

COMMUNITY RIGHTS, MANAGEMENT OF NATURAL RESOURCES AND THE ENVIRONMENT

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



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PRIORITY AREA 2: COMMUNITY RIGHTS, INDIGENOUS PEOPLES,
LAND-RELATED RIGHTS, NATURAL RESOURCES & THE ENVIRONMENT

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



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For more information about the NBA on BHR, please contact :



Emilie Pradichit
Founder & Director
Manushya Foundation
emilie@manushyafoundation.org



Ananya Ramani
Human Rights and Advocacy
Coordinator
Manushya Foundation
ananya@manushyafoundation.org



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>

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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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ABBREVIATIONS

AECEN	Asian Environmental Compliance and Enforcement Network
ASEAN	Association of Southeast Asian Nations
BHR	Business and Human Rights
CCPR	Committee on Civil and Political Rights
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CODI	Community Organizations Development Institute
CHRB	Corporate Human Rights Benchmark
CSO	Civil Society Organisation
EEC	Eastern Economic Corridor
EGAT	Electricity Generating Authority of Thailand
EHIA	Environmental Health Impact Assessment
EHRD	Environmental Human Rights Defender
EIA	Environmental Impact Assessment
EnLAW	ENLAWTHAI Foundation
EPA	Environmentally Protected Areas
EPPO	Energy Policy and Planning Office
FAO	Food and Agriculture Organization
FIDH	International Federation for Human Rights
FPIC	Free, Prior and Informed Consent
HRC	Human Rights Council
HRD	Human Rights Defender
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEE	Initial Environmental Examination
IFC	International Finance Corporation
ILO	International Labour Organization
ISO	International Organization for Standardization
IWNT	Indigenous Women Network of Thailand
JoMPA	Joint Management of Protect Areas
KRBK	Kon Rak Baan Kerd Group
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LVC	La Via Campesina
MDES	Ministry of Digital Economy and Society
MNRE	Ministry of Natural Resources and Environment
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MPC	Myanmar Pongpipat Limited
MSDHS	Ministry of Social Development and Human Security
NAP	National Action Plan
NBA	National Baseline Assessment
NCPO	National Council for Peace and Order
NDF	Northern Development Foundation
NEQA	National Environmental Quality Bill
NFN	Northern Farmer’s Network
NGO	Non-governmental organisation
NHRCT	National Human Rights Commission of Thailand
NLA	National Legislative Assembly



NSC	National Strategy Committee
OECD	Organisation for Economic Co-operation and Development
ONEP	Office of National Resources and Environmental Policy and Planning
PBS	Public Broadcasting Service
PCD	Pollution Control Department
PDP	Power Development Plan
PSA	Production Sharing Agreement
RIA	Regulatory Impact Analysis
RLPD	Rights and Liberties Protection Department
SCG	Siam Cement Group
SEA	Strategic Environment Assessment
SES	Stakeholder Engagement Standard
SEZ	Special Economic Zone
SLAPP	Strategic Lawsuit against Public Participation
THB	Thai Baht
TKL	Tungkum Limited
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGC	United Nations Global Compact
UNGP	United Nations Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review
UNHRC	Committee of the United Nations Human Rights Council
VP	Voluntary Principles on Security and Human Rights



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 Universal Period Review (UPR), of which many are experiencing adverse human rights impacts of corporations, to effectively engage in the 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 UPR, a recommendation from Sweden to develop a National Action Plan (NAP) on BHR with the view to implement the 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 NBA on BHR, 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, Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders (HRDs), the impact of Thai outbound investments and trade agreements.*

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

In order to guarantee the safety of local communities and HRDs engaging in Manushya's strategy, all these six consultations were co-organised with the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MoJ), 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 HRDs;
- 4) Trade agreements and outbound investments.

These four priority areas of focus influenced the content of the Government's NAP on BHR, following our key four priority areas. Thus, this Chapter falls under Priority Area 2 and is part of Manushya Foundation and the Thai BHR Network's Independent NBA on BHR in Thailand.⁵

Manushya Foundation and the Thai BHR Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and non-governmental organisations (NGOs) together ensure local communities are central to the BHR response and discourse in Thailand and work together to inform the development of the NAP on BHR, as well as to monitor and support its effective implementation, with communities' voices and solutions at the centre.

Role of Manushya

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

At Manushya, we strongly believe in the importance of collaboration and cooperation to further human rights and social justice and recognize 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 organization. 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 in 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 RLPD of the MoJ 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 Chapter on Community Rights, Management of Natural Resources and the Environment in the context of BHR 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 NBA Dialogues on BHR conducted from January to March 2017⁶;
- Four regional capacity-building workshops on BHR 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 NAP on BHR. 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 BHR Coalition Building Workshop held on 18-20 November 2017.⁹

Secondly, this Thematic Chapter is based on desk-research 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 the context of BHR and the 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.

COMMUNITY RIGHTS, MANAGEMENT OF NATURAL RESOURCES AND THE ENVIRONMENT

CONTEXT

Community rights, particularly those of rural communities, have been an ongoing debate under international human rights law. The first recognition of such a collective right took place under the leadership of La Via Campesina (LVC),¹⁰ an international peasants' movement which spearheaded the recognition of peasants' rights, beginning in 2001. In 2008, LVC adopted a Declaration on the Rights of Peasants, both women and men.¹¹ Another significant recognition for community rights was the coining of a definition for 'local communities' that was undertaken in 2005 during a research planning workshop in Peru.¹²

In March 2012, the Advisory Committee of the United Nations Human Rights Council (UNHRC) presented a study on the rights of people working in rural areas.¹³ In it, it was acknowledged that the need to formally recognise these rights is crucial. Peasants and other people working in rural areas, including herders, pastoralists, and fisherfolks are marginalised, and represent about 70% of people living in extreme poverty, and 80% of the world's most hungry.¹⁴ To close the definitional debate and to complement previously synthesised definitions, the Human Rights Council (HRC) in October 2012, established the open-ended intergovernmental working group on the United Nations (UN) declaration on the rights of peasants and other people working in rural areas.¹⁵ More than six years after it was set up, a final declaration was eventually formalised and was adopted only on 28 September 2018.¹⁶ This declaration on the rights of peasants and other people working in rural areas proposes a definition as follows, 'a peasant is any person who engages or who seeks to engage alone or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetised ways of organising labour, and who has a special dependency on and attachment to the lands.'¹⁷

Thai local communities are rarely involved in the process of developing and implementing projects.¹⁸ Natural resource management projects are largely developed by the State and businesses, mirroring their own interests.¹⁹ Hence, communities are often denied the rights to self-determination, sovereign decision-making, and participation when it comes to their livelihoods and their surrounding environment.²⁰ Although during the first session of the UPR process in 2011 Thailand did not receive any recommendations on mining, petroleum projects, water, and natural resources management;²¹ practices under these categories that are harmful to the environment, continue unabated. For instance, the construction of dams for development has negatively impacted the watershed ecosystem and communities through the decline of revenue, decay of natural food, increased food insecurity and change in the lifestyle of communities that rely on natural resources.²² Further, decades of exploiting mineral resources for economic gain has disrupted the environment and the lives and livelihoods of many local communities.²³ Mining and petroleum extraction operations destroy the ecological balance and contribute to global warming. In addition, mining causes the release of toxins into the soil, polluting water resources.²⁴

Owing to increased water and air pollution, Thailand's economic growth has come at a great cost to both its environment and its people.²⁵ While the global trend is to decentralise large power stations, Thai public and private institutions seem to oppose this trend, increasing the reliance on fossil fuel.²⁶ In order to meet increased electricity needs, support industries, and boost the economy, the government of Thailand has implemented diverse operations and projects exploiting mineral and natural resources, including building dams, and mining or extracting petroleum.²⁷ However, such constructions have heavily impacted the environment and ecosystem, as well as the health and livelihoods of communities.²⁸ Communities have faced evictions, as well as serious violations when it comes to the right of a safe, clean, healthy, and sustainable environment due to such development projects.²⁹



Generally, natural resources management projects' policies are developed by the State and private actors, whose livelihoods are not dependent on the exploited resources.³⁰ The very concept of engaging communities in major projects which will directly or indirectly impact their lives is widely known and understood in multilateral human rights fora. However, in reality, meaningful consultations, prior participatory mechanisms and information sharing about the impact of certain activities with affected communities are mostly lacking when it comes to development projects or natural resource extraction.³¹ Such projects imposed by governments and businesses without meaningful consultation with local communities is a major cause of concern. As the final means to endure, communities resort to protests to exercise their rights. In turn, corporations and state agencies have countered protest and community activism with violence, harassment, and intimidation.³² In 2017, 197 cases of murdered land and EHRDs were reported.³³ Various investors, including development banks, have been fueling this vicious cycle of reprisals by funding abusive projects or by failing to take appropriate action against violent attacks targeting communities.³⁴

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

1.1. International Obligations

1.1.1. International Human Rights Law: The Right to self-determination, and to equality and non-discrimination - ratified by Thailand

The right to self-determination is a fundamental right and an essential prerequisite to individuals' human rights, which by themselves cannot be properly exercised without the realisation of the collective right to self-determination.³⁵ This right was first recognised by the **UN Charter**³⁶ and subsequently by the **Universal Declaration of Human Rights (UDHR)**, and is provided for in both the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, in common Article 1. According to Article 1 of ICCPR and ICESCR, 'all peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.'³⁷ Moreover, ICCPR affirms a particular aspect of the economic content of the right to self-determination, namely the right of peoples to 'freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic cooperation based upon the principle of mutual benefit, and international law. In no case may a people be deprived of their own means of subsistence.'³⁸ This right entails corresponding duties for all States in the international community. In fact, States should indicate factors or difficulties which prevent free disposal of natural wealth and resources contrary to the provisions of Article 1(2) of ICCPR and to what extent that affects the enjoyment of rights set forth in the Covenant.³⁹ Additionally, within the ICESCR, people have the right to freely pursue their economic, social and cultural development without interference, which is intertwined with the right of every citizen to partake in public affairs at all levels, without distinction to their race, colour, descent or national or ethnic origin.⁴⁰

Another core principle in international human rights law is the right to equality and non-discrimination, which all members of the UN have a legal obligation to promote and protect and that is essential to the exercise and enjoyment of the other human rights, including economic rights.⁴¹ Common Article 2 of the two Covenants provides a non-discrimination provision, requiring state parties to respect and ensure rights without distinction on the basis of enumerated grounds, including 'property' or national or social origin or economic status.⁴²

1.1.2. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities - adopted unanimously, without vote

Adopted in 1992, this provides that States shall 'protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.'⁴³ Furthermore, minorities 'have the right to participate effectively in decisions



on the national and, where appropriate, regional level concerning minorit(y)ies' or 'the regions in which they live'.⁴⁴ It thereto states that 'national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities' and that 'programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities'.⁴⁵

1.1.3. The UN Declaration on the Right to Development

This Declaration, adopted in 1986, declared that everyone is 'entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human beings and fundamental freedoms can be fully realised'.⁴⁶ It identifies every person as being the central subject of development and attributes to States the duty to formulate appropriate national development policies which improve 'the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation in development and in the fair distribution' of the resulting benefits.⁴⁷

1.1.4. The 1992 Rio Declaration on Environment and Development⁴⁸ – ratified by Thailand

This Declaration establishes the right of the people to be involved in the development of their economies and the responsibility to safeguard the common environment. It emphasises that long term economic progress is ensured only when linked with protection of the environment. Principles 4, 10, and 22 entail the protection of the environment, access to information with redressal mechanisms and participation of communities and indigenous peoples in the development and management of the environment respectively. Principle 15 of the declaration establishes the precautionary clause, by stating that 'in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.⁴⁹

This has facilitated the evolution of the precautionary approach into a guiding legal principle. The precautionary principle's key aim is to encourage decision-makers to assess and evaluate the possible harmful effects of their activities on the environment.⁵⁰ In addition, Principle 17 of the Rio Declaration states that environmental impact assessments (EIAs) should be undertaken for proposed activities likely to have a significant adverse impact on the environment.

1.1.5. The Paris Climate Agreement⁵¹ – ratified by Thailand

It was signed by Thailand on 22 April 2016 and ratified on 21 September 2016. Through this agreement, Thailand has committed to reducing its greenhouse emissions by 20% from projected business as usual levels by 2030, with the subsequent goal to increase this to 25% subject to adequate resources as required by the agreement - to keep global temperature rise below 2°C above pre-industrial levels and to commit to making efforts to further limit the temperature to 1.5°C.

1.1.6. The UN Declaration on the Rights of Peasants and other People Working in Rural Areas – ratified by Thailand

This was adopted by the Third Committee of the UN General Assembly, with 119 countries voting in favour of the adoption of this resolution.⁵² It affirms 'that all human rights are universal, indivisible, interrelated' and recognises 'the special relationship and interaction between peasants and other people working in rural areas, and the land, water, nature, and territory to which they are attached and on which they depend for their livelihood'.⁵³ Furthermore, article 2 sets out the State's duty to 'respect, protect, and fulfil the rights of peasants and other peoples working in rural areas,' 'before adopting and implementing legislation and policies, international agreements or any other decision-making processes that may affect the rights of peasants and other people working in rural areas'.⁵⁴ According to this, the government is mandated to 'consult and cooperate in good faith with peasants and other people working in rural areas through their representatives' in order to obtain their 'active, free, effective, meaningful and informed participation'.⁵⁵ States shall also take 'all necessary measures to ensure that non-state actors that they are in a position to regulate (...) respect and strengthen the rights of peasants and other people working in rural areas'.⁵⁶



1.2. Regional Commitments

1.2.1. Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights

The obligation to ensure a sustainable environment was formalised in 2012 when Thailand signed the ASEAN Human Rights Declaration, which under Article 28(f) provides that ‘Everyone has the right to a sufficient standard of living for himself or herself and his or her family including: [...] the right to a safe, clean, and sustainable environment’.⁵⁷

1.3. National Legislations

1.3.1. The 2017 Constitution of Thailand⁵⁸

The 2017 Constitution is weaker in its mandate to protect community rights than its predecessor in 2007 and the interim constitution of 2014. The constitutional provisions contained in the 2017 constitution under Articles 41, 42, 43, 57, 58, 59, and 77 establish the rights of communities to access information, participate in public consultations including through EIAs and Environmental Health Impact Assessments (EHIAs) and requires responsible government agencies to follow a Regulatory Impact Assessment (RIA) prior to the enactment of new laws. It also includes the right to manage, maintain, and utilise natural resources and the environment by the communities for their benefit and a commitment from the state to ensure sustainable development with regards to the state’s use of resources. Article 258 highlights the relationship between environment and business activities with an agenda to encourage environmentally-friendly enterprises and ensure sustainable water resource management and waste disposal systems.

1.3.2. The Enhancement and Conservation of the National Environmental Quality Bill 1992 (NEQA)

The NEQA is the main source of law for the undertaking of EIAs.⁵⁹ Section 47 stipulates that for a project required to pass an EIA and which needs the approval of the Cabinet, ‘the government agency or state enterprise responsible for such a project or activity shall prepare the EIA report at the stage of a feasibility study for such a project, and submit it to the National Environment Board for its review and comments, which supplement the Council of Ministers’ consideration’.⁶⁰ Further, when considering an EIA report submitted for approval, the Council of Ministers ‘may also request a person or institution, being an expert or specialising in the EIA, to study and submit a report or opinion for its consideration thereof.’⁶¹

However, the Bill does not contain any provision on disclosure of information and public participation, although Section 6 provides for participation rights and access to information in environmental conservation.⁶² However, Section 7 and 8 limit participation in decision-making to NGOs who do not ‘pursue political purposes’.⁶³ Thus, the NEQA does not provide for citizens as private individuals to claim their rights to public participation and to access public information. Overall, general provisions of the NEQA related to public participation are not properly developed and public participation in the process of EIA is not formally addressed.⁶⁴

1.3.3. The role of the Office of National Resources and Environmental Policy and Planning (ONEP) and the guidance for ‘EIAs in Thailand’

ONEP is the main agency in charge of the EIA system. It is responsible for the development of the EIA system and the EIA review process. It is in charge of the rules and regulations for the preparation of EIA reports submitted to the National Environment Board for approval, the development of guidelines for the preparation of EIA reports for various types of projects, and the registration of EIA consulting firms.⁶⁵ ONEP has developed guidance tools to support project proponents further understand NEQA and the EIA/EHIA process. According to the guidance, ONEP provides definitions and explanations on EIA, EHIA, and Initial Environmental Examination (IEE) processes, as well as indications for Projects within the Environmentally Protected Areas (EPA) and Projects in Forest Conservation Areas that require EIA reports, IEE reports, and Environmental Checklists.



1.3.4. The Industrial Products Standards Act (1968),⁶⁶ the Act on the Maintenance Cleanliness and Orderliness of the Country (1992),⁶⁷ the Hazardous Substance Act (1992),⁶⁸ the Public Health Act (1992),⁶⁹ the Factory Act (1992),⁷⁰ and the Fuel Control Act (1999)⁷¹

The above Acts are also relevant to the protection of the environment and public health.

1.3.5. The Climate Change Master Plan 2015-2050,⁷² the Thailand Gas Plan 2015-2036,⁷³ the Thailand Power Development Plan (PDP) 2015-2036,⁷⁴ the Alternative Energy Development Plan 2015-2036,⁷⁵ the Energy Efficiency Development Plan 2015-2036,⁷⁶ Thailand 4.0,⁷⁷ the 12th national economic and social development plan 2017-2021,⁷⁸ and the 20-year National Strategy framework 2017-2036⁷⁹

The above Acts are amongst the policy plans by the government which aim to address environmental concerns.

1.3.6. The new Minerals Act of 2017⁸⁰

The Minerals Act came into force on 29 August 2017, with the aim to better implement environmental controls and protection, decentralise power, encourage the use of updated mining technology, and provide communities living in and around the mining areas with more protection. The highlight of the new act is the setting up of mineral committees at the national and provincial levels and the transfer of the responsibility of identifying mines and mining areas, acquiring permits, conducting EIA, EHIA, and surveys to the government. This transfer along with the provisions laid out also carry negative implications such as:

1. less importance given to public participation as the government does the paperwork and the assessments for companies, minimising public hearings;
2. permission for mines to operate in protected forest areas and exemption from EIA as a requirement for mining concessions;
3. speedy process for acquiring mining licenses, neglecting the need for time to research and assess the impacts of the mining activity on the environment and the communities that surround the mines;
4. representatives of the local community and CSOs are appointed by the chairperson, rather than being elected through a democratic process at the National Mineral Management Committee, ultimately undermining the purpose of representation and;
5. the vague and unclear restoration plan that provides no guarantee of environmental restoration

1.3.7. The Petroleum Act of 2017⁸¹ and the Petroleum Income Tax Act of 2017⁸²

Both acts were enacted to replace their predecessor laws. They provide for the establishment of Production Sharing Agreements (PSA) or Service Contracts for oil companies. Despite the presence of provisions for the protection to actors incurring damage as a result of operations, the law is yet to prove successful in resolving disputes between communities living near petroleum development projects. One such dispute is between the Na Moon community located on the border of Khon Kaen and Kalasin provinces and the oil drilling company Apico Ltd.⁸³

1.3.8. Exemption of EIA reviews through the issuance of National Council for Peace and Order (NCPO) orders

In 2016 and 2017, a series of NCPO orders exempting the passing of EIA process have been issued. Under the power of article 44 of the Interim Constitution, the Head of the NCPO has facilitated economic growth and enrichment of businesses over the respect of fundamental human rights of local communities. Article 44 of the interim Constitution gave the head of the NCPO discretionary power, inconsistent with the rule of law, to issue any order considered necessary for ‘... the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs...’.⁸⁴ The NCPO orders exempting the passing of EIA/EHIA are as follows:

- **NCPO Order No. 3/2016 on the exemption from enforcement of city plan and Building Control Act within Special Economic Zones (SEZs)⁸⁵** absolves the construction of buildings in SEZs from the regulatory framework of the 1975 Town and City Planning Act and other regulations on buildings, which imposed the conduct of EIAs.
- **NCPO Order No. 4/2016 on the exemption from enforcement of the Ministerial Regulation determining central city plan for certain business type,⁸⁶** published in the Government Gazette



suspends enforcement of the 1975 Town and City Planning law for certain undertakings, such as power plants, production and energy enterprises, and waste disposal and management projects countrywide. To illustrate, the Order exempts 29 plants, 27 of them run by the state and two by private companies, from all laws related to city planning.

- **NCPO Order No. 9/2016 on the amendment to the Environment Promotion and Conservation Act⁸⁷** permits state-owned enterprises to select private subcontractors to initiate their projects before an EIA gets approval. The order amends section 47 of the NEQA 1992 to cut short the process of conducting EIAs on construction megaprojects. This will make it possible for state agencies to fast-track projects with private subcontractors benefiting, on projects related to transportation, water management, public health, and public safety. The order also allows state projects to be proposed to the Cabinet before a full EIA is completed.
- **NCPO Order No. 28/2017⁸⁸** seeks to boost the efficiency of the new Eastern Economic Corridor (EEC) development, by setting up a special expert panel for EIA of projects in SEZs, in order to speed up the overall EIA process to keep it under one year. Academics and experts claim that this, as well as other similar orders, violate communities' rights and ignores environmental impacts, due to the fact that the duration of one year seems to be insufficient to produce a meaningful EIA or EHIA.

Other laws that encompass provisions on the **community right to assess environmental impacts, on natural resource management and public participation** include several legislations. The Industrial Products Standards Act (1968),⁸⁹ the Act on the Maintenance Cleanliness and Orderliness of the Country (1992),⁹⁰ the Hazardous Substance Act (1992),⁹¹ the Public Health Act (1992),⁹² the Factory Act (1992),⁹³ and the Fuel Control Act (1999)⁹⁴ address issues of environment and public health, but they neglect to provide any accountability mechanism such as those related to due diligence. Specific to public participation are, the Land Development Act 2008,⁹⁵ which lays out conditions for the consultation of impacted communities on development projects related to land, agriculture, economic, and natural resources; and the 2003 Royal Decree on Criteria and Procedures on Good Governance⁹⁶ that also provides for public hearings to be organised before the operational phase of any project. The State Administration Act (1991),⁹⁷ the Rules of the Office of the Prime Minister on Public Consultation (2005),⁹⁸ the Administrative Procedures Act (1996),⁹⁹ the Factory Act (1992) and its ancillary laws, the Town Planning Act (2015),¹⁰⁰ and the National Health Act (2007)¹⁰¹ also contain provisions related to public hearing, public participation, and disclosure of information in the context of the development project.

1.3.9. The 20-year National Strategy Plan and community rights

A 20-year National Strategy Plan has been drafted as a national development plan that sets out a framework based on which all governments, present and elected will have to design their policies and allocate their budget.¹⁰² The Strategy Plan provides for the recognition of the community's right to use and benefit from their land, and for access to natural resources, by fixing the conflict on forest land that is believed to intersect with community land.¹⁰³ It also focusses on environmental issues, highlighting the importance of public participation in decision making on these aspects.¹⁰⁴ It encourages businesses to create a favourable attitude, by motivating them to have good governance practices and effective management in place.¹⁰⁵ However, the problem remains that this Plan also places focus on the enhancement of competitiveness as one of its main areas of focus.¹⁰⁶ This includes the encouragement of investment, through strategies such as the creation and development of SEZs.¹⁰⁷ In addition, this Plan contains provisions that define terms very broadly, thus leaving its application up to the interpretation of the National Strategy Committee (NSC) set up by this Plan.¹⁰⁸ This Committee consists of 34 members, 17 ex-officio, and 17 qualified members that have been appointed to this post by the Cabinet, which would mean it is made up of NCPO members and its allies.¹⁰⁹ This reinforces continuity in their maintenance of control for the next 20 years over the governance and legislations of the country, even if a new democratic government were to be elected.¹¹⁰

1.3.10. Adoption of the draft Community Forest Bill

Adopted by the National Legislative Assembly (NLA) at its third reading on 15th February 2019, the Community Forest Bill was primarily developed 30 years ago to ensure that those who are residing locally in forests can work together with the state in the management and the usage of natural resources in a manner that is sustainable for the environment.¹¹¹ This will become enforceable as law, following the signature of the King and the

publication in the government gazette.¹¹² It sets out a process whereby the locals have to develop a five-year plan on the use and conservation of the forest within their community and this blueprint will undergo a process of the assessment once every five years.¹¹³ This Bill has been justified based on the fact that it is believed that management of community forests is essential to ensure cooperation and food security, prevent global warming, and protect people's basic rights. But while making such a claim, the draft Bill undermines the rights of people residing in the forest to participate and make decisions on the management of the local environment.¹¹⁴ Besides disempowering communities, the draft Bill also results in several issues primarily because of the limitation of the scope of its application, which in turn results in the further marginalisation of those living in areas beyond its scope.¹¹⁵ This happens for the following reasons:¹¹⁶ (1) Community forests have been identified by the Bill as those that are outside the conservation area managed by the State, thus excluding communities that are dependent on the forest and living in conservation areas designated as national parks. (2) This does not address the customary rights of ownership to land of hundreds of communities residing in conservation areas, resulting in a charge of trespass or their eviction, particularly on the rise since the forest reclamation policy and NCPO orders 64 and 66/2014 issued by the NCPO. (3) Communities that depend on and help sustain forests are disqualified from protection and discriminated against under this draft law. (4) With the forest department controlling the use of resources, the law further exacerbates the failure to protect land tenure, livelihood or food security for the local communities. (5) The law does not ensure the engagement of the forest department with communities with both as equal partners.

1.3.11. The Factories Act and its amendments¹¹⁷

On 22nd February 2019, the NLA revised the Factories Act of 1992 with amendments to change the definition and regulation of factories in the country. A factory has been redefined by this Bill as a place where the machinery exceeds 50 horsepower, with 50 workers or more. All places of work that do not meet these qualifications are not required to register any longer and are subject to lesser regulations as a result. As a result, 43% or 60,000 factories will no longer be subjected to regulation by this Act. Without rule preventing the establishment of these small unregulated factories in residential areas, it is expected that such establishment practices will grow exponentially. Redefining the physical limits of a factory as well, they can now be easily expanded under the amendment to Article 19/1 of the Factories Act. To further encourage investment, factory licences will also have no expiration date and would not require renewal procedures to be complied with; following the removal of Articles 14 and 15 of the Act. This slackening of procedural regulation over factories will result in lesser physical inspections of premises to ensure that the establishments meet the environmental or labour standards, otherwise expected for the renewal of a license. This suspension of licensing and the removal of regulation for small factories will also cause an increase in pollution and the absence of motivation for factories to meet standards of decent work.

1.3.12. 'Waste to energy' and the harm caused by the Alternative Energy Development Plan and the PDP¹¹⁸

Starting in 2014, the NCPO has prioritised the generation of energy from waste processing plants, as a strategy for waste management. To achieve this goal, the Ministry of Energy enacted the ten-year Alternative Energy Development Plan for 2012-2021. Through this plan, it has aimed to promote the participation of communities in the conversion of waste to energy, their involvement in activities to sort waste, and sharing of knowledge with the municipal authorities, the general public, and students to develop an understanding of waste management. Besides these campaigns, the activities of waste management operators are being incentivised to encourage their activities. These include the provision of investment assistance, investment incentives from the Board of Investment, waiving of import tariff for machinery, an exemption from corporate tax for eight years, and reduction in the corporate tax bill by 50% for another five years. In addition to this, the PDP of 2018 drafted by the Energy Policy and Planning Office (EPPO) has also reaffirmed energy production largely from waste through waste-to-energy plants. It has been, however, opined that such plants are not clean or safe, both for the environment and for public health, particularly owing to the greenhouse gases released during their processes. The Interior and Energy Ministries are also further subsidising these activities to boost investment through an increase in the power purchase quota from these sources, through the PDP. Fear has been expressed over the proliferation of such plants as hastened development instead of addressing waste management could result in more hazardous pollution from lower environmental protection standards imposed on these plants and



improper management of their activities. These could have an effect on the environment and the health of the local population and their ecosystems. Such lowered environmental protection standards are supported by special laws and exemptions guaranteed by the NCPO to private companies for the construction of such plants. Geographically, these plants can also be constructed anywhere with city development plans being overridden. To compound these factors, these small waste-to-energy power plants are often exempt from EIAs, do not have to undertake public consultation, have lower pollution control standards, and are regulated by the Ministry of Interior and the Energy Regulation Commission instead of through ONEP.

1.3.13. Amendment to the National Parks Act of 1961 and the Wildlife Conservation Bill¹¹⁹

With 140 votes in favour, seven abstentions, and only one vote against; the amendment to the National Parks Act and the Wildlife Conservation Bill were adopted together on 7 March 2019 following second and third readings by the NLA. Widespread opposition to these bills was expressed for several reasons, including with respect to the restriction it places on the right to access the forest and natural resources; on placing limitations on the duration of residence to 20 years and access to resources for individuals with overlapping claims that are in conflict with the State over ownership of the land in forests; their restriction on community rights; and harsh penalties imposed under the bills that further threaten those residing in the forests. Despite protests from affected communities during the deliberation process over the adoption of these bills and prior to it, concerns they expressed were dismissed as it was suggested that those residing in the forest will still have access to forest resources but only under new conditions set. In addition, they were not allowed to participate in the discussion or consulted on the bill or any other decision-making processes, which would affect and have an adverse impact on their rights.

1.3.14. Draft of Rice Bill

The draft of the Rice Bill passed its first reading in February 2019 and is expected to go through the second and third readings. The Bill has been proposed by representatives of the Ministry of Finance and members of the NLA.¹²⁰ However, it has been argued that the Bill was drafted in a haste; with no public hearings or consultation with all stakeholders, particularly farmers.¹²¹ Various actors have also expressed their concern that the Bill is likely to negatively affect the livelihood of communities and farmers. Two major controversial points emphasised in the draft Rice Bill are the ban on non-certified paddy seeds and the requirements for rice mills to issue purchase papers which specify the variety of rice, quality, weight, and moisture content. Farmers themselves are worried that they will be forced to buy commercial, certified varieties of paddy seeds instead of developing their own varieties and that it would be more difficult to get paddy seeds. Critics also raised concerns about the purchase-paper requirements of rice mills as this could increase mills' operating costs, which could lead to an increase in crop prices for farmers. As a result of these events, a closed-door meeting has been held, with an agreement to revise the bill to address concerns expressed.¹²² Thereafter, the NLA ad hoc committee removed or rephrased some controversial clauses.¹²³ With the Rice Bill being expected to affect the livelihood of communities and farmers, it is important that they should be informed of the drafting of the Bill to provide their comments at every stage.¹²⁴ Although the NLA ad hoc committee had a meeting with over 70 farmer representatives, during the meeting representatives were only informed why the Rice Bill would be good for them.¹²⁵

2. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS TO PROTECT, RESPECT AND REMEDY

2.1. Pillar I & Pillar III - The duty of the State to protect community rights and to ensure effective access to remedy

Community rights are established in the introduction to the UNGPs, by stating that ‘these Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to BHR so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalisation.’ The duty to protect these rights is mainly established in the first three Guiding Principles. Efforts to protect and ensure respect for community rights is a positive action taken by the State. Having promulgated legislation on this, Thailand partly complies with Guiding Principle 2 of the UNGPs towards the requirement to clearly set out the expectation that businesses respect human rights,¹²⁶ and Guiding Principle 3 that mandate the enforcement of laws that force businesses to respect human rights.¹²⁷ The Thai government recognised that protection of local people’s livelihood and the environment in the context of large-scale development projects to minimise impacts must include measures, such as the requirement to systematically conduct EIAs and EHIA, the establishment of monitoring committees, and measures to alleviate or compensate affected people, through the provision of new shelters for their relocation.¹²⁸ While it is laudable that the government acknowledged the problem and has identified measures to redress the situation, the listed measures suffer from major flaws and are largely inadequate in protecting local communities.

To illustrate, while the Constitution of Thailand of 2007 contained rather robust provisions recognising and protecting community rights,^{129 130} the Constitution of 2017’s provisions regarding community rights are much weaker¹³¹ and the continuous use of Article 44 of the interim Constitution of 2014 coupled with repressive NCPO orders undermine these rights regardless of the protection afforded by the constitutional provisions. In theory, though, the 2017 Constitution still guarantees the right of communities to manage, utilise, and preserve traditional practices, natural resources and the environment to ensure their sustainable livelihood.¹³² The main source of law for public consultation is Article 77 of the Constitution, on RIA prior to the enactment of new laws,¹³³ but does not allow for meaningful public consultation nor sufficient time for stakeholders to provide substantive input prior to the development and adoption of new legislation. The Thai system requires to publish a notice on the government-run or the agency’s website when drafting new laws.¹³⁴ Public hearings allow for the public to comment on draft laws within 15 days, criticised as it does not provide enough time for key stakeholders to research, comment, and provide input and gather evidence and data regarding draft laws.¹³⁵ This is not compliant with Organisation for Economic Co-operation and Development (OECD) guidelines which represent the international standard in terms of RIAs¹³⁶ and are important under the UNGPs, as stakeholder engagements are needed to develop NAP’s and to fulfil the public consultation requirement contained therein.

Gaps also exist in other laws with respect to community rights, such as the general provisions of the NEQA related to public participation that are not properly developed, wherein public participation in the process of EIA is not formally addressed.¹³⁷ Since the EIA provisions contained in the NEQA are broad in nature, additional guidelines and rules have been issued by relevant agencies, including through Ministerial Notifications. For example, in 2009, a Ministerial Notification containing guidelines to conduct an EHIA was published.¹³⁸ This was further amended, with the last amendment in 2017. Nevertheless, the elements of the notification fall short of protecting human rights within a business framework as although the notification sets out the requirements for EHIA in cases that ‘heavily affect the community’, often, this impact on the community cannot be determined until an EHIA has been carried out. As such, the notification only requires EHIA in cases where projects have an immediately obvious impact on communities, something which often is not clear before a project has started. By establishing the requirements of EHIA to apply only when a project seems to heavily affect the community, this notification fails to adhere to the standards set out in the UNGPs on human rights due diligence (HRDD) through EHIA as enshrined in principles 17-21. Additionally, the new Minerals Act (2017)¹³⁹ reduces the process of acquiring mining; transfers the responsibility of finding mining land, acquiring permits, and conducting

environmental surveys to the government; which will diminish local voices in mining operations. Thus, the outcome of public hearings will carry less weight.

Other laws also contain provisions related to the community's right to public participation, such as the Land Development Act 2008, the 2003 Royal Decree on Guidelines and Procedures on Good Governance,¹⁴⁰ the State Administration Act (1991),¹⁴¹ the Rule of Office of the Prime Minister on Public Consultation (2005),¹⁴² the Administrative Procedures Act (1996),¹⁴³ the Factory Act (1992)¹⁴⁴ and its ancillary laws, the Town Planning Act (2015),¹⁴⁵ and the National Health Act (2007)¹⁴⁶ also contain provisions related to public hearings, public participation and disclosure of information in the context of development projects. However, these provisions have routinely been overlooked when State authorities and private actors implement development projects across the country.

On the right of access to information, the Official Information Act 1997 is extremely vague regarding the timeframe for accessing information, only stating that the relevant body must comply within a reasonable time. In addition, the implementation of the Official Information Act has largely been seen as weak because of its several limitations, including non-compliance with the timeframes set by the law, excessively long proceedings, rejection of requests on frivolous grounds, discretionary powers of officials to apply for exemptions, obsolete methods of organising information, overlapping laws making it difficult to enforce decisions of the Tribunals, and lack of responsibility of officials in charge of implementing the law. Other provisions such as NCPO Order 3/2016,¹⁴⁷ ¹⁴⁸ NCPO Order 4/2016,¹⁴⁹ NCPO Order 9/2016,¹⁵⁰ and NCPO Order 28/2017¹⁵¹ ¹⁵² also prove contradictory as they amount to violations of Articles 58 and 77 of the Constitution¹⁵³ because they give rise to violations of the freedom to seek, receive, and impart information, and of the right to take part in public affairs. The government of Thailand is thus required, under Guiding Principle 1, to redress this situation through effective policy and legislation,¹⁵⁴ which it fails to do.

Moving from law to practice, the government has the tendency to withhold information and only organise public hearings as a formality instead of as an exercise to seek the opinions of local communities.¹⁵⁵ Despite provisions in the law, exploitation of natural resources lacks participatory mechanisms and consultations with genuine access to information for impacted individuals and communities affected. Additionally, authorities often impede the work of communities, such as submitting petitions or organising public information sharing events. This is especially the case when the activities are related to opposing development projects for environmental or land rights.¹⁵⁶ Since the coup, the NCPO has also been providing expedited licenses to palm oil, logging, and mining companies. This practice is putting thousands of communities at risk of losing access to their land and natural resources and results in them being frequently targeted over land disputes by both State and non-State actors.¹⁵⁷

On access to remedy, the commentary on Principle 25 of the third Pillar of the UNGPs, lays the foundation for access to remedy, and refers explicitly to communities by stating 'For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.' The Constitution of Thailand in Article 41(3) sets out the communities' right to approach the court against State agencies by providing that, 'A person and community shall have the right to... take legal action against a State agency as a result of an act or omission of a government official, official or employee of the State agency.'¹⁵⁸ Moreover, the right to take environmental cases to court is established in several existing laws, including the Civil Procedure Code, the Act on the Establishment of Administrative Courts and Administrative Court Procedures, the NEQA, and the Penal Code, in which penalties are prescribed for environmental violations. The NEQA provides for private organisations registered in accordance with the provisions of the NEQA to act as a party in a court case and to sue for damages incurred.¹⁵⁹ The most common legal recourse in Thailand for the violation of community rights is tort law. The Administrative Court is also useful for preventive purposes, as a case can be filed to suspend or withdraw a company's license for a development project if it poses the risk of harm to a community.¹⁶⁰ According to the government, the term 'community rights' appears often in litigation cases related to disputes between rural communities and businesses exploiting natural resources as well as in cases of opposition to a communities' land-related rights.¹⁶¹

The RTG is also of the view that a number of Administrative Court rulings recognise of cultural rights,¹⁶² and that Administrative Courts are also responsible for cases related to the violation of communities' rights, in the context of development projects.¹⁶³

As a State-based means of non-judicial grievance redressal, the Community Organisations Development Institute (CODI) established by the Ministry of Social Development and Human Security (MSDHS) is mandated to support local communities who experience rural land rights problems.¹⁶⁴ Activities carried out by the CODI include the 'provision of housing for those affected and establishment of data collection and mapping system for local communities'.¹⁶⁵

As a State based non-judicial means of grievance redressal, the National Human Rights Commission of Thailand (NHRCT) serves as the focal point of contact to receive complaints with respect to potential human rights violations.¹⁶⁶ Between 2010 and 2015, the NHRCT complaint mechanism received a total of 3,907 cases of the petition, issued 4,755 investigation reports and coordinated 1,495 cases of human rights protection.¹⁶⁷ The NHRCT is very engaged on the issue of community rights, as can be attested by the number of committees and subcommittees dedicated to community rights, and economic, social, and cultural rights. For the period 2005-2015, the NHRCT received 48 complaints related to mining management. It grouped these complaints into five categories: (1) people participation, and decision and policy making process; (2) participation in administrative process; (3) right of a safe, clean, healthy, and sustainable environment; (4) land tenure with disputes on asset management and rehabilitation and remedies accessed, and (5) right to judicial process with intimidation and threats made to community rights defenders.¹⁶⁸

2.2. Pillar II & Pillar III - The corporate responsibility to respect community rights and to ensure effective access to remedy

Principle 13 of the UNGPs requests business enterprises to avoid, and if already caused, address and mitigate human rights impacts caused by their activities.¹⁶⁹ This cannot be done without safeguarding the rights of the communities that may be potentially affected by business activities. Principle 18 highlights the need to engage with affected communities and mentions that in order to gauge human rights risks, business enterprises should, amongst other things, engage in meaningful consultation with potentially affected groups and other relevant stakeholders, including for tracking company performance.¹⁷⁰ The commentary under Principle 18 states that "(t)o enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement...".¹⁷¹ With respect to Pillar 3 and grievance mechanisms, Principle 29 sets out that companies "should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may have been adversely impacted".¹⁷² Principle 31 also lays out effectiveness criteria for operational-level grievance mechanisms.¹⁷³ Communities seeking redress to remediate a business-related violation through non-state based grievance mechanisms in Thailand is very rare. The most well-known mediation process established between a local community and a business was in the case of an oil spill in Rayong province, where State-owned petrochemical company PTTGC had one of its pipelines burst into the sea.¹⁷⁴ A community of fishermen who were affected by the spill engaged in a dialogue with the company.¹⁷⁵ However, PTTGC ended up paying only 30,000 baht to the fishermen, which was deemed extremely insufficient for the damage incurred.¹⁷⁶ The community has since then sought remedy by suing the company through a judicial mechanism,¹⁷⁷ highlighting the failure of businesses to provide mechanisms to ensure effective access to remedy.



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

Challenge 1: The adverse impact of business activities affects the environment, health, and livelihood of rural communities

Impact

The extractive industry generates millions of dollars for companies and revenue for the government, but its effects are devastating to the communities of rural Thailand. The devastation caused is severe in most cases and directly affects the health, food security, water, livelihood, and environment of communities and individuals. According to the NHCRT's report to the UN Human Rights Council following the Second Cycle of the UPR, "People in certain localities have suffered from illnesses believed to be caused by the pollution emanating from industrial activities for many years, while the government has failed to solve the problem".¹⁷⁸

There are multiple negative impacts in a poorly managed and operationalised extractive industry. Some of these adverse impacts are: (1) increased health risks to the communities due to air, water, and land pollution caused by the tailings and gasses emitted, in addition to the contribution to global warming and ultimately climate change;¹⁷⁹ (2) hazardous substances emitted as tailings contaminate the water and land causing a decrease in food production and consequential harm when produced and consumed by communities;¹⁸⁰ (3) deforestation causes soil erosion that affects agricultural lands, leading to loss of livelihood,¹⁸¹ and (4) all the aforementioned impacts lead to social disruption, poverty, displacement, and forced relocation.¹⁸²

The case of Klity Creek¹⁸³

Due to the business activities of Lead Concentrates (Thailand) Co. Ltd. in Kanchanaburi province, chemicals such as lead and tin residue were discharged into the Klity Creek. The water, soil, and aquatic wildlife were affected by the high levels of lead content. This adversely impacted the quality of life of those living around Klity Creek, whose lives were dependent on the natural resources. It was particularly damaging for locals who were entirely dependent upon the creek as their only source of clean water. A 14-year dispute in Kanchanaburi's Thong Pha Phum district came to an end after three judicial processes, in September 2017.

These occurrences first came to light in 1998, when lead contamination by illegal water discharge was exposed and the Department of Mineral Resources ordered the closure of the company. Villagers reported the contamination and the resulting death and illness, to both the company and state agencies, however, this was ignored. Therefore, they proceeded to take the company to court, which was found guilty of polluting the river. In 2017, the Supreme Court's Environmental Division rendered a judgment, ordering the payment of a compensation of 36 million baht to 151 villagers, in addition to the restoration of the creek to its original state.¹⁸⁴ In February 2018, the Pollution Control Department (PCD) started the restoration process,¹⁸⁵ but the removal of lead did not cover all affected territories.¹⁸⁶ This resulted in the continuation of harm being caused to the villagers and the environment.¹⁸⁷ Furthermore, the effects of this can be encountered in other areas, since the water from the creek flows to the Mae Klong river that supplies water and food resources to other parts of Thailand.¹⁸⁸ Nevertheless, it is mandated that the process must be completed by August 2020 and must include the suction of lead from the upper and lower Klity villages.¹⁸⁹ Towards this end, a trilateral meeting between the government authority, community leaders and the company appointed for the restoration was held in April 2018 to follow up on the restoration process,¹⁹⁰ but as of December 2018, the compensation has yet to be paid.¹⁹¹



Challenge 2: Laws addressing community rights are themselves regressive or have gaps and barriers to effective implementation, and are at times in conflict with each other to ensure businesses' benefits

Impact

One of the very significant challenges to the community and the environment are Thailand's regressive and problematic laws. The new Minerals Act of 2017,¹⁹² the Petroleum Act of 2017,¹⁹³ NCPO Orders 9/2016,¹⁹⁴ 3/2016,¹⁹⁵ 4/2016,¹⁹⁶ and 28/2017¹⁹⁷ are infamous for their neglect of upholding community rights or focusing on environmental protection and promotion. Moreover, they also prove detrimental in relation to the access to information and participation of communities in the decision-making processes, which have an impact on the environment and development. State authorities utilise special security laws, such as NCPO Order 3/2015,¹⁹⁸ Article 44 of the 2014 Interim Constitution,¹⁹⁹ and the 2015 Public Assembly Act²⁰⁰ to restrict freedom of assembly rights for individuals opposing mining and petroleum projects.

The laws of Thailand related to community rights, environmental impacts, and development and management of natural resources are ineffective and lack the capacity to protect the rights of the communities and environment.²⁰¹ The impact of these ineffective laws includes a low regard for the nation in the international community on the subject of BHR, and a lack of space for communities to exercise their rights; leaving them bitter towards the government and causing corresponding indirect negative impacts such as food insecurity, displacement, loss of livelihood, poverty, and ultimately social disruption.²⁰²

The case of Thepa Coal-fired Power Plant

Thepa Coal-fired Power Plant is located in Pak Bang subdistrict in Songkhla Province, in the south of Thailand.²⁰³ The case involving this power plant is an important and classic case demonstrating the ineffective and detrimental impact of environmental laws and the laws that protect the rights of communities in Thailand.²⁰⁴ The local communities raised many concerns and accessed many State-based non-judicial grievance mechanisms against the establishment of the power plant, but governments did not respond to most of their grievances.²⁰⁵ When the community through a network called Songkhla-Pattani complained to the Electricity Generating Authority of Thailand (EGAT) that they were not informed of the public hearings and of the negative impacts of the coal-fired power plant, the government officially responded that all the hearings were transparent and inclusive of all opinions.

The network had organised a peaceful protest against the establishment of the power plant on 27 July 2015, during the third public hearing.²⁰⁶ These protestors were not invited for the second public hearing that was carried out in secret.²⁰⁷ The network had organised a peaceful march to submit a letter to the Prime Minister.²⁰⁸ However, the people who marched were blocked and 16 of them were arrested despite it being a peaceful march.²⁰⁹ Finally, in an attempt to completely shut down the power plant, the network organised a peaceful hunger strike in front of the UN Headquarters in Bangkok elevating the issue from national to international level.²¹⁰ All these efforts were undermined when the Ministry of Energy signed contradictory Memorandums of Understanding (MoUs), one in favour of the Network to withdraw the EIA²¹¹ and the other in favour of supporters of the power plant project.²¹² Clear violations of the rights of the people are evident through the deliberate withholding of information about the EIA and in the public hearings by EGAT corresponding to article 58 of the current Constitution²¹³ and NEQA, 1992, purchase of land owned by the communities and forced eviction, destruction of community structures, curtailing the right to food, subsistence, and livelihood.

The case of Siam Cement Group (SCG)²¹⁴

On 5 March 2019, the Cabinet passed a resolution that allowed SCG as a special case to use land in a reserve forest for the operation of a limestone quarry, in Tab Kuang and Muak Lek forest reserve of Saraburi province that was of more than 3,200 rai (512 hectares). This proposal was strongly supported by the Ministry of Natural Resources and Environment (MNRE) which persuaded the Cabinet to pass this proposal, claiming that this reserved forest was at one time a part of the concession area that belonged to SCG and that its mining permits for this land only expire in April 2036. Others supporting this claim reiterate that the old concession was granted only after the completion of all the necessary screening processes and approval by the National Environment Board. It has also been stressed that such legal exemptions can be granted on condition of necessity with the



importance in this case being the relevance and necessity of industrial development. It was expressed that in this situation the government could place protective measures to control the activity of the private enterprise and to prevent any adverse environmental impact that could result. However, this stance faced widespread opposition. It was believed that such mining activity could be a threat to the environment, ecosystem, and the natural resources of what is considered 'a top-grade headwater area'. Contradicting the supportive view expressed, it was also suggested that these lands could have already been in a national park when the concession was granted. This Cabinet Resolution is also considered as being contradictory and in violation of the 20-year National Strategy, the five-year mining plan and Article 17 of the Minerals Act that prohibits mining in 'national parks, archaeological sites, national security areas and headwater forestland.' Criticising the process, it has been highlighted that the government rushed the granting of the Cabinet Resolution which it should have refrained from doing while instead of waiting for the elected government that would be voted into power to evaluate and make such a decision. Therefore, currently, an attempt is being made to try and secure an injunction against the Cabinet Resolution before the Central Administrative Court.

Challenge 3: The right to access to information of communities is violated, due to the failure to consult them or as a result of manipulation

Impact

According to obligations set out in international standards, such as those of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labour Organisation (ILO) Convention 169, communities need to be consulted before the commencement of any development project, fulfilling the criteria of Free, Prior and Informed Consent (FPIC). Informed consent 'implies that all information relating to the activity is provided...and that information is objective, accurate, and presented in a manner or form that is understandable to indigenous peoples.' However, often communities are the subject of withholding information, which violates their right to evaluate and freely determine their opinion on the project.

The case of limestone mining in Songkhla province²¹⁵

In the south of Thailand in Songkhla province, a community that was affected by the Kuha limestone mining activity requested a copy of the EIA report. However, in violation of their rights, they were supplied with an unfinished copy of the EIA.

The case of exploration drilling in the northeast of Thailand²¹⁶

In the northeast of Thailand, in the case of an exploration drilling project, the affected community asked for information about the chemical and drilling technology to be utilised. The relevant authorities failed to provide any details or information in this regard.

The case in Lampang province²¹⁷

In a case similar to the exploration drilling project in the northeast of Thailand, in the Ngao district of Lampang province in northern Thailand, information was requested by the affected community on a lignite mining project. However, this information was not provided by the relevant authorities.

The case of Apico Ltd. in Kalasin province

In 2003, the government granted a petroleum concession to Apico Ltd., in Kalasin province. After that, the villagers only heard about the project again in 2014 when the EIA was approved. An opposing group, Na Moon-Doon Sat Conservation Group, said that the company had held two public hearings during the EIA process. However, these were only attended by members of the sub-district administrative offices, sub-district chiefs, and village heads.²¹⁸ Moreover, the group claims that the EIA process was conducted without public participation. Instead of asking locals for consent, the company had given them gifts and requested them to sign upon receiving.²¹⁹



The Case of Mitr Phol Group's sugarcane factory and power plant in Khon Kaen province

Mitr Phol Group proposed to build a sugarcane factory and power plant in Ban Phai district in Khon Kaen province and brokers have begun buying land for the project starting in 2017. However, local communities have not been informed by the government about the project. Due to the potential negative impacts the project may have, various people have opposed the project. They have organised themselves into various networks; including Khaeng Lawa Conservation and Rehabilitation Network; Pa Kok Conservation Group, Hug Ban Kerd,²²⁰ and Love My Hometown. In February 2019, about 200 locals protested against the project and presented a letter with their concerns to the provincial governor. Protestors required provincial authorities to review projects and establish a villager-government committee to research the impact the project would have on people's health and the environment; the impact of the project, and an impact report before holding any public hearings. The governor agreed to set up such a committee but said that it would not have decision-making power. Currently, a public hearing is scheduled for 1 April 2019.²²¹

The case of Mitr Phol sugar refinery and biomass power plant in Yasothon province²²²

A company owned by Mitr Phol Group created a proposal for the construction of a sugar refinery and a biomass power plant in Pa Tiew district in Yasothon province. In 2015, land for the project was purchased by brokers. However, neither the local government nor the company informed local communities about what the land would be used for or about the project. A year later, villagers were made aware of the project through a poster, announcing a 'public hearing'. The public hearing was held in the form of a Chinese banquet. During the 'public hearing' attendees were informed of the benefits of the project and were given gifts. Moreover, the list of attendees was later used during the project's EIA. Locals opposed the project and organised themselves into the 'Say Bai River Conservation Network'. They complained that they were not informed about the project and the impact it would have on communities and the environment. Further, locals wanted to know which steps were taken to prevent damages to health, quality of life, and the environment, and what remedies would be available to them. The Network also asserted that the public consultation should have taken place before the project operator could obtain a permit to operate so that local communities could have provided their informed consent.

Challenge 4: Community participation in decision-making is inadequate or completely absent in various occasions

Impact

Communities are neglected in policymaking and the implementation of natural resource management, development, and on issues such as environmental impact, even when such decision-making process affects them and the enjoyment of their rights. These decisions are often made by the government and businesses, or to benefit them. This can be seen in the process of deliberation on the National Forest Park Act and the Wildlife Conservation Bill, where communities that would be negatively impacted by the adoption of these bills were not just ignored during the development of this policy but were actively ejected from the NLA when they voiced their desire to be part of the decision-making process.²²³ Development projects are aimed at increasing economic growth and the quality of life of people but often prove to be detrimental to local communities and the environment. Moreover, their feedback and consultation processes do not include all stakeholders, especially the communities that are likely to be affected by the development project.²²⁴ This issue is compounded wherein, traditionally, there is a remarkably low rate of participation of women, especially rural and indigenous women, in the preparation of policies and in the decision-making processes related to natural resource extraction.²²⁵ Patriarchal structures have overshadowed women's contribution and men continue to be at the centre of decision-making: male community leaders make the important decisions in male-only meetings. Even within communities allowing wider participation, women are often outnumbered or remain on the margins of decision-making. This has often resulted in gender-blind laws and policies regulating the exploitation of natural resources.²²⁶ Women-only meetings or focus groups, household surveys, and having women lead consultation and engagement activities represent some of the steps that may be essential to guarantee a truthful understanding of the gendered impacts of development projects.²²⁷



Devastating impacts of the lack of community participation and decision making are imminent with regard to community rights and environmental impact. The community knowledge and understanding of the environment are undermined and the environment is plundered for economic gains.²²⁸ This can lead to threats to the right to life, food, water, a secure environment to live, livelihood and ultimately forcefully displace the communities causing social disruption. Moreover, this is also a threat to all flora and fauna in the region where the business establishment is set up.²²⁹

The lack of public participation in policy-making also proves to be an obstacle to the adequate distribution of resources for public needs and in order to meet the development goals.²³⁰ Although Thailand has attempted to address this challenge by adopting the OECD guidelines on promoting public consultation in policy-making and by strengthening RIAs, there is still a lack of cooperation between public authorities and local stakeholders.²³¹ At the beginning of the 2000s, Thailand introduced new laws for the implementation of mandatory RIAs in order to comply with the OECD Reference Checklist for Regulatory Decision-Making.²³² However, compliance remained weak due to the absence of a dedicated agency to check on RIA reports, the lack of appropriate consultation with stakeholders, the underdevelopment of guidelines, and the limited capacity of officials to undertake RIAs.²³³ Improvements have been made under the new Constitution of 2017 broadening the coverage of subordinate laws, with the introduction of RIA laws that require mandatory consultation with stakeholders before any new regulation is adopted.²³⁴ Also, in 2016, guidelines were published for the Thai government to enhance the capacity and awareness of officials to conduct RIAs and to create a standard format for RIAs, along with procedures for consultation.²³⁵

The case of Pak Mun Dam²³⁶

In regards to the construction of dams and reservoirs, several projects have already been completed while some are still in progress. The construction of large dams, such as the Pak Mun Dam has changed the ecosystem of the Mun River, significantly decreasing the number and type of fish species migrating from the Mekong River. Mun River fishing communities in ten northeastern provinces have been affected by drastic reductions in fish populations and are now faced with food insecurity. This situation has been ongoing for over 26 years. However, no measures have been taken to solve the problem. The affected communities are demanding the Pak Mun Dam be decommissioned, to restore the river and their lost livelihoods.

Voice from Expert²³⁷

“The people who know the problem best is us, the people living with the problem, not the government: the people who have to live with impact should have the chance to participate.”

Katima Leeja, WHRD from the Indigenous Women Network of Thailand (IWNT), during the Second Experts Meeting to Discuss the Findings & Recommendations of the CSO NBA on BHR

Challenge 5: The right to public participation of communities is transgressed, using the justification of law or security

Impact

The absolute power exercised by the military under the NCPO has resulted in Orders that prevent opposition of as well as the investigation into development projects and the adverse impacts that result from them.²³⁸ Other methods utilised to prevent public participation include close surveillance or gaining control of public hearings, community meetings or forums.²³⁹ The Public Assembly Act of 2015 is also exploited by the police and military authorities to bar public organisation, expression of opinions, and even the holding of protest banners or signage.²⁴⁰ These practices have resulted in an established system of excluding or discriminating against communities and their rights in the decision-making process of development project, leading to an environment of impunity that has fostered an exponential rise in the number and scale of development projects under the military rule as compared to the democratic rule.²⁴¹



The case of Dawei Special Economic Zone (SEZ)²⁴²

In the Dawei SEZ, in addition to affected communities being given limited information about the project, they were also not involved in any meaningful consultations prior to the commencement of the project. Only 27% of those impacted by the project were present at the implementation meetings for the project, and of these, 82% of them did not participate due to their lack of understanding of the project and because there was a shortage of time to answer the questions they had about the project.

The case of the Namoon community²⁴³

In Khon Kaen province, during the construction of a gas exploration plant by Apico Ltd., neither was the Namoon community consulted nor were they invited to participate in the decision-making process. Locals became aware of the project in 2014 and demanded a public hearing. However, this public hearing was accompanied by 200 army and police officers. Also, attendees were screened before they were let in, and whenever an attendee would voice his concern, law enforcement officials would approach the individual.²⁴⁴ In February 2015, Apico started transporting its drilling equipment into the area and hundreds of villagers attempted to block the road, but this was to no avail as the company's trucks were accompanied by 200 state security forces.²⁴⁵

The case of potash mining in Udon Thani province

In the province of Udon Thani, in September 2015, a public hearing about a potash mining project was organised inside a local military camp.²⁴⁶ This was organised in the presence of 100 to 200 military officers inside the camp, and another 60 military officers present in front of the camp.²⁴⁷

Challenge 6: The current system makes it possible to avoid genuine EIA

Impact

In Thailand, the current system of EIA and EHIA is ineffective. The process is neglected and made easier for the businesses by the government agencies carrying out the process.²⁴⁸ This enables the government to allow access to businesses to carry out operations in the protected forest areas.²⁴⁹ There is very minimal accountability and therefore, lack of genuine assessment.

For instance, the Cabinet, on 25 August 2009, gave the green light to 76 new development projects without requiring an EIA or an EHIA. The construction of new industrial plants in Map Ta Phut Estate was one of the approved projects.²⁵⁰ The NHRCT, in its 2015 report to the Committee on Economic, Social and Cultural Rights (CESCR), gave a detailed analysis of the failure of the Map Ta Phut Industrial Estate, which has been problematic since 1994 as it does not take community rights into consideration in its implementation.²⁵¹

The case of the biomass powerplant in Rayong province²⁵²

In Krasae Bon in Rayong province, Sahakit Biopower, Ltd. intentionally avoided the law that requires the construction of biomass power plant which have to conduct an EIA when they are ten megawatts or above in size: the owner constructed a 9.9 megawatts biomass powerplant.²⁵³ The biomass powerplant project was communicated to the affected communities on 8 May 2014, when the owner presented the benefits of the powerplant at the annual meeting of the Agricultural Cooperative of Klaeng district. On that occasion, he tried to ask for opinions of the participants and considered it as the first public consultation. Other public consultations organised by Sahakit Biopower prevented the people living at a distance of more than one kilometer from participating in the consultations as they did not consider them potentially affected people. However, the area where the powerplant is to be built is close to an important source of water (the Pasae river) for many communities.²⁵⁴ The powerplant will be built in the middle of a community in a very limited space of 60 rai (0.096 square kilometer). The Thai government has refused to include this case in the UPR report and other international reports because they felt it would reflect poorly on Thailand. Affected communities have made it clear that they are not against development, but rather that they were wary of developments that occurred without transparency and community involvement.



Voices from Expert²⁵⁵

“The EIA and EHIA is an ineffective system as it exists currently, because businesses see it as a stamp of approval for their activities, and so deliberately skew or hide information to ensure approval. There is no follow up or monitoring to ensure that projects abide by the submitted EIA and EHIA. There is also often very little honest practical engagement. It is very difficult for communities to engage in projects actively and honestly, and often companies hamper this intentionally using highly technical jargon to increase barriers to participation by the layman. Regional dialects and language barriers are also a problem. This process is therefore ineffective at achieving its intended purpose”

Thornthan Kanmangmee, Mekong Staff Attorney, Earth Rights International, during the First Experts Meeting to inform the CSO NBA, 2-3 September 2017

Challenge 7: The adverse impact on community rights resulting from business activities, when highlighted often leads to Strategic Lawsuit against Public Participation (SLAPP) lawsuits against community members, HRDs, and journalists

Impact

HRDs and those with close ties to affected communities face severe discrimination, abuse and harassment, and in several cases are also victims of death and disappearances themselves.

The case of Tunglum Mining in Loei province

Tunglum Limited (TKL) mining company sued Mr. Surapan Rujichaiwat, leader of Kon Rak Baan Kerd Group (KRBK), in 2014.²⁵⁶ The Group had been protesting against the mining industry and the expansion of the Phuthapfa gold mine by TKL. Based on an agreement, the charges against Mr. Rujichaiwat were dropped.²⁵⁷ TKL also sued Ms. Porntip Hongchai, another member of KRBK, in the same year and for the same reason stated. The Group had been protesting and speaking out against the company’s gold mining. Eventually, TKL dropped all charges on a conditional exchange that would allow the company to resume activities upon the removal of a barricade constructed to prevent their access to the mine.²⁵⁸ In 2016, a third lawsuit was filed by TKL against Thai Public Broadcasting Service (PBS) journalists for reporting the impact of gold mining on the environment in the Wangsapung district of Loei province. The court ruled that all reports were honest and true, thus the case was dismissed.²⁵⁹ A fourth lawsuit was filed in the form of a defamation case by TKL against Ms. Wanphen Khunna, a 15-year-old schoolgirl, for narrating a news clip about a youth camp that raised awareness about environmental issues. The clip was broadcasted by Thai PBS on 1 September 2015. The Provincial Office of Juvenile Observation and Protection refused to allow TKL’s lawsuit against the girl to move forward and the Loei Juvenile Court dismissed the case.²⁶⁰

The case of the Akara gold mine²⁶¹

Akara Resources gold mine operation sued environmental activist Somlak Hutanuwatr for posting about contamination to the environment in the area in which the gold mine operated in 2016. They also sued Smith Tungkasamit for sharing Somlak’s Facebook post. Both Somlak and Smith were members of an investigation committee that discovered that the gold mine had contaminated the environment with heavy metals, such as iron, arsenic, and manganese. The court dismissed the case against both of them.

The case of mining by Myanmar Pongpipat Limited (MPC)

In March 2017, the Thai mining company MPC filed a lawsuit against The Nation Multimedia Group and its journalist Pratch Rujivanarom who allegedly published false information. They asserted that the company’s tin mine was contaminating the water supply of Myaung Pyo Village.²⁶² The court arranged mediation sessions whereby the parties settled the case non-judicially.²⁶³



Challenge 8: Barriers are placed on attempts to access effective remedy for violations of community rights with respect to the management of natural resources and the adverse environmental impacts, emerging as a result of business activities

Impact

Accessing effective remedies in Thailand on the management of natural resources and any effect on the environment as a result of the adverse impact of business activities is difficult because of legal barriers associated with the identity of a corporation, law and policy barriers resulting from the imposition of restrictions to protecting these rights, and physical barriers such as reprisals or SLAPP lawsuits that emerge when communities try to defend these violations.

The case of NCPO Order 4/2016

On 20 January 2016, the NCPO published NCPO Order 4/2016 in the Government Gazette, suspending the enforcement of city as well as town planning regulations for certain endeavours.²⁶⁴ This resulted in city and town planning regulations becoming unenforceable, thus undermining an essential vehicle for safeguarding the environmental and health rights of residents and a way of ensuring sustainable and appropriate use of land.²⁶⁵ In particular, the order left unregulated energy enterprises, waste management and disposal operations, and power productions, including those being planned by state agencies.²⁶⁶ A case was filed by plaintiffs made up of a number of community groups, who argued that the order would result in immense and long term detrimental effects on the environment, health, and livelihood of the people by allowing projects to operate without consideration of their adverse impacts.²⁶⁷ On 4 November 2016, the Administrative Court rejected a petition filed by eight community groups and the ENLAWTHAI Foundation (EnLaw) that sought to nullify NCPO Order 4/2016 and the easing of environmental rules and regulations on development projects.²⁶⁸ The Court based its decision on the fact that Order 4/2016 had been issued pursuant to Article 44 of the interim constitution.²⁶⁹ Thai courts have so far refused to review the legality of such orders,²⁷⁰ allowing for its unhindered utilisation that would result in more violations of community rights.

The case of community rights in Loei province

The KRBK, a community-based organisation in Wang Saphung district of Loei Province has long been engaged in fighting for compensation and restoration of the environment, following the pollution of the community's water supply with heavy metals from mining activities at a mine operated by TKL.²⁷¹ The group along with locals filed a collective case against TKL demanding restoration of the environment and compensation to be paid for the impact of pollution of the water and soil, which still persists 14 years later.²⁷² These individuals and groups faced reprisals during the course of this process, as they have been facing for years.²⁷³ Despite this and taking a prodigious step forward, the Loei Provincial court has ordered the company to pay the 149 plaintiffs and amount of 104,000 Thai Baht (THB) (\$3,300) each – in addition to environmental rehabilitation that the company will have to undertake.²⁷⁴ Basing this verdict on the Constitutional recognition of community rights to resource management and usage, the court has mandated that the community claimants be involved in the rehabilitation planning.²⁷⁵

Voice from Expert²⁷⁶

“In Thailand, a corporation is a separate legal entity, and therefore corporations cannot be held criminally liable. For a corporation, the penalty faced, if found liable under criminal law, is just paying a fine or pay compensation under tort law in civil cases”.

Sor Rattanamanee Polkla, co-founding director of Community Resource Centre



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. Community-led Good Practices and Guidelines

4.1.1. Community mobilisation as well as sustainable land and forest management, to resist land evictions²⁷⁷

In 1966, Karen people settled in Huay Hin Lad Nai in northern Thailand, a small village consisting of 20 households surrounded by a National Forest Reservation Area and the Khun Jae National Park. In 1968, the Thai government allowed the Chian Rai Tha Mai logging company to operate in the area which led to the destruction of sacred forest areas and water sources. In 1984, the government annulled the forest concession, and eight years later it declared the Khun Kae National Park as a protected area and ordered the community to move out of the territory. While the villagers did not have appropriate structures and institutions in place to protect their community's land and livelihoods, the government did not recognise their customary land rights.

To challenge the government's actions and order, the community adopted a sustainable land and forest-use planning system to organise resistance against logging and evictions. They also collaborated with neighbouring Lisu and Hmong communities facing the same problems. In 1994, they formed the Northern Farmer's Network (NFN) which aims "(1) to promote and support the community on natural resources management and conservation; (2) to carry out advocacy work for the state to recognise the community's land-related rights; and (3) to promote and support a sustainable agriculture model by using the community's traditional knowledge and rotational farming". The network actively participated in actions and protests and collaborated with other stakeholders such as the Northern Development Foundation (NDF) and the National Assembly of the Poor. The NDF, together with Huay Hin Lad Nai community, conducted research highlighting the positive impact of indigenous peoples' sustainable natural resource management systems, particularly how rotational farming sequesters more carbon than it emits and is key to food security. The community also established its rules and regulations for restoring and managing the forest and resources sustainably with the participation of women and youth. They also devised innovative income generation methods to sustain their struggle and implement their plans. In 2003, the village was officially recognised under Chiang Rai province, occupying around 3,700 hectares, with 85% retained as forest cover and only 1% used for rotational farming under the present land use pattern. The villagers generate income from wild tea, honey and bamboo, among others, of which certain amount is set aside for the community forest management fund. They also revived their traditional practices and culture. The community has been in the process of getting their collective land rights recognised by the State.

4.1.2. Revision of the NEQA utilising the Study on 'EIA in Thailand'

A major study on 'EIA in Thailand: Implementation Challenges and Opportunities for Sustainable Development Planning', a Working Paper of the Asian Environmental Compliance and Enforcement Network (AECEN) conducted by Supat Wangwongwatana, Daisuke Sato, and Peter Noel King published in 2015 pointed out that the NEQA (1992) does not have any provision on public participation, which is one of the most fundamental elements of the EIA system. The NEQA should thus be amended to "include specific provisions on public participation to provide a legal basis in the management of environmental quality".²⁷⁸ Specifically, the requirement for public participation should be included in "provisions related to the development of Terms of Reference, the preparation of EIA reports, EIA review process, EIA approval, permit granting and monitoring, including requirement for disclosure of information, documents and EIA/EHIA reports to the public and relevant organisations". Procedural manuals on public participation in EIA/EHIA processes should also be produced to supplement existing guidelines.²⁷⁹ The study also insisted on the importance of integrating a legal basis for the establishment of a Strategic Environment Assessment (SEA) in the NEQA.²⁸⁰

4.1.3. 'Integrating Human Health into Environmental Impact Assessment': A Study on the effectiveness of EHIA²⁸¹



A study titled 'Integrating Human Health into EIA: Review of EHIA in Thailand' by Phayong Thepaksorn, Wattasit Siriwong, and Sathirakorn Pongpanic published in the Applied Environmental Research journal in March 2016, found that the current implementation of EHIAs was still problematic. Lack of strong evidence-based documentation and Thailand's political climate were identified as obstacles to the effectiveness of decision-making in the context of EHIAs. To redress these shortcomings, the authors indicated that methodologies and tools that fit with available data and resources, analytical validity, relevance, stakeholder engagement and public involvement had to be better integrated into the EHIA evaluation. The study makes the following recommendations:

- 1) Develop tools and guidelines for implementation of EHIA for different project categories. Such screening tools may be employed to decide what level of EHIA is required (e.g. rapid or comprehensive health impact assessment), provide guidance in preparing resources, community area and establishment of the EHIA advisory committee.
- 2) Train EHIA experts and conduct EHIA courses to build human resource capacity for implementing and negotiating on EHIA-related topics. It is therefore important to train multi-disciplinary teams in EHIA skills and educate community stakeholders to support the EHIA process and enhance EHIA capacity and effectiveness. In addition, the EHIA practitioners should be trained in skills for community involvement such cultural sensitivity and accountable listening.
- 3) Encourage participation of private agencies and companies from the outset.
- 4) Engage with all stakeholders and ensure full and meaningful community participation and environmental justice, including transparent EHIA communication.
- 5) Ensure full public participation in political engagement, and create incentives for EHIA use, such as involving decision makers in the EHIA process, promoting EHIA as part of improved policymaking, and motivating communities to ask for EHIA process. Such measures would all be advantageous to support EHIA development".

4.1.4. Investigating the effectiveness of mandatory integration of EHIA within EIA

A study carried out on 'Investigating the effectiveness of mandatory integration of EHIA within EIA: a case study of Thailand' by Chaunjit Chanchitpricha and Alan Bond, published in the Impact Assessment and Project Appraisal in November 2017 - analysed four power plant EHIA cases established by EGAT. It found that "the level of successful public consultation is questionable in terms of how fruitful the outcomes are".²⁸² Issues of trust between stakeholders and authorities were identified as an area of concern. To resolve this, the authors suggested that roles of public participation in Thailand should be clarified so that it can be applied more efficiently to the EHIA process. The study made the following recommendations:

- 1) EHIAs guidelines should be revised to "strengthen procedural effectiveness based on integration of lessons learned, professional experience sharing, and documentary analysis".²⁸³ This should be done in collaboration with academics, ONEP and EHIA practitioners.
- 2) Institutional capacity-building needs for authorities regarding EIAs and EHIAs should be identified to assess how human resources and institutional roles can be strengthened to contribute to better effectiveness.
- 3) "[N]ational policy impact assessment should be considered so that public policy, which links with national environmental and health outcomes, can be developed more sustainably".²⁸⁴

4.1.6. Human Rights Impact Assessment (HRIA) in a Brazil Land Conflict: The Sirinhaem Case²⁸⁵

A decades-long land conflict case in Brazil recently produced a rare occurrence, where a community-based HRIA was conducted at the same time as a company-led HRIA. Pastoral Land Commission (CPT) partnered with Oxfam to conduct an HRIA while Coca-Cola and PepsiCo committed to conducting their own impact assessment of the Sirinhaem case. Although Oxfam was in touch with all parties, the assessment processes of Coca-Cola, PepsiCo and CPT were conducted independently, and thus the findings from each did not inform the other's outcomes. Analysing this case, Oxfam found that parties consciously conducted parallel impact assessments to inform each other's outcomes. This process of two parallel impact assessments resulted in Coca-Cola and PepsiCo being more understanding of the community's concerns and proposed solutions. The study of this case indicated that having both the community and the company actively engage in due diligence processes resulted in more opportunities to collaborate, in order to achieve results in the future.²⁸⁶



4.1.7. Rights and Democracy and the example of best practice by a CSO²⁸⁷

In 2004, Rights & Democracy, a Canadian organisation, developed a community-based HRIA tool - a participatory process to analyse the human rights impact of private foreign investments. This tool focuses on local communities and human rights advocates as experts. From 2005, the organisation tasked community-based organisations in Argentina, Peru, the Philippines, Democratic Republic of Congo, and Tibet to test the tool through its usage, for assessments. Through four pilot studies organised in Bolivia, the United States, Ecuador, and Cameroon in 2009 by Rights & Democracy, in partnership with Oxfam and the International Federation for Human Rights (FIDH), further tested and refined the tool. In 2011, the tool was converted into a web-based format with the title 'Getting it Right' and was made available in English, Spanish, and French. Getting it Right is the only HRIA tool specifically designed to be used by community-based organisations.

4.2. Government-led Good Practices & Legislations

4.2.1. Collaborative mapping and management in Ob Luang National Park²⁸⁸

There exist singular experiences of a successful collaborative management approach between indigenous communities and national park authorities. For example, a pilot project in Ob Luang National Park, organised by the Thai and Danish government under the Joint Management of Protect Areas (JoMPA) project, involving Karen and Hmong communities, resulted in the mapping of the area with final maps accepted by both the communities and the Park's authorities, demarcation of community farmland, and participatory management of the Park continued even after the project. Unfortunately, such an approach has not been adopted as a national policy.

4.2.2. France and the 'corporate duty of vigilance law'

After years of parliamentary debates, a duty of vigilance law²⁸⁹ was adopted by the Constitutional Court of France on 23 March 2017. This law applies to all companies headquartered in France that employ more than 5,000 people; or that are based in France or abroad and employ more than 10,000 people worldwide. It legally requires them to set up vigilance plans which include "reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons and environment resulting from the activities of the company and of the companies it controls, either directly or indirectly, as well as the activities of subcontractors or suppliers with whom an established business relationship is maintained".²⁹⁰

In terms of stakeholder engagement, the law stipulates that the vigilance plan "should be drawn up in association with society's stakeholders, where appropriate through multi-stakeholder initiatives within sectors or at territorial level".²⁹¹ This is a vague provision, and it does not specify to which extent stakeholders should be consulted, and who should be considered a stakeholder. Nevertheless, stakeholders now play a leading role in assessing early reports to identify gaps. More importantly, because of this law, interested stakeholders will be able to require the court to order companies to comply with the law, and bringing civil liability actions against noncompliant businesses will be easier.²⁹²

4.2.3. The application of the precautionary principle through the judiciary in Indonesia

After Greenpeace Indonesia, together with community groups, namely Pawapeling, Walhi and Legal Aid Bandung, filed a lawsuit against the decision made by the government to continue the issuance of wastewater discharge permits to three textile companies, a judge ruled in favour of the environmental groups taking into account the precautionary principle. This represented an unprecedented decision to prevent further destruction on the basis of the precautionary principle.²⁹³

4.3. Business-led Good Practices & Guidelines

4.3.1. Guidelines for Social Responsibility: International Organisation for Standardisation (ISO) 26000

ISO 26000 provides guidance on seven core subjects: organisational governance, human rights, labour practices, the environment, fair operating practices, consumer issues, and community involvement and development. The seven core subjects include detailed guidance on issues of social responsibility for corporations.²⁹⁴ Most notably, one chapter focuses on community involvement and development as an integral part of sustainable development.²⁹⁵

4.3.2. The AA1000 Stakeholder Engagement Standard (SES) 2015

The AA1000 SES (2015) is a framework for assessing, designing, implementing, and communicating an integrated approach to stakeholder engagement.²⁹⁶ It was synthesised by AccountAbility, an international consulting firm which works with NGOs, States and business enterprises on issues of corporate responsibility and sustainable development.²⁹⁷ The applicability of this framework extends to ‘all types and levels of stakeholder engagement’. Its applicability is relevant to the public sector, private sector, and CSOs of varying sizes, and to stakeholder engagement – both internal and external in nature. It can be applied to activities that are project based and also for other ongoing necessities.

4.3.3. Best Practice adopted by a business enterprise: The case of Lafarge

French Lafarge Cement company has been featured in Chris Laszlo’s book titled “Sustainable Value: How the World’s Leading Companies Are Doing Well by Doing Good”.²⁹⁸ Lafarge’s cement plant in Tetouan, Morocco, was initially built on the fringes of the town but then found itself in the middle of the town following urban expansion. The plant was also starting to become obsolete. Consequently, Lafarge made the decision to build a new plant and invited the local community to advise them on where it should be located. Residents were taken to nearby sites to assess the level of nuisance, including in relation to the noise, vibration, and desecration of landscape. After several rounds of consultation, the new plant was built a few kilometres away from the initial site. The new plant is now universally accepted.²⁹⁹

4.3.4. Aligning with the principles of the United Nations Global Compact (UNGC)

With more than 12,000 members in 170 countries, the UNGC is the largest corporate sustainability project with a range of participants including those from the business sector, labour associations, and organisations.³⁰⁰ To align with international law and policy on sustainable business practices, the UNGC has set out ten guiding principles on human rights, labour, environment, and anti-corruption as policy, and with collaboration and innovation as goals in practice.³⁰¹ With respect to community rights, the UNGC principles 1 and 2 stipulate that ‘businesses should support and respect the protection of internationally proclaimed human rights’ and ‘make sure that they are not complicit in human rights abuses’.³⁰² These include the rights to land, resources and territories, and the carrying out of due diligence in consultation and cooperation with communities that may be affected by business activities, in line with General Comment No. 24 on State obligations under the ICESCR in the context of business activities.³⁰³ Furthermore, States have the obligation to protect economic rights under the Covenant and ‘by granting exploration and exploitation permits for natural resources, without giving due consideration to the potential adverse impact of such activities on the individual and on communities’ enjoyment of Covenant rights’ would be a violation of their compliance with the Covenant.³⁰⁴ On the subject of environmental impact, principles 7 and 8 require that businesses ‘support a precautionary approach to environmental challenges’ and ‘undertake initiatives to promote greater environmental responsibility’.³⁰⁵

Businesses part of the UNGC are expected to incorporate these principles in their operations and report on the progress of their efforts on an annual basis,³⁰⁶ a step that has been taken by businesses in Thailand as well.³⁰⁷ Failure to do so for two consecutive years results in expulsion from the UNGC.³⁰⁸ In Thailand, over 50 companies have signed on to the UNGC and a number of them have made commitments to abide by its principles.³⁰⁹ Notable amongst them are the CP group,³¹⁰ PTT³¹¹ and True,³¹² who have taken steps to ensure the adherence to and understanding of international human rights principles.

4.4. Good Practices & Guidelines led by Multilateral Initiatives

4.4.1. Voluntary Principles on Security and Human Rights (VP) (2000)

In 2000, a small group of governments, companies, and NGOs cooperated to develop and launch a set of VPs, which represent a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.³¹³ The VPs were developed in response to reports of human rights abuses allegedly committed by security providers contracted by the extractive industry. The VPs include provisions on regular consultations between companies and host governments and local communities and the monitoring of the progress of investigations into alleged abuses.³¹⁴



4.4.2. Equator Principles (2006)³¹⁵

These principles are a financial industry benchmark for determining, assessing and managing social and environmental risk in project financing. They were endorsed by more than 20 commercial banks (known as the Equator Banks) that provide more than 75% of all development project financing around the world. The principles refer back to the **International Finance Corporation (IFC)** Performance Standards for certain projects. Equator Principle 5 specifically addresses consultation and disclosure. According to this, it is necessary for the State, the borrowing party or a third-party organisation to undertake consultation with communities who are affected by the project in a 'structured and a culturally appropriate manner'. Furthermore, it is necessary that a project incorporates the concerns of affected communities sufficiently by ensuring their 'free, prior and informed consultation' and facilitating their 'informed participation' in the process. This process mandates the public availability of the assessment documentation or non-technical summaries, for a reasonable minimum period of time, in the local language, and in a culturally appropriate manner.

4.4.3. OECD Guidelines for Multinational Enterprises (2011)

Article 14 of the OECD guidelines stipulate the importance of engagement with stakeholders, including communities, in order to take their views and opinions into account.³¹⁶ Section IV of the Guidelines focus on the impact on human rights in general, including a recommendation to carry out human rights due diligence according to the company's size.³¹⁷ Additionally, the OECD Due Diligence Guidance for meaningful Stakeholder Engagement in the Extractive Sector calls on businesses to integrate stakeholder engagement as a core principle in management systems.³¹⁸

4.4.4. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012)

The business sector is directly addressed in the Voluntary Guidelines set out by the UN Food and Agriculture Organisation (FAO). It explicitly aims to strengthen the capacity of the private sector. The Guidelines seek to improve the governance of the tenure of land and it covers principles of implementation of responsible tenure governance, rights responsibilities and other relevant frameworks.³¹⁹ For non-state actors, including businesses, the general principles of the Voluntary Guidelines include: the responsibility to respect human rights and legitimate tenure rights; due diligence to avoid infringing on human rights and legitimate tenure rights; appropriate risk management systems to address the adverse impacts on human rights and legitimate tenure rights; the need for businesses to provide for and cooperate in the provision of remedy by non-judicial mechanisms, including effective operation-level grievance mechanisms; the need to identify and assess any actual or potential impact on human rights and legitimate tenure rights; respect for customary rights of indigenous peoples, and providing secure rights to women and other marginal groups.³²⁰

4.4.5. IFC Performance Standards (2012)

IFC Performance Standard 1 requires private sector projects that receive funding from the IFC to secure meaningful stakeholder engagement based on stakeholder analysis and engagement planning, disclosure and dissemination of information, consultation and participation, access to a grievance mechanism, and ongoing reporting to affected communities.³²¹ Additionally, Performance Standard 3 (Resource Efficiency and Pollution Prevention),³²² Performance Standard 4 (Community Health, Safety, and Security),³²³ Performance Standard 5 (Land Acquisition and Involuntary Resettlement),³²⁴ and Performance Standard 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources)³²⁵ address key requirements related to community rights that are impacted by the actions of businesses.

4.4.6. Assessing the human rights performance of businesses according to the Corporate Human Rights Benchmark (CHRB)³²⁶

The CHRB is a multi-stakeholder initiative which utilises a methodology to assess the performance of businesses in line with human rights standards, including the UNGPs amongst other international instruments and standards set therein.³²⁷ This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.³²⁸

The CHRB methodology mandates a commitment to the rights of indigenous peoples, including with respect to FPIC, applicable particularly to the extractive industry but also extending to agricultural industries and apparel manufacturers. In this respect, the benchmarking methodology requires a publicly available statement of businesses' policy to commit to respecting the ownership, use of land, and natural resources. This includes a commitment to recognise and respect legitimate tenure rights related to the ownership and use of land as provided for in the Voluntary Guidelines on Responsible Governance of Tenure or of the IFC Performance Standards or to obtain the FPIC from indigenous peoples and local communities. This is with respect to transactions involving land and natural resources and mandates a zero tolerance for land grabbing, with a business also having to commit to respecting the right to water. In addition, the commitment also requires suppliers to make these commitments.³²⁹

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

PILLAR I: STATE DUTY TO PROTECT			
Priority Area 1	Repeal and amendment of law and policy		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Repeal, or amend law and policy by the NLA, Cabinet and NCPO, including existing development related laws, forest-related laws and cabinet resolutions, particularly those related to the head of the NCPO orders, to ensure that they do not contradict existing national law and that they are in line with international obligations as set out in the ICCPR, Articles 2 and 25-27 of the ICESCR, and ICERD, and that seek to undermine Articles 41, 42, 43, 57, 58, 59, and 77 of the 2017 Constitution on communities' rights to access information and public participation in the decision-making process, in addition to redressing the harm caused.	Repeal or amend head of NCPO order 3/2016, 4/2016, 9/2016 and 28/2017 that neglect community rights and fail to ensure the protection of the environment through due diligence mechanisms.	NCPO, NLA, MoJ	These steps must be taken in consultation with the NHRCT and local civilian agencies and with the participation of communities in these decisions affecting them and their rights through prior consultation using participatory approaches. Timeline: 2 years – 2019-2020
	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.		
	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 and threatening to evict local communities.		



	<p>Repeal or amend head of NCPO Orders 17/2015 and 74/2016 related to the acquisition of land for the creation of SEZs. According to the Orders, the authorities are not obliged to comply with normal checks and balances usually required for such development projects, in addition to acts resulting in the forced eviction of community members without sufficient compensation.</p>		
	<p>Repeal or amend head of NCPO order 47/2017, that revokes city planning in the EEC provinces of Chonburi, Rayong and Chachoengsao, which will result in the violation of national and international standards on human rights, community rights, and land-related rights.</p>		
	<p>Ensure that all policies governing waste-to-energy plants are amended to include provisions that prevent lowering of regulatory standards in their operation, to ensure the establishment of the plants takes place following public consultation, and that due diligence processes are put in place to analyse their possible impact on people and the environment.</p>		
	<p>To provide redressal for harm caused, authorities should include provisions that reopen and undertake fair investigations with respect to charges, arrests, prosecution or any other adverse impact, including with respect to food security, displacement, and loss of livelihood.</p>		
<p>Align the provisions and enforcement of national law and policy with respecting and</p>	<p>The new Minerals Act of 2017 must be amended to ensure (1) public participation in the</p>	<p>NLA, the Ministry of Natural Resources and Environment (MNRE),</p>	<p>Assess the promulgation of these laws to determine if the responsible government</p>



<p>protecting community rights including by business enterprises, in accordance with Articles 41, 42, 43, 57, 58, 59, 77 and 258 of the 2017 Constitution of Thailand.</p>	<p>EIA and EHIA process, with effective public hearings; (2) strict prohibition of the conduct of mining operations in protected forests, through the dismissal of mining concessions on EIA; (3) sufficient time provided to assess the impact of mining activity on the environment and communities affected by them; (4) appointment of representatives from the local community and CSOs through a democratic process, instead of by the National Mineral Management Committee, and (5) detailed provisions for environmental restoration through secure processes.</p> <p>The enforcement of the Petroleum Act of 2017 on the protection for damages incurred as a result of business activities must be strengthened through effective mechanisms and more stringent penalties.</p> <p>The amendment to the Factories Act must be repealed and the original provisions restored, to ensure the regulation of all industrial establishments so that they do not violate the rights of the community to a healthy environment and their right to be consulted prior to establishment or expansion of the operations of these 'factories'.</p>	<p>MoJ</p>	<p>agencies undertook an RIA process, and make such assessment public.</p> <p>Timeline: 2 years – 2019-2020</p>
<p>Reform existing land and forest related legislation and policy, including the National Reserved Forest Act, the Forest Act, the draft Rice Bill, the Natural Sanctuary Act, and the draft Community Forest Act, the amendment to the National Parks Act, and the Wildlife Conservation Bill in line with</p>	<p>Amend the legislation to recognise the rights of communities. In the context of the ongoing process to review these laws, the concerned authorities should provide for and ensure full and effective participation of communities and their representative organisations</p>	<p>MNRE, MoJ</p>	<p>The review of these laws and related policy must ensure the provision of redress through restitution or through just, fair, and equitable compensation.</p> <p>Timeline 1 year – 2019</p>

<p>international standards and the recommendation from the Statement at the end of the visit by the United Nations Working Group on BHR to Thailand that affirmed the right to participation of communities in meaningful consultations and to take part in government decision making.</p>	<p>to provide inputs in the revision of these legislations.</p>		
<p>Repeal or amend law and policy particularly special state security laws that allow for arbitrary detention, criminalise defamation and infringe on basic freedoms, constricting the space of EHRDs and community rights defenders, in line with international obligations such as the ICCPR, the ICESCR.</p>	<p>Repeal or amend NCPO Announcement 7/2014, head of the NCPO Orders 3/2015 and 13/2016, Article 44 of the interim Constitution, Sections 326-328 of Thailand’s Penal Code, the 2015 Public Assembly Act, the 2007 Computer-related Crime Act, and the Cybersecurity Bill.</p>	<p>NCPO, NLA, Ministry of Digital Economy and Society (MDES)</p>	<p>Protection of specific rights such as the right to freedom of expression, the right to freedom of association and assembly, the right to access to information, and the right to public participation must be ensured.</p> <p>Timeline: 3 years – 2019-2021</p>
Priority Area 2	Addressing root causes on the violation of community rights		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
<p>Protect EHRDs, community rights defenders, community leaders, and individuals from SLAPP cases.</p>	<p>Guidelines should be developed to prevent businesses from filing SLAPP lawsuits against EHRDs and those who defend community rights. Any anti-SLAPP legislation implemented should ensure that the burden of proof remains on the business/prosecution.</p>	<p>MoJ, the Attorney General</p>	<p>The number of prosecutions that are SLAPP lawsuits must be tracked, annually.</p> <p>Timeline: 1 year – 2019</p>
<p>Undertake extensive and meaningful consultations with community members and their civil society representatives on ongoing and future projects, investment treaties, and free trade agreements to ensure that these protect and do not violate their rights, in line with the 2012 concluding observations of the Committee on the Elimination of Racial Discrimination to Thailand (CERD).</p>	<p>Such treaties and agreements, if agreed upon, should include human rights clauses that ensure internationally recognised human rights are protected, at the same level as business interests of the State and companies.</p> <p>Review and assess the social and environmental impacts or academic studies of development and construction projects based on human rights principles, including seeking alternatives to manage water in ways that</p>	<p>The Ministry of Industry</p>	<p>Consultations must be public, transparent, should include the opinions of all those present, and provide adequate time for the synthesis of information in the treaty, agreement or on the project. Evaluation of management of resources in particular water and the environment must be undertaken, in order to make the realisation of human rights a prerequisite for sustainability.</p> <p>Timeline: 2 years – 2019-</p>



	<p>minimally alter ecosystems or affect the quality of life in the community.</p> <p>Review the positive and negative impacts of Thailand’s various resources management policies, including in small and large projects to evaluate those policies as lessons learned for the implementation of future projects, and in order to establish a clear legal framework for sustainable development as it impacts on natural resources.</p>		2020
Provide training on human rights, including the rights of communities, so as to ensure human rights obligations, policies, and practices are understood.	These training must be conducted for government ministries, departments, and agencies particularly those related to economic development, management of natural resources and the environment that are responsible for drafting and implementing business-related laws and policies.	RLPD of the MoJ	Regular assessments must be carried out to ensure that the information and knowledge shared is understood and practiced. Timeline: 1 year – 2019
Priority Area 3	Review and adoption of a domestic regulatory framework to assess the impact on the environment, through a mechanism that is inclusive of community rights		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Adopt legislation that creates mandatory due diligence obligations for companies, and ensures the public disclosure of relevant information.	This must disclose information on corporate structure and governance, contracts, license concessions, business relationships, scientific information about company operations, and company filings.	NLA, MNRE	This must respect the communities’ right to access to information and participate in decision-making. The information must be displayed publicly, in an accessible manner and in a language that is understood. Timeline: 2 years – 2019-2020
Ensure the laws, policies, and processes related to EIAs, particularly for large-scale agribusiness, extractive, energy and development projects, including the assessment of actual and potential human rights impacts following the	Independent experts with knowledge of the issues faced by the affected communities should be involved in the conduct of the assessments, which should include meaningful consultation with the communities to obtain	NLA, MNRE, the Ministry of Commerce	Mechanisms must be put in place to ensure the regular reassessment of the actual and potential human rights impacts by an independent individual and institution to determine whether the impacts are being dealt



<p>2017 concluding observations of the Human Rights Committee to Thailand and the 2012 concluding observations of the CERD to Thailand</p>	<p>their FPIC.</p> <p>NGOs, CSOs or institutions working on environmental issues should be given power to carry out an EIA process by law.</p> <p>An expert panel of multi-sectoral experts on human rights, environment, geoscience, community development and planning, policy, administration and governance should be set up as an independent panel to review the report and provide recommendation for amendments.</p>		<p>with.</p> <p>Timeline: 2 years – 2019-2020</p>
<p>Require business enterprises, through regulatory or reporting requirements such as annual audits and renewals, to adopt and adhere to policy commitments for respecting human rights; undertake a HRDD process to identify, prevent, mitigate, and address their human rights impacts; and remediation processes for adverse human rights impacts.</p>	<p>Requirements on business enterprises should include guidance to consider additional human rights standards for groups requiring particular attention such as rural communities, indigenous peoples, and women beyond national laws; draw on independent external experts and involve meaningful consultations with the affected communities to assess their human rights risks and agree on appropriate actions to prevent or remedy adverse impacts; and establish criminal liability for business enterprises operating in Thailand or Thai investments abroad causing human rights violations, particularly in violation of the due diligence obligation.</p>	<p>The Ministry of Industry, MNRE, MoJ</p>	<p>The efficacy of these processes must be assessed by an analysis of the perpetuation or resolution of adverse human rights impacts caused by businesses to local communities. A qualitative and quantitative analysis must be carried out in this regard through the involvement of community representatives, CSOs, experts with knowledge of the local context, academics, and government representatives.</p> <p>Timeline: 1 year – 2019</p>
<p>Conduct a survey of existing development projects in various parts of Thailand, to determine the land disputes as well as other impacts on the community.</p>	<p>Such a survey should be undertaken with the effective participation of the concerned communities and take into account the archaeological and historical evidence, to establish the ownership and control of the communities over their lands</p>	<p>MNRE, Ministry of Tourism and Sports, MoJ</p>	<p>This must be done in consultation with affected communities and with the involvement of the NHRCT.</p> <p>Timeline: 2 years – 2019-2020</p>



	and resources.		
Establishing inclusivity, participation, and decision-making roles of community members, in line with Article 1 of ICCPR and ICESCR, Committee on Civil and Political Rights (CCPR) General Comment No. 12 and CERD General Recommendation No. 12.	A mechanism to ensure prior information and informed consent from the community to be established.	The Ministry of Interior, MNRE, the Ministry of Commerce	This inclusivity should be undertaken through an effective, multi-stakeholder process. Timeline: 1 year – 2019
	Commend local and traditional knowledge of communities by involving them in environmental management, development, and decision making.		
	Ensure the EIA reports and other studies are shared with the local communities, enabling them to assess any detrimental impact that may occur.		
	No new business project should commence without the permission of communities directly affected by the business.		
Priority Area 4	The right to access information		
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.	Community representatives who are directly affected should be allowed to participate when the Expert Committee’s comments are delivered to the National Environment Board.	MNRE, and the National Environment Board	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 living in remote areas and of all socio-economic levels. Timeline: 1 year – 2019
	ONEP should ensure public access to the EIA report once it is handed in by the consultant.		
	Any amendments to the EIA should be announced to communities.		
	Any information related to the community’s well-being and the environment sought by an individual or community affected by the activities of business enterprises should be made available, through the responsible agency.		
Ensure transparency and the respect for community rights to public information, in line	Establish a mechanism that provides information to communities on upcoming	MNRE, and The National Environment Board	This transparency mechanism should be the shared responsibility of



with Article 1 of ICCPR and ICESCR, CCPR General Comment No. 12 and CERD General Recommendation No. 12.	projects in a systematic manner and that allows communities to access information without restriction.		businesses and the government to inform the communities prior to the development of a project. Timeline: 1 Year – 2019
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Priority Area 5	The right to public participation		
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Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
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Ensure public-participation of community members on issues of environment and management of natural resources, in line with the 2015 concluding observations of the CESCR to Thailand, the 2017 concluding observations of the Human Rights Committee to Thailand and the 2012 concluding observations of the CERD to Thailand.	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 FPIC.	The Ministry of Commerce	Seek assistance from the international community working in the area of community, environment, and business to ensure compliance with international standards. Timeline: 1 year – 2019
	Ensure guaranteed participation of communities and CSO representation from the inception of projects through all the steps of the project, including monitoring, evaluation, and decision-making processes until the completion of the project.		
	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.		

The engagement of local stakeholders and NGOs in public policy needs to be improved in order to deliver efficient and effective public services, especially in the rural areas, inspired by the OECD Guiding Principles for Public Consultation and Article 77 of the 2017 Constitution.	In order to achieve active participation in policy processes, Thai ministries and agencies need to follow the new guidelines on Public Consultation for government officials carrying out public consultations with relevant stakeholders.	MNRE	Independent review of participation in the policy processes must be carried out. Timeline: 1 Year – 2019
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PILLAR III: ACCESS TO REMEDY			
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Priority Area 1	Creation of effective grievance redressal mechanisms		
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Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Remove barriers to access effective judicial remedies through courts, in line with the 2012 concluding observations by the CERD to Thailand.	<p>This is to be achieved by enforcing implementation of existing positive laws and policies effectively by prioritising them over conflicting laws and policies; eliminating biases and discrimination in the laws and justice system through sensitisation and awareness-raising of security and judicial personnel; and addressing practical limitations of language challenges and need for legal assistance through the provision of effective interpretation and free legal aid services.</p> <p>Support mechanisms such as the Justice Fund should be strengthened by providing more resources and independence while setting up separate dedicated mechanisms that should be considered for groups requiring particular attention such as marginalised communities, indigenous peoples, and women.</p>	MoJ	<p>The presence of structural and functional barriers must be reviewed periodically through a study of individual cases.</p> <p>Timeline: 2 years – 2019-2020</p>
Ensure that security forces perform their duties strictly in accordance with the law.	Eradicate the concept of impunity by bringing security personnel guilty of wrongdoing to justice and providing prompt and sufficient remedies to victims of human rights violations.	MoJ, The royal Thai Police	<p>Perpetrators must be brought to justice through these processes.</p> <p>Timeline: 1 year – 2019</p>
For complaints filed against state authorities and law enforcement officials, ensure prompt investigation through an impartial, independent and an autonomous team of experts.	Strengthen the Ombudsman, the Administrative Courts, and the NHRCT at the national and local levels through capacity, resources, and knowledge building on BHR.	MoJ	<p>A timeline must provide for the court decision as well as for the implementation of the same. The efficacy of these mechanisms must be analysed and any inadequacies must be resolved.</p> <p>Timeline: 1 year – 2019</p>

Undertake fair and effective investigation into the disappearance, killing, and other reprisals against indigenous leaders, HRDs, and community members.	Create an independent, dedicated and well-resourced mechanism to protect and support EHRDs, community rights defenders, and HRDs against ongoing and future reprisals, which are on the rise, including in business contexts.	NHRCT, MoJ	Take steps to ensure access to justice for such reprisals in order to guarantee the end of impunity and insecurity in the communities from the government authorities, businesses or other community members. Timeline: 2 years – 2019-2020
The NHRCT should enhance its role as an effective non-judicial grievance mechanism as part of a comprehensive State-based system for remedy of business-related human rights abuses, including for Thai investments abroad.	Greater powers and mandate for the NHRCT should also be accompanied by greater resources to undertake its works. Further, setting up new mechanisms such as parliamentary committees could also be considered.	NHRCT	These non-judicial mechanisms should take into account the local context and practices of communities, where they do not violate human rights standards. Timeline: 1 year – 2019
End all land related legal proceedings against those facing investigation, charges or prosecution initiated by State authorities for engaging in legitimate activities protected by international human rights law or for addressing violations.	Any processes and proceedings must be withdrawn or refrained from. Compensation must be provided for the actual loss of livelihood, the loss caused by unintended deficiencies, and the cost incurred as a result of legal proceedings.	The Public Prosecutors Office	Full and adequate compensation must extend to community members and their families. Timeline: 1 year – 2019
Increase the capacity and budget of as well as access to the Justice Fund.	Support mechanisms such as the Justice Fund should be strengthened by providing more resources and independence while setting up of separate dedicated mechanisms should be considered for groups requiring particular attention such as marginalised communities and women.	MoJ	Accessibility to the Justice Fund must be extended to include unhindered access to all community members that are located remotely and are victims of human rights violations. Timeline: 3 years – 2019-2021

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

PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT			
Priority Area 1	Fulfilment of International Obligations		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline

<p>Prevent or cease to carry out any activity that causes environmental harm or that violate the rights of the community.</p>	<p>Carry out periodic reviews of the project and share the reports with the representatives of the community and ensure transparency in the report.</p> <p>Carry out need assessment studies to create project plans, without adverse impacts.</p> <p>Regulated, periodic, and frequent visits to the community should be carried out by business representatives, to collect information on the detrimental effects of their business on the community and the environment.</p> <p>Immediately decommission projects negatively affecting local communities and restore rivers and the environment to re-establish local communities' livelihoods.</p>	<p>Businesses</p>	<p>Ensure the inclusion of a community representative in the project review team of the company.</p> <p>Timeline: 2 Years – 2019-2020</p>
<p>Implement projects on social, cultural, and community development by directly connecting with the community, and carry out a need assessment study to create project plans.</p>	<p>A social development programme committee should be created to monitor, evaluate, and oversee all the projects carried out in the community. This committee should comprise of representatives from the business, local government, and community.</p>	<p>Businesses</p>	<p>These must constructively engage, develop, and benefit the community.</p> <p>Timeline: 2 Years – 2019-2020</p>
<p>Priority Area 2</p>	<p>Abstain from policies and actions that violate human rights</p>		
<p>Recommendations (Goal to be achieved)</p>	<p>Action</p>	<p>Lead Agency/ Jurisdiction</p>	<p>Performance Indicators/ Timeline</p>
<p>Take all necessary and lawful measures to ensure that business practices do not cause, contribute or remain complicit in violations, with respect to the rights of communities.</p>	<p>Avoid contributing to any actions amounting to land grabbing and forced evictions; structure arrangements with corporate partners to ensure all parties uphold responsibilities with respect to these rights, and build leverage in pre-existing</p>	<p>Businesses</p>	<p>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 country or</p>

	business relations to prevent or mitigate adverse impacts of development projects or other business activities.		through extra-territorial investments. Timeline: 1 year – 2019
Abstain from advocating for legislation that restrict rights of communities, in contravention of the duty to respect set out for businesses in the UNGPs through corporate capture of the legislature.	Companies should understand and promote the rights of communities, which are beneficial to them and their economic well-being as well.	Businesses	Coordination with domestic civil society and those affected could ensure a social license to operate. Timeline: 1 year – 2019
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	Development in a sustainable manner should be a priority in their investment profile. Independent assessments of mitigating factors should be carried out by investors, before and during the project. Timeline: 1 year – 2019

PILLAR III: ACCESS TO REMEDY

Priority Area 1	Drop Legal Actions and force eviction against community members initiated by Businesses		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
End all legal proceedings against individuals facing investigation, charges or prosecution initiated by businesses for engaging in legitimate activities protected by international human rights law or for addressing violations.	Any processes and proceedings must be withdrawn or refrained from. Compensation must be provided for the actual loss of livelihood, the loss caused by intended deficiencies, and the cost incurred as a result of legal proceedings.	Businesses	Compensation must be full and adequate, and extend to community members and their family, in a strict time bound manner. Timeline: 1 year – 2019
End all forms of forced eviction against community members from their habitual place.	Any processes and proceedings must be withdrawn or refrained from. Compensation must be provided for the actual loss of livelihood, the loss caused by intended deficiencies, and the cost incurred as a result of the eviction.	Businesses	Compensation must be full and adequate, and extend to community members and their family, in a strict time bound manner. Timeline: 1 year – 2019
The project review team should be equipped with grievance redressal capacities, adhering to Principle 29 of UNGP.	Any grievance or complaint from the community should be prioritised, and immediate action to remedy the complaint should be set	Businesses	Complaints received by the business should set penalties for remedial measures that do not deliver compensation to communities in a time

	in motion and completed with a time-frame.		bound manner. Timeline: 2 Years – 2019 - 2020
Priority Area 2	Grievance redressal processes of businesses		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Business enterprises and associations or multi-stakeholder bodies should establish and participate in effective non-State-based grievance mechanisms, including at operational levels.	Requirements for such mechanisms can be included in the granting or renewal of licenses and/or agreements with business enterprises or in the statutes of business associations with consideration to the size, operation, and experiences or potential of harms of the business/sector.	Businesses	Those mechanisms should be culturally appropriate and take into consideration the local context, circumstances and languages when engaging with them. Timeline: 2 years – 2019-2020

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- 3 The four regional NBA dialogues were conducted by Manushya Foundation as follows: The Northern Regional NBA Dialogue in Chiang Mai (29 - 30 January 2017), The Northeastern Regional NBA Dialogue in Khon Kaen (23 - 24 February 2017), The Southern Regional NBA Dialogue in Hat Yai (20 - 21 March 2017) and The Eastern and Central Regional NBA Dialogue in Rayong (30 - 31 March 2017). Please access the NBA Regional Dialogues Report here: Manushya Foundation, *Meeting Report: Regional Dialogues for the CSO National Baseline Assessment (NBA) on Business and Human Rights*, (2017), available at: <https://www.manushyafoundation.org/nba-dialogues-report>
- 4 Manushya Foundation conducted 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). Please see: Manushya Foundation, *Executive Summary: First Experts Meeting to inform the independent national baseline assessment on business and human rights in Thailand, 2-3 September 2017*, (2017), available at: <https://www.manushyafoundation.org/single-post/RELEASE-OF-FIRST-BHR-NBA-EXPERTS-MEETING>; and: Manushya Foundation, *Executive Summary: 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*, (2018), available at: <https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-SECOND-BHR-NBA-EXPERTS-MEETING>
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MANUSHYA

Empowering Communities | Advancing Social Justice

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.