

# LAND-RELATED RIGHTS IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

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



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

*#ThaiBHRNetwork*



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

Chaiyaphum Land Rights Defenders  
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## *About the Thai BHR Network*

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

<https://www.manushyafoundation.org/coalition-building-workshop-report>



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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

<b>AECEN</b>	Asian Environmental Compliance and Enforcement Network
<b>ALRO</b>	Agricultural Land Reform Office
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BHR</b>	Business and Human Rights
<b>CED</b>	International Convention for the Protection of All Persons from Enforced Disappearance
<b>CEDAW</b>	Convention / Committee on the Elimination of All Forms of Discrimination Against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CHRB</b>	Corporate Human Rights Benchmark
<b>CPT</b>	Pastoral Land Commission
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisations
<b>CSR</b>	Corporate Social Responsibility
<b>DNP</b>	National Parks, Wildlife, and Plant Conservation Department (Department of National Parks)
<b>DSI</b>	Department of Special Investigations
<b>EEC</b>	Eastern Economic Corridor
<b>EGAT</b>	Electricity Generating Authority of Thailand International
<b>EHIA</b>	Environmental and Health Impact Assessment
<b>EHRD</b>	Environmental Rights Defender
<b>EIA</b>	Environmental Impact Assessment
<b>FAO</b>	United Nations Food and Agriculture Organisation
<b>FPIC</b>	Free Prior & Informed Consent
<b>GMS</b>	Greater Mekong Subregion
<b>HRD</b>	Human Rights Defender
<b>HRDD</b>	Human Rights Due Diligence
<b>HRIA</b>	Human Rights Impact Assessment
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IFC</b>	International Finance Corporation
<b>IFI</b>	International Financial Institution
<b>IHRL</b>	International Human Rights Law
<b>ILO</b>	International Labour Organisation
<b>ILRN</b>	Isaan Land Reform Network
<b>JoMPA</b>	Joint Management of Protect Areas
<b>KKFC</b>	Kaeng Krachan Forest Complex
<b>KRBK</b>	Kon Rak Baan Kerd Group
<b>MNRE</b>	Ministry of Natural Resources and the Environment
<b>MoAC</b>	Ministry of Agriculture and Cooperatives
<b>MoFA</b>	Ministry of Foreign Affairs
<b>Moi</b>	Ministry of Interior
<b>MPC</b>	Myanmar Pongpipat Limited
<b>NAP</b>	National Action Plan



<b>NBA</b>	National Baseline Assessment
<b>NCPO</b>	National Council for Peace and Order
<b>NDF</b>	Northern Development Foundation
<b>NEQA</b>	National Environmental Quality Bill
<b>NFN</b>	Northern Farmer's Network
<b>NGO</b>	Non-Governmental Organisation
<b>NHRCT</b>	The National Human Rights Commission of Thailand
<b>NHRI</b>	National Human Rights Institution
<b>NLA</b>	National Legislative Assembly
<b>NSC</b>	National Strategy Committee
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OHCHR</b>	Office of the High Commissioner on Human Rights
<b>ONEP</b>	Office of National Resources and Environmental Policy and Planning
<b>PACC</b>	Office of Public Sector Anti-Corruption Commission
<b>PCD</b>	Pollution Control Department
<b>P-Move</b>	People's Movement for a Just Society
<b>RAI</b>	Principles for Responsible Investment in Agriculture and Food System
<b>RFD</b>	Royal Forest Department
<b>RPLD</b>	Rights and Liberties Protection Department
<b>RTG</b>	Royal Thai Government
<b>SDG</b>	Sustainable Development Goals
<b>SEA</b>	Strategic Environmental Assessment
<b>SES</b>	Stakeholder Engagement Standard
<b>SEZ</b>	Special Economic Zones
<b>SLAPP</b>	Strategic Lawsuit Against Public Participation
<b>SMEs</b>	Small and Medium Enterprises
<b>SPFT</b>	Southern Peasants Federation of Thailand
<b>THB</b>	Thai Baht
<b>TLK</b>	Tungkum Limited
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCHR</b>	United Nations Commission on Human Rights
<b>UNDRIP</b>	UN Declaration on the Rights of Indigenous Peoples
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights
<b>UPR</b>	Universal Periodic Review
<b>VPs</b>	Voluntary Principles on Security and Human Rights
<b>WHRDs</b>	Women Human Rights Defenders

## 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 BHR 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 UN Guiding Principles (UNGPs) on BHR, Manushya developed a strategy<sup>1</sup> aiming at empowering communities to be at the centre of the BHR 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 BHR 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 BHR 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 that 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".<sup>2</sup> 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 HRDs, and 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),<sup>3</sup> 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).<sup>4</sup>

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 NAP on BHR, following our four key 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.<sup>5</sup>

Manushya Foundation and the Thai BHR Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and 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 recognise the importance of approaching our work in a constructive manner to ensure the greatest positive change for the communities we serve. However, while we work with any and all willing partners to advance these causes, Manushya is a completely independent human rights organisation. Our willingness to work with 'champions' to create a fairer, more equitable world is based solely on the needs of communities, with the singular purpose of ensuring no individual or group is the victim of human rights abuses caused by business conducts. Our approach lies in the empowerment of invisible and marginalised 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 Land-related Rights 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 2017;<sup>6</sup>
- Four regional capacity-building workshops on BHR to demystify corporate accountability to HRDs<sup>7</sup> 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);<sup>8</sup> and
- The BHR Coalition Building Workshop held on 18-20 November 2017.<sup>9</sup>

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 United Nations (UN) human rights bodies, and NGOs' reports, observations and recommendations; online news articles; expert papers; and other publications.



## LAND-RELATED RIGHTS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS

### CONTEXT

Across countries in Asia, foreign investors, domestic elites and governments have benefitted from the recent trend of large scale land acquisition.<sup>10</sup> While commercial investment in land can contribute to economic development opportunities, the combination of weak land governance, powerful corporations, corruption, lack of transparency and the quest for development and economic growth have created an unrestricted setting for projects and business practices where local communities are evicted from their land and where land use rights are ignored. South-East Asian local communities' distinct dependence and connection to their land as part of their identity and culture are not often prioritised over profit-making development projects.

In Thailand, an abundant number of cases have been documented where government policies have led to forced eviction, arrest for illegal logging, and intimidation of communities who have been in possession of, and living on their lands for decades, such as the Lao-speaking communities in Isaan (Northeastern Thailand) or the indigenous Moken sea communities in southern Thailand.<sup>11</sup> Land evictions and land grabbing negatively impact the entire livelihood of communities and may lead to hunger and malnutrition, undermining their food security and well-being. Evicted families are at risk of losing their only source of income, social protection networks, as well as cultural and spiritual binding mechanisms for communities with deep ties to the land. The government's increasing policy of declaring natural reserves by reclaiming forest areas utilised and managed by local communities has fuelled conflicts.<sup>12</sup> The issuance of land-use certificates for corporate purposes – to official state departments, individuals and business entities – which target part of lands that have traditionally been used by local communities showcases the government's pursuit of economic growth at all costs.

In Thailand, the governance of land tenure is regulated by a complex set of regulations overseen by 14 departments under the Ministry of Interior (MoI) and the Ministry of Agriculture and Cooperatives (MoAC).<sup>13</sup> Reported ongoing land conflicts opposing smallholder farmers, local communities, and indigenous peoples to government agencies and the private sector have revolved around land acquisition and problems of land tenure.<sup>14</sup> Encroachment of State and forest land has been a result of the expansion of agricultural land, the absence of clear land boundaries, the inability to access and own land by small communities due to high cost and land concentration and overlapping proclamation of land ownership.<sup>15</sup> Besides, environmental conservation laws, many of which are threatening the rights of indigenous communities, such as the Forest Reclamation Policy of 2014,<sup>16</sup> have led to various conflicts between local communities and the State.

In the last years, Thailand has implemented new measures (including National Council for Peace and Order (NCPO) orders and a new Master Forest Plan) resulting in further restrictions on people's livelihoods by granting greater power to the government over land management and limiting deprived communities' rights to defend their land.<sup>17</sup> Complaints from communities and individuals who have been affected by government operations to combat forest encroachment have been reported to the National Human Rights Commission of Thailand (NHRCT).<sup>18</sup> For example, since mid-2018, the government began a shift in forest policy, allowing forest inhabitants to remain but under different conditions, according to the fragility of the forest ecosystem. The aim of the new policy is to arrange individual land properties as a collective, single, and large-scale property called 'plaeng ruam', in order to prevent "land from changing hands multiple times" and encroachment. In February 2019, the maps with the new strict boundaries were distributed together with a guide on how to act on forest issues including a conflict-management mechanism.<sup>19</sup> Also, the new Rice Bill is controversial as it seems to forbid, with punishments including imprisonment, the trade of rice seeds not approved by the Rice Department, which can be detrimental for small-scale farmers that rely on indigenous rice varieties. Besides not addressing farmers' issues in crop production, the bill seems to be rushed to be voted before the new elections.<sup>20</sup> Both the new forest policy and the Rice Bill have been drafted without consulting the communities that might be affected by these policies. On 27 February 2019, community members of the People's Movement for a Just Society (P-Move) submitted a petition against the new bill and policy. Furthermore, a Special Economic Zone (SEZ) Development Plan is being implemented in regions close to the border, even though the Special Economic Zone Act is still a draft and has not been approved by the National Legislative Assembly (NLA) yet. Since 2014, the

NCPO has announced policies related to the establishment of SEZs with the intention of “helping establish a production base in Thai border cities and support the economic development of the ASEAN (Association of Southeast Asian Nations) community”. Policies, such as the Announcement 4/2014 on Investment Promotion in Special Economic Development Zones, allow private businesses to obtain incentives if they invest in the industrial development of the SEZs’ land. The use of NCPO orders as legal mechanisms to implement the SEZs had been criticised for not allowing participation nor properly recognising the “value of natural resources and the environment in the areas identified for the development of SEZs”. However, these mechanisms had been perceived as enabling the acquisition of land by the NCPO, circumventing normal social and environmental regulations in order to expedite the development of the SEZs.<sup>21</sup>

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

### **1.1. International Human Rights Standards**

The need to provide access to land in order to facilitate the realisation of human rights has been recognised in several international conventions and interpretive documents; however, there is no explicit international right to land in the international legal framework.<sup>22</sup> Despite this, while not wholly defined, several of the human rights codified in the major treaties, including the International Convention on the Elimination of Racial Discrimination (ICERD) (1965); the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966); the International Covenant on Civil and Political Rights (ICCPR) (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), and the Convention on the Rights of the Child (CRC) (1989), contain provisions that regard land and natural resources as part of their normative content, including non-discrimination and the rights to adequate housing, food, water, health, work, cultural integrity, freedom of opinion and expression, and self-determination, as well as the right to participate in public affairs and cultural life.<sup>23</sup>

The UN treaty bodies of the Committee on Economic, Social, and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of All Forms of Discrimination Against Women addressed the issue of land and agricultural reform in their Concluding Observations, highlighting that land is fundamental for the realisation of several other human rights.<sup>24</sup> Furthermore, International Labour Organisation (ILO) Conventions, specifically addressing land and natural resources are the Rural Workers’ Organisations Convention No. 141 (1975) and Indigenous and Tribal Peoples Convention No. 169 (1989),<sup>25</sup> but neither of them is ratified by Thailand.<sup>26</sup>

#### **1.1.1. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights**

The first human right linked with land is the right to self-determination, provided in Article 1 of both documents. The High Commissioner for Human Rights stated that when marginalised peoples or peoples living under occupation are not allowed to freely dispose of their natural resources, including land, it may amount to a violation of their right to self-determination, especially when they rely on those resources for their livelihood.<sup>27</sup> Thus, on the grounds of this right, all peoples can freely pursue their economic, social and cultural development and, as such, they may dispose of their land and resources. Under no circumstances, should they be excluded from their own means of subsistence, including those deriving from land.<sup>28</sup> This right, as affirmed by the ICCPR, includes a particular aspect of economic self-determination, which equates to the right of disposal of natural wealth.<sup>29</sup> The duty of States to undertake consultation with communities on issues of natural resources and land is also enshrined in both Covenants.<sup>30</sup>

Another core principle in international human rights law is the right to equality and non-discrimination, which all States have a legal obligation to promote and protect, and that is essential to the exercise and enjoyment of

human rights, including those relating to access to, use of, and control over land.<sup>31</sup> 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, which also apply to land issues.<sup>32</sup>

In addition, within the two binding Covenants, a number of other articles are directly tied to the right to land.<sup>33</sup> The ICESCR protects the right to an adequate standard of living, which includes the right to housing<sup>34</sup> and, to a certain extent, refers to land;<sup>35</sup> the ICCPR protects privacy and property rights.<sup>36</sup> The right to an adequate standard of living is particularly relevant as land can be a critical element of fulfilling the right.<sup>37</sup> Indeed, “[l]and is often a necessary and sufficient condition on which the right to adequate housing is absolutely contingent for many individuals and even entire communities.”<sup>38</sup> Moreover, one of the factors of the adequacy of housing is the legal security of tenure.<sup>39</sup> Another fundamental right intertwined with land issues is the right to life: Article 6 of the ICCPR guarantees to every person the inherent right to life and protects against the arbitrary deprivation of life. Therefore, for the full enjoyment of this right, it is recognised that no individual should be restrained in their means of subsistence, including those deriving from land.<sup>40</sup> Additionally, every individual has equal right and the opportunity to participate in the conduct of public affairs, and as such, in the formulation and implementation of government policies and decisions as well as development planning relevant to land.<sup>41</sup> Finally, as outlined in the ICCPR, everyone has the right to effective grievance mechanisms by national tribunals for violations of human rights recognised by national or international law, including those related to land. Effective access to remedy is particularly relevant in cases of conflicting land claims, eviction, and displacement.<sup>42</sup>

#### **1.1.2. Interpretation of the Human Rights Committee (CCPR)**

The CCPR has included the right of use of land resources while interpreting the rights of minorities (Article 27 of ICCPR) in its General Comment No. 23.<sup>43</sup> It has affirmed that ‘culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples and thus the right to enjoy culture may include such traditional activities as fishing or hunting and the right to live in reserves protected by law, which may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.’<sup>44</sup>

#### **1.1.3. Interpretation of the Committee on the Economic, Social and Cultural Rights**

The CESCR has contributed to clarifying the relationship between land and other natural resources as well as human rights entitlements and state obligations.<sup>45</sup> The interpretation of CESCR includes General Comment No. 4 on the right to adequate housing; General Comment No. 7 on forced evictions; General Comment No. 12 on the right to adequate food; General Comment No. 14 on the right to the highest attainable standard of health; General Comment No. 15 on the right to water; General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, and General Comment No. 21 on the right to take part in cultural life.<sup>46</sup>

#### **1.1.4. International Convention on the Elimination of All Forms of Racial Discrimination**

The ICERD also recognises the abovementioned economic, social, civil and political rights without distinction of race, colour, national or ethnic origin, such as the right to take part in public affairs (Article 5(c)); right to freedom of movement and residence within the border of the State (Article 5(d)(i)); the right to housing (Article 5(e)(iii)) as well as the right to access to effective judicial remedies (Article 6).<sup>47</sup> Most importantly, it recognises the right to own property and to inherit (Articles 5(d)(v) and (vi)) which is directly related to land property rights.<sup>48</sup> Additionally, The CERD in its General Recommendation No. 23 on the rights of indigenous peoples, called upon States to ‘recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free, prior and informed consent (FPIC), to take steps to return those lands and territories.’ In circumstances when this is for factual reasons not possible, “the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”<sup>49</sup>

### 1.1.5. The Convention on the Elimination of all Forms of Discrimination Against Women

Land rights are also invoked within the international legal framework on women's rights. In fact, the CEDAW requires state parties to ensure women's right to equal treatment in land reform and resettlement schemes.<sup>50</sup> Article 14 of the CEDAW is developed to protect women in rural areas from discrimination and elaborates on women's right to participate in the implementation of development planning at all levels, including those relevant to land; the right to benefit from rural development, including the right to access to agricultural credit and loans; the right to equal access to the use of and control of the land; and, finally, the right to housing and adequate living conditions.<sup>51</sup> On the rights of rural women, the Committee on the Elimination of all Forms of Discrimination Against Women further commented in its General Recommendation No. 34, which is particularly significant as it is the first international instrument specifically addressing the rights of rural women.<sup>52</sup> It explicitly considers 'rural women's rights to land, natural resources, seeds, forestry, and fisheries as fundamental human rights'.<sup>53</sup> It furthermore recognises the right to participate in decision-making for rural women whose livelihoods depend on natural resources.<sup>54</sup> The Convention also provides that both spouses must enjoy equal rights with regard to property ownership in marriage.<sup>55</sup>

### 1.1.6. Convention on the Rights of the Child

Children are often dependent on their caregivers to have access to health services, education, adequate food, safe water, and sanitation, and as such are affected by the loss of livelihood as much as their caregivers in cases of insecure tenure or loss of access to land.<sup>56</sup> Furthermore, the Committee on the Rights of the Child, in its General Comment on the rights of indigenous children, highlighted the cultural significance of traditional land and the importance of its use in children's development and enjoyment of their culture, recommending States to consider both the significance of land and the quality of the natural environment in relation to children's right to live, survival and development.<sup>57</sup>

### 1.1.7. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)

The UNDRIP sets the minimum standard for the protection of indigenous peoples' collective rights and stipulates necessary measures to ensure that their rights are respected and followed, including the right of indigenous peoples to the lands and resources which they have traditionally owned, occupied or used.<sup>58</sup> While not legally binding, the declaration states that indigenous peoples have the right to own and develop resources on their land,<sup>59</sup> the right to legal recognition of indigenous lands by states,<sup>60</sup> and the right to redress for land which has been confiscated, used or damaged.<sup>61</sup> The declaration also calls upon states to ensure FPIC<sup>62</sup> of indigenous peoples prior to undertaking an act which could have a direct impact on them, such as removal of indigenous peoples from their land or territories;<sup>63</sup> adoption and implementation of legislative or administrative measures that may affect them;<sup>64</sup> the occurrence of military activities on their territory;<sup>65</sup> storage or disposal of hazardous material on their land and territories;<sup>66</sup> and approval of any project affecting their land, territory or other resources.<sup>67</sup> Although Thailand voted in favour of the adoption of the UNDRIP, it maintains that it does not have indigenous peoples in the country if it follows the commonly used definition of 'pre-colonial or pre-settler societies'.<sup>68</sup>

### 1.1.8. The ILO Indigenous and Tribal Peoples Convention (C169)

The ILO Indigenous and Tribal Peoples Convention is the major binding international convention concerning indigenous peoples. Thailand has so far refused to ratify it. Articles 10 and 29 of the UNDRIP and Articles 6 and 16 of the ILO Convention No. 169 view the principle of FPIC as one of the key requirements before starting any development project on or near indigenous peoples' land and territories. The convention also requires the provision of legal procedures to resolve land claims,<sup>69</sup> establishes rights over natural resources,<sup>70</sup> protects against forced removal,<sup>71</sup> and establishes a right of return and compensation for lost land either through land or money.<sup>72</sup> There are a number of principles and rights outlined in the ILO Convention No. 169 (and the UNDRIP) that have implications for business activities taking place in areas inhabited by indigenous peoples, including:

- Indigenous peoples should be consulted in an effective way whenever development activities are being planned or executed on their lands, and they should participate in the planning, implementation and evaluation of these activities.<sup>73</sup>

- Indigenous peoples have rights to the lands which they traditionally occupy, including their natural resources and governments shall take the necessary steps to guarantee effective protection of their rights of ownership and possession.<sup>74</sup> Indigenous peoples may have these rights even when the country concerned has not yet identified the lands or the rights they have.
- In cases of resource extraction projects taking place on indigenous lands, indigenous peoples have the right to participate in the benefits of such projects and to be fairly compensated for any damages which they may sustain as a result of such activities.<sup>75</sup>
- The social, cultural, religious and spiritual values and practices of indigenous peoples should be recognised and protected.<sup>76</sup>
- Indigenous peoples have the right to participate in the use, management and conservation of the natural resources on their lands.<sup>77</sup>
- Indigenous peoples should not be resettled from their lands without their FPIC.<sup>78</sup>

#### **1.1.9. The 1992 Rio Declaration on Environment and Development**

The 1992 Rio 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 the protection of the environment. Principle 22 specifies that indigenous and other local communities represent the key agents when it comes to environmental management and development based on their in-depth local knowledge and traditional practices.<sup>79</sup> Principle 10 enshrines that all citizens and communities should participate in environmental issues and in decision-making processes, which implies that they need to have appropriate access to information on hazardous materials and activities in their communities.<sup>80</sup>

#### **1.1.10. The 2030 Agenda for Sustainable Development and land-related rights<sup>81</sup>**

There are several links between the Sustainable Development Goals (SDGs) and these rights. These include:

- Target 1.4, which aims to ensure that all, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, natural resources, technology and financial services. This relates to land-related rights and communities' right to property and self-determination.
- Target 6.b, which calls for the support and strengthening of participation of local communities in improving water and sanitation management.
- Goal 11, which stresses the need to establish sustainable cities and communities. Inevitably, FPIC of all communities affected by business activities is necessary to ensure their sustainability.
- Target 12.c, which aims to rationalise inefficient fossil-fuel subsidies that encourage wasteful consumption and to protect marginalised and affected communities while doing so.
- Target 13.b, which calls to promote mechanisms for raising capacity for effective climate change-related planning and management in the least developed countries, including focusing on local and marginalised communities.
- Goal 16, which aims at promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and build effective, accountable and inclusive institutions at all levels. Particularly important within this goal and relating to communities' rights to self-determination and to information, participation and consent when it comes to business activities, are target 16.7, which aims to ensure responsive, inclusive, participatory and representative decision-making at all levels; and target 16.10, which seeks to ensure public access to information and protect fundamental freedoms in accordance with national legislation and international agreements.

#### **1.1.11. UN Declaration on the Rights of Peasants and other People Working in Rural Areas**

The Declaration, under negotiation since 2013, was adopted in 2018 by the Third Committee of the UN General Assembly, with Thailand as one of 119 countries that voted in favour of the adoption of this resolution.<sup>82</sup> The negotiation process was initiated by the transnational peasant movement La Via Campesina, supported by the Geneva Academy's project on the rights of peasants, FIAN, and other organisations which provided expert advice on key challenges like the need for the recognition of the right to lands and seeds.<sup>83</sup> It 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<sup>84</sup> and expressly recognises them the right to land, individually or collectively.<sup>85</sup> Furthermore, it sets out the State duty to ‘respect, protect, and fulfil the rights of peasants and other peoples working in rural areas’, before adopting and implementing legislation, programmes, policies, international agreements or any other decision-making processes that may affect the rights of peasants, their lives, land and livelihoods.<sup>86</sup> 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; to provide redress and remedy for actions that violate peasants’ human rights and that deprives them of their land and natural resources or means of subsistence; and to protect them from evictions or displacement from their land.<sup>87</sup> States shall also take ‘all necessary measures to ensure that non-state actors that are in a position to regulate (...) respect and strengthen the rights of peasants and other people working in rural areas.’<sup>88</sup> Finally, it reiterates the equality of men and women in accessing to, using of, and managing of land and natural resources as well as ‘equal or priority treatment inland and agrarian reform and in land resettlement schemes’.<sup>89</sup>

#### **1.1.12. The UN Declaration on the Right to Development**

Adopted in 1986, 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.<sup>90</sup>

#### **1.1.13. UN Basic Principles and Guidelines on Development-Based Evictions and Displacement<sup>91</sup>**

These Eviction Guidelines by the Special Rapporteur on the right to housing set out principles to be adhered to by any actor responsible for displacement, affirming the following requirements: “1) fully exploring alternatives to displacement; 2) ensuring an appropriate planning process with sufficient opportunities for meaningful participation and informed participation; 3) ensuring displaced persons do not experience a deterioration in living standards, including by ensuring appropriate compensation and alternative livelihood options; and 4) prohibiting all forced evictions”.<sup>92</sup> The guidelines describe key steps to be followed prior to evictions which include involving all affected individuals; disseminating information by authorities; providing a reasonable time period for public review and possible objection to plans; and public hearings with opportunities to challenge the decisions and present alternatives. In addition, the guidelines request that eviction decisions should be communicated to all affected individuals in advance, in the local language and detailing justification, as well as providing free legal counsel, and fair compensation. Finally, yet importantly, states must ensure adequate and effective legal or other appropriate remedies for victims of forced evictions.<sup>93</sup>

#### **1.1.14. Other instruments relevant to land-related rights**

UN Human Rights experts and bodies have likewise developed guidelines and principles relevant to the right to land and other natural resources, such as the UN Guiding Principles on Internal Displacement (1998); the Minimum Human Rights Principles Applicable to Large Scale Land Acquisitions or Leases (2010) by the UN Special Rapporteur on the right to food; and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles, 2005) by the Sub-Commission on the Promotion and Protection of Human Rights.<sup>94</sup>

### **1.2. Regional Commitments**

#### **1.2.1. ASEAN Human Rights Declaration**

On a regional level, the ASEAN Human Rights Declaration sets out a number of standards similar to those in international treaties that relate to land rights, such as the right to an adequate standard of living and housing that includes the right to a safe, clean and sustainable environment;<sup>95</sup> the right to own property;<sup>96</sup> and the right to be free from the interference of their home.<sup>97</sup> Although, as with other human rights treaties, these principles

do not directly confer specific land rights on individuals, they do provide rights that are inextricably linked to land and can be applicable in cases of land right violations.

### **1.3. National Legal & Policy Framework**

National parks and protected areas, particularly those aimed to facilitate carbon trading and attract tourists, should be considered equivalent to state-owned enterprises and thus, falling within the BHR framework. Thailand should follow the UNGPs in these regards; however, as the policies and laws enlisted above show, Thailand is not taking steps to protect against human rights abuses occurred within the national parks and other protected areas under the control of the State or receiving support from it, including by requiring human rights due diligence (HRDD) and assessing actual and potential human rights impacts.<sup>98</sup>

#### **1.3.1. The Constitution of Thailand of 2017**

On issues with relation to the environment, Section 57 and 58 of the Constitution of Thailand of 2017 are key articles addressing the environment. Section 57 states that the government endeavours to ‘conserve, revive and promote local wisdom, arts, culture, traditions, and good customs’ and to ‘conserve, protect, maintain, restore, manage, and use or arrange for utilisation of natural resources, environment and biodiversity in a balanced and sustainable manner, provided that the relevant local people and local community shall be allowed to participate in and obtain the benefit from such undertaking as provided by law.’<sup>99</sup> Section 58 highlights the government’s duty to protect the environment and conduct proper Environmental Impact Assessments (EIAs) for all environmentally harmful projects. It adds that if any undertaking ‘may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment, the State shall undertake to study and assess the impact on environmental quality and health of the people or community and shall arrange a public hearing with relevant stakeholders, people, and communities in advance in order to take them into consideration for the implementation or granting of permission as provided by the law. Individuals and communities have the right to receive information, explanation and reasons from the State prior to the implementation of any project. The State also has the obligation to minimise the impact of its projects on people, community, environment, and biodiversity and to ‘remedy the grievance or damage for the affected people or community in a fair manner without delay.’<sup>100</sup> In relation to this, Section 41 of the Constitution provides the right to access to information and public data,<sup>101</sup> which due diligence mechanism like the EIA endeavours to provide.

#### **1.3.2. Land management and Land titling policies**

##### **1.3.2. (A) The Land Code Act (1954)<sup>102</sup>**

The Land Code Act sets out the basis for land ownership and covers the systems of title deeds and other forms of ownership. It establishes the National Land Allocation Committee, which oversees all land allocation and ownership in Thailand.<sup>103</sup> It also formalised state ownership of unclaimed land.<sup>104</sup> The Act applies to all land surfaces, including mountains, hills, streams, ponds, canals, swamps, marshes, waterways, lakes, islands, and sea coasts. It provides for various tenure types, including ownership and use rights. It governs land surveys, titling, and registration. It allowed a period of 180 days from the promulgation of the Act for submission of claim by people occupying land to prove their claims over the land and any land not vested by a person was established as State property.<sup>105</sup> Through the above laws, the State asserts control over all land and natural resources and provides that land can be either state-owned or privately owned. In the process, much of the traditional lands and resources of indigenous peoples are classified as state forestlands while the State disregards the rights of indigenous peoples that have been living in these forests for generations, even before the creation of the modern State, and whose livelihoods have traditionally been intricately connected to resources from the forests. Since indigenous peoples never had any title deed, occupation of their ancestral land was deemed illegal, and they were prohibited from using forest products.

##### **1.3.2.(B) Agricultural Land Reform Act 1975**

The Agricultural Land Reform Act in Thailand strives towards the recognition of user rights of farmers who have encroached land classified as forest land in order to provide them with secure tenure rights. The Agricultural

Land Reform Office (ALRO) has the power to provide land to agricultural workers or agricultural institutions according to the rules, methods, and conditions prescribed by the Committee.<sup>106</sup> If the land is provided to agricultural workers, ALRO provides it through a lease or hire-purchase, which is a contract under which the owner of a property lets the land out on hire and on the basis that the hirer makes a certain number of payments, promises to sell it to, or that it will become the property of, the hirer. If the land is provided to an agricultural institution, ALRO provides it through a lease. The right provided by ALRO is merely the right to enter and make use of the land.<sup>107</sup>

### **1.3.2.(C) Land Development Act 2000**

The Land Development Act sets forth regulations for land development in Thailand. It established a Central Land Development Commission,<sup>108</sup> which is responsible for overseeing land development and setting out land development policies.<sup>109</sup> It also established Provincial Land Development Commissions,<sup>110</sup> which serve as more localised versions of the central commission and consider applications for land development and inspect development projects for compliance.<sup>111</sup>

### **1.3.2.(D) The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds (2010)**

This regulation only provides for communities to collectively manage and benefit from State-owned land for their livelihood, while the State retains ownership of these lands.<sup>112</sup> As of 2012, more than 400 local communities were in the process of waiting to be granted community title deeds, and only around 50 communities land titles had been issued.<sup>113</sup>

### **1.3.2.(E) The 20-year National Strategic Plan in relation to rights to land, environment and natural resources<sup>114</sup> and the Rights of Workers**

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.<sup>115</sup> The Strategic Plan provides for the distribution of land possession and access to natural resources, by fixing the conflict on forest land that is believed to intersect with community land.<sup>116</sup> It recognises the community's right to use and benefit from their land. It also sets out measures for the use of land with existing titles in a fair manner and to ensure the distribution of land possession in appropriate sizes for equality in land possession. Adjust the land titles for the people with less income and those without land so they can use it as evidence for financial purposes. It also provides for the amendment of the rules on the usage of public land in order for people to work and access the land, particularly with respect to those with a lower income. The Strategic Plan also focusses on environmental aspects, pointing to the importance of public participation in decision making on these aspects.<sup>117</sup> It also encourages businesses to create a favourable attitude and a likable culture, by motivating them to have a good governance style and effective management.<sup>118</sup> It also urges businesses to develop corporate social responsibility (CSR), extending to both employees and clients. Changing the attitude of profit by highlighting social costs is required. However, the problem remains that 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.<sup>119</sup> 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.<sup>120</sup> 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.<sup>121</sup> In addition, in direct conflict with these provisions, it also highlights the importance of development and the governments' plan to push for increased economic growth in this manner. On implementation, this may ultimately prove as an aspect that overshadows the land-related, environment and public participation provisions of the National Strategic Plan.

### **1.3.3. Forest and national parks policies and related NCPO orders: The Forests Act (1941), The National Park Act (1961), The National Reserved Forest Act (1964), The Wild Animal Preservation and Protection Act (1992)**

These legislations have all denied and/or restricted the rights of communities to own or access their land and utilise their natural resources, in one form or the other.

#### **1.3.3.(A) The Forests Act (1941)<sup>122</sup>**

The Act defines a forest as any land which has not been acquired by an individual under the Land Code Act and defines forest products as products that naturally originate from or were found in forests, such as timber, plants, bird nests, honey, stones and charcoal. It prohibits the use of forestland unless the land has previously been declared as an agricultural area by authorities and any product made out of restricted forest produce can be seized.

#### **1.3.3.(B). The National Park Act (1961)<sup>123</sup>**

It provides for the declaration of certain land areas as “National Park” land by Royal Decree if the Thai government deems that such land possesses features that should be maintained and preserved for the benefit of public education and leisure. The law has a negative impact on the communities living in forests because the State can declare the area they live in as a National Park and evict them at any given time.

#### **1.3.3.(C). The National Reserved Forest Act (1964)<sup>124</sup>**

It was established for the preservation of forests and defines forest as land that has not been acquired by anyone, including mountain, rivulet, marsh, canal, swamp, waterway, lagoon, island and seashore. Under the Act, the Ministry of Natural Resources and Environment (MNRE) can declare any forest to be a national reserved forest by issuing a regulation to that effect. Anyone can claim rights over land in a national reserved forest area by submitting an application to the concerning authority within 90 days of the issued regulation and receive compensation, which is only monetary and does not compensate for the loss of livelihoods. Often, it is too late for the peoples to make a claim because they are not informed that their land has been declared a national reserved forest.

#### **1.3.3.(D) The Wild Animal Preservation and Protection Act (1992)<sup>125</sup>**

It empowers the MoAC to declare any area it deems appropriate as “Wild Animal Reserved Area” to safeguard the preservation of wild animals. Section 37 and 38 prescribe that no one (except a competent officer) can enter, possess or occupy Wild Animal Sanctuaries.

#### **1.3.3.(E) Adoption of the draft Community Forest Bill**

Adopted by the NLA at its third reading on 15<sup>th</sup> 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.<sup>126</sup> This will become enforceable as law, following the signature of the King and the publication in the government gazette.<sup>127</sup> 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.<sup>128</sup> This Bill has been justified based on the fact that it is believed that management of community forests is essential to ensure cooperation, food security, prevent global warming and protect people’s basic rights, but while making such a claim the draft Bill also undermines the rights of people residing in the forest to participate and make decisions on the management of the local environment.<sup>129</sup> 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.<sup>130</sup> This happens for the following reasons:<sup>131</sup> (1) Community forests have been identified by the bill as those that are outside the conservation area managed by the States, 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 the 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 order 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 of local communities. (5) The law does not ensure the engagement of the forest department with communities with both as equal partners.

### **1.3.3.(F) Amendment to the National Parks Act of 1961 and the Wildlife Conservation Bill<sup>132</sup>**

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 threaten those residing in the forests further. 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 with new conditions set. In addition, they were not allowed to participate in the discussion or consulted on the bill or any other decision-making process, which would affect and have an adverse impact on their rights.

### **1.3.3.(G) The Cabinet Resolutions dated 17, 22 and 29 April 1997**

These Cabinet Resolutions gave some recognition to the rights of people living in the forest areas and to attenuate the restrictions. The resolution provided for sub-committees at the provincial level to examine petitions and consider revoking declarations of forest land or national parks for certain areas.<sup>133</sup> However, another Cabinet Resolution dated 30 June 1998 revoked the resolutions. It went even further to explicitly provide for the relocation of people living in protected areas, and specified that any action deemed forest encroachment was to be strictly dealt with under the law.<sup>134</sup> Under the restrictive framework of this resolution, 85% of the people living in forests would be considered to be in violation of the law and is still in effect until now.<sup>135</sup> This led to important demonstrations and protests, which in turn led the Cabinet to adopt a positive Resolution on 11 May 1999.

### **1.3.3.(H) Cabinet Resolution of 11 May 1999**

The Cabinet Resolution has set up a registration process for communities living in forests and stipulated that people under the verification process could not be evicted or charged with forest encroachment.<sup>136</sup> At the time, the resolution was deemed fair by local communities and NGOs. However, indigenous peoples and communities have not been able to benefit from it because of a lack of awareness of the law, the language barrier (inability to understand Thai language) and once again the lack of citizenship. The government did not make any particular effort to disseminate information about the resolution, and at the same time, people with more resources took the opportunity to seek permissions for planting fruit orchards, gardens and building holiday resorts on these lands. Nowadays, the NCPO is prioritising its reforestation plan with all its adverse effect on indigenous peoples and local communities, rather than implementing this resolution.

### **1.3.3.(I) NCPO Order No. 64/2014, Order No. 66/2014 ('Forest Reclamation Policy') and a reforestation 'Master Plan'**

The Forest Reclamation Policy and the Master Plan, or the forest plan to suppress illegal logging and deforestation, seek to end deforestation and encroachment of reserves, and rearrange the management of forest territories. Although NCPO Order 66/2014 stipulates that the operations would only affect wealthy investors, indigenous peoples who lived on their lands for decades have been persistently targeted as "investors" or viewed as being funded by wealthy investors, resulting in complete disregard of the protection measures. Communities and indigenous peoples (many indigenous communities in the north and northwest and sea gypsies in the south, in particular) have been evicted with removal and demolishing of houses and properties, cutting-down of rubber trees and all cultivated plants, and faced with arrests and judicial harassment.<sup>137</sup> By December 2015, NCPO Order 64/2014 had impacted nearly 1,800 families, mostly in the north and northeast, home to large indigenous populations. At that date, 681 cases filed against the exercise of

powers under Order 64/2014 towards local and indigenous communities were recorded, and 168 of these cases amounted to judicial harassment.<sup>138</sup> As of April 2016, the NHRCT revealed that they received 50 complaints covering 30 provinces which were related to Order 64/2014.

### 1.3.3.(L) New Forest Policy 'Khor Tor Chor'

Due to overlapping claims over forestland between the government and the forest communities, in mid-2018, the Government began a shift in forest policy, allowing forest inhabitants to remain but under different conditions, according to the fragility of the forest ecosystem.<sup>139</sup> The National Parks, Wildlife, and Plant Conservation Department (DNP) aims at clarifying boundaries around national parks and wildlife sanctuaries as well as around existing communities within them with the new forest policy, also known as Khor Tor Chor. The objective of the new policy is to arrange individual land properties as a collective, single or large-scale property called 'plaeng ruam', in order to prevent "land from changing hands multiple times" and encroachment.<sup>140</sup> The DNP identified three groups of forest residents to whom the Khor Tor Chor can be applied: the first group consists of those who settled before 1998 (Cabinet's stricter forest policy); the second group of people settled between 1998 and 2014 (until NCPO Orders 64 and 66, letting poor forest inhabitants remain in place); the third group settled into forests since 2014, which is 'illegal' and will be subject to the new conditions and measures addressed in the new law.<sup>141</sup> The new policy was approved by the cabinet in November 2018. In February 2019, the new maps with the new strict boundaries were distributed together with a guide for officials on how to act with forest issues under the new law, including a conflict-management mechanism. Punishments are provided for those who do not respect the boundaries set.<sup>142</sup>

### 1.3.4. Environmental Impact Assessments and related NCPO orders

#### 1.3.4.(A) NCPO Orders and Environmental Impact Assessments

In 2016, the NCPO passed Order 9/2016 allowing for projects concerning transportation, irrigation, public rescue and protection, hospital and residential development to enter into construction contracts even before the approval of an EIA.<sup>143</sup> Moreover, the NCPO promulgated Orders 3/2016 and 4/2016 allowing certain projects, such as SEZs, to avoid EIAs.<sup>144</sup> According to new laws, the requirement for an EIA depends on the size of projects, which has led to tactics of structuring projects in a manner that does not oblige the conduct of an EIA. For example, biomass projects producing less than ten megawatts are not obliged to develop an EIA. Thereby, developers of biomass projects have been limiting the size of projects to be just below ten megawatts in order to bypass the EIA. NCPO Order 28/2017 aims at boosting the efficiency of the new Eastern Economic Corridor (EEC) development by setting up a special expert panel for environmental assessment of projects in SEZs and speed up the overall EIA process to keep it under one year.<sup>145</sup>

#### 1.3.4.(B) The Enhancement and Conservation of the National Environmental Quality Bill 1992 (NEQA)<sup>146</sup>

NEQA is the main source of law for the conduct of EIAs. The type of projects required to pass an EIA and the related regulations are addressed in sections 46 to 51. 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 project or activity shall prepare the EIA report at the stage of a feasibility study for such project submitting to the National Environment Board for its review and comments, which supplement the Council of Ministers' consideration."<sup>147</sup> 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".<sup>148</sup> Projects which do not require the approval of the Cabinet are covered under section 48.

The Office of National Resources and Environmental Policy and Planning (ONEP) is the main agency in charge of the EIA system.<sup>149</sup> It is responsible for the development of the EIA system and the EIA review process. The ONEP is mandated to review and make proposals on the types and sizes of projects for which an EIA is required. 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. In the NEQA, health impact assessment is only incorporated

as part of the EIA process. The first legal provision providing for EHIA was included in section 67 of the 2007 Constitution.

Additionally, 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.<sup>150</sup> Section 7 and 8 limit participation in decision-making to NGOs who do not pursue political purposes.<sup>151</sup> 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.<sup>152</sup>

### **1.3.5. Economic Zones and Corridors**

#### **1.3.5.(A) Special Economic Zone**

A SEZ Development Plan is being implemented in the Thai regions close to the border, even though the Special Economic Zone Act is still a draft and has not been approved by the NLA yet. Since 2014, the NCPO has announced policies related to the establishment of SEZs with the intention of “helping establish a production base in Thai border cities and support the economic development of the ASEAN community”.<sup>153</sup> Policies, such as the Announcement 4/2014 on Investment Promotion in Special Economic Development Zones, allow private businesses to obtain incentives if they invest in the industrial development within the SEZs’ land. Such incentives can be reduction of corporate income tax; favourable investment conditions for small and medium enterprises (SMEs) and guaranteed access to lower-cost foreign labour.<sup>154</sup> The use of NCPO orders as legal mechanisms to implement SEZs had been criticised for not allowing participation nor properly recognising the “value of natural resources and the environment in the areas identified for the development of SEZs”. These mechanisms had also been perceived as enabling the acquisition of land by the NCPO, circumventing normal social and environmental regulations in order to expedite the development of the SEZs.<sup>155</sup>

#### **1.3.5.(B) Eastern Economic Corridor**

To enhance production, trade, investment, tourism, and other economic opportunities,<sup>156</sup> Thailand and other Greater Mekong Subregion (GMS) countries (Cambodia, People’s Republic of China, Lao People’s Democratic Republic, Myanmar, Vietnam) decided in 1998 to adopt a strategy to include ‘increased connectivity through sustainable development of physical infrastructure and the transformation of transportation corridors into multi-sector transnational economic corridors’.<sup>157</sup> Thus, the GMS economic corridors were developed to link production, trade and infrastructure within the GMS countries in order to eliminate infrastructure bottlenecks; develop competitive infrastructure; link major markets; address the high demand for goods across the GMS; leverage the scope for intraregional supply; and promote investment.<sup>158</sup> Since the EEC is the intersection of several economic corridors, it been the first national project to be developed and implemented by the government of Thailand. The Twelfth National Economic and Social Development Plan of 2017-2021 is the current policy document that provides the direction of development and strategies to achieve it.<sup>159</sup>

On 17 January 2017, NCPO Order 2/2560 was drafted on the EEC project development,<sup>160</sup> which promoted plans for improvement of land use and activities to be undertaken in the EEC.<sup>161</sup> It also established the EEC Development Policy Committee chaired by the Prime Minister,<sup>162</sup> which has been responsible for 24 notifications on the determination of Promotional Zones, which are areas in the EEC determined by the Committee, only between the period of 23 February 2018 until 7 May 2018.<sup>163</sup> Moreover, there are incentives under this policy that include exemption from corporate income tax for up to 15 years; deduction of annual losses from net profits during tax determination; and subsidies from the National Competitiveness Enhancement for Targeted Industries Fund to support research and development and promotion of innovation.<sup>164</sup> The Eastern Special Development Zone Act B.E. 2561 for the EEC came into effect on 15 May 2018,<sup>165</sup> providing both tax and non-tax benefits to those benefitting from the provisions of this Act. Worryingly, the 2018 EEC Act also enables the State to reclaim land from farmers and reallocate it to EEC investors and overrides the principle within the ALRO of protecting the land use rights of small-scale farmers and the poor, and prohibiting the use of the land for non-agricultural purposes.<sup>166</sup>

The economic corridors have been set as public-private partnerships,<sup>167</sup> with heavy reliance placed on foreign direct investment.<sup>168</sup> Beneficiaries of the development of economic corridor projects in Thailand will be of two types: the first will include businesses that will gain from the development of infrastructures,<sup>169</sup> such as property developers, civil-construction contractors, industrial estate developers, and telecommunication providers; the second will include those who belong to any of the specifically targeted industries that the government initiative is focussing on, which in the case of the EEC will be those focusing on robotics and aviation.<sup>170</sup> However, along the economic corridors, there has been a growth and opportunity imbalance, with growth being distributed unequally between rural and urban areas in some provinces; as a result of this, farmers living in remote areas get lesser benefits from the economic corridors compared to industries and trading businesses,<sup>171</sup> perpetuating the extreme wealth gap that exists between the poor and rich in Thailand.<sup>172</sup>

### 1.3.6. Use of and access to natural resources

#### 1.3.6.(A) Rice Bill

The new Rice Bill is a controversial draft law that will forbid the trade of rice seeds not approved by the Rice Department and is designed to benefit large-scale commercial producers.<sup>173</sup> This provision can be detrimental for small-scale farmers that develop and rely on indigenous rice varieties because it will force them to buy commercial varieties and this can threaten their way of life and their ties to rice mills.<sup>174</sup> The concern is in fact that the law will ban farmers “from selecting their own rice varieties or force them into seeking certification”. Some farmers traditionally develop their own rice varieties and this bill will not only prevent them from continuing their activities but can also increase their costs. Furthermore, punishments under the draft law amount to 100,000 THB (\$3220) and/or one-year imprisonment.<sup>175</sup> Relevantly, the Bill has been drafted without consulting the farmers that might be affected by the policy.<sup>176</sup> Furthermore, besides not addressing farmers’ issues in crop production, the bill seems being rushed to be voted before the new elections.<sup>177</sup> Farmers and activists are opposing the bill, demanding to halt the legislation from its approval.<sup>178</sup> On 27 February 2019, community members of P-Move submitted a petition to the government to protest against the rushed reviewing of the bill. The Rice Bill is still under review process, it went through the first reading by the NLA and the second and third readings are on their way.<sup>179</sup> After the third reading, the law will be sent to the Cabinet and then enter into force. However, the NLA suspended the review of the law on 26 February 2019.<sup>180</sup> Luckily, the last version of the bill seems to have removed the ban on keeping rice seeds and the punishments for such violations.<sup>181</sup>

#### 1.3.6.(B) New Factory Bill (2019)

The new factory bill, revising the 1992 Factory Act, was approved by the NLA on 22 February 2019. This revision redefines ‘factory’ as a place with machinery exceeding 50 horsepower or with at least 50 workers, instead of the previous definition that started from machinery from 5 horsepower or places with seven or more people working. This means that factories that have machinery or workers below the newly established quotas can be settled within residential areas because they are not considered ‘factories’ *per se* and do not have to be subject to environment and health-protection regulations, which can lead to possible pollution of land, water and natural resources.<sup>182</sup>

#### 1.3.6.(C) Minerals Act (2017)<sup>183</sup>

It governs the exploration, exploitation, and trade in minerals other than petroleum but fails to include provisions ensuring respect for the traditional ownership rights of indigenous peoples. It is expected to facilitate future exploitation in doubling the amount of land available for each surface mining permit to 600 Rai (96 Hectare) and aligning the decision-making process for permits closer to industry stakeholders.

#### 1.3.6.(D) The Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Thailand (2010)

This is a positive measure in the sense that it recognises the rights of Karen and Chao Lay indigenous communities, although the term ‘indigenous peoples’ is not used. Thus, it also recognises the intangible heritage, ethnic identity and culture of these communities and advocates to grant them natural resource

management, legal recognition, and indigenous-based education with cultural pluralism undertaking. Unfortunately, the resolution has been poorly implemented.<sup>184</sup> Progress is slow and ineffective due to bureaucratic obstacles, political instability, lack of understanding amongst State departments and the low budget allocated for activities to meaningfully implement the resolutions' objectives.

## **2. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS TO PROTECT, RESPECT AND REMEDY LAND-RELATED RIGHTS IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS**

### **2.1. Pillar 1 & Pillar 3 - The duty of the State to protect land-related rights and to ensure effective access to remedy**

The three pillars of the UNGP's can be applied to land rights. Guiding Principle 3 of Pillar 1 states that States should enforce laws that require business enterprises to respect human rights.<sup>185</sup> This is relevant to land rights because conflicts between companies and communities with regards to land are shaped by laws and policies that govern corporate behaviour and land ownership and right to land.<sup>186</sup> As the commentary explains, to protect both rights-holders and business enterprises, greater clarity is necessary in law and policy, including those governing access to lands such as entitlements in relation to ownership or use of land.<sup>187</sup> In this regard, the State should review whether laws provide the coverage necessary to ensure "an environment conducive to business respect for human rights".<sup>188</sup> In fact, States should safeguard against the dispossession of legitimate tenure right holders and environmental damage and, if effectively addressing land tenure challenges, they can actually assist companies to improve their performance and sustainable development outcomes in communities where they operate, and to do no harm.<sup>189</sup>

Additionally, Guiding Principle 5 states that States should oversee business enterprises' activities to meet their international human rights obligations, above all if they may impact upon the enjoyment of human rights, including those related to land.<sup>190</sup> Pillar 3 of the UNGPs, access to remedy, is applicable to land rights as without effective mechanisms for rectifying land-based rights violations, those who have experienced such violations are then unable to resolve the situation and access their rights. For example, in cases of land grabbing, without effective access to remedy victims have no means to have their land returned to them or receive compensation. This mirrors ILO Convention 169, which includes the right to return to lands, and if not, receive adequate compensation in the form of land or money.<sup>191</sup> States must take appropriate measures, judicial or non-judicial, to ensure access to effective remedy when business-related human rights abuses occur.<sup>192</sup>

### **2.2. Pillar 2 & Pillar 3 - The corporate responsibility to respect land-related rights and to ensure effective access to remedy**

Regarding pillar 2, the business duty to respect human rights is key to issues surrounding land rights. Often, rights violations occur with regards to land due to the fact that companies' use of land in business operations can adversely affect communities and negatively impact their human rights. Disputes may emerge due to companies' need for land that conflicts when there are prior occupants on that land, who may have legal titles or cultural or ancestral claims under indigenous practices or customary law.<sup>193</sup> Guiding Principle 11 of the UNGPs stipulates that businesses enterprises should respect and avoid infringing on human rights:<sup>194</sup> as businesses activities with regards to land can negatively affect the rights of others, this Principle highlights the responsibility businesses have to avoid and rectify this. Moreover, in countries where there are insufficient mechanisms to protect local land and take account of local interests, businesses should respect human rights independently from the State's ability to fulfil their rights obligations: businesses' responsibility in this regard is "above compliance with national laws".<sup>195</sup>



Furthermore, Guiding Principle 13 requests business enterprises to avoid, and if already caused, address and mitigate human rights impacts caused by their activities.<sup>196</sup> Necessarily, this cannot be done without safeguarding the land rights of communities which can be potentially affected by the 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.<sup>197</sup> 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”.<sup>198</sup> This can apply to activities that can affect their land and livelihoods.

With respect to Pillar 3 and grievance mechanisms, Principle 29 set out that companies “should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may have been adversely impacted.”<sup>199</sup> Principle 31 also lays out the effectiveness criteria for operational-level grievance mechanisms.<sup>200</sup>

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

#### Challenge 1: Land grabbing, land confiscation and forced eviction occur with relation to lands belonging to local communities and indigenous peoples

##### Impact

Land access is often crucial to access economic rights (source of capital, provision of a social safety net as a source of shelter, food, water, and various resources), as well as social, civil and cultural rights.<sup>201</sup> As such, land access and related issues affect a broad range of human rights. In fact, under international human rights law, land issues are linked to the enjoyment of specific substantive human rights, such as the right to non-discrimination; the rights to adequate housing, food, water, health, work, cultural integrity, freedom of opinion and expression, self-determination, and the right to participate in public affairs and cultural life.<sup>202</sup> The increased interest in land by corporations and governments can be explained with several factors, such as the rise in extractive mining, tourism and urbanisation; the ‘financialisation’ of natural resources, agriculture and food systems, and thus, financial actors find it attractive to invest in; the “appropriation of land and other resources for alleged environmental ends”, leading to establishing natural reserves, conservation projects, and carbon and emission trade schemes for the financialisation and privatisation of nature; and the increasing demand for raw materials for industrial use.<sup>203</sup> In areas where businesses interfere with land ownership, access and usage, adverse impacts on the rights of individuals and communities are often occurring, also because such impacts are not considered as human rights violations and abuses, especially in the cases of marginalised populations.<sup>204</sup> Companies may cause or contribute to the following human rights impacts: land acquisition without adequate consultation or compensation; restriction of use or access to land; social conflict by acquiring land whose ownership is disputed; failure to obtain the FPIC when accessing or impacting indigenous peoples’ lands and natural resources; acquisition of disputed lands, including lands acquired by the state through forced eviction or demolition.

European Coordination via Campesina defined land grabbing as “the control - whether through ownership, lease, concession, contracts, quotas or general power - of larger than locally-typical amounts of land by any persons or entities - public or private, foreign or domestic - via any means - ‘legal’ or ‘illegal’ - for purposes of speculation, extraction, resource control or commodification at the expense of peasant farmers, agroecology, land stewardship, food sovereignty, and human rights.”<sup>205</sup>

Land confiscation is another common issue, when government officials, military personnel or agents on behalf of

the army, and businessmen claim ownership over land that is already occupied or used or use intimidation and coercion to seize land and displace local people, above all without formal legal documentation that proves their land ownership.<sup>206</sup>

Finally, there are land evictions, which are often the result of government policies, such as the Thai Master Plan on the restoration of the forest, as will be shown in the cases below. Evictions are also usually the consequence of land grabbing.<sup>207</sup> The UN Commission on Human Rights (UNCHR) in 1993 and the CESCR in 1997 defined forced evictions as gross violations of human rights and, in *prima facie*, violations of the right to adequate housing.<sup>208</sup> Forced evictions violate, directly and indirectly, civil, cultural, economic, political, and social rights enshrined in international instruments. Further, even if a forced eviction is in accordance with national legislation, it does not necessarily result in a lawful or justified eviction. In many cases, evictions give rise to violations of human rights because of the way the evictions were decided; planned; carried out; the use of harassment, threats, violence or force, and the results of the evictions.

In Thailand, the lands of communities are confiscated for economic development based on the NCPO orders and the Forestry Master Plan. This plan was issued based on NCPO Orders 64/2014 and regarded the discourse that commercial investors' exploitation of Thailand's natural resources is responsible for deforestation and must be stopped. The NCPO also issued Order 66/2014, a supplemental directive which states that government operations must not impact the poor and landless who had lived on the land before the enforcement of Order 64/2014.<sup>209</sup> However, implementation of the Master Plan has overwhelmingly targeted impoverished villagers and indigenous peoples who lived on their lands for decades as "investors" or alleged that local communities were being funded by wealthy investors, resulting in complete disregard of the protection measures set out by Order 66/2014. Under the Master Plan, the government has set the goal to increase Thailand's forest cover up to 40% by 2020,<sup>210</sup> which was 31.5% in 2014<sup>211</sup> – estimated at 128 million Rai (204,800 square kilometres).<sup>212</sup> That means around 26 million Rai (41,600 square kilometres) has to be added, of which around 4.5 million Rai (7,200 square kilometres) overlaps with areas of indigenous peoples and local communities. It is estimated that about ten million people live in protected areas in Thailand.<sup>213</sup> The government does not recognise ethnic minorities as indigenous peoples and although the life, livelihood and culture of these communities depend on the land and natural resources, no meaningful consultation and participation in decision-making processes had been undertaken in the land management and forest conservation towards indigenous people as mandated by the UNDRIP.<sup>214</sup> As a result, many indigenous communities in the north, northwest and south have been evicted with removal and demolishing of houses and properties, cutting-down of rubber trees and cultivated plants, and faced with arrests and judicial harassment.<sup>215</sup>

Additionally, thousands of ethnic Hmong and Karen groups have been displaced from their lands after their lands were designated national parks or protected areas. The groups have been deemed "illegal occupants" or "squatters" even if they have been residing there for more than 100 years. The Hmong and Karen are often blamed for natural resource degradation, but according to them, their traditions actually protect nature. This is particularly found in the case of large scale development projects, including SEZs and the EEC, in which businesses have been involved in illegal land grabs in provinces that are part of the EEC initiative.<sup>216</sup> Such land grabbing by businesses related to the EEC could occur also within the green zone, reserved for farming activities.<sup>217</sup> On occasions, land grabbing is a result of state action directly or indirectly through land brokers: farmers have received letters asking them to vacate their lands by the State and others have been threatened with eviction because they have no legal land titles over the land they have farmed for generations.<sup>218</sup>

## Cases of Land Grabbing

### Case 1: Land grabbing in Lamphun

The case of land grabbing in Lamphun province followed a government project from 1965 until 1969. The land was used communally to support the village, such as rainfall collected in the forest for irrigation, wood from the forest to build houses, and communal farming. The government claimed the land and moved many of the local groups to ill-suited areas and none of them successfully sought remedies for this. Between 1990-2000, the land

was surveyed by the World Bank and then given to the private sector. The re-issue was illegal and, in many cases, the deeds for the land were clearly forged and based on false information. The matter was taken to court, but the court upheld that the land belonged to the private sector. After 13 years, the Land Department has still not remedied the situation because they claim that the employee who was responsible for forging the documents was convicted for illegal actions and no longer works for them. Those who received the land deeds in 1990 have sold them to other people, resulting in a number of new and disgruntled owners who have attempted to litigate against the villagers because they are unable to gain access to the land. Others who bought the land deeds have mortgaged it to banks, who have then taken the land and tried to sell it again. As of 2016, there are now new owners who have bought land from the internet without realising the problem. These purchasers then bring in a team of surveyors and soldiers with them and have met opposition and resistance from villagers who would not let them survey the land. This is a major issue of corruption in the issuing of land deeds, and in allowing those people to sell the land.<sup>219</sup>

Complaints have been sent to various government agencies and organisations (e.g. Human Rights Watch) but have not yet gotten any response.<sup>220</sup> Moreover, there is a problem of collecting credible evidence: the Lamphun case is more than 50 years old, and many documents and incidents have been forgotten and mis recorded.<sup>221</sup>

### Case 2: Mae Sot SEZ in Tak Province<sup>222</sup>

The case concerns the province of Tak, where in 2015 two large land plots were expropriated for the development of a SEZ in Mae Sot, in accordance with NCPO Orders 64/2014 and 66/2014. The plots were listed as protected areas, parts of which were settled and utilised by the locals as farmland. However, this status was revoked and the land given to the Treasury Department in May 2015, for the SEZ. Villagers' activities and access have been restricted to avoid contact with decision-makers and government officials. Affected villagers were barred from directly handing petitions against the orders, or any other complaints to Prime Minister Prayut Chan-o-cha, who visited the site on 2 September 2015. Villagers also sent letters to their local administrations, the Damrongdhama Centre under the MoI, and the NHRCT, without receiving any response.<sup>223</sup> In 2017, the community continued to criticise the process and attempted to submit a petition, requesting authorities to stop harassing and intimidating villagers and insisting that their activities were in accordance with their rights. In August of the same year, a seminar to develop recommendations and policies to improve the law for SEZs was held in Bangkok. At the event, a representative of the affected community from Mae Sot stated that, at that time, 82 villagers affected by the expropriation of land were expecting compensation.<sup>224</sup> Though the government provided them compensation for the expropriated land, the amounts were found to be unfair and concluded without negotiation. It has also proved difficult to defend as community members do not know how to calculate the loss. This case has resulted in litigation; however, the Administrative Court ruled that it does not have the jurisdiction to determine this case, and that the villagers should file a case with the Provincial Court. Villagers and CSOs involved are currently deciding whether to appeal this decision or file a case with the Provincial Court. This case also sees a problem with the collection of credible evidence: as it is an active issue and therefore many villagers are afraid to provide evidence to fieldworkers as they have either been threatened or are fearful that they would receive threats from the private sector. Data collection from government and private sectors has also been difficult, as both of these groups have aligned fieldworkers and CSOs with the communities and view them as litigating parties.<sup>225</sup>

#### Voice from Expert

***“Data collection from government and private sectors has also been difficult, as both of these groups have aligned fieldworkers and CSOs with the community and view them as litigating parties.”<sup>226</sup>***

- Anonymous Researcher, during the First Expert Meeting of Manushya Foundation (2017)

### Case 3: Confiscated land from Sab Wai villagers due to the Forestry Master Plan

After a logging company moved out, in 1972 a forest community started to settle in Sab Wai village in Sai Thong National Park in Chaiyaphum province, building their homes and farming cassava on free land. However, in 1992, the government established the Sai Thong National Park over the area they had lived on for more than 40

years. Until 2014, villagers did not know they were ‘trespassing’ nor were they asked to leave, but since the 2014 Forestry Master Plan, Sab Wai villagers claim that to reach the master plan’s 26-million-rai (41,600 square kilometres) goal, the government uses scare tactics, such as armed officers intruding into villagers’ houses to force them to give up their land titles and sign away their land rights, believing that they have no other options. The cassava farms, located on the government’s land which has been confiscated, are the villagers’ primary source of their income; thus, they continue to farm on the land, even if they have no legal rights anymore. As a consequence, 14 Sab Wai villagers have been sued for trespassing on national park area, with possible sentences of 18 months of imprisonment and a fine of 600,000 THB (\$19,300). Unfortunately, on 27 September 2018, all villagers were found guilty of the charges but they all have lodged appeals before the Appeal Court.<sup>227</sup>

#### Case 4: Pang Kob community

Pang Kob is one of the thousands of communities nationwide with claims over land against the State. It is an isolated community located deep in the forest of the Khun Nan National Park, declared as protected forestland. Situated close to the top of the Khun Nan Mountain, the community is composed of eight households and 13 families and follows the traditional Hmong hilltribe’s way of life. When the conflicts started with the forest officials, the community was not aware of if and how they were allowed to use the land to provide for their livelihoods. Waiting for the claims to be solved, the rights of residents of the forest, such as basic needs, infrastructure, and land security are on hold.<sup>228</sup>

#### Cases of land eviction

##### Case 1: Land eviction of Karen Communities in the Kaeng Krachan Forest Complex

The Kaeng Krachan Forest Complex (KKFC), proposed for inscription as a World Heritage Site in 2011, is composed of Kaeng Krachan National Park, Kuiburi National Park, Thaiprachan National Park and Maenamphachi Wildlife Sanctuary, and has been home to various indigenous Karen communities for hundreds of years. These communities rely upon the forests and natural resources for their living, which is based on self-sufficiency practices, such as gathering forest products, hunting, and practicing rotational farming.<sup>229</sup> Families have been relocated to the lowlands since the 1960s due to forest conservation and the threat to national security; however, evictions seem worsened because of the plan proposed for the World Heritage site, about which the majority of villagers living in the KKFC have received limited information.<sup>230</sup> Kaeng Krachan National Park officials assisted by military officials have evicted, burned down, and removed a dozen houses of Karen communities from Kaeng Krachan National Park in 2011.<sup>231</sup> The resettlement land provided by authorities consists of soil mixed with gravel and is not suitable to grow food. The Karen villager filed a case before the Administrative Court and submitted a complaint to the NHRCT but have so far not been adequately compensated.<sup>232</sup> Additionally, an estimated ten Karen families have been arrested on charges of “forest encroachment” in various villages in the Forest Complex area. While some cases have been resolved, six cases are under investigation before sending to the court. There are concerns that conflicts over land might increase and could intensify into violence in the future.<sup>233</sup>

#### Voice from the Ground

***“On that day, the Forest Rangers [special task force of the DNP] seized a nearby resort, and some border control officers witnessed me planting mango trees here. They said nothing, but today I was arrested on the grounds of encroaching on 5.75 Rai [0.92 hectare] of land; the local police station is now preparing the documentation... the land I was working on was passed down to me from my parents and I have farmed it for many years. How can this be considered new encroachment? I even don’t know where my 5.75 rai of land is officially located.”***

Karen woman interviewed on 25 May 2017 in Kaeng Krachan National Park<sup>234</sup>

##### Case 2: Land eviction of the Isaan ethnic community in North-eastern Thailand

Various cases of land confiscation and evictions have been reported in Isaan, the northeastern Lao-speaking region of Thailand, home to large indigenous and minority populations. Communities in this region have faced

discrimination from the Thai administration since its incorporation into the modern state.<sup>235</sup> Since the new SEZs, villagers in this region have been evicted from their homes, which were settled there for generations, and they were not consulted regarding the development of the SEZ project in the area.<sup>236</sup> By 2015, at least 1,800 families, mostly belonging to minority and indigenous populations, had been affected by evictions in the northern and northeastern regions.<sup>237</sup>

## Challenge 2: Failure to respect the FPIC of local communities in relation to development projects, resulting in the loss of communities' livelihoods

### Impact

According to obligations set out in international standards, such as those of the UNDRIP,<sup>238</sup> ICESCR,<sup>239</sup> ICERD,<sup>240</sup> and ILO Convention 169,<sup>241</sup> communities need to be consulted prior to the commencement of any development project, fulfilling the criteria of FPIC. As the Expert Mechanism on the Rights of Indigenous Peoples defined, 'informed' consent implies that all information relating to the activity is provided and that the "information is objective, accurate, and presented in a manner and form" that is understandable.<sup>242</sup> However, often communities are subject of withholding information, which violates their right to evaluate and freely determine their opinion on the project, and their livelihoods are often negatively impacted by policies and decisions that they did not consent to or were not aware of. The Constitution of Thailand, under Section 78, prescribes the participation of people and communities in various aspects of the development of the country, in the provision of public services at both national and local levels, in the scrutiny of the exercise of State power, in combating against dishonest acts and wrongful conducts, as well as in decision making in politics and in all other matters that may affect them.<sup>243</sup> Despite the explicit provision, lack of participation in decision-making and consultations of individuals and communities affected by policies remains,<sup>244</sup> and the FPIC of indigenous peoples and local communities is not sought.

### Case 1: Lack of meaningful consultation and participation of the Thepa community, in relation to the Thepa coal-fired power plant

The Thepa Coal-fired Power Plant is a proposed coal power station in Pak Bang subdistrict, in Songkhla province, located in southern Thailand, and it is a project owned by the Electricity Generating Authority of Thailand (EGAT), a state-owned enterprise.<sup>245</sup> This is an important and classic case demonstrating the ineffective and detrimental impact of environmental laws and the lack of consultation of affected communities in Thailand. Relevantly, to build the plant, EGAT would have to purchase and rent the land and, thus, it will result in potential land evictions, estimated to affect 250 households and 1,000 people, and destruction of schools and religious sites, estimated to three temples, ten mosques, 11 schools and one hospital.<sup>246</sup> Land concession between the government and EGAT would negatively impact those who do not possess official land titles and, thus, would be forcibly evicted and displaced, according to Section 9 of the 1954 Land Code Act.<sup>247</sup> Additionally, foreseen adverse impacts of the coal-fired power plant are loss of biodiversity and ecosystems; pollution; diseases and health issues; and loss of cultivation of land and traditional fishing as a way of living.<sup>248</sup>

The Thepa coal-fired power plant has raised concerns over its irregular Environmental Health Impact Assessment (EHIA) process and flawed EHIA study. In fact, opponents of the Thepa coal-fired power plant have suggested that the EHIA process was irregular; lacked meaningful public participation, transparency, and proper access to information; failed to seek communities' consent to be evicted from their land; and failed to provide full and accurate baseline data regarding the environment and impacts on the ecosystem and local people's livelihoods, dependent mostly on rice, fish and crops.<sup>249</sup> The local communities raised many concerns and accessed many state-based non-judicial grievance mechanisms against the establishment of the power plant, but the governments did not respond to most of their grievances.<sup>250</sup> When the community through a network called Songkhla-Pattani complained to 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 were inclusive of all opinions.<sup>251</sup> As a matter of fact, EGAT affirmed that the project passed three public hearings and denied irregularities.<sup>252</sup> However, Songkhla-Pattani claims that very little explanation was provided to them in the first public hearing regarding the power plant and no information on its negative

impacts. Additionally, the signatures collected were used by EGAT to legitimate the process, claiming participants agreed upon it.<sup>253</sup> Songkhla-Pattani also claims that the second hearing was held in secret, without informing the opponents to the plant nor the communities from Pattani province, eight kilometres away from the power plant and ignored by the EHIA process.<sup>254</sup> Opponents were further banned from participating in the third public hearing.<sup>255</sup> The public hearings did not follow any meaningful engagement, did not allow communities to be heard nor to share their opinions freely, and opponents were side-lined in order for their view to be invisible and not included in the EHIA report.

#### **Case 2: Families displaced due to the Dawei SEZ did not receive appropriate information nor were consulted**

Communities affected by the Dawei SEZ were given only limited information about the project, and many communities were displaced. Two-thirds of the 1,583 households surveyed were not provided with any information from government agencies or companies; 60% of those households who did receive information were only provided with a listing of benefits of the project. Further, impacted communities were not involved in meaningful consultation, and only 27% of them took part in project implementation meetings. Of those who attended the meetings, 82% failed to participate due to their limited understanding of the project and the absence of time to answer questions.<sup>256</sup>

#### **Case 3: Communities impacted by the Pak Mun Dam were not appropriately consulted and have been suffering the loss of their livelihood and food security due to the negative impacts on their land**

The Pak Mun Dam is one of the most studied failed development projects: villagers were neither informed nor included in any decision-making process, the EIA was severely flawed, the government misinformed the local communities and the oversight of the World Bank was totally careless. The construction of the Pak Mun Dam in 1992 caused severe ecological damage destroying villagers' livelihoods, families, and ties to their culture and land.<sup>257</sup>

#### **Case 4: Local communities not informed about the negative effects of development projects on their land**

In Southern Thailand, the Southern Development Plan has initiated 20 large-scale development projects, such as Bara deep-sea port in Satul province, a coal power plant in Chumphon province, and 150,000-Rai (240 square kilometres) industrial estate in Satun province. Affected communities were not informed about these projects nor engaged in the processes of decision-making. These projects had numerous negative environmental impacts on the local communities, who were not aware because of the lack of FPIC and being not involved in the development and implementation of these projects.<sup>258</sup>

#### **Case 5: Affected people prevented from participation to a power plant's project and lack of FPIC**

In Krasae Bon in Rayong province, the company Sahakit Biopower Ltd. constructed a 9.9 megawatts biomass power plant, avoiding conducting an EIA because the law requires only biomass power plants of ten megawatts and above to conduct an EIA. The biomass power plant project was communicated to the affected communities on 8 May 2014, when the owner presented the benefits of the power plant 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 Ltd. prevented people living at a distance of more than one kilometre away from the project from participating in the consultations as they did not consider them as potentially affected people. However, the area where the power plant is to be built is close to an important source of water for many communities, the Pasae river; and thus, can affect communities along the river, who all needed to be involved and informed about the processes. In fact, the power plant can cause environmental deterioration and can restrict access to resources to the communities affected. This can result in loss of livelihood, and food and water security for many communities. The Thai government has refused to include this case report in the UPR and other international reports because they felt it would reflect poorly on Thailand.<sup>259</sup>

### Challenge 3: Investments and SEZ in Thailand and Thai investments abroad and their adverse impacts on land-related rights

**Challenge 3.1: Investments and SEZ in Thailand damaged the environment and quality of the land used by communities for cultivation to sustain their livelihoods and secure their right to food** (Mines, dams, ports, and factories have reportedly damaged the environment not just in Thailand but also in the region)

#### Impact

The environmental disasters caused by development-related projects have negatively impacted the rights of the communities in the enjoyment of their land. Their right to life and livelihood is threatened when there are hazardous substances that are emitted from industries. Environmental impacts of business activities or State investments can affect several human rights and amount to the violation of the right to food, water, livelihood, the right to the enjoyment of the highest attainable standard of health, and the right to a safe, clean, healthy and sustainable environment, which are all related and depend on the land and its quality. For example, the extractive industry's effects are devastating to the communities of rural Thailand. The devastation caused is severe in most cases and directly affects the health and environment of communities and individuals. According to the NHRCT report to the UN Human Rights Council following the Second Cycle of the UPR, "[p]eople 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."<sup>260</sup>

There are multiple negative impacts in a poorly managed and operationalised extractive industry, including increased health risks to the communities due to air, water, and land pollution caused by the tailings and gasses emitted, besides the contribution to global warming and ultimately climate change;<sup>261</sup> 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;<sup>262</sup> deforestation causes soil erosion that affects the agricultural lands leading to loss of livelihood;<sup>263</sup> and all the aforementioned impacts lead to social disruption, poverty, displacement and forced relocation.<sup>264</sup>

Regarding the SEZs, the acquisition and development of public land required for the economic zones brought social and environmental impacts, as well as conflicts between authorities and local people, who were not allowed to sufficiently participate in the decision-making processes. First, the assignment of public land to SEZs by government means that local people will lose access to common resources, leading to their economic activities and livelihoods to be compromised. Similarly, the use of land in forest reserves for the SEZ also can be detrimental for local users as well as for the ecosystems of the forest. Second, there are environmental impacts expected from the SEZs, such as increase of emissions and air pollution due to the industrial growth; scarcity of water due to the pressure from competing uses (industrialisation, urbanisation, agriculture, domestic use); increase of solid and hazardous waste, and related pollution of land, due to the industrial development and tourism. All these effects will adversely impact the livelihoods of local communities.<sup>265</sup>

Similarly, the EEC initiative also affected the access to and use of natural resources of local communities and villagers lost their livelihoods due to the increase of industrialisation and land grabbing.<sup>266</sup> Negative environmental impacts could result not just from the development of the economic corridors and their infrastructure, but also through the industries and manufacturing units associated with them.<sup>267</sup> An example is the Thai government's push to increase biofuel production, which has been found to cause negative land-use changes that are also a threat to food security.<sup>268</sup> Additionally, the over-industrialisation leads to changes in agricultural and the choice of crops by using economic crops such as rubber and cassava, which result in poor soil quality and the need for more of the already scarce water to sustain it.<sup>269</sup> Finally, it has been recently found that the EEC is a potential site of air pollution,<sup>270</sup> and thus it can adversely impact not only the health of the local communities but also their food and water security as the use of land and natural resources will be compromised.

### Case of the Klity Creek in Kanchanaburi province

Hundreds of indigenous Karen families were reportedly exposed to serious and irreversible health problems due to the failure of the Thai government to clean up toxic lead in Klity Creek stream in the western province of Kanchanaburi, following the closure of a lead-processing factory upstream. The factory, Lead Concentrate (Thailand) Co. Ltd., began operations in the mid-1960s and was ordered to close in 1998 due to pollution. However, Thailand's Pollution Control Department (PCD) had no emergency plan to clean up the contamination of the factory.<sup>271</sup> A ground-breaking court order was ruled in 2013 when a superior Court ordered the government to clean up a toxic site in Klity Creek; this represents the first time in the nation's history that a court decided to force the government to fulfil its obligations towards an environmental human rights violation.<sup>272</sup> As a matter of fact, Klity Creek has been described as one of the most heavily polluted industrial sites in Thailand, which led to serious health and environmental damage. Nevertheless, Thailand's PCD failed to implement the Supreme Administrative Court order in 2013 to take necessary and immediate steps to compensate those affected and clean up the toxic site, while the Karen families were continuously exposed to high levels of lead in their water, soil, vegetables and fish, with more severe impacts among farmers and children.<sup>273</sup> In reaction, multiple lawsuits have been filed by the affected villagers against both government agencies and the operating lead processing factory. Due to the pollution, residents suffer from chronic lead poisonings, such as abdominal pain, headaches, fatigue, and mood changes, and some children in the village have been born with severe intellectual and developmental disabilities. Lead has contaminated the water, soil, vegetables, and aquatic animals in and around the creek, affecting all aspects of life of over 400 Karen villagers.<sup>274</sup>

In 2017, the Supreme Court's Environmental Division rendered a judgement and ordered a compensation of 36 million THB (\$1.16 million) to 151 villagers and to rehabilitate the polluted creek.<sup>275</sup> In February 2018, the PCD started the restoration process,<sup>276</sup> however, the removal of the lead does not cover all the affected territories,<sup>277</sup> continuing to cause harm to villagers and the environment.<sup>278</sup> Additionally, effects can be encountered also by other areas, since the water from the Creek flows to Mae Klong river that is used to produce water supply and food resources for other parts of Thailand.<sup>279</sup> Nevertheless, the process should be completed by August 2020 and will include the suction of the lead from the upper and lower Klity villages.<sup>280</sup> Moreover, 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.<sup>281</sup> As of December 2018, the compensation has not been paid yet.<sup>282</sup>

### Case of Xayaburi Dam in Mekong River

The operations of the hydropower plant company, operated by EGAT and Chalkanchai, at the Mekong River on 80 kilometres distance from Luang Prabang, a province in Lao PDR, have had a negative impact on the local community. The company never sought to engage with the community along the river when setting up the project – nor did they perform any HRIA/EIA. Its operations have had a huge negative impact on the agricultural land alongside the bank – reversing the river's current. Impacts included agricultural changes and environmental degradation, which had direct implications upon the community's livelihoods. The community brought the case to the administrative court. The Court of First Instance dismissed the case, saying that the community members were not direct victims of the project and the issue was not for the administrative court to decide. The people from the community appealed the decision, arguing that they were direct victims of the company operations, as the company is a state-owned enterprise. The appeal court accepted the case.<sup>283</sup>

### Challenge 3.2: Thai outbound investments have been marked by land grabs and forced eviction and reported failure to enforce the right to FPIC

#### Impact

Lack of FPIC has been repeatedly highlighted in many cases of Thai outbound investments and the RTG has not remedied the situation. Communities that are directly affected are forcefully evicted, they lose their livelihood as a result of land grabbing and bear the brunt of environmental degradation through diminished health and food insecurity. Moreover, in some cases the impacts are devastating and cost lives, for example, a broken dam

or a malfunction in the energy plants.

### Case of Koh Kong in Cambodia

In the case of the Koh Kong sugar plantation in Cambodia, which is jointly owned by the Thai company Khon Kaen Sugar Industry; the Taiwanese company Ve Wong Corporation, and the Cambodian Senator Ly Yong Phat, it has been estimated that 500 families were expelled from their villages to make way for the sugar plantation in 2006. This resulted not only in their loss of property but also in their subsequent loss of access to food and way of life, as they depended on the land for their livelihoods.<sup>284</sup> 4000 villagers claimed that they were forcibly relocated and had never been consulted prior to the land concession.<sup>285</sup> In 2012, the Subcommittee on Civil and Political Rights of the NHRCT found breaches of the human rights to life and self-determination in this case.<sup>286</sup> It reiterated in 2015 that the land grab that occurred for the implementation of the plantation violated also the local population's right to manage and benefit from natural resources and their right to development. This was the first trans-boundary case of the NHRCT and the Commission found the Thai company responsible for such human rights violations caused by its decision to benefit from land concessions that led to the violations.<sup>287</sup>

### Case of Dawei SEZ in Myanmar

In the Dawei SEZ, an industrial development project in Myanmar, residents are facing land grabs, abuse and exploitation, as well as forced evictions. The Dawei SEZ affects 43,000 residents, of which only 8% gave consent to the project before it began, while 70% of them actually depend on the land for their livelihoods. Thai developers and investors have contributed to environmental and human rights violations, including violations of rights of indigenous peoples, land rights, and the right to information and proper consultation. Thus, communities affected and CSOs brought the case to the NHRCT complaining about the human rights abuses, forced eviction, lack of consultation, restricted access to information, and inadequate compensation provided. The NHRCT then visited Dawei and conducted a study on the impact of the SEZ in 2013 and issued a report in 2015 acknowledging these rights violations and impacts, including the lack of fair and just compensation and remedy. The NHRCT could verify that villagers had lost their land, houses, and access to their livelihoods and that the Thai company involved violated the human rights of Myanmar people. The Commission also promised to further investigate the responsible corporations and government bodies.<sup>288</sup>

### Case of Ban Chaung in Myanmar

In Ban Chaung, an open-pit coal mine built and operated by Thai developers in Myanmar, Thai investors failed to meaningfully consult with the affected people and carry out HRDD. In fact, the investors are accused by affected communities of land grabbing, environmental pollution, lack of consultation with communities, damages to livelihoods, and severe health impacts for people living in the surrounding area, impacting as many as 16,000 people. Some of these impacts have been caused by toxic mining wastes illegally dumped into water sources, and toxic fumes released from the combustion of the lignite coal stockpile. Consequently, Ban Chaung communities had to face the destruction of their land as well as the pollution of their natural resources. In 2017, the affected communities filed a complaint with the NHRCT, alleging violations of several human rights, such as the rights to health, living in a good environment, and access to remedies. CSOs also brought the issue to a discussion of Thai outbound investments at the 2017 UN Forum on BHR in Geneva.<sup>289</sup>

**Challenge 4: The criminalisation of land rights defenders: there has been a sharp increase in Strategic Litigation Against Public Participation (SLAPP) lawsuits against HRDs seeking to protect land-related rights of communities from the adverse impact of businesses (Laws such as the Public Assembly Act, Computer Crime Act or the controversial lèse majesté law are misused)**

#### Impact

The criminalisation of environmental and land rights defenders and their activities through the filing of lawsuits against them by both state and business entities is used to intimidate communities, tarnish their reputations and force them into costly legal battles. Both public and private actors fail to address the root causes of attacks, which lies in the fact that development projects are forced upon local communities without FPIC.

Thailand's Criminal Code, particularly Section 328 regarding defamation, has played a major role in the limitation of individual access to remedies concerning social and development issues. Through the vague application of Articles 14 and 15 of the Computer Crimes Act, criticism and dissent have been stifled across all demographics of individuals, often utilised to silence activists and HRDs. Such cases have typically involved an individual vs. a corporation. Despite the access to the judicial system, the provision of justice is not always fair or impartial, and judicial precedent is not respected in all cases.<sup>290</sup> Furthermore, NGOs consider the Criminal Code Articles 326 and 328, and the Computer Crimes Act as inconsistent with international human rights standards as well as been used to limit the right to freedom of opinion and expression.<sup>291</sup>

In addition, since the military government, the political climate has exacerbated insecurity for HRDs, who are now at greater risk of judicial harassment, arbitrary detention, physical violence and killing, in particular environmental rights defenders defending land, environmental and indigenous peoples' rights from corporate capture and in the face of development projects.<sup>292</sup>

The major impact of the trend of increasing SLAPP lawsuits provides a lack of democratic space for communities and people to exercise their land-related rights and more so for the environmental rights defenders who are trying to voice the concerns of the local communities in the cases of adverse violations of Thai outbound investments. Lawsuits are unfortunately used as means to exhaust HRDs' resources and discourage them.<sup>293</sup> The NHRCT has received several complaints related to SLAPP suits over the past ten years.

#### **Case of the gold mining company Tungkom Limited**

A gold mining operation, owned by Tungkom Limited (TKL), in the village of Nanongbong has caused serious negative effects on the health of the villagers. In 2009, blood samples of local villagers revealed high levels of toxic metal. Water, soil, and farmland in the community are contaminated with heavy metals. In parallel, TKL has filed multiple defamation lawsuits against activists and journalists to silence critics of the mining project. In 2014, the TKL mining company sued Mr. Surapan Rujichaiwat, leader of the Kon Rak Baan Kerd Group (KRBK), a community-based organisation.<sup>294</sup> 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.<sup>295</sup> TKL also sued Ms. Porntip Hongchai, another member of KRBK, in the same year and for the same reasons. 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.<sup>296</sup> In 2016, a third lawsuit was filed by TKL against Thai PBS journalists for reporting the impact of the company's gold mining activities on the environment in the Wangsapung district in Loei province. The court ruled that all reports were honest and true and thus, the case was dismissed.<sup>297</sup> 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.<sup>298</sup>

#### **Case of mining company Akara Resources PCL**

In 2016, Akara Resources PLC, operating a goldmine in Phichit and Phetchabun provinces in Central Thailand, sued environmental activist Somlak Hutuanuwatr for posting about contamination of the environment in the area where the gold mine operated. The company 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.<sup>299</sup>

#### **Case of mining company Myanmar Pongpipat Limited**

In March 2017, the Thai mining company Myanmar Pongpipat Limited (MPC) filed a lawsuit against The Nation Multimedia Group and its journalist Pratch Rujivanarom for allegedly publishing false information as they asserted that the company's tin mine was contaminating the water supply of Myaung Pyo Village.<sup>300</sup> The court arranged mediation sessions whereby the parties settled the case non-judicially.<sup>301</sup>

### Challenge 5: Land and Environmental rights defenders face increasing risks to their right to life, illustrated by prominent cases of extrajudicial killings and disappearances in business contexts

#### Impact

Recently, there is a growing awareness of the danger faced by many land defenders, EHRDs, community activists, NGO staff, and indigenous leaders around the world. HRDs face violent attacks, threats, enforced disappearances, illegal surveillance, travel bans, blackmailing, sexual harassment, and other forms of violence and discrimination as well as the criminalisation of their activities in order to be silenced.<sup>302</sup> The trend of increased violence and intimidation towards environmental rights defenders is both growing and spreading. A report states that 77% of HRDs killed in 2018 worked on land, environmental and indigenous peoples' rights, often in the context of extractive industries and state-aligned mega-projects. The percentage raised by 10% from 2017.<sup>303</sup> At the same time, HRDs working on land, environmental, and indigenous peoples' rights were nearly three times more likely to be physically attacked than other defenders working in other sectors, and nearly twice as likely to be targeted with threats, intimidation and smear campaigns.<sup>304</sup> The growing tide of force and violence is influenced by an intensifying focus on disputes over land and natural resources, such as those resulting from development projects in the mining, logging, hydro-electric and agricultural sectors. They trample on people and the environment in the pursuit of profit. As more and more extractive projects violate the rights of communities, many of those who dared to speak out and defend their rights were silenced and often in a violent manner. This is reflected in an analysis of the situation of EHRDs prepared by the UN Special Rapporteur on the situation of HRDs in 2016, which indicates that EHRDs face unprecedented risks and that Thailand is amongst the ten most dangerous countries for EHRDs.<sup>305</sup>

#### Case of the Southern Peasants Federation of Thailand (SPFT) and related extrajudicial killings

The case of the Southern Peasants Federation of Thailand (SPFT) of the Klong Sai Pattana community demonstrates how land rights defenders are killed because they stand against land grabbing by business companies. The SPFT is a “community-led organisation of landless farmers advocating for land reform, food security, and fair distribution of resources”.<sup>306</sup> The Klong Sai Pattana is a 160-hectare plot, which is owned by ALRO, a government agency in charge of land management.<sup>307</sup> However, Jiew Kang Jue Pattana Co. Ltd, a palm oil company, has been illegally occupying the land for 30 years after the expiry of their lease.<sup>308</sup> In 2007, the ALRO filed a civil lawsuit against the company on behalf of the community in order to evict the company from the land<sup>309</sup> and in 2008, the SPFT occupied the land with the consent of the ALRO. The community then started helping ALRO to collect data and evidence to help win the court case to evict Jiew Kang Jue.<sup>310</sup> The civil lawsuit was appealed up to the Supreme Court, which ultimately ruled against the company in November 2014.<sup>311</sup> Nevertheless, the ALRO did not execute the court order to evict the company from the land and the land was not redistributed to the peasants. Instead, on 6 June 2015, ALRO issued an order to forcibly evict not only Jiew Kang Jue Pattana and its workers, but also the peasants from the Klong Sai Pattana community, claiming that the villagers were employees of the company.<sup>312</sup> Contrary, the Sub-committee on Land Rights and Forestry of the NHRCT, in March 2015, declared that the community members were HRDs and urged the ALRO and other relevant authorities to return the land to the community, as they were the rightful owners.<sup>313</sup> Additionally, on 15 July 2016, another court judgement ruled in favour of the SPFT, declaring that they were to be considered farmers living on the land instead of the company's dependents.<sup>314</sup> However, ten days before this judgement was rendered, NCPO issued Order 36/2016,<sup>315</sup> allowing the ALRO to reclaim land that is occupied illegally.<sup>316</sup> In between of this land litigation, at least four extrajudicial killings<sup>317</sup> and other killing attempts and threats towards SPFT members from the Klong Sai Pattana community have been reported:

- In January 2010, SPFT member Somporn Pattanaphum was found dead riddled with bullet holes just outside of his village;<sup>318</sup>
- In November 2012, two women human rights defenders (WHRDs) from the SPFT, Montha Chukaew and Pranee Boonrat, were shot dead on their way to a local market;<sup>319</sup>
- On 11 February 2015, SPFT member Chai Bunthonglek was shot dead by someone on a motorcycle just outside Klong Sai Pattana;<sup>320</sup>

- On 8 April 2016, Supoj Kansong, a land rights defender from Klong Sai Pattana community and nephew of Chai Bunthonglek, was shot and seriously injured outside of Klong Sai Pattana community;<sup>321</sup>
- SPFT member Pratheep Rakhanthong has been victim of multiple death threats. It is believed that a bounty of 300,000 THB (\$9,640) has been offered for his killing.<sup>322</sup>

Although the killers have not been identified, local and international NGOs have declared that they believe the killings of SPFT members and attacks against them are linked to their activities as land rights activists.<sup>323</sup>

#### **Case of the extrajudicial killing of Pitan Thongpanang, campaigning against a mining company**

Pitan Thongpanang, a key activist against mining operations in Krung Ching subdistrict, was shot dead on 30 November 2014. He was a lead plaintiff in a lawsuit that ordered a halt to the mining operation. The shooting took place while Pitan visited local villagers to seek their financial assistance for the lawsuit.<sup>324</sup> The mining company, P&S BarteMining Co. Ltd, occupied the land of the community since 2009 and obstructed the commuting ways around the community. Thongpanang led a lawsuit against the company, asking an injunction to the Court against them. Since then, Pitan Thongpanang received death threats from the company's men. In May 2014, the Administrative Court issued a temporary injunction, halting the mine operation until the company would take measures to respond to the environmental concerns of the community. Pitan was shot some months after this Court decision. Nevertheless, threats to community members continued even after Pitan's murder in November 2014, and some had to relocate, fearing for similar repercussions.<sup>325</sup>

#### **Case of the extrajudicial killing of land rights activist Somsuk Kohkrang, campaigning against a palm oil plantation**

Somsuk Kohkrang, a 47-year old land rights activist in Muang District in Krabi province, was a local community leader who campaigned to defend the rights of landless farmers in Muang and Play Phraya districts since 2009. More specifically, Somsuk questioned the legality of the land owned by palm oil company Saha Industry Palm Oil Co. Ltd. He submitted a petition to the provincial authorities, asking them to revoke the title deeds given to the company. He had also requested the ALRO to distribute the land to the landless farmers. Saha Industry had allegedly illegally occupied the land since 1981 and had filed civil and criminal defamation lawsuits against other HRDs working with Somsuk. In January 2013, approximately 120 landless farmers started cultivating the land occupied by Saha, and in 2014, a joint operation of 800 police officers and military forced the villagers out and destroyed their properties. On 3 December 2014, Somsuk was on his way home on his motorcycle with his wife when he was shot twice by an unknown armed man. Somsuk died while members of the community were rushing him to a hospital.<sup>326</sup> This happened exactly four days after Pitan was killed. Although the case has not been resolved, the UN Working Group on BHR expressed grave concern that Somsuk's killing might be linked to his activities as a land rights defender.<sup>327</sup>

#### **Case of the disappearance of Den Khamlae and imprisonment of his wife**

On 16 April 2016, prominent land rights defender Den Khamlae, from the Khok Yao community, went missing in Chaiyaphum province while he collected food from a forest close to his home. Den Khamlae had been leading a network of local villagers to claim their right over their land, which is located in Phu Khieo Wildlife Sanctuary. At that time, the community was facing eviction from the land they occupied for 45 years, based on the NCPO orders of 2014 and 2015. Previously, Den Khamlae and his wife had been already convicted for illegal land encroachment and deforestation. After his disappearance, an arrest warrant was issued against him for illegal hunting in the Wildlife Sanctuary in April 2016. The police failed to investigate the disappearance and made no attempt to support his wife and the community with the search of Den Khamlae. The authorities of Chaiyaphum province deny knowing about his whereabouts, while villagers demand justice.<sup>328</sup> In March 2017, some of his rests and belongings were found in the forest by community members.<sup>329</sup> Furthermore, Den's wife, Suphab Khamlae, a WHRD, was sentenced, despite her being already elder, to six months imprisonment for encroaching into a protected area under the Forest Act and the National Reserved Forest Act in June 2017 and was released in January 2018.<sup>330</sup>

### Case of Chao Lay Indigenous Community fighting back against the hotel industry on Rawai Beach

Several cases of forced eviction of indigenous Chao Lay have been reported year after year where businesses have allegedly used threats and intimidations to forcibly relocate families.<sup>331</sup> For example, on 27 January 2016, about 100 men, allegedly hired by the company, blocked the Rawai community's access to the land, which affected some 250 households, consisting of more than 2,000 people. It culminated in a violent encounter between the two sides and left at least 30 Chao Lay people injured – ten of them seriously hurt. In June, as members of the community tried to block access for the construction work, they were kicked, punched, and beaten with sticks; and their fishing equipment was destroyed. A further altercation took place when builders placed a wall of boulders to block access to the Chao Lay's sacred ceremonial ground.<sup>332</sup> Furthermore, in July 2016, a group of unidentified men threatened two indigenous Chao Lay with a gun and assaulted them. One of them was ordered by the men to demolish his house and move., The men claimed that they were staff of a company that owns the land on which the house was built.<sup>333</sup> Further, the indigenous Chao Lay communities faced menial jobs and harder living conditions due to a rise in the cost of living due to tourism.<sup>334</sup>

### Case of the disappearance of “Billy”

The widely reported case of prominent indigenous Karen activist Porlajee Rakchongcharoen “Billy” is testimony to the failure of Thailand's legal response to cases of enforced disappearances. At the time of his “disappearance”, Billy had been working with Karen villagers and activists on legal proceedings concerning the destruction of villagers' homes and property in the Kaeng Krachan National Park in Phetchaburi province in 2010 and 2011. He was arrested on 17 April 2014 on charges of “illegal possession of wild honey”. Chaiwat Limlikhitasorn, then head of Kaeng Krachan National Park was the last person to see him.<sup>335</sup> Mr. Chaiwat and park authorities claim that Billy was released the same day but he has not been seen since.<sup>336</sup> On 24 April 2014, Billy's wife, Phinnapha Phrueksaphan, filed a habeas corpus petition seeking an inquiry into the lawfulness of her husband's detention. In July 2014, after a six-day habeas corpus inquiry, the Phetchaburi Provincial Court concluded that it could not be established that Billy was still in detention when he had disappeared. No light on Billy's fate or whereabouts was shed even through the subsequent appeal of this decision. Local police investigation officers in September 2014 filed malfeasance charges under article 157 of the Penal Code against the then head of the Park, Chaiwat Limlikhitasorn and four other park officers for unlawfully detaining Billy. They found no record of Billy's release from custody. However, in September 2015, the Supreme Court upheld the decisions of both the Administrative Court and the Appeal Court, dismissing allegations against Mr. Chaiwat and his associates due to insufficient evidence.<sup>337</sup>

### Challenge 6: Gender Lens: women's right to land and the impacts of business activities on women

#### Impact

Land is considered fundamental for poverty reduction, food security, and rural development; nevertheless, men and women do not enjoy the same right to land.<sup>338</sup> In fact, gender inequalities in land rights are widespread: women have lower access to land than men and they are often restricted in the ‘so-called secondary land rights’ (land rights through male family members). Women risk losing their land titles in cases of divorce, widowhood, or when their husband migrated. Additionally, women's access to land is also linked to hunger and poverty.<sup>339</sup> Land and property rights are essential for women that work the land and depend on the land to produce food for themselves and their families and generate family income, and as such to support the health care, educational and nutritional needs of the whole family.<sup>340</sup> Besides fighting extreme hunger and poverty, secure tenure rights for women also promote gender equality because the recognition of their land and resource rights often establish personal agency and empowerment, producing women's economic security and decision-making power, and serve as a shield from injustices and domestic violence.<sup>341</sup> In many cases, women are lacking secure tenure rights to the land they “depend on for livelihood, shelter, and identity”. On top of it, rural women face systemic discrimination in access to land and natural resources and are frequently excluded from community decisions about land use and investment. Besides being more likely to lose access to land and resources, they are even less likely to receive profits from the sale of crops, and less likely to be considered for employment after an investment.<sup>342</sup>

Furthermore, women can be affected by business activities more adversely than men. Development projects can intensify gender inequalities and power dynamics: agricultural workers in Asia are mostly women and they bear the burden of their crops and livelihood, despite not being recognised as heads of households and as such not being recognised any land rights. Another burden that women and girls face is related to resettlement because their rights to the land are often “unrecognised or diluted by law or practice”. Additionally, physical and sexual violence against women and girls is often a consequence of investment-linked evictions and displacements. They also experience greater challenges in accessing redress and justice, including inadequate compensation for loss of crops and other forms of livelihood nor reparations when their subsistence agriculture is affected or impacted by business activities.<sup>343</sup> Research revealed that the reliance on Mekong’s indigenous women and girls’ economy on agriculture and the environment and climate change are linked to increased gender-based violence. Furthermore, having a survival relationship with the land, many indigenous women had to experience migration and trafficking because of the environmental degradation and erosion of land rights.<sup>344</sup>

In Thailand, women, especially indigenous women, were not consulted on the Forest Master Plan of 2014 and on NCPO Orders 64/2014 and 66/2014, which affect them, as the Constitution prescribes, although indigenous women are considered the ‘caretakers of the land and natural resources’.<sup>345</sup> Women need to be explicitly consulted and participate in decision-making processes related to investments inland, as well as related to grievance mechanisms and remedies so that these are tailored to their interests and needs. Their participation has to be accessible, culturally-appropriate and gender-sensitive; and thus, measures should be taken to ensure such environment, such as explicitly inviting women to meetings and holding separate meetings when needed.<sup>346</sup> Without being included in decision-making processes that affect them, women remain compelled within unjust laws and practices. As a 2017 study shows, among over 400 laws from 30 countries in Latin America, Asia, and Africa, none of them paid adequate respect to indigenous and rural women’s rights to community forests.<sup>347</sup>

Finally, WHRDs, especially indigenous women, are particularly subjected to environmental-related violence: it is estimated that almost half of all women activists were murdered for defending community land and environmental rights, however, this violence goes largely unnoticed. Meanwhile, a greater number of female EHRDs faces threats, intimidation, rape, torture and/or imprisonment every year.<sup>348</sup> WHRDs, and especially rural women in Thailand, are at higher risk of attacks and intimidation since the 2014 coup. The NCPO failed to protect WHRDs, who continued to experience violent acts, threats, judicial and online harassment, and denial of justice.<sup>349</sup> Extreme and deadly violence has been reported to be used against WHRDs opposing land confiscation, unfair land distribution, evictions, and environmental degradation of the land caused by development or industrial projects.<sup>350</sup> This has been occurring more often for WHRDs compared to their male counterparts.<sup>351</sup> The Committee on the Elimination of all Forms of Discrimination Against Women also acknowledged that WHRDs are especially under attack in Thailand and are targeted with lawsuits, harassment, violence, and intimidation by both authorities and business enterprises because of their activism.<sup>352</sup>

#### **Case of the killing of two WHRDs of SPFT**

In November 2012, two WHRDs and members of the SPFT, Montha Chukaew and Pranee Boonrat from the Khlong Sai Pattana community in Surat Thani Province, were shot and killed while going to a local market. They were involved in the land rights dispute, mentioned above, against the palm oil company Jiew Jang Pattana. The bodies of the two women were found mutilated; a further act of intimidation against the community. Those responsible were never brought to justice or held accountable. Since this incident, other WHRDs of Khlong Sai Pattana live in fear for their lives as they still face death threats and intimidation.<sup>353</sup>

#### **Case of intimidation and judicial harassment of WHRD Onarut Phonphinyo**

Oranut Phonphinyo is the coordinator of Rak Khon San, a group of villagers from Khon San district in Chiyaphum Province, opposing the establishment of a rubber plantation that posed environmental risks to the local community. Since 2013, her activism has been responded to with intimidation from the rubber manufacturer. The company has also filed a defamation complaint against her and other members of the group. Since the coup in 2014, she has been summoned several times by military officials and was asked about her activism activities. She has faced other intimidations from the company since then.<sup>354</sup>

### Case of the imprisonment of WHRD Suphab Khamlae

Suphab Khamlae, as her husband Den Khamlae before his disappearance, fights for the right to land of her community, was asked to leave the land they occupied for 45 years. In 2013, she was convicted of illegal land encroachment and deforestation.<sup>355</sup> In June 2017, she was again sentenced to six months imprisonment for encroaching into a protected area under the Forest Act and the National Reserved Forest Act. She was finally released in January 2018.<sup>356</sup> Her case was brought to the attention of the UN Human Rights Office for Southeast Asia, which expressed concern over the case and said that female activists must be allowed to campaign “without fear or threat of lawsuits, harassment, violence or intimidation”.<sup>357</sup>

### Challenge 7: Lack of Access to Effective Remedy

#### Impact

While the State has been unsuccessful in protecting human rights in business contexts and even caused human rights impacts through its agencies, the corporate responsibility of business enterprises to respect human rights has also been unmet. Most often, the affected communities are denied access to effective remedy, for which both the State and the business enterprises share complementary roles. A range of judicial and non-judicial mechanisms exist in Thailand’s State structure for victims of human rights abuses to file complaints and seek redress. Those include the Court, NHRCT, and provincial Damrongdharma Centres.

While the legal and administrative systems of Thailand have failed the indigenous communities in general, insecurity in the communities has grown particularly due to reprisals and intimidations against their activists. Such incidents have highlighted critical gaps in the legal protections in the country. In fact, although Thailand is a signatory of the Convention for the Protection of All Persons from Enforced Disappearance (CED),<sup>358</sup> there is no appropriate legal framework to ensure accountability in cases of enforced disappearances in Thailand and accessing to justice in such cases remains a challenge for victims and their families,<sup>359</sup> enhancing the climate of impunity.

#### Case of Karen communities seeking remedy for the forced evictions they faced

The Karen communities evicted from Kaeng Krachan National Park (*see above Challenge 1*) tried to seek remedies. In 2014, six Karen villagers filed a petition against their forced relocation and destruction of property at the Central Administrative Court of Thailand against the DNP and other concerned officials. In 2016, the Court ruled that the Karen had “encroached” forest area and the DNP had rightfully burned their properties, but ordered meagre for the damages done to their properties.<sup>360</sup> In response to an appeal by the Karen, the Supreme Administrative Court, despite recognising that the Karen had been living in the forest before the establishment of the National Park, did not allow them to return to their lands as they did not have ownership documents to much dismay of the Karen villagers. The Court however ordered higher compensation in 2018.<sup>361</sup> So far, Karen communities have not been adequately compensated.<sup>362</sup>

#### Case of Sab Wai villagers who were found guilty of trespassing

The Sab Wai villagers, who were left without land to farm and continued to work the land that the government confiscated as protected forestland, (*see above Challenge 1*) were found guilty of the charges of trespassing but they all lodged appeals before the Appeal Court. The Isaan Land Reform Network (ILRN), a local NGO network, has been supporting the 14 villagers in fighting their cases and seeking solutions to the land issue, providing them with free legal counsel and financial support as well as free information workshops on the Thai judicial system and preparation to the trial. ILRN aims to make the government understand the need and the relationship of the villagers with the land, and propose a solution such as community land titles, for the villagers to be allowed to use the land and, at the same time, preserve and manage the forest legally.

This case also showed discrepancies in the application of Order 66/2014. Namely, the Royal Forest Department (RFD) said that Order 64/2014 is meant to target investors and Order 66/2014 is meant to exclude poor people from being targeted under Order 64/2014 and protect them from being sued by the government. The definition of poor, according to the RFD, is anyone who owns less than 25 Rai (0.04 square kilometer) of land; while an

investor is anyone who owns more. Most of the villagers owned more than 25 Rai of land and they find themselves unfairly targeted because they consider themselves being only small-scale farmers. Nevertheless, even a villager that owned less than 25 Rai of land, and thus meeting the requirement to be excluded, was sued for trespassing and got the land confiscated. This highlights the unequal application of the Order 66/2014, considering that those who were supposed to be protected, not only lost their land but were also found guilty of the charges of trespassing, having to pay a fine of 600,000 THB (\$19,260).<sup>363</sup>

### Case of Rawai Beach

The Chao Lay petitioned provincial and national authorities for settlement of the land dispute of the Rawai Beach Case (see above Challenge 6). Investigations of the Department of Special Investigation (DSI) under the MoJ, as well as the NHRCT into the case confirmed that the Chao Lay have used the lands for hundreds of years. After years of battling over land rights, in January 2017, the Provincial Court dismissed the lawsuit filed by the company against the community despite the company's title deed. It reasoned that the community's settlement on the land predates the time when the land department issued the title deed in 1965 based on various pieces of evidence that supported the community's claim to the land, including historical records from Thai King's visit to the community and student records of the local school.<sup>364</sup>

Though in Rawai, the indigenous community was able to win their land back, the struggles of Chao Lay peoples have been long ongoing and not always successful. There are other reports of protracted land disputes of the Chao Lay peoples involving cases of multiple claims or ownerships over lands from across southern Thailand in Sireh Island in Phuket province, Lipe Island in Satun province, and Phang Nga province. Those disputes are generally with hotel investors and often with local and national politicians, but also with the DNP such as in Lipe, Adang and Rawee islands. Besides, many communities also lost their lands due to language barriers, when they were manipulated or forced by non-indigenous village headmen and local authorities to give up their land tenure. The disputes have particularly increased after the 2004 tsunami; until when the Chao Lay were virtually unknown to the public and when many previously unknown islands were also opened up for tourism.<sup>365</sup>

As a result of the disputes, many families, for examples in Koh Sireh Island, were forced to leave their land and relocate away from beachfront while proximity to sea is essential for the way of life of indigenous Chao Lay – not only for their livelihoods but also for their beliefs, traditions, and identity. On Koh Lipe Island, indigenous communities were restricted access to all the beaches through which they previously accessed the sea. They were also barred from entering their sacred site and cemetery, which was occupied by a hotel and forced to carry their deceased to neighboring islands for burial. Also, on the island, until a dispute was settled, private security forces and local police reportedly threatened some Chao Lay families on a daily basis.<sup>366</sup>

### Complaint to NHRCT

Arhama Leeheng lodged a complaint with the NHRCT requesting an investigation. Under the Royal Decree on Demarcation of National Forest in Budo-Sungai Padi Mountain Range, villagers were not allowed to cut down any trees, including defunct rubber trees with the replanting of substituents. The Cabinet then adopted a Resolution for cutting-defunct rubber trees down with replanting of substituents in proportion not exceeding 4% of those being in areas, in order to avoid environmental impacts. At the same time, it was also requested to fasten the land dispute resettlement for suffered villagers with the issuance of land titles. However, the Cabinet's Resolution was not implemented and the villagers still suffered as a result. The NHRCT adopted a Resolution of the case in which, through the Southern Border Provinces Administration Centre, it establishes a Centre Surveying Land Demarcation, mandated to establish a clear database of villagers suffered in the Case. It further distinguishes the villagers in four main groups: "(1) a group of people residing outside the National Park; (2) a group of people occupying areas inside the National Forest; (3) a group of people occupying areas further announced to be in the National Park who are facing difficulties earning for their living due to that all their plots of land were seized, and (4) a group of people requesting to change or cut down their rubber trees which would be entitled to rights and compensation schemes under the Rubber Replanting Aid Fund".<sup>367</sup>

### Case of impunity in the disappearance of ‘Billy’

After the disappearance of Rakchongcharoen “Billy”, who worked with Karen villagers and activists on legal proceedings concerning the destruction of villagers’ homes and property, and the Supreme Court decision dismissing charges against the officers who arrested him,<sup>368</sup> DSI under the MoJ had also reportedly collected witness testimonies, examined the evidence and announced 100,000 THB (\$3,210) as a reward for clues to his disappearance. However, due to insufficient evidence or witness testimony to prosecute people suspected of involvement in the case, in January 2017, the DSI refused investigation into the disappearance as a special case.<sup>369</sup> It recently, in July 2018, announced a probe into the disappearance to re-examine all evidence.<sup>370</sup>

Similarly, the NHRCT held a review progress meeting on the case attended by the concerned officials of the Royal Thai Police, the DSI, and the Office of Public Sector Anti-Corruption Commission (PACC) in January 2016. The Police found the testimonies of the Park officials involved in Billy’s detention ‘inconsistent’ and had also put a 100,000 THB (\$3,210) cash reward to persons for providing useful information on the case. Further, the PACC accepted the case file for consideration, gathered witness testimonies on the case and had been investigating the evidence. However, further information on their investigation is not available. The NHRCT, in the briefing, indicated inadequacy of legal framework for accountability in cases of enforced disappearances in Thailand.<sup>371</sup>

To date, the investigation of Billy’s disappearance has not resulted inadequate remedy to the victims while the case has also reinforced the lack of adequate legal protections against disappearances in Thailand. Billy’s disappearance is only a representative case. In September 2011, Billy’s associate and another activist Tassanakamol Aobaom was also killed, apparently in relation to his activism.<sup>372</sup>

### Some hope of progress – allocation of the Justice Fund

The Justice Fund under MoJ established in 2006 with the objective of helping the poorest and most vulnerable with legal assistance in order to have access to justice, offers a good example of reducing barriers to seeking remedies. Indigenous communities, such as the Chao Lay in the case of Rawai beach, have also sought and received assistance under the project. However, there are recommendations that the requests for assistance under the Fund are dealt with in an impartial and expeditious manner.<sup>373</sup>

## 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 evictions<sup>374</sup>

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. A Successful Multi-Stakeholder Collaboration: Leam Chabang Deep Sea Port**

In 2011, Dr. Somnuck Jongmeewasin, Community Researcher and lecturer on environmental management at Silpakorn University International College, has assisted in negotiations between local fishermen and the Port Authority of Thailand to stop the Laem Chabang Phase III Deep Sea Port. This project had heavily affected the livelihood of the fishermen. Moreover, local communities have long suffered from health and environmental problems resulting from the impacts of the deep sea port, which is the largest in Thailand. Numerous cases of chemical leaking accidents had also been reported. In response, Dr. Somnuck and the affected communities created a network committee comprised of multi-disciplinary experts and groups such as ecologists, engineers, social specialists and academic institutions to conduct a strategic environmental assessment (SEA) in order to negotiate with the senior management team of the deep sea port project. The study was wellreceived and provided valuable input to minimise negative impacts on the local communities and the environment. Commenting on this successful process, Dr. Somnuck indicated that open-mindedness and forgiveness were essential to bring diverse groups of stakeholders together. In this case, communities adopted a new approach: they converted their enemies into friends by changing the word 'me' to 'we' - this helped private actors to understand the community's concerns. It was a mutual understanding – both sides had to understand each other.<sup>375</sup>

#### **4.1.3. Community-based Human Rights Impact Assessment in a Brazil Land Conflict: The Sirinhaem Case**

A decades-long land conflict case in Brazil recently produced a rare occurrence, where a community-based Human Rights Impact Assessment (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.<sup>376</sup>

#### **4.1.4. Community-led women's leadership in local governance in Brazil**

In Ponte do Maduro, Brazil, female residents from four communities (Chié, Santa Teresinha, Ilha de Joaneiro, and Santo Amaro) were struggling for their right to land titles due to a State-led land regularisation process. Thanks to the support of Espaço Feminista and other partners, since 2015, women have organised and started to participate in the regularisation process and acting collectively to make their demands visible, demonstrating their capacity both to understand the technicalities of the process and to act on knowledge from their own communities.<sup>377</sup>

#### **4.1.5. The Bangkok Declaration on Land Rights as Human Rights<sup>378</sup>**

The Declaration was adopted by 19 entities among NGOs and experts, representing national human rights institutions and regional and international CSOs working with rural communities in Bangladesh, Cambodia, India, Indonesia, Nepal, Philippines, Thailand, and Timor Leste, during a regional workshop on “Engaging National Human Rights Institutions toward the Promotion of Land Rights as Human Rights,” held in Bangkok on 15 and 16 November 2018. It enlists the major restrictions to land rights and human rights, calls to action for states and regional bodies, and asserts the commitment of civil society and national human rights institutions to work together towards the recognition of land rights as human rights, monitoring and documenting human rights violations and abuses within land conflicts.<sup>379</sup> It also urged the UN to adopt a legally binding treaty recognising land rights as human rights and States to adopt a NAP that incorporates the UNGPs. It also reminds that States have obligations to protect communities against abuses by businesses, including regarding the use and exploitation of land and its resources and to respect and protect civil society, NGOs, and land rights defenders.<sup>380</sup>

## 4.2. Government-led Good Practices & Legislations

### 4.2.1. Response to environmental concerns with respect to Thailand’s last gold mine

In 2016, Thailand’s ruling junta closed the country’s only active gold mine and suspended all gold mining operations “due to the impact on locals and the environment”. The government also said it would not issue new licenses for mining. The move was widely welcomed by environmental and human rights groups.<sup>381</sup>

### 4.2.2. Collaborative mapping and management in Ob Luang National Park<sup>382</sup>

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.

### 4.2.3. Analysis of the Enhancement and Conservation of the National Environmental Quality Bill of 1992

A major study entitled ‘Assessing Environmental Impact Assessment 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 include 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 its legal basis in the management of environmental quality.<sup>383</sup> Specifically, requirements 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 a requirement for disclosure of information, distributing documents and EIA/EHIA reports to the public and relevant organisations. Procedural manuals on public participation in EIA/EHIAs processes should also be produced to supplement existing guidelines.<sup>384</sup> The study also insisted on the importance of integrating a legal basis for the establishment of a SEA in the NEQA.<sup>385</sup>

### 4.2.4. Towards a protocol on fair compensation in cases of legitimate land tenure changes

The Organising Committee of the Dutch Land Governance Multi-Stakeholder Dialogue has commissioned a research into the possibility and the need for a protocol on fair compensation in cases of legitimate land tenure changes focused on expropriation. The protocol would aim to be a guide for all relevant actors, including representatives of affected people, governments, project developers, financiers, donors, and CSOs, in cases where a fair compensation of land tenure issues needs to be assessed. According to the study, land tenure changes, including relocation, are “an impactful process for holders of tenure rights”. States have the duty to avoid or minimise displacement, as stated within national and international legal systems as well as in human rights conventions.<sup>386</sup>

### 4.3. Business-led Good Practices and Guidelines

#### 4.3.1. 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".<sup>387</sup> 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.<sup>388</sup>

#### 4.3.2. Businesses adopting measures that protect HRDs

In recent years, a few companies have been focusing on their responsibility to protect and support HRDs, and some good practices can be noted. In a groundbreaking development, in 2016 Adidas has set a bar by issuing a general corporate policy statement in support of HRDs.<sup>389</sup> FIFA's human rights policy also makes mention of HRDs by committing to "respect and not interfere with the work of both HRDs who voice concerns about adverse human rights impacts relating to FIFA, and media representatives covering FIFA's events and activities. Where the freedoms of HRDs and media representatives are at risk, FIFA will take adequate measures for their protection including by using its leverage with the relevant authorities".<sup>390</sup> In November 2017, the Anglo-Australian multinational mining, metals and petroleum company BHP Billiton publicly stated that it was opposed to the restriction of the advocacy activities of environmental groups.<sup>391</sup>

#### 4.3.3. OECD Guidelines for Multinational Enterprises to ensure responsible business conduct

In line with applicable laws and international standards, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises provides recommendations from the government to multinational corporations.<sup>392</sup> These are multilateral, non-binding principles and standards that establish responsible business conduct in a global context, and promote positive practices of businesses towards the economy, environment, and society. General Policy A.14 of the OECD guidelines stipulates the importance of engagement with stakeholders, including communities, in order to take their views and opinions into account.<sup>393</sup> General Policy A.2 of these Guidelines reaffirms the obligation of enterprises to respect the human rights of those affected by their activities, within international human rights framework and the international human rights obligations of the countries in which they operate;<sup>394</sup> while Section IV of the Guidelines focuses on impacts on human rights in general, including a recommendation to carry out HRDD according to the company's size.<sup>395</sup> Additionally, the OECD Due Diligence Guidance for meaningful Stakeholder Engagement in the Extractive Sector calls on businesses to integrate stakeholder engagement as a core management system.<sup>396</sup>

#### 4.3.4. Guidelines for social responsibility under the ISO 26000

ISO 26000 provides guidance on seven core subjects, including 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.<sup>397</sup> Most notably, one chapter focuses on community involvement and development as an integral part of sustainable development.<sup>398</sup>

#### 4.3.5. Management of risks with the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability

Guided by standards set in the international conventions of ILO and the UN, the IFC's Performance Standards on Environmental and Social Sustainability provides businesses that IFC is investing in with the responsibility and directions to identify risks and impacts, in an attempt 'to avoid, mitigate, and manage the risks and impacts as a way of doing business in a sustainable way'.<sup>399</sup> The IFC Performance Standard 1 requires private sector projects receiving 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.<sup>400</sup> Additionally, Performance Standard 3 (Resource Efficiency and Pollution Prevention);<sup>401</sup> Performance Standard 4 (Community Health, Safety, and Security);<sup>402</sup> Performance Standard 5 (Land Acquisition and Involuntary Resettlement),<sup>403</sup> and Performance Standard 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources)<sup>404</sup> address key requirements related to community rights affected by businesses and apply to land rights. More specifically, Performance Standard 5 deals with land acquisition and involuntary resettlement and its objective has a number of standards designed to prevent or mitigate the negative impacts of companies' operations with regards to land.<sup>405</sup> These include: (1) to avoid or minimise displacement by exploring alternative project designs; (2) to avoid forced eviction; (3) to anticipate and avoid or minimise adverse social and economic impacts from land acquisition or restrictions on land use by providing compensation for loss of assets and ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected; (4) to improve or restore the livelihoods and standards of living of displaced persons; and (5) to improve living conditions among physically displaced persons through adequate housing with security of tenure at resettlement sites.<sup>406</sup>

#### **4.3.6. Assessing the human rights performance of businesses according to the Corporate Human Rights Benchmark**

The Corporate Human Rights Benchmark (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.<sup>407</sup> This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.<sup>408</sup> The benchmarking methodology requires a publicly available statement of a businesses' policy to commit to respecting the ownership and use of land and natural resources. This includes a commitment (A.1.3a) 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 FPIC from 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.<sup>409</sup> Commitment D.3.5 specifically addresses the indigenous peoples' rights to FPIC in extractive operations. This requires respect of indigenous peoples' rights in its processes to decide whether and how to carry out projects that are located in or impact on lands or territories, or resources traditionally owned or occupied, or traditionally or customarily used by indigenous peoples, or that are based on their cultural heritage. These processes assess and address the impacts of the company's activities and those of their business relationships and any related actions of the government.<sup>410</sup>

#### **4.3.7. Aligning with the voluntary principles on security and human rights**

In 2000, a small group of governments, companies, and NGOs cooperated to develop and launch a set of Voluntary Principles on Security and Human Rights (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.<sup>411</sup> 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.<sup>412</sup>

#### **4.3.8. Guidelines of the United Nations Food and Agriculture Organisation**

The business sector is directly addressed in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests set out by the UN Food and Agriculture Organisation (FAO). The Guidelines explicitly aims to strengthen the capacity of the private sector, and Guidelines seek to improve the governance of tenure of land, fisheries, and forests and cover principles of implementation of responsible tenure governance, rights responsibilities, and other relevant frameworks.<sup>413</sup> For non-state actors, including businesses, the general principles of the 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 adverse impacts on human rights and legitimate tenure rights; the need for businesses to provide for

and cooperate in non-judicial mechanisms to provide remedy, including effective operation-level grievance mechanisms; the need to identify and assess any actual or potential impacts on human rights and legitimate tenure rights; respect for customary rights of indigenous peoples; and providing secure rights to women and other marginal groups.<sup>414</sup> In 2004, FAO also adopted the Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food, in which States recognised their obligations to respect and protect the right of peasants and other people working in rural areas to access resources such as land, water, forests, without any discrimination, including the specific commitment to protect the security of land tenure, especially with respect to women, and to provide a full and equal right to own land.<sup>415</sup>

#### **4.3.9. International Financial Institutions' safeguards on involuntary resettlement**

International Financial Institutions (IFIs) have developed measures regarding involuntary resettlement. Adopted by the IFIs such as the World Bank and the Asian Development Bank, these standards defend the rights to information, consultation, and participation in economic projects. The World Bank's IFC developed policies which place the responsibility for resettlement arrangements on either states or private companies, depending on those who are responsible for the development of a project.<sup>416</sup>

#### **4.3.10. The Principles for Responsible Agricultural Investment**

The Principles for Responsible Investment in Agriculture and Food System (RAI), adopted in October 2014, promote responsible conduct among a variety of stakeholders (public and private, large and small).<sup>417</sup> These Principles affirm the need to respect legitimate tenure rights which is essential for greater and more sustainable investment in agriculture and food systems.<sup>418</sup>

In 2010, the UN Conference for Trade and Development, FAO, International Fund for Agriculture Development, and the World Bank adopted the Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources. They are a set of seven principles that cover all types of investment in agriculture, including between principle investors and contract farmers. They are intended to provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives, and individual investor contracts.<sup>419</sup> The first principle directly addresses land rights, stipulating that the right to land and the associated natural resources must be recognised and respected.<sup>420</sup>

#### **4.3.11. The AA1000 Stakeholder Engagement Standard 2015**

The AA1000 Stakeholder Engagement Standard (SES) (2015) is a framework for assessing, designing, implementing, and communicating an integrated approach to stakeholder engagement.<sup>421</sup> 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.<sup>422</sup> 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.

#### **4.3.12. Equator Principles (2006)**

These principles are a financial industry benchmark for determining, assessing, and managing social and environmental risks in project financing. They are adopted by 94 financial institutions, encompassing the majority of international finance projects. The principles refer back to the IFC's Performance Standards for certain projects.<sup>423</sup> 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 culturally appropriate manner'. Furthermore, it is necessary that a project incorporates the concerns of affected communities sufficiently by ensuring their FPIC 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.<sup>424</sup>

## 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 that allows for the violation of land-related rights, including through development projects.	Repeal or amend NCPO 64/2014 and 66/2014 on the Forest Mastery Plan. Repeal or amend NCPO Orders 3/2016, 4/2016, and 9/2016, on EIAs. Repeal or amend NCPO Order 28/2017 on the EEC.	NCPO; NLA, MNRE	Protection of specific rights such as the rights to access information and to public participation should be ensured.  Timeline: 3 years – 2019-2021
	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, 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.		
	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 human rights standards, community rights and land-related rights.		
Recognise the rights of individuals and communities in existing legislation, in line with international obligations such as UNDRIP, CEDAW, UN Declaration on the Rights of Peasants, and Article 5 of CERD on the right of everyone to participation, and FPIC	Amend and recognise the rights of indigenous communities as well as peasants and women in rural areas, to their traditional lands and resources, including forests and waters. In addition, recognise the collective community rights to natural resources.	NLA, MNRE	This must be done in consultation with the communities and individuals affected by these legislations. Protections must be put in place for violation of these rights.  Timeline: 1 year – 2019
	Comply with the state's obligation to respect, protect, and fulfil the right to		This should be in line with UN human rights treaties that Thailand has ratified.

	land and natural resources without discrimination.		Timeline: 1 year – 2019
Review and amend the National Park Act, in line with the concluding observations of the UN Human Rights Committee.	Amend the law to enable indigenous peoples who have been living there to continue to do so and to set clear guidelines in section 6 to standardise the government’s interpretation of what can be claimed as a national park.	Department of Forestry, MNRE	This must be done in consultation with indigenous peoples and in light of their best interest. An independent monitoring mechanism must be established to oversee the review process.
	Review the excessive penalties and the offences in the Act, which states that ‘If an offender is found guilty of occupying national park land, he or she may face imprisonment up to five years and/or a fine not exceeding 20,000 THB (\$640). Also, bringing cattle into the park is punishable with imprisonment of up to one month and/or a fine not exceeding 1000 THB (\$32).’		Timeline: 1 year – 2019
<b>Priority Area 2</b>	<b>Access to information and right to participation in decision making</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Communities that are directly affected should be consulted in a meaningful and effective manner, and their contributions and recommendations should be taken into consideration.	Provide the affected communities with information regarding the development project to enable their participation and decision making regarding it.	MNRE	Presenting the collateral damage that could result is necessary. A record should be maintained on the dissemination of information.  Timeline: 1 year – 2019
	Permission to commence should be received through FPIC from the communities that are directly affected.	Ministry of Commerce, Ministry of Foreign Affairs and Justice (MoFA)	Consent should be obtained in the form of a signed document.  Timeline: 1 year – 2019
Undertake extensive and meaningful consultations with indigenous and civil society representatives on the ongoing and future investment treaties and free trade agreements to ensure respect for human rights and land rights in those treaties	Such treaties and agreements, if agreed upon, should include clauses on human rights to ensure that internationally recognised human rights are protected, including land rights, at the same level as business interests of the State and	The Ministry of Industry	Consultations must be public, transparent, should include the opinions of all those present, and provide adequate time for the synthesis of the information in the treaty or agreement.  Timeline: 1 year – 2019

and agreements.	companies.		
There must be no reservations on information that impacts the community and environment in the name of 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 Environmental Board	These must be an analysis of existing information for falsified information as well.  Timeline: 1 year – 2019
	ONEP should ensure public access to the EIA report once it is handed in by the consultant.	MNRE	Immediate
	Any amendments to the EIA should be announced to communities.		Immediate
	Any information related to the community’s well-being and environment sought out by an individual or community that is affected by the business should be able to receive it from the responsible agency.		There should be a monitoring body assessing if individuals and communities are effectively accessing to information.  Timeline: 2 years – 2019-2020
Consult with communities before the enactment of any new projects, especially when affecting communities, following a participatory approach.	There should be a core assessment process by which people and the government would review all laws that will impact people.	MNRE	Consultations should be transparent and follow the UNGPs.  Timeline: 1 year – 2019
To provide remedy against SLAPP cases, adopt anti-SLAPP legislation or provisions that protects EHRDs from intimidation and silencing of criticisms against businesses while repealing any provisions that contribute to it.	The anti-SLAPP legislation or provisions should end any form of physical or mental harassment and must be strengthened with appropriate institutional and accountability mechanisms.	NLA	Such provisions must meet the approval of EHRDs, who are affected by them,  Timeline: 1 year – 2019
Protect EHRDs from SLAPP cases, pending the enactment of effective anti-SLAPP legislation to ensure they are able to advocate for the rights of communities.	Protect EHRDs from intimidation and silencing of criticisms against businesses, while repealing any provisions that contribute to it.	MoJ, the Attorney General	Monitor SLAPP cases against HRDs to ensure that there is a decline in the number of prosecutions under the SLAPP legislation.  Timeline: 1 year – 2019
Require EIAs before allowing any development or SEZ and make them available to affected communities in a timely manner.	Monitor their implementation in accordance with international human rights standards, including Principle	MNRE	Monitor the implementation of the access to information of communities affected and that their concerns are effectively taken into consideration.

	18 of the UNGPs, and the IFC.		
	Reconsider the contracts of companies operating that may affect land rights of communities or individuals; require those who have not done so to conduct an EIA and establish a mitigation plan for the risks identified.		Timeline: 1 year – 2019
Effectively include women in decision-making processes regarding land, natural resources and environmental issues, including indigenous women and women in rural areas.	Ensure participation in an accessible, culturally-appropriate, and gender-sensitive manner.	Ministry of Internal Affairs, MNRE	Monitor the participation of women, collecting data and surveys.  Timeline: 1 year – 2019
	Measures should be taken to ensure effective participation in any decision-making that affects women and their access to land, explicitly inviting women to meetings and holding separate meetings when needed.		To effectively implement the participation, the measures have to be adjusted to women’s specific needs and concerns.  Timeline: 1 year – 2019
<b>Priority Area 3</b>	<b>Addressing root causes</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Curb official complicity in the violation of the rights of communities on land-related aspects, by doing away with conflicting legislative and policy provisions.	The government should enhance the effectiveness of legal, structural, and policy measures to ensure there is no violation of land-related rights such as through acts of land grabbing and forced evictions.	MoJ, MNRE	Avoid forced evictions and acts of land grabbing.  Timeline: 1 year – 2019
Prevent corruption amongst State officials, institutions, and mechanisms that result in or magnify the violation of rights.	Policy and practices should be outlined to address abuse of public authority when it directly or indirectly leads to the violation of land-related rights, that includes the right to a safe environment.	MoJ, including the RLPD	A conducive legal, institutional, and administrative framework for communities should be the result of such an exercise.  Timeline: 2 years – 2019-2020
Address corporate capture through the influence that corporations exert over the government.	Checks and balances should be put in place to ensure that government legislations, policies, and practices do not infringe on the rights of communities by only responding to the needs of businesses with influence.	MoJ	Any instances of interference must be rectified using precautionary, preventive, and reparative measures.  Timeline: 1 year – 2019
End impunity of perpetrators responsible for violations of	Effective accountability measures must be set out,	MoJ	To ensure a safe and enabling environment for communities

rights, whether these are businesses or members of the government that contribute to violations by businesses and held those responsible for abuses accountable.	along with access to alternative mechanisms or protections on the failure of these measures. Companies may also be held accountable for failing to act on information of rights violations provided by NGOs and communities.		and EHRDs, these measures must be independent and transparent.  Timeline: 1 year – 2019
The State must develop a mechanism to monitor and inspect the potential human rights impacts, especially impacts on land rights, of either state or privately-operated development projects.	All relevant stakeholders must be equally involved in the monitoring process.	MoJ, MNRE	Timeline: 1 year – 2019
Invest in resolving and securing land and resource rights of indigenous communities.	In order to solve environmental issues peacefully and to protect individuals defending their rights, the State should take steps to achieve meaningful resolutions of land issues.	MoJ, MNRE	Timeline: 2 years – 2019-2020
	Set up and support a land fund managed by the community.		
<b>Priority Area 4</b>	<b>Protection of groups that are marginalised or excluded</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Consult and cooperate in good faith with indigenous peoples affected, through their own representatives who may be an individual from the community or an institution.	These acts must be towards ensuring their FPIC prior to the approval of any development project affecting their land, water, and other resources through utilisation and exploitation.	MoJ, The Ministry of Industry	This must be in line with the UNDRIP.  Timeline: 1 year – 2019
Protect women from discrimination in regard to land rights, secure tenure and use of natural resources.	Effectively implement international human rights law and CEDAW provisions and repeal customary laws that are detrimental to women’s livelihoods.	MoJ	This must be in line with the UN human rights treaties, especially CEDAW.  Timeline: 1 year – 2019
	Ensure the protection of women and girls from physical and sexual violence resulting from investment-related evictions.		This should follow international standards and CEDAW provisions.  Timeline: 2 years – 2019-2020
	Protect WHRDs, especially environment and land rights		Effectively implement measures to prevent gender-

	activists, from violence.		based violence. Timeline: 1 year – 2019
<b>Priority Area 5</b>	<b>Raising awareness</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Raise awareness on rights principles, practices, and processes on land-related issues, in line with international law.	Mandatory education and awareness-raising workshops must be carried out to disseminate knowledge on the potential and actual impact of land-related rights and possible violations.	MoJ, MNRE	Training must be provided to civil society, the government, as well as to relevant private sector actors throughout the country.  Timeline: 1 year – 2019
Provide training on human rights, including land rights, women’s rights, and the rights of indigenous peoples, so as to ensure human rights obligations policies and practices are understood.	These trainings must be conducted for government ministries, departments and agencies such as those related to tourism, natural resources and environment that are responsible for developing and implementing business-related laws and policies.	RLPD under MoJ	Regular assessments must be carried out to ensure that the information and knowledge shared is understood.  Timeline: 1 year – 2019
<b>PILLAR III: ACCESS TO REMEDY</b>			
<b>Priority Area 1</b>	<b>Access to remedies and compensation</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Establish a grievance mechanism for affected people to submit complaints and seek redressal.	Set up an accessible and appropriate mechanism with effective remedies to language barriers, for whoever is affected by negative impacts caused by businesses.	MoJ	Regular review of the mechanisms must be carried out.  Timeline: 1 year – 2019
	Provide fair treatment, just compensation, and appropriate remedies to the affected people, including in collaboration with investors who are contributing to the development project.		Independent oversight of the mechanisms must be undertaken.  Timeline: 1 year – 2019
	The redressal mechanism should provide unhindered access to judicial and non-judicial remedy for all (including remotely located) victims of human rights violations.		Accessibility should be assessed by an independent body.  Timeline: 3 years – 2019-2021
Remove barriers to access effective judicial remedies for indigenous peoples and other	Support mechanisms such as the Justice Fund that should be strengthened by providing	MoJ	The presence of structural and functional barriers must be reviewed



<p>communities that experienced violations of their land rights, through courts, including by enforcing implementation of existing positive laws and policies effectively through priority 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>more resources and independence while setting up separate dedicated mechanisms that should be considered for groups requiring particular attention such as indigenous peoples and women. Judicial remedies should also take into account the customary laws and practices of indigenous peoples where they are in line with human rights standards.</p>		<p>periodically through a study of individual cases.</p> <p>Timeline: 2 years – 2019-2020</p>
<p>For complaints filed against state authorities and law enforcement officials, ensure prompt investigation through an impartial, independent, and an autonomous team of experts.</p>	<p>Strengthen the Ombudsman, the Administrative Courts, and the NHRCT at the national and local levels through capacity, resource, and knowledge building on BHR.</p>	MoJ	<p>Perpetrators must be brought to justice through these processes. The efficacy of these mechanisms must be analysed and any inadequacies must be resolved.</p> <p>Timeline: 1 year – 2019</p>
<p>End all legal proceedings against individuals facing investigation, charges, or prosecution initiated by State authorities for engaging in legitimate activities protected by international human rights law or for addressing violations by businesses.</p>	<p>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.</p>	The Public Prosecutors Office, NHRCT	<p>Compensation must be full, adequate, and extend to EHRDs and their family members.</p> <p>Timeline: 1 year – 2019</p>
<p>Ensure timely resolutions of land disputes.</p>	<p>Resolutions should be resolved in accordance with international standards such as Article 3 (a) of the ICCPR, and Principle 26 of the UNGPs.</p>	MoJ	<p>People affected by lengthened processes should be compensated or their land returned.</p> <p>Timeline: 1 year – 2019</p>
<p>The NHRCT should enhance its role as an effective non-judicial grievance mechanism as part of a comprehensive</p>	<p>Greater powers and mandate for the NHRCT should also be accompanied by greater resources to undertake its</p>	NHRCT	<p>These non-judicial mechanisms should take into account the customary laws and practices of</p>

State-based system for remedy of business-related human rights abuses, including for Thai investments abroad.	works. Further, setting up new mechanisms such as parliamentary committees could also be considered.		indigenous peoples, where they are in line with human rights standards.  Timeline: 1 year – 2019-2020
Undertake fair and effective investigation into the disappearances, killings and other reprisals against land and HRDs, and community members.	An independent, dedicated and well-resourced mechanism should be developed to protect and protect 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 indigenous communities from government authorities, businesses or other community members.  Timeline: 2 years – 2019-2020

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

<b>PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT</b>			
Priority Area 1	Fulfilment of International Obligations, including those under the UNGPs and SDGs		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Businesses need to immediately adopt and implement UNGPs to prevent human and land rights violations, allocating sufficient resources towards the fulfilment of the implementation of UNGPs.	This must extend to the company’s online and offline work, including due diligence through EIAs, EHAs, stakeholder engagement through FPIC, strategies to prevent or mitigate human rights risk related to land-related rights, transparency and effective remedies.	Businesses	A successful example is the design and implementation of accountability mechanisms drawing on both internal and external expertise and with meaningful input from customers, affected communities, rights holders, and civil society.  Timeline: 2 years – 2019-2020
Partnering of companies with communities who can assist them in the realisation of their UNGP and SDG commitments, through the implementation of compliant policy and practice.	Community members can help companies produce successful evaluation tools to assess a company’s due diligence obligations including actual and potential risks.	Businesses	This approach can reduce costs and operational obstacles by minimising the risk of community conflict, which can result in interrupted operations, security costs, and human resource lost to crisis management and litigation.  Timeline: 1 year – 2019

Abstain from advocating for legislation that restricts rights of individuals and communities, in contravention of the duty to respect set out for businesses in the UNGPs through corporate capture of the legislature.	As being recognised by an increasing number of businesses, companies should understand and promote the rights of individuals and communities which are beneficial to them and their economic well-being.	Businesses	Coordination with domestic civil society and affected communities across a shared civic space could assist grasp the import of legislations, ensuring a social license to operate.  Timeline: 1 year – 2019
Business enterprises should contribute to the full respect of the rights of individuals and communities, by promoting a system characterised by non-discrimination, a transparent and accountable government, and freedom from corruption.	This can be achieved by engaging on these issues using measures that are consistent with the UNGPs, by engaging with governments and through direct, indirect, and collective advocacy in the form of short-term reactive steps or long-term, affirmative policy.	Businesses	This discretionary responsibility should be adopted using measures that promote the ‘do not harm’ principle, including through jurisprudence that reinforces the idea that omission or inaction may be equated with complicity.  Timeline: 3 years – 2019-2021
<b>Priority Area 2</b>	<b>Abstain from policies and actions that violate land-related rights</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Conduct assessments and due diligence processes to determine the impact of business activities on individuals and communities.	Directly connect with the community and carry out a need assessment study to create project plans, explicitly including women in the assessment.	Businesses	Representation and participation in a meaningful way must be ensured.  Timeline: 1 year – 2019
	Carry out periodical reviews of the project and share the reports with the representatives of the community and ensure transparency in the report.		Include a community representative in a project review team of the company.  Timeline: 1 year – 2019
	Regulated, periodical, and frequent visits to the community should be made by the business representative to collect information on the detrimental effects of their business, on the community and the environment.		Responses received should be integrated in future policy of businesses and acted upon, at the earliest.  Timeline: 1 year – 2019
Prevent or cease to carry out any activity that causes environmental harm or violates the rights of the	Include a community representative in a project review team of the company.	Businesses	Immediate



community.	Carry out periodical reviews of the project and share the reports with the representatives of the community and ensure transparency in the report.		Measures should be taken to assess the transparency of the report and the accessibility to affected communities.
	Regulated, periodical, and frequent visits to the community should be made by the business representative to collect information on the detrimental effects of their business, on the community and the environment.		<p>Timeline: 2 years – 2019-2020</p> <p>This must be in compliance with Principle 13 of the UNGPs</p> <p>Timeline: 2 years – 2019-2020</p>
Integrate and act on the findings of due diligence processes on development projects, by determining ways to exercise leverage or deciding whether to terminate relationships when leverage cannot be built following evaluation, by understanding how the company is involved in causing or contributing to them.	This can be achieved by taking action in light of the companies’ normative responsibility under the UNGPs to prevent and mitigate impacts on the rights of individuals and the communities; prioritising and addressing severe impacts.	Businesses	The effectiveness of this action can be tracked by analysing qualitative elements, such as company specific indicators; the views of those affected; and the actions of others they are in a business relationship with.
	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>Timeline: 1 year – 2019</p> <p>The actions of this committee must constructively engage, develop, and benefit the community.</p> <p>Timeline: 2 years – 2019-2020</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 individuals and communities that are associated with their land and livelihood, including land rights and the resulting human rights violations.	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 business relations to prevent or mitigate adverse	Businesses	All actions resulting from external interactions of the business should be without adverse actual and potential human rights impacts that the business causes, contributes to or is linked with through any operation, investment, product or service in the country or through extra-territorial investments.

	impacts of the development projects.		Timeline: 1 year – 2019
Investors should ensure that they consider environmental and social risks as mitigating factors while investing in development 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 the investment profile. Independent assessments of mitigating factors should be carried out by investors, before and during the project.  Timeline: 1 year – 2019
<b>PILLAR III: ACCESS TO REMEDY</b>			
<b>Priority Area 1</b>	<b>Grievance Mechanisms processes of Businesses</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
Provide company level remedies and grievance redress mechanism to victims affected by adverse impacts of development projects.	Set up physical and virtual systems for grievance redressal with effective remedies for language barriers.	Businesses	Document number and details of grievances received.  Timeline: 1 year – 2019
	Co-operate with public grievance redressal mechanisms, both judicial and non-judicial, and collaborate with the government to provide fair treatment, just compensation, and appropriate remedies to the affected people.		Complaints mechanisms must be time-bound and afford effective oversight.  Timeline: 2 years – 2019-2020
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 to indigenous peoples when engaging with them.  Timeline: 2 years – 2019-2020
Businesses should design and implement effective grievance mechanisms that are gender-responsive and respectful of women’s social contexts and legal status, in	Ensure that women’s land rights and interests are captured in such mechanisms, involving the assistance of local civil society and promoting	Businesses	Undertake impact assessments to evaluate effectiveness of remedies.  Timeline: 2 years – 2019-



order to appropriately redress the impacts of businesses activities on their rights, and provide fair compensation.	iterative consultations with men and women in the affected communities.		2020
	Follow the UNGPs elements for effective company-based grievance mechanisms: legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, and based on dialogue and engagement.		Timeline: 2 years – 2019-2020
	Remedies for corporate human rights abuses should be redressed in accordance with human rights law standards and principles, be expeditious, be accessible, and meaningfully redress all types of harm.		This should be in line with UN human rights treaties.  Timeline: 2 years – 2019-2020
<b>Priority Area 2</b>	<b>Drop Legal Actions and force eviction against IPs initiated by Businesses</b>		
<b>Recommendations (Goal to be achieved)</b>	<b>Action</b>	<b>Lead Agency/ Jurisdiction</b>	<b>Performance Indicators/ Timeline</b>
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 indigenous peoples and their families.  Timeline: 1 year – 2019

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# NOTES

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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.