (1998). They are escalated to an inquiry official and not actioned directly by labour inspectors.



2.2. Criminal and civil law

Crimes are offences codified in the Thai Criminal Code, B.E. 2499 (1956), and constitute wrongs committed against the community and are punishable by way of financial penalties or imprisonment. Crimes are different from civil wrongs which are wrongs against a person that may require compensation. In Thailand, civil wrongs are governed by the Civil and Commercial Code B.E. 2468 (1925). Rape, indecency and indecent exposure are acts of sexual violence¹⁹ that are considered by law as both crimes and civil wrongs.

The Criminal Code, B.E. 2499 (1956) does not provide a definition of sexual harassment, sexual abuse, sexual violation, sexual violence or sexual nuisance – the terms used in the Labour Protection Act, B.E. 2541 (1998). Therefore, the relationship between these terms under Thai law is difficult to identify. Additionally, these terms do not translate neatly between the Thai and English languages. As stated above, the Labour Protection Act, B.E. 2541 (1998), treats these terms equally, as any infringement of section 16 of the Act results in the same punishment. Some, but not all, forms of sexual harassment may amount to criminal acts of sexual violence.

There is case law that demonstrates this crossover. The rape of a minor is a criminal offence. Additional penalties can also be sought under section 16 of the Labour Protection Act, B.E. 2541 (1998), if there is an employment relationship (see box 1) between the victim and the perpetrator.

¹⁸ The Criminal Procedure Code, B.E. 2477 (1956), defines an inquiry as “the collection of evidence and other proceedings conducted by an inquiry official according to the provisions of [the Criminal Procedure Code, B.E. 2477] in connection with an alleged offence, for the purpose of ascertaining the facts or establishing the guilt and securing the punishment of the offender” (sect. 2(11)).

¹⁹ “Sexual violence” is defined by the World Health Organization (2002, 149) as: “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”.

Box 1. The intersection of the Criminal Code and the Labour Protection Act in sexual violence cases: An example

In a case in Nakhon Pathom Province, a Thai employer raped his migrant employee who was 17 years old at the time. The court ruled that the defendant committed an offence of indecency against a minor under section 318 of the Criminal Code, B.E. 2499 (1956), and also violated section 16 of the Labour Protection Act, B.E. 2541 (1998). The offender pleaded guilty and the sentence was mitigated to one year and six months imprisonment with a 30,000 baht (US\$964) fine for the offence under section 318 under the Criminal Code, B.E. 2499 (1956), and a 5,000 baht (US\$160) fine for the offence under section 16 of the Labour Protection Act, B.E. 2541 (1998). However, due to the fact that the offender “had never received a prison sentence before, had an honest occupation, showed remorse, and compensated the survivor”¹, the prison sentence was suspended and the offender given two years of probation.

¹ Translated from the original judgment by the author. Source: Nakhon Pathom Provincial Court Judgment for *Criminal Case No. 3604/2560*.

2.2.1. Criminal offences that may constitute sexual harassment

Under Thai law, the offences of rape, indecency, and causing annoyance and bullying may be instances where sexual harassment amounts to criminal sexual violence or harassment.²⁰

The offence of rape

Rape is the most serious form of sexual violence, and it is a very serious criminal offence. The offence of rape is prescribed in section 276 of the Criminal Code, B.E. 2499 (1956), as follows:

Section 276. Whoever has sexual intercourse against other person’s will, by threatening by any means, by doing any act of violence, by taking advantage of such person being in the condition of inability to resist, or by causing the person to mistake one for the other person, shall be punished with imprisonment of four to twenty years and fined of eighty thousand to four hundred thousand baht.

There are certain circumstances that aggravate the offence and make it more serious (resulting in a higher maximum penalty); for example, if the offender appears to be or is carrying a fire arm, or if it is committed in a gang. If the offence is committed between spouses who wish to cohabit, there is discretion for the court to apply a lighter sentence.

Section 277 of the Criminal Code contains the offence of rape of a child. Consent is not an element of this offence, as the law states that a child cannot grant such consent. Again, there are aggravating circumstances relating to firearms and gang rape.

Section 1(6) of the Criminal Code, B.E. 2499 (1956), provides the definition of committing an act of violence, which means: “to do an act of violence against the body or mind of a person, whether it be by physical force or by any other means, and included any act causing any person to be in a state of being unable to resist, whether it be using drug causing intoxication, by hypnotism or by any other similar means.”

²⁰ It should be noted that some forms of sexual harassment may also fall under section 326 of the Criminal Code, which states that “whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation, and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand baht, or both”.

In 2019, the Criminal Code, B.E. 2499 (1956), was amended to streamline the law in relation to certain sexual offence provisions, and to clarify terms. These amendments clarified the definition of “sexual intercourse” in section 1 (18), which now uses the definition: “to satisfy the desire of the doer by using sex organ to penetrate against sex organ, anus or oral cavity of other person”.

The amendments also included the aggravating elements mentioned above and made recording, publishing or distributing images, or sounds of,

acts of rape an offence. The amendments also increased the penalties for rape and made it a “non-compoundable” offence. This means that it is no longer the case that parties can reach an agreement for compensation in order to drop or lessen the penalty. Another improvement was the removal of gendered terms in the offence of rape. The law is now gender-neutral in terms of who may be a perpetrator or a victim of rape.

Even so, the application of the law can still be ambiguous, as illustrated in the example in box 2.

Box 2. Ambiguity in the application of the law to rape cases: An example

In a Nakhon Pathom Provincial Court case, the defendant, an employer, took away a 17-year-old migrant worker from her mother, without the girl’s consent and without her mother’s permission. The defendant took the girl to a hotel and then committed an act of violence by pressing her down on the bed, making her unable to resist, and had sexual intercourse with her, against her will, in order to satisfy his sexual desire. This appears to satisfy the elements of the offence of rape under the Criminal Code.

However, the public prosecutor filed the case under the offence of taking a minor away from her parents for indecency (sect. 318, Criminal Code, B.E. 2499 (1956)), and the offence of sexual violation, harassment, or nuisance against an employee (sect. 16, Labour Protection Act, B.E. 2541 (1998)).

The charge of rape may have been mediated and dropped before the prosecution, as the judgment stated that the defendant paid compensation to the victim. It should be noted that an offence of rape was a compoundable offence at the time of the incident, making the compensation relevant to the lower charge.

The act was rape but the charge was not. However, when the judge applied section 16 of the Labour Protection Act, B.E. 2541 (1998), the words “offence of rape against employee” were used to convict the defendant. This shows the ambiguity of interpretation when applying the criminal and labour laws.

Source: Nakhon Pathom Provincial Court Judgment, *Criminal Case No. 3604/2560*.

A 2017 UN study on access to justice in rape cases in Thailand and Viet Nam, notes a number of reasons why the criminal justice systems in both countries do not fully facilitate access to justice for survivors of sexual violence. This leads to attrition in every stage of criminal justice procedures – the initial reporting stage, investigative

stage, pre-trial stage and trial stage. Barriers to justice in rape cases in Thailand include:

- a. **Societal factors:** cultural construction of femininity, strong patriarchal society, negative attitudes towards women, family honour and social stigma, and gender stereotyping.

- b. **Legal factors:** lack of comprehensive detailed legal definitions and guidance given by the Supreme Court, experience may not fit into legal interpretation, limitation requirements.
- c. **Procedural factors:** negative initial reporting experience, unfriendly spaces without privacy, biased questions during interrogation, language, negotiation outside the criminal justice system, low number of women officers, no judicial protection order for victims of sexual offences, lack of victim-centred approaches, perceived “weak” cases, lengthy delays, lack of communication, and judicial biases.
- d. **Institutional factors:** weak governance and accountability mechanism, limited institutional capacity and resources, insufficiently developed infrastructure, limited monitoring and evaluation (UN Women, UNDP and UNODC 2017, 130).

These factors would apply not just to rape, but to other sexual criminal offences that might be relevant if pursuing justice in sexual harassment cases.

The offence of indecency

The offence of indecency is considered an act of violence against another person and is contained in section 278 of the Criminal Code, B.E. 2499 (1956):

Section 278. Whoever, committing an indecent act to the person who is over fifteen years of age by threatening with any means, by doing any act of violence, by taking advantage of that person to be in the condition of inability to resist, or by causing that person to mistake one for the other person, shall be punished with imprisonment not exceeding ten years or fined not exceeding twenty thousand baht, or both.

Section 279 relates to indecency against a child. These offences are considered more serious if they were committed against a child under the age of 13, or if they are accompanied by violence or deception.

The Criminal Code, B.E. 2499 (1956), does not provide a definition of indecency. Case law from the Supreme Court’s judgments indicate that the term “indecent” means an act that is inappropriate in a sexual way, and can include sexual humiliation. This means indecency could include hugging, kissing or touching others in a sexually inappropriate manner, putting an arm around a shoulder, or any action of a sexual nature that makes the recipient feel uncomfortable.

Indecency need not be physical, and can be any action that sexually humiliates another person. An example illustrating this can be found in Supreme Court Judgment No. 12983/2558 (2015) which details a case in which the defendant used a camera to film up a woman’s skirt without her consent; this was considered as an act of indecency. Even though it was not an act of violence against the woman’s body, the offender committed the act to satisfy his sexual desire. This resulted in the humiliation of the complainant and thus constituted an act of violence against the mind. Violence is an element of the offence of indecency, and the ruling in this case expanded the interpretation of indecency under section 278 of the Criminal Code, B.E. 2499 (1956). As a result, any action that violates the mental state of a person by causing them nuisance, shame, embarrassment, or humiliation – such as sexual harassment – can also be considered an offence of indecency. In 2019, there was a new development in the Supreme Court concerning the definition of an “indecent act”, with the Court ruling that an “indecent act” means any inappropriate sexual act (Supreme Court Judgment No. 7178/ 2562). In doing so, the Court has opened the door to a much

broader interpretation of what constitutes an “indecent act” under the Criminal Code.

Workplace sexual harassment could amount to the offence of indecency, with the offence potentially covering acts such as touching, hugging, fondling, talking about one’s sexual activity in front of others, or displaying or distributing sexually explicit images. To commit the offence of indecency, the perpetrator does not need to be an employer or superior, as is required for behaviour to be considered sexual harassment under the law (as per section 16 of the Labour Protection Act, B.E. 2541 (1998)). As such, the offence of indecency could cover inappropriate sexual acts by colleagues, clients or others in the workplace. There would also need to be an element of violence – physical or mental – against the victim, or the perpetrator must be “taking advantage” of the victim in some way.

The offence of indecent exposure

According to the law, the offence of indecent exposure is a petty offence, which means it is considered less serious and attracts a lower penalty. The offence is contained in section 388 of the Criminal Code, B.E. 2499 (1956):

Section 388. whoever, doing any shameful act in public by indecently exposing oneself, or by committing the other indecent act, shall be liable to a fine of not exceeding five thousand baht.

The law does not provide definitions of “shameful act”, “indecently exposing oneself” or “other indecent act”. Importantly, this offence requires that it be committed “in public”, a term that has been considered by case law. In Supreme Court Judgment No. 4836/2547 (2004) the term “in public” was taken to mean performing a shameful act openly, even if no one sees it at that time.²¹

The offence of causing annoyance and bullying

The offence of causing annoyance is also a petty offence:

Section 397. Anyone who commits upon another in whatever manner an act of bullying, maltreating, menacing, or causing to suffer humiliation or annoyance shall be liable to a fine of not exceeding five thousand Baht.

If the offence under paragraph one is committed in a public place or in the presence of a third party or bears characteristics which give rise to sexual molestation, the offender shall be liable to imprisonment for a term of not exceeding one month, or to a fine of not exceeding ten thousand Baht, or to both.

If the offence under paragraph two is committed by taking advantage of the offender’s superior power over the victim in consequence of his status as commander, employer, or other superior figure, the offender shall be liable to imprisonment for a term of not exceeding one month and to a fine of not exceeding ten thousand baht.

Section 397 can be applied to sexual and non-sexual harassment, but the offence is more serious if there is a sexual element. In addition, it can occur between any persons, including work colleagues, clients or others whom an individual may interact with at work. However, the offence is considered to be more serious if the perpetrator is in a position of power, including being an employer. Notably, this offence could occur in a workplace or any other place, private or public.

²¹ It should be noted, however, that this judgment was applied to the offence of indecency under section 278, not section 388.

2.2.2. Civil and Commercial Code, B.E. 2468 (1925)

Sexual harassment could lead to claims for compensation and damages by a survivor under section 420 of the Civil and Commercial Code, B.E. 2468 (1925). The Code defines the liability for wrongful acts that may be related to sexual harassment behaviours as follows:

Section 420. A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

The victim may also claim compensation for moral damages, which is considered a non-pecuniary loss, under section 446:

Section 446. In the case of injury to the body or health of another, or in the case of deprivation of liberty, the injured person may also claim compensation for the damage which is non-pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or on action on it has been commenced.

Women who had been morally damaged by a person who committed a crime shall have the same claim.

These provisions protect the rights to life, bodily integrity, health, liberty, property and any other rights of individuals. Those who wilfully or negligently violate such rights, whether by acting, or by omitting to act, and causing damage, must pay compensation.



2.3. Legal processes and remedies

In order to pursue a complaint of sexual harassment, survivors must go through the legal process. These courts are open to everyone in Thailand, including women migrant workers. However, this process can be long, arduous, and expensive.

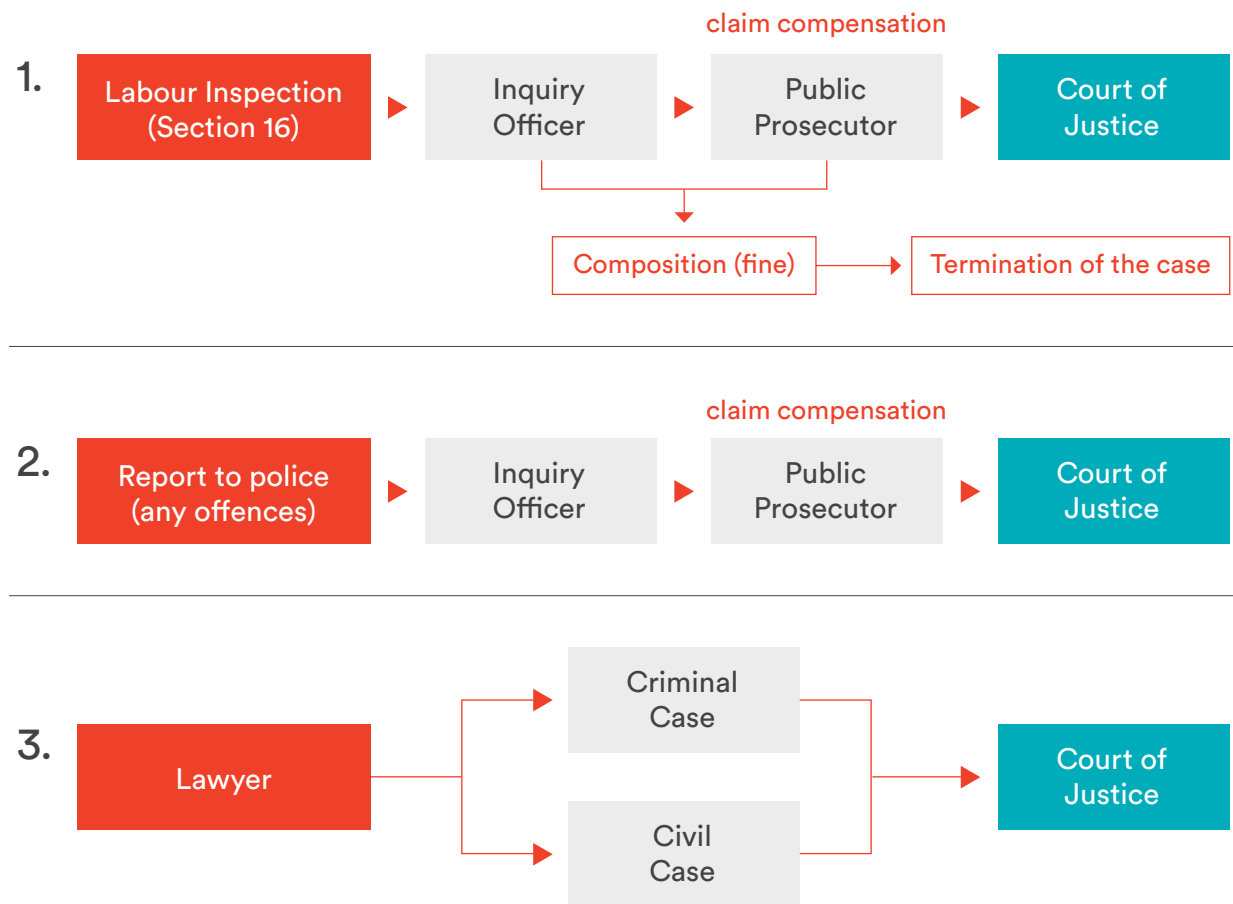
As an offence of sexual harassment is considered to be against the public order, a complaint or case is admissible in Criminal Court. If the case is raised under the Labour Protection Act, as mentioned above, inquiry officials shall conduct the fact-finding and help complainants to proceed the case. If the case is raised under the Criminal Code, the burden of proof is upon the complainant. Time limits, confidentiality, due process rights, and preventing victimization are all frequently identified as essential to the investigation of a harassment complaint. Emphasis is placed on the investigation being resolved promptly for the benefit of both the complainant and the alleged harasser. Confidentiality is considered a vital component of a sexual harassment complaints procedure, given the nature of many complaints, and the effect publicity may have on both victims and wrongfully accused harassers (McCann 2005).

2.3.1. Complaint and grievance procedures

Labour law cases are treated differently from criminal and civil matters. The process of judicial proceedings in the Labour Court is primarily based on mediation and dispute

resolution methods. If the employer and the employee cannot agree with the dispute resolution method, the court will consider the case according to the law. Sexual harassment cases, as standalone cases, are usually not accepted by the Labour Court.

Dispute resolution mechanisms in sexual harassment cases in Thailand



The figure above presents dispute resolution mechanism in sexual harassment cases in Thailand, which can be divided into three channels: labour inspection, reports to the police, or direct application to the court through a legal representative.

Labour inspection process

Victims of sexual harassment may submit complaints to labour inspectors. However, sexual harassment complaints are treated differently from other types of complaints. The

labour inspector shall conduct a preliminary investigation before referring such a complaint to the inquiry officer. The employee who has been sexually harassed is both a victim and a witness in such a case. If the inquiry officer finds the employer guilty, and the employer agrees to a composition (that is, agrees to pay a fine), the case will be terminated. If not, the case shall proceed to the Public Prosecutor and then the Court of Justice. Similarly, if the accused agrees to a composition with the Prosecutor, the case will be terminated.

Reports to the police

A person who experiences sexual harassment may choose to report directly to the police, without submitting a complaint to a labour inspector. The offence of sexual violation, harassment or nuisance under section 16 of the Labour Protection Act, B.E. 2541 (1998), includes a criminal sanction. The complaint may also fit other criminal offences, such as rape or indecency.

Time limits on the reporting of some criminal offences applies under the Criminal Code, B.E. 2499 (1956). Compoundable offences are offences that cause personal damage to any person, but do not cause damage to the State or society. Non-compoundable offences cause damage not only to the victim, but also to the State and society. If the offence is a compoundable offence, the survivor must report to the police within three months of the incident or of knowing who the offender was, otherwise the prescription period lapses according to section 96 of the Criminal Code, B.E. 2499 (1956). Compoundable offenses can also be dropped upon payment of compensation to the survivor. Rape is now a non-compoundable offence, while other offences linked to sexual harassment are still compoundable.

Direct filing to the court

A survivor can choose to file a case with the Court. Sexual harassment can be both a criminal offence and a civil liability under section 420 of the Civil and Commercial Code, B.E. 2468 (1925). A lawyer can choose to file the complaint as a criminal case, or the civil case, or both.

According to the Thai legal system, the burden of proof belongs to the complainants, who will have to collect information about the accusation. This means that survivors bear the cost of proving their claim, an impossible task for migrant workers who do not understand Thai language or who cannot afford to pay professional fees to find required evidence of their employer's assets. There are no clear links between court processes and survivor-support services that would help women migrant workers navigate these processes.

2.3.2. Remedies

Victims in criminal cases do not receive compensation directly from the offender. They have to submit a petition or sue the offender for civil damages, which incurs various fees and expenses. Under the Labour Protection Act, B.E. 2541 (1998), a fine for sexual harassment (under section 16) paid by the offender is collected into the employee welfare fund.²² It is not paid to the survivor.

A survivor's rights to claim compensation is prescribed under section 44(1) of the Criminal Procedure Code, B.E. 2477 (1956). The victim can submit a petition for compensation under the criminal case filed by the Prosecutor. The compensation that the defendant will pay to the victim must be for the damage to life, body, mind, liberty, reputation, or property caused by the act of the defendant. A victim may also have a right to receive compensation according to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001).²³

²² Section 126 of the Labour Protection Act, B.E. 2541 (1998), states that the employee welfare fund may be used when employees pass away, resign or for other purposes as the committee of the employee welfare fund may indicate, as prescribed in section 127 of the Labour Protection Act, B.E. 2541 (1998).

²³ This Act offers medical expenses up to 40,000 baht (US\$1,285) and 1,000 baht (US\$32) per day for hospitalization; up to 20,000 baht (US\$642) for rehabilitation; and up to 50,000 baht (US\$1,606) for compensation.

2.3.3. Dispute settlement

Before court proceedings commence, there will be a mediation process to settle the dispute between the parties. The Court will always attempt to mediate between the plaintiff/complainant and the defendant to reach an agreement or a compromise. The Mediation Act, B.E. 2562 (2019), defines the term “mediation” as “an operation in which the parties have the opportunity to negotiate and agree to settle the civil and criminal disputes by peaceful methods without deciding the disputes, exclusive of the mediations which are conducted in court and the stage of enforcement” (sect. 3).



2.4. Codes applying to civil servants, public officials and government agencies

The public sector is leading the way in Thailand in terms of preventing and protecting against sexual harassment in the workplace. While some gaps still remain, a 2015 Cabinet resolution has meant that Government agencies have adopted guidelines about sexual harassment prevention.

2.4.1. Civil Service Act, B.E. 2551 (2008)

Section 83 of the Civil Service Act, B.E. 2551 (2008), prohibits sexual violation and harassment:

Section 83. A civil servant must not commit any of the following prohibitions:

(8) to not commit acts which amount to a sexual violation or harassment as prescribed by the Civil Service Commission Regulation.

The Regulation of the Civil Service Commission on Sexual Violation or Sexual Harassment, B.E. 2553 (2010), issued under the Civil Service Act, B.E. 2551 (2008), prohibits civil servants from committing five types of sexual violation or sexual harassment against fellow civil servants and persons involved in the performance of official functions, regardless of whether it occurs in a government building or outside of a government building, in which consent has not been given, or annoyance is caused to the harassee (clause 2). The five types of sexual violation or sexual harassment listed in the Regulation are:

- a. physical conduct in an implicitly sexual way, such as kissing, embracing, touching any part of the body;
- b. verbal conduct in an implicitly sexual way, such as criticizing the body, talking, teasing, vulgarity;
- c. gestures in an implicitly sexual way, such as sexually staring, making any signs or symbols;
- d. any performance or communication in an implicitly sexual way, such as showing pornographic images or sending letters, messages or other forms of communication;
- e. other implicit sexual behaviour that is unwanted or an annoyance for the recipient.

The Civil Service Act, B.E. 2551 (2008), also prescribes a complaint procedure for sexual harassment. If the perpetrator is the manager of the person who has been sexually harassed, the complaint should be made to the “respective higher up”. If the complaint is against a person for whom there is no “respective higher up”, the complaint goes to the Merit System Protection Commission (sects 122 and 123).

The Regulation of the Civil Service Commission on Sexual Violation or Sexual Harassment, B.E. 2553 (2010), does not apply to the general public.

2.4.2. State Enterprise Labour Relations Act, B.E. 2543 (2000)

Sexual harassment is also prohibited by the Notification of the State Enterprise Labour Relations Board on Minimum Standards of Employment Conditions in State Enterprises, B.E. 2549 (2006), issued under section 13(1) of the State Enterprise Labour Relations Act, B.E. 2543 (2000):

Clause 10. An employer, a person in charge, a supervisor, or a work inspector is forbidden from committing sexual abuse, harassment, or nuisance against an employee.

Additional regulations extend this prohibition to any person who is authorized to act on behalf of a State enterprise.

2.4.3. Ethical standards for the highest officials

The Constitution of the Kingdom of Thailand, B.E. 2560 (2017), stipulates that ethical standards shall be prescribed by members of the Constitutional Court and Independent Organs in order to uphold the honour and interests of the nation (sect. 219). Those ethical standards will apply to those high office holders as well as Members of the House of Representatives, Senators and the Council of Ministers.²⁴ Provisions regarding sexual harassment are contained in clause 20 of the Ethical Standard of the Judges of the Constitutional Court and Persons holding positions in the Independent Organs, including the Auditor-General and Heads of the Secretariat of the Constitutional Court and the Independent Organs, B.E. 2561 (2018):

Clause 20. Do not conduct sexual abuse or sexual harassment causing the recipient, who is under undeniable condition, distress, damage or effect on duty performance.

Do not use a sexual relationship of oneself with any person to cause or influence any person to exercise discretion in performing duties which are favourable or harmful to any person.

2.4.4. Measures to prevent sexual harassment in government agencies

On 16 June 2015, the Cabinet, by resolution, adopted the Measures on Preventing and Combatting Sexual Abuse or Sexual Harassment

²⁴ The Ethical Standards only apply to specific groups of people, not to the general public. Persons subject to the Ethical Standards are defined in clause 3 as follows: the President of the Constitutional Court and judge of the Constitutional Court; a person holding a position in an Independent Organ such as Chairperson and The Election Commission, the president of Ombudsmen and Ombudsmen, Chairman and National Anti-Corruption Commission, Chairman and The State Audit Commission and Chairman and The National Human Rights Commission; The Auditor-General; Heads of the secretariat of the Constitutional Court and the Independent Organs such as Secretary-General of the Office of the Constitutional Court, Secretary-General of the Election Commission, Secretary-General of the Office of the Ombudsman, Secretary-General of the National Anti-Corruption Commission and the Secretary-General of the National Human Rights Commission; Members of the House of Representatives, the Senate, and the Council of Ministers under the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

in the Workplace, proposed by the Ministry of Social Development and Human Security, to prevent and combat sexual abuse and sexual harassment in the workplace. Government agencies are now obliged to follow the Measures while the private sector is encouraged to voluntarily adopt the Measures. This is an example of the public sector setting a high standard that the private sector can follow.

The Measures prescribe that government agencies must establish guidelines on preventing and addressing sexual harassment that cover all personnel and others who work for the agency, including students and contractors (measure 1.1). The Measures also prescribe that agencies must increase understanding and knowledge about sexual harassment (measure 1.3), and change mindsets (measure 1.2). Processes to address sexual harassment can be both informal and formal (measure 1.4), but matters must be solved swiftly and confidentially (measure 1.5). For complaints, a fact-finding committee should be established (measure 1.6), and the chairperson of that committee should have experience solving sexual abuse matters. Agencies are required to report to the Committee on Gender Equality Promotion at least once a year (measure 1.7). The Committee on Gender Equality Promotion is established under section 5 of the Gender Equality Act, B.E. 2558 (2015), and is mandated to promote “gender equality in all public and private entities”. The Measures reflect Thailand’s obligations to comply with CEDAW.

Sample guidelines on preventing and combatting sexual abuse or sexual harassment are attached as an appendix to the Measures, as a template for adoption by government agencies. According to the sample guidelines, sexual abuse and sexual harassment are defined as “any sexual actions involving force or misuse of power in the form of speech, messages, gesture, visual elements, documents, or electronic data”. Actions that could be considered as sexual harassment are defined as follows:

Harassing by staring or looking inappropriately such as sexual looks, looking under women’s dresses, or staring at women’s breasts which cause the person or others to feel uncomfortable or embarrassed.

Harassing by verbal conduct such as commenting about a person’s clothing or person’s shape, requesting sexual favours, making sex-based jokes, making unwanted phone calls, making catcalls and lewd noises, discussing one’s sex life and fantasies, or spreading rumours about a person’s personal or sexual life.

Harassing by physical conduct such as making a sexual body language, blocking someone’s movement, touching, hugging, kissing, fondling, sexual assault and intercourse, licking lips, blowing kiss, whistling, intentionally standing too close, or pulling people to sit on the lap.

Other conduct such as displaying or distributing sexually explicit drawings, text, pictures or written material or by sharing via the internet.

Sexual favours in exchange for an employment benefit if a person agrees to have a sexual activity with them by promising to provide benefits such as job positions, academic results, scholarships, observational study or renewal of work contracts.

Intimidation such as threatening to engage in sexual activity or to rape a person.

The sample guidelines also cover informal and formal processes. Significantly, the protection of victims, witnesses, and the accused person are also covered by the guidelines.

The sample guidelines have been adopted in a number of government agencies. Some government agencies, such as the Office of the Economic and Social Development Council, and the Department of Agriculture Extension, have

produced infographics and leaflets about sexual harassment to promote better understanding. However, one weakness of the guidelines must be noted: There are no penalties prescribed under the guidelines.



2.5. Cases and complaints

Victims of sexual harassment also have the option of filing a complaint to one of several bodies. These include: the National Human Rights Commission of Thailand, the Department of Labour Protection and Welfare, the Ministry of Labour (including those complaints brought to labour inspectors), and some non-governmental organizations (NGOs). Women migrant workers are entitled to use such channels. However, in the course of conducting research for this report, we discovered that there are very few documented cases, indicating that barriers exist for women, in particular women migrant workers.

Court cases relating to sexual harassment brought by women (nationals as well as migrants) are limited in number. According to the Legal Affairs Division of the Department of

Labour Protection and Welfare, from June 2015 to May 2019, there were just four complaints related to section 16 of the Labour Protection Act, B.E. 2541 (1998) (the section that prohibits sexual harassment).

The number of cases and complaints related to sexual harassment perpetrated against women migrant workers are unknown. Statistics from the Department of Labour and in court cases do not contain information about the nationality of victims. Similarly, statistics about sexual-related offences collected by the Royal Thai Police do show the nationality of victims, but they do not differentiate whether the victims are migrant workers or tourists.

Nevertheless, sexual harassment against women migrant workers does occur. This was demonstrated by the Nakhon Pathom Provincial Court Judgment for *Criminal Case No. 3604/2560* mentioned above (see box 2)

It is important to take into account that the absence of complaints on sexual harassment does not mean that it is not taking place. In this study, individual interviews and small group discussions with women migrant workers and representatives from NGOs strongly affirmed that sexual harassment in the workplace in Thailand does occur, but it is largely unreported. This finding is in line with the CEACR’s warning that “the absence of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisals” (ILO 2012a, para. 790).

2.5.1. Examples of sexual harassment that did not result in legal action

The below examples are the stories of women, most of them migrant workers, who were sexually harassed but did not claim their rights through the legal channels available. The severity of the harassment is varied, from rape, to sexual advances, to touching, to the display of pornography. In all instances the women report discomfort and fear.

The responses of the women also vary greatly between the situations. In some cases, they chose to leave their employment; in others, they bore with the situation until they had an opportunity to leave; and yet in other cases, they took some action to report the behaviour to others around them. It is not clear from these examples why some women chose to leave their employment rather than pursue action. Perhaps they did not know that legal redress was an option for them, or perhaps they did not have faith that the legal system would assist them. One barrier to legal redress mentioned in these examples is a lack of evidence or witnesses. Another is uncertainty regarding their immigration situation if a complaint were to be made.

A woman migrant worker from Myanmar was secretly filmed while she was in a toilet at work by her Thai colleague. She confronted him and reported the matter to her employer. He received a warning but no punishment. Fearing for her safety, she decided to move to another province.²⁵

An undocumented woman migrant worker who had mental health issues worked as a domestic worker on the night shift in an apartment. Upon bringing a spare room key to a male customer, she was tricked into his room and raped. It was not reported to the police as the offender could not be identified. Due to the fact that she did not have the documentation to stay and work in Thailand, an NGO helped her by finding a place for her to stay in her home country.²⁶

A Thai woman worker was raped by her male employer. She was afraid and she did not take any action. He told her that he was single, and they started to have a consensual relationship. After a while, she became pregnant and discovered that he actually already had a wife. Their relationship went on for eight years. The employee wanted to file the rape case, but did not have any evidence from that time.²⁷

A woman migrant worked as a domestic worker for three years. Her employer often watched pornographic films when his wife was not at home, and intentionally turned up the volume. She felt that he deliberately wanted her to hear the pornography. She sometimes also had the feeling that he was watching her while working. She avoided him, consulted with her close friend, and then told the wife of the employer.²⁸

Another woman migrant worker often received unwanted touches from her male colleague. She disliked such behaviour and felt uncomfortable. She told her colleagues about the incidents, and eventually reported the incidents to his boss. He promised to keep an eye on the man.²⁹

25 Interview, NGO, Samut Sakorn, 14 June 2019.

26 Interview, NGO, Chiang Rai, 2 July 2019.

27 Interview, lawyer, Bangkok, 13 June 2019.

28 Interview, woman migrant worker, Bangkok, 7 July 2019.

29 Interview, woman migrant worker, Bangkok, 7 July 2019.

One undocumented migrant worker entered Thailand when she was 17 and worked as a domestic worker in a house where her relative was working. One day, when she was alone in the house with the male employer, he came to her and gave her a massage on her shoulders and pulled the strap of her bra. He then made some inappropriate jokes. She was scared and ran to lock herself in the toilet until someone came home. After that she left the house without telling anyone, not even her relatives, about what happened.³⁰

A 17-year-old migrant lived with her family in a construction worker camp. She sometimes helped her parents with construction work. She felt that the camp was not safe for her. The toilets and bathrooms were full of holes, and men gathered and drank alcohol in front of the bathroom. The room where her family lived had no lock on the door. One night while she was sleeping, she felt someone enter the room and stand by her feet, watching her. Then she heard the voice of her brother coming to the door, and she fell back to sleep. In the morning, she found a condom near her bed. The girl told her mother about feeling unsafe, but her mother did not take any action. She never told her mother again, and decided to tolerate the situation until she could leave the camp one day.³¹

A migrant worker worked as a domestic worker when she was 14. Her employer bought clothes for her many times. One day, her employer attempted to enter her room to rape her. As her room had no lock on the door, she moved her bed to block the door and waited until his wife came home. After that, she moved out to find another job.³²

The stories above showcase serious violations of the law, and of the dignity and well-being of the victims. The decision of these women to not report their cases is certainly understandable given the trauma they have experienced and their fear of what may stem from seeking redress, but ideally all such cases should be reported, not just to ensure that justice is done for these specific victims, but also to prevent the persistence of a culture of impunity and to uphold the right of everyone to a world of work free from violence and harassment, including sexual harassment. To this end, all workers, and particularly women workers, need to have equitable access to legal redress and complaints mechanisms that will properly handle their claims and offer the protection and confidentiality they need to feel confident enough to seek justice.

2.5.2. Examples of sexual harassment that did result in legal action

The below examples are of women migrant workers in Thailand who took action to report and pursue legal redress for complaints of sexual harassment. The outcomes of their cases are varied. In some cases, the survivor received some compensation. In others, no legal remedy was forthcoming. In most of these stories, assistance from an NGO was required to help the complainant access justice. This indicates that there are barriers to women claiming their rights without this additional support. In one case, the survivor reported being retraumatized due to the insensitive nature of the police investigation.

30 Interview, woman migrant worker, Bangkok, 28 July 2019.

31 Interview, woman migrant worker, Chiang Mai, 10 August 2019.

32 Interview, woman migrant worker, Chiang Mai, 10 August 2019.

An undocumented woman migrant worker who worked in a sewing factory was raped by another migrant worker in the workers' accommodation situated within the area of the factory. The incident was reported to the human resources department. Her offender confessed during the mediation, and she wanted to take legal action. However, the employer did not want the police to be involved, so the employer fired them both. She then went to file a complaint with the police by herself. Legal action proceeded, but her offender went back to his home country and could not be called back to face his charge.³³

A 17-year-old migrant worker without immigration documentation was raped by her employer. The Department of Labour Protection and Welfare received a complaint from her family, and helped her bring her case to the court for both the criminal offence and the sexual harassment offence under section 16 of the Labour Protection Act, B.E. 2541 (1998). The migrant worker received monetary compensation before being repatriated to her country of origin.³⁴

A migrant worker was offered a drink by a recruiter and became unconscious. She woke up in a room and found that she had been raped. She did not know where she was, or the real name of the recruiter. An NGO helped her to collect information and evidence, and finally reported the rape to the police. During the investigation, the police officers made her physically act out the incident, which shocked the woman migrant worker and the NGO staff. She later found out that her niece had also been raped by the same recruiter and became

pregnant. As the investigation got closer to the offender, she received a death threat from him. To date, the offender is still at large.³⁵

A woman migrant worker reported to an NGO that she had been sexually harassed by her supervisor. He touched her shoulders and breasts many times at work. There were witnesses, but none dared to speak up against the supervisor. An NGO then helped her bring the case to court. The case was mediated in court by a judge, and the supervisor paid her 80,000 baht (US\$2,568) as compensation. He was later moved to another position, while she continued her work.³⁶

A girl aged around 15 years old worked as a part-time domestic worker in a house where her mother used to work. Her friend contacted an NGO, and a staff member approached the girl. It turned out that the girl had been raped by the employer over a period of two years, and her mother had sent her to the employer in exchange for money. Her mother was arrested for human trafficking.³⁷

The below case is different from the others. In this case, legal action was not taken by but against the victim of sexual harassment.

A woman migrant worker who was employed in meat processing was put in prison while awaiting her trial for assaulting the son of her employer. An NGO visited her in prison and learned that the assault had been an act of self-defence. The woman migrant worker was chopping meat, as a part of her job, when the son of her employer approached her from behind,

³³ Interview, NGO, Chiang Rai, 2 July 2019.

³⁴ Interview, Department of Labour Protection and Welfare, Bangkok, 10 June 2019.

³⁵ Interview, NGO, Chiang Mai, 10 August 2019.

³⁶ Interview, trade union, Bangkok, 5 June 2019.

³⁷ Interview, NGO, Chiang Rai, 2 July 2019.

inappropriately touching her. She turned around still holding a knife in her hand and accidentally cut his face. She was charged as an offender, and was never able to report the sexual harassment.³⁸

2.5.3. Reasons sexual harassment goes unreported

Many, if not most, cases of sexual harassment go unreported. The ILO and UN Women state in the *Handbook: Addressing Violence and Harassment against Women in the World of Work*:

Ensuring women’s access to justice and redress is critical to achieving full enforcement and monitoring of laws addressing violence and harassment. In many countries, existing laws fail to take into account the negative impact of social and cultural norms on how women exercise their rights, as well as the lack of training of and awareness amongst labour inspectors and other authorities (ILO and UN Women 2019b, 26).

The interview findings from this study described above align with other studies on sexual violence in Thailand to give insights about why sexual violence and harassment goes unreported in Thailand.

Societal factors

Thailand has a strong patriarchal culture, and traditional views and attitudes towards women are that women are weak, they should stay at home, and are followers of men. As mentioned in Chapter one, gendered norms lead to myths about sexual violence, which ultimately lead to a tolerance of gender-based violence.

Women are often partially blamed for violence inflicted upon them and the dishonour that

it is perceived to bring. Many women may have internalized that sense of blame, and experience shame and fear of the social stigma of being a survivor of sexual violence or harassment. To protect personal or family honour and kinship, as well as to maintain social status, survivors and their families may be inclined to “save face” rather than seek justice.

Cultural norms and stereotypes that prize purity or innocence in women are a barrier to justice. Such norms may lead to the belief that rape is a problem only when it happens to “good” or “innocent” women. This was evident in the attitudes of police towards one woman whose story was told in the UN report *The Trial of Rape*. She said:

Then the other police officer asked me “Why didn’t you simply accept compensation from him (the offender)? You already have children, why you were asking for so many things?” I thought that was an insult. It was me who was raped and I had to be the one who understands and compromises? (UN Women, UNDP and UNODC 2017, 31)

Legal factors

While there are provisions in Thai law labour law and criminal law that could apply to sexual harassment, there are gaps in terms of coverage, definitions, and remedies. As discussed above, there are very few cases brought under the existing provisions.

Since there is a lack of comprehensively detailed legal definitions of sexual-related offences in Thai law, judiciary officials have broad discretion, and there remains the potential for sexual harassment to be downplayed, especially given the social norms discussed above. This then could have a reinforcing effect in society, as court interpretation sends

³⁸ Interview, NGO, Bangkok, 27 July 2019.

a message to society about which behaviour is regarded as acceptable or unacceptable.

There are additional vulnerabilities for migrant workers in terms of court discretion. As officials have discretion to deport migrant workers, migrant workers who experience of sexual violence and harassment may fear deportation and thus not report.

Procedural factors

The examples of both reported and unreported sexual harassment discussed in the sections above indicate that women face multiple barriers in pursuing legal recourse. In addition to perhaps not being aware of all the legal options available to them, some women may not have the ability or resources to access those legal options. Most of the examples above wherein action was taken, involved the assistance of an NGO. Women migrant workers, with few ties to the community around them and lacking social support, may find it even harder to access the resources they need.

The procedural application of the law also affects women's likelihood to report, and the likelihood that they will continue through the complaint process until they access justice. Interviews from this study found that when they went to make a complaint, survivors of sexual violence often had to wait long hours, without privacy, in police stations primarily staffed with male police officials. Questions asked by the police have implied that the victims are at least partially to blame for what was done to them. Some examples recounted in interviews for this study were: "Why were you there late at night?"; "Why did you go with him in the first place?"; or "What did you wear when it happened?"

Additionally, survivors were often encouraged to mediate their complaints. This could mean that a survivor may be required to face the person who harmed them. Mediation is problematic in cases where there is a

power discrepancy between the parties, as is the frequent case in sexual violence and harassment complaints.

Evidence may be scarce in sexual violence and harassment cases because the offences may have taken place in private and there are unlikely to be witnesses, especially in the context of domestic work. Since there are often no witnesses or material evidence to these comments or conduct, issues of credibility often arise in sexual harassment claims. The requirement of proof beyond a reasonable doubt under the Criminal Code is, therefore, difficult to meet, as the burden of proof is borne by victims.

When public prosecutors assess evidence and perceive the case as being "weak", they may not proceed to take the matter to court. Discriminatory social and cultural values may impact officials' assessment of the evidence, and their subjective attitudes about the credibility of survivors may affect their decisions.

Such discriminatory social and cultural values, patterns and practices may impact the complaint at any point throughout the process. They may be reflected in the conduct of the police, prosecutors and judges, and may determine how the law is applied, as well as the speed and thoroughness of the response. Gender stereotyping and discriminatory attitudes are evident in some Supreme Court judgments (Shah 2017). For example, in Supreme Court Judgment No. 536/2528, an 11-year-old girl did not cry for help during sexual intercourse, which was interpreted to mean that it was not against her will.

An analysis of Supreme Court judgments between 1952 and 2002 found that there are three significant considerations that the court takes into account when assessing evidence about whether sexual intercourse was consensual or rape (Preechasilapakul

2009a; 2009b):

- a. **The duration of time between the incident and when the victim reported to the police, told someone and asked for help, or went to see a doctor for examination.** This consideration ignores the impact that shame, fear, trauma, lack of knowledge about possibilities for legal redress, and lack of resources to access legal redress may have on survivors’ willingness or ability to immediately report.
- b. **Wounds on the victim’s body which imply resistance.** The more severe the wounds, the heavier the weight of evidence may be that there was not consent. Victims of rape who do not have physical wounds may be seen to have weaker testimony in the eyes of the court. This plays to the myth that sexual violence involves strangers and physical force. It ignores the fact that sexual violence and harassment is perpetrated by people known and trusted by the survivor, and can involve coercion rather than force.
- c. **The prior relationships and practices of the victim.** If a victim has been the partner of the perpetrator, that may impact the court’s findings about consent. Additionally, victims of sexual violence can have their prior sexual history examined by the court by expert witnesses throughout the legal proceedings for the purpose of fact finding. This can further violate and traumatize the victim. This perpetuates myths that sexual violence is only a problem when it happens to “good” girls, and that women are at fault for the violence perpetrated against them.

All of the above demonstrate why it is so important to adopt effective legal measures to address cases of sexual harassment. While criminal law may allow victims to seek police protection, especially in cases of sexual assault, the burden of proof is high and criminal law does not address the wide range of unacceptable behaviours and practices that sexual harassment

includes. Cases brought under general provisions are usually conducted according to ordinary procedures, which are often criticized for being too public, too complex, isolating for the complainant, and insufficiently responsive to the difficulties of proving sexual harassment. Labour laws regulating contracts of employment, which specify the contractual rights and duties of employees and employers, are also used to tackle sexual harassment. However, independent contractors, trainees, volunteers, and job applicants should also be covered, as should other specific categories of workers, such as domestic workers, agricultural workers and workers in the informal economy.

Institutional factors

The ability of wealthy and powerful individuals to influence the outcome of matters through the promise of compensation can influence the process of justice. Survivors may feel pressured to settle the case outside of the justice system. This weakens the integrity of the system overall. A lack of implementation of mechanisms to address sexual violence leads to distrust of the system, and decreases the likelihood survivors will make a complaint.

Having gender diversity among officials who carry out inquiries is vitally important. However, women inquiry officials may also be biased, and gender stereotypes within institutions can undermine the positive gains that gender diversity can have. For example, women inquiry officials may be marginalized in the institution by being assigned only the sexual-related offence cases. This could undermine the credibility of those officials and undermine the seriousness of the cases that they are working on. Finally, the physical infrastructure of public institutions impacts the experience of those using them. There are few women-friendly facilities in police stations and hospitals to support survivors of sexual violence.



3.

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Gaps, limitations and recommendations

This chapter presents the gaps and limitations in the current laws, policies and measures relating to the prevention of, and response to, sexual harassment and violence in the world of work in Thailand, especially with regard to women migrant workers.

This chapter is divided into three sections. The first section presents gaps and limitations in laws, policies and measures; while the second section explains gaps and limitations in enforcement mechanisms. The third section presents gaps and limitations in prevention of sexual harassment and violence in workplaces in Thailand.

Given that the Violence and Harassment Convention, 2019 (No. 190), will come into force on 25 June 2021, the timing is right for Thailand to take a root and branch review of all laws relating to sexual violence and harassment in the world of work. In undertaking this review, law and policymakers can refer to the ILO and UN Women’s (2019b) *Handbook: Addressing Violence and Harassment against Women in the World of Work*.

Recommendation 1

The Government of Thailand should engage relevant ministries and departments, as well as social partners and stakeholders, to embark on a consultative review of all relevant laws, regulations, measures and policies in order to set a law reform agenda to bring national laws into alignment with international standards, including the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019. This process should include consultations with workers’ and employers’ organizations, as well as organizations concerned with migrant workers and/or domestic workers.



3.1. Gaps in laws, policies and measures

The gaps in laws, policies and measures relating to the prevention of, and response to, sexual harassment in the workplace in Thailand can be categorized into three thematic topics:

- a. Definitional gaps and language (and translation) inconsistencies;
- b. Coverage of the law; and
- c. Penalties and outcomes of sexual harassment complaints.

3.1.1. Definitional gaps and language/translation inconsistencies

Many of the laws, policies and measures presented in Chapter two lack definitions of important terms. For example, in the Labour Protection Act, B.E. 2541 (1998), there are no definitions of “sexual abuse”, “sexual harassment”, or “sexual nuisance”, and the legal interpretations of these terms are unclear. Considering that these laws are usually presented to the public through websites or notice boards at workplaces in their original text, survivors of sexual harassment may not understand how the laws relate to their experience and therefore may be discouraged from taking further actions.³⁹

Definitional ambiguity may be clarified through interpretations and rulings in court. However, ambiguous definitions concerning sexual harassment may discourage lawyers from taking on cases, as there is uncertainty as to whether the case will be successful. Furthermore, the Thai courts use an accusatorial system. In order to win the case, the plaintiffs must be certain about the charge

39 Interview, President of the Cuisine and Service Workers’ Union, 5 June 2019.

in order to prove that the offender committed the crime.

Finally, the language used in laws, policies, measures and official documents is often difficult to understand, even for native Thai speakers. Official translations of the reviewed laws, policies and measures are limited (and often only done in English) and are not easy to read. This creates an additional barrier for those whose first language is not Thai or English], such as migrant workers. The result is laws, policies, and measures that are difficult for both Thai and migrant victims of sexual harassment to read and interpret, and which are also difficult for victims' Thai- and English-speaking supporters to navigate as well.

Recommendation 2

The definitions relating to sexual harassment and violence in the labour law and criminal law should be reviewed, with an aim to clarify and define terms either in the law or through supporting regulation or guidelines, and in line with international standards or guidance from UN and ILO supervisory bodies. A consultative approach to this review should be taken, and a starting point could be the definitions contained in the Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), issued under the Civil Service Act, B.E. 2551 (2008). There are clear definitions of types of sexual violence and sexual harassment within the regulation. However, the Regulation does not apply to the general public and lacks detail on the remedies available in cases where sexual violence or harassment is proven.

Recommendation 3

Translations of the law into English and other languages should be reviewed for their accessibility in consultation with representatives from communities who specialize in languages other than Thai. Particular focus should be on the native languages spoken by women migrant workers in Thailand.

3.1.2. Coverage of the law

Remedies for sexual harassment are not available in every instance. The law does not cover every instance of what may constitute sexual harassment following international standards and this could lead to confusion and a lower likelihood that sexual harassment receives redress.

Horizontal relationships

The Labour Protection Act, B.E. 2541 (1998), only covers sexual harassment that occurs in a vertical relationship. Section 16 of the Act, which prohibits sexual harassment in the workplace, only applies to acts of harassment committed by superiors against their subordinates. The provision is wrongly based on the assumption that someone cannot have power or influence over a colleague at the same level or position.⁴⁰ However, social capital varies across individuals, and this can affect individuals' positions at work. Additionally, sexual harassment disempowers those against whom it is targeted. It may be used to disempower and humiliate workers who are perceived to threaten the social or workplace standing of another worker. An example would be derogatory sexual remarks being made to a hardworking woman employee by her male co-workers to decrease

40 Interview, Department of Labour Protection and Welfare, 10 June 2019.

her comfort and productivity at work, so that the male employees are more likely to receive workplace promotions and recognition.

This gap in protection against sexual harassment committed by colleagues in horizontal relationships is significant. Many women migrant workers interviewed for this study spoke about their experiences of being sexually harassed by men colleagues. An example is a complaint received by an NGO working with migrant workers in Thailand. In that case, a Thai colleague took photos of a woman migrant worker in a factory while she was in a toilet at work. When the woman migrant worker confronted him, he deleted the photos and destroyed the evidence, so she went to their superiors. Despite believing her, their supervisors only scolded the local worker, without giving him any concrete punishment. The woman migrant worker then moved to find a new job in another province due to fear for her safety.⁴¹ In another interview, a woman migrant worker reported that a Thai worker at the shoe factory where she worked would slap her arm every time he saw her. She told her female colleagues about this, and together they went to his superior, who promised to “keep an eye on him”.⁴²

The Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010) does cover sexual harassment against co-workers who are government officials or those who work for the government, regardless of whether the commission of an act occurs inside or outside of the government building.

Recommendation 4

The Labour Protection Act, B.E. 2541 (1998), should be amended so that the definition of sexual harassment includes harassment by co-workers.

Third parties: Recruiters, clients and police

Section 16 of the Labour Protection Act, B.E. 2541 (1998), does not cover sexual harassment committed by third parties such as recruiters, customers or state officials.

There are incidents of sexual violence against women migrant workers by both Thai and non-Thai recruiters.⁴³ Many migrant workers depend on recruiters to find them employment in Thailand, and may be vulnerable to exploitation by recruiters. One example is from an NGO that dealt with the case of a recruiter who offered women migrants employment in Thailand in return for sexual favours. It should be noted that section 27 of the Foreigners’ Working Management Emergency Decree, B.E. 2560 (2017), only allows limited companies or public limited companies to apply for licenses to bring migrant workers into Thailand for employment. Hence, individual recruiters of migrant workers are illegal.⁴⁴ However, in practice, these recruiters may supply migrant workers to licensed companies.

Most anti-sexual harassment policies and measures only cover direct employer-employee relationships, which do not adequately reflect the realities of the world of work. As previously mentioned in chapter one, many existing research papers about sexual harassment in Thailand report that

41 Interview, NGO, Samut Sakorn, 14 June 2019.

42 Interview, woman migrant worker, Bangkok, 7 July 2019.

43 Interview, NGO, 4 July 2019.

44 Interview, Department of Employment, 5 July 2019.

employees in the service industry tend to be more exposed to sexual harassment because the nature of their work requires them to be in contact with customers. This was also reflected in interviews undertaken for this study. For example, a woman employee of a tour company reported that being touched and receiving inappropriate comments about her body by customers was almost inevitable, especially when the customers consumed alcohol. The tour company solved this problem by assigning men employees to events where alcohol could be consumed and not letting women staff accompany all-men groups of customers. While these measures were intended to protect women employees, they also limit women's ability to participate in the workforce on an even basis with men. A less discriminatory approach would have been to take action against the sexual harassment perpetrated by men customers.

In some workplaces, especially in the hospitality industry, the sexualization of women's bodies can be part of the service being sold to clients. In such cases, employers knowingly put women employees in a position where it is likely they will be sexually harassed by a customer. This practice is sometimes associated with more serious crimes. Some exploitative employers, such as those in the restaurant or entertainment sectors, have been known to hire women migrant workers to serve customers but then later prevent the workers from leaving unsafe workplaces by indebting them with the costs of the food and drink consumed by them, among other hidden costs of employment.⁴⁵ This situation raises issues of agency, exploitation and consent. Women in such workplaces should never be placed in such positions out of coercion, and

they must be empowered, and supported, to reject sexual behaviours that are unwelcome and unwanted.

Sexual harassment may also be committed by other third parties. In a group interview, three women, all of whom work as cleaners in the same building, reported that they have been inappropriately touched, grabbed, and told dirty jokes by the same Thai security guard of the building. Asked about how they have responded to this behaviour, the women said it was better to walk away and avoid him. "It is not that serious, and he has been here long before us. Thankfully he will retire soon, so we just have to stay away from him until then," said one of the women, who was the most senior among the three.⁴⁶

Many interviewed women migrant workers also reported to have been themselves – or witnessed another woman migrant worker – sexually harassed by police officers. For example, one woman migrant worker, who has been in Thailand for almost three decades, recounted several incidents where police approached women migrant workers, asking to search their bodies. She said:

One time, they [the police officers] told us to strip off our bras. My friend and I were reluctant; then one of them tried to grab me, so I screamed for help, and he stopped. He probably thought that we did not understand or speak Thai.⁴⁷

More than once, she witnessed women migrant workers being searched by police. These incidents often happened on their way to and from work because "they [police] know that we [women migrant workers] will be there". Another interviewed woman migrant

45 Interview, NGO, 4 June 2019. Also, Interview, Provincial Office of Ministry of Social Development and Human Security, Samut Sakorn, 14 June 2019.

46 Interview, woman migrant worker, 30 June 2019, Bangkok.

47 Interview, woman migrant worker, 30 June 2019, Bangkok.

worker who works as a domestic worker said she had been inappropriately touched by policemen twice.⁴⁸

Despite having wider coverage in some aspects than the Labour Protection Act, B.E. 2541 (1998), the Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), does not cover sexual harassment committed by third parties. This is a shortcoming for those who work in public services such as hospitals or educational institutes, and especially for those who are not civil servants but who are nonetheless contracted to work in government institutions, such as temporary employees, who lack job security.⁴⁹ The Measures on Preventing and Combatting Sexual Abuse or Sexual Harassment in the Workplace (2015) cover all those who do relevant work with a government agency, such as trainees and contractors. However, the Guidelines issued by a number of government agencies under those Measures only use the term “personnel of the agency” with no definition elaborated.

Recommendation 5

The Labour Protection Act, B.E. 2541 (1998), should be amended so that the definition of sexual harassment includes harassment by third parties, including but not limited to recruiters, clients, contractors, and officials with whom employees, or others carrying out work for an employer or organization, may come into contact with through the course of their work duties.

Recommendation 6

The Labour Protection Act, B.E. 2541 (1998), and Occupational Health, Safety and Environment Act, B.E. 2554 (2011), should be amended so that employers are vicariously liable for sexual harassment that occurs in the world of work, unless they can show that they have taken appropriate steps to prevent and protect against sexual harassment. Such steps may include policies and training. Vicarious liability means that one person is held responsible for the actions of another person. In this case, it would mean that an employer could be held responsible for the actions of their employees, customers, or third parties.

Recommendation 7

The Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), should be amended to cover sexual harassment by third parties.

Recommendation 8

The Guidelines adopted by government agencies to implement the Measures on Preventing and Combatting Sexual Abuse or Sexual Harassment in the Workplace (2015) should be reviewed, with assistance provided to agencies on how they can improve the content and implementation of the Guidelines. A review could also inform the adoption of the Guidelines by the private sector (see Recommendation 19).

48 Interview, woman migrant worker, 30 June 2019, Bangkok.

49 Interview, Gender Equity Division, Women’s Affairs and Family Development, Ministry of Social Development and Human Security, 8 July 2019.

Interns and contractors

The Labour Protection Act, B.E. 2541 (1998), defines employees as “those who agree to work for the employer for wages”. Accordingly, unpaid interns, who seek to earn study credits or work experience are not covered by the Act.

In addition, the Labour Protection Act, B.E. 2541 (1998), only covers those in an employer–employee relationship, but not those in a client–contractor relationship. Therefore, independent contractors, who work for fees to carry out assignments or projects, are not protected under the Act.

Recommendation 9

The Labour Protection Act, B.E. 2541 (1998), should be amended so that unpaid workers and those who do not have employment contracts – such as jobseekers, interns, apprentices and volunteers – and workers whose employment has been terminated are also protected against sexual harassment. This is in line with Convention No. 190.

Recommendation 10

The Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), should be amended to protect civil servants and persons working for public agencies, irrespective of their contractual status.

Work-related places

The Occupational Safety, Health and Environment Act, B.E. 2554 (2011), focuses on the workplace only. However, sexual harassment can happen outside the workplace

through technology, and in work-related places such as accommodation provided by employers. According to the interviews and focus group discussions conducted for this study, women migrant workers in construction and agriculture frequently experience sexual harassment in their accommodation.

Interviewed construction workers did not feel safe in the employer-provided accommodation. Toilets were made from worn-down zinc plates with holes and gaps, and many times the women migrant workers perceived that someone was watching them from outside. Although there are private bathrooms (an improvement from open-air baths with no separation between men and women), groups of men would often be sitting in front of the bathrooms that the women migrant workers use (ILO 2016a). In 2016, the Labour Welfare Committee under the Ministry of Labour issued the Notification of Labour Welfare Committee on Standard of Labour Welfare on Accommodation for Construction Employee. The Notification sets basic standards, but it is only a recommendation and not enforceable. There are currently no private sector standards concerning workers’ accommodation in the construction industry.⁵⁰

Recommendation 11

The Occupational Safety, Health and Environment Act, B.E. 2554 (2011), should be amended to expand the meaning of “workplace” to all aspects of the “world of work” in line with ILO Convention No. 190. This would ensure coverage of work-related interactions over technology and also cover work-related places, especially workers’ accommodation provided by the employer, so that workers’ safety is more broadly protected.

50 Interview, Director of Standard Development, Community, and Customer Service, construction company, 23 August 2019.

Recommendation 12

The implementation of the Notification of Labour Welfare Committee on Standard of Labour Welfare on Accommodation for Construction Employees (2016) should be reviewed in consultation with the construction sector, with a view to enforcing higher standards to protect women from sexual harassment in their living areas. In addition, similar notifications should be issued for other sectors where employers provide housing for national and migrant workers, for example, manufacturing, domestic work, agriculture, fishing, and the service sector.

3.1.3. Penalties and outcomes for sexual harassment complaints

Penalties for sexual harassment are low under section 16 of the Labour Protection Act, B.E. 2541 (1998). The maximum penalty is a fine of 20,000 baht (US\$642). For those in state enterprises, the penalty is imprisonment of not more than one month, or a fine of not more than 1,000 baht (US\$32), or both (Notification of the State Enterprise Labour Relations Board Minimum Standards of Employment Conditions in State Enterprises, B.E. 2549 (2006), clause 10).

Making a complaint of sexual harassment and going through the process of proving the complaint can be stressful and time consuming. It may also involve the risk of retaliation against the complainant, as well as a risk to their reputation, and to their job security. Accordingly, it may not be worthwhile for the complaint to be made. Moreover, the perpetrator, if found guilty, does not pay the

fine to the survivor, but to the labour inspector, who will collect the fine into the Employee Welfare Fund. Survivors of sexual harassment have to file a separate civil lawsuit in order to secure compensation. Legal processes involve high levels of cost, time, and stress, which may preclude legal action for survivors of sexual harassment.

There are no penalties mentioned under key policies prohibiting sexual harassment by civil servants or officials. The Guidelines for Preventing and Solving Sexual Abuse or Sexual Harassment Problems in the Workplace (2016) contain no penalty provisions. The Ethical Standard of the Judges of the Constitutional Court and Persons holding positions in the Independent Organs, including the Auditor-General and Heads of the Secretariat of the Constitutional Court and the Independent Organs also contains no penalty provisions. The Regulation of the Civil Service Commission on Sexual Abuse or Sexual Harassment, B.E. 2553 (2010), contains only administrative punishments which can be problematic when applied to those in high positions. If an offender is a civil servant who has been in public service long enough, resignation can allow them avoid the punishment, while still entitling them to a retirement pension.

Recommendation 13

The quantum of penalties for sexual harassment in the Labour Protection Act, B.E. 2541 (1998), and the State Enterprise Labour Relations Act, B.E. 2543 (2000), should be reviewed in consultation with tripartite constituents and relevant stakeholders, to form a view as to whether these penalties reflect the potential severity of sexual violence and harassment.

Recommendation 14

A review should be undertaken into options for streamlining the procedures for compensating a survivor of sexual harassment for offences under the Labour Protection Act, B.E. 2541 (1998), and the State Enterprise Labour Relations Act, B.E. 2543 (2000), so that victims do not need to make an expensive, stressful and time-consuming application to the court for compensation.



3.2. Gaps in prevention

Discriminatory attitudes towards women need to change if sexual harassment is to be prevented. This means identifying and dismantling cultural norms that perpetuate ideas that women and men have specific gendered roles in society. Both women and men need to be made aware of what sexual harassment is; that it is not acceptable, and that it is a breach of human rights. Gender equality across the board – especially in employment – can help shift discriminatory attitudes.

3.2.1. Culture and norms

Sexual harassment is viewed by many in Thailand as a non-serious issue. Cultural norms and beliefs about how men can behave create a tolerance for sexual harassment. Some people who hold gendered views about acceptable behaviour may see it as typical or normal masculine behaviour to tell dirty jokes or to whistle at women. People may think that these behaviours do not cause harm, or that men are not able to refrain from such behavior (UN Women, UNDP and UNODC 2017). Such attitudes need to be challenged.

In the example shared earlier about the domestic worker who complained about her male employer's pornography viewing habits to his wife, the male employer refused to stop, claiming that it was "natural" for men to watch pornography in the way he did. No thought was given to the feelings of the worker who, feeling uncomfortable and unsafe, left to work for another household.

A patriarchal culture, where men are dominant, may lead to practices across society that on the surface look ungendered, but actually have a disproportionately negative effect on women. Historically, women have had low participation in legislative, judicial and executive mechanisms, which means most laws have been drafted by men. For that reason, it may not be surprising that there are very low penalties for sexual harassment. In order to have laws that are relevant and reflective of the experience and concerns of all people, it is vitally important that there is diversity in the legal profession and that the voices and perspectives of women and other minority groups are included in the law reform process.

Recommendation 18

Gender balance in workplaces, especially at the managerial and executive levels, should be promoted, and gender equity trainings be provided to both male and female employees. Particular attention may be paid to key industries that are particularly men- or women-dominated in order to understand how gender norms are leading to the skewed employee gender ratios in those industries.

3.2.2. Awareness about sexual harassment

Reflecting back on when she first came to Thailand ten years ago, one interviewee could now see that her employer sexually harassed her. She said:

At 12, I came to live with my parents in a sewing home-factory. The owner allowed me to work when I became 14 or 15 [years old]. That was when he started touching my arms and kissing my cheeks, saying that he saw me as his own child. I was young and not sure what actually happened. Now that I think about it, he should not do those things to me.

Like the woman quoted above, many women and girls may not be able to recognize what constitutes sexual harassment or how to respond when it happens. Most of the interviewed women migrant workers said they would change jobs when sexual harassment happened. When asked whether finding a new job was easy, many of them said no, but as one interviewee said, “Still, it is easier than making people believe us. Who is going to believe us?”

Gender bias in society can suppress women from speaking up for fear of shame and scrutiny. These attitudes must be dismantled if sexual harassment is to be prevented.

Recommendation 19

The private sector, including workers and employers’ organisation should be encouraged to take action to prevent and protect against sexual violence and harassment, by adopting guidelines against such practices. Business associations and employer representatives should play an active role in developing such policies to ensure their buy-in and support.

- The guidelines developed for the public sector could be recast for the private sector. Legal reforms that place vicarious responsibility on employers for sexual harassment in their workplaces would complement such guidelines (see Recommendation 8). The adoption of guidelines and training could be used by employers to show that they are serious about preventing sexual harassment in order to fulfil their legal obligations to provide safe working environments, and to avoid liability.
 - The Department of Labour Protection and Welfare could help encourage businesses to adopt such guidelines and support their implementation through concrete responses to sexual harassment, such as warnings, suspensions and termination of licenses.
 - The guidelines should be published in a user-friendly and easy-to-read format, with translations in different languages, such as English, Burmese, Khmer, Lao and a few key languages used by minorities in Myanmar migrating to work in Thailand.
-

Recommendation 20

Civil society organizations, trade unions, government, and employer associations should all engage in promoting public awareness about sexual harassment. This may be done through funding of public awareness campaigns and training. Trainings could be provided for general audiences to change perceptions about sexual harassment and gender roles; for survivors of sexual harassment to make informed decisions about options for support and redress; and for employers and officials to support survivors.



3.3. Gaps in enforcement mechanisms

Labour inspectors, the police, and the courts all have roles to play in the enforcement of protections against sexual violence and harassment in the world of work, in Thailand. There are gaps with regard to how all three of these groups of duty bearers carry out their functions.

Officials need to be given opportunities to reflect on how their own subjective views about gender, shaped by cultural norms, may affect their decision-making and conduct in the course of their duties. Training can help officials surface any biases they may have, so that they can better conduct their duties objectively. They should also be given the right resources and support to ensure that they can communicate with and support survivors of sexual harassment and violence of any nationality, including women migrant workers.

Recommendation 21

Training and guidance be given to officials who may interact with survivors of sexual harassment (including labour inspectors, police and court officials) to ensure that their approaches are gender-sensitive and survivor-centred, without victim-blaming attitudes or any other harmful norms. Gender-sensitivity training can be used to invite individuals to question commonly shared myths and misconceptions on sexual violence.

Recommendation 22

Officials who may interact with survivors of sexual harassment (including labour inspectors, police and court officials) should be able to access the right resources and support to enable survivors to pursue their legal rights. These include:

- Interpreters – Interpreters for official use must be made available, especially for the languages used by women migrant workers in Thailand.
 - Social, legal, and health support – Officials should be given information and training to be able to refer survivors to local support services and NGOs who can assist them in the process of pursuing their legal rights.
-

3.3.1. Labour inspection

Capacity, capability, authority, and support for labour inspectors

At present, there are 776 labour inspectors nationwide who together inspect around 40,000 workplaces per year.⁵¹ Considering that there were 139,446 registered factories in the manufacturing sector alone (National Statistical Office of Thailand), it is clear that the number of labour inspectors is not sufficient to oversee all workplaces in Thailand. At current numbers, every single labour inspector would have to visit around 526 workplaces annually to cover all workplaces in the country. It is particularly difficult for labour inspectors to inspect small enterprises inside residential properties, and private residences where domestic workers are. Additionally, among the 776 labour inspectors, only 478 of them have passed the training for occupational health and safety (OSH) inspection. Therefore, the workload for those who can inspect OSH matters is greater than others. There is currently no specific requirement for labour inspectors to have training on how to sensitively inspect workplaces for violations of section 16 of the Labour Protection Act, B.E. 2541 (1998), on sexual harassment.

The Department of Labour Protection and Welfare can appoint certain state officials, such as police officers, to act as external labour inspectors. However, this is currently not effective, as the external inspectors also have other obligations, and have no incentive to carry out labour inspections.

Every employer of ten or more employees must provide a “work rule”. This document would generally set out matters such as working hours, rest periods, leave, holidays, overtime and payment (Labour Protection Act, B.E. 2541 (1998), sect. 108). It was previously the case that these rules would be shared with the Department of Labour Protection and Welfare and were used as a tool in workplace inspections. According to one interviewee, as part of the government’s recent attempts to improve the ranking of Thailand in the World Bank’s Ease of Doing Business Index, employers are now no longer required to submit their work rules.⁵²

During an inspection, a labour inspector can still ask an employer to change an inappropriate work rule, such as a requirement for women employees to wear skirts and high-heeled shoes. However, they can no longer review the work rules prior to inspection, and as noted above, cannot inspect every workplace.

Inspections by labour inspectors and officers of other agencies (such as the Provincial Office of Social Development and Human Security) are not usually accompanied by an interpreter. This may prevent them from receiving complaints from women migrant workers during their inspections.

The ILO and UN Women (2019b, 27) state that the labour inspection process can be made more gender-responsive by hiring more women labour inspectors and by promoting gender awareness throughout inspections. This could be done by introducing gender equality indicators in inspection and training.

51 Interview, Department of Labour Protection and Welfare, Bangkok, 10 June 2019.

52 Interview, Department of Labour Protection and Welfare, Bangkok, 10 June 2019.

Recommendation 23

A review should be conducted to ensure that there are enough labour inspectors who are able to conduct high quality, streamlined inspections. The review should consider the overall number of labour inspectors, the skills that they have been equipped with (including on sexual harassment identification), and whether their authority and processes allow them to easily identify and prevent gender discrimination in the workplace.

Confidentiality of complaints

The Department of Labour Protection and Welfare receives complaints from both Thai and foreign workers, regardless of their migration status. The process of complaint submission is, however, not entirely anonymous. Although the complainants have the option to not disclose their personal information in the complaint form, they are encouraged to provide as much information as possible to facilitate the investigation. Complaint forms filed anonymously may not receive a prompt response, as more time would be required to verify facts. Although the Department does not disclose this information during investigation, there is a possibility that the confidentiality of survivors of sexual harassment could be compromised.

Recommendation 24

Sexual-related complaints submitted anonymously should receive timely responses by Department of Labour Protection and Welfare. The Department may wish to consider other alternative channels of complaint submission, for example, adopting technology such as a chatbot that can collect the necessary information about the incident but at the same time omit personal information when reporting the case to relevant investigators.

3.3.2. Police

Fear and distrust of police

Interviews conducted for this study indicate that there is some distrust and fear of police officers among women migrant workers. This is partly due to their direct experiences with police officers. Another reason for distrust may be the attitudes of their peers and employers. According to one migrant women worker who has worked in many factories in Thailand for 13 years, one of her previous employers told her not to trust police officers as they might trick her into wrongdoing and ask for a bribe later.⁵³

Police discretion and harmful gender norms

Discriminatory gender norms and stereotypes can mean that sexual harassment can be viewed as a non-serious issue. If police officers responding to a complaint hold these views, they may not officially record and process complaints about sexual harassment.⁵⁴ Even if a complaint about sexual harassment is lodged with the police, it may not receive as much attention as other crimes such as rape and murder, or a crime involving multiple victims. Police officers' broad discretion in prioritizing

⁵³ Interview, woman migrant worker, 7 July 2019, Bangkok.

⁵⁴ Interview, NGO, 5 July 2019.

their time and investigations, coupled with discriminatory attitudes, could mean that sexual harassment is not taken seriously. This can have reinforcing effects; if complaints are not taken seriously, survivors will be less inclined to make a complaint.

Lack of interpreters

There are no interpreters for migrant workers' languages at police stations. In principle, a police officer may send a request to the Ministry of Labour to send a registered interpreter when dealing with a case involving a migrant worker. In practice, however, there are a limited number of registered interpreters, and thus they cannot attend to every case.⁵⁵ Some NGOs may be able to provide interpreters, but that may be for only one particular language.⁵⁶

Limited number of women police officers

For sexual violence and harassment-related cases, inquiry officials who are women will be assigned to work with women survivors. However, out of approximately 9,000 inquiry officials in Thailand, only about 700 of them are women. The ratio of women inquiry officials to total inquiry officials is less than one in ten. Hence, not every police station has a woman inquiry official. If a woman migrant worker visits a police station without any women inquiry officials stationed or present, the migrant worker may not want to submit her complaint. Though the number of women inquiry officials remains limited, the Coordinating Centre for Gender Equality was set up within the Royal Thai Police to increase knowledge and understanding on gender equality among police officers.

Recommendation 25

The police force should be appropriately resourced and trained to exercise their discretion and decision-making to ensure the best possible experience for all sexual violence and harassment survivors who wish to file a complaint and seek redress. This may include:

- Increasing the number of women inquiry officials, with a goal of 50 per cent women inquiry officials within a specified timeframe.
- Continuing to provide all police with training and support so that they can exercise their discretion in a non-discriminatory, gender-sensitive, and survivor-centred manner, regardless of the migration status of the victim.
- Providing police with interpreters and links to community support to ensure access to justice for those who speak another language.
- Considering community policing programmes to build trust between local police and women migrant workers and their communities.

Lack of legal protection for survivors whose migration status is undocumented

At present, there is no law in Thailand that allows survivors of sexual violence and harassment who have an irregular migration status, to remain in the country until the processes of the justice system are completed, or exhausted. Many are forced to leave the country prior to receiving court judgment and remedy, preventing access to justice. Exceptions are made for children and for survivors of

⁵⁵ Interview, Police Colonel, superintendent of precinct, 3 July 2019.

⁵⁶ Interview, NGO, 4 July 2019.

human trafficking.⁵⁷ The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), requires Member States “to respect basic human rights of all migrant workers” (Art. 1), and its accompanying Recommendation No. 151 includes a provision calling upon Member States to grant sufficient time to migrant workers whose status cannot be regularized to be involved in legal proceedings (Para. 32(1)).⁵⁸

Women migrant workers may have an irregular migration status because they entered Thailand without the required documentation. This would make them an offender under the Immigration Act, B.E. 2522 (1979); the risk of drawing attention to their irregular status often places them in positions where they are vulnerable to abuses of power. Women migrant workers who enter Thailand in accordance with entry and residence requirements, but who experience workplace sexual harassment, are also vulnerable, because if they report the harassment, they may lose their job, which in turn would mean that they no longer have a work permit or the ability to stay legally in Thailand.

The loss of a work and/or residency permit as a result of a migrant worker losing their job is in contravention of Article 8 of ILO Convention No. 143. This provision in the Convention is complemented by its accompanying Recommendation No. 151, which states that migrant workers who lose their job should be provided sufficient time to find alternative employment, and that migrant workers who have lodged an appeal against their termination should be allowed to stay in the country until a final decision is made on that appeal (Paras 31–32). As such, survivors of sexual harassment

who have either left their job, or had their employment terminated as a result of that harassment (or in retaliation for reporting the harassment), should be entitled sufficient time to find new employment or to appeal against the termination. If it is established that the termination was not justified, the migrant worker should be allowed to reclaim her position (or an equivalent position) and receive compensation for loss of wages and other payments.

A police officer may postpone the process of sending a non-Thai survivor of harassment, with an irregular migration status, back to her country of origin. However, this is based on individual discretion, and there is no rule or guideline to support such action. As a result, if a complaint is made urging the police to deport the survivor, the police officer must do so immediately, or risk being charged with negligence or refraining from one’s duty (section 157 of the Criminal Code, B.E. 2499 (1956)). An example from the interviews conducted for this study is a case concerning a woman migrant worker whose Thai partner had physically abused her. He reported her migration status to the police, and she was deported before receiving justice. In such a case, the police can collect evidence and testimony from the survivor before deportation.⁵⁹

In Thailand, there is no specific law or provision that allows a victim of a crime who has irregularly entered into Thailand to stay in the country, until the case has been resolved. However, section 54 of the Immigration Act, B.E. 2522 (1979), allows officials discretion about whether to repatriate any migrant who has overstayed their permission to be in Thailand. This means that if a migrant is a

⁵⁷ The former are protected by the Child Protection Act, B.E. 2546 (2003), and the latter by the AntiTrafficking Act, B.E. 2551 (2008).

⁵⁸ See also the ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration, para. 9.5.

⁵⁹ Interview, Police Colonel, superintendent of precinct, 3 July 2019.

victim of a crime, such as sexual harassment or violence, and has no right to stay in Thailand, the official may use their discretion not to repatriate the person.⁶⁰ In practice, this discretion will only be exercised after certain conditions have been met. The migrant wishing to stay must have a confirmation letter from an inquiry official involved with the case proving that litigation or court proceedings are underway. They may also have to abide by certain rules, pay a bond, or bear detention expenses. After the legal proceedings for the victims of such criminal cases are complete, the migrant will be repatriated to their home country.

Victims of human trafficking are treated differently. They are allowed to stay in Thailand (if they wish) for a term not exceeding one year to receive medical treatment and rehabilitation, or to claim their rights through legal proceedings. The term can be extended as deemed necessary for the case.⁶¹ Assistance is provided through the Ministry of Social Development and Human Security (Anti-Trafficking in Persons Act B.E. 2551(2008), sect. 33).

Recommendation 15

Criminal justice policies, practices and resources should be reviewed to ensure that they reflect and encourage gender-responsive and survivor-centred approaches, and that the safety and privacy of survivors of sexual violence and harassment is prioritized.

Recommendation 16

Law reform should be considered to ensure that migrant victims of criminal offences, including offences that relate to circumstances of sexual harassment, are entitled to reside in Thailand to access justice. The legal provisions could be modelled on the existing provisions for survivors of human trafficking.

3.3.3. The courts

Lack of a means to allow deported survivors to attend court processes

Court processes can proceed in the absence of the complainant, if the individual has been deported due to having an irregular migration status. However, this situation makes it harder to prove the offence, as the complainant cannot elaborate upon, strengthen or verify their own testimony. Furthermore, she may not be able to receive compensation or remedy because there is no official channel to follow up the case for those who are abroad.

Systemic barriers of court procedures

Court hearings in Thailand use the accusatorial system in which the complainants must prove that damage has been caused by the defendant, while the judge remains impartial. The judge will not ask for additional evidence and will rely solely on what the complainant and witnesses provide. This means that a survivor of violence or harassment must recount as many details of the ordeal as possible, which can be a traumatizing experience. This is a huge barrier for survivors as they are required to re-live their

60 Interview, General Staff Division of Immigration Bureau, 2 August 2019.

61 The Notification of Ministry of Interior on Permission of Aliens to particularly stay in the Kingdom for victims of Human Trafficking issued in B.E 2554 (2011) and its amendments explicitly allow victims of human trafficking who voluntarily agree to receive assistance and welfare protection from the Ministry of Social Development and Human Security to stay in Thailand. The acceptable reasons for victims being allowed to stay in Thailand include: (i) for the benefit of prosecuting offenders under the AntiTrafficking in Persons Act B.E. 2551(2008); (ii) for medical treatment and/or physical and mental rehabilitation; (iii) for victims to engage in legal proceedings to claim their rights; or (iv) to help and protect the welfare of victims of human trafficking.

experience in order to claim their rights. It is also disadvantageous due to the fact that they may not be able to remember all the details because of fear, shock, or being unconscious during the ordeal.⁶²

For women migrant workers who have experienced sexual violence or harassment, and who face language barriers, this can be especially difficult because they might not be able to find the right words when explaining the details in court. Migrant workers must completely rely on interpreters to deliver the exact details of their ordeal, which means that interpreters must be highly skilled. Interpreters also must have a gender-sensitive understanding of very sensitive and personal disclosures, as well as the technical terms related to sexual violence or harassment. Such skilled interpreters are difficult to find. There are no full-time interpreters stationed at the court. Furthermore, interpreters are only present during the testimony-giving process, but not throughout the whole court process, meaning that non-Thai speakers cannot follow the proceedings as they happen.

In cases where the Court has ruled that an employer must pay compensation to an employee, and the employer refuses to do so by claiming a lack of financial means, the burden of proof belongs to the employee to collect information about the employer's assets. This means that survivors bear the cost of collecting evidence, an impossible task for migrant workers who do not understand the

Thai language, or who cannot afford to pay professional fees to find the required evidence of their employer's assets. There are no clear links between court processes and survivor-support services that would help women migrant workers navigate these processes.

Recommendation 17

A technical study and review should be undertaken to explore the possibility of inquisitorial and/or quasi-judicial processes for sexual violence and harassment matters. The review should consider how procedural fairness for defendants can be maintained, while providing an easier, cheaper, and less traumatic experience for victims. The shifting of the burden of proof in discrimination and sexual harassment cases should also be considered in this context.

Recommendation 26

Courts and court officials should receive training and support to provide a survivor-centred approach for sexual violence and harassment matters, including links to other service-providers. Providing support to survivors without doing any harm to them, including providing mental health support throughout the long legal process, should be seen to be as important as the punishing of offenders.

⁶² Interview, NGO.

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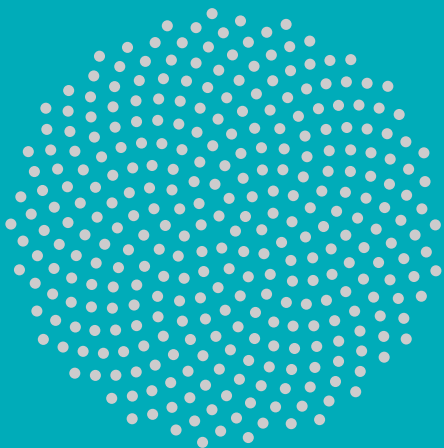
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Appendix I. Methodology

Data was collected for this study between April and August 2019.

Qualitative research methods were chosen to collect sensitive and technical data necessary for understanding how and why sexual harassment occurs in Thai workplaces despite the presence of laws, policies and measures that attempt to prevent and respond to such situations.



Research questions

Four main research questions related to women workers, and especially to women migrant workers, guided this study:

- a. What are the international standards relating to the prevention of and response to sexual harassment in the workplace?
- b. What are the current laws, policies and measures relating to the prevention of and response to sexual harassment in the workplace in Thailand, with specific focus on women migrant workers?
- c. What are the limitations in the current laws, policies and measures relating to the prevention of and response to sexual harassment in the workplace in Thailand, especially for women migrant workers?
- d. What are the factors leading to limitations in the current laws, policies and measures relating to the prevention of and response to sexual harassment in the workplace in Thailand, with specific focus on women migrant workers?

Research tools

In order to answer the above research questions, this study employed four qualitative research tools as follows:

1. Desk Review

A desk review of literature about sexual harassment in the workplace in Thailand – particularly involving migrant workers – was conducted, with sources including the following:

- international standards;
- laws, policies and measures against sexual harassment in the workplace in Thailand, such as the Labour Protection Act, B.E. 2541 (1998), the Civil Service Act B.E. 2551 (2008), and the *Manual for Labour Inspectors*;

- Existing research on sexual harassment in the workplace, including research papers available in the online databases of the Thailand Research Fund, the National Research Council of Thailand, and the Thai Library Integrated System (ThaiLIS); and
- cases in the Criminal Court and the Central Labour Court, which have jurisdiction over Bangkok, Samut Prakarn, Samut Sakorn, Nakorn Patom, Nonthaburi and Patumthani. These provinces have high concentrations of migrant workers and are thus more likely to have cases relating to migrant workers.

It should be noted that access to the details of court cases is generally restricted to those who are considered to be stakeholders of such cases in order to ensure the privacy of those involved. Court cases available to the public are those with final verdicts only.

2. Interviews with experts

Expert interviews with 32 key informants from 27 agencies/organizations enabled inclusion of their perspectives regarding the laws and enforcement mechanisms under consideration, as well as their experiences in helping women, both Thai and migrant workers, who have experienced sexual violence and harassment at their workplaces. Interviewees included but were not limited to:

- experts in law and the implementation of sexual harassment-related laws, including lawyers who have experience in dealing with sexual harassment cases;
- government officials from the Ministry of Labour and Ministry of Social Development and Human Security, as well as police officers; and
- NGOs working on sexual harassment cases, particularly those involving women migrant workers, such as the MAP Foundation, Raks Thai Foundation, Friend of Women Foundation, and Human Rights and Development Foundation, as well as trade unions and recruitment agencies

3. Interviews and small group discussions with women migrant workers

Private interviews and small group discussions were held with 33 women migrant workers in Thailand. Each participant was offered a choice of data collection method, either to participate in a private interview with a woman researcher or in a small discussion group with their peers. Some participants spoke out about their own experiences, while others talked about incidents that they had witnessed or heard about. All interviews and small discussion groups were conducted in Thai, some with interpretation. More than half of the interviewed migrants had been in Thailand for more than a decade, and thus were able to fluently communicate in the Thai language. Research ethics were strictly applied to ensure that participants would not be harmed as a result of data collection in this study.

It was not possible to interview women migrant workers with active cases in court, or who had received court judgments on sexual harassment in the workplace. This was because court cases related to women migrant workers tend to be about serious crimes such as rape or human trafficking, and the women involved could not be reached.⁶³ Further, it must be noted there were no court case about sexual harassment in the workplace due to gaps and limitations in the laws and their enforcement.

4. Validation seminar

Findings were presented at a tripartite-plus seminar on provisions on sexual harassment in the workplace. This validation seminar was held on 12 November 2019 in Bangkok with key stakeholders comprising government, employers, trade unions, NGOs and international organizations.⁶⁴

Ethics notes

This section outlines the ethics guidelines that were applied during private interviews and small group discussions with women migrant workers about their experiences of and views towards sexual harassment in the workplace in Thailand. Where applicable, this approach was also taken during interviews with experts and government officials.

The ethics practices outlined below were based on the following publications:

- World Health Organization (WHO), *Ethical and Safety Recommendations for Interviewing Trafficked Women*, 2003.
- ILO, *Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children*, 2012.
- WHO, *Ethical and Safety Recommendations for Intervention Research on Violence Against Women*, 2016.

Before the interview or small group discussion

- Participants were consulted about safety, confidentiality, comfort, as well as other issues of their concerns relating to the data collection process. The pros and cons of each interview option (one-on-one interview or small discussion group) were laid out for their consideration. The researcher’s personal opinion was not given, or when asked for it, kept as minimal as possible.
- All women migrant workers were contacted, consulted and interviewed by women researchers.

At the interview or small group discussion

- Participants were notified at the start that they were free to stop the interview, remain

⁶³ Interview, member of the National Human Rights Commission, 22 April 2019.

⁶⁴ A summary of comments from the participants at the validation seminar is available upon request from the Safe and Fair Programme team at the ILO.

silent or leave the group at any time.

- Participants were informed about the purpose of the research and how the findings would be used.
- After notifying the participants about confidentiality, the researcher asked each participant whether they would give their verbal consent to be interviewed.
- Sensitive questions that might provoke emotionally charged responses or re-traumatize participants were avoided. In the case where a participant chose to have a private interview, the interview was conducted in a secluded setting and not within hearing range of other individuals.
- Researchers always respected each woman's assessment of her own situation. Personal

opinion or criticism about participants' decisions and actions were not given at any time.

After the interview or focus group discussion

- Participants were consulted about how they preferred to be contacted for any follow-up information. If they wanted a referral for violence-related support services, this was provided.
- Primary data and information from the interviews were treated with confidentiality, and were only accessed by the study team and designated officers of the Safe and Fair programme.

“Who is going to believe us?” Work-related sexual harassment in Thailand, with a focus on women migrant workers

In June 2019, the ILO Conference adopted the Violence and Harassment Convention, 2019 (No. 190), which affirms workers’ right to be free from violence and harassment in the world of work. Convention No. 190 entered into force on 25 June 2021 and is open for ratification.

This is the culmination of decades of social change and campaigning. Women’s contributions to the workforce and public life are increasingly valued. Tolerance for violence against women is increasingly unacceptable. Violence and harassment in the workplace is most often experienced by women, and it devalues their contributions. Freedom from sexual harassment in the world of work is a human right. The time is right to make improvements in law and practice to ensure this right is protected.

This study delves into the legal context of sexual violence and harassment experienced by women workers in Thailand. The study reviews laws, policies, and cases, as well as barriers to redress and remediation for those who have experienced sexual harassment. Data for this report comes from the review of international jurisprudence; study of the relevant laws and research in Thailand; interviews with 32 experts from legal, governmental and non-governmental organizations; as well as small group discussions and interviews with 33 women migrant workers.



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www.spotlightinitiative.org/safe-and-fair

ISBN: 9789220354193 (Print)

ISBN: 9789220354209 (Web PDF)