

ADVERSE HUMAN RIGHTS IMPACTS OF THAI OUTBOUND INVESTMENTS

THEMATIC ASSESSMENT
CHAPTER OF THE INDEPENDENT
CSO NATIONAL BASELINE
ASSESSMENT (NBA) ON
BUSINESS & HUMAN RIGHTS



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PRIORITY AREA 4: TRADE AGREEMENTS & THAI OUTBOUND INVESTMENTS

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MARCH 2019



Manushya Foundation &
Thai BHR Network, *Adverse
Human Rights Impacts of Thai
Outbound Investments. Thematic
Assessment Chapter of the Independent
CSO National Baseline Assessment(NBA) on
Business & Human Rights in Thailand, (2019).*

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About the Thai BHR Network

The Thai Business and Human Rights Network (TBHRN) is an informal, inclusive and intersectional coalition of human rights defenders, community leaders, researchers, academics, and non-governmental organisations from the local, national and regional spheres, who are joining hands to ensure local communities are central to the business and human rights response in Thailand. The Network engages in advocacy, dialogue, and monitoring of business and human rights commitments made by the Royal Thai Government, in particular in engaging in the development and monitoring of the National Action Plan on Business and Human Rights. More information on the TBHRN and its role can be accessed at: <https://www.manushyafoundation.org/coalition-building-workshop-report>

SPECIAL THANKS

On behalf of Manushya Foundation, I would like to convey our sincere gratitude to all the individuals who have engaged in our business and human rights strategy, who have all contributed sincerely and meaningfully to the development of the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand, and who all share our common vision of communities at the heart of our work, thus bringing to focus and empowering local and affected communities to be at the center of the business and human rights response in Thailand.

We are eternally grateful to the national, regional and international experts that dedicated their time, their invaluable support and guidance to help our organisation and the community members we work with, comprising the Thai BHR Network; to understand the language of business and human rights (BHR), its application in the region and internationally that in turn contributed to the successful collection and collation of evidence-based data and information into our own Independent CSO National Baseline Assessment (NBA) on business and human rights in Thailand. In this regard, we are especially grateful to **Commissioner Angkhana Neelapaijit** of the National Human Rights Commission of Thailand (NHRCT) for her invaluable expertise on the protection of human rights defenders and on the importance of applying a gender lens in the context of business and human rights in Thailand; **Ms. Debbie Stothard** for her extensive contribution with capacity building on business and human rights achieved through workshops conducted together with ALTSEAN-Burma; **Mr. Prabindra Shakya** for sharing his knowledge and expertise on the application of the UN Guiding Principles on Business and Human Rights (UNGPs) particularly on issues related to indigenous peoples; **Ms. Golda Benjamin** for her direction on the methods to document cases arising out of adverse business conducts; **Ms. Patchareeboon Sakulpitakphon** for imparting to communities an understanding on the responsibility of companies with regards to Pillar 2 of the UNGPs; **Ms. Cindy Woods** for providing an insight into existing National Action Plans on Business and Human Rights and the necessity for a National Baseline Assessment; **Professor Vitit Muntarbhorn** for his invaluable remarks, contributions and support to community researchers and the work of Manushya Foundation; and **Professor Surya Deva** for his support and important recommendations for the development of a meaningful National Action Plan (NAP) on Business and Human Rights (BHR).

We also would like to pay a special tribute to **Ms. Nattaporn Artharn**, who we owe a debt of gratitude to, for her constant and steadfast support, her meaningful contribution serving as our Community Empowerment Coordinator from 2017-2018, for the roll-out of our regional NBA dialogues and BHR capacity building workshops, for her dedication in empowering grassroots communities throughout all our events, for her invaluable grounded knowledge and positive spirit, and also for the inspiration she has granted to the shaping of our work on business and human rights by placing the concerns and solutions of communities at the center of all processes and content.

Manushya Foundation also extends its genuine appreciation and thanks to the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ), in particular **Ms. Nareeluc Pairchaiyapoom**; Former Thai representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), **Dr. Seree Nonthasoot**; and **Dr. Netithorn Praditsarn** of UN Global Compact Network of Thailand, for their acknowledgment of our work and the contributions made by representatives from our community coalition. We are particularly grateful for the safe space provided by the cooperation with the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ) in implementing Manushya Foundation's business and human rights' strategy; in particular, the co-hosting of four Regional National Baseline Assessment Dialogues (January-March 2017), the first experts meeting to inform the independent national baseline assessment on business and human rights in Thailand (2-3 September 2017), and the second experts meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand (28 February-1 March 2018).

Manushya Foundation, also expresses its heartfelt gratitude and deepest appreciation to all the grassroots community members, civil society and academics who are part of the Thai BHR Network, and partners who joined in their individual capacity, including representatives from and/or working on the following issues: *rights of migrant workers, labour rights (formal and informal workers), trade unions, indigenous peoples, stateless persons, community rights, land-related rights, environmental rights, people with disabilities, LGBTI individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders, the impact of Thai outbound investments and trade agreements*. We are forever thankful to them for the important contribution of their valuable time, their knowledge, their unique insight into their experiences and the situation on the ground in Thailand, and for providing meaningful input into the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand, and/or critical comments into the draft NAP on BHR. These individuals include the following:



1. Amao Pongpanawan, Ethnic Peoples Development Foundation
2. Amporn Pripanasumpun, Indigenous Women Network of Thailand (IWNT)
3. Anuwat Promma, New Esaan Movement
4. Asmah Tanyongdao, Secretary Board Member of Manushya Foundation
5. Asmee Pu, Saiburi Basin of a River Youth Network
6. Buppavan Angkurasee, Amnat Charoen Women's Friend Center
7. Busayapa Srisompong, SHero & Migrant Rights Promotion Working Group (MRPWG)
8. Chainarong Sretthachau, Mahasarakham University
9. Chatchalawan Muangjan, EMPOWER Foundation
10. Chatjaporn Loyplew, Rak Talae Thai Association
11. Direk Hemnakorn, Thepa Community Leader, Green World Network
12. Dr. Somnuck Jongmeewasin, Silpakorn University International College
13. Jetsada Taesombat, The Foundation of Transgender Alliance for Human Rights (Thai TGA)
14. Jintana Srinudet, Consumer Rights Association
15. Jitti Pramongkit, Indigenous Women Network of Thailand (IWNT)
16. Jum Veerawan, Sangsan Anakot Yawachon Development Project
17. Junnapa Kuendee, Assembly of the Poor & Samacha Khon Jon Korani Kuen Pakmoon
18. Kanda Pramongkit, Indigenous Women Network of Thailand (IWNT)
19. Kanlaya Chularattakorn, Indigenous Women Network of Thailand (IWNT)
20. Kannikar Siriwong, Indigenous Women Network of Thailand (IWNT)
21. Kaosar Aleemama, Muslim Attorney Centre Foundation (MAC)
22. Kath Khangpiboon, Thammasat University
23. Katima Leeja, Indigenous Women Network of Thailand (IWNT)
24. Kieratikarn Techavadranakool, Rainbow Dream
25. Kittisak Rattanakrajangsri, Asia Indigenous Peoples Pact (AIPP) & Indigenous Peoples' Foundation for Education and Environment (IPF)
26. Kongpop Sennunta, Migrant Workers Federation (MWF)
27. Krisda Tuprung, CRC Coalition Thailand
28. Kraitong Ngamsurach, Valeo Rayong Labour Union
29. Krittipong Joopoh, Organic Family
30. Kunlakan Jintakanon, Network of Women Living with HIV in Thailand
31. Laofang Bundidterdsakul, Legal Advocacy for Indigenous Communities (LACIC) Thailand



32. Malinee Vachsook, Network of Women Living with HIV in Thailand
33. Manavee Dengdo, Land rights Activist, Budo Community
34. Manop Keawphaka, HomeNet Thailand
35. Manop Sanid, Change East Network
36. Manop Yasanop, Dignity Return Thai Informal Workers
37. Matcha Phorn-In, Sangsan Anakot Yawachon Development Project
38. Nada Chaiyajit, Intersex activist
39. Nan San May Khine, MAP Foundation
40. Napaporn Songprang, Vice-Chair of Manushya Foundation
41. Nattaporn Artharn, Coordinator of Ban Na Moon-Dunsad Environmental Conservation Group
42. Nattawut Chotikan, Faculty of Law, Thaksin University
43. Nattawut Kasem, Environmental Justice Foundation (EJF)
44. Nattawut Sriermthong, Thai Network of People Who Use Drugs (TNPUD)
45. Nattaya Petcharat, STELLA Maris Songkla
46. Nisarath Jongwisan, Tamtang Group
47. Nitaya Chuchuen, M-Moon
48. Nittaya Muangklang, Esaan Land Reform Network (ELRN)
49. Nongair Sairongyamyen, Sangsan Anakot Yawachon Development Project
50. Noppanai Rittiwong, SWING Foundation
51. Noreari Thungmuangthong, Indigenous Women Network of Thailand (IWNT)
52. Pairach Aurfur, Forersia Emission Control Technologies Labour Union
53. Pakorn Areekul, Political activist
54. Panjit Kaewsawang, Women's Rights Activist
55. Panachai Chanta, Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)
56. Pathompong Serkpookiaw, Thai Network of People Who Use Drugs (TNPUD)
57. Phnom Thano, Indigenous Peoples' Foundation for Education and Environment (IPF)
58. Preeyapat Butprasert, Health and Opportunity Network (HON)
59. Punyaphat Kamonnet, Land Rights Activist
60. Punya Chusiri, Network of People Living with HIV in Thailand
61. Puttan Sakaekhum, The State Enterprise Workers' Relations Confederation (SERC)
62. Puttinee Gopatta, HomeNet Thailand
63. Ratchayapornatawee Tanawatthewakul, Health and Opportunity Network



64. Rattathammanoon Meepon, Andaman Power Phuket
65. Rokeeyoh Samaae, Thepa Community, Green World Network
66. Saovane Kaewjullakarn, Thaksin University
67. Saowalack Pratumthong, Rak Talae Thai Association
68. Saowalak Thongkuay, Disabled Peoples' International Asia-Pacific Region (DPI/AP)
69. Saranya Boonpeng, Network of Women Living with HIV in Thailand
70. Saranya Katalo, Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT)
71. Sarawut Pinkanta, Center for Protection and Revival of Local Community Rights (CPCR)
72. Sarayuth Rittipin, Esaan Land Reform Network (ELRN)
73. Siribhadee Yensiri, Esaan Land Reform Network (ELRN)
74. Sirisak Chaited, LGBTI Activist & Sex Worker Activist
75. Sitifatimao Maauseng, Heart Support Group (Children in Deep South)
76. Sitthichai Tanoothong, Nakornnayok River Conservation Network
77. Sommai Chanthawong, EMPOWER Foundation
78. Somboon Kamhaeng, Community Leader, Pak Bara Seaport
79. Sompha Chaikla, Taphan Community Organization Council
80. Sompol Sitthiwetch, Andaman Power Phuket
81. Sompong Sakaew, Labour Rights Protection Network (LPN)
82. Sompong Viengchan, Woman Community Leader, Pak Mun Dam
83. Somyot Tohlang, Community member, Pak Bara Seaport
84. Suchart Intha, Migrant Workers Federation (MWF)
85. Sugarnta Sookpaita, Migrant Workers Federation (MWF)
86. Sulaiporn Chonwilai, Tamtang Group
87. Sumitchai Hattasan, Center for Protection and Revival of Local Community Rights (CPCR)
88. Sunaruk Kaeonukun, Network of People Living with HIV in Thailand
89. Supachai Niyompong, Rung Andaman Phuket
90. Supawat Samurpark, Disabled Peoples' International Asia-Pacific Region (DPI/AP)
91. Tee Nayod, Migrant Workers Federation (MWF)
92. Thankamol Bunchai, M-Moon
93. Thanunchay Svittnuntachai, Elderly Catholic Association
94. Thawatchai Khanawiwat, Plan International
95. Thissadee Sawangying, Health Opportunity Network (HON)

96. Thitiya Chutipun, Singburi Community Organisation Council/Singburi Women Group
97. Titipol Phakdeewanich, Ubon Ratchathani University
98. Udom Ngammuangsakul, University of Phayao
99. Vaewrin Buangoen, Kon Rak Ban Haeng Conservation Group (KRBH)
100. Varinyupa Buranaareepong, Asylum Access Thailand
101. Wanitchaya Kanthayuang, Indigenous Women Network of Thailand (IWNT)
102. Wannapong Yodmuang, Transwoman Activist
103. Watcharachai Jirajindakul, National Institute of Development Administration (NIDA)
104. Watchree Sirimaha, Network of People Living with HIV in Thailand
105. Wattana Sansa, YMP Labour Union
106. Winai Payakko, AGC Thailand Labour Union
107. Wimonrekha Sirichairawan, University of Phayao
108. Wipawee Silpitaksakul, Plan International Thailand
109. Wiraphat Wilaisilpdeler, Foundation For Older Persons' Development (FOPDEV)
110. Wiroon Sakaekhum, The State Enterprise Workers' Relations Confederation (SERC)
111. Witoowat Thongbu, Legal Center for Human Rights

Finally, Manushya Foundation would like to thank all the individuals who have participated and/or been supportive of all our business and human rights activities from 2017 till date, who we have not been able to name above, but who we still keep close to our hearts.

Through our Independent CSO National Baseline Assessment (NBA) on Business & Human Rights (BHR) in Thailand, we hope to provide the foundation for a meaningful National Action Plan (NAP) on Business and Human Rights (BHR), which would guarantee that Thai businesses are not committing or involved in human rights abuses wherever they operate. We strongly believe that our NBA on BHR could serve as a starting point to raise awareness on the challenges faced by affected communities on the ground, could help address corporate accountability, and ensure responsible business conduct. We see the Thai NAP on BHR as a critical opportunity for civil society and grassroots communities to engage collectively in order to promote a Thai economy that is sustainable and respectful of human rights, while building an understanding of private actors on the adverse impacts of their activities. It is our aspiration that this independent CSO NBA on BHR would influence the Thai NAP on BHR; a NAP that is inclusive of communities' voices, concerns and solutions. We truly believe that this represents a great opportunity for open, frank, transparent and constructive dialogue among all relevant sectors, so that we can all continue working together to ensure that Thai corporations respect human rights at home and abroad.



Emilie Palamy Pradichit
Founder & Executive Director
Manushya Foundation

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ACKNOWLEDGEMENTS

Manushya Foundation would like to sincerely thank everyone who contributed to the realisation of this Thematic Assessment Chapter on the Adverse Human Rights Impacts of Thai Outbound Investments in the context of Business and Human Rights in Thailand. In particular, Manushya Foundation would like to express its deep appreciation to all members of the Thai BHR Network – in particular, environmental human rights defenders, indigenous peoples, grassroots communities, civil society organisations, local and national academics and experts – for their invaluable inputs throughout the implementation of Manushya Foundation’s business and human rights strategy and activities (Regional BHR workshops to demystify corporate accountability to HRDs and BHR Coalition building workshop), and the NBA regional dialogues as well as two experts meetings held in 2017 and 2018 to inform our NBA on BHR.

Special thanks are also given to Manushya Foundation team members who developed this thematic assessment chapter, by conducting: desk research, analysis and writing, studying the international and national legal frameworks, analysis of the UNGPs, incorporating the voices and recommendations from the Thai BHR Network, and providing further analysis of good practices and development of the proposed action plan. These individuals are: Ms. Emilie Pradichit, Founder & Director, Manushya Foundation and Ms. Ananya Ramani, Human Rights Research & Advocacy Officer. Manushya Foundation is also grateful to the following individuals for their research and design assistance: Ms. Tanida Itthiwat, Human Rights Research & Documentation Officer, Manushya Foundation; Ms. Christina Burchia, Human Rights Intern, Manushya Foundation; Ms. Evie van Uden, Research & Development intern, Manushya Foundation; and Ms. Laurène Cailloce, Communications & Advocacy Intern.

Manushya Foundation would also like to acknowledge the financial contribution of Internews, which kindly supported the implementation of Manushya’s BHR strategy and the development of the independent CSO NBA on BHR. We are particularly thankful to Mr. Brian Hanley, Asia Regional Director, Internews, and Ms. Carolann Minnock, former Thailand Country Director, Internews.



ABBREVIATIONS

AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
BHR	Business and Human Rights
CAT	Committee Against Torture
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CLEC	Community Legal Education Centre
CRC	Committee on the Rights of the Child
CSO	Civil Society Organisations
EGAT	Electricity Generating Authority of Thailand
EHIAs	Environmental and Health Impact Assessments
EIAs	Environmental Impact Assessments
ELC	Economic Land Concession
ETOs	Extraterritorial Obligations
EU	European Union
FPIC	Free, Prior, and Informed Consent
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFI	International Financial Institution
KKPT	Koh Kong Plantation Company Ltd.
KKSI	Koh Kong Sugar Industry Company Ltd
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed
MoU	Memorandum of Understanding
MPC	Myanmar Pongpipat Co. Ltd.
MRC	Mekong River Commission
NAP	National Action Plan
NBA	National Baseline Assessment
NCPO	National Council for Peace and Order
NGO	Non-Governmental Organisation
NHRCT	National Human Rights Commission of Thailand
OECD	Organisation for Economic Co-operation and Development
PNPCA	Procedures for Notification, Prior Consultation and Agreement
RTG	Royal Thai Government
SLAPP	Strategic Litigation Against Public Participation
TBHRN	Thai Business and Human Rights Network
TNC	Transnational Corporation
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGPs	UN Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review

INTRODUCTION: Manushya Foundation's Business & Human Rights Strategy

As part of its work in Thailand, the Manushya Foundation (Manushya) aims to further strengthen the capacity of local communities, members of the Thai CSOs Coalition for the UPR, of which many are experiencing adverse human rights impacts of corporations, to effectively engage in the Universal Periodic Review (UPR) implementation phase and to hold the Royal Thai Government (RTG) accountable on its UPR commitments and business and human rights obligations.

After the Thai government received, during its Second Universal Periodic Review (UPR), a recommendation from Sweden to develop a National Action Plan (NAP) on Business and Human Rights (BHR) with the view to implement the UN Guiding Principles on Business and Human Rights (UNGPs), Manushya developed a strategy¹ aiming at empowering communities to be at the centre of the business and human rights response in Thailand, by guaranteeing their central role throughout the development, implementation and monitoring of the NAP. To this end, since the beginning of 2017, Manushya has reached out to local communities, national, regional and international experts on business and human rights to:

- Develop a CSO national baseline assessment (NBA) on Business and Human Rights, with communities' challenges and needs put at the centre of the assessment,
- Empower local communities to conduct evidence-based research and, together with academics, document Business and Human Rights issues they face, and
- Empower grass-root organisations to tip the balance of power between businesses and governments versus CSOs, and encourage more bottom-up approaches which view CSOs as equal partners. For that purpose, in addition to building capacities on BHR knowledge, Manushya also provides sub-grants to establish and sustain a national network on BHR comprising communities, academics and experts, called the "Thai BHR Network"². The Thai BHR Network is an inclusive and intersectional network of grassroots communities, civil society, academics and experts, including representatives from and/or working on the following issues: *rights of migrant workers, labour rights (formal and informal workers), trade unions, indigenous peoples, stateless persons, community rights, land-related rights, environmental rights, people with disabilities, LGBTI individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders, the impact of Thai outbound investments and trade agreements*.

As part of its Business and Human Rights strategy and in order to inform the development of the independent CSO National Baseline Assessment, Manushya Foundation has supported the formation of the Thai Business and Human Rights Network and has conducted a series of consultations to identify the key priority areas, as well as community-led recommendations: four Regional National Baseline Assessment Dialogues (January-March 2017)³, the first experts meeting to inform the independent national baseline assessment on business and human rights in Thailand (2-3 September 2017), and the second experts meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand (28 February-1 March 2018).⁴

In order to guarantee safety of local communities and human rights defenders engaging in Manushya's strategy, all these six consultations were co-organised with the Rights and Liberties Protection Department of the Ministry of Justice, Thailand.

Throughout the four regional NBA dialogues and the two experts meetings, Manushya and members of the Thai BHR Network have identified four main areas of focus for the CSO NBA:

- 1) Violations of Labour Rights and Standards;
- 2) Impacts on community rights, indigenous peoples, livelihoods, land-related rights, natural resources and the environment;
- 3) The protection of human rights defenders;
- 4) Trade agreements and Thai outbound investments.



These four priority areas of focus influenced the content of the Government National Action Plan on Business and Human Rights, following our key four priority areas. Thus, this Thematic Assessment Chapter falls under the Priority Area 4 and is part of Manushya Foundation and the Thai Business and Human Rights' Independent CSO National Baseline Assessment (NBA) on Business and Human Rights in Thailand.⁵

[Manushya Foundation](#) and the Thai Business & Human Rights Network ([Thai BHR Network](#)), its inclusive and intersectional coalition of human rights defenders, community leaders, researchers, academics, and non-governmental organisations together ensure local communities are central to the business and human rights response and discourse in Thailand and work together to inform the development of the National Action Plan on Business & Human Rights, as well as to monitor and support its effective implementation, with communities' voices and solutions at the center.

Role of Manushya

“Empowering local communities to be at the center of business and human rights discourse and of the NAP on Business and Human Rights”

At Manushya, we strongly believe in the importance of collaboration and cooperation to further human rights and social justice and recognise the importance of approaching our work in a constructive manner to ensure the greatest positive change for the communities we serve. However, while we work with any and all willing partners to advance these causes, Manushya is a completely independent human rights organisation. Our willingness to work with 'champions' to create a fairer, more equitable world is based solely on the needs of communities, with the singular purpose of ensuring no individual or group is the victim of human rights abuses caused by business conducts. Our approach lies on the empowerment of invisible and marginalized communities, sharing knowledge with them so they can assert for their rights, facilitating their meaningful engagement in the NAP process so they can become 'Agents of Change' providing solutions to improve their livelihoods.

Working with the Rights and Liberties Protection Department of the Ministry of Justice in Thailand is a crucial element of achieving this. However, we see a key difference between working with and working for. For us, collaboration and critique are inseparable partners, and while we are enthusiastic to cooperate, we do so with our driving force of community empowerment at its core. This means that when we work with others, the working relationship has to be based on mutual respect for each other, ideally safeguarded by applying a bottom-up approach and not a top-down one. Our primary motivation and guiding principles are the needs of communities, not the needs of those we are collaborating with. While we believe the value of strong relationships with those in power cannot be denied as essential tools in the fight for human rights, we will not develop and maintain such relationships based on anything other than achieving the goals of the communities we serve, and we will not and have not ever shied away from being strong, critical voices against those we are working with when necessary to advance the needs of communities. Our independence is crucial to us and is what enables us to effectively tackle rights violations and inequality in Thailand.

METHODOLOGY

The methodology used in the research, analysis and writing for this Thematic Assessment Chapter on the Adverse Human Rights Impacts of Thai Outbound Investments in the context of Business and Human Rights in Thailand relies on primary and secondary data and resources. Firstly, Primary sources, including voices, concerns, cases, experiences and recommendations of local communities and experts, were collected directly from Manushya Foundation's BHR activities; including:

- Four Regional National Baseline Assessment (NBA) Dialogues on BHR conducted from January to March 2017⁶;
- Four regional capacity building workshops on Business and Human Rights to demystify corporate accountability to HRDs⁷ held in May-June 2017;
- Two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the National Action Plan on Business and Human Rights. The First Experts' Meeting aimed at Informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018)⁸; and
- The Business & Human Rights Coalition Building Workshop held on 18-20 November 2017.⁹

Secondly, this Thematic Assessment Chapter is based on desk-research conducted from January 2017 to March 2019, and presents an analysis of the international, regional and national legal and policy framework pertaining to community rights, the management of natural resources and the environment in Thailand, including in the context of business and human rights and the UN Guiding Principles on Business and Human Rights (UNGPs). The research included a systematic literature review of UN human rights bodies' and NGOs' reports, observations and recommendations; online news articles; expert papers; and other publications.

Limitations of the Thematic Assessment Chapter

The *Thematic Assessment Chapter on Adverse Human Rights Impacts of Thai Outbound Investments* is informed by our desk research of existing secondary evidence, coupled with input and first-hand accounts gathered throughout Manushya Foundation's business and human rights strategy. The Thematic Assessment Chapter does not have the pretention to present the most comprehensive assessment of the situation on the ground, but only translates realities as available through the conduct of a literature review of secondary evidence existing in English language, and captures first-hand accounts shared by Thai local and affected communities who engaged in our BHR's strategy. These individuals comprise the Thai BHR Network and their communities, who do not represent the opinions of all civil society organisations working on business and human rights in Thailand. Further, the *Thematic Assessment Chapter on Adverse Human Rights Impacts of Thai Outbound Investments* does not provide a list of all the cases of rights violations and adverse impacts caused by the activities of Thai companies. Nevertheless, the case studies and voices selected and included in the Thematic Assessment Chapter demonstrate the challenges faced by affected communities on the ground, and are representative of trends and patterns of adverse business conducts and operations inside Thailand and abroad. Finally, the *Thematic Assessment Chapter on Adverse Human Rights Impacts of Thai Outbound Investments* does not analyse the level to which Thai companies comply with the UNGPs and existing sustainability and human rights standards as enshrined in Thai policies. This Thematic Assessment Chapter focuses on the duty of the Thai State, the legislative and policy gaps and failures to protect human rights in business contexts and to hold companies accountable for their adverse human rights impacts. Despite that, the Thematic Assessment Chapter shares good practices and recommendations for businesses to follow, as well as a business-oriented action plan, in compliance with Pillar 2 of the UNGPs, which could be a starting point for Thai companies to ensure responsible business conducts.

This **Thematic Assessment Chapter falls under the Priority Area 4 'Trade Agreements & Thai Outbound Investments'** of Manushya Foundation and the Thai Business and Human Rights' Independent CSO National Baseline Assessment (NBA) on Business and Human Rights in Thailand.¹⁰

ADVERSE HUMAN RIGHTS IMPACTS OF THAI OUTBOUND INVESTMENTS

CONTEXT

Globalization and an increased focus on economic benefits have resulted in corporations and financial institutions attempting to bolster their profits by investing in countries all over the world.¹¹ These investments in projects abroad are common not just amongst economic partners but are also consolidated within regional and geographic blocs that are reliant on the same natural resources, as can be seen in Thai investments in the Mekong region.¹² Thai outbound investments that are aggressively growing have resulted in and reinforced the fear that they will result in adverse human rights impacts in Cambodia, Laos, Myanmar, Vietnam and in Thailand itself as well.¹³ These transactions involve investments made by business enterprises that have been incorporated in Thailand, and from them having a controlling stake in entities or projects abroad though varying in their systems such as through the purchase of enterprises, investment in subsidiaries, investment in joint ventures, or by operating as a developer in the project.¹⁴ These are driven by the goal to seek unexplored markets for products and services, to obtain resources and raw material, to access cheaper labour, to benefit from a supply chain that is transboundary, and in order to diversify business ventures.¹⁵ It has been estimated that more than 100,000 people have been negatively affected by Thai outbound investments in several projects including the Dawei Special Economic Zone, Ban Chaung coal mine, Heinda mine, and Hatgyi dam in Myanmar; Koh Kong and Oddar meanchey sugar plantations in Cambodia; and Xayaburi dam and Hongsa coal mine and power plant, and Pak Beng dam in Laos.¹⁶ While these projects are justified based on the economic development that result for them, this is often at the cost of the human rights of people in the countries where the project is based and even abroad.¹⁷

The adverse human rights impact of Thai outbound investments that amounted to 13.3 billion dollars in 2016¹⁸ has manifested in the form of land grabs, forced evictions,¹⁹ failure to enforce the right of Free, Prior, and Informed Consent (FPIC), and destruction of natural resources of the community.²⁰ Affected communities also do not have access to remedies and a redress mechanism with appropriate compensation to enforce their rights and seek justice, in a system that abounds with the absence of accountability and transparency in its processes as well as in its content.²¹ Restrictions on freedom of expression and assembly and the crackdown on human rights defenders have obstructed efforts to protect communities from the negative impact of Thai outbound investments.²² Trans-boundary obligations also arise in the case of expansion not just with respect to investment of financial capital and in resources, but also in labour capital across the supply chain.²³ Additionally, these prove complicated to address as most Thai investments are marked by registrations in a third country, where these companies benefit from tax incentivization and convenient capital transfer processes. Action with respect to Thai investments is particularly imperative as they are slated to grow to an approximate amount of 53 billion dollars by 2020.²⁴

1. INTERNATIONAL & NATIONAL LEGAL AND POLICY FRAMEWORK: Existing Laws and Policies, Gaps and Legal Challenges

1.1. International Human Rights Standards

Thailand ratified seven of the nine core UN Human Rights Treaties: (1) *Convention on the Elimination of All Forms of Racial Discrimination (CERD)*; (2) *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*; (3) *Convention on the Rights of the Child (CRC)*; (4) *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; (5) *International Covenant on Civil and Political Rights (ICCPR)*; (6) *Convention on the Rights of Persons with Disabilities (CRPD)*; and (7) *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)*.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide for the right to self-determination. This includes the right to

economic self-determination, which for many local communities equates to the right to public participation, the control of natural resources, as well as social and cultural development. Under these international human rights treaties, States have individual and joint obligations to respect and protect human rights, both within and beyond their borders.²⁵ However, many States deny the extra-territorial nature of these obligations in practice, which results in the denial of certain rights or the rights of individuals and groups of individuals in certain situations.

1.1.1. General Comment No. 24 on extra-territorial obligations under the International Covenant on Economic, Social and Cultural Rights

General Comment No. 24 of the Committee on Economic, Social and Cultural Rights (CESCR) remains noteworthy in its application of the ICESCR to all business activities, whether they are State-owned, State-controlled, privately-held, or transnational in its activities, regardless of the presence of domestic laws that is applicable or fully enforceable in practice.²⁶ According to this, States continue to have extraterritorial obligations on ICESCR rights to food, housing, health,²⁷ work,²⁸ obtain social security and form trade unions,²⁹ to ensure they are respected, protected, and facilitated. The fundamental obligation that States have of non-discrimination requires them to eliminate all forms of discrimination by non-State actors, whether they may be formal or substantive. This includes groups that are disproportionately affected by the adverse impact on their rights by the development, exploitation, or utilisation of land and natural resources, such as women, LGBTI individuals, disabled persons, children, indigenous peoples, workers,³⁰ Towards these aspects, the General Comment holds States who are party to the ICESCR directly responsible for the activity or inactivity of non-State entities. The Committee does so by highlighting 'extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social, and cultural rights outside its territory.'³¹

This includes (1) the duty of the State not to place barriers on the attempts of other State Parties to comply with obligations under the ICESCR, such as during the negotiation of trade and investment agreements or treaties that are financial and tax based;³² (2) the duty of the State to take reasonable measures to prevent violations caused by the activities of private actors, particularly in high risk projects like those of the mining and extractive industry;³³ or (3) require business entities to directly employ their best efforts in order to ensure compliance of the ICESCR by those whose conduct is influenced by them, such as subsidiaries and those part of their supply chain.³⁴

1.1.2. Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic Social and Cultural Rights

The Maastricht Principles were drafted based on expert opinion internationally contributed, not towards the promulgation of new law but simply towards the restatement of human rights obligations on extra-territoriality. Developed by international experts including present and former members of international and regional human rights bodies and mechanisms such as Special Rapporteurs, these normative principles set out the scope of extra-territorial obligations including the jurisdictional scope, limits to the exercise of jurisdiction, State responsibility, attribution of State responsibility for the conduct of non-State actors, the obligation not to cause harm, impact assessment and prevention, the obligation of States as the members of international organisations, the obligation of international organisations, and obligations under international agreements. It also sets out the obligations to respect, protect and fulfil economic, social and cultural rights; providing for accountability measures and remedies as measures of redress.³⁵

1.1.3. Application of ETOs through the tests established by the opinions of human rights bodies

The Committee on the Rights of the Child (CRC) has clearly expressed that 'home States have (human rights) obligations... in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned.' According to the observations of the CRC, this 'reasonable link' can be established in cases where 'a business enterprise has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities in the State concerned.'³⁶ Contributing to the idea of the applicability of ETOs, the Human Rights Committee has articulated that 'a State

party must respect and ensure the rights laid down in the (International Covenant on Civil and Political Rights) to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.³⁷ Additionally, the Committee Against Torture (CAT) has similarly expressed that States should provide and ensure regulation 'in all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law.'³⁸

These opinions have led to the establishment of three tests, applicable in the case of ETOs. These include:

- **Effective Control:** This test sets out that ETOs apply in cases where the State exercises effective control over a private actor or to their activities and operations. According to this narrow test, States only have an obligation to protect in cases where control over private actors is such that it may be equated with an organ of the government or acting on its behalf.³⁹
- **Decisive influence:** According to this test, an obligation is imposed on a State when it exerts decisive influence over private actors or their activities. A State is said to exercise such influence when it is able to influence the conduct of the corporation overseas materially. This applies particularly in cases where a home state provides economic, political, diplomatic, financial or other support to the activities of the trans-national corporation abroad.⁴⁰
- **Reasonable Link:** Broadening the sphere of obligation, this test imposes an obligation on States if there is a reasonable link between the State and the conduct of private actors.⁴¹ A reasonable link

1.2. Regional Commitments

1.2.1. The 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin

Commonly known as the Mekong Agreement, this document provides a regional framework according to which, member countries have agreed to cooperate, consult and discuss the transboundary impact of water projects in the region before any commitments is made with respect to implementation. This agreement establishes the Mekong River Commission (MRC) which researches and assesses programs along the Mekong Basin, in addition to fulfilling other duties. The Mekong Agreement in Article 3 provides for protection of the environment and ecological balance, by guarding natural resources, aquatic life and conditions of the Mekong River Basin from 'pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.'⁴²

An important feature of this Agreement that is relevant in the case of development projects is prior consultation, which includes timely notification along with the provision of additional data and information to the Joint Committee. This allows for the evaluation of the impact of a project based on the proposed use of water in addition to other effects which may result. This, however, does not allow for the right to veto or unilaterally use water without taking into consideration other riparian rights. Nevertheless, it has been highlighted that both the key to success as well as failure of this agreement is the fact that all parties are required to cooperate on matters that interfere with the rights of other member states on the utilization of the resources of the river. The MRC's extreme reliance on foreign donors has also been identified as one of its shortcomings.⁴³

1.2.2. The Procedures for Notification, Prior Consultation and Agreement (PNPCA)

The quest for prior consultation with respect to development projects in the Mekong region has further resulted in the documentation of procedure to notify, consult and for agreement on the use of resources. Adopted in 2003, the PNPCA promotes better understanding and cooperation among the member countries of the Mekong River Commission. The primary aim of the PNPCA is to provide members with prior notification of planned projects that are likely to bring about transboundary impact, allowing members to consider information and request additional information if required. This is guided by the principles of sovereign equality and territorial integrity; equitable and reasonable utilisation; respect for rights and legitimate interests; good faith; and transparency.⁴⁴ However, the fact remains that the MRC, its policies and procedures consider only

State opinions and participation in decision-making and completely disregards the vital role that civil society plays in the protection of the environment and also the effect of violations on these individuals.

1.3. National Legal & Policy Framework

There exists a legal vacuum under national law on the criminalisation of adverse human rights impacts caused by the actions of Thai investors in their operations abroad and by foreign investors inside Thailand.

1.3.1. Cabinet Resolution of 16 May 2016

The Royal Thai Government (RTG) passed a cabinet resolution providing guidelines for Thai investors engaging in outbound investments to comply with the UN Guiding Principles on Business and Human Rights. It mandates that Thai investors must refrain from causing or contribution to adverse human rights impacts. For implementation of this resolution, the Ministry of Foreign Affairs, the Ministry of Trade and the Ministry of Justice are given the responsibility of implementing these provisions. However, the cabinet resolution only refers to three transboundary Thai investment development projects: the Dawei Special Economic Zone in Myanmar, the Koh Kong sugar plantation in Cambodia, and transmission lines from the Hongsa coal power plant in Laos to Nan province in Thailand.⁴⁵

1.3.2. Cabinet Resolution of 2 May 2017

The Royal Thai Government passed a second cabinet resolution reaffirming its commitment to comply with the UN Guiding Principles on Business and Human Rights, acknowledging the NHRCT's recommendations on the investigation of the Mitr Phol Sugar Co., Ltd and its impact on the local communities in north-eastern Cambodia. Following this resolution, Prime Minister General Prayuth Chan-Ocha on the 31st May, 2017 affirmed in a speech the RTGs commitment to implement the UNGPs at the United Nations meeting on Business and Human Rights in Bangkok. This speech was followed by him presiding over the signing of an MoU involving the Ministry of Justice, Foreign Affairs and Commerce to take concrete steps to seek greater commitment from businesses to comply with human rights norms and laws.⁴⁶

2. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPs) TO PROTECT, RESPECT AND REMEDY THE ADVERSE IMPACT OF THAI OUTBOUND INVESTMENTS

2.1. Pillar I & Pillar III - The duty of the State to protect against the adverse impact caused by Thai outbound Investments, and to ensure effective access to remedies

The UNGPs sets out the obligation of States to protect the rights of people against and to ensure effective access to remedies with respect to the adverse impacts caused by Thai outbound investments. Guiding Principle 2 requires states to set out clearly that businesses within their territories should respect human rights throughout their operation. The commentary to this principle sheds light on the recommendations of several human rights treaty bodies, that requires home States to take steps to prevent abuses abroad by business enterprises within their jurisdiction. Where states are themselves involved in extraterritorial business operations, they must also respect human rights in their operations abroad. The state also has to set out clear expectations on what it expects from corporations including with respect to extra-territorial obligations applicable to them. Towards this, the State can adopt several measures including requiring parent companies to report on global operations and enacting and enforcing criminal legislations with extraterritorial applications. On effective access to remedy, Guiding Principle 26 requires States to provide for effective judicial mechanisms and to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.⁴⁷

As the UN Working Group on Business and human rights published in its guidance that “[w]hile the Government’s legal duty is generally restricted to adverse impacts in the country’s territory and/or jurisdiction, States should also take into account extraterritorial implications of business enterprises domiciled in their territory in accordance with the UNGPs”⁴⁸, this offers relevant guidance to the government to incorporate in its

National Action Plan, an outline for the extraterritorial application of its legislations to protect human rights in the operation of businesses domiciled within its jurisdiction as well as by state owned corporations.

At present, Thailand does not have in place specific laws or regulations to monitor and supervise the activities of private or even public-sector businesses outside their borders with respect to resulting human rights abuses, or in order to protect those who could be possible victims of these violations.⁴⁹ Therefore, the government fails to prevent, control or monitor the violations that result from the impacts of activities by Thai companies and investors in foreign countries. Given the complexity of extraterritorial activities and a rise in the number of investments abroad, it is vital that States ensure that they protect the rights of those affected by the adverse impact of businesses extraterritorially as mandated by the UNGPs.

2.2. Pillar II & Pillar III - The responsibility of businesses to respect the obligation to protect against the adverse impact caused by Thai outbound Investments, and to ensure effective access to remedies

Guiding Principles 11 and 12 urge business enterprises to respect human rights established in international instruments and take adequate measures to prevent, mitigate, and remedy adverse human rights impact throughout their operations. Principle 18 requires business enterprises to engage in meaningful consultation with potentially affected groups, and other relevant stakeholders, including for identifying risks and tracking company performance in context to impact on human rights in its operations. This is a foundational element of human rights due diligence and requires identifying the rights of the affected populations with regard to the affected area and the way in which these rights are likely to be affected. Guiding Principle 21 requires businesses to communicate externally their measures to identify and address the human rights impact of their operations, including through dialogue, consultation with affected stakeholders, and formal public reports where there is a risk of severe human rights impact. On effective access to remedy, Guiding Principle 29 requires businesses to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may have been adversely impacted.⁵⁰ Therefore, these principles oblige Thai companies to respect human rights, in addition to preventing any harm to the environment, and to follow procedures and standards set out that ensure the protection of these rights.

3. PRACTICES ON THE GROUND: CHALLENGES, IMPACTS & SIGNIFICANT CASES

Challenge 1: Benefits vs. Harms due to Thai Outbound Investments. Development benefits through large-scale infrastructure projects resulting from Thai outbound investments affect marginalized communities.

Impact

Thai foreign investments have heavily invested in a wide range of large scale projects in several sectors including exploration for oil and gas, electricity, energy, industrial production and manufacturing, finance, mining, trade credits,⁵¹ and special economic zones with their deep-sea ports, crude oil and petrochemical units, to name a few.⁵² These sectors are themselves widely unregulated in most countries, with disregard for the environmental and social impact. Owing to the nature of these sectors, there has been a strong support for them based on the consequential development benefits that would result.⁵³ However, in practice these have often resulted in uneven and unsustainable development that disproportionately affects indigenous peoples, women, rural communities, and other marginalised groups.⁵⁴

Case of Dawei deep sea port and Special Economic Zone in Myanmar

Proposed as the largest industrial complex of Southeast Asia in a Memorandum of Understanding (MoU) between the governments of Thailand and Myanmar, the Dawei Deep Sea Port and its connected Special Economic Zone in Myanmar has a large infrastructural investment that includes a petrochemical industrial complex, a heavy industry zone, an oil and gas industry, and medium as well as light industries. It also connects Dawei to Bangkok through the Kanchanaburi province using a road, pipeline and rail link, covering 350 km.⁵⁵

While these are touted as positive aspects to infrastructure development, in Dawei Special Economic Zone, it has been reported that the village's main water sources have been contaminated with toxic heavy metals from the mining operation.⁵⁶

Challenge 2: Thai outbound investments have been marked by land grabs and forced eviction and a reported failure to enforce the right of Free, Prior, and Informed Consent (FPIC) of affected communities.

Impact

Lack of FPIC has been highlighted in many cases of Thai outbound investments and yet the RTG has not remedied the situation.⁵⁷ Communities that are directly affected are forcefully evicted, losing their livelihood as a result of land grabbing and bearing the brunt of environmental degradation through diminished health and food insecurity. Moreover, in some cases the impacts are devastating and costs lives, for example, a broken dam or a malfunction in the energy plants.

Case of Koh Kong Sugar Plantation in Cambodia

The Koh Kong Plantation Company Ltd. (KKPT) and Koh Kong Sugar Industry Company Ltd (KCSI), two Cambodian companies received economic land concessions to establish a sugarcane plantation and a processing factory. These companies are both owned and controlled by the Thai company Khon Kaen Sugar Industry Public Co. Ltd. at over 70%. Owing to these projects, hundreds of families faced forced eviction with no prior notice of the projects, in order to allow for these land concessions. In addition, they faced violence and their displacement resulted in them losing not just their property but also their livelihoods. No form of redressal has been provided to over 200 families and they continue to persist in their efforts to obtain restitution in the form of their lands and compensation for the loss and harm suffered.

Case of Oddar Meanchey plantation in Cambodia

The Oddar Meanchey plantation in Cambodia consists of three 70-year economic land concessions (ELCs) given by the Cambodian Government to senior officials of the Thai sugar corporation, Mitr Phol Sugar Corporation. The ELCs, covering a total of 19,700 hectares, include areas of private land that were owned and even occupied by ordinary Cambodian citizens. These ELCs eventually resulted in the forced displacement of more than thousand men, women and children and contributed to an increase in food insecurity, a decline in their livelihood, and losing sources of income which emerged from land lost and a decreased access to natural resources in the location.⁵⁸

Case of the Ban Chuang mine in Myanmar

The Ban Chuang open pit coal mine in Myanmar has been highlighted by indigenous Karen communities, amongst other negative impacts, as being the source of air and water pollution, harming the livelihood of the local residents, and for resulting in the seizure of agricultural land illegally. Thai companies operating the mine including Energy Earth PCL, East Star Company and Thai Asset Mining Company have failed to meaningfully consult or consult at all with the affected people and have failed to carry out any form of human rights due diligence. In addition, those affected by the seizure of their land have either not received any form of compensation or the amount received has been entirely inadequate. There has also been a complete disregard by the companies towards the complaints received from the local population and the local authorities, with only a handful being addressed and in a sporadic manner.⁵⁹

Challenge 3: The environmental damage caused by Thai outbound investments has resulted in the violation of key economic and social rights, including the right to water

Impact

The environmental disasters caused due to the establishment of mines, dams, ports and factories have damaged the environment negatively and impacted the rights of the communities. The right to life is threatened when there are hazardous substances that are emitted from industries of mining which are related to the right to food, water, livelihood and a safe environment.

Case of solid waste burning in Ban Chaung, Myanmar

In Ban Chaung in Myanmar, spontaneous combustion of lignite, toxic fumes, and foul smokes from solid waste burning has created serious health impacts. The project has polluted local water sources that communities used for drinking, bathing, and cooking.⁶⁰

Case of the Heinda Mine in Myanmar

The Heinda Mine located in the Thanintharyi Region of Southern Myanmar is a source of tin. These mines that are at present under the operational control of a Thai subsidiary company, Myanmar Pongpipat Co. Ltd. (MPC) have contributed to the pollution of the Heinda and Heindu streams. Ten villages on their banks are adversely impacted by the runoff from these streams resulting in water shortage, destruction of the villagers' plantations, floods, erosion of the soil and the degradation of the ecosystem.⁶¹

Case of Xayaburi dam in Laos

The Xayaburi Dam in Lao PDR, a 1,285MW hydroelectric project extends along the mainstream of Mekong River. It has been proposed as the first in a string of eleven dams constructed along the lower Mekong, nine of which will be located in Lao PDR. Thai investments are deeply rooted in this development, with Ch. Karnchang Public Company as a lead contractor and four Thai banks supplying funding. In addition, the Electricity Generating Authority of Thailand will be the main beneficiary, since it will be purchasing 95% of the electricity produced. The dam is expected to harm region's ecology, blocking nutrient-rich sediment, negatively impact agriculture, and may lead to the extinction of 41 fish species.⁶²

Challenge 4: Lack of Accountability: Transboundary investments are challenging due to (1) the refusal of the home State or corporation to recognise and implement the extraterritorial dimension of its duty to protect or respect human rights, and (2) the unwillingness, inability or complicity of the home State in the actions of the corporate.

Impact

To address this challenge that results from transboundary investments, it is essential that States close the gap of addressing adverse human rights impacts by exercising effective control over business entities with which they exercise effective control, have decisive influence or maintain a reasonable link. In this manner, States must take all essential measures to address violations by non-State actors that they are in a position to regulate. Corporations also have an obligation to ensure that they respect the rights of individuals through all their actions, not just those within their territory of operation. This is often abandoned in the pursuit of profit and steps are taken to not maximize profit, but also to avoid these responsibilities.

Challenge 5: Thai investments abroad, Transnational Corporations (TNCs) and International Financial Institutions (IFIs) remain unregulated due to the absence of effective mechanisms to monitor their operations in Thailand

Impact

In cases of Thai Outbound Investments, the commonality remains that communities are not included in the decision-making processes of the project and that the EIAs conducted are either not efficient or not adequate, or both. Apprehensions shared by community members affected by projects are disregarded and affect their right to a healthy environment, right to clean air, their food security. In addition, the absence of overall regulation of law, policy and enforcement results in the duty of the government and businesses to ensure access to information, right to compensation, analysis of impact, and provision of remedy and compensation on violation is not complied with. Cabinet resolutions to ensure oversight of the impact of these transboundary investments through laws and institutional mechanisms while having been articulated have still to be implemented two years later.

Voice from Expert

*'The Cabinet had come out with a resolution on controlling human rights violations from transboundary investment in May last year, and this June, Prime Minister General Prayut Chan-o-cha had just announced the Government stance on tackling this issue. However, there still have been no concrete measures from the government to regulate Thai investors so they respect human rights.'*⁶³

Sor Rattanamanee Polkla, Community Resource Centre Foundation

Challenge 6: There is an absence of adequate remedies and compensation, for reported and identified adverse human rights impacts caused by transboundary investments**Impact**

The primary challenge that remains on accessing remedies is the fact that different countries and jurisdictions have dissimilar rules on the means and methods of pursuing a remedy,⁶⁴ which may extend to situations when a person is affected by the adverse impact of the activities of corporations. These difficulties may also be compounded by the differing level of protection for human rights and environmental standards. There are also difficulties in obtaining evidence from a different country, compounded by the lack of cooperation from authorities in the countries in question.⁶⁵ There may also exist political manipulation or corporate capture of the judicial system⁶⁶, and disregard for the rule of law in countries where the violation has taken place⁶⁷.

In Thailand, communities affected by the violation of rights by transboundary investments have extreme difficulty in accessing justice mechanisms and remedies, partly due to the fact that there are no legislations that mandate the fulfilment of extraterritorial obligations by Thai investors.⁶⁸ It is often also difficult to access remedies for violations by Thai companies based on their activities abroad, as they often register as legal person's under the law of the foreign country and thus operate accordingly.⁶⁹ There are also very poor avenues for judicial remedies in Thailand for violations of human rights by Thai outbound investments.⁷⁰ The impact of poor redressal, compensation and remedies for transboundary human rights encourages more violations through the loopholes and profit agenda of the businesses and investors alike.

Case of Xayaburi Dam in Laos

The National Human Rights Commission of Thailand (NHRCT) accepted the case brought against the Xayaburi Dam on the grounds of an absence of disclosure of information and lack of public participation through an effective EIA and EHIA process.⁷¹ While the second committee of the NHRCT issued the preliminary report, the problem remained that it was not enforceable. Therefore, in 2013, the plaintiff who continued to be concerned that the Xayaburi Dam negatively affected the environment and the livelihood of communities in the area filed a case before the Thai courts. The Administrative Court dismissed the case based on jurisdictional grounds.⁷² The Supreme court while reversing the decision of the lower court still proceeded to dismiss the case, arguing that the defendants, EGAT and the Ministry of National Resources and Environment, fulfilled all obligations and their responsibility to conduct public consultations according to the PNPCA⁷³, and acted in accordance with the Constitution.⁷⁴

Case of Pak Beng Dam in Laos

In June 2017, the Rak Chiang Khong Conservation Group filed a lawsuit against Thai government agencies regarding their responsibilities in relation to the proposed Pak Beng dam and the expected cross-border impacts in Thailand. The group claimed that the technical review of the environmental and social impact studies for the dam, as well as the consultation processes, were seriously inadequate and only offered a very limited understanding of the impacts of the dam. The complaint was dismissed by the administrative court.⁷⁵

Challenge 7: There has been a sharp increase in SLAPP lawsuits against human rights defenders seeking to protect communities from the adverse impact of Thai outbound investments**Impact**

Laws such as the Public Assembly Act, Computer Crime Act, and provisions of the NCPO orders have been misused by the government and private enterprises to prevent any criticism or in an attempt to protect their interests.⁷⁶ The NHRCT has received several complaints related to SLAPP suits over the past 10 years.⁷⁷ The major impact of the trend of increasing SLAPP lawsuits restricts and highlights the lack of a democratic space for communities and people to exercise their rights. It also proves to be a barrier on the actions of HRDs, who are agents of change trying to voice the concerns of the local communities in the cases of adverse violations by Thai outbound investments.⁷⁸

Case of Koh Kong Sugar Plantation in Cambodia

A case of the Koh Kong Sugar plantation in Cambodia, as decided upon by the NHRCT sets a clear example of an extraterritorial case that has also been used as a precedent to investigate other alleged transboundary human rights violations committed by Thai companies. The Community Legal Education Centre (CLEC), a Cambodia-based organisation complained to the NHRCT of forced evictions, threat to community members, loss of food security and killing of livestock in the Koh Kong sugar cane plantation involving a Thai company. NHRCT's Subcommittee on Civil and Political Rights carried out investigations and clarified in 2012 that as long as the stakeholder in question are bound by Thai laws and human rights obligations, the NHRCT which is committed to serving the interest of justice through human rights promotion and protection in the country could address it. The Subcommittee identified violations of the rights to life and to self-determination in particular as well as the people's right to economic, social, cultural and political development.⁷⁹

4. EXAMPLES OF GOOD PRACTICES AND GUIDELINES TO GUARANTEE COMPLIANCE WITH THE UN GUIDING PRINCIPLES ON BUSINESS & HUMAN RIGHTS AND IN THE IMPLEMENTATION OF LAW AND POLICY**4.1. Good Practices & Guidelines led by Multi-stakeholders' Initiatives****4.1.1. Coalition building, advocacy and measures to ensure compliance with extra-territorial obligations by Thai ETO-Watch**

Civil society organisations and non-governmental organisations in Thailand have come together to form a coalition called Thai-ETO Watch that is working towards stopping the violation of human rights, environmental damage and social impact that arise from Thai outbound investments. This group monitors the standards and practices of Thai investors in Mekong countries as well as in Myanmar, and in order to support those communities that are negatively affected as a result of these projects particularly in the defence of the rights of individuals to access natural resources and in the provision of remedies in the case of violations of rights. Advocating for changes in policy in order to enforce the extraterritorial obligations of investors from Thailand, they propagate the implementation of strong regulatory frameworks through practices such as due diligence. They work with government actors, National Human Rights institutions, individual academics, think tanks and CSOs in Thailand and the Mekong region for the development of mechanisms to hold Thai investors accountable for their actions.⁸⁰

4.1.2. The contributions of the Clean Sugar Campaign

The Clean Sugar Campaign is an example of successful coalition building, with a network of CSOs and affected communities engaging on cases of human rights violations and environmental damage caused by the sugar industry in sugar plantations all across Cambodia, including by addressing cases of land grabbing, forced evictions, violation of the rights of communities and indigenous peoples, absence of remedy and provision of compensation. Through its actions, it attempts to ensure that just and equitable remedies are provided to

individuals and communities, harmed by the industry.⁸¹ This campaign works on targeting the actions of companies working on sugar production, the investments they have undertaken, and sugar retailers that are exporting and selling the sugar in European countries and United Kingdom. The Clean Sugar Campaign is also specifically involved in monitoring several cases involving Thai outbound investments in the Koh Kong and Oddar Meanchey projects, through which it has achieved some important successes, such as in the case of the Oddar Meanchey sugar plantation which has informed a EU Parliament resolution. This resolution calls for investigation by the EU into these abuses as well as the revocation of trade preference that are extended to the sugar industry.⁸²

5. RECOMMENDATIONS AND ACTION PLAN FOR THE STATE: PILLAR I AND PILLAR III

5.1. PILLAR I: STATE DUTY TO PROTECT

Priority Area 1	Resolution of challenges in terms of law and policy		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Repeal or amend law and policy to ensure that there is no violation of the rights of individuals due to transboundary investments, that violate or deny rights to individuals and communities while redressing harm caused in line with international obligations as set out in the ICCPR, ICESCR, ICERD, UNDRIP, the UNGPs and the recommendation from the Statement at the end of visit by the United Nations Working Group on Business and Human Rights to Thailand	Repeal or amend head of the NCPO Orders 64/2014 and 66/2014, to resolve aspects which give authority to arrest, threaten, destroy crops and evict local communities arbitrarily without due notice and without prior consultation.	The National Council for Peace and Order (NCPO) and the National Legislative Assembly, The Ministry of Justice, The Ministry of Natural resources and environment, Ministry of Foreign Affairs	These steps must be taken in consultation with the National Human Rights Commission, local civilian agencies and with the participation of local communities in these decisions affecting them and their rights; through prior consultation through participatory approaches. These must be done also keeping in mind their best interests. Regular review should ensure interpretation that complies with the intent of the contributions received from local communities. Those who have been displaced in accordance with these laws should be provided redress through restitution or just fair and equitable compensation Timeline: 3 years - 2019-2022
	Halt implementation of the existing forest-related laws and policies, specifically NCPO Order 64/2014, NCPO Order 4/2015 and the Forest Mastery Plan, including by refraining from arresting people on the allegation of land encroachment		
	Reform existing land and forest related legislations and policy, including the National Reserved Forest Act, the Forest Act, the Natural Sanctuary Act, and the draft Community Forest Act, by affirming the right to participate in meaningful consultations and in government decision making, through measures such as FPIC and allow for communal management of land and natural resources associated.		

	To provide redressal for harm caused, authorities should include provisions that reopen and undertake fair investigation on charges, arrests, prosecution or any other adverse impact. In addition, such remediation must also be provided for illegal logging or encroachment under Order No. 64/2014.		
Enactment of laws to ensure the enforcement of extra-territorial obligations, in line with the obligations set out in and the interpretation of the ICCPR, ICESCR, General Comment no. 24 of the CESCR, the Maastricht Principles on ETOs and the UNGPs	<p>Ensure the enactment of a law on the basis of the 2016 cabinet resolution to expand the scope and better regulate Thai outbound investments, including through the provision of a singular oversight body for all transboundary projects</p> <p>Enact anti - SLAPP (Strategic Litigation Against Public Participation) legislation to regulate the impact of laws such as the Computer Crimes Act and NCPO orders, for the decriminalisation of defamation with respect to development projects where there are violations extraterritorially. In these cases, burden of proof must not be placed on the defendant/affected individual</p>	The National Legislative Assembly, The Ministry of Commerce, The Ministry of Foreign Affairs and The Ministry of Justice	<p>An impact analysis of development projects must be undertaken prior to and following the implementation of laws that regulate transboundary investments, both at the State level and on a regional basis with the sharing of information compiled and obtained</p> <p>Timeline: 3 years - 2019-2022</p>
Priority Area 2	Regulation and monitoring of the impact from activities that give rise to ETOs		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Ensure monitoring of rights violations that arise as a result of adverse impacts of investments extraterritorially, in accordance with the obligation under General Comment 24 of the CESCR	Set up an independent body with a transparent process to monitor the impact of these business activities on economic, social and cultural right such as the right to food, housing, health, work, favourable conditions at work and social security; as well as protection of the	The Ministry of Labour, the Ministry of Justice, the Ministry of Environment and Natural Resources	Re-evaluation of the impact of businesses through monitoring must be carried out on a regular basis, and carried out in businesses, their subsidiaries and their supply chain. Maintain documentation to study patterns of violations that can be used to remedy violations

	<p>environment and natural resources</p> <p>Adhere to the positive obligation to adopt a regulatory and policy framework that requires business entities to utilise due diligence mechanisms periodically to monitor the impact of their activities, such as through EIAs and EHIA</p> <p>Put in place monitoring and accountability methods that cause business entities to respect rights, such as through the imposition of a duty to report policies and procedures and the placing of criminal and administrative sanctions for their failure to act with due diligence</p>		<p>and determine effective remedies.</p> <p>Timeline: 1 year - 2019</p>
Develop sustainable investment guidelines to regulate foreign investors, at every stage of the investment	These must specify what companies must do in order to comply with domestic legislation and international human rights standards by providing for the principles of 'do not harm', due diligence, and the right of communities to access remedies	The Ministry of Industry	<p>These mechanisms and remedies must address community specific needs, based on the harm caused and the differing requirements of those affected based on this</p> <p>Timeline: 2 years - 2019-2020</p>
Priority Area 3	Access to information and public participation in decision making		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
There must be no reservation on the access to information that impacts the community, environment and development; even if they are extraterritorial in nature.	<p>Any amendments to the EIA should be announced to communities</p> <p>Any information related to well-being and the environment sought by an individual or community affected by activities of business enterprises should be made available, through the responsible agency</p>	The Ministry of Natural Resources and Environment	<p>Information should be available in its entirety, in a manner, which is accessible in language and mode by all persons in the community including those that are remote areas and of all socio-economic levels</p> <p>Timeline: 1 year – 2019</p>
Ensure transparency and the respect for community and	Establish a mechanism that provides information on	The Ministry of Natural	This transparency mechanism should be the shared

individual rights to public information, in line with Article 1 of ICCPR and ICESCR, CCPR General Comment No. 12 even if it involves the rights of those from other countries	upcoming projects in a systematic manner and that allows communities to access information without restriction.	Resources and Environment	responsibility of businesses and the government to inform the communities prior to the development of a project. Timeline: 1 Year – 2019
Ensure public-participation on issues of environment and management of natural resources affected as a result of transboundary impacts, in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights to Thailand, and the 2017 concluding observations of the Human Rights Committee to Thailand	<p>Adopt a human-rights based approach in development projects, through participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC)</p> <p>Ensure guaranteed participation of individuals, communities and CSOs from inception of projects through all the steps, including monitoring, evaluation and decision-making processes until the completion of the project</p> <p>Ensure local communities, including indigenous peoples and ethnic minorities play a vital role in the environmental management and development of their land, as their knowledge and local wisdom is essential and must be considered in decision-making processes.</p>	The Ministry of Commerce	<p>Seek assistance from the international community and regional experts working in the area of ETOs, community rights, environmental protection and business sustainability to ensure compliance with international standards</p> <p>Timeline: 1 year – 2019</p>
Priority Area 4	Complicity in violations through transboundary activities		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Promote protection of rights when the government is entering into agreements with businesses or state enterprises are involved in transboundary activities	The government should carry out economic activities with complete transparency and in respect of rights. For instance, in procurement, supply and recruitment processes	Ministries and authorities involved such as Ministry of Energy, Electricity Generating Authority of	<p>Accountability measures must be provided</p> <p>Timeline: 2 years - 2019-2020</p>

		Thailand (EGAT)	
Priority Area 5	Regional cooperation in addressing transboundary violations		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Ensure regional cooperation, consultation and discussion on the transboundary impact of all development projects, following the example of the standards set out for water projects in the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin	<p>The analysis of the impact of development projects involving natural resources must be carried out individually and regionally, using due diligence</p> <p>A responsible agency must be assigned to ensure the dissemination of the information on the impact analysis in an accessible manner</p>	The Ministry of Foreign Affairs and the Ministry of Justice (in association with ASEAN through AICHR)	<p>This must be carried out with the participation of those affected by the development project, in all ASEAN countries; and taking into consideration their best interests</p> <p>Timeline: 2 years - 2019-2020.</p>
Jointly provide for the protection and promotion of human rights and environmental rights under extraterritorial obligations, by leveraging the membership of regional organisations such as the ASEAN	The ASEAN must promulgate law, policy and practice along with redressal mechanisms to address the violation of rights as the result of the adverse impact of countries in the region	The Ministry of Foreign Affairs and the Ministry of Justice (in association with ASEAN through AICHR)	<p>Monitoring of the implementation of these provisions must be undertaken regularly by ASEAN institutional mechanisms such as the AICHR</p> <p>Timeline: 3 years - 2019-2021</p>
5.2. PILLAR III: ACCESS TO REMEDY			
Priority Area 1	Remove practical and procedural barriers to legal remedies		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Remove barriers to access effective judicial remedies through courts	<p>Guidelines should be developed to prevent businesses from filing SLAPP lawsuits against those who defend the violation of rights by outbound investments. Anti-SLAPP legislation should be implemented with the burden of proof on the business/prosecution</p> <p>Address the lack of territorial and subject matter jurisdiction over violation of rights caused by the adverse impacts of transboundary investments or operations</p> <p>Address the absence of legal aid available to the indigent</p>	The Ministry of Justice	<p>The presence of structural and functional barriers, must be reviewed periodically through a study of individual cases and overall patterns</p> <p>Timeline: 2 years - 2019-2020</p>

	to address ETOs, by providing funding to make the claims financially viable.		
Priority Area 2	Access to effective remedies and compensation		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Establish specific grievance mechanisms and strengthen existing ones for affected people and communities to submit complaints and seek remedies, particularly with respect to transboundary investments	<p>Set up physically and virtually accessible mechanism with effective remedies to language barriers</p> <p>Provide fair treatment, just compensation, and appropriate remedies to affected people, including in collaboration with Thai investors</p>	The Ministry of Foreign Affairs, the Ministry of Commerce, and the Ministry of Justice	<p>Determine the number of grievances received against the number resolved, to study effectiveness of redressal</p> <p>Timeline: 1 year - 2019</p>
Strengthen the effectiveness of existing non-judicial state-based grievance redressal mechanisms which are particularly relevant in the case of ETOs, including through independent oversight as provided for in Guiding Principle 31 of the UNGPs	<p>Ensure that the NHRCT and the offices of ombudspersons have sufficient mandate and resources to admit complaints from affected individuals and communities</p> <p>Ensure the effectiveness of OECD National Contact Points by raising awareness of their existence, increasing their mandate and providing increased finances.</p> <p>These must be bolstered through provisions in domestic law, such as the implementation of remedial action and appropriate consequence in the form of administrative penalties like fines or limiting access to state services</p>	The Ministry of Justice	<p>Adequate independent oversight mechanisms must be put in place to regularly test these mechanisms</p> <p>Timeline: 2 years - 2019-2020</p>

6. RECOMMENDATIONS AND ACTION PLAN FOR BUSINESSES: PILLAR II AND PILLAR III

6.1. PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT

Priority Area 1	Fulfilment of International Obligations, including those under the UNGPs		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Prevent or cease to carry out any activity that causes environmental harm or that violate the rights of individuals and communities, through operations and investments within the country and abroad	Carry out periodic reviews of the project and share the reports with the representatives of the community and ensure transparency in the report	Businesses	Ensure the inclusion of a local community representative in the project review team of the company Timeline: 2 years - 2019-2020
	Carry out a need assessment studies to create a project plans, without adverse impacts		
	Comply with international best practices on social and environmental safeguards and human rights principles		
	Regulated, periodic and frequent visits to the project location should be carried out by business representatives, to collect information on the detrimental effects of their business on the community and the environment		
	Immediately decommission projects negatively affecting local populations and restore rivers and environment to re-establish livelihoods.		
Priority Area 2	Abstain from policies and actions that violate human rights		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Take all necessary and lawful measures to ensure that business practices do not cause, contribute or remain complicit in violations, both within and outside the country	Avoid contributing to any actions of land grabbing and forced eviction in any project; structure arrangements with corporate partners to ensure all parties uphold responsibilities with respect these rights; and	Businesses	All actions resulting from external interactions of the business should be without adverse actual and potential human rights impacts that the business causes, contributes to or is linked with through any operation, investment, product or service in the

	build leverage in pre-existing projects or business relations to prevent or mitigate adverse impacts of development projects or other business activities.		country or through extra-territorial investments Timeline: 1 year - 2019
Abstain from advocating for legislations that restrict rights, in contravention of the duty to respect set out for businesses in the UNGPs through corporate capture of the legislature in all countries of operation	Companies should understand and promote rights of individuals and communities, which are beneficial to them and their economic well-being, and refrain from dismissing extraterritorial obligations	Businesses	Coordination with domestic civil society and those affected in every jurisdiction could ensure a social license to operate Timeline: 1 year - 2019
With development in a sustainable manner as a priority in their investment profile, investors should ensure that they consider environmental and social risks as mitigating factors while investing in projects, within the country and abroad	Internal policy should mandate the requirement of investment projects to address any negative impacts that projects may have on the environment and at the social level	Businesses	Independent assessment of mitigating factors should be undertaken, before and during the project Timeline: 1 year - 2019

6.2. PILLAR III: ACCESS TO REMEDY

Priority Area 1	Grievance Redressal processes of Businesses		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Provide remedies and grievance redressal mechanism to victims affected by adverse human rights impact of their operations abroad, using associations or multi-stakeholder approaches including at the operational level of subsidiaries and in the supply chain	Setup physical and virtual systems for grievance redressal with effective remedies for language barriers	Businesses	Document the number and details of grievances received, in addition to the number received against those that were resolved. These mechanisms should be culturally appropriate and take into consideration the local context, circumstances and languages, while engaging Timeline: 2 years - 2019-2020
	Requirements for such mechanisms can be included in the granting or renewal of licenses and/or agreements with consideration to the size, operation and experiences or potential of harms of the business/sector/country.		

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Founded in 2017, Manushya Foundation serves as a bridge to engage, mobilise, and empower agents of change by: connecting humans through inclusive coalition building and; by developing strategies focused at placing local communities' voices in the centre of human rights advocacy and domestic implementation of international human rights obligations and standards.

Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to ensure they can constructively raise their own concerns and provide solutions in order to improve their livelihoods and the human rights situation on the ground.