THE PROTECTION OF HUMAN RIGHTS DEFENDERS

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

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PRIORITY AREA 3: HUMAN 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

SPECIAL THANKS

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

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ABBREVIATIONS

ALRO	Agricultural Land Reform Office
ASEAN	Association of Southeast Asian Nations
BHR	Business and Human Rights
CAT	Committee Against Torture
CCA	Computer Crime Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRB	Corporate Human Rights Benchmark
CRC	Committee on the Rights of the Child
CSO	Civil Society Organisations
CSR	Corporate Social Responsibility
DLPW	Department of Labour Protection and Welfare
DSI	Department of Special Investigation
EHRD	Environmental Human Rights Defenders
EIA	Environmental Impact Assessments
ETO	Extraterritorial Obligations
EU	European Union
FCCT	Foreign Correspondents Club of Thailand
FPIC	Free, Prior and Informed Consent
GDPR	General Data Protection Regulation
GNI	Global Network Initiative
HRD	Human Rights Defender
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICT	Information Technology
ILRN	Isaan Land Reform Network
ISHR	International Service of Human Rights
ISOC	Internal Security Operational Command
KRBK	Khon Rak Ban Kerd
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed
MDES	Ministry of Digital Economy and Society
MoFA	Ministry of Foreign Affairs
MoI	Ministry of Interior
MoJ	Ministry of Justice
MNRE	Ministry of Natural Resources and Environment
MPC	Myanmar Pongpipat Co. Ltd.
NACC	National Anti-Corruption Commission
NAP	National Action Plan
NBA	National Baseline Assessment
NCPO	National Council for Peace and Order
NCSC	National Cyber Security Committee
NEQA	National Environmental Quality Act
NGO	Non-Governmental Organisation
NHRCT	National Human Rights Commission of Thailand
NLA	National Legislative Assembly
OECD	Organisation for Economic Co-operation and Development

OHCHR	United Nations Human Rights Office of the High Commissioner
PACC	Office of Public Sector Anti-Corruption Commission
RLPD	Rights and Liberties Protection Department
RTG	Royal Thai Government
RTN	Royal Thai Navy
RTP	Royal Thai Police
SDG	Sustainable Development Goal
SEZ	Special Economic Zone
SPFT	Southern Peasants' Federation of Thailand
SLAPP	Strategic Litigation Against Public Participation
TBHRN	Thai Business and Human Rights Network
THB	Thai Baht
TNC	Transnational Corporation
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
UNGPs	UN Guiding Principles on Business and Human Rights
UNWG	United Nations Working Group
UPR	Universal Periodic Review
WHRD	Women Human Rights Defender

INTRODUCTION: Manushya Foundation's Business & Human Rights Strategy

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

After the Thai government received, during its second UPR, a recommendation from Sweden to develop a National Action Plan (NAP) on BHR with the view to implement the UNGPs, Manushya developed a strategy[1] aiming at empowering communities to be at the centre of the business and human rights response in Thailand, by guaranteeing their central role throughout the development, implementation and monitoring of the NAP. To this end, since the beginning of 2017, Manushya has reached out to local communities, national, regional and international experts on 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 Business and Human Rights issues they face, and
- Empower grass-root organisations to tip the balance of power between businesses and governments versus CSOs, and encourage more bottom-up approaches which view CSOs as equal partners. For that purpose, in addition to building capacities on BHR knowledge, Manushya also provides sub-grants to establish and sustain a national network on BHR comprising communities, academics and experts, called the "Thai BHR Network".[2] The Thai BHR Network is an inclusive and intersectional network of grassroots communities, civil society, academics and experts, including representatives from and/or working on the following issues: *rights of migrant workers, labour rights (formal and informal workers), trade unions, indigenous peoples, stateless persons, community rights, land-related rights, environmental rights, people with disabilities, Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) individuals, sexual and reproductive health, drug users, people living with HIV, sex workers, women's rights, the protection of human rights defenders (HRDs), 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),[3] the first experts meeting to inform the independent NBA on BHR in Thailand (2-3 September 2017), and the second experts meeting to discuss the findings and recommendations of the independent NBA on BHR in Thailand (28 February-1 March 2018).[4]

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

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

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

These four priority areas of focus influenced the content of the Government's NAP on BHR, following our key four priority areas. Thus, this Chapter falls under Priority Area 3 and is part of Manushya Foundation and the Thai BHR Network's Independent NBA on BHR in Thailand.[5]

Manushya Foundation and the Thai BHR Network, an inclusive and intersectional coalition of HRDs, community leaders, researchers, academics, and non-governmental organisations (NGOs) together ensure local communities

are central to the BHR response and discourse in Thailand and work together to inform the development of the NAP on BHR, as well as to monitor and support its effective implementation, with communities' voices and solutions at the centre.

Role of Manushya

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

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

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

METHODOLOGY

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

- Four Regional NBA Dialogues on BHR conducted from January to March 2017;[6]
- Four regional-capacity building workshops on BHR to demystify corporate accountability to HRDs[7] held in May-June 2017;
- Two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the NAP on BHR. The First Experts' Meeting aimed at Informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018);[8] and
- The BHR Coalition Building Workshop held on 18-20 November 2017.[9]

Secondly, this Thematic Assessment Chapter is based on desk-research conducted from January 2017 to March 2019, and presents an analysis of the international, regional and national legal and policy framework pertaining to the rights of HRDs, their freedom of expression and association, civil and political rights, their access to remedy, 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.

Limitations of the Thematic Assessment Chapter

The *Thematic Assessment Chapter on the Protection of Human Rights Defenders* is informed by our desk research of existing secondary evidence, coupled with input and first-hand accounts gathered throughout Manushya Foundation's BHR strategy. The Thematic Assessment Chapter does not have the intention to present the most comprehensive assessment of the situation on the ground, but only translates realities as available through the conduct of a literature review of secondary evidence existing in English language, and captures first-hand accounts shared by Thai local and affected communities who engaged in our BHR's strategy. These individuals comprise the Thai BHR Network and their communities, who do not represent the opinions of all CSOs working on BHR in Thailand. Further, the *Thematic Assessment Chapter on the Protection of Human Rights Defenders* does not provide a list of all the cases of rights violations and judicial harassment faced by HRDs in the context of BHR. Nevertheless, the case studies and voices selected and included in the Thematic Assessment Chapter are representative of trends and patterns of adverse business conducts and judicial harassment against HRDs in business contexts. Finally, the *Thematic Assessment Chapter on the Protection of Human Rights Defenders* does not analyse the level to which Thai companies comply with the UNGPs and existing sustainability and human rights standards as enshrined in Thai policies.

This **Thematic Assessment Chapter on the Protection of Human Rights Defenders in Thailand falls under the Priority Area 3 *'Human Rights Defenders'*** of Manushya Foundation and the Thai BHR Network's Independent CSO NBA on BHR.[10] It focuses on the duty of the Thai State, the legislative and policy gaps and failures to protect HRDs in business contexts and to hold companies accountable for their judicial harassment against HRDs through Strategic Litigation Against Public Participation (SLAPP) lawsuits, as well as for their involvement in human rights abuses against HRDs. It also provides an overview of the challenges faced by HRDs on the ground. This Thematic Assessment Chapter shares good practices to follow for the government, businesses, and relevant stakeholders, as well as comprehensive recommendations and action plans, in compliance with Pillar 1, 2, and 3 of the UNGPs, which could be a starting point for the Thai government to hold companies accountable, and for Thai companies and transnational corporations (TNCs) to ensure responsible business conducts and to respect the work of HRDs in the context of business and human rights in Thailand.

THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS IN THAILAND

CONTEXT

Who are Human Rights Defenders?

"Human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights. According to the UN Declaration on Human Rights Defenders, there is no strict definition of HRDs and the definition must be able to evolve in order to include all possible profiles of defenders. Each person engaging him or herself and acts for the defence and promotion of human rights is considered an HRD. HRDs are identified by what they do and the activities they perform instead of by who they are.[11]

The safety and security of HRDs and the growing threat to civil society is a matter of increasing public concern across the globe. This is one of the most pressing issues on the BHR agenda, as HRDs engaging in business-related issues find themselves under threat and attack, most commonly in the context of development projects that hinder access to land and livelihoods.[12] In 2017, Front Line Defenders documented 312 killings of HRDs from 27 countries, and 67% of them were HRDs engaged in the defence of land rights, the environment, and the rights of indigenous peoples; almost all of them in the context of large development projects.[13] The BHR Resource Centre recorded an increase of 34% in attacks on HRDs working in the context of BHR from 290 in 2016 to 388 in 2017,[14] and so far 260 attacks have been recorded in 2018.[15]

In recent years in Asia, civic space for HRDs has been steadily shrinking. Democratic backsliding and the resurfacing of authoritarian regimes have emerged as dominant trends, where HRDs are increasingly perceived as enemies of the State for trying to uphold fundamental rights and freedoms. In Thailand, the political climate since the 2014 coup d'état has amplified the insecurity of HRDs who are now at greater risk of judicial harassment, arbitrary detention, physical violence, and killing. Community-based and EHRDs are particularly vulnerable since they belong to groups that both challenge the country's traditional power structures and find themselves at the margins of society, by virtue of class, citizenship, ethnicity or geography. This fact exposes them further to retaliation, a reality reflected in an analysis of the situation of EHRDs by the UN Special Rapporteur on the situation of HRDs in 2016, which indicates that Thailand is amongst the ten most dangerous countries for EHRDs.[16] Journalists and citizens who report abuses committed by the State, and those who criticise the junta face violent reprisals, made possible by legislations that criminalise freedoms.[17] It has been reported that 262 journalists have been imprisoned in 2017 alone, with 45 killed and 60 missing in 2018 so far.[18] In addition to State authorities and powerful private actors do not hesitate to make use of these laws to criminalise HRDs who legitimately oppose activities that violate human rights. Consequently, Thailand ranks 140th among 180 countries on the 2018 World Press Freedom Index.[19]

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

1.1. International Human Rights Standards

The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Committee Against Torture (CAT), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) are the four most relevant core UN human rights treaties for the protection of HRDs. Thailand has ratified them all except for the ICPPED, which it has only signed. In addition, Sustainable Development Goal (SDG) 16 of the 2030 Sustainable Development Agenda requires for its fulfilment the protection of civic freedoms and HRDs.[20] The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (commonly referred to as the *Declaration on human rights defenders*) adopted by UN General Assembly (UNGA)

resolution 53/144 on 9 December 1998, is a pre-condition for the creation of an environment that enables HRDs to carry out their work, and gives rise to State obligations in this respect.[21] The UNGPs highlight in Guiding Principle 26 the risks faced by HRDs and requires States to guarantee that HRDs' legitimate actions are not impeded.[22] The commentary to Principle 26 indicates that states should remove barriers that prevent 'legitimate cases from being brought before the court'.[23] States also have the duty to ensure that accessing justice mechanisms is not prevented by corruption within the judicial systems and its processes; that courts remain independent of any economic or political pressure, particularly from other State agents and business actors; and that all legitimate and peaceful activities of HRDs do not face obstruction.[24]

1.1.1. The UN Human Rights Council resolution on EHRDs[25]

On 21 March 2019, at the 40th session of the Human Rights Council, a resolution 'recognising the contribution of EHRDs to the enjoyment of human rights, environmental protection, and sustainable development' was adopted by consensus. This resolution recognises the critical role of HRDs in protecting ecosystems, addressing the impacts of climate change, to attain the SDGs, and to ensure that no one is left behind. Through its acknowledgment of the duties set out in the UNGPs for both states and businesses in addition to other treaties, declarations, and resolutions; this resolution calls on States to create a NAP or similar frameworks, and to encourage businesses to undertake human rights due diligence (HRDD), particularly with respect to human rights related to 'the enjoyment of a safe, clean, and healthy environment' and through meaningful and inclusive consultations with potentially affected communities and other stakeholders relevant to the process. The resolution also encourages businesses to exchange and share best practices, and to communicate in a publicly accessible format on the manner in which adverse human rights impacts are addressed, specifically when concerns are expressed by or on behalf of all stakeholders that are affected, including concerns raised by EHRDs.

1.1.2. The European Union (EU) Guidelines on HRDs

The EU Guidelines on HRDs identify practical ways to work towards the promotion and protection of HRDs.[26] The Guidelines focus on five different areas to achieve this namely, monitoring and reporting on the situation of HRDs; support and protection of HRDs; HRDs' promotion with third countries and in multilateral fora; support for the special procedures of the UN Human Rights Council, and support through other programmes including the development policy.[27]

1.2. National Legal & Policy Framework

The Constitution of Thailand of 2017 and legislative frameworks do not recognise or define 'HRDs.'[28] However, legislations, particularly those passed and enacted by the National Council for Peace and Order (NCPO) created by the Thai military, indirectly grant power over these HRDs.

Article 44 of the interim Constitution of 2014 gives the head of the NCPO discretionary power to issue any order considered necessary for public order or national security, the Monarchy, the national economy or State affairs.[29] Article 47 and 48 of the interim Constitution provide that all orders issued by the NCPO are lawful, constitutional, and final, and are subject to immunity.[30] Although the Constitution of 2017 provides rights and liberties, State authorities at the highest level tend to equate rights with what is prescribed by law, including restrictive laws enacted by the NCPO, which are in violation of international human rights law.[31] Articles 265 and 279 of the current Constitution allow the NCPO to continue using Article 44 of the interim Constitution until a new government is appointed.[32] These sections guarantee that Article 44 as well as all orders issued by the NCPO are deemed constitutional, lawful, and effective.[33]

1.2.1. Right to Freedom of Expression

The Constitution of 2017[34] stipulates in Articles 34 and 36 liberty and freedom of expression and communication.[35] However, liberty to express opinion can be restricted for the purpose of maintaining the State's security, protecting the rights or liberties of other persons, maintaining public order or good morals or protecting people's health.[36] In addition, a series of specific laws have been used or even developed to silence HRDs voicing concerns over rights. Article 112 on lèse-majesté, 116 on sedition, and Articles 326, 328,[37] and 423 on slander and libel[38] of the Penal Code cover the crime of defamation in broadly defined terms. These have regularly been invoked to target HRDs reporting on human rights abuses committed by military officials and

private corporations.[39] Additionally, the Computer Crime Act (CCA) of 2007[40] has been extensively used to criminalise online freedom of expression, remove online content, and prosecute HRDs. This is often used in combination with criminal defamation to charge HRDs.[41] The amendment to the CCA[42] raises concerns, as it provides the government unrestricted authority to limit free speech, conduct surveillance and warrantless searches of personal data; limit freedoms to use encryption and anonymity;[43] and holds service providers of the Information and Communications Technology (ICT) sector accountable for actions of users.[44]

A Cyber Security Bill has also been prepared to toughen online monitoring and to grant authorities the power to carry out mass surveillance.[45] This Bill was drafted by the Ministry of Digital Economy and Society (MDES) of the RTG.[46] Following deliberation, this Bill was passed by the Council of States for it to be vetted by the cabinet in October 2018.[47] In November 2018, the Bill was revised by experts from the National Cybersecurity Preparation Committee and was then approved by the Cabinet, following which it was submitted to the National Legislative Assembly (NLA) for final approval.[48] On 27 December 2018, the NLA passed the Cybersecurity Bill in its first reading.[49] The Bill then underwent an internal process of review by the Ad-Hoc Committee that submitted its report to the NLA on 18 February 2019 during the second reading.[50] Following this, it was examined and adopted by the NLA through fast-tracked second and third readings before the NLA on 26 February 2019 and adopted with a unanimous vote from those present on 28 February 2019.[51] The provisions of this Bill seek to establish a National Cybersecurity Committee that will have the discretionary power to order anyone to report for questioning or to hand over information, and in case of an emergency the ability to tap all communication devices even without court approval.[52] These powers have been criticised by many as being too broad, allowing for interpretation of the vague language in the laws on actions that can be undertaken by the authorities that could result in the violation of rights of individuals.[53] This remains a matter of immediate concern as the Bill, having been passed by the NLA will now become operational as law following its signing by the King and its publication in the Government Gazette.

1.2.2. Right to privacy

With regards to online privacy, the Constitution of Thailand of 2017 provides in Article 32 that everyone shall have the right to privacy, dignity, and reputation, and that abuse of personal information shall not be permitted unless provided by law and necessary for the public interest.[54] At present, beyond the Constitution's provisions, the Draft Personal Data Protection Act governs data protection and consequently the right to privacy. This Act was unanimously adopted by the NLA on 28 February 2019.[55] It attempts to replicate the General Data Protection Regulation (GDPR) of the EU, but does not address implementation and specifically mandates that international business enterprises store their data locally.[56] However, concern was expressed over the territorial applicability and the implementation of the Bill when it becomes law; as it would apply not only to businesses located inside Thailand but also to companies located overseas that are involved in the collection, usage or disclosure of personal data of persons in Thailand for the purpose of advertising and determining behaviour patterns.[57]

1.2.3. Freedom of the media

Article 35 of the Constitution deals with 'freedom of the press and prohibits censorship of news or statements prior to publication in a newspaper or any media unless the State is at war'. However, NCPO Order 97/2014 (revised by Announcement No. 103/2014) prohibits criticism of the junta in the media.[58] Many media outlets raised concerns over NCPO orders allowing government officials to curb press freedom and suspend press operations without a court order.[59] NCPO Orders 97/2014 and 103/2014, and Head of the NCPO Order 3/2015 are of particular concern in relation to freedom of the press.[60] In 2016, in an effort to restrict the operations of international media in Thailand, the Ministry of Foreign Affairs (MoFA) published new guidelines regarding visa issuance to journalists according to the content of media reporting.[61]

1.2.4. Right to access to information, and of free, prior and informed consent (FPIC) through public participation

On access to information by HRDs, Thai law does not specifically mention that public authorities have to proactively disclose information regarding business-related violations. However, Article 41 of the Constitution states that a person and community have the right to be informed and have access to public data or information in possession of a State agency as provided by law.[62] Further, Article 59 provides that the State shall disclose any

public data or information in its possession, not related to the security of the State or government confidentiality and shall ensure that the public can conveniently access such data or information.[63] The Official Information Act 1997, under Sections 7 and 9, specifies which kind of information authorities have to proactively disclose.[64] Section 11 of the Act states 'If any person is making a request for official information, the responsible agency shall provide it within a reasonable period of time, unless made for an excessive amount or frequently without reasonable cause'.[65] HRDs should be able to meaningfully engage and participate in development projects and in any other matters related to development, especially if it affects them. Article 65 of the Constitution provides for 'the State to set out a national strategy as a goal for sustainable development of the country'[66] and that 'the formulation, determination of goals, prescription of time for achieving such goals and contents shall contain provisions relating to people's participation and public consultation in every sector'.[67] Moreover, Article 78 of the Constitution also provides for '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 dishonest acts and wrongful conducts, as well as in decision making in politics and in all other matters that may affect them'.[68] Despite provisions in the law, exploitation of natural resources lacks participatory mechanisms and consultations with genuine access to information for impacted individuals and communities affected.[69] EHRDs, indigenous peoples, and local communities FPIC is not sought.

1.2.5. Right to peaceful assembly

The right to peaceful assembly is a fundamental freedom recognised both in national and international human rights law. However, since the 2014 coup, State authorities have curtailed this right. Article 44 of the Constitution of 2017 upholds the liberty of any person to assemble peacefully but allows its restriction for the purpose of maintaining security of the State.[70] This restriction on the right is contained in NCPO Order 7/2014[71] that prohibits public gatherings of more than five people;[72] NCPO Order 57/2014[73] that bans all political activities of political parties;[74] Head of the NCPO Order 3/2015[75] that bans public gathering of more than five people, and Head of the NCPO Order 4/2015[76] that allows cabinet ministers to assign military officers to contribute to law enforcement duties.[77] These Orders have been used to shut down events that were held to inform or promote discussion about rights and democracy.[78] The Public Assembly Act of 2015 also gives authorities sweeping powers to ban public assemblies on vague and arbitrary grounds, such as assemblies held without submitting an application for prior approval; that result in damage or disruption to public and economic infrastructure or that fail to comply in any other way with instructions issued by the authorised body and prescribes disproportionately harsh penalties.[79]

1.2.6. Reserved forests and forcible seizure of land

NCPO Orders 64/2014 and 66/2014 on the 'Return Forest Policy' and a Forestry Master Plan[80] seek to end deforestation and encroachment of reserves. However, since its implementation, the government's goal has been to monopolise natural resources.[81] 'Order 64/2014 enables government agencies to put an end to deforestation by removing encroachers on national reserves.'[82] With the implementation of Order 66/2014, the NCPO declared that its operations would only affect wealthy investors. The Order states that 'government operations must not impact the poor and landless who had lived on the land before the enforcement of Order 64/2014'.[83] However, during its implementation, the government has persistently targeted impoverished villagers and indigenous peoples who have lived on these lands for decades. Those who have opposed these policies have even been killed or forcefully disappeared.[84]

1.2.7. Right against arbitrary arrest and detention

Although martial law has been abolished in theory following the coup, in practice the Head of the NCPO Orders 3/2015 and 13/2016 perpetuate measures that are usually only permitted under martial law. The Head of the NCPO Order 3/2015 grants military officials the power to detain individuals in undisclosed locations for up to seven days.[85] 'Article 5 of the order allows the military to issue announcements prohibiting the propagation of news or the sale or distribution of any book publication or any other media that contains information that is intentionally distorted to cause public misunderstanding that affects national security or public order'. Article 12 bans political gatherings of more than five people. HRDs who speak up against military rule have often been detained under this Order.[86] Also, NCPO Order 13/2016[87] furthers the draconian powers normally granted to security forces under martial law, by providing 'prevention and suppression officers with extensive powers to prevent 27 categories of crimes including crimes against public peace, liberty and reputation, immigration,

human trafficking, narcotics, and weapons. These officers are granted 'the power to arrest, detain, and search suspects without a warrant'. Suspects can be held in unofficial places of detention for up to seven days. The prevention and suppression officers are immune from prosecution and their actions cannot be submitted for judicial review.[88]

1.2.8. Trial before military courts

While before the 2014 coup only military personnel could be tried before military courts, this changed in the months following the coup. However, on 12 September 2016, the NCPO revoked NCPO Orders 37/2014, 38/2014, and 50/2014 which allow for civilians to be tried in military courts for national security offenses. Problematically, the revocation did not apply retroactively and did not affect individuals who had been sentenced already or still had pending cases.[89]

1.2.9. Right to freedom of movement

Since the coup, the NCPO also imposed travel bans on many activists to prevent them from travelling abroad. NCPO Order 21/2014 barred Thai citizens from leaving the country without prior approval of the head of the NCPO. The Order has been lifted together with subsequent Order 25/2016, but the NCPO continues to prevent individuals who were subjected to attitude adjustment detention from travelling abroad as per NCPO Orders 39/2014 and 40/2014.[90] Additionally, individuals who were previously detained for lèse-majesté, sedition charges, and for violating various NCPO Orders are also prohibited from leaving Thailand.[91]

1.2.10. Access to remedies – Witness Protection Act 2003

On access to remedies, no specific law in Thailand directly provides whistleblowing measures. The Organic Act on Counter Corruption of 1999 amended in 2011, and the Witness Protection Act of 2003 are both relevant but do not define the term 'whistleblower'.[92] The National Anti-Corruption Commission (NACC) provides measures to receive whistleblowers, but the actual implementation of these measures is fairly recent and thus, cannot be properly assessed.[93]

1.2.11. Suppression of Torture and Enforced Disappearances

Thailand has made several commitments to address enforced disappearances, but while the RTG signed ICCPED in 2012,[94] it has still not ratified the Convention.[95] Additionally, the much-delayed Bill on the Prevention and Suppression of Torture and Enforced Disappearance displays severe shortcomings in relation to the definition of the crimes, victims, and perpetrators.[96] While pending before the NLA since 2014, the failure to adopt this Bill raises concerns also owing to the fact that cases of 'enforced disappearances' are on the rise.[97] Worries over the specific content of the draft Bill include the removal of Section 11 that prevents authorities from using national security, wars or emergencies to exempt them from the law; and Section 12 that disallows state agencies from taking part in the extradition of people if they believe that such extradition may lead to torture or enforced disappearance.[98] This amendment was suggested as it is believed that Sections 5 and 6 sufficiently meet the same goals of these Sections. However, past instances show that authorities often find it difficult to comply with CAT and ICCPED as is and watering down the Bill will not allow for the strengthening of such compliance.[99] To ensure compliance with the ICCPED, it is also suggested that in line with the Convention the wording of Section 32 of the draft Bill should be re-framed to punish senior officials if found to be aware of offences committed by their subordinates, and failed to act, not just in situations of 'direct' supervision.[100] Overall, there remain two conflicting positions weighing the need to adopt an effective national law on the prevention and suppression of torture and enforced disappearances; and doing so with haste and later amending its provisions.[101] To further weaken the national position on enforced disappearances, the Penal Code does not yet recognise enforced disappearance as a criminal offence.[102]

1.2.12. Protection of HRDs by the RLPD of the MoJ

The RLPD of the MoJ is the main governmental body in charge of the protection of HRDs. However, their programme does not cover HRDs per se.[103] Still, the RLPD has created a Working Group to develop measures for the protection of HRDs at risk, which is divided into two sub groups.[104] The first group reviews criteria and qualifications of HRDs, works to develop a definition of HRDs, defines threats and incidents, and works to identify measures to protect HRDs.[105] The second sub-group works with HRDs who have already been subject to human rights violations, to enable them to share their experiences.[106] The RLPD also came up with the idea of a

'White List' to allow HRDs to voluntarily enlist themselves. The white list is said to be a monitoring system of protection in which authorities would gather information related to activists and threats of violence they face.[107] However, the White List initiative has aroused suspicion that it could do more harm than good since it would be a public record and could fall in the wrong hands.[108] Also, the RLPD stated that it had developed a "Handbook to Protect HRDs", in collaboration with the United Nations Human Rights Office of the High Commissioner (OHCHR) Regional Office for Southeast Asia and partner CSOs.[109] The handbook apparently outlines currently available measures to protect HRDs. However, CSOs in Thailand seem to be largely unaware of such an initiative.

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

Challenge 1: Judicial harassment against HRDs denouncing corporate capture – Silencing HRDs through SLAPP lawsuits

Impact of Defamation Cases used to SLAPP HRDs

The right to freedom of expression of HRDs is violated by the misuse of provisions criminalising defamation to initiate legal proceedings against them. Sections 112, 116, 326, 328, and 423 of the Penal Code, and the CCA have regularly been invoked to target HRDs reporting on human rights abuses committed by military officials and private corporations, discouraging any dissent by calling it defamation.[110] In this manner, any opposition is quashed even before a remedy or restitution can be sought. However, in a positive step by the judiciary, a large number of the total cases falsely instituted against HRDs have been dismissed by them over the last year.[111] Therefore, the only remaining problem is the anti-SLAPP legislation in itself and its use to quell dissent.

a. Energy Co. Ltd against Watcharee Phaoluangthong, energy activist and Women Human Rights Defender (WHRD)[112]

In 2009, Siam Energy Co. Ltd sued energy activist and WHRD Watcharee Phaoluangthong for defamation after she gave an analysis during an interview of the energy policies and regulations regarding the concession of the Independent Power Producers of the National Energy Policy Council, the inappropriate role of the higher-ranked authorities in the Ministry of Energy, and the transparency on the concession process and Environmental Impact Assessment (EIA) process of the Siam Energy Ltd. Company. The plaintiff sued Ms. Watcharee on defamation and civil charges asking for over 300 million Thai Baht (THB) ($9.6 million) compensation. Ms. Watcharee was found not guilty and the Court dismissed the case.

b. Akara Resource gold mining company engaged in flagrant judicial harassment of HRD

- **Akara Resources vs Somlak Hutanuwatr & Thanyarat Sinthornthammathat**: On 31 March 2016, Somlak Hutanuwatr & Thanyarat Sinthornthammathat were charged for defamation, under Sections 326 and 328 of the Penal Code and Article 14 (1) of the CCA, for posting messages on Facebook accusing Akara Resources, a gold mine company, of tax evasion.[113] The Bangkok South Criminal Court dismissed the charges on 29 November 2016.[114]
- **Akara Resources vs Somlak Hutanuwatr & Smith Tungkasamit**: On 29 April 2016, WHRD Somlak Hutanuwatr posted a message on her Facebook page stating that Akara Resources' gold mine operation had caused contamination to the environment in Phichit Province, the area in which the gold mine operates. On the same day of the post, Smith Tungkasamit shared Somlak's Facebook post. Both Somlak and Smith were members of a committee of investigation which discovered that the gold mine contaminated the environment with heavy metals such as iron, arsenic, and manganese. In reaction, on 21 June 2016, Akara Resources filed a lawsuit against Somlak and Smith for alleged defamation under Sections 326 and 328 of the Penal Code and article 14(1) and 14(5) of the CCA. The Court dismissed the case.[115]
- **Akara Resources vs Somlak Hutanuwatr:** On 22 July 2016, Akara Resources filed another defamation complaint against Somlak in relation to another online comment critical of the gold mine company for allegedly violating Article 14(2) of the CCA and Article 10(1) of the Enhancement and Conservation of the National Environmental Quality Act (NEQA). On 20 December 2017, the Phichit Provincial Court sentenced Somlak to one-year imprisonment (which was suspended for two years) and a fine of 80,000 THB ($2,560).[116]

- **Akara Resources vs Somlak Hutanuwatr:** Akara Resources filed a fourth case against Somlak in relation to another Facebook post for violating Article 14(1) of the CCA, Sections 326 and 328 of the Penal Code, and Section 393 of the Penal Code. The Phichit Provincial Court accepted the case for consideration. The status of this case is unknown at this stage.[117]

c. Thung Kham mining company's judicial harassment of local HRDs

Thung Kham vs Surapan Rujichaiwat: HRD Surapan Rujichaiwat, aka "Por Mai", is the leader of Khon Rak Ban Kerd (KRBK). KRBK, which means "People Who Protect Their Homeland", is a community-based organisation in Wang Saphung district in Loei province. The group fights for the compensation and restoration of the environment following pollution of the community's water supply with heavy metals from mining activities at a mine operated by Thung Kham Co. Ltd. As part of their fight, KRBK has been protesting against gold mining in Loei province, resulting in an intimidation campaign against the local villagers being waged by mining company Thung Kham Co. Ltd for many years. On 16 and 17 May 2014, Surapan gave an interview to a reporter of TNN24 Channel, recalling the events of 15 May 2014. Thung Kham Co. Ltd. Then sued Surapan for defamation and defamatory by means of publication according to the Penal Code Section 326 at the Phuket Provincial Court.[118] Despite the lack of evidence, on 29 October 2014, the court ruled to proceed with the case against Surapan and the trial was scheduled to start on 9 February 2015. However, on 4 December 2014 Thung Kham Co. and KRBK signed an agreement that the case would be dropped based on a conditional exchange.[119]

- **Thung Kham vs Surapan Rujichaiwat**: In 2015, following a post on social media calling for an investigation into the activities of Thung Kham Co. Ltd., Surapan was charged again with criminal defamation. Once more, the charges were eventually dropped in March 2016.[120]
- **Thung Kham vs Pornthip Hongchai**: Similarly, WHRD Pornthip Hongchai, aka "Mae Pop", also a member KRBK, gave an interview to a reporter of Nation TV, indicating that the mine caused contaminated water sources in the village, and human toxicity. Thung Kham also sued her under Section 326. The charges were dropped as part of the same deal described under the first case against Surapan Rujichaiwat.[121]
- **Thung Kham vs six KRBK members**: In response to the actions of Thung Kham, KRBK members erected signs at the entrance of Na Nong Bong village and along the main road in the village, calling for the closure of the controversial mine, and rehabilitation of the local environment. Thung Kham then filed a criminal and civil defamation suit against Mr. Surapan Rujichaiwat, Ms. Viron Rujichaiyavat, Mr. Konglai Phakmee, Mr. Samai Phakmee, Ms. Pornthip Hongchai, and Ms. Mon Khunna, seeking 50 million THB ($1.6 million) in damages. The Court dismissed the case.[122]
- **Thung Kham vs Wanphen Khunna**: Thung Kham also filed a defamation case against Wanphen Khunna, a 15-year-old schoolgirl. On 1 September 2015, Thai PBS broadcasted a news clip about a youth camp raising awareness about environmental issues, which was narrated by Wanphen. In the news clip it was stated that six villages in the area had been environmentally affected by the gold mining industry. Thung Kham then lodged two criminal defamation complaints against the schoolgirl in November 2015. However, on 2 June 2016 The Loei Juvenile Observation and Protection Centre decided against the gold mining company's filing of the lawsuit based on the provisions of Section 99 of the Juvenile and Family Court and Its Procedure Act B.E. 2553 (2010), which forbids any injured person to file criminal charges against children and youth before the Juvenile and Family Court, unless the permission is granted by the Director of the Juvenile Observation and Protection Centre in the area.[123]
- **Thung Kham vs Thai PBS**: Additionally, Tung Kham filed another case against Thai PBS reporters and executives (Wirada Saelin, Somchai Suwanban, Kohket Chanthaloelak and Yothin Sitthibodikun) through the Criminal Court under defamation by publication and for violation of the CCA. Thung Kham Co. Ltd. demanded a compensation of 50 million THB ($1.6 million) and demanded that Thai PBS stopped broadcasting for five years. The Criminal Court in Bangkok dismissed the case. Thung Kham appealed the decision and on 20 March 2018, the Court of Appeal decided that there was sufficient evidence to proceed with the case. The trial started on 21 May 2018, and if found guilty, the four journalists face a sentence of up to two years of imprisonment or a fine of up to 200,000 THB ($6,400).[124]
- **Thung Kham vs residents of Wang Saphung district**:[125] For decades, the villagers in Wang Saphung district have fought against pollution caused by Thung Kham Co. Ltd's mining operations and have protested since the company started mining in the area in 2006. In 2014, as a response to the protests, villagers were

attacked by 200 armed men. On 25 April 2018, the villagers sued Thung Kham Co. Ltd. at the Loei Provincial Court, demanding compensation of more than 200 million THB ($6.4 million). Thung Kham as well made a complaint against the villagers in the Court. However, the Court dismissed the company's complaint, arguing that Thung Kham had no solid evidence to argue against the villagers and that the villagers' evidence and testimony were much more reliable. Consequently, on 13 December 2018, the Loei Provincial Court ordered Thung Kham to pay 15 million THB ($480,000) to those affected by the mining operations and to take full responsibility for restoring the environment to a liveable condition. However, it has to be noted that the compensated amount is much smaller than the amount demanded by the villagers.

d. Natural Fruit Company's relentless judicial harassment against British HRD Andy Hall

- **Natural Fruit vs Andy Hall**: On 21 January 2013 at the Foreign Correspondents Club of Thailand (FCCT), British HRD Andy Hall released research related to the violation of international labour standards in the food production industry for export in Thailand. The Bangkok South Criminal Court then received a complaint from the Natural Fruit Company, who filed a lawsuit against Andy Hall for publicising false information, which is an offense under Sections 326, 328, 332, 90, and 91 of the Penal code and Section 3 and 4 of the CCA. Andy Hall was found guilty on two different counts. The first count is due to his publication of a report on Finn Watch Website because of "false information" included in the report regarding the natural fruit company. The court then found Andy hall guilty under CCA Section 14(1), and under Section 328 of the Penal Code, defamation by means of publication, and sentenced him to two years in prison and to pay a fine of 100,000 THB ($3,200). The second count was due to the dissemination of a hard copy of an executive summary of the report at the FCCT event. The court found Andy guilty under Section 328 of the Penal Code and sentenced him to two years in prison and a fine totalling 100,000 THB ($3,200). In total Andy was to be sentenced to four years in prison and fined for 200,000 THB ($6,400). However, Andy's testimony reduced his sentence to three years, and a fine of 150,000 THB ($4,800).[126] After a three-and-a-half-year legal battle and in the face of additional criminal charges, Andy Hall decided to flee Thailand.[127] Andy Hall's multiple cases have been the subject of a few communications submitted to the UN Special Procedures.[128] Both Andy and Natural Fruit have appealed to the verdict of the court of first instance. On 24 April 2018, the Appeals Court hearing was adjourned because Andy did not attend as he had fled Thailand. The Court responded by ordering the issuance of an arrest warrant and adjourned the reading of the Appeals Court verdict until 31 May 2018. On 31 May 2018, Bangkok South Criminal Court read the verdict of Thailand's Appeal Court ruling in favour of Andy Hall. According to Andy Hall's legal team, civil society actors, and diplomatic observers at the Court, the Appeal Court accepted all of the points made in Hall's appeal in their entirety. The Appeal Court ruled that Andy Hall had not acted unlawfully according to the prosecution's accusations and promptly pronounced him acquitted of all the charges filed against him. Further, the Court also ruled that Andy Hall's interviews with migrant workers revealed allegations of rights violations that should be made public.[129] Lastly, the Court stated that, given the RTG's 2017 amendments to Thailand's CCA, the act retrospectively could not be used to prosecute Andy Hall alongside a criminal defamation prosecution.[130]
- **Natural Fruit vs Andy Hall**: Natural Fruit has also filed a 300 million THB ($9.6 million) civil defamation case against Andy Hall, linked to the case described above. In October 2014, the Nakhon Pathom Court postponed the consideration of the case until the above-mentioned case reaches a final verdict. Consideration of the case has not resumed yet and will only be resumed if either party requests to do so.[131]
- **Natural Fruit vs Andy Hall**: Natural Fruit Company also sued Andy Hall for criminal defamation in relation to an interview he gave to Al-Jazeera while in Myanmar. The case was dropped by the court of first instance but the decision was appealed up to the Supreme Court, which ultimately upheld the dismissal in November 2016.[132]
- **Natural Fruit vs Andy Hall**: In addition to the above-mentioned lawsuit, National Fruit sued Andy Hall for civil damages at the Phra Khanong Provincial Court in Bangkok in relation to the same interview. The Phra Khanong Court had initially dismissed the case, invoking lack of jurisdiction, but Natural Fruit appealed the case and in August 2017 Appeal Court ordered the Phra Khanong Court to accept jurisdiction. On 26 March 2018, the Phra Khanong Court released its verdict, which ordered Andy Hall to pay ten million THB ($320,000) in damages to Natural Fruit. Andy Hall's lawyer has informed the press that he would appeal the case to the Supreme Court.[133][134] On 6 September 2018, Andy Hall's legal defence team appealed the decision

of Phra Khanong Court to the Appeal Court, using 422,350 THB ($13,500) donated by S Group and Freedom Fund with legal support fees from Freedom United and Solidarity Centre.[135]

Counter-attack/Access to Remedy: In response to the judicial harassment he has faced, on 31 May 2017, Andy Hall and his legal team, initiated a series of counter criminal litigations against Thailand's Office of the Attorney General, nine Thai State prosecution officials and one senior police officer, and against Natural Fruit Company Ltd., a board member with legal authority to act on behalf of the company, a senior company management official, and the company's lawyer. The lawsuit against State officials was filed at the Criminal Court for Corruption and Misconduct Cases in Dusit district of Bangkok, and the lawsuit against Natural Fruit was filed at Phra Khanong Court in Phra Khanong district in Bangkok. In October 2017, the Central Criminal Court for Corruption and Misconduct Cases dismissed the case against officials as being groundless, despite the Supreme Court ruled the case to be unlawful. In January 2018, Andy Hall's legal team appealed to the Central Criminal Court for Corruption Misconduct Cases' to fight the dismissal decision. However, the Appeals Court for Corruption and Misconduct Cases had dismissed Hall's counter prosecutions against state officials on 9 May 2018.[136] Further, the lawsuit Hall filed against Natural Fruit at Phra Khanong Court was partly dismissed in September 2017 as the Court dismissed the case against Natural Fruit's lawyer and some of the charges against company officials. On the other hand, several charges against two company executives were accepted for a full criminal trial, which had started on 22 March 2018. The two defendants had already been temporarily released on a 100,000 THB ($3,200) bail, pending the criminal trial. However, the charges against the two defendants have as well been dismissed on 15 May 2018 and Andy Hall's legal team is preparing to appeal this dismissal verdict to the Appeal Court.[137]

e. Thammakaset relentless judicial harassments against migrant workers and HRDs

Case of Thammakaset against 14 migrant workers:

In 2016, 14 migrant workers from Myanmar complained to the National Human Rights Commission of Thailand (NHRCT) that their former employer Thammakaset Farm had violated Thailand's Labour Protection Act by paying workers less than minimum wage, failing to pay overtime wages, and confiscating their passports. In response, the Thammakaset Farm filed a defamation lawsuit against these migrant workers, claiming that their allegations were false.[138] On August 1, 2016, the Department of Labour Protection and Welfare (DLPW) in Lopburi province issued an order that required the company to pay 1.7 million THB ($54,000) for unpaid wages to the 14 workers.[139] This Compensation Order was approved by Supreme Court in September 2017[140] while the case was dismissed in July 2018[141] and the compensation to workers was again confirmed by the Supreme Labour Court in March 2019.[142]

Case of Thammakaset against Andy Hall

Andy Hall was also accused of criminal defamation by the Thammakaset Farm for his social media comments on the alleged labour rights abuses in relation to the world-famous case of the 14 migrant workers who submitted a complaint to the NHRCT accusing Thammakaset Farm of labour abuse.[143] The farm alleged criminal defamation under Sections 58, 90, 91, 326, 328, and 332 of the Thai Criminal Code, and under Sections 3 and 14 of the CCA against Andy Hall for his use of social media. The charges remain pending but if found guilty, Hall faces a fine not exceeding 200,000 THB ($6,400) and/or up to seven years imprisonment. It has as well to be noted that the legal team representing Thammakaset in the cases against Hall and the fourteen migrant workers, is the same team representing Natural Fruit Company Ltd.[144]

Case of Thammakaset against Nan Win & Sutharee Wannasiri

In October 2018, Thammakaset filed new criminal defamation charges against Nan Win, a former Thammakaset employee, for reporting alleged labour abuses against the fourteen former employees in a film produced by human rights organisation Fortify Rights and during a Facebook-live press conference organised by the same organisation. Consequently, the Criminal Court was scheduled to consider the complaints against Nan Win on 4 February 2019.[145] In response, in January 2019 the UN Special Procedures expressed their concern with respect to the case of Nan Win to the RTG and emphasised that the RTG has an obligation to ensure that domestic legislations safeguard against human rights abuses by business enterprises.[146] Despite efforts of the UN Special

Procedures, the Criminal Court in Bangkok ruled on 8 March 2019 that the defamation case filed by Thammakaset should proceed.[147]

f. The Police filing defamation charges on behalf of companies to judicial harass HRDs

The Police vs 23 members of the Khao Lao Yai and Pha Jun Dai Community Forest Conservation Group[148]

As of May 2016, trials were still pending for 23 members of the Khao Lao Yai and Pha Jun Dai Community Forest Conservation Group, a community-based network opposing the limestone quarry in Nong Bua Lamphu province. The authorities brought criminal charges against the group members after the mining company stated that the Conservation group used false information to charge a person in court. Between 1993 and 1999, four members of this community group were reportedly shot dead.

The Police vs Wichosak Roonarongpairee[149]

Wichoksak Roonarongpairee advocates for the rights of fishing communities in southern Thailand, and works with Thai Sea Watch, a local NGO, and with the Federation of Thailand Fisherfolk Association, a coalition organisation. On 26 September 2016, Wichosak attended a meeting organised by the Fisheries Committee in Satun province. While there trying to advocate for the interests of the fishing communities, an unknown man threatened him and tried to silence him. After the meeting, Wichosak described what happened in a Facebook post and raised concerns about a possible connection between the man he was threatened by and a local fisheries' official. Wichosak also urged the Department of Fisheries to investigate the incident. Then, in October 2016, he was summoned to Satun police station where he was notified that his Facebook post might have equated to a violation of Section 328 of the Penal code and the CCA, and the case was submitted to the public prosecutor in December 2016. According to the latest reports, Wichosak was awaiting the decision of the prosecutors to formally charge him or not. The status of the case is unknown at this point.

***Impact of Defamation charges used to censor the Media reporting on human rights violations caused by businesses*[150]**

Media personnel reporting on human rights violations can face censorship. As a result of the provisions in the Constitution, owners of newspapers and mass media have to be Thai citizens. Most radio and television stations are owned and controlled by government entities. An additional 244 radio stations are owned by military and police authorities, for alleged national security purposes. Radio and television frequencies are regulated by the law. Such strict control over media outlets by the authorities raises concern over freedom of press and freedom of expression and can cast a chilling effect on government critics, including HRDs. The media has widely practiced self-censorship since the NCPO took over in 2014.

Case of the journalists and editors of Phuketwan news agency exposing human trafficking[151]

In September 2015, journalists and editors of Phuketwan news agency were charged with defamation, as well as with section 14(1) of CCA for publishing articles accusing the Royal Thai Naval Forces (RTN) of being involved with benefiting from the trafficking of Rohingya migrants. Three defendants were accused, including Island Media Co., Ltd., which runs the news website Phuketwan; Alan Morison, an Australian journalist for the Phuketwan website and founder of Big Island Media Co., Ltd., and Chutima Sidasathian, a journalist for Phuketwan. In Reuters' report was stated "The Thai naval forces usually earn about 2,000 THB ($63) per Rohingya for spotting a boat or turning a blind eye". The RTN stated that the aforesaid message was false and was meant to defame the RTN's reputation. The case was dismissed by the Court.

Case of Pratuan Thanarak vs Jonathan Head & Ian Rance for denouncing a corruption scandal

BBC South Asia correspondent Jonathan Head and joint defendant Ian Rance faced defamation charges brought by Mr. Pratuan Thanarak, a lawyer who was referenced in a 2015 report published by the BBC. The report detailed how two foreign retirees in Phuket had properties stolen from them "by a network of criminals and corrupt officials".Mr. Ian Rance had been one of the victims. Mr. Thanarak was featured in the report as having admitted to forging Mr. Rance's signature causing him a loss of $1.2 million in properties. In response, Mr. Thanarak filed criminal defamation charges, with a maximum sentence of two years' imprisonment, claiming that the report has led him to be "defamed, insulted or hated". In addition, if found guilty, Mr. Head faced an additional charge under the CCA which forbids uploading "false data" to a computer system, which additionally

carries a maximum penalty of five years' imprisonment. At the start of the trial on 23 August 2017, both Mr. Head and Mr. Rance pleaded not guilty. The plaintiff withdrew charges against Mr. Rance on 24 August 2017, after having dropped all charges against Mr. Head the previous day.[152]

Case of Journalist Pratch Rujivanarom for exposing environmental impact of a mining company

In March 2017, the Thai mining company Myanmar Pongpipat Limited (MPC) filed a lawsuit against The Nation Multimedia Group and its journalist Pratch Rujivanarom who allegedly published false information. On 1 March 2017, a report written by Pratch Rujivanarom was published in the Nation's online newspaper and uploaded onto their website, under the headline "Thai mine destroyed Myanmar water sources". In the article, Pratch quoted community members and reported first-hand information from Myuang Pyo village where the community member's drinking water was said to be contaminated. The Thai mining company MPC, which operates in Myanmar, filed a lawsuit against The Nation Multimedia Group and Pratch Rujivanarom on charges of violating Sections 59, 83, 91, 326, and 328 of the Thai Penal Code, and Article 14 of the CCA. MPC alleged that an article published by The Nation contained false allegations claiming that the company's tin mine was contaminating the water supply of Myaung Pyo village.[153] This claim of false allegations was made despite the fact that the allegations were supported by the research of an environmental engineering expert who found that water samples collected from the village showed excessive levels of manganese. The court arranged mediation sessions whereby the parties settled the case non-judicially.[154]

Spotlight on Thailand's Cybersecurity Bill which could be used to silence dissidents

Impact – In Thailand, through legislations and practices, cybersecurity is being prioritised over the right to freedom of expression and the right to privacy

Under the guise of national security, the cyber security bill will grant the government more power to monitor the use of the internet and the content shared therein.[155] The Cyber Security Bill displays deficiencies both in the process it sets out and in the content of its provisions. In the process, the draft legislation sets up a National Cyber Security Committee (NCSC) that will have the power to implement it.[156] In the exercise of its authority, the NCSC can perform functions without a prior request and obtaining a warrant from the court.[157] Moreover, this broad range of authority can be imposed on individuals without the option of appealing such authority.[158] Appeal does not exist in the form of complaints against the abuse of power by public authorities through the Administrative Procedure Act and Section 157 of the Criminal law, as the NCSC operates as a juristic person and not as a government agency.[159] Thus, an effective accountability measure through a process of appeal and grievance redressal is required. Also, to ensure efficiency in function and use of resources, the process of cyber-protection does not necessitate the creation of a new agency, but instead requires coordination from the already existing relevant government departments and offices.[160] This law is also questionable with respect to its content as it does not just allow for the collection of information with respect to a cyber-threat but also permits the possibility for collection of personal information from individual users.[161] Drawing from the example of the misuse of the CCA and the usage of the words 'national security' and 'public order' therein, it has been highlighted that like in the CCA, since these terms have not been defined – their meaning could be expanded beyond the intent of the provisions and misused to suit the needs of the government.[162] Furthermore, the standard of proof set as 'with a reason to suspect' instead of 'with a reason to believe' is problematic, as it presupposes and attributes culpability prior to investigation.[163]

The Organisation for Economic Cooperation and Development (OECD) published a report suggesting that as the internet is vital to the economy and society, cybersecurity strategies and policies should not just attempt to protect societies reliant on cyberspace from cyber-threats, but also to preserve the openness of the internet for these societies.[164] The draft of the Cybersecurity Act fails to do so by limiting the international obligations towards the rights to freedom of expression and privacy, and by failing to place any checks and balances on the power of the NCSC. Further, open ended terms in the draft Act allow for wide interpretation by the NCSC, which can have a chilling effect on the expression of public opinion through the internet, brought on by surveillance of the online behaviour of the population.[165] This control of ICT networks and the information they disseminate has also been used in the past as a means to disallow any criticism against the government while also being employed to spread propaganda and disinformation.[166]

The draft Cyber Security Act also proves dangerous in the power it grants the Secretary General of the NCSC, as it does not leave room for any defence or justification by those considered to be in violation of the draft law. Instead of placing a penalty on "an action which is contrary to an order without proper reason", it penalises all actions that are contrary to the order of the Secretary General in any circumstances.[167]

Challenge 2: Criminalisation of HRDs to Stop Peaceful and Legitimate Opposition to Development Projects and Land Grabbing

Impact – Public Assembly Act and NCPO order 3/2015 used as tools to stop peaceful and legitimate opposition to development projects and land grabbing

HRDs and local communities are prevented from meaningfully participating in development projects that affect them, so their only resort is to assemble and hold public protests. However, since the coup, even this right has been curtailed.

The Public Assembly Act of 2015 gives authorities sweeping powers to ban public assemblies on extremely vague and arbitrary grounds. A public assembly that takes place without submitting an application for prior approval or a public assembly banned by the authorised body is regarded as unlawful and results in criminal liability. Disproportionately harsh penalties prescribed in the Act raise further concerns. Organisation of demonstrations that result in damage or disruption to the public transportation system, telecommunications or public and economic infrastructure, or failure to comply in any other way with instructions issued by the authorised body can result in a prison sentence of up to ten years and a fine of up to 200,000 THB ($6,400). While the RTG claims that restrictions on the right to assembly are only exercised in cases where public activities seek to reignite social divide and stir hatred and violence, reality tells a different story. The Public Assembly Act has been repeatedly invoked to prevent activists from holding peaceful demonstrations and activities to denounce human rights abuses caused by corporations and oppose development projects. As a result, the right to freedom of assembly of HRDs is often denied and their peaceful and legitimate assembly is criminalised.

As of June 2018, 378 individuals have been charged with violating the provisions of NCPO order 3/2015, restricting public gatherings.[168] This right is essential to the work of community-based HRDs as it enables them to organise activities related to conservation of livelihood, protection of the environment, sustainability, social justice etc, and it also guarantees the right to civil and political participation. Since the coup, at least 69 public discussions were prohibited by the NCPO, including academic seminars, civil society forums on environmental issues etc.[169] The authorities interfered in 42 social and political events in 2014, in 68 in 2015, and in 34 in 2016.[170]

Use of the 2015 Public Assembly Act

Akara Resources vs. 27 HRDs[171]

Akara Resources filed a complaint against 27 HRDs for their involvement in a peaceful protest that allegedly prevented Akara Resources' trucks from transporting ore out of Phichit Province. The Tub Klor district police charged the 27 HRDs for violating Section 309 of the Penal Code. The police also charged community leader Ms. Thanyarat Sinthornthammathat under Article 10 of the 2015 Public Assembly Act for the role she allegedly played in organising the protest. On 9 February 2017, the Phichit provincial prosecutor proceeded with charges under Section 309 of the Penal Code and Article 16 of the Public Assembly Act against the HRDs, and with charges under Article 10 and 15 of the Public Assembly Act against Ms. Thanyarat. On 12 September 2017, the 27 HRDs pleaded guilty to the charges and subsequently the Phichit Provincial Court found them guilty. However, the Court decided to impose a one-year probation instead of a sentence since the 27 HRDs were affected by the gold mining, had low incomes, and had not previously committed any crimes.

Case of HRDs from Thepa who opposed the construction of the Coal-fired power plant[172]

On 27 November 2017, about 100 villagers from Thepa district in Songkhla province organised a symbolic march to hand their petition against the planned construction of a coal-fired power plant to the prime minister, who was touring the region. The police interrupted the demonstration and arrested 17 HRDs, including a 16-year-old.

The 16-year old was released the next day on bail and 15 of them two days later. The remaining HRD was only released on bail in early January. On 12 January 2018, the Songkhla public prosecutor indicted 16 of the HRDs, accusing them of resisting arrest, injuring state authorities, obstructing traffic, carrying weapons in public, and violating the Public Assembly Act. The HRDs denied the charges, indicating that they gave prior notice of the protest to local authorities and that the weapons allegation is unfounded since they were merely using their flagsticks in self-defence. On 27 December 2018, the Songkhla Provincial Court dismissed three charges but fined two out of 17 defendants 5,000 THB ($160) due to violating the Public Assembly Act. Some defendants appealed.[173]

State authorities criminalise KRBKG for resorting to the last mean they have left to assert their rights: peaceful assembly

The Police vs seven WHRDs from KRBK

In 1996, Thung Kham Co. Ltd. had received its license to operate a gold mine in Wang Saphung district in Loei province. Four years prior, in 1992, people had come to the village to buy land and villagers were told that it would have something to do with 'livestock-related business' and the villagers were unaware of the gold mine which would be operating in their area. Moreover, villagers suffered from environmental damage caused by run-off chemical leaching used to extract gold from the mine's copper ore. As a result of the environmental damage, the water was contaminated and villagers were unable to utilise the water for drinking, foraging vegetables, and fishing, and the villagers' health was negatively affected. In 2008, residents of six villages formed the KRBK group in order to hold the company accountable for the pollution and damage it had caused; claiming that the company had lied in order to receive its license to operate.[174] Since its establishment in 2008, KRBK held various protests and campaigns to fight against Thung Kham and the caused damage and pollution. However, while doing so, KRBK's activities have been continuously restricted by State authorities, who used threats, attacks, and intimidation techniques against the group. So held more than 20 KRBK members a peaceful sit-in protest outside the Khoa Luang Administrative Council Office meeting room, demanding community participation in decision-making processes regarding rights granted to Thung Kham to perform mining activities in the area. As a result of the protest members of the administrative council were forced to cancel a meeting regarding forestland rights. Consequently, on 8 March 2017, the police of Wang Saphung district charged seven female members of KRBK who took part in the protest for allegedly violating Section 309 (compelling another person to do or not do any act by putting them in fear of injury to life, body, liberty, reputation or property…) of the Penal Code. Ms. Pornthip Hongchai, a leader of the KRBK community, was additionally charged with violating Articles 10 and 28 of the Public Assembly Act for failing to notify the authorities 24 hours prior to engaging in a protest on 16 November 2016. On 13 June 2017, the police filed additional charges against the seven women for violating Article 8 and 27 of the Public Assembly Act by blocking entries and disrupting government services. If convicted, these women face five and a half years' imprisonment and or a fine of up to 100,000 THB ($3,200). Ms. Pornthip faces an additional 10,000 THB ($320) fine for violating Article 10 of the Public Assembly Act. The indictment of these seven women has been postponed several times since its original date 25 May 2017.[175] On 19 April 2018, the Loei Provincial Court dismissed the case on the basis that the villagers were simply attending a public hearing, and that they were expressing their right to freedom of expression guaranteed under the Constitution.[176]

Charged for exercising the constitutional right to present a petition to a State agency

The Police vs Sama-ae Jehmudor

Sama-ae Jehmudor was summoned to the Nang Loeng police station to hear charges of alleged violations of the Public Assembly Act. As reported to Amnesty international by Sama-ae Jehmudor, he and around 40 other fishermen travelled to Bangkok to submit a petition to the Ministry of Agriculture regarding the government's fisheries policies such as the 2015 Fishery Act, which is said to impose restrictions that affect the fishermen's activities. Jehmudor reported that upon arrival, the group was denied entry to the Ministry of Agriculture and later on, police approached them to declare that they were not allowed to remain on the street in front of the Ministry. However, the fishermen remained at the location until the Minister of Agriculture agreed to meet with them. Later that month, Jehmudor was summoned to the police station with charges of violating the Public Assembly Act. While no further information on this case has been made available, Banjong Nasae, fellow petitioner and president of the "Love Thai Sea" association, shared in a Facebook post the police order and

photographic evidence of their assembly outside the Ministry, posing the question of the difference between a rally and waiting to hear the Minister.[177]

Use of the NCPO Order 3/2015

The police vs "We Walk" activists

On 20 January 2018, a network of CSOs under the banner People Go Network started marching from Bangkok to Khon Kaen province in the "We Walk" event. The march was intended to raise awareness on the right to universal health care, the right of farmers, community and environmental rights, and the Constitution.[178] On 23 January 2018, the police issued warrants for eight of the participants of "We Walk" under Head of the NCPO Order 3/2015. In response, the legal team representing the People Go Network sued the Royal Thai Police (RTP) and three high-ranking police officers for violating the people's right to gather in public.[179] On 27 January 2018, the Administrative Court ruled that the police prevented the marchers from exercising their right to assembly and ordered the police to stop intimidating the protesters and help facilitate the march instead. However, the eight marchers still face charges of violating Head of the NCPO Order 3/2015.[180]

A similar march titled "Walk for Rights" organised by the New E-Saan Movement held two years prior did not result in the filing of charges under NCPO orders, although police and military officers persistently harassed the activists as they were marching.[181]

Access to Remedy: The legal team of the People Go Network and organiser of the We Walk march filed a lawsuit against the RTG and three high-ranking policemen for reportedly disrupting and intimidating the peaceful protesters. E-Law Foundation lawyer Surachai Trongngam indicated that they accuse the police of violating the right to peaceful assembly. They also asked the police to stop their operations limiting the rights of the marchers and requested the court to order the police to pay 100,000 THB ($3,200) compensation.[182]

Challenge 3: Anti-SLAPP provisions legislated remain flawed, re-victimising HRDs

Impact – There is a critical need to enact Anti-SLAPP legislation to stop the judicial harassment of HRDs criticising business conducts, denouncing business abuses, and/or opposing development projects.

Efforts to put an end to the practice of SLAPP were undertaken at the Thai parliament in 2017 when the NLA submitted the Criminal Procedure Code Amendment Act no. 26 to include Section 161/1 as an anti-SLAPP provision in the Criminal Procedure Code.[183] On 4 December 2018, the NLA adopted this amendment at its third reading with a total of 149 votes in favour of the provision and three abstentions amongst the 152 NLA members present.[184] On the publication of this provision in the Royal Gazette following a signature from the King,[185] it will give the court the power to dismiss a lawsuit of a plaintiff that has been filed in bad faith or by distorting facts in order to intimidate or take advantage of the defendant.[186] In addition, this Section prohibits the filing of a new lawsuit by the same private plaintiff on similar grounds against the defendants[187] in cases where a final judgment has been reached in accordance with Section 39 (4) of the Criminal Procedure Code.[188] However, this does not apply to public prosecutors,[189] even when they are representing a plaintiff in the same case that has been filed in bad faith or by distorting facts.[190] It remains to be seen whether the implementation of this provision will be effective in addressing SLAPP lawsuits and their use by businesses in Thailand.

Section 165/2 of the Criminal Procedure Code was also added through this amendment and was adopted separately on 2 November 2018, with 163 votes in favour out of 168 members present, and five abstentions,[191] to be sent directly by the NLA to the King for his signature.[192] This Section states that in the preliminary stage, a defendant may declare to the court a fact or a law, which the court could use to declare the absence of merit in the case. This may be mentioned in the defendant's statement to point to the person, documents, and materials which could be used to support the defendant's claim. In such cases, the court may call for the person, documents or material to be produced before the court as it deems appropriate and necessary. The plaintiff and defendant may also question the witness if permitted by the court.[193]

This addition through Section 165/2 is problematic because of the onus it places on HRDs, with their limited resources, finances, and access to information. By placing the burden of proof on the defendant or the individual who is facing harassment through a case without merit, the NLA moves away from the standard that the UN binding treaty on BHR is attempting to set. This standard to bridge the gap in accountability of BHR cases includes the element of 'reversing the burden of proof in favour of the victim',[194] and placing this responsibility on businesses. This adds more work to the HRD and his legal counsel, and functions as an obstacle to prove that the case in fact lacks credibility. By adding 165/2, the NLA conceals instead of exposing the role of the plaintiff (business or government agencies) in using litigation as a means of harassing HRDs and preventing critique.

Of concern is also the fact that criminal law provisions are being used to protect against SLAPP cases, allowing for these criminal cases to be filed in the first place.[195] Thus, instead of providing a criminal provision as protection against SLAPP laws – they should be struck down in their entirety.[196]

Challenge 4: Criminalisation of HRDs motivated by business incentives

Impact – The lands and livelihoods of HRDs in 'reserved forests' are forcibly seized, treating HRDs as criminals, accusing them of being 'investors', and charging them for 'land encroachment'

Forced evictions violate, directly and indirectly, civil, cultural, economic, political, and social rights enshrined in international instruments.[197] 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 or carried out; through the use of harassment, threats, violence or force, and because of the results of the evictions.[198] Despite the use of the justification of environmental protection, evidence suggests that the reclamation of forest land is of economic purpose to the Thai government. NCPO Order 17/2015 removes the protected status from forests in order to allow the land to be leased to businesses.[199] In 2015, ten provinces in Thailand were declared Special Economic Zones (SEZs).[200] Also, a number of NCPO Orders were passed, allowing the lands seized for SEZs to have lenient environmental regulations, flexible EIA requirements or removing the need for EIAs entirely.[201]

Case of forest land in Lamphun province[202]

In Lamphun province, forest land was used communally to support the village through rainfall collection for irrigation, use of wood to build houses, and communal farming. The government claimed the land and moved locals to areas that were inhospitable and ill-suited for living. None of the locals successfully sought remedies. Between 1990-2000, the land was surveyed by the World Bank and then given to the private sector. This land was re-issued illegally, and in many cases, the deeds were forged and based on false information. The matter was taken to court, where it was concluded that the land belonged to the private sector. Though it has been 13 years and the deeds were forged, the Land Department has not remedied the situation as they claim that the employee responsible for forging the documents was convicted and no longer works there. 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 litigation to gain access to the land. Others who bought the land deeds have mortgaged it to banks who have tried to sell the land. As of 2016, there are new owners who have bought land without realising the problem, brought in a team of surveyors and soldiers, and have met opposition and resistance from villagers.

Case of Chaiyaphum Province (Nittaya Muangklang)

In Sab Wai village, located in in Sai Thong National Park in Chaiyaphum province, WHRD Nittaya Muangklang and 13 other villagers are currently on trial for trespassing on national park territory as a consequence of not observing orders to abandon their lands in 2016.[203] In the early 1970s, Nittaya's family as well as many others, settled and began farming cassava on a large open plot of land free of claim.[204] However, in 1992 that area was declared part of the newly established Sai Thong National Park.[205] In 2014, the military government released the Forestry Master Plan, ordering that all individuals living or farming on lands constituting National Park areas had to be evicted from their lands. As a result, in April 2016, 11 Sab Wai villagers received an eviction order, as the lands they were farming were considered protected areas, according to the Forest Master Plan.[206] On 8 August

2018, the Chaiyaphum Provincial Court found Ms. Nittaya guilty on two charges of trespassing. For the first charge, the court sentenced her to eight months in prison and to pay 100,000 THB ($3,200) in damages. In addition, for the second charge, she received four months in prison and a fine of 40,000 THB ($1,280) in damages. Not only Nittaya, but also her mother, two sisters, and other neighbours have been accused of trespassing. As of the time of writing, 14 villagers on trial have been found guilty of charges against them, which they have appealed.[207]

Challenge 5: Targeting HRDs: Threats, intimidations, attacks, arbitrary arrests, and detentions

Impact – Threats, intimidations, attacks, arbitrary arrests, and detentions are used against HRDs pushing back on companies to respect their rights to access of information, public participation, and their FPIC, and for legitimately protecting their livelihoods and lands

During all stages of development projects, local communities and HRDs should be included, they should have access to information through legal provisions, they should be consulted, and their right to FPIC should be respected. However, these are routinely overlooked by business enterprises and the government.[208] Worse, repressive laws and NCPO Orders that have been enacted have aggravated the situation and draft laws and law amendments display severe shortcomings. This has been acknowledged by the NHRCT, which concluded in its report on community rights from 2015 to 2017 that projects they investigated were not in line with principles of participation.[209] Consequently, the NHRCT recommended the government to provide effective remedy to individuals and communities, particularly those living within or nearby project areas and have been negatively impacted.[210]

Threats, attacks, arbitrary arrests, and detentions faced by HRDs – The case of KRBK:
On 15 May 2014, a group of about 150 masked, unidentified, armed men entered Na Nong Bong village in Khaoluang sub-district; a village where many leaders of KRBK reside. The group of unidentified, armed men took about 40 villagers' hostage, who were held captive for about seven hours and were released around 4:30 am. The villagers reported being assaulted and threatened. According to the latest reports, only two (two military lieutenants) out of the 150 men have been identified and convicted.[211]

Access to Remedy: According to medical evidence, 13 individuals who were taken hostage suffered minor injuries. In May 2016, Army Lieutenant Colonel Poramin Pomnak and retired Army Lieutenant General Porames Pomnak were sentenced to three years' imprisonment for their role in the attack of 15 May 2014 against the Na Nong Bong villagers and were forced to pay compensation to nine villagers ranging from 2,600 THB to 25,000 THB ($83 - $800). On 25 September 2016, the Loei Provincial Court extended the prison sentence of Lieutenant Colonel Poramin Pomnak to four years and 12 months, and extended Lieutenant General Porames Pomnak's sentence to two years and 16 months.[212] On September 25, 2017, the Appeal Court upheld the conviction of the two military officers and increased their sentences to 60 months and 40 months of imprisonment, respectively.[213] Although in 2016 the Appeal Court awarded financial compensation to the nine Loei residents affected by the 2014 attack, as of the time of writing, Loei residents have yet to receive compensation.[214] Further, it can be stated that Thai authorities failed to fully investigate and hold the rest of the 150 perpetrators who were involved in this case accountable as only two people were convicted for the attack.[215]

Dead threats against WHRD, Waewrin Buangern
On 9 November 2014, WHRD Waewrin Buangern, coordinator of Rak Baan Heang Conservation Group, was threatened with enforced disappearance after her group participated in the "Walk for Land Reform" in Chiangmai province. When she was summoned for attitude adjustment on 11 November 2014, and was reportedly told by a high-ranking military officer "You know we can make anyone disappear".[216] The Rak Ban Haeng Conservation Group was created by Ban Haeng villagers opposing a mining project by Kiew Lueng Company in the Lampang province.[217]

Killing attempt against Suwith Jeh-Soh
On 29 December 2014, Suwith Jeh-Soh, leader of the 'People's Network to Protect Ton Sa Tor Watershed in

Phatthalung Province', was attacked in his home by unknown armed individuals. The assailants sprayed the front door of his house with bullets while his family, including his two children, were inside. Prior to the attack, Suwith received warnings from an influential group to "stop getting involved with the construction of the reservoir" as well as threats to his life alleging that his "cremation is forthcoming".[218] According to reports of a NGO, no progress has been made in the investigation of the attack.[219] Suwith has been leading the campaign in his community in Mueng Ta Kau village against the construction of a water reservoir in Pa Bon district. The project was initiated by the Royal Irrigation Department in 1991 but was only recently green-lighted, with the construction to occur between 2014 and 2016. Suwith and the Network were opposing the construction of the reservoir because the Department did not consult the community about the construction, and did not allow them to take part in the decision-making process. They were also worried about the potential damage and impacts of the reservoir on the environment and marine and wildlife. The police reportedly suspect that this attack is the result of Suwith's activism.[220]

Access to Remedy: The investigation conducted by the police of Pa Bon district discovered seven bullet holes in the front door of Suwith's house, along with 15 M-16 cartridges. Shots were fired at three different heights, which revealed the intention of the assailants to kill or seriously injure. On the same day of the attack, Suwith filed a complaint to the Pa Bon police station. There, he met with the Superintendent and asked him to assign police officers to improve the security of Mueng Ta Kau village. Consequently, patrolling started the following day, but ended on 6 February 2015, roughly two months after the attack took place.[221] According to the latest information the RTG submitted to UN Special Procedures, the police investigated the attack, but no suspect has been identified thus far and no arrest has been conducted. In its last response made publicly available on the website of the UN Special Procedures communications, the RTG did not give further information on the progress of this investigation.[222]

Arbitrary Arrest and Detention – Case of Pianrat Boonrit, the President of the Southern Peasants' Federation of Thailand (SPFT)[223]

On 3 February 2015, Pianrat Boonrit, the president of the SPFT, a "community-led organisation of landless farmers advocating for land reform, food security, and fair distribution of resources",[224] was detained and held incommunicado in secret for two days. He was detained after showing up at the Vibhavadi Rangsit Military Camp in Surat Thani province, in response to a summon. He only got released on the condition that he would urge the Perm Sap community to leave the area, which had been a subject of dispute between the community and the palm oil company Thai Boonthong. The RTG, in one of its responses to a communication sent by the UN Special Procedures, has simply declared that the Internal Security Operational Command (ISOC) invited Mr. Pianrat Boonrit for a talk that lasted for three days.

Challenge 6: Extrajudicial Killings of HRDs

Impact – In violation of their right to life, several HRDs working on Business and Human Rights have been killed

With an ever-shrinking civic space and the primacy of economic consideration, violence against HRDs that has reached the stage of killing is on the rise. To demonstrate, in addition to judicial harassment, NGOs have documented more than 500 incidents of violence against environmental HRDs from 2011 to 2016.[225] At least 60 killings of just environmental activists in Thailand have been recorded in the last two decades.[226] According to NGO reports, no one has been held accountable for any of these killings.[227] The recurrence of killings of HRDs, the failed investigations into these killings, the impunity enjoyed by the perpetrators, and the ensuing denial of justice amount to noncompliance with Guiding Principles 25 and 26 of the UNGPs.

Land Rights Defenders: standing strong against land grabbing by businesses

Case of land rights activist Somsuk Kohkrang[228]

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.

He questioned the legality of land owned by Saha Industry Palm Oil Co. Ltd, which has been illegally occupied since 1981. He submitted a petition to provincial authorities asking for the revocation of title deeds given to the company. He also requested that the Agricultural Land Reform Office (ALRO), a government agency in charge of land management,[229] distribute the land to landless farmers. The company filed civil and criminal defamation suits against other HRDs working with Somsuk. In January 2013, 120 landless farmers started cultivating the land. In 2014, a joint operation of 800 police officers and military forced the villagers out and destroyed their property. On 3 December 2014, on his way home with his wife, Somsuk was shot twice by an unknown armed man and died on the way to the hospital. On 29 January 2015 and 6 February 2015, the police requested the Court of First Instance to issue a warrant of arrest for an alleged suspect but the Court refused, citing insufficient evidence. On 18 February 2015, the police searched the house of the suspect but did not find sufficient evidence. The RTG indicated in 2015 that the search for more evidence will continue.

Although the case has not been resolved, the United Nations Working Group (UNWG) on BHR expressed grave concern that Somsuk's killing might be linked to his activities as a land rights defender.

The case of SPFT's members from the Klong Sai Pattana community

Four extrajudicial killings of SPFT members from the Klong Sai Pattana community, based in Surat Thani province, have been reported from 2010 to 2015. Klong Sai Pattana is a 160-hectare plot which is owned by the ALRO, However, a palm oil company – Jiew Kang Jue Pattana Co. Ltd – has been illegally occupying the land for 30 years after the expiry of their lease. In 2007, the ALRO filed a civil lawsuit against Jiew Kang Jue on behalf of the community in order to evict the company from the land.[230] In 2008, the SPFT occupied the land with the consent of the ALRO. The community then started to help ALRO collecting data and evidence to help win the court case to evict Jiew Kang Jue. The civil lawsuit was appealed up to the Supreme Court, which ultimately ruled against the company in November 2014. Nevertheless, the ALRO did not execute the court order to evict the company from the land and the land was not redistributed to peasants. Instead, on 6 June 2015, ALRO issued an order to forcibly evict not only Jiew Kang Jue Pattana and the workers, but also the peasants from Klong Sai Pattana community, claiming that the villagers were employees of the company. This was done despite the fact that 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 members as they were the rightful owners.[231] 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. However, ten days before this judgement was rendered, the NCPO issued Order 36/2016,[232] which allowed the ALRO to reclaim the land that it had occupied illegally. This complicated the efforts of the Klong Sai Pattana community to claim their lands.

- In January 2010, SPFT member Somporn Pattanaphum was found dead riddled with bullet holes just outside of his village.
- In November 2012, two WHRDs from the SPFT, Montha Chukaew and Pranee Boonrat**,** were shot dead on their way to a local market.
- On 11 February 2015, SPFT member Chai Bunthonglek was shot dead by someone on a motorcycle just outside Klong Sai Pattana.[233]
- Supoj Kansong, land rights defender from Klong Sai Pattana community and nephew of Chai Bunthonglek, was Shot eight times and seriously injured outside of Klong Sai Pattana community on 8 April 2016. Supoj was the key witness in the failed investigation into Chai Bunthonglek's murder.

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 right activists.[234]

Access to Remedy: According to the latest reports, no one has been held accountable for the killings of SPFT members, which occurred between 2010 and 2015.[235] The members of this community continually requested the Department of Special Investigation (DSI) to investigate the killings and the attempted killing, but the DSI allegedly refused on the basis that these cases fall outside of their jurisdiction.

- **Somporn Pattanaphum**: Eight years after he was assassinated, no one has been prosecuted for his killing. The police reportedly alleged insufficient evidence to investigate the case further.

- **Ms. Montha Chukaew and Ms. Pranee Boonrat**: In 2015, in one of its responses to communications from Special Procedures, the RTG stated that they identified and arrested two suspects in November 2012, and that the Court of First Instance was considering their cases.[236] In April 2016, it was reported that the case was still pending.[237] The RTG has also informed the Special Procedures that the family of Pranee had been granted the highest amount of compensation to a family in the case of death of the victim under the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Cases of 2001.
- **Chai Bunthonglek**: On 26 February 2015, (two weeks after Chai was killed), the police had arrested two suspects. On 28 November 2016, the Appeal Court acquitted the only suspect left in the killing of Chai, because of a lack of evidence. In 2015, the RTG informed the Special Procedures that the application of Chai's family for compensation to a family in the case of death of the victim was under consideration.
- **Supoj Kansong**: On 22 February 2017, the Wiengsa Provincial Court acquitted Mr. Santi Wanthong, for the attempted killing of Supoj (key witness in the failed investigation of Chai's assassination), citing a lack of evidence.

The case of Phra Bundit Supanthito

The abbot of Pah Taw Si Siad temple in Muang district, Phra Bundit Supanthito, had a land dispute with rich investors and was shot dead after he returned from his morning alms on 1 March 2015.[238]

The case of Payao Panrote

Environmental activist Payao Panrote, who found out that local villagers were colluding with park rangers to encroach the forest on Tako Mountain, was shot dead on 6 May 2016 after he brought the information to the press.[239]

Indigenous HRD: protecting ancestral and sacral land

The case of Tatkamol Ob-om

On 10 September 2011, Karen HRD Tatkamol Ob-om was shot dead by hired assassins. Tatkamol, a Pheu Thai Party election candidate in Phetchaburi province, had been assisting the Karen people to fight an order to leave their ancestral lands in Kaeng Krachan National Park which was declared a protected area by the authorities. He had also filed a petition to the NHRCT on behalf of the Karen people.[240]

Access to Remedy: The alleged perpetrator, Chaiwat Limlikitaksorn, is the head of Kaeng Krachan National Park. Charges against him were dropped. On 15 October 2015, the Appeal Court (Region 7) upheld the acquittal of Chaiwat Limlikitaksorn (the former head of Kaeng Krachan National Park) and four other alleged accomplices for the assassination of Tatkamol. These four alleged accomplices were: Sak Plabngam (the alleged gunman), Chuchai Sukprasert (former member of Bang Kao subdistrict administration in Cha-am district), and Tawatchai Thongsuk and Duang Sangthong (two park employees). The Phetchaburi Court had previously dismissed the case due to lack of evidence, on 28 October 2013.[241]

EHRDs denouncing that pollution and health impacts caused by mining, and toxic and chemical waste costs lives

The case of Thongnak Sawekjinda

On 28 July 2011, Thongnak Sawekjinda was shot dead at his home in Muang district in Samut Sakhon province. He was involved in publicising environmental and health risks associated with coal mining factories operating in the Tambon Thasai community. Thongnak had lodged a complaint at the court regarding violations of the rights of the Tambon Thasai community by five coal mining factories. It is widely believed that he was killed because of his activism.[242]

Access to Remedy: The police identified seven men who were paid $10,000 to kill Thongnak[243] but the investigation has so far not given any results and one of the suspects has been killed prior the court trial. Yothin Theprian, the suspected gunman, had turned himself in and informed the police that he had received $1,333 for shooting and killing Thongnak.[244] Another suspect, Sutchadech Thabkrai, was killed while on his way to court to testify about the killing of Thongnak, in what has been described as a "hush killing" by the police. According to some reports, the killers of Sutchadech were allegedly in the same pickup truck which was involved in the

assassination of Thongnak. Such circumstances give more weight to the voices of activists who believe that powerful people are involved in the murders of EHRDs, and that connections exist between local businesses and politics.[245]

The case of Suthep Thongkham

Leader of the opposition to the illegal disposal of chemically tainted waste and sewage in Moo 14, Nong Haen subdistrict, Phanom Sarakham district in Chachoengsao province, HRD Suthep Thongkham was shot dead on 7 December 2012.[246]

The case of Prajob Nao-opas

On 25 February 2013, Prajob Nao-opas, an HRD fighting illegal toxic waste disposal by industrial estates, was shot dead in Chachoengsao province.[247] Prajob was shot by a gunman at a garage in Phanom Sarakham while he was waiting for his truck to get fixed. Local police stated that it was likely that he was targeted because of his activism, and noted that they had reportedly warned him in December 2012 that he might be in danger.[248]

Access to Remedy: Prajob's case is one of the rare cases of killings of EHRDs for which the perpetrators were identified. On 24 December 2014, the Chachoengsao Provincial Court handed out three death sentences to the men prosecuted for colluding to murder Prajob: Phuthorn Kaweepun (a C8 government officer of the Department of Industrial Works) and Sergeants Yutthanai Nachaeng and Anu Boonpeng (both military officers). While Anu Boonpeng admitted to being one of the two gunmen, the two others denied any involvement. Phuthorn Kaweepun was on the committee of Fusion Development Co. Ltd, the company Prajob had accused of toxic dumping. Phuthorn was also designated by the Court as the mastermind of the assassination. He was convicted for premeditated murder and inciting another person to commit an offence. The two sergeants were convicted of premeditated murder and carrying firearms in public spaces, but since they gave useful statements, the Court commuted the sentence to life imprisonment.[249] However, Phuthorn appealed the judgement and the Appeal Court, in early 2017, dismissed the charges against him on the basis that the evidence linking him to the assassination was insufficient. John Nao-opas, Prajob's brother, stated that he would hire a new legal team and appeal the judgement to the Supreme Court. No further update was received on this case.[250]

The case of Pitan Thongpanang

Pitan Thongpanang, a key activist against mining in Krung Ching subdistrict in Nakhon Si Thammarat province, was shot dead on 30 November 2014, four days before Somsuk Kohkrang was killed.[251] More specifically, he opposed mining operations on his community's land in Nonpitam district. He was also the lead plaintiff in an ongoing case in which the administrative court issued a temporary order to the company involved to suspend its mining operations. He was shot nine times while he was visiting villagers requesting for financial support in order to obtain legal assistance for the case.[252] So far, no suspect for his murder has been identified.[253] The RTG believes that Pitan could have been killed as a result of his activism.

Access to Remedy: The RTG, in 2015, has informed UN Special Procedures that the assassination of Pitan was promptly investigated and that it resulted in the issuance of search warrants allowing the police to look for evidence at the houses of a number of suspects. Yet, it then stated that "[f]urther legal proceedings would commence right away once sufficient evidence are found".[254] This is despite the fact that sources indicated that a bounty of 500,000 THB ($16,000) for Pitan had previously been issued by individuals associated with the company he was opposing. Additionally, reports allege that the Kamnan, District Chief and the Provincial ISOC pressured Pitan to drop his case against the company at the Administrative Court.[255] The RTG has also informed the UN Special Procedures that the family of Pranee had been granted the highest amount of compensation to a family in the case of death of the victim under the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Cases of 2001.[256]

Challenge 7: Enforced Disappearance of EHRDs

Impact – There have been several cases of enforced disappearance of HRDs working in the field of BHR in Thailand

Thailand's legislative framework does not recognise enforced disappearance as a crime. Consequently, it has not ratified the ICPPED yet, and the normative framework is not in line with international standards. Also, the government-appointed Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance has been described by CSOs as a "toothless administrative body which lacks authority and political will to resolve the cases".[257] This adds to increased impunity. As a result, since 1980, 82 cases of enforced disappearances have been recorded in Thailand by the UNWG on Enforced or Involuntary Disappearances.[258] So far, none of these cases have been resolved since they are not even recognised as violations or taken seriously.[259]

Case of 'Billy' (Porlajee Rakchongcharoen)[260]

Porlajee Rakchongcharoen, known as Billy, was assisting ethnic Karen villagers to file a lawsuit on the destruction of the homes of 20 families in Kaeng Krachan National Park. He was arrested on 17 April 2014 on charges of illegal possession of wild honey. The authorities claim that he was released but he has not been seen since. On 24 April 2014, Billy's wife Phinnapha Phrueksaphan, submitted a habeas corpus petition at the Provincial Court on the lawfulness of her husband's detention. After a six-day inquiry, the Court could not conclude if he was still detained when he disappeared. On 2 September 2015, the Supreme Court upheld the decision of the lower courts to dismiss the case for lack of sufficient evidence. Billy's wife, on 6 August 2015 requested the DSI to open a special investigation into his disappearance. The DSI had reportedly collected witness testimonies and examined the Park's office vehicles after finding blood stains on the carpet of one. On 14 January 2016, the Sub-Committee on Civil Rights of the NHRCT held a review progress meeting on the case attended by officials of RTP, the DSI, and the Office of Public Sector Anti-Corruption Commission (PACC) in response to a request from Billy's wife. The briefing indicated that the police found that the testimonies of the Park officials involved in Billy's detention were inconsistent. The PACC shared that they would submit the case to the prosecutor, who would then decide whether to file charges. On 30 January 2017, the DSI announced it would not investigate Billy's disappearance due to insufficient evidence and a lack of witness testimony. On 23 May 2017, a Committee consisting of 18 officials was set up to draft policies for the prevention of acts of torture and enforced disappearance, and to investigate and provide remedies in accordance with CAT and the ICPPED. It reportedly said it would consider the case of Billy.

Voice from the Ground

"Billy has disappeared since 17 April 2014. The last thing I heard from him was that he would travel outside the Kaeng Krachan checkpoint to give a friend eight bottles of honey. There is a witness and record that he was caught by an officer named Kasem Lueh-rid and was sent to the head of the Kaeng Krachan national park, named Chaiwat Limlikitaksorn. However, Chaiwat said that he had already released Billy on the same day, at the T-junction of Baan Mae Ka. But since then no one has seen Billy. This tragedy reminds me of the whole experience that happened previously. I learn that there is no 'justice' given for minorities. Looking into myself, I am powerless and overloaded with burdens and responsibilities. I have been trying to call for justice for Billy, five times already. But it is still a question with no answer. I have five children to take care of and every time I travel to Bangkok to ask for justice, I have to travel with my youngest son he is almost two years. Not easy at all, but for justice I will never give up. My third son always asks for this father. When is he coming back? It really hurts when the children ask for father and really hard when they are sick.

Billy used to say "if I go missing, don't waste time to look for me just know that the national park did it - but you have to follow up to help the village ask for justice for our Karen". I will follow up on Billy's mission no matter what happens."[261]

Phinnapha "Muenor" Phrueksaphan, wife of disappeared EHRD Billy

The case of Den Khamlae

On 16 April 2016, prominent land rights defender Den Khamlae went missing in Chaiyaphum province. Den was last seen entering a forest near his home in the Khok Yao community. Den was a member of the Isaan Land Reform Network (ILRN), a union of villagers opposing the Kon San Forest Project. His community was facing eviction from the land they had been living on for 45 years, and he was leading the community's efforts to re-affirm their right over their land. The Kon San Forest project was initiated by the State-owned Forest Industry organisation in 1978, which caused substantive damage to the Laohai forest. The operations of the organisation have resulted in the eviction of more than a thousand villagers.[262] No significant progress has been made in the investigation of Den's disappearance. Front Line Defenders has declared that the disappearance was solely motivated by Den's peaceful and legitimate land rights activism.[263]

Access to Remedy: On 17 April 2016, Suphap Khamlae (the wife of Den Khamlae) filed a complaint at the Huay Yang police station regarding her husband's disappearance the day before. On 25 April 2016, Suphap, along with other relatives of Den, submitted urgent appeals to relevant government agencies to seek their help in finding Den. On 7 May 2016, villagers looking for Den found burnt areas in the forest where bone ashes were retrieved, about one hundred meters away from the Forestry Unit. On 11 May 2016, Suphap and members of her network sent an urgent appeal to the Central Institute of Forensic Science to seek their assistance.[264] On 25 March 2017, human remains were found and the Central Institute of Forensic Science indicated that there was over 90% probability that the remains were those of Den, after comparing the DNA with his younger sister.

Challenge 8: Lack of legal protection of HRDs against intimidation and reprisals

Impact – Lack of Protection of Whistleblowers denouncing Corruption

No specific law in Thailand directly provides whistleblowing measures. The Organic Act on Counter Corruption of 1999 amended in 2011, and the Witness Protection Act of 2003 are both relevant legislation but do not include the term "whistleblower". The Witness Protection Program is designed to provide witness safety and grants immunity to the witness to acquire information or evidence for prosecution. Alternatively, an informant in a sting operation or a whistleblower will be granted immunity under the Organic Act on Counter Corruption. The NACC also provides measures to receive whistleblowers, but the actual implementation of these measures is fairly recent and thus, cannot be properly assessed as of this date.[265] Both the Organic Act on Counter Corruption and the Witness Protection Act fail to integrate the operations of several relevant government agencies. This is one reason why specific legislation on whistleblowing is needed.

Whistleblowing is currently best described as a suppression measure which focuses on cases where an offence is committed. However, it should be prescribed as preventive measures in order for a case in which an offence is likely to be committed to enable whistleblowing measures to be conducted by the relevant agencies so they can further proceed with the case. The Office of the NACC does not have sufficient resources to implement a witness protection programme by itself, and needs to rely on the RTP, the RLPD, and the Witness Protection Office. This contributes to a lack of efficiency since each agency is established for different purposes.

In Thailand, a lack of public awareness and encouragement to participate in whistleblowing have been documented. No law provides for the protection of mass media with regard to whistleblowing, and thus renders media personnel vulnerable to legal action.[266]

"The law must provide protection measures for whistleblowers or witnesses, or witness immunity for the accomplices, which must at least comprise the following measures:

- identity of the whistleblower must be retained as confidential, except where the whistleblower consents to reveal it. If it is revealed without the whistleblower's consent, the revealing person must be imposed with punishment under the law;

- the whistleblower or informant must be treated as a person acting in good faith. If the whistleblower or informant has reason to believe that the information which he provides is true, even though the offense is not subsequently committed;
- measures are needed for preventing revenge or retaliation against the whistleblower. There should be a punishment prescribed against a person, who retaliates or prosecutes the whistleblower for slander or defamation;
- legal measures must cover an employee in the private sector, who conducts whistleblowing or provides information to the public official;
- measures should be provided for preventing obstruction of justice at any level, which may result in failing to prosecute and convict the offender under the law;
- legal measures must protect a public official who is a whistleblower or informant, thereby providing definite, effective, and reliable protection measures for the official, in order to prevent the official from being mistreated by a politician or commanding official, sued or unfairly rotated;
- protection for a whistleblower or witness does not require any request from such person, the responsible party or organisation may exercise its discretion to implement protection measures for the whistleblower or witness subject to consent of such person. If circumstances of the whistleblowing concern a serious matter or highly influential person, protection measures for the whistleblower or witness, including his or her family, must be implemented promptly;
- legal measures must protect a mass media professional, who is a whistleblower or informant;
- in a case where a person is required to be a whistleblower or informant, there must be legal measures to provide protection for such person, in order to prevent such person from being damaged, and there must be measures to properly relieve or compensate for the damage;
- there should be measures for a critical witness to testify at the preliminary stage, because the witness may be tampered with or prevented from testifying in the subsequent stages; and
- the agency which provides protection for whistleblowers or witnesses, should be independent from control of the executive branch."[267]

The 2015 report to the UN General Assembly (UNGA) of the UN Special Rapporteur on the Freedom of Expression (UNSR on FoE) focused, inter alia, on the legal protection of whistleblowers, and the recommendations and comments made on the subject draw on international standards.[268] The report prescribes that: the term "whistleblower" should be broadly defined, public interest information should be disclosed, internal institutional and external oversight mechanisms should provide effective and protective channels for whistleblowers to motivate remedial action (in the absence of such channels, public disclosures should be protected and promoted), whistle-blowers should be guaranteed confidentiality and the possibility of anonymity in their reporting, and whistleblowers must be protected from the threat or imposition of retaliation, remedies should be made available to targets and penalties should be imposed on those who retaliate. Since Thailand does not yet have a legal framework in place to protect whistleblowers, and since public interest information and public disclosure frameworks suffer from a severe lack of implementation, Thailand does not comply with international standards in this regard.

3. ACCESS TO EFFECTIVE REMEDY FOR HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

In Thailand, the rights of HRDs in the context of BHR are often violated. Business enterprises have charged HRDs with defamation charges for publicising human rights abuses caused by business enterprises, and HRDs have been killed and enforced disappeared for protesting against business enterprises and large-scale projects that would negatively affect the livelihood of local communities and villagers. As HRDs in the context of BHR are exposed to such high risks, it is important that grievance mechanisms providing effective remedies are available and accessible to them.

Thailand has various grievance mechanisms in place which could be accessed in order to receive remedy. These mechanisms are all State-based and either judicial or non-judicial. It is noticeable that within Thailand, there are no non-state-based grievance mechanisms available, which means that persons whose rights are violated by business enterprises are unable to make complaints directly to the enterprises. Even though State-based grievance mechanisms are available, considering the cases discussed in chapter 2, it can be concluded that these channels are often ineffective. In cases of enforced disappearances and killings of HRDs, it is especially difficult to access effective remedy as there is a lack of accountability and a climate of impunity. This chapter first of all explains why this is the case with respect to prosecuting those who violate the rights of HRDs in the context of BHR. Continuing, this chapter describes the judicial and non-judicial grievance mechanisms that are established by the RTG and discusses whether these mechanisms provide effective remedy to HRDs in the context of BHR.

3.1. A climate of impunity and lack of accountability

In Thailand, there is a climate of impunity and a lack of accountability with respect to prosecuting those who violate the rights of HRDs in the context of BHR. These factors contribute to the fact that these HRDs are unable to access effective remedy. The climate of impunity and lack of accountability, especially in the events of enforced disappearances and killings, are caused by two factors. First of all, there is a legal vacuum to criminalise enforced disappearances of HRDs. Thailand has made several commitments to address enforced disappearances, but so far, the country's legislative framework does not recognise enforced disappearance as a crime and has still not ratified the ICPPED. Additionally, the much-delayed draft law on the suppression of Torture and Enforced Disappearance, which is currently under review, displays severe shortcomings. For instance, the definitions of crimes, victims, and perpetrators are not in line with international standards.[269] Further, the Penal Code does not yet recognise enforced disappearance as a criminal offence, and the government-appointed Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance lacks authority and political will to resolve cases.[270] Since 1980, 82 cases of enforced disappearances have been recorded in Thailand by the UNWG on Enforced or Involuntary Disappearances but so far none of the cases has been resolved.[271]

Secondly, there is a climate of impunity for the killings of environmental HRDs. In its Concluding Observations of the 2017 review of Thailand's implementation of the ICCPR (paragraph 21 and 22) The Human Rights Committee expressed its concern regarding the problem of widespread impunity, especially in cases where HRDs have been targeted. Impunity can be seen in failed investigations, impunity enjoyed by perpetrators, the reoccurrence of such killings of EHRDs, and the ensuing denial of justice.[272] So have NGOs documented more than 500 incidents of violence against EHRDs from 2011 until 2016, and at least 60 killings of environmental activists have been recorded in Thailand in the past two decades. However, according to NGO reports, no one has been held accountable for any of these killings,[273] which is as well reflected in the cases (Chapter 2, Challenge 6) which have been either dismissed by courts or charges against perpetrators have been dropped due to a lack of evidence.

3.2. State-Based Judicial Grievance Mechanisms

The RTG has various judicial grievance mechanisms in place which provide remedy. In case of violations, HRDs can bring their case to court, depending on the type of case and the location where the incident occurred, cases

will be handled by the appropriate court. So are most cases of HRDs in the context of BHR dealt with in the Courts of Justice[274][275] by one of the General Courts under the Court of First Instance: (1) Civil courts; (2) Criminal courts; (3) Provincial courts (Jang-Wad Courts), and (4) Municipal courts (Kwaeng courts).[276] Various cases of HRDs in the context of BHR are related to corruption and malfeasance, therefore these cases can be dealt with in the Criminal Court for Corruption and Malfeasance Cases, a division of the Criminal Courts. Further, cases with respect to Juvenile HRDs are likely to be dealt with in Juvenile and Family Courts.[277] In any case, whenever either party appeals, cases will be handled by the Appeal Court[278] or the Supreme Court.[279]

3.2.1. The Criminal Court for Corruption and Malfeasance Cases

The Criminal Court for Corruption and Malfeasance Cases was established under the Act on the Establishment of the Criminal Court for Corruption and Malfeasance Cases B.E. 2559 (2016) and is one of the four divisions of the Criminal Courts.[280] The Criminal Court for Corruption and Malfeasance Cases handles cases related to corruption and malfeasance in which government officials and state employees are involved, as well as cases involving collusion, neglect of duty, and bribery. The Court utilises the inquisitorial system[281] so that it is able to be actively involved in the investigation of facts of cases.[282] The Criminal Court for Corruption and Malfeasance Cases is utilised by HRDs in the context of BHR to file lawsuits against government officials. An example is the lawsuit filed by Andy Hall against ten officials who filed defamation charges against him in 2013, as has been reflected in the case of Natural Fruit Company against Andy Hall (Chapter 2, Challenge 1). However, the Criminal Court for Corruption and Malfeasance Cases ruled that none of the ten officials had acted unlawfully when filing a defamation prosecution against Hall in 2013 and dismissed his case on 9 May 2018 accordingly.[283]

The Criminal Court for Corruption and Malfeasance Cases as well handles corruption cases related to land and accepted the case against former key Pheu Thai Party figure Yongyuth Wichaidit in October 2016. Wichaidit has been accused of abusing his authority while selling 732 rai (1.2 square kilometres) of monastic land owned by Wat Thammikaram to Alpine Real Estate Co and Alpine Golf & Sports Club in 2002. In August 2017 The Criminal Court for Corruption and Malfeasance Cases sentenced Wichaidit to two years in prison, which has been upheld by the Appeal Court in 2019.[284]

3.2.2. Juvenile and Family Court

In Thailand, various child HRDs, such as the 15-year-old Wanphen Khunna who reported that villages in the Loei Province were environmentally affected by the gold mining industry (chapter 2, challenge 1), have become victim of judicial harassment of business enterprises and defamation charges have been filed against them. In order to protect Juvenile in prosecutions, the RTG has established the Juvenile and Family Court and Its Procedures Act B.E. 2553 (2010) which regulates the Juvenile and Family Courts[285] which are part of the Court of First Instance.[286] According to Section 97 of the Act, when (criminal) cases are filed against the juvenile, which is considered over the age of 15 but not exceeding the age of 18 years old, the Court that has jurisdiction over the case has the power to transfer the case to the Juvenile and Family Court having jurisdiction. Further, according to Section 99 of the Act, "no injured person shall institute a criminal prosecution in the Juvenile and Family Court unless a permission from the Director of the Observation Centre having jurisdiction over the juvenile has been obtained".[287] The Director will investigate the case and determine whether such permission should be given. However, whenever the Director will decline permission to prosecute the case, the injured person could file a request with the Court for permission to prosecute the case. Consequently, the Court will summon the Director of the Observation Centre and will order as he or she deems appropriate.[288] In the case of Wanphen Khunna, it can be seen that based on the provisions of the Act, Thung Kham Co. Ltd. was unable to file a lawsuit against her.[289]

Even though HRDs are enabled to bring their cases to the Courts of Justice, Courts have proven to be an ineffective remedy for HRDs in the context of BHR. Of the few cases that have been brought to court, remedy was not or only partially accessed. First of all, HRDs experience obstacles bringing their cases to court as courts charge high legal fees and processes are complex. Secondly, as can be seen in the cases discussed, police investigations into human rights violations of HRDs often fail and lack sufficient evidence which results in the fact that courts and public prosecutors are unable to issue warrants of arrest or examine cases. Consequently, suspects and alleged perpetrators do not receive appropriate punishment or prosecution. Thus, the inability of

the police to conduct effective, independent, transparent, and inclusive investigation is the main obstacle for HRDs seeking remedies through the Courts of Justice System.

Further, in cases of judicial harassment (such as SLAPP lawsuits and defamation) of HRDs in the context of BHR, victims are often unable to access remedy through the Courts of Justice System as Thailand has not yet enacted anti-SLAPP legislation. So was the case filed by Andy Hall against a SLAPP lawsuit dismissed by the Criminal Court for Corruption and Misconduct Cases because there was 'no unlawful acting when filing defamation charges against Hall in 2013'.[290]

3.3. State-based non-judicial grievance mechanisms

Besides judicial grievance mechanisms, the RTG has various non-judicial grievance mechanisms in place which provide remedy and protection to persons whose rights are violated, who have been unfairly treated by State officials or who have been unjustly accused of committing an offence. The most significant institution in Thailand responding to human rights violations is the NHRCT. Further, the MoJ established various institutions which provide remedy, including the RLPD; Justice Fund, and the DSI. Besides that, the MoJ established the Witness Protection Act and the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Cases Act B.E. 2544 (2001) in order to provide remedy. Besides that, the Ministry of Interior MoI) has established Dhamrongtham Centres in each province which provide remedy to those ill-treated by civil servants under the supervision of MoI.[291] Lastly, the RTG can prevent harm of business enterprises and government institutions to HRDs through its' NAPs.

3.3.1. National Human Rights Commission of Thailand

The NHRCT is the most significant institution responding to human rights violations in Thailand. The NHRCT was established in accordance with the Constitution of Thailand of 1997[292] and is mandated to investigate and report on acts or omissions amounting to human rights violations and propose appropriate solutions. Further, NHRCT may forward issues and opinions to relevant judicial institutions and provide recommendations on the amendment of laws to the parliament or cabinet for the promotion of human rights. The NHRCT is the focal point of contact to receive complaints about potential human rights violations.[293] In 2017, the NHRCT has set complaints related to BHR, community rights, natural resources management, and the protection of HRDs as its top priorities[294] and received 41 complaints related to judicial harassment of HRDs between 2014 and 2017.[295] Complaints can be filed via phone, post, email, and in-person by victims of human rights abuses, human rights related private organisations or by the NHRCT itself. Once a complaint is received, the NHRCT will assess the situation and determine whether it amounts to a human rights violation and falls under its' mandate. If it does, the NHRCT will investigate the case and if evidence of human rights abuse is found, investigation reports will be produced. Based on the reports, the NHRCT will provide policy recommendations to relevant agencies or persons and will propose measures to resolve the case.[296] In the event agencies or persons do not comply with NHRCT's recommendations, the NHRCT may report directly to the Prime Minister or the Parliament for further action if deemed necessary.[297] In 2016 and 2017, the NHRCT investigated seventeen cases of HRDs threatened by State authorities and businesses, particularly stemming from the mining and extractive industries.[298]

Even though the NHRCT receives numerous complaints and is the most significant institution responding to human rights violations, there are various aspects that weaken the institution's effectiveness. First of all, the NHRCT does not have the power to implement its proposed measures, enforce its recommendations or to punish companies.[299] Secondly, in September 2017, the NLA adopted the new draft Organic Law on the NHRCT[300] which entered into force in December 2017.[301] The law prescribes that the then-current Commissioners were to be removed from the Commission and were to be replaced by junta appointees. Section 34 (4) of the Organic Law mandates the NHRCT to rebut inaccurate or unfair reporting of human rights situations in Thailand.[302] As a result of the Organic Law, it is likely that the effectiveness of the NHRCT as a remedy for HRDs in the context of BHR will decrease as the NHRCT will be less independent from the government and would therefore defend the government's arguments rather than HRDs.

3.3.2. The Rights and Liberties Protection Department

In 2002, the RLPD under the MoJ was established in order to respond to the increasing number of human rights violations in Thailand. The vision of the RLPD is "to promote and to integrate greater human rights protection with innovations towards universality level".[303] The RLPD is mandated to develop systems and dispute resolution mechanisms, coordinate with public and private sectors, ensure that those affected will receive remedy in accordance with the law concerning remedy and compensation of victims and defendants in criminal cases, and protect witnesses in accordance with the Witness Protection Act.[304] The RLPD provides victims with free legal counselling, a free helpline, legal clinics at 81 locations throughout Thailand, and procurement of lawyers during investigation proceedings. Lastly, the Department provides State compensation for innocent victim's injuries in the event of a crime committed by others and for accused persons who are declared not guilty based on clear evidence.[305] Most complaints filed at the RLPD are with respect to land rights and HRDs' disappearances.

Ms. Pitikarn Sitthidej, the director-general of the RLPD reported in September 2018 that the budget allocation for 2018 had been fully utilised to compensate victims of crime and false justice before the end of the year. So has the Department paid 294 million THB ($9.4 million) to 5,611 victims of crime and 5,918 million THB ($1.9 million) to victims of false justice between October 2017 and May 2018. In order to be able to compensate the remaining victims, the central fund granted the RLPD additional 210 million THB ($6.7 million).[306] However, even though a great amount has been provided to victims of crime and false justice, it is unknown whether compensation has been provided to HRDs in the context of BHR. Further, even though the RLPD is the main governmental body in charge of the protection of HRDs, its initiatives have not made any genuine progress in the provision of effective remedy to HRDs. For example, the RLPD provides witness protection for criminal offences and shelter when needed, but this programme does not cover HRDs per se. Besides that, in 2014 the Department established a Working Group to develop measures for the protection of HRDs at risk[307] which includes ensuring compensation and remedy in cases of murdered HRDs. However, Ms. Pairchaiyapoom, Officer at the Human Rights Law Division at the RLPD, reported that due to internal conflicts the work had been transferred from one division to another and so far, no progress has been made.

3.3.3. Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Cases Act B.E. 2544 (2001)

The Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Cases Act B.E. 2544 (2001) has been established under the RLPD under the MoJ. The Act is in accordance with the 1997 Constitution which includes that access to remedy shall be provided by the State to parties aggrieved from the action of other parties in case no other remedy is available. The law is applicable to all, regardless of race, nationality, religion, language or other status.[308] Applicants are able to apply for compensation within one year from the date the accused has been aware of the offence or one year from the date that the Court has permitted withdrawal of the case for reason that the accused had not committed an offence. 'Damages' covered under the Act include (1) expenses for medical treatment; (2) damages in the case where an injured person has died; (3) loss of earnings during the period the person has been injured, and (4) damages for other losses the Committee deems appropriate. The Committee on Determination of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case will determine whether assistance will be provided to an injured person based on the gravity of the offence, the condition of the injured person, and the opportunity of the injured person to receive compensation by other means. Following Section 20 of the Act, accused persons eligible for compensations must (1) be the accused prosecuted by a public prosecutor; (2) be taken into custody during trial, and (3) not be the one who committed an offence.[309] Of all cases discussed in chapter 2, only in the case of Ms. Pranee Boonrat compensation had been granted to a family in the case of death of a HRD under the Act.

3.3.4. Justice Fund

The Justice Fund, established in 2006 in order to assist the most vulnerable to access legal assistance,[310] is regulated by the Justice Fund Act B.E. 2558 (2015) under the Office of the Permanent Secretary of the MoJ. The Justice Fund has the objective to be a source of funding for expenses related to the provision of assistance to defendants in litigation, petition for temporary release, legal knowledge, and the violation of human rights. The Office of the Justice Fund has the duty to receive applications for assistance under the Act[311] which can be submitted in all provinces, districts, subdistricts, and villages within Thailand. The Justice Fund Office does not

only receive applications but also investigates cases and provides opinions for the consideration of its' sub-committee. The sub-committee will then inform relevant parties of their consideration results, establish contracts, procure lawyers, and follow the processes of legal cases.[312]

Whether assistance in litigation or to persons whose human rights have been violated will be provided to applicants depends on (1) the person's behaviour; (2) the status of the applicant, and (3) the opportunity that the person might receive assistance under other laws. Whether a defendant will be considered to receive assistance for temporary release depends on whether the person would cause trouble to witnesses or evidence or cause any danger. In the event of human rights violations, an applicant may be considered for an assistance grant if (1) expenses for medical treatment are required; (2) the person whose rights have been violated is death; (3) compensation for the absence of income due to inability to work is required, or (4) compensation is required for other damage as the Committee deems appropriate.[313]

From 2006 to 2014 the Justice Fund Office has received 12,894 applications for assistance. Of all applicants, only 5,583 had received assistance. In 2015, as a result of the establishment of the Justice Fund Act B.E. 2558 (2015), the expansion of the Justice Fund to 76 provinces, and an established network which forwards assistance requests to the Justice Fund Office, the Justice Fund Office received 90.92* more applications compared to 2014.[314] However, it is unknown how many applicants have received assistance in 2015, and whether those who received assistance include HRDs in the context of BHR.

3.3.5. The Department of Special Investigation

The DSI was established under the MoJ in 2002 in order to investigate Thailand's most complex criminal cases. DSI operates independently from the RTP. DSI is mandated to dismantle organised crime that causes serious harm to public order, morale, national security or Thailand's economy. DSI's focal points of investigations are cases related to (1) forest encroachment; (2) human trafficking; (3) terrorism, and (4) passport fraud.

With respect to cases of HRDs in the context of BHR, it has to be noted that these HRDs are often viewed as a threat to national security and the country's economy. As it is DSI's mandate to protect both aspects, it is unlikely that DSI is willing to effectively resolve cases of violations of HRDs in the context of BHR. This can be seen in the case of disappeared human rights lawyer Somchai Neelapaijit: DSI had investigated the disappearance for over eleven years but closed the case because no suspect had been found.[315] Further, in 2017 DSI said not to investigate the case of Billy's disappearance (Chapter 2, Challenge 7) due to insufficient evidence and a lack of witness testimony.[316]

3.3.6. Witness Protection Act

The Witness Protection Act B.E. 2546 (2003)[317] is established under the MoJ. Under the Act, eligible witnesses are provided with a new place of accommodation; daily living expenses for a period not exceeding one year; assistance in order to change names; means of proper living, including training and education; bodyguard service, and other actions necessary to secure witnesses' safety. Witnesses eligible for protection are those in cases (1) under the law on narcotic drugs, money laundering law, anti-corruption law or customs law; (2) of sexual offence under the Penal Code relating to the luring of a person for the sexual gratification of another; (3) of criminal offence in the nature of organised crime under the Penal Code; (4) punishable with at least ten years of imprisonment, and (5) the Witness Protection Bureau deems appropriate to provide protection.[318] Considering the provisions of the Act, witnesses in cases of HRDs in the context of BHR are unlikely to be eligible for witness protection measures. Therefore, the Witness Protection Office is an ineffective remedy to HRDs in the context of business and human rights. Further, according to NGO reports, the Witness Protection Office has not been provided with sufficient officials with the required expertise and does not provide prompt assistance in cases of looming danger. Further, a lack of clear procedures weakened the mechanism and contributed to the increasing vulnerability of those who speak out against human rights violations.[319]

3.3.7. The Centre for Rights and Liberties Protection in Criminal Cases

The Centre for Rights and Liberties Protection in Criminal Cases is the new name of the "Centre for Reconciliation and Peaceful Means". The Centre has been established following the Court of Justice's policy to ensure standards in protecting all person involved (the accused, defenders, victims, and witnesses) in criminal

cases concerning liberties and human rights.[320] The Centre focuses particularly on serious cases such as killings in which mediation is usually insufficient and where compensation has yet to occur.[321] The Centre offers victims information about their rights, liberties, and court processes. The accused will as well be provided with basic information about his or her legal rights.[322] Besides that, the Centre covers punishment and provides compensation.[323]

So far, there is no information available about the number of applicants or assistance that has been provided or received. It is as well unknown whether the Centre deals with cases of HRDs in the context of BHR.

3.3.8. Dhamrongtham Centres

Dhamrongtham Centres, established in 1994 under the MoI, are located in each province and chaired by the Provincial Governor. Dhamrongtham Centres are mandated to receive complaints and petitions from citizens who are ill-treated by civil servants, employees of state enterprises under the supervision of the MoI, subdistrict or village headman, or any staff-bureaucrat-employee from any administrative office.[324]

Dhamrongtham Centres as well received complaints from HRDs in the context of BHR. In 2015, villagers in Tak district were threatened by military officers that law enforcement would be used against those who showed resistance to the SEZ which is to be built in the district. As a response to the threats, villagers submitted their complaint to the Dhamrongtham Centre in Tak.[325] It is unknown whether the complaint has been processed and effective remedy has been provided to the villagers.

3.3.9. National Action Plan

In order to prevent human rights violations caused by business enterprises, Thai citizens can share their concerns with regards to government-supported development projects through NAPs developed by specific departments of the RTG. Citizens are able to do so by providing input in the form of complaints, feedback, and recommendations during public hearings at the central and sub-regional levels. However, in order for NAPs to be an effective remedy to HRDs in the context of BHR, the process utilised by businesses and the government needs to be fair and just and in line with international standards. The process must include EIAs and health impact assessments, the process must be free from corruption, the process must respect the principle of FPIC, and complaints, recommendations, and feedback gathered during public hearings have to be implemented into the Plan. However, in the context of Thailand, NAPs have proven to be an ineffective remedy to HRDs in the context of BHR. This is reflected in the NAP on BHR, as in 2017, the government co-organised with Manushya Foundation and the Thai BHR Network four regional dialogues, as well as expert meetings during which comments and recommendations of civil society and communities were gathered. However, in 2018, recommendations provided by civil society were not reflected in the NAP.[326]

4. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPs) TO PROTECT, RESPECT AND REMEDY THE PROTECTION OF THE HUMAN RIGHTS DEFENDERS

4.1. Pillar I & Pillar III - The duty of the State to protect HRDs and to ensure effective access to remedies

According to the UNGPs, States must take appropriate steps to ensure that when business-related human rights violations occur, those affected have access to effective remedy. The State should take appropriate steps to investigate, punish, and redress business related abuses when they occur. In the context of Thailand, it can be concluded that grievance mechanisms established by the RTG do not provide effective remedy to HRDs in the context of BHR. The ineffectiveness of the mechanisms is caused by the fact that they are not aligned with the UNGPs.

Thailand's judicial grievance mechanism which deals with most of the cases related to HRDs in the context of BHR, the Court of Justice, has proven to be an ineffective remedy to HRDs: in the cases that have been brought to court by HRDs, remedy was not or only partially accessed. This is caused by the fact that the Court of Justice is not aligned with the UNGPs as the system is not protected from corruption and political interference which results in the fact that investigations are not promptly conducted and perpetrators do not receive punishment

due to a lack of evidence. This can especially be seen in the event of killings of HRDs, for example in the case of the members of SPFT from the Klong Sai Pattana Community (Chapter 2, Challenge 6) in which four HRDs were killed. Out of four, two investigations have been stopped due to insufficient evidence. Ineffective police investigations into cases of HRDs affected by business operations result in the fact that courts and public prosecutors are unable to issue warrants of arrest or examine cases and suspects and alleged perpetrators do not receive appropriate punishment or prosecution. The fact that investigations are not conducted in an appropriate manner is often caused by corruption[327] as both the police, as well as the Judiciary are not protected from corruption and political interference.[328] Even though the Office of the Judiciary is established as an independent official organisation with the status of a juristic person,[329] businesses indicated that is common for them to pay bribes in order to obtain favourable judicial decisions.[330] Businesses as well reported that land administration is the most corrupted division and that enterprises are required to provide 'gifts' to officials in order to receive construction permits.[331] This affects the protection of environmental and land rights defenders, as they are often pushed back by government authorities while fighting for their lands and their livelihoods. This can for example be seen in the case of Thepa in which 17 HRDs were arrested while demonstrating against the Coal-fired power plant (Chapter 2, Challenge 2). Further, since the coup in 2014, the Judiciary has been highly politicised under the rule of the NCPO and judgments are often influenced by third parties who use extra-legal means.[332]

Further, according to UNGP 26, judicial mechanisms can only be effective when states ensure that they do not erect barriers which prevent legitimate cases from being brought to courts. However, in the case of Thailand, there are two major barriers that prevent HRDs who are victims of violations of business enterprises from bringing their cases to court. HRDs in the context of BHR are often from marginalised groups and belong to the low-income class. They often lack financial resources to afford high legal fees required, as well as the legal knowledge of the judiciary system and its procedures. HRDs experience difficulties in securing legal representation which results in the fact that they are unable to access grievance mechanisms and receive remedy. Various state-based non-judicial institutions, such as the RLPD and Justice Fund offer legal assistance and financial resources to those in need and eligible for assistance so that they are able to receive justice. However, as can be seen in the cases in chapter 2, only few HRDs have made use of such institutions and even less have received assistance. This indicates that (1) HRDs are often unaware of such institutions; (2) procedures to apply for assistance are complex and challenging, and (3) HRDs in the context of BHR are considered ineligible for assistance. This as well indicates that the government has not put sufficient effort into creating public awareness and understanding of grievance mechanisms and how they can be accessed. Moreover, the government has failed to address the needs of marginalised groups at each stage of the remedial process, including access, procedures, and outcome, as prescribed in the UNGPs.

4.2. Pillar II & Pillar III - The responsibility of businesses to respect the obligation to protect HRDs and to ensure effective access to remedies

Principle 18 addresses the need for businesses to consult HRDs; to consider them as a vital expert resource; and to recognise them as watchdogs, advocates, and facilitators.[333] The commentary to Principle 18 asserts that "To enable business enterprises to assess their human rights impacts accurately, they should attempt 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. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including HRDs and other civil society actors".[334]

The 2017 report of the United Nations Special Representative on HRDs to the UNGA also addresses this link between Pillar 2 and HRDs in the following manner: "Attacks against defenders are committed on a daily basis by business enterprises. Whether the link is direct or indirect, all business enterprises have an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations". The responsibility of a business to respect human rights as affirmed by the UNGPs, includes acting with due diligence to avoid infringing the rights of others and to address adverse impacts linked to the company's own business activities and its business relationships. The UNGPs apply to all businesses, regardless

of their size, sector, location, ownership, and geographic scope of their activities, and they apply in all situations."[335]

Discussing the rise of companies from non-OECD economies as investors and capital exporters, the report highlights that these economies are often not part of international initiatives for corporate social responsibility (CSR) or have not adopted an effective framework to ensure it.[336] While a few Thai companies have a degree of experience when it comes to CSR, through initiatives at the Association of Southeast Asian Nations (ASEAN) level, these completely neglect corporate accountability. The RTG's commitment to implement the UNGPs attempts to address this gap, but so far Thailand's overseas investments have already given rise to a number of violations committed abroad in the context of big development projects.

The responsibility of businesses to respect human rights includes two aspects. While the first is a negative duty to refrain from violating rights, the second is a positive obligation of states to support a safe environment that enables the actions of HRDs in every country in which they are operating. In order to fulfil this obligation, consultation with defenders is necessary to understand the issues at stake and barriers that impede their work.[337] Further, Guiding Principle 16 encourages businesses to issue a human rights policy statement. While a growing number of companies has adopted such statements, few of them pay attention to the situation of HRDs. The Special Rapporteur recommends the issuance of these commitments to recognise the legitimacy of HRDs, setting a baseline expectation that indicates a company will not interfere with their legitimate work. Such statements should be issued after a collaborative consultation with HRDs.[338]

The report of the Special Rapporteur in accordance with Guiding Principle 22 of the UNGPs also addresses the vital role played by HRDs in the company requirement to conduct HRDD, the need for engaging HRDs in the decision making-process surrounding disengagement, the responsibility of businesses to cooperate with proceedings of judicial and non-judicial grievance mechanisms to ensure HRDs have access to remedy, and the relationship between investors/private institutions and development banks on the one hand and HRDs on the other.[339]

Even if the UNGPs do recognise a role for HRDs in HRDD, there is so far minimal practical guidance for businesses in this regard. While no common reference point has been developed for all stakeholders, a number of good practices have been emerging.[340] Recognising this reality, the UNWG on BHR has identified opportunities where it can play a role in the support and reinforcement of existing efforts on this issue. These include: [341]

- Development of guidance on the normative and practical implications of corporate responsibility to respect human rights as set forth in the second pillar of the UNGPs in relation to HRDs, based on consultations with a range of stakeholders including but not limited to HRDs, civil society, and businesses. This guidance serves as a useful reference point for civil society groups that are conducting advocacy and awareness-raising; governments seeking to improve corporate respect for human rights across jurisdictions, and companies aiming to stay in the lead on the implementation of the UNGPs.
- Facilitate exchange and coordination between different experts and stakeholders on this subject.
- Support efforts to identify potential new coalitions and concrete collective actions to be undertaken.
- Continue to use the annual UN Forum on BHR organisation in collaboration with OHCHR, to sustain attention on this critical issue.

5. 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

Protection against SLAPP cases in the domestic legislation of Thailand: the need for a specific anti-SLAPP legislation

Looking at existing legal provisions that help protect against SLAPP cases, according to section 21 of the Public Prosecution Organ and Public Prosecutors Act (2010), public prosecutors potentially have the power to refuse accepting SLAPP cases.[342] It states that: "Should a public prosecutor find that a criminal prosecution will be of no use to the general public, will affect the national safety or security, or will impair significant interest of the State, he shall refer his opinion to the Attorney General who may then render an order of non-prosecution".[343]

In a successful application of this provision, on 9 March 2018, the public prosecutor of Pathumwan Municipal Court made the decision not to indict 28 out of 39 pro-election protesters, on the basis that the prosecution would not benefit the public.[344] During their visit to Thailand, the UNWG on BHR in its recommendations to the RTG, urged them to ensure the utilisation of Section 21 vigilantly to screen out criminal defamation cases that are filed in an attempt to harass HRDs.[345] **This is an isolated case where section 21 of the Public Prosecution Organ and Public Prosecutors Act (2010) has been enforced to protect HRDs. However, this application does not guarantee that all judges in Thailand will enforce section 21 to protect HRDs as an effective anti-SLAPP measure. Manushya Foundation and the Thai BHR Network urge the enactment of a specific anti-SLAPP legislation.**

5.1. Good Practices & Guidelines led by Multi-stakeholders' Initiatives

5.1.1. Model Law for the Recognition and Protection of HRDs

On 21st June 2016, a Model National Law for the Recognition and Protection of HRDs was launched by the International Service of Human Rights (ISHR) to provide support for the implementation of international human rights law on the rights and protection guaranteed to HRDs, including the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms at the domestic level.[346] Developed following an in-depth analysis of international and regional human rights instruments along with resolutions and recommendations provided by the UN mechanisms and special procedures including from treaty bodies and Special Rapporteurs,[347] this model law aims to fulfil three primary purposes. These are: (a) to serve as a guide to States in the development of law, policy, and institutional mechanisms; (b) to function as a tool for HRDs to advocate for legal recognition and protection of their work; and (c) to operate as a mechanism for States and civil society to assess and monitor the implementation of existing law and policy.[348]

This model law is unique in its constitution as it was developed following consultation with 500 HRDs from over 110 countries around the world, with its contents revised and finalised by 28 of the world's leading jurists and experts on human rights.[349] This was also synthesised after a comprehensive analysis of legal research from over 40 countries and jurisdictions.[350] To ensure 'a supportive legal framework and effective access to justice'[351] by HRDs, the model law consists of clear legal provisions that set out and reinforce the obligation of the State, it's institutions and authorities to protect and promote the work of HRDs as well as those that prevent, examine and remedy violations.[352] To achieve this goal, the model law also outlines the role of HRDs in defending rights, while providing for a mechanism to ensure their protection, accompanied by commentaries and designed to be adaptable to national contexts and systems.[353]

However, for this model law to be effective in the domestic context such as within Thailand, it would have to be bolstered with political support, will, and resources to ensure its implementation. In addition, it has to be accompanied by complementary measures such as an independent judiciary, an effective national human rights institution, as well as by providing international and regional institutions and mechanisms with access to the system.

5.1.2. 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 ground-breaking development, Adidas has set a bar in 2016 by issuing a general corporate policy statement[354] in support of HRDs. FIFA's human rights policy also makes mention of HRDs by committing to "respect and not interfere with the work of both human rights defenders who voice concerns about adverse human rights impacts relating to FIFA and media representatives covering FIFA's events and activities. Where the freedoms of human rights defenders and media representatives are at risk, FIFA will take

adequate measures for their protection including by using its leverage with the relevant authorities".[355] 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.[356] Individual companies have also issued statements in support of HRDs in specific cases in Angola (Tiffany & Co) and Thailand (S-Group).[357]

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

The CHRB is a multi-stakeholder initiative which utilises a methodology to assess the performance of businesses in line with human rights standards, including the UNGPs amongst other international instruments and standards set therein.[358] This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.[359] One of its indicators evaluates if a business is committed to respecting the rights of HRDs be ensuring it 'publicly commits to not tolerating threats, intimidation, physical or legal attacks against HRDs, including those exercising their rights to freedom of expression, association, peaceful assembly, protest against the business or its operations.'[360]

5.1.4. Creation of a multi-stakeholder platform and process for the protection of digital rights

The Global Network Initiative (GNI) is an initiative to protect and promote privacy and freedom of expression in the technology sector,[361] through contributions from companies, investors, academics, and civil society including human rights organisations and those that promote press freedom.[362] To support free speech and expression as well as to protect privacy, the GNI has provided a framework for company decision-making in the form of Principles and Implementation Guidelines that draw on the International Covenant on Civil and Political Rights and the UNGPs.[363] As part of their work, this group also collectively engages with governments and institutions around the world to ensure the promulgation of laws and policies to protect and promote privacy and freedom of expression.[364]

5.1.5. Positive action taken by NGOs and CSOs for the protection of HRDs in relation to business activities

Oxfam has been partnering with a number of organisations, including the Danish Institute for Human Rights and the Canadian organisation Rights and Democracy, to develop tools and training material to conduct community-based human rights impact assessments (HRIAs). Their efforts have led to some companies demonstrating some level of engagement with HRDs.[365] The Coalition for Human Rights in Development, a coalition of CSOs, social movements and community groups, has been formed to ensure that all development finance institutions respect, protect, and fulfil human rights.[366]

5.2. Good Practices & Guidelines led by Governments' Initiatives

5.2.1. Canadian Government - Responsible Business Conduct Abroad

The Government of Canada has recognised the role of business enterprises in promoting and protecting human rights. Therefore, the Canadian government expects Canadian companies operating abroad to respect human rights in their operations and supply chains, and to consult HRDs as an important resource while recognising that they are vulnerable to attacks. The government expects its business enterprises to do so through aligning their practices with internationally recognised standards, including the UNGPs. Moreover, in order to guide Canadian companies abroad, in March 2019,[367] the Global Affairs Canada developed the 'Responsible Business Conduct Abroad' which outlines how the private sector can support HRDs. The Business Conduct describes how the private sector could (1) decrease the likelihood of HRD-issues arising, and (2) respond when a HRD-issue arises.[368]

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

6.1. 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 arbitrary detention, criminalises defamation and infringes on basic freedoms, by constricting civic space in line with international obligations such as General Assembly Resolution 53/144 and the EU Guidelines on HRDs.	Repeal or amend NCPO Order 7/2014, head of the NCPO Orders 3/2015 and 13/2016, Sections 326-328 of Thailand's Penal Code, the 2015 Public Assembly Act, Section 14 of the 2007 Computer-related Crime Act, and the Cybersecurity Bill.	NCPO, NLA, Ministry of Digital Economy and Society (MDES)	Protection of specific rights such as the right to freedom of expression, the right to freedom of association and assembly, the right to access information, and the right to public participation. Timeline: 3 years – 2019-2021
Review and amend measures adopted under the Constitution of 2017 and the interim Constitution of 2014.	Amend Articles 44, 47, 48, and 279 of the 2014 interim Constitution and Articles 265 and 279 of the 2017 Constitution.	NLA	It must be reviewed using international obligations, the UN Human Rights Committee Concluding Observations, and UNGPs. Timeline: 2 years – 2019-2020
Priority Area 2	**Adoption of law and policy for the legal recognition of HRDs and the violation of their rights**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Adoption of the provisions in the General Assembly Declaration on HRDs as a binding national legislation.	This legislation must provide recognition to HRDs by setting out a legal definition of "human rights defenders". State obligations in this document should include the development of protection mechanisms to ensure the physical and psychological safety; protect HRDs from unlawful interference with their privacy and from attack, threat or criminalisation; ensure access to information relevant to obtain accountability and appropriate remedies.	NLA, MoJ, MoFA	This legislation must be developed in consultation with HRDs and complimented with the provision of specific examples, including in relation to businesses and the local context. Timeline: 2 years – 2019-2020
Inclusion of HRDs in the National Human Rights Plan of 2019-2023.	The provisions in the Human Rights Plan must recognise, support and protect HRDs.	RLPD, MoJ	It must include clearly outlined results and outcomes that are expected, along with a timeline. Timeline: 1 year – 2019

Ratify the ICPPED, according to the commitment of the NLA on 10 March 2017 that it is yet to comply with.	Following the ratification of the ICPPED, adopt the draft Act on Prevention and Suppression of Torture and Enforced Disappearance revising it to ensure that it complies with the ICPPED, particularly on retaining Section 11 and 12 of the Bill and amending Section 32 to remove the supervisory role in command responsibility from just being 'direct'.	NLA, MoFA, MoJ	The Act on Prevention and Suppression of Torture and Enforced Disappearances should include the definition of enforced disappearance, its non-derogable nature, non-refoulment, criminal liability for acts beyond direct commission, all command responsibility, and provision of safeguards. Timeline: 1 year - 2019
Priority Area 3	**Addressing root causes**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
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 the rights of HRDs or places a barrier on their work.	MoJ, RLPD	A conducive legal, institutional, and administrative framework for HRDs 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 legislation, policy, and practice do not marginalise HRDs and infringe on their rights by only responding to the needs of businesses with influence.	MoJ	Any instances of interference by non-state actors in the peaceful exercise of rights of individuals, must be rectified using precautionary, preventive, and reparative measures. Timeline: 2 years – 2019-2020
End impunity of perpetrators responsible for serious human rights violations affecting the rights of persons and the work of HRDs, whether these are businesses or members of the government that contribute to violations by businesses.	Effective accountability measures must be set out, 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 HRDs.	MoJ	To ensure a safe and enabling environment for HRDs, these measures must be independent and transparent. Timeline: 1 year - 2019
Ensure transparency in the process, content, and implementation of the NAP and its processes with respect to affected communities, including HRDs.	This is done by explaining to HRDs how their input in the NAP was utilised, by publishing and disseminating drafts of the NAP through official platforms, by furnishing reports summarising implementation, and by	MoJ, RLPD, and other line ministries	This would result in a more effective NAP process, protection of affected communities and a more secure environment for businesses. Timeline: 1 year - 2019

	making information on all consultations throughout the process as accessible as possible.		
Priority Area 4	**Right to freedom of expression**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
To provide a remedy against SLAPP cases, adopt standalone anti-SLAPP legislation or provisions that protect HRDs from intimidation and silencing of criticisms against businesses, while repealing any provisions that contribute to it.	The anti-SLAPP legislation or provisions, including Sections 161/1 and 165/2 of the Criminal Procedure Code should protect all HRDs from judicial harassment in the form of civil and criminal lawsuits, while providing for access to justice, the right to a fair trial, the right to appeal and other forms of remedy in case of the violation of rights. There must be a clear outline of the purpose, the definition of terminology used such as 'bad faith', and applicable to cases filed by public prosecutors and private individuals. The burden of proof in these provisions must be placed on the business to prove that the case filed is not frivolous and has a legitimate basis.	NLA	Such provisions must meet the approval of civil society organisations and HRDs, who are affected by them. Timeline: 1 year - 2019
Protect HRDs from SLAPP cases, pending the enactment of effective anti-SLAPP legislation amongst other measures that may amount to reprisals.	Public prosecutors must be informed of Section 21 of the Public Prosecution Organ and Public Prosecutors Act (2010) on the issuance of non-prosecution orders for SLAPP cases filed against HRDs, by companies or by the police on behalf of companies. They must be instructed to refrain from appealing cases against HRDs who are acquitted in the Court of First Instance.	MoJ, the Attorney General	There must be a decline in the number of prosecutions under the SLAPP legislation and this will be a step towards guaranteeing the protection of HRDs. Timeline: 1 year - 2019
Remove law, policy, and refrain from using extra-legal means that require or pressure the private sector to unnecessarily or disproportionately interfere with freedoms.	Any demands, requests, and measures to take down digital content or access customer information must be based on validly enacted law and authorised by an impartial and competent authority.	NLA, MoJ	The demand, request or measure must be the subject to external and independent oversight and demonstrates a necessary and proportionate means of achieving one or more legitimate aims. Timeline: 2 years – 2019-2020

Priority Area 5	**Review and adoption of a domestic regulatory framework for mandatory due diligence in companies, that is inclusive of the protection of HRDs**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Adopt legislation that creates mandatory due diligence obligations for companies in line with principle 17 to 21 of the UNGPs.	HRDDin the form of HRIAs must include assessment of actual and potential human rights impacts; integration and acting upon finding; tracking the effectiveness of responses; and communicating how impacts are addressed.	NLA, The Ministry of Environment and Natural Resources (MNRE)	This must be done by companies in Thailand, their subsidiaries, subcontractors and suppliers and in consultation with HRDs, at regular intervals during the business cycle. Timeline: 2 years – 2019-2020
Implement law and policy which legitimises and guarantees the participation of communities and HRDs in business-related decisions.	This must include the right to form trade unions and the right to FPIC.	NLA, MoJ	This must be done in consultation with HRDs and include early as well as meaningful stakeholder engagement with all potentially affected communities. Timeline: 1 year - 2019
Adopt legislation requiring companies to publicly disclose relevant information.	This must disclose information on corporate structure and governance, contracts, license concessions, business relationships, scientific information about company operations, and company filings.	NLA, MoJ	This must be done in consultation with HRDs. Timeline: 2 years – 2019-2020
Priority Area 6	**Strengthening implementation of international obligations**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Public procurement contracts by businesses should be regulated to protect human rights and international obligations.	These contracts must require HRDD, transparency, and independent monitoring.	The associated ministries involved	Indicators to be monitored include the protection of fundamental freedoms, particularly the freedom of expression and association. Timeline: 1 year - 2019
The State must issue an open invitation to mandate holders, and by immediately accepting any pending country visit requests.	Respond to the 2010 and 2012 requests for an invitation for a second visit by the UN Special Rapporteur on HRDs.	MoFA, MoJ	The State must respect and deliver on commitment to upholding international standards of human rights, specifically on the work on UN Special Procedures. Timeline: 1 year - 2019
Train and educate public officials and civil society on the role of HRDs, their rights	All officials responsible for promoting and regulating business activities must be	Ministry of Social Development	Illustrations in the local context, sector specific and community specific examples

and the protections they are guaranteed.	trained on HRDs. Awareness campaigns should also inform communities of human rights and the role of those who defend them, particularly in the context of businesses.	and Human Security (MSDHS), the NHRCT, MoJ	must be provided. Timeline: 2 years – 2019-2020
Towards its extraterritorial obligations (ETOs), the state can protect HRDs through their foreign policy and through active diplomatic actions.	States can put in place policies and guidelines to encourage and support a safe and enabling environment for protecting and promoting the rights of HRDs in host countries. This can be achieved through supporting positive steps, public statements, diplomacy on behalf of defenders, observing and supporting trials of HRDs, and facilitating dialogue between HRDs and businesses.	MoFA	Personnel in embassies must be trained and provided instruction on proactively following and soliciting information on the situation of human rights related to businesses and that of HRDs in the host country. Timeline: 2 years – 2019-2020
Priority Area 7	**Protection of groups that are marginalised or excluded**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
In the development of a regulatory framework to recognise, protect and promote HRDs, particular attention must be paid to protect women HRDs.	Establish development frameworks that are gender responsible particularly on obtaining FPIC, provide resources to authorities at all levels to respond to violence against WHRDs, address threats and attacks they are specifically vulnerable to, and ensure remedies and its access are strengthened to be gender appropriate to provide them fair redress.	RLPD, MoJ, NLA	WHRDs must feel better protected as a result of the adoption of these action-based activities. Timeline: 2 years – 2019-2020
Consult and cooperate in good faith with indigenous peoples affected, through their own representatives (who may also be HRDs) or institutions.	These acts must be towards ensuring their FPIC 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 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Timeline: 2 years – 2019-2020
6.2. PILLAR III: ACCESS TO REMEDY			
Priority Area 1	**Access to remedies and compensation**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
For complaints filed against state authorities and law enforcement officials, ensure prompt investigation through	Strengthen the Ombudsman, the Administrative Courts and the NHRCT at the national and local levels	MoJ	Perpetrators must be brought to justice through these processes.

an impartial, independent, and an autonomous team of experts.	through capacity, resource, and knowledge building on BHR.		Timeline: 1 year - 2019
Effective remedies should be guaranteed to persons, with a legitimate interest in the cases of HRDs who are suspected of being victims of enforced disappearances.	Policy measures must be implemented to ensure that relatives, representatives or counsel of these individuals are provided access to proceedings before the court or other mechanisms to access remedies with respect to the disappearance.	MoJ	These must be provided for in line with Article 17(2)(f) of ICPPED and the Report of the Working Group on Enforced Disappearances in its General Comment on the right to the truth in relation to enforced disappearances. Timeline: 1 year - 2019
Amend the Criminal Procedure Code for stronger witness protection.	Add express provisions on penalty for intimidating witnesses, and criminalising acts that obstruct justice.	NLA, MoJ	Provisions on witness protection must be stronger as a result. Timeline: 2 years – 2019-2020
Accelerate the process to amend the Witness Protection Act for stronger witness protection.	It must define intimidation and harm; cover criminal defendants who report torture; detail procedures on obtaining new identity and for immediate protection in emergency situations; specify power, role and functions of the Witness Protection Office and staff; and allow enforcement of directives to police and other agencies.	NLA, MoJ	The law on Witness Protection must be stronger as a result. Timeline: 2 years – 2019-2020
Take measures, in policy and practice, to ensure that the security of HRDs can be guaranteed when accessing grievance mechanisms.	Raise awareness on witness protection; increase the staff and resources assigned to the Witness Protection Office; run it as an independent agency; provide specialised training for Witness Protection Officers; conduct trials in camera; and inform judges, public prosecutors, lawyers, doctors on witness protection.	MoJ, the Respective Courts, NHRCT	It must result in a streamlined process of protection for HRDs and others approaching the grievance remedy system. Timeline: 1 year - 2019
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.	Any processes and proceedings must be withdrawn or refrained from. Compensation must be provided for the actual loss of livelihood, the loss caused by unintended deficiencies, and the cost incurred as a result of legal proceedings.	The Public Prosecutors Office, NHRCT	Compensation must be full, adequate, and extend to HRDs and their family members. Timeline: 1 year - 2019

Increase the capacity and budget of as well as access to the Justice Fund for actual harm and risk against HRDs and their families, both for business related human rights violations and against judicial harassment through SLAPP cases.	Provisions must be put in place to prioritise access by HRDs who apply for assistance, without any hindrance including in the form of legal aid and independent legal counsel.	MoJ	Accessibility to the Justice Fund must be extended to include stateless and indigenous HRDs. Timeline: 3 years – 2019-2021

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

7.1. PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT

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**
Allocation of sufficient resources towards the fulfilment of the implementation of UNGPs.	This must extend to the online and offline work of the company, including due diligence through HRIAs, rights-oriented design and engineering choices, stakeholder engagement, strategies to prevent or mitigate human rights risk, transparency and effective remedies.	Businesses	A successful example is the design and implementation of corporate human rights accountability provisions, drawing on both internal and external expertise and with meaningful input from customers, affected rights holders, civil society and HRDs through measures such as community HRIAs. Timeline: 2 years – 2019-2020
Partnering of companies with HRDs who can assist them in the realisation of their UNGP and SDG commitments, through the implementation of compliant policy and practice.	HRDs can help companies produce successful evaluation tools to assess a company's human rights due diligence including actual and potential human rights risks, such as the Corporate Human Rights Benchmark which features an indicator of the commitment to respect HRDs.	Businesses	This approach can reduce costs and operational obstacles by minimising the risk of community conflict, which can result in interrupted operations, security costs, human resource loss to crisis management and litigation. Timeline: 1 year - 2019
Abstain from advocating for legislations that restrict civic space, 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 an open civic space which is beneficial to them and their economic well-being as well.	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 and HRDs should contribute to the full respect of freedoms of expression, association and assembly, 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
Priority Area 2	**Abstain from policies and actions that violate human rights**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Integrate and act on the findings of HRDD processes, by determining ways to exercise leverage or deciding whether to terminate relationships when leverage cannot be built following evaluation.	This can be achieved by taking action in light of the companies' normative responsibility under the UNGPs to prevent and mitigate human rights impacts; prioritising and addressing severe impacts; and by understanding how the company is involved if by causing or contributing to them.	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 suppliers and others they are in a business relationship with. Timeline: 2 years – 2019-2020
Take all necessary and lawful measures to ensure that business practices do not cause, contribute or remain complicit in human rights abuses.	Avoid State requests to participate in censorship or surveillance; structure arrangements with corporate partners to ensure all parties uphold human rights responsibilities; and build leverage in pre-existing business relations to prevent or mitigate adverse human rights impact.	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. Timeline: 2 years – 2019-2020
Priority Area 3	**Business contribution to the promotion of the rights of HRDs**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Promote best practices of businesses that protect human rights, including those of HRDs and are engaged in positive action in this respect particularly in countries and sectors where there is a high risk.	Corporation can assist with raising awareness amongst businesses, by helping translate this information to suit the local context or sectoral practices. This can be bolstered by practical examples.	Businesses	The 'duty of care' of parent companies must extend to countries where corporations have headquarters, country offices, subsidiaries or suppliers. Timeline: 2 years – 2019-2020
Assist in the scaling up of existing positive practices in countries, sectors and industries that respect and	Business networks, business leader summits, and industry associations can be leveraged for this purpose.	Businesses	This can be done to ensure compliance with international standards and obligations.

promote HRDs and civic freedoms.			Timeline: 2 years – 2019-2020
Take measures to promote change in legislation and address the adverse impact of businesses on HRDs and human rights in countries where materials are being sourced from, even if not responsible for these violations.	These measures can be a negative step to prevent a violation or a positive step aimed at promoting the rights of individuals including HRDs.	Businesses	This is towards a broader ethical responsibility that businesses owe to industries, economies, and people that they have benefitted from over the years. Timeline: 3 years – 2019-2021
Help by providing direct assistance to HRDs, such as by furnishing funds for the legal support of HRDs.	While providing support, the supporting business can utilise this as a means to influence the litigating corporations to change their attitude and response to HRDs.	Businesses	Appropriate safeguards must be put in place while undertaking such support. Timeline: 1 year - 2019
7.2. PILLAR III: ACCESS TO REMEDY			
Priority Area 1	**Drop Legal Actions against HRDs initiated by Businesses**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
End all legal proceedings against individuals facing investigation, charges, or prosecution initiated by businesses for engaging in legitimate activities protected by international human rights law or for addressing violations.	Any processes and proceedings must be withdrawn or refrained from. Compensation must be provided for the actual loss to 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 HRDs and their family. Timeline: 1 year - 2019
Priority Area 2	**Grievance Mechanisms processes of Businesses**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Incorporate explicit human rights components into existing customer service and ethics-related grievance mechanisms.	Business can incorporate this in different ways, such as through hotlines that are accessible to users. It should permit cases to be brought by others on behalf of those who fear the process because of marginalisation.	Businesses	They must meet the effectiveness criteria in the UNGPs. Timeline: 1 year - 2019
Priority Area 3	**Uphold Digital Rights: Right to privacy and freedom of expression online**		
Recommendations (Goal to be achieved)	**Action**	**Lead Agency/ Jurisdiction**	**Performance Indicators/ Timeline**
Resist government and individual requests to restrict or remove content.	If the order or request lacks a legal basis or is disproportionate, it must be challenged before the court.	Businesses	Only requests and orders that are legitimate under international human rights law should be entertained.

			Timeline: 2 years – 2019-2020
Challenge court orders related to the restriction of access to content that violates legitimate rights.	Appeal such court decisions that restrict legitimate rights to access or access to legitimate information.	Businesses	Legitimate rights under international human rights law should not be violated. Timeline: 2 years – 2019-2020
Develop clear redress mechanisms for individuals whose content that is legitimate under international human rights law, has been taken down.	Companies should notify users that their content has been removed with basic reasons for the decision, with an opportunity to challenge those decisions.	Businesses	These mechanisms must meet a due process threshold as defined by international human rights law, with the due process safeguards explained clearly in company policies. Timeline: 2 years – 2019-2020
Provide information on content removed based on terms of service, at the request of the government, private parties, or proactively by the company itself.	This information must be provided in a disaggregated format.	Businesses	Internal guidelines for the removal of content should also be published. Timeline: 1 year - 2019

ENDNOTES

1 Manushya Foundation, *Business & Human Rights Strategy*, (2017), available at: https://www.manushyafoundation.org/business-human-rights

2 Manushya Foundation, *Meeting Report: Coalition Building Workshop on Business & Human Rights – Towards a 'Thai BHR Network'*, (18-20 November 2018), available at: https://www.manushyafoundation.org/coalition-building-workshop-report

3 The four regional NBA dialogues were conducted by Manushya Foundation as follows: The Northern Regional NBA Dialogue in Chiang Mai (29 - 30 January 2017), The Northeastern Regional NBA Dialogue in Khon Kaen (23 - 24 February 2017), The Southern Regional NBA Dialogue in Hat Yai (20 - 21 March 2017) and The Eastern and Central Regional NBA Dialogue in Rayong (30 - 31 March 2017). Please access the NBA Regional Dialogues Report here: Manushya Foundation, *Meeting Report: Regional Dialogues for the CSO National Baseline Assessment (NBA) on Business and Human Rights*, (2017), available at: https://www.manushyafoundation.org/nba-dialogues-report

4 Manushya Foundation conducted two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the National Action Plan on Business and Human Rights. The First Experts' Meeting aimed at Informing the CSO NBA on BHR in Thailand in Bangkok (2-3 September 2017) and the Second Experts' Meeting focused on Findings and Recommendations for CSO BHR NBA in Bangkok (28 February to 1 March 2018). Please see: Manushya Foundation, *Executive Summary: First Experts Meeting to inform the independent national baseline assessment on business and human rights in Thailand, 2-3 September 2017*, (2017), available at: https://www.manushyafoundation.org/single-post/RELEASE-OF-FIRST-BHR-NBA-EXPERTS-MEETING; and Manushya Foundation, *Executive Summary: Second Experts Meeting to discuss the findings and recommendations of the independent national baseline assessment on business and human rights in Thailand, 28 February-1 March 2018*, (2018), available at: https://www.manushyafoundation.org/single-post/2018/07/31/RELEASE-OF-SECOND-BHR-NBA-EXPERTS-MEETING

5 Manushya Foundation & Thai BHR Network, *Independent CSO National Baseline Assessment on Business and Human Rights in Thailand*, (2019), available at: https://www.manushyafoundation.org/bhr-cso-nba-thailand

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NOTES

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.