

THE RIGHTS OF INDIGENOUS PEOPLES IN BUSINESS CONTEXTS IN THAILAND

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



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

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Manushya Foundation
& Thai BHR Network,
*the Rights of Indigenous Peoples in
Business Contexts in Thailand. Thematic
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For more information about the
NBA on BHR, please contact :



Emilie Pradichit
Founder & Director
Manushya Foundation

emilie@manushyafoundation.org



Ananya Ramani
Human Rights Research and
Advocacy Officer
Manushya Foundation

ananya@manushyafoundation.org



About the Thai BHR Network

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

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



Emilie Palamy Pradichit
Founder & Executive Director
Manushya Foundation

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ABBREVIATIONS

AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
BHR	Business & Human Rights
CCPR	Human Rights Committee
CEDAW	Committee on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CERD	Committee on the Elimination of Racial Discrimination
CIPT	Council of Indigenous Peoples in Thailand
CSO	Civil Society Organisations
FIO	Forest Industry Organization
FPIC	Free, Prior and Informed Consent
HRD	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant On Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organisation
IPs	Indigenous Peoples
MoJ	Ministry of Justice
NAP	National Action Plan
NBA	National Baseline Assessment
NCPO	National Council for Peace and Order
NGO	Non-Governmental Organisation
NHRCT	National Human Rights Commission of Thailand
NIPT	Network of Indigenous Peoples of Thailand
OECD	Organisation for Economic Co-operation and Development
RCEP	Regional Comprehensive Economic Partnership
RFD	Royal Forest Department
RLPD	Rights and Liberties Protection Department
RTG	Royal Thai Government
SDGs	Sustainable Development Goals
UN	United Nations
UNGPs	UN Guiding Principles on Business & Human Rights
UPR	Universal Periodic Review



INTRODUCTION: Manushya Foundation's Business & Human Rights Strategy

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

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

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

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

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

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

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



These four priority areas of focus influenced the content of the Government National Action Plan on Business and Human Rights, following our key four priority areas. Thus, this Thematic Assessment Chapter falls under the Priority Area 2 and is part of Manushya Foundation and the Thai Business and Human Rights Network's Independent CSO National Baseline Assessment (NBA) on Business and Human Rights in Thailand.⁵

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

Role of Manushya

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

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

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



METHODOLOGY

The Thematic Assessment Chapter on the Rights of Indigenous Peoples in Business Contexts in Thailand was written by indigenous peoples' rights experts and its methodology relies on primary and secondary data and resources. Firstly, Primary sources, including voices, concerns, cases, experiences and recommendations of local communities and experts, were collected directly from Manushya Foundation's BHR activities; including:

- Four Regional National Baseline Assessment (NBA) Dialogues on BHR conducted from January to March 2017⁶;
- Four regional capacity building workshops on Business and Human Rights to demystify corporate accountability to HRDs⁷ held in May-June 2017;
- Two Experts Meetings to get input from national, regional and international experts to inform its NBA and ultimately provide guidance for the development of the National Action Plan on Business and Human Rights⁸;
- EU delegation visits to the Indigenous Women's Network of Thailand on 16 January 2018 at the Inter Mountain Peoples' Education and Culture in Thailand Association (IMPECT) offices⁹ and EU Field visit to Huay Hoi Karen Indigenous Village on 15 March 2018¹⁰; and
- The Business & Human Rights Coalition Building Workshop held on 18-20 November 2017.¹¹

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 indigenous peoples' rights in business contexts in Thailand, including compliance of the Thai legal framework with the UN Guiding Principles on Business and Human Rights (UNGPs). The research included a systematic literature review of UN human rights bodies' and NGOs' reports, observations and recommendations; online news articles; expert papers; and other publications.

Limitations of the Thematic Assessment Chapter

The *Thematic Assessment Chapter on the Rights of Indigenous Peoples in Business Contexts in Thailand* is informed by our desk research of existing secondary evidence, coupled with input and first-hand accounts gathered throughout Manushya Foundation's business and human rights strategy. The Thematic Assessment Chapter does not have the pretention to present the most comprehensive assessment of the situation on the ground, but only translates realities as available through the conduct of a literature review of secondary evidence existing in English language, and captures first-hand accounts shared by indigenous peoples, Thai local and affected communities who engaged in our BHR's strategy. These individuals comprise the Thai BHR Network and their communities, who do not represent the opinions of all civil society organisations working on business and human rights in Thailand. Further, the *Thematic Assessment Chapter on the Rights of Indigenous Peoples in Business Contexts in Thailand* does not provide a list of all the cases of rights violations and adverse impacts caused by the activities of Thai companies. Nevertheless, the case studies and voices selected demonstrate the challenges faced by indigenous peoples on the ground, and are representative of trends and patterns of adverse business conducts and operations. Finally, the *Thematic Assessment Chapter on the Rights of Indigenous Peoples in Business Contexts in Thailand* does not analyse the level to which Thai companies comply with the UNGPs and existing sustainability and legal standards as enshrined in Thai policies.

This **Thematic Assessment Chapter falls under the Priority Area 2 'Community Rights, Indigenous Peoples, Land-Related Rights, Natural Resources & The Environment'** of Manushya Foundation and the Thai BHR Network's Independent CSO NBA on BHR in Thailand.¹² This Thematic Assessment Chapter focuses on the duty of the Thai State, the legislative and policy gaps and failures to protect indigenous peoples' rights in business contexts. It also provides an overview of the challenges faced by indigenous peoples 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 into account for their human rights abuses, and for Thai companies and transnational corporations to ensure responsible business conducts in Thailand, while respecting indigenous peoples' rights.



RIGHTS OF INDIGENOUS PEOPLES IN BUSINESS CONTEXTS IN THAILAND

CONTEXT

As per a 2009 UN estimate, indigenous peoples numbered at around 370 million in over 90 countries globally, make up about 5 percent of the world's population.¹³ Representing 5,000 distinct cultures, they occupy only 20 percent of territory worldwide, but have been protecting 80 percent of the world's biodiversity.¹⁴ Nevertheless, the treatment of indigenous peoples has resulted in them accounting for 15 percent of the world's poorest.¹⁵ Two-thirds of the world's indigenous peoples live in Asia while recent estimates of indigenous peoples' organisation show their number in Asia as high as 411 million.¹⁶ In Thailand, according to the National Statistical Office in its 2010 nationwide census of the population, the country had a population of 65.5 million, of which 62.3 million (95.1%) were Thai citizens and 3.2 million were non-Thai citizens (4.9%).¹⁷ On 24 January 2018, the Department of Provincial Administration of the Ministry of Interior, announced that in 2017, Thailand had a population of 66.2 million, of which 65.3 million are Thai citizens, whereas 875.8 thousand are non-Thai citizens.¹⁸ Since indigenous peoples are not recognised under the Thai laws, no official census has been conducted to determine the number of indigenous peoples living in the country. The Royal Thai Government recognises solely the existence of ethnic groups/minorities. According to the Master Plan for Development of Ethnic Groups in Thailand (2015-2017), Tai ethnic groups comprise a majority of the population, and there are fifty-six ethnic groups additionally recognized in sixty-seven provinces.¹⁹ These groups continue to use their traditional practices and pass on their folk wisdom from generation to generation²⁰ and they are around 6.1 million in number, which is more than 9% of the total population of the country.²¹ According to the Network of Indigenous Peoples in Thailand,²² these ethnic groups have been categorized into four groups based on their place of residence, including those living in the highlands;²³ in the plains;²⁴ in the coastal areas;²⁵ and in the forests²⁶. Geographically, indigenous peoples are concentrated in three regions of the country: fishing groups or *chao lay* and a small number of hunter gatherer groups in the South;²⁷ small groups in the east and north-east Korat plateau; and highland people or the *chao khao* in the north and north-west.²⁸

Indigenous Peoples Movement in Thailand

Started in the early 2000s by leaders from the 'hill tribes', the indigenous peoples movement expanded to include 30 ethnic groups with the potential of all fifty-six groups joining the movement.²⁹ The indigenous movement in Thailand officially came into being in 2007 when the Network of Indigenous Peoples of Thailand (NIPT) was established to campaign for the recognition of indigenous peoples and their rights by the State and the public. The NIPT thereafter, has attempted to establish the Council of Indigenous Peoples in Thailand (CIPT) as a quasi-state functionary to represent, protect and promote the rights of indigenous peoples in Thailand by advising the State on policies and plans with relation to them.³⁰ Regrettably, efforts to achieve legal recognition for indigenous peoples and the CIPT in the legislative and constitutional framework have been unsuccessful. Instead, the CIPT has moved forward independently with National Assemblies organised in 2014, 2015³¹ and 2016³² with attendance growing to more than 190 members representing 40 indigenous groups.

Indigenous Peoples in Business Contexts in Thailand

In 2018, Thailand was classified as the most unequal country in the world, according to the Credit Suisse Global Wealth Databook 2018, which indicated that the richest 1% Thais controlled 66.9% of the country's wealth.³³ At the same time, as per a 2014 report, 62% of private land is owned by 10% Thais – mostly chief executives of Thai transnational corporations, while the remaining 90% population had less than a hectare per person.³⁴ Further, 70% of private land is neglected and lies idle whereas around a million small-scale farmers have no land at all and at least 1.5 million households have to lease others' land for inhabitation and cultivation,. In this context, indigenous peoples are among the most excluded and disenfranchised populations in Thailand, with highland indigenous communities among the poorest populations.³⁵ Since the military government, the National Council for Peace and Order (NCPO), came to power after the May 2014 coup, indigenous peoples have faced the impacts of restrictive forestry policies undermining their right to their ancestral lands. The acceleration of economic growth and tourism projects has also negatively impacted their livelihoods, surrounding environment, and ways of living. Further, the political climate since the 2014 coup has exacerbated insecurity for human



rights defenders (HRDs), who are now at greater risk of judicial harassment, arbitrary detention, physical violence and killing, in particular environmental human rights defenders defending land and indigenous rights from corporate capture. An analysis by the UN Special Rapporteur on the situation of Human Rights Defenders in 2016 indicates that Thailand is amongst the ten most dangerous countries for environmental defenders.³⁶ While indigenous communities often face limited protections due to non-recognition of their rights very often compounded by their lack of nationality, indigenous leaders, human rights defenders and community members, who have challenged the abuses, have usually been subjected to harassments and reprisals, including even disappearance and killing.

This thematic chapter focusing on the *Rights of Indigenous Peoples in Business Contexts in Thailand* is a summary of a Working Paper with the same title and is included in the independent CSO National Baseline Assessment (NBA) on Business and Human Rights in Thailand, developed by Manushya Foundation and informed by members of the Thai BHR Network.

1. RELEVANT INTERNATIONAL & NATIONAL LEGAL AND POLICY FRAMEWORK

1.1. International Obligations

Thailand has ratified seven of the nine core human rights treaties. Although the core human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) do not specifically address the rights of Indigenous peoples, the treaty bodies have elaborated on these rights in their general comments and provided recommendations for them (which are further analysed below). In addition, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly in 2007 and Thailand voted in favour of the Declaration,³⁷ and is thus relevant herein.

1.1.1. International Covenant on Civil and Political Rights (ICCPR) – ratified by Thailand

Article 27 of the ICCPR provides that ‘persons belonging to ethnic, religious or linguistic minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.’³⁸ The Human Rights Committee (CCPR) in its General Comment No. 23³⁹ on article 27 has affirmed that ‘culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples and thus the right to enjoy culture may include such traditional activities as fishing or hunting and the right to live in reserves protected by law, which may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.’⁴⁰

1.1.2. International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by Thailand

The Committee on Economic, Social and Cultural Rights (CESCR) has integrated the rights of indigenous peoples in a number of its general comments, including in General Comment No. 21 on the right of everyone to take part in cultural life⁴¹ and General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities⁴². The latter specifically tackles this issue through its affirmation that States and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all aspects that may affect their rights, including to their traditional lands, territories and resources.⁴³ Further, it necessitates that States specifically incorporate the impact of business activities on indigenous peoples into human rights impact assessments and for businesses to obtain the free, prior and informed consent of indigenous peoples while exercising human rights due diligence.⁴⁴ Discrimination against indigenous women and girls, sharing of benefits with indigenous peoples, their right to control intellectual property over their cultural heritage and their accessibility to effective remedies, and protection of indigenous leaders at risk are other issues covered in this general comment.⁴⁵



1.1.3. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) – ratified by Thailand

The Committee on the Elimination of Racial Discrimination has repeatedly stated that discrimination against indigenous peoples falls under the purview of the Convention.⁴⁶ In its General Recommendation No. 23 on the rights of indigenous peoples, the Committee called upon States to ‘recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.’ In circumstances when Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.”⁴⁷

1.1.4. United Nations Declaration on the Rights of Indigenous Peoples – Thailand voted in favour

The Declaration is the most important international instrument on indigenous peoples’ rights, which sets out minimum standards for the survival, dignity and well-being of indigenous peoples in a comprehensive manner. The Declaration recognises the individual as well as collective rights of the Indigenous peoples,⁴⁸ including the right to equality and non-discrimination,⁴⁹ the right to self-determination,⁵⁰ the rights to lands, territories and resources,⁵¹ and their economic, social and cultural rights such as those highlighting cultural equality and distinctiveness⁵². The Declaration also calls upon states to ensure free, prior and informed consent⁵³ of indigenous peoples prior to undertaking an act which could have a direct impact on them, such as their removal from their land or territories;⁵⁴ adoption and implementation of legislative or administrative measures that may affect them;⁵⁵ the occurrence of military activities on their territory;⁵⁶ storage or disposal of hazardous material on their land and territories;⁵⁷ and approval of any project affecting their land, territory or other resources⁵⁸. Although Thailand voted in favour of the adoption of the Declaration, it maintains that it does not have indigenous peoples in the country if it follows the commonly used definition of ‘pre-colonial or pre-settler societies’.⁵⁹

1.1.5. Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization⁶⁰ - Thailand has not ratified

The definition of indigenous peoples can be drawn from the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), which states that the Convention applies to:

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present states boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which its provisions apply. It provides the same rights to “indigenous” and “tribal” peoples – the terms are used interchangeably in international human rights discourse.

1.1.6. 2030 Agenda for Sustainable Development⁶¹

With the promise to leave no one behind and reach the furthest behind first, the 2030 Agenda on Sustainable Development includes six references to indigenous peoples; three times in the political declaration; two in the targets under target 2.3 of Goal 2 with regard to zero hunger and target 4.5 of Goal 4 on education and follows this up with calls for indigenous peoples’ participation. Moreover, the overarching framework of the 2030 Agenda contains several elements that can go towards articulating the development concerns of indigenous peoples. Of significance is the fact that human rights principles and standards are strongly reflected in the 2030 Agenda. The overall focus on reducing inequalities is also relevant to the protection of indigenous people, who



are almost universally in situations of disadvantage as compared to other segments of the world population. Further, indigenous peoples are also referred to in the global indicator framework, which also includes indicators on land rights relevant to indigenous peoples.⁶²

1.1.7. Other standards relevant to the rights of indigenous peoples

- **Convention on Biological Diversity, 1993:**⁶³ In Article 8, it provides that States shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities and promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
- **UNESCO Universal Declaration on Cultural Diversity (2001):**⁶⁴ In Article 4, the Declaration provides that defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity, which implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples.
- **The Paris Agreement (2016) under the United Nations Framework Convention on Climate Change:**⁶⁵ Article 7 of the Agreement acknowledges the role of indigenous peoples' traditional knowledge in addressing climate change and reminds States to respect, promote and consider their human rights obligations when taking action to address climate change. States, party to the Agreement, also acknowledge that climate change adaptation should be based on and guided by knowledge of indigenous peoples, as appropriate.

1.2. Regional Commitments

1.2.1. ASEAN Declaration on Cultural Heritage

This declaration is the only regional instrument that makes reference to indigenous peoples, whereby it provides that ASEAN 'will cooperate for the enactment of international laws on intellectual property, in order to recognize indigenous populations and traditional groups as the legitimate owners of their own cultural heritage.'⁶⁶

1.3. National Constitution, Legislations & Policies

1.3.1. Constitutional Framework – Lack of recognition of Indigenous Peoples

The Constitution of the Kingdom of Thailand 2017 does not recognize indigenous peoples. However, under the Directive Principles of State Policies, it provides that "The State should promote and provide for different ethnic groups to have the right to live in the society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, in so far as it is not contrary to public order or good morals or does not endanger the security of the State, health or sanitation."⁶⁷ While the constitution places duty on the state to promote and provide the right of the ethnic group to live as per their cultures, it places ambiguous restrictions in the exercise of the right in the name of "public order" and "security of the State".⁶⁸ At the same time, the Constitution did away with the provision of the earlier 2007 and 1997 Constitutions for the right of persons assembling as a traditional community to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and the environment [including biological diversity] in a balanced [sustainable] manner [and persistently as provided by law].⁶⁹ The 2017 Constitution has also placed an important role on public participation. Stemming from section 41 of the Constitution, 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.⁷⁰ Moreover, Section 78 of the Constitution prescribes the participation of people and communities in various aspects of the development of the country, in the provision of public services at both national and local levels, in the scrutiny of the exercise of State power, in combating against dishonest acts and wrongful conducts, as well as in decision making in politics and in all other matters that may affect them.⁷¹ Despite the explicit provisions, challenges remain to access to information and participation and consultations for individuals and communities affected by development policies and projects and business conduct while the



provisions fall short of international standards for the rights of indigenous peoples, including to free, prior and informed consent.⁷²

1.3.2. Nationality Act (1965) – Indigenous Peoples' struggle in accessing citizenship

Disenfranchisement of legal citizenship is one of the fundamental challenges for indigenous groups in the country, particularly in the northern highlands. Various mechanisms to grant temporary residential status have also been set up by the government, but although it is estimated that at least 50% of the indigenous people have a legitimate claim for citizenship, many of them lack the relevant paperwork and proof is thus complicated to obtain. Some positive amendments⁷³ have been made to the Act in 2008, whereby children of ethnic groups born before 1992 should be granted Thai nationality and measures be adopted to offer them birth certificate where there are without one. However, the NIPT has pointed out that the right to obtain nationality still affirms “jus sanguinis” (right of blood principle) and denies “jus solis” (right of soil or birth right citizenship principle). Consequently, children born in Thailand to indigenous peoples can still be considered as having entered the country illegally and be denied access to all social security systems.⁷⁴

Indigenous Peoples' struggles in sustaining their livelihoods and in living on their ancestral lands, mainly located in forest protected areas or National Parks

1.3.3. Forests Act (1941)⁷⁵

The Act defines a forest as any land which has not been acquired by an individual under the Land Code and defines forest products as products which naturally originate from or were found in forests, such as timber, plants, bird nests, honey, stones and charcoal. As per the Act, logging of timber and the collection of natural forests products are regulated by a system of licensing and royalty payment. The Act prohibits the use of forestland unless the land has previously been declared as an agricultural area by the authorities. Regarding penalties, any individual found in illegal possession of restricted timber can face up to 5 years in prison and/or a fine of 50,000 baht.⁷⁶ For illegal possession of restricted forest products, the prescribed penalty is up to one year in prison and/or a fine of 10,000 baht.⁷⁷ Moreover, any product made out of restricted forest produce can be seized. This caused an adverse impact on indigenous community due to the fact that for some, forest is considered to be a way of life.

1.3.4. National Park Act (1961)⁷⁸

The Act provides for the declaration of certain land areas as “National Park” land by royal decree, if the Thai government deems that such land possess features that should be maintained and preserved for the benefit of public education and leisure. Additionally, it prohibits actions that may endanger wildlife or deteriorate/alter natural resources. If an offender is found guilty of occupying national park land, he or she may face imprisonment up to five year and/or a fine not exceeding 20,000 baht. Allowing cattle to enter the park is punished with imprisonment of up to one month and/or a fine not exceeding 1000 baht.⁷⁹ The law has a negative impact on the Indigenous community because most of the population stays in their ancestral land which is composed of the forests; therefore, the state can declare the area a National Park and evict them at any given time.

1.3.5. Land Code Act (1954)⁸⁰

The Act applies to all land surface, including mountains, hills, streams, ponds, canals, swamps, marshes, waterways, lakes, islands and sea coast. It provides for various tenure types, including ownership and use rights, and established a Committee for the allocation and reallocation of State and private land. It governs land surveys, titling and registration. It allowed a period of 180 days from the promulgation of the Act for submission of claim by people occupying land to prove their claims over the land and any land not vested by a person was established as State property.

Through above laws, the State asserts control over all land and natural resources and provides that land can be either State owned or privately owned. In the process, much of the traditional lands and resources of indigenous peoples is classified as state forestlands while the State disregards the rights of indigenous peoples



that have been living in these forests for generations even before the creation of the modern State, and whose livelihoods have traditionally been intricately connected to resources from the forests. Since indigenous peoples never had any title deed, their occupation or use of their ancestral land is deemed illegal and they are prohibited from using forest products.

1.3.6. National Reserved Forest Act (1964)⁸¹

The National Reserved Forest Act (1964) was established for the preservation of forests and defines forest as land that has not been acquired by anyone, including mountain, rivulet, marsh, canal, swamp, waterway, lagoon, island and sea shore. Under the Act, the Ministry of Natural Resources and Environment can declare any forest to be national reserved forest by issuing a regulation to that effect. It provides for anyone to claim rights over land in a national reserved forest area by submitting an application to the concerning authority within 90 days of the issued regulation.⁸² If the Committee find that the claimant's rights have been affected, appropriate compensation is to be paid. Under certain circumstances, permission can be granted to live in a reserved forest area. The Act also bans certain activities, although such activity can be permitted upon granting of a license.⁸³ This Act further erodes indigenous peoples' rights to their land and natural resources w. The fact that only monetary compensation is offered in exchange of land is problematic since money cannot compensate for loss of livelihoods. Because of the traditional lifestyle of indigenous peoples, it becomes challenging for them to change how they earn a living. Moreover, it often happens that they do not receive the information that their land has been declared national reserved forest until it is too late to make a claim. Once again, the issue of the lack of citizenship amongst indigenous peoples is also problematic when the time to make such claim comes, and even with a citizenship, complying with all the necessary requirements to apply for a license is arduous.

1.3.7. Wild Animal Preservation and Protection Act (1992)⁸⁴

This Act empowers the Ministry of Agriculture and Cooperatives to declare any area it deems appropriate as "Wild Animal Reserved Area" to safeguard the preservation of wild animals. The Act prohibits any act that may destroy or endanger wildlife and their habitat. Section 37 and 38 prescribe that no one (except a competent officer) can enter, possess or occupy Wild Animal Sanctuaries. This Act has often drawn criticism for implying that the life of animals is more valuable than the life of indigenous peoples.⁸⁵

1.3.8. 'Return Forest Policy' & Forestry Master Plan: National Council for Peace and Order (NCPO) Order No. (2557/64) 2014/64, Order No. ((2557/66) 2014/66

NCPO Orders No. 64/2014, and 66/2014 on the 'Return Forest Policy' and a Forestry Master Plan⁸⁶ seek to end deforestation and encroachment of reserves. However, since implementation, the government's goal has been to monopolise natural resources.⁸⁷ Order 64/2014 enables government agencies to put an end to deforestation by removing encroachers on national reserve lands.⁸⁸ 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 64/2014.⁸⁹ 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.⁹⁰

1.3.9. Community Forest Bill (2019)

Recently adopted by Thailand's National Legislative Assembly, the Community Forest Bill, once enforced as law, sets out a process whereby the locals have to develop a five-year plan on the use and conservation of the forest within their community and this blueprint will undergo a process of assessment once every five years. The bill has been justified based on the fact that management of community forests is essential to ensure cooperation, food security, prevent global warming and protect people's basic rights, but it also undermines the rights of people residing in the forest to participate and make decisions on the management of the local environment.⁹¹ While it is significant that the bill provides, for the first time, legal recognition of the right of local communities to manage their forests, it also has several limitations in its scope and application, which in turn can result in the



further marginalization of those living in forests for the following reasons:⁹² (1) Community forests have been identified by the bill as those that are outside the conservation area managed by the States, thus excluding communities that are dependent on the forest and living in conservation areas designated as national parks. (2) This does not address the customary rights of ownership to land of hundreds of communities, predominantly indigenous peoples, residing in conservation areas, and thus can result in charges of trespass or their eviction particularly on the rise since the NCPO forest reclamation orders. (3) Communities that depend on and help sustain forests are disqualified from protection and discriminated against under the bill. (4) With the forest department controlling the use of resources, it further exacerbates the failure to protect land tenure, livelihood or food security for the local communities. (5) The bill does not ensure the engagement of the forest department with communities with both as equal partners.

1.3.10. Amendment to the National Parks Act, 1961 and the Wildlife Conservation Bill (2019)

Also, recently adopted with overwhelming votes in favour in the National Legislative Assembly despite strong opposition from community groups and CSOs, the amendment further restricts the rights of forest-dwelling communities to access the forest and resources therein and does not address the concerns of the communities that have lived in the forests before their designation as national park or conservation areas and thus have overlapping claims with the State. Under the amendment, conditions are due to be introduced to resolve overlapping claims, but with some limitations set, including a limited residency of 20 years. Some penalties to be imposed under the new bills are also too harsh and further threaten communities. While the government dismissed those concerns of community concerns, the community representatives were also not allowed to participate in the deliberations or any other decision-making process of the amendments.⁹³

Other recent laws and policies relevant for indigenous peoples' rights in Thailand include, among others,

- the **Minerals Act (2017)**⁹⁴, which governs the exploration, exploitation and trade in minerals other than petroleum but fails to include provisions ensuring respect for the traditional ownership rights of indigenous peoples to their lands and resources. It is expected to facilitate future exploitation in doubling the amount of land available for each surface mining permit to 600 rai (96 ha) and aligning the decision-making process for permits closer to industry stakeholders.
- the **20-year National Strategy (2018-37)**, which sets out a framework based on which all governments, current and elected, will have to design their policies and allocate their budget.⁹⁵ The National Legislative Assembly unanimously approved the Strategy with binding effect over the next 20 years and penalties for non-compliance.⁹⁶ The Strategy recognizes the rights of communities to use and benefit from their land and provides for the distribution of land possession and the access to natural resources by fixing the conflicts on forest lands. It also prescribes measures for land use with existing titles in a fair manner and to ensure distribution of land possession in appropriate sizes for equality and for the adjustment of land titles for poor and landless. It further allows for the amendment of rules on the usage of public land for people, particularly those with lower income, to work and access the land. It focuses on environmental aspects, pointing to the importance of public participation in decision making on these aspects. The Strategy further particularly targets businesses, urges them to have a good governance style and effective management and to develop social corporate responsibility, extending to both employees and clients by changing the attitude of profit and highlighting social costs. However, the application of the broad provisions of the Strategy are up to the interpretation of the National Strategy Committee consisting of 34 members – 17 ex-officio and 17 qualified members appointed by the Cabinet, which means it is made up of NCPO members and its allies and reinforces continuity in their maintenance of control for the next 20 years over Thailand's governance and legislations, even if a new democratic government were to be elected.⁹⁷ In addition, in direct conflict with above provisions, the Strategy highlights the governments' plan to push for increased economic growth. During implementation, this can ultimately prove to be an aspect that will overshadow land-related rights, and those related to the environment and public participation in the Strategy.



Regulation & Cabinet Resolutions providing minimal protection for Indigenous Peoples, for some specific cases

1.3.11. Cabinet Resolutions in 1997, 1998 and 1999

The Cabinet Resolutions dated 17, 22 and 29 April 1997 gave some recognition for people living in the forest area to attenuate the restrictions set up by above laws. The resolution provided for sub-committees at the provincial level to examine petitions and consider revoking declarations of forest land or national parks for certain areas.⁹⁸ However, another Cabinet Resolution dated 30 June 1998 revoked the resolutions. It went even further to explicitly provide for relocation of people living in protected areas, and specified that any action deemed forest encroachment was to be strictly dealt under the law.⁹⁹ Under the restrictive framework of this resolution, 85 percent of the people living in the forests could be considered to be in violation of the law.¹⁰⁰ This led to important demonstrations and protests, which in turn led the Cabinet to adopt a positive Resolution on 11 May 1999. This resolution set up a registration process for communities living in forests and stipulated that people under the verification process could not be evicted or charged with forest encroachment.¹⁰¹ At the time, local communities and NGOs largely deemed the resolution fair.

1.3.12. Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds (2010)

The Resolution could be considered somewhat positive as it provides for communities to collectively manage and benefit from State-owned land for their livelihoods while the State retains ownership of these lands.¹⁰² As of 2012, more than 400 local communities were in the process of waiting to be granted community title deeds, and only 55 community land titles had been approved.¹⁰³

1.3.13. Cabinet Resolutions on the Restoration of Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand (2010)

Even though the term “indigenous peoples” is not used, the resolutions are more positive measure in the sense that they recognise the rights of these two indigenous groups, their intangible heritages and their ethnic identity and culture. They advocate to grant them natural resource management, legal recognition and indigenous-based education with cultural pluralism undertaking. Unfortunately, the resolutions have been poorly implemented.¹⁰⁴ Progress is slow and ineffective due to bureaucratic obstacles, political instability, lack of understanding amongst State departments and the low budget allocated for activities to meaningfully implement the resolutions’ objectives.

2. PRACTICES ON THE GROUND: CHALLENGES AND IMPACTS FOR INDIGENOUS PEOPLES IN BUSINESS CONTEXTS IN THAILAND, INCLUDING SIGNIFICANT CASES

Challenge 1: Lack of Legal Recognition of Indigenous Peoples & Disenfranchisement of Citizenship

Impact

The Thai government has continued to deny legal recognition of indigenous peoples and claims that they are “not considered to be indigenous peoples but Thais, who are able to enjoy fundamental rights and are protected by the laws of the Kingdom as any other Thai citizen.”¹⁰⁵ It refers to them as ethnic groups, communities and/or “hill tribes” and has also stated that “hill tribes” are “migrants...who by nature and historical background are not indigenous to the country”.¹⁰⁶ Indigenous leaders argue against such claim of the government and assert that many indigenous groups have lived in their homelands hundreds of years even before the creation of the modern nation State. Studies show that the highland border regions in the north and northwest, where many indigenous groups have long resided, were only directly incorporated into the central Thai State as recently as the 1980s, and as a result, the indigenous groups were largely excluded from the State’s earlier administrative efforts to identify, document and regulate its national population. Further, there are numerous and complex reasons why the Thai State has long viewed indigenous groups in the highland areas as illegal migrants.



While the State, during the Cold War, came to view those groups as prime suspects of divided loyalties as a result of their cross-border movements and ties of ethnic kinship, their disenfranchisement in terms of legal citizenship and land tenure has long served the intertwined political and economic interests of the State and Bangkok elite in promoting the capitalist accumulation of indigenous lands and natural resources by way of their State enforced legal dispossession.¹⁰⁷ Due to non-recognition of indigenous peoples and their rights to their land, territory and resources as well as their disenfranchisement of legal citizenship, they have faced human rights abuses, including to their livelihoods and health, which occur more commonly in the contexts of agribusinesses and extractive operations as well as development projects in their operations. Further, their lack of citizenship critically undermines their access to social services, access to justice and legal protection.

Case of Indigenous Peoples considered as Illegal Aliens

According to estimates, over 100,000 indigenous peoples are without citizenship and have been categorised as illegal aliens. Without citizenship, indigenous peoples cannot secure their rights to land, education and freedom of movement.¹⁰⁸ Moreover, because of this status, they have been subject to arbitrary arrest, discrimination and denial of basic rights and access to social services, such as education and healthcare.¹⁰⁹ In Thailand, the current policy to register people living in remote areas as citizens requires proof that at least one parent was born in Thailand or has been awarded temporary legal status. Various mechanisms to grant temporary residential status have also been set up by the government, but although an estimated 50% of the indigenous people have a legitimate claim to citizenship, many do not have the relevant paperwork and proof is thus complicated to obtain. Without citizenship, moving to a city is illegal, which is problematic because many indigenous peoples face forced evictions from their homelands. Consequently, fear of arrest is omnipresent.¹¹⁰ Indigenous women are also at high risk of becoming victims of abuse, violence and human trafficking because of this lack of citizenship.¹¹¹

Challenge 2: Land Grabbing of Indigenous Ancestral Lands for Tourism

Impact

Land grabbing caused by tourism enterprises and projects is a significant issue for indigenous peoples in Thailand. Their ancestral land, which they have always resided on, is now being intruded upon by both the private and public actors. There are many protracted land disputes of the Chao Lay peoples involving cases of multiple claims or ownerships over lands from across southern Thailand – famous for its beaches. Those disputes are generally with hotel investors and often local and national politicians but also with the Department of National Parks while many communities also lost their lands due to language barriers when they were manipulated or forced by non-indigenous village headmen and local authorities to give up their land tenure. The disputes have particularly increased after the 2004 tsunami until when the Chao Lay were virtually unknown to the public and when many previously unknown islands were also opened up for tourism.¹¹² Beyond complex judicial processes, those disputes have also subjected Chao Lay to threats, intimidations and reprisals – often with violence – at the hands of private and State forces.

Case of Chao Lay Indigenous Community fighting back the Hotel Industry on Rawai Beach

On 27 January 2016, about 100 men allegedly hired by Baron World Trade Co. Ltd., which held the legal title deed to over 33-rai (5 hectares) of land in the public beachfront in Rawai, Phuket, tried to forcefully evict the indigenous Chao Lay villagers.¹¹³ The company sought to build a luxury villa project in the land but the Chao Lay villagers refused to leave the land, which they have occupied and used for generations and includes their ritual sites.¹¹⁴ The men blocked access of the community to the land, which affected some 250 households of more than 2,000 people. That culminated in a violent encounter between the two sides, and left at least 30 Chao Lay injured – 10 of them seriously hurt. In June, as members of the community tried to block access for the construction work, they were kicked, punched and beaten with sticks and their fishing equipment was destroyed. A further altercation took place when builders placed a wall of boulders to block access to a sacred ceremonial ground.¹¹⁵ The Chao Lay petitioned provincial and national authorities for settlement of the land dispute.



Following strong struggles and judicial fight by the Chao Lay, in January 2017, the Provincial Court dismissed the lawsuit filed by the company against the community despite title deed of the company. However, not all Chao Lay communities have been able to win back their lands like in Rawai.

Case of Moken Indigenous Community & their Ancestral Cemetery encroached by Tourism investor

On 13 October 2018, the Moken community in Takua Pa district, Phangnga, encountered an encroachment on their ancestral cemetery by business investors. They maintained that the area of the land which served as their cemetery is decreasing due to the construction of a road and the hotel nearby. On 6 February 1989, the Interior Ministry has issued a letter granting eight rai of land as a public facility which can be used as a cemetery. However, with an ever-growing rate of the tourism industry surrounding the area, a road has been constructed on the cemetery, leading the way to restaurants and shops within walking distance to the beach. A further plan was also made to build a walkway and a new hotel.¹¹⁶

Challenge 3: Indigenous Peoples Treated as Tourist Attractions with Little Benefits

Impact

While the government promotes indigenous groups and their traditional arts and cultures as tourist attractions, those representations do not fully reflect how indigenous peoples are currently faring in society. Indigenous peoples have shared concerns on the lack of consultation by the government and businesses with them to seek their consent, discuss conditions of tourism agreements and shared benefits. There are also concerns about commodification of indigenous cultures and arts, including their crafts and other products.

Case of Kayan Women

The Kayan people (also known as Padaung), who fled from Myanmar due to civil war there to Thailand, were granted temporary stay under 'conflict refugee status'. Around 500 Kayans live in guarded villages in northern Thai border where some Kayan women wear rings to create the appearance of a long neck as part of their traditions (thus also called "Long neck Karen". Many tourism companies operate tours to these villages to 'exhibit' Kayan women and traditional practices to tourists. While that has helped the Kayan women earn a living, and they have become a tourism symbol for Thailand, they still have not been granted Thai citizenship despite great efforts. As a result, they have limited access to social services and they are also not allowed to resettle outside tourist villages.¹¹⁷

Case of Akha and Karen Communities

Research studies in Akha and Karen communities have shown that they are faced with challenges on issues such as citizenship, land rights and agricultural problems despite the supposed benefits of tourism and modernization. In the context of their longstanding plight since being caught between war and conflict among countries and relocated forcibly in the name of conservation or other purposes, tourism has not been able to supplant poverty in the communities or the loss of their way of life, while there have also been problems of excessive migration out and other negative consequences.¹¹⁸

Voice from the Ground

*"It is a hugely exploitative practice of indigenous communities being used as a tourist attraction, with no benefit for them. Indigenous peoples are not against tourism but should be able to benefit from it economically themselves, as opposed to businesses using stateless indigenous groups as a way to make money while falsely promising to help them with their Thai citizenship applications."*¹¹⁹

Noraeri Thungmueangthong, Indigenous Women's Network of Thailand



Case of Reprisals

In Thailand, while tourism development has not been accompanied with full recognition and respect of rights, to compound these problems, there have been reprisals against indigenous leaders and individuals when they have tried to call attention to the human rights challenges of the communities such as statelessness. In 2016, police tried to illegally arrest an ethnic Mani man, who was attending a human rights forum, accusing him of being a stateless person travelling without permission while local officials allegedly often bring Mani nomads outside their local area to promote tourism.¹²⁰

Challenge 4: Forest Conservation/Reclamation and Forced Evictions of Indigenous Peoples

Impact

In 2014, the Forestry Master Plan was issued based on NCPO Orders 64/2014. The Master Plan was around the discourse that commercial investors' exploitation of Thailand's natural resources is responsible for deforestation and must be stopped. It has also released Order 66/2014, a supplemental directive which states that government operations must not impact the poor and landless who had lived on the land before the enforcement of Order 64/2014.¹²¹ However, implementation of the Master Plan has overwhelmingly targeted impoverished villagers and indigenous peoples who lived on their lands for decades as "investors" or alleged that local communities were being funded by wealthy investors, resulting in a complete disregard of the protection measures set out by Order 66/2014. Under the Master Plan, the government has set the goal to increase forest cover up to 40 % by 2020,¹²² which was 31.5% in 2014¹²³ – estimated at 128 million rai.¹²⁴ That means around 26 million rai has to be added, of which around 4.5 million rai overlaps with areas of indigenous peoples and local communities. It is estimated that about 10 million people live in protected areas in Thailand.¹²⁵ The Government does not recognize ethnic minorities as indigenous peoples and although the life, livelihood and culture of these communities depends on the land and natural resources, no meaningful consultation and participation in decision-making processes had been undertaken in the land management and forest conservation towards indigenous people as mandated by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹²⁶ As a result, many indigenous communities in the north, northwest and in the south have been evicted with removal and demolition of houses and properties, cutting-down of rubber trees and cultivated plants, and faced with arrest and judicial harassment.¹²⁷

Some Representative Cases

In July 2014, the Royal Forest Department in Thung Pa Ka village, northern Mae Hong Son province, claimed the land of three indigenous Pakayaw Karen families. Before that, in May 2014, the military arrested 39 Pakayaw Karens for cutting down trees in the surrounding forest to use the timber to build their homes, in flagrant violation of its own NCPO Order 66/2014. Three of them are currently serving jail sentences of 4-7 years, other were condemned to 1-3 years in jail and were bailed out, ten were fined between 10,000-20,000 baht and two died before the verdict.¹²⁸

In October 2014, two indigenous Lisu communities had their land confiscated by forest officials and military officers, who destroyed the communities' agricultural crops. After negotiations, land was returned to one community, but the other community was only allocated small plots of land for each household, which was not sufficient to sustain their basic needs, resulting in further poverty and marginalization.¹²⁹

On 27 December 2017, a group of combined forces forestry, military and police officers went to Ban Wang Kho in Ratchaburi province as part of an ongoing operation started in November 2017. The Karen villagers were informed about a forced eviction plan and were given until 31 January 2018, to relocate from the land that belonged to their ancestors. At the time, the authorities had not yet provided information on a relocation site that can accommodate up to 200 people. The villagers submitted a complaint to the NHRCT.¹³⁰



Community Expert Voice

“Much deforestation in Thailand occurred between 1975 and 1982. It is widely reported that deforestation occurred due to indigenous groups, but even the reports of the Forestry Department indicate that forests were cut for 20 years for wholesale commercial use. Now the government’s position is that forests should be increased by 40%, which has led to increased conservation and protection through the Forest Act, National Park Laws and Wildlife Conservation Areas. The enactment of these laws has led to military arrests of persons who dwell in designated reforest areas. Thailand should implement the international laws related to indigenous rights in order to protect indigenous groups from land-grabbing, forced evictions, and charges of encroachment.”¹³¹

Napaporn Songprang, Vice-Chair of Manushya Foundation
and Deputy-Director & Attorney, Center for Protection and Revival of Local Community Rights (CPCR)

At the same time, forest areas have also been claimed under different **royal projects** for the purpose of reforestation and preservation. Thereby, some land is given to villagers for housing and various farming activities are carried out under the projects. Benefits received by local people are dependent on the budgets allocated for the projects.¹³² While the royal and other government supported projects have been noted to replace opium plantations of the past, it has also been noted that they have promoted mono cropping, which reportedly encourage spread of forest fires, while the myth of indigenous peoples’ practice of shifting cultivation causing deforestation are propagated.¹³³ There has also been at least one documented report of alleged seizure of about 1,600 hectares of land used by Akha indigenous people within a national forest reserve in Chiang Rai for a royal project in 2003 without consulting them for construction of a research facility, whereby armed forest officials moved more than 1000 people and destroyed standing crops.¹³⁴ Further research is needed on potential negative impacts of such project.

Voice from the Ground

“Indigenous communities share the impact of contract farming and the royal projects on their livelihoods. Before, indigenous peoples were able to use their traditional knowledge to recycle seeds and cultivate their ancestral lands. Since the introduction of the royal projects, indigenous peoples don’t own the lands but are provided with community land titles to use the land to live, cultivate and produce. Indigenous communities are forced to buy specific seeds to produce according to the standards of the project, forcing them into debt and increasing the precariousness of their situation. While the intention behind the royal projects might be good, the impacts demonstrate the need for indigenous voices to be the driving force behind any initiative involving their community.”¹³⁵

Indigenous Karen Woman at Huay Hoi Karen Village

Challenge 5: Reprisals and Insecurity Faced Indigenous Activists and Communities for Defending their Rights

Impact

While the legal and administrative systems of Thailand have generally failed the indigenous communities in general, insecurity in the communities has grown particularly due to reprisals and intimidations against their activists. These cases highlight critical gaps in legal protections in the country. Such cases have significantly increased insecurity among community members to defend or assert their rights. It is not only forest, military or other State authorities that the indigenous communities have been insecure of, but also businesses and their hired men as reported above.¹³⁶ They also face intimidations and disputes with other communities that they often find themselves in conflict with for their lands and limited resources in their territories or resettled areas, which is exacerbated due to their lack of citizenship and land title.



Significant Cases

Disappearance of “Billy”

The case of indigenous Karen activist Porlajee Rakchongcharoen “Billy” is testimony to the failure of Thailand’s response to enforced disappearances. At the time of his “disappearance”, Billy had been working with Karen villagers and activists on legal proceedings concerning the destruction of villagers’ homes and property in the Kaeng Krachan National Park in Petchaburi in 2010 and 2011. He was arrested on 17 April 2014 on charges of “illegal possession of wild honey”. Chaiwat Limlikhitakorn, then head of Kaeng Krachan National Park was the last person to see him. Mr Chaiwat and park authorities claim he was released the same day but he has not been seen since.¹³⁷ Despite various efforts of Billy’s family for justice through courts, concerned government authorities and National Human Rights Commission of Thailand, there has been effective remedy while despite a long list of allegations against Chaiwat for serious abuses and misconduct while he was in charge of the Park, the Government promoted him to lead Thailand’s influential “Tiger Corps” forest and wildlife protection unit in May 2016. At the same time, the Government has proposed listing the Kaeng Krachan Forest Complex, including the Park, as a World Heritage Site, which the Karen communities have opposed with the condition that their land and natural resources rights in the Park should be ensured before such listing. In September 2011, Billy’s associate and another activist Tassanakamol Aobaom was also killed, apparently in relation to his activism.¹³⁸

Extrajudicial Killing of ‘Chaiyaphum Pasae’

In March 2017, Chaiyaphum Pasae, a 17-year old indigenous Lahu activist working on the rights of his community to help them gain access to a Thai nationality, healthcare and education, was shot dead by Thai military officers in Chiang Dao. The military was trying to arrest him as an alleged drug suspect, when they claim he tried to resist and even “attempted to throw a grenade at the soldiers” – one of whom claimed to have shot him in self-defense.¹³⁹ While the relatives and community members of Chaiyaphum, who himself was involved in campaigning against drug use, claim the allegations against him are false, his relatives and associates have also been intimidated. In May 2017, Lahu activist, Nawa Chaoue, was arrested allegedly for supplying drugs to Chaiyaphum.¹⁴⁰ However, after being detained for 331 days, on 24 April 2018, The Chiang Mai Provincial Court has finally acquitted Nawa on drug charges on the basis of the lack of sufficient evidence.¹⁴¹

Voice from the Ground

“My father was shot to death after he was accused of encroaching community forest and allegedly fought with the officers and thus ended his life in an armed fight. Being his daughter, I tried hard to bring justice to his death, but failed. I was brought up in Ban San Pa Hiang where the majority of people are Northern Thai and Lisu. Except for a few members, most Lisu people have not obtained citizenship. With no ID cards, members of my community, who are non-citizens, are more easily exposed to ill treatment at the hands of other people. There were times, for example, when the lowlanders’ cattle were encroaching on our farmlands. The Thai owners responded to our demand for compensation with their challenge that we better report to the police. We did not know the law provides that even without ID cards, we have our rights to receive compensation from the cattle owners. A person having no citizenship does not mean that his/her rights can be violated by anyone. However, the Lisu villagers are afraid of getting arrested, so they dare not go to the police station to report the cattle encroachment into their farmlands. Furthermore, conflict between lowlanders and Lisu people often takes place out of prejudice. It so happened that a lowland leader, in order to increase the forest areas, launched his reforest campaign into our farmlands. Thus, Lisu farmers cannot make use of their farmlands anymore, and when they went back to their farms, the lowland leader intimidated them. Some families had cleared their fields, but these were later confiscated back by the authorities. Lisu villagers feared going back to their farms again. However, the local Thai leader granted permission to his relatives to cultivate the former Lisu’s lands. Such incidences take place every now and then.”¹⁴²

Katima Leeja, Indigenous Woman from the Lisu indigenous community,
Chiang Dao district, Chiang Mai Province, Thailand



Challenge 6: Negative Environmental and Health Impacts of Extractives and Agribusiness Projects on indigenous Peoples

Impact

Extractive and agribusinesses industries are considered among the leading business sectors that very often result in human rights violations and environmental destruction. Those industries have also been associated with the highest proportion of killings of environmental and lands rights defenders every year, including in the case of indigenous leaders who are disproportionately affected.

Though Thailand carries a reputation of being a cross-border investor rather than a country with large-scale mining or agribusiness activities, there are also a number of mining and agribusiness operations linked with negative impacts on human rights, including actions such as killing and harassment of communities and defenders. However, despite large number of extractive operations in north-eastern Thailand with significant indigenous population, the reports of indigenous rights violations, or identification of affected indigenous communities, are not abundant. Similarly, small and medium scale commercial plantations has reportedly caused negative impacts on indigenous peoples; for example, with increasing rubber plantations in southern Phang-Nga, Phatthalung and Satun provinces of Thailand have reduced the forest areas, which are the main areas of food and livelihoods for indigenous Mani people. As a result, some of them have had to change their livelihoods or migrate to near lowland communities for food and engage in tourism industry, where exploitation has been alleged such as low remuneration, etc.¹⁴³

At the same time, many Thai businesses are also linked with human rights violations abroad, particularly in neighbouring countries in the Asian region like Cambodia, Myanmar and Laos, where they are also responsible for the violation of the rights of indigenous peoples.¹⁴⁴ Lack of access to information, effective public participation, and other weak procedures such as the Environmental or Environmental and Health Impact Assessments (EIA/EHIA) conducted for infrastructure, mining and energy projects through private consultants was a problem consistently raised with the UN Working Group on Business and Human Rights during its visit to Thailand.¹⁴⁵ Thailand's new Minerals Act 2017 is expected to facilitate future exploitation in doubling the amount of land available for each surface mining permit to 600 rai (96 ha), and aligning the decision-making processes for permits in favour of industry stakeholders.¹⁴⁶

Case of contamination of Klity Creek stream in Kanchanaburi

In a case demonstrating the human rights impact of the extractive industry, hundreds of indigenous Karen families were reportedly exposed to serious and irreversible health problems due to the failure of the Thai government to clean up toxic lead in Klity Creek stream in the western province of Kanchanaburi following closure of a lead-processing factory upstream. The factory, Lead Concentrate (Thailand) Co. Ltd., began operations in the mid-1960s and was ordered to close in 1998 due to pollution. However, Thailand's Pollution Control Department had no emergency plan to clean up the contamination of the factory. It also failed to implement the Supreme Administrative Court order in 2013 to take necessary and immediate steps to compensate those affected and clean up the toxic site, in accordance with a report of 2014. Further, while the Karen families were continuously exposed to high levels of lead in their water, soil, vegetables and fish, with more severe impacts among farmers and children, the Ministry of Natural Resources and Environment was commissioning an assessment to decide whether to reopen the province for lead mining.¹⁴⁷ In 2017, the Supreme Court's Environmental Division rendered a judgement and ordered a compensation of 36 million baht to 151 villagers and to rehabilitate the polluted creek.¹⁴⁸ In February 2018, the Pollution Control Department started the restoration process;¹⁴⁹ however, the removal of the lead does not cover all the affected territories,¹⁵⁰ keeping causing harm to villagers and the environment.¹⁵¹ Additionally, effects can be encountered also by other areas, since the water from the Creek flow to Mae Klong river that is used to produce water supply and food resources for other parts of Thailand.¹⁵² Nevertheless, the process should be completed by August 2020 and will include the suction of the lead from the upper and lower Klity villages.¹⁵³ Moreover, a trilateral meeting, between the government authority, community leaders and the Company appointed for the restoration, was held in April 2018 to follow up the restoration process.¹⁵⁴ As of December 2018, the compensation has not been paid yet.¹⁵⁵



Challenge 7: Concerns over Impacts of Free Trade Agreements on the rights of Indigenous Peoples

Impact

While negative consequences on the rights of indigenous peoples in business contexts in Thailand are already perceptible and well reported in the manners discussed above, there are also strong concerns about actual and potential impacts of free trade agreements on their rights, particularly as expressed by indigenous women and their organizations. The UN Special Rapporteur on the rights of indigenous peoples has contended that as they are currently conceptualized and implemented, international investment agreements, including bilateral, regional and multilateral investment treaties and free trade agreements, cause direct adverse impacts on the rights of indigenous peoples, particularly their rights to self-determination; land, territories and resources; participation and free, prior and informed consent, with documented cases of violations. She has also pointed to systemic impacts of such investments and the free trade regime, including asymmetry between States and private actors, constriction of policy and legislative space of States, loss of public funds, democratic deficit, weakened rule of law and the perpetuation of international power imbalances.¹⁵⁶

Thailand has made a number of international investment agreements which draws on investors and trade.¹⁵⁷ Currently, there have been specific concerns regarding the impact on food security and the traditional knowledge of indigenous peoples in the context of ongoing negotiations of the Regional Comprehensive Economic Partnership (RCEP) – a free trade agreement involving ten ASEAN countries and its six free trade partners – Australia, China, India, Japan, South Korea and New Zealand. The negotiations have been criticized for lack of transparency and lack of independent socio-economic and environmental assessments, being plagued by vested interests of corporate entities and devoid of public participation or effective representation of elected officials.¹⁵⁸

Amidst the RCEP negotiations, Thailand has recently introduced an amendment to its 1999 Plant Varieties Protection Act, which threatens the control of seeds by women, farmers and indigenous peoples, according to the Indigenous Women's Network of Thailand. The Act which claims that it provides a balance between communities' rights and the interests of corporations has enabled Thailand to be the largest seed exporter in the ASEAN and the fourth largest in the Asia-Pacific region.¹⁵⁹ The amendment to the Act, if adopted, can result in criminalization of the practice of indigenous peoples, particularly women, of preserving, sharing and diversifying seeds, which will have a penalty in the forms of a fine and a jail sentence; as well as for destruction of their crops if found to be in violation of a corporation's intellectual property rights to the seeds.¹⁶⁰

Specific Case on threats of RCEP

Concern has been raised about potential increase in restrictions to use and develop traditional knowledge of local herbs, which corporations have already begun patenting for profit, under the RCEP trade agreement. An example is the patent rights acquired by a company over *Pueraria mirifica*, a plant that local women in Thailand have used for decades but now can do so no longer as they run the risk of violating patent rights, which is punishable by a jail sentence and a fine.¹⁶¹ Similarly, potential impacts of large-scale land investments under RCEP on women's subsistence farming and land rights, privatization of health services and intellectual property rights on medicines, on health rights as well as overall possible consequences of investor-State dispute mechanisms on public expenditure have also been issues of concern, among others aspects.¹⁶²

Voice from the Ground

*"Seed is often synonymous with food, while food for many people is the same as life. And yet an amendment recently introduced in Thai parliaments will take seeds out of the hands of women, farmers and indigenous peoples who have kept seeds, shared seeds and developed a wealth of local knowledge on plant varieties-- and put them instead in the hands of large corporations... Seeds are our food security, our identities and our lives. We indigenous people have our own seeds and our own ways to preserve the seeds for the next planting seasons... So, we should be consulted if laws relating to seeds are going to be drafted and enforced in our country."*¹⁶³

Indigenous Women's Network of Thailand



Challenge 8: Indigenous Peoples' Lack of Access to Effective Remedy

Impact

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

However, non-recognition of indigenous peoples and their rights in Thai legal framework in line with the UN Declaration on the Rights of Indigenous Peoples, remains at the root of many violations against indigenous peoples in Thailand as well as the key challenge for their access to effective remedy for human rights abuses. In addition, indigenous community representatives, activists and leaders, who have called attention to their human rights issues or challenged the authorities and businesses for their rights, have faced various reprisals ranging from arrests, imprisonment and other reprisals to even enforced disappearances and killings as mentioned above. The access to justice for such cases remains a challenge for victims and their families,¹⁶⁴ enhancing the climate of impunity.

Case of Karen communities seeking remedy for their forced evictions from Kaeng Krachan National Park

The Kaeng Krachan Forest Complex (KKFC) proposed for inscription as a World Heritage Site in 2011, is composed of Kaeng Krachan National Park, Kuiburi National Park, Thairachan National Park and Maenamphachi Wildlife Sanctuary. It is spread over with a total area of 482,225 ha. along the Tanaosri mountain range in the west of Thailand, bordering Myanmar. The areas have been ancestral homes and farmlands of the indigenous Karen communities for hundreds of years. These communities rely upon on the forests and natural resources for their living, which is based on self-sufficiency practices, such as gathering forest products, hunting and practicing rotational farming.¹⁶⁵ Since the 1960s, four to five Karen communities have been relocated from the Forest Complex areas to the lowlands in the name of forest conservation and threat to national security. According to the government policy, more communities residing in the forest should be relocated to lowlands. Up until now, many affected families in Bangkloy-Lang have not received land for farming as promised by the park authorities. Consequently, some of them returned to their traditional homeland to farm; this resulted in arrests,¹⁶⁶ forced evictions from their huts and burning of properties in 2011.¹⁶⁷

Six Karen villagers, in 2014, filed a petition against their forced relocation and destruction of property at the Central Administrative Court of Thailand against the Department of National Parks (DNP) and other concerned officials. In 2016, the Court ruled that the Karens had "encroached" forest area and the DNP had rightfully burned their properties but ordered meagre for the damages done to their properties.¹⁶⁸ In response to an appeal by the Karens, the Supreme Administrative Court, despite recognizing that they had been living in the forest before the establishment of the Park, did not allow them to return to their lands as they did not have ownership documents to much dismay of the Karen villagers. The court however ordered higher compensation in 2018.¹⁶⁹

Indigenous peoples' organizations have also lobbied with the World Heritage Committee (WHC) directly.¹⁷⁰ Thus, although the KKFC was adopted as a tentative listing for nomination in 2013 and the DNP nominated for inscription in 2015, the WHC referred the nomination stating there were many outstanding problems that had not yet been resolved in the KKFC, in particular the case of the Karen in Bangkloy.¹⁷¹ In 2016, the WHC upheld their decision to refer the nomination again for another three years to ensure that there would be enough time for the DNP to resolve the said problems on the basis of recommendations made by the UN Office of the High Commissioner for Human Rights and the National Human Rights Commission of Thailand, which were also monitoring the case.¹⁷²



Nonetheless, problems continue to exist between the communities and the DNP in forest areas. An estimated 10 Karen families have been arrested on charges of “forest encroachment” in various villages in the Forest Complex area. While some cases have been resolved, six cases are under investigation before sending to the court. There are concerns that conflicts might increase and could intensify into violence in future.¹⁷³

Voice from the Ground

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

Karen woman interviewed on 25 May 2017 in Kaeng Krachan National Park¹⁷⁴

Case 2: The legal vacuum for accountability in cases of enforced disappearances in Thailand leading to impunity and weak access to effective remedy for family of the disappeared – The Case of “Billy”:

The widely reported case of prominent indigenous Karen activist Porlajee Rakchongcharoen “Billy” is testimony to the failure of Thailand’s legal response to cases of enforced disappearances. At the time of his “disappearance”, Billy had been working with Karen villagers and activists on legal proceedings concerning the destruction of villagers’ homes and property in the Kaeng Krachan National Park in Petchaburi in 2010 and 2011. He was arrested on 17 April 2014 on charges of “illegal possession of wild honey”. Chaiwat Limlikhitaksorn, then head of Kaeng Krachan National Park was the last person to see him.¹⁷⁵ Mr Chaiwat and park authorities claim he was released the same day but he has not been seen since. On 24 April 2014, Billy’s wife, Phinnapha Phrueksaphan, filed a habeas corpus petition seeking an inquiry into the lawfulness of her husband’s detention. In July 2014, after a six-day habeas corpus inquiry, the Petchaburi Provincial Court concluded that it could not be established that Billy was still in detention when he had disappeared. No light on Billy’s fate or whereabouts was shed even through the subsequent appeal of this decision. Local police investigation officers in September 2014 filed malfeasance charges under article 157 of the Penal Code against then head of the Park, Chaiwat Limlikhitaksorn and four other park officers for unlawfully detaining Billy. They found no record of Billy’s release from custody. However, in September 2015, the Supreme Court upheld the decisions of both the Administrative Court and the Appeals Court, dismissing allegations against Mr. Chaiwat and his associates due to insufficient evidence.¹⁷⁶

In response to the request of Phinnapha in August 2015, the Department of Special Investigation (DSI) under the Ministry of Justice had also reportedly collected witness testimonies, examined evidence and announced 100,000 THB as a reward for clues to his disappearance. However, due to insufficient evidence or witness testimony to prosecute people suspected of involvement in the case, in January 2017, the DSI refused investigation into the disappearance as a special case.¹⁷⁷ It recently, in July 2018, announced probe into the disappearance to re-examine all evidence.¹⁷⁸

Similarly, the NHRCT held a review progress meeting on the case attended by the concerned officials of the Royal Thai Police, the DSI and the Office of Public Sector Anti-Corruption Commission (PACC) in January 2016. The Police found the testimonies of the Park officials involved in Billy’s detention ‘inconsistent’ and had also put 100,000 THB cash reward to persons for providing useful information on the case. Further, the PACC accepted the case file for consideration, gathered witness testimonies on the case and had been investigating evidence. However, further information on their investigation is not available. The NHRCT, in the briefing, indicated inadequacy of legal framework for accountability in cases of enforced disappearances in Thailand.¹⁷⁹

To date, the investigation of Billy’s disappearance has not resulted in adequate remedy to the victims while the case has also reinforced the lack of adequate legal protections against disappearances in Thailand. Billy’s disappearance is only a representative case.



3. APPLICATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS FOR THE RIGHTS OF INDIGENOUS PEOPLES IN THAILAND

3.1. Pillar I & Pillar III - The duty of the State to protect the rights of indigenous peoples and to ensure access to effective remedy

Under the Guiding Principles Pillar 1, Thailand has the duty to protect against business-related abuses within its territory or jurisdiction. There are some laws and regulations that protect the rights of indigenous peoples in Thailand such as the constitutional provisions whereby the State should promote and provide for “traditional, culture, custom and ways of life” of different ethnic groups and the community has rights to manage, maintain and utilize natural resources, environment and biodiversity, among others.¹⁸⁰ Regulation on the issuance of community land title deeds 2010 and cabinet resolutions on restoration of the traditional practices and livelihoods of Karen and Sea Gypsies in Thailand 2010¹⁸¹ are also positive for indigenous peoples. However, the implementation of the already limited protections available is generally poor or non-existent, including in the face of conflicting laws and policies. At the same time, the existing legal protections fall short of international human rights standards of indigenous peoples. Thus, Thailand should adopt and implement additional laws, policies and regulations providing greater protections for the rights of indigenous ethnic groups.

National parks and protected areas, particularly those aimed to facilitate carbon trading and attract tourists, should be considered equivalent to state-owned enterprises.¹⁸² Thus, as provided in the Guiding Principles, Thailand should take additional steps to protect against human rights abuses by the national parks and other protected areas under control of the State or receiving substantial support from it, including by requiring human rights due diligence, where appropriate (Guiding Principles 4-6). Further, it should ensure that the policies and processes related to environmental impact assessments include assessing actual and potential human rights impacts are carried out, particularly as the new Minerals Act places greater responsibility on the government agencies or formed committees.¹⁸³

Within the concept of policy coherence in the Guiding Principles 8-10, Thailand should ensure that all government departments, agencies and institutions that shape business practices observe human rights obligations, including through relevant information, training and support. States should also maintain adequate domestic policy space to meet their human rights obligations when pursuing investment treaties or contracts. However, the Thai government, particularly its ministries and departments related to natural resources, environment and land as well as tourism, have failed to balance their human rights obligations with respect to indigenous peoples when shaping business aspirations and practices related to tourism and conservation, among others. At the same time, the government also appears to have been unable to ensure that free trade agreements, such as the RCEP, do not impact the rights of indigenous peoples.

Pillar 3 of the Guiding Principles requires access to effective remedy for violations of rights in business contexts through State-based judicial and non-judicial remedies. The Thai constitution provides for four types of courts, including the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Courts. Administrative courts of Thailand, which have jurisdiction on cases between a government entity or official and a private entity or another government entity or official, are the judicial mechanisms that indigenous peoples most often engage with for the land disputes. While there have some cases of effective remedy from courts in relation to land disputes, the experiences in cases against government entities or officials at the Administrative Courts have been mostly negative for indigenous peoples. Based on an analysis of case studies from the region, the barriers to access effective remedy for indigenous peoples include,

- Weak enforcement of positive laws and policies as well as conflicting laws and policies: Despite constitutional provisions for State duty to protect traditional cultures and community rights to manage natural resources, these legal protections are weakly enforced or conflicting laws and policies such as those related to forest conservation take precedence.
- Biases and discrimination in the legal system:¹⁸⁴ The legal framework and adjudication process in Thailand is biased and discriminates against indigenous peoples based on misconceptions that they pose national security threats, destroy forests and engage in drug-related issues.



- Limitations to existing remedies: The judicial system often fails to consider the practical barriers faced by indigenous peoples, which includes high illiteracy and poverty, language challenges, lack of knowledge of their rights and access to legal assistance. Indigenous communities are not adequately informed about laws that directly affect them as they are rarely consulted about those laws and their consequences. Further, they also lack knowledge about remedy mechanisms, including court systems.

Non-judicial grievance mechanisms play an important complementary role in access to remedy. The National Human Rights Commission of Thailand (NHRCT) is the key non-judicial grievance mechanism for indigenous peoples facing human rights challenges in Thailand. The NHRCT is mandated to investigate and report on the act or omission amounting to violations of human rights and to propose appropriate solutions. The NHRCT is composed of 24 sub committees and 17 ad-hoc sub committees. Each sub-committee is mandated to review complaints on designated issues. The Sub-Committees on Community Rights and Natural Resources and on the Status of Ethnic Groups and Indigenous Tribes handle complaints related to violations of indigenous peoples' rights.¹⁸⁵ The 2017 NHRCT law is attempting to strengthen its status and powers as per the Paris Principles, but this will give rise to deprivation to some of its existing powers.

3.2. Pillar II & Pillar III - The corporate responsibility to respect the rights of indigenous peoples and to ensure access to effective remedy

As per the Guiding Principles 11-21, business enterprises have an independent responsibility to respect human rights, distinct from obligations of States. That responsibility requires business enterprises to avoid infringing on human rights of others and addressing the human rights impacts they are involved with. While in most cases, respecting human rights follows from complying with national laws, depending on the circumstances and in accordance with guiding principle 1, business enterprises may need to consider additional standards, for instance, in relation to groups that require particular attention such as indigenous peoples, whereby UN instruments have elaborated further on their rights.¹⁸⁶ This is particularly relevant in the case of Thailand as the national laws do not effectively protect the rights of indigenous peoples.

The UN Special Rapporteur on the rights of indigenous peoples has provided guidance in relation to the identification of indigenous peoples and has recommended that businesses make use of the characteristics outlined in ILO Convention 169 as the basis for their due diligence processes.¹⁸⁷ However, the challenges, impacts and cases discussed above show that business enterprises in Thailand, particularly those related to tourism, agribusiness and extractives, have not been able to meet their responsibility to respect the rights of indigenous peoples, including human rights due diligence and remediation processes, in line with guiding principle 3. As noted in the Guiding Principles, business enterprises in Thailand should, draw on internal or independent external human rights expertise and involve meaningful consultation with potentially affected groups to assess their human rights risks; integrate findings from their impact assessments across their operation and take appropriate action to prevent adverse human rights impacts; and provide for or cooperate in remediation of adverse impacts through legitimate processes.

Further, the Guiding Principles, under Pillar 3, mandate that Thailand should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms. More importantly, business enterprises should establish or participate in effective operational-level grievance mechanisms to address grievances early and remediate directly while industry, multi-stakeholder and other collaborative initiatives should also ensure that effective grievance mechanisms are available. Such grievance mechanisms are rare in Thailand, as also noted by the UN Working Group on Business and Human Rights. There are a few recent initiatives for grievance mechanisms, particularly of large conglomerates¹⁸⁸ and industries such as seafood processing. However, such grievance mechanisms dealing specifically with the human rights concerns of indigenous peoples in business contexts are unheard of.



4. EXAMPLES OF GOOD PRACTICES FOR RESPECT OF INDIGENOUS PEOPLES' RIGHTS IN BUSINESS CONTEXTS

4.1. Community-led Good Practices

4.1.1. Community mobilization as well as sustainable land and forest management to resist land evictions¹⁸⁹

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

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

4.2. State-led Good Practices

4.2.1. Thailand shuts down its last gold mine over environmental concerns

In 2016, Thailand's ruling junta closed the country's only active gold mine and suspended all gold mining operations "due to the impact on locals and the environment". The government also said it would not issue new licenses for mining. The move was widely welcomed by environmental and human rights groups.¹⁹⁰ However, the affected communities of the Chatree mine run by Akara Resources Public Co. Ltd., a subsidiary of Australia's Kingsgate Consolidated Ltd. continue to bear the environmental and health impacts of the mine due to water and soil contamination, which the company has consistently denied.¹⁹¹ While the Thai authorities had also fined the mining operation for violating environmental, factory and other related laws prior to suspension, the Australian parent company has sued the Thai government of violating the Thai-Australia Free Trade Agreement for failing to follow proper procedures when it shut down the mine before a proposed international arbitration committee.¹⁹²

4.2.2. Collaborative mapping and management in Ob Luang National Park¹⁹³

There are singular experiences of successful collaborative management approach between indigenous communities and park authorities. For example, a pilot project in the Ob Luang National Park, organized by the



Thai and Danish government under the Joint Management of Protect Areas (JoMPA) project, involving Karen and Hmong communities, resulted in mapping of the area with final maps accepted by both the communities and the Park's authorities and demarcation of community farmland and participatory management of the Park continued even after the project. Unfortunately, such approach has not been adopted as a national policy.

4.2.3. Support from Justice Fund

The Justice Fund under Thailand's Ministry of Justice, established in 2006 with the objective of helping the poorest and most vulnerable with legal assistance in order to have access to justice, offers a good example of reducing barriers to seeking remedies. Indigenous communities, such as the Chao Lay in the case of Rawai beach, have also sought and received assistance under the project. However, there are recommendations that the requests for assistance under the Fund are dealt with in an impartial and expeditious manner.¹⁹⁴ Nawa Choue, Lahu indigenous woman and indigenous human rights defender, caretaker of Chaiyaphum Pasae, was arrested in May 2017, after a police raid in the house of her brother-in-law, Maitree Chamroensuksakul, also a human rights defender. Nawa was indicted for drug possession and accused of complicity in the drug-related offences committed by Chaiyaphum. She was then incarcerated with a bail amounting to 2 million Baht. The family could appeal to the Justice Fund in order to be able to pay the amount, which was granted by the Fund in November 2017. Nevertheless, the request for bail was denied by the Court and she was kept in detention for 331 days, until her acquittal in April 2018. Despite the bail denial, community leaders and civil society organisations considered an achievement that an indigenous woman, facing such charges, could access the amount of 2 million Baht from the Justice Fund.¹⁹⁵

4.3. Business-led Good Practices

4.3.1. Aligning with the principles of the UN Global Compact (UNGC) on the rights of indigenous peoples

With more than 12,000 members in 170 countries, the UN Global Compact (UNGC) is the largest corporate sustainability project with a range of participants including those from the business sector, labour associations and organisations.¹⁹⁶ To align with international law and policy on sustainable business practices, the UNGC has set out ten guiding principles on human rights, labour, environment, and anti-corruption as policy, and with collaboration and innovation as goals in practice.¹⁹⁷ With respect to indigenous peoples, while the UNGC does not specifically address indigenous people in its ten guiding principles, however guiding principles 1 requires businesses to support and respect that protection of human rights set out in international legislations,¹⁹⁸ including with respect to the rights of indigenous peoples. Towards this end, they are encouraged to take discretionary action that promote these rights, by complying with the core principles on the rights of indigenous peoples such as self-determination; free, prior and informed consent (FPIC); as well as effective participation in decision making affecting them.¹⁹⁹ To provide further guidance on these aspects the UNGC has drafted a guide 'to help businesses understand, respect and support the rights of indigenous peoples'.²⁰⁰ The UNGC has also compiled a supplement that collates examples of business responses that respect and support the rights of indigenous peoples.²⁰¹ Businesses part of the UNGC are expected to incorporate these principles in their operations and report on the progress of their efforts on an annual basis,²⁰² a step that has been taken by businesses in Thailand as well.²⁰³ Failure to do so for two consecutive years, results in expulsion from the UNGC.²⁰⁴ In Thailand, over 40 companies have signed on to the UNGC and a number of them have made commitments to abide by its principles.²⁰⁵

4.3.2. Assessing the human rights performance of businesses according to the Corporate Human Rights Benchmark (CHRB)²⁰⁶

The Corporate Human Rights Benchmark is a multi-stakeholder initiative which utilizes 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.²⁰⁷ This was compiled following a consultation with more than 400 representatives including businesses, investors, state actors, CSOs, academics, and those with legal expertise.²⁰⁸ The CHRB methodology mandates commitment to the rights of indigenous peoples, including with respect to FPIC, applicable particularly to the extractive industry but also extending to agricultural industries



and apparel manufacturers. In this respect, the benchmarking methodology requires a publicly available statement of a businesses' policy to commit to respecting the ownership, use of land and natural resources. This includes a commitment to recognise and respect legitimate tenure rights related to the ownership and use of land in line with the Voluntary Guidelines on Responsible Governance of Tenure or the IFC Performance Standards, and to obtain the free prior and informed consent (FPIC) from indigenous peoples and local communities. This is with respect to transaction involving land and natural resources and mandates a zero tolerance for land grabbing with a business also having to commit to respecting the right to water. In addition, the commitment also requires for suppliers make these commitments. For commitment specifically addressing the indigenous peoples' rights to free, prior and informed consent in extractive operations, it requires respect of indigenous peoples' rights in its processes to decide whether and how to carry out projects that are located in or impact on lands or territories, or resources traditionally owned or occupied, or traditionally or customarily used by indigenous peoples, or that are based on their cultural heritage. These processes assess and address impacts of the Company's activities and those of their business relationships and any related actions of the government.

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

Guided by standards set in the international conventions of the ILO and the UN, the IFC's Performance Standards on Environmental and Social Sustainability provides businesses that IFC is investing in with the responsibility and with directions to identify risks and impacts, in an attempt 'to avoid, mitigate and manage the risks and impacts as a way of doing business in a sustainable way'.²⁰⁹ Performance Standard 7 is specific to indigenous peoples, their rights and the challenges they face.²¹⁰ It includes guidance for businesses on the avoidance of adverse impacts, participation and consent, relocation, mitigation and development benefits,²¹¹ addressing both the protection and promotion of the rights of indigenous peoples. It was recently updated to require Free, Prior and Informed Consent (FPIC), along with an explanation of circumstances in which it applies and measures to be taken for the same.²¹² The stated objectives of Performance Standard 7 as it applies to private sector projects are to:²¹³ "(1) ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture and natural resource-based livelihoods of indigenous peoples; (2) anticipate and avoid adverse impacts of projects on communities of indigenous peoples, or when avoidance is not possible, minimize and/or compensate for such impacts; (3) promote sustainable development benefits and opportunities for indigenous peoples in a culturally-appropriate manner; (4) establish and maintain an ongoing relationship based on Informed Consultation and Participation with the indigenous peoples affected by a project throughout the project's life cycle; (5) ensure that the right of affected communities of indigenous peoples to Free, Prior and Informed Consent (FPIC) is upheld when the circumstances described in the Performance Standard are present; (6) respect and preserve the culture, knowledge, and practices of indigenous peoples"



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

5.1. PILLAR I: STATE DUTY TO PROTECT			
Priority Area 1	Resolution of challenges in relation to laws and policies		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Repeal or amend laws and policies issued by the NCPO, including existing forest-related laws and cabinet resolutions, particularly those related to the head of the NCPO orders, in line with relevant international obligations as set out in the ICCPR, ICESCR, ICERD and the UNDRIP and redress violations caused	Repeal or amend the NCPO Orders 64/2014 and 66/2014 to resolve aspects, which give authority to arrest, threaten, destroy crops and evict local communities arbitrarily without due notice and without prior consultation.	National Council for Peace and Order (NCPO) and National Legislative Assembly, Ministry of Justice	These steps must be taken in consultation with the National Human Rights Commission, local civilian agencies and with the participation of indigenous peoples in these decisions affecting them and their rights through prior consultation through participatory approaches. Timeline: 2 years – 2019-2020
	Halt implementation of the existing forest-related laws and policies, specifically NCPO Order 64/2014, NCPO Order 4/2015 and the Forest Master Plan, including by refraining from arresting people on the allegation of land encroachment and threatening to evict local communities		
	To provide redress for harm caused, the authorities should reopen and undertake fair investigation with respect to charges, arrests, prosecution or any other adverse impact. In addition, such remediation must also be provided for illegal logging or encroachment charges under Order No. 64/2014.		
Reform existing land and forest related legislations and policy, including the National Reserved Forest Act, the Forest Act, the Natural Sanctuary Act, and the draft Community Forest Act, in line with International standards, in particular UNDRIP, Article 5 of the ICERD, and with the recommendation from the Statement at the end of visit by the United Nations Working Group on Business and Human Rights to Thailand, which affirmed the right	Amend the legislations to recognize the rights of indigenous peoples to their traditional lands and resources, including forests and water, in line with the UNDRIP. In the context of ongoing process to review these laws, the concerned authorities should provide for and ensure full and effective participation of indigenous peoples and their representative organizations to provide inputs in the revision of the National Park Act, the Wildlife Sanctuary Act and draft Community Forest Act.	Department of Forestry, Ministry of Natural Resources and Environment, Ministry of Foreign Affairs, Ministry of Justice	This must be done in consultation with indigenous peoples, but also keeping in mind their best interests. Regular review should ensure interpretation that complies with the intent of the contributions from indigenous peoples. Those who have been displaced in accordance with these laws should be provided redress through restitution or just fair and equitable compensation



for participation of communities in meaningful consultations and to take part in government decision making, through measures such as also through FPIC. It must also align with CCPR Recommendations and the CERD general recommendation No. 23 on the rights of indigenous peoples to own, develop, control and use their communal lands			Timeline: 1 year – 2019
Amend the provisions of the Minerals Act, in line with CERD General Recommendation No.23	Amend section 7 to include provisions ensuring respect for the traditional ownership rights of indigenous peoples.	Ministry of Natural Resources and Environment	This must be done in consultation with indigenous peoples and with respect to their best interests. An independent monitoring mechanism must be established to oversee the review process Timeline: 1 year – 2019
Review and amend the National Park Act, in line with the concluding observations of the UN Human Rights Committee.	Amend the law to enable indigenous peoples who have been living in the national parks to continue to do so and to set clear guidelines in section 6 to standardize the governments interpretation of what can be claimed as a national park. Review the excessive penalty and the offence in the Act, which states that ‘If an offender is found guilty of occupying national park land, he or she may face imprisonment up to five years and/or a fine not exceeding 20,000 baht. Allowing cattle to enter the park is punishable with imprisonment of up to one month and/or a fine not exceeding 1000 baht.’	Department of Forestry, Ministry of Natural Resources and Environment	This must be done in consultation with indigenous peoples and with respect to their best interests. An independent monitoring mechanism must be established to oversee the review process Timeline: 1 year – 2019
Review and amend the provisions of the Nationality Act 1965, in line with Article 1 and 27 of the ICCPR.	Recognize and grant nationality to indigenous persons, without any restrictions with respect to indigenous children born before 1992. Special attention should be given to indigenous women in granting nationality and ensuring their access to services and	National Legislative Assembly and Ministry of	This must be done in consultation with indigenous peoples and with respect to their best interest.



	protection.	Justice	Timeline: 1 year – 2019
Ensure legal recognition of indigenous peoples as peoples with their own distinct groups, cultures and collective rights, particularly over their lands, territories and natural resources	<p>Review and amend the provisions of the Constitution of 2017, in line with the concluding observation of the UN Human Rights Committee and UNDRIP – particularly Sections 43 and 57 of the 2017 Constitution to define, specify and recognize indigenous peoples. Include a constitutional right and corresponding state duty, for the protection of their traditional cultures and community rights.</p> <p>Adopt the UNDRIP as a binding national legislation and implemented, particularly on the legal definition of “Indigenous peoples”.</p> <p>Expedite the process of granting Thai citizenship to indigenous persons with necessary reforms in the laws, policies and processes for registration of nationality in order to ensure their access to social services and legal protections.</p>	National Legislative Assembly, Ministry of Justice, Ministry of Foreign Affairs	<p>The recognition of indigenous peoples and their rights must be in a manner approved by them. Special attention must be paid to indigenous women in granting nationality and ensuring access to services and protections by them. There must be specific reference in any legislations and policy of all the indigenous groups in Thailand and they must be approached to understand the specific challenges they face with respect to the violation of their rights and recognition</p> <p>Timeline: 2 years – 2019-2020</p>
Adopt a national action plan on the implementation of UNDRIP, and in accordance with its provisions, in line with recommendations from the Statement by the UN Working Group on Business and Human Rights at the end of their visit to Thailand	The national action plan must provide guidelines that legitimize and guarantee ensure effective and politically meaningful participation in the decision-making process and equal representation in the governance of the country	Ministry of Social Development and Human Security	<p>Take operational steps to ensure the implementation of these guidelines, including with relation to specific rights and assess its efficacy.</p> <p>Timeline: 2 years – 2019-2020</p>
Accede to ILO Convention No. 169 on Indigenous and Tribal Peoples, in line with the recommendations of CERD, CESC and the UN Special Rapporteur on the rights of indigenous peoples	Policy guidelines must be developed for implementation of the Convention by the State and by businesses, including with respect to the definition and the criteria for self-identification	Ministry of Foreign Affairs	<p>The characteristics of indigenous peoples set out can be utilized to carry out due diligence mechanisms, periodically</p> <p>Timeline: 1 year – 2019</p>
Include indigenous peoples and their rights in the National Human Rights Plan of 2019-	The provisions in the Human Rights Plan must recognize, support and protect indigenous peoples and their rights	Rights and Liberties	It must include clearly outlined results and outcomes that are



2023		Department of Ministry of Justice	expected, along with a timeline. Timeline: 1 year – 2019
Priority Area 2	Analysis of the impact on the rights of indigenous peoples		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Adopt legislation that creates mandatory due diligence obligations for companies, and the public disclosure of relevant information	The legislation must require disclosure information on corporate structure and governance, contracts, license concessions, business relationships, scientific information about company operations, and company filings	National Legislative Assembly, Ministry of Natural Resources and Environment	This must respect the rights of indigenous peoples to access information and participate in decision-making. The information must be displayed publicly, in an accessible manner and in a language that is understood Timeline: 2 years – 2019-2020
Undertake human rights due diligence in national parks and protected areas aimed at carbon trading and tourism	<p>A collaborative approach should be implemented for participatory demarcation and management of national parks and protected areas with the concerned communities based on the positive experience in Ob Luang National Park.</p> <p>Necessary trainings and assistance should be provided to the officials of national parks and protected areas on sustainable conservation and natural resource management strategies, so that they are respectful of the rights of indigenous communities.</p> <p>Full and effective participation of indigenous peoples should also be ensured in the climate change mitigation processes of Thailand, including preparation and implementation of REDD+ projects, to guarantee respect for indigenous peoples' rights and knowledge in those processes.</p>	Department of forestry, Ministry of Natural Resources and Environment, Ministry of Justice	<p>These national parks and protected areas must be considered as equivalent to state-owned enterprises, and the due diligence must be carried out such including by making efforts to mitigate the effects of the projects</p> <p>Timeline: 2 years – 2019-2020</p>
Ensure the laws, policies and processes related to environmental impact assessments, particularly for large-scale	Independent experts agreed with the affected communities should be involved in the conduct of the assessments, which should involve meaningful consultation with the communities	Ministry of Natural Resources and	Mechanisms must be put in place to ensure the reassessment of the actual and potential human rights



agribusiness, extractive, energy and development projects, include assessing actual and potential human rights impacts	to obtain their free, prior and informed consent	Environment	impacts by an independent individual and institution to determine whether the impacts are being dealt with. Timeline: 2 years – 2019-2020
Necessitate business enterprises, through regulatory or reporting requirements such as annual audits and renewals, to adopt and adhere to policy commitments for respecting human rights; undertake a human rights due diligence process to identify, prevent, mitigate and address their human rights impacts; and remediation processes for adverse human rights impacts	Requirements on business enterprises should include guidance to consider additional human rights standards for groups requiring particular attention such as indigenous peoples and women beyond national laws; draw on independent external experts and involve meaningful consultations with the affected communities to assess their human rights risks and agree on appropriate actions to prevent or remedy adverse impacts; and establish criminal liability for business enterprises operating in Thailand or Thai investments abroad causing human rights violations, particularly in lack of due diligence	Ministry of Industry	The efficacy of these processes must be assessed by an analysis of the perpetuation or resolution of adverse human rights impacts caused by businesses to indigenous persons. A qualitative and quantitative analysis must be carried out in this regard Timeline: 1 year – 2019
Conduct a survey in southern Thailand, to determine the land disputes as well as other impacts on the community due to tourism establishments and protected area, in line with the concept of FPIC as stated in CERD general recommendation no. 23.	Such survey should be undertaken with effective participation of the concerned communities and take into account the archaeological and historical evidence, to establish the ownership and control of the Chao Lay communities over their lands and resources.	Ministry of Natural Resources and Environment, Ministry of Tourism, Ministry of Justice	This must be done in consultation with indigenous peoples and with the involvement of the NHRCT. Timeline: 2 years – 2019-2020
Review existing tourism plans and programs involving indigenous peoples and/or implement new community-based tourism initiatives.	Evaluation of tourism development should also address the challenges and advance the rights of indigenous peoples concerned and benefits should be shared fairly with the communities.	Ministry of Tourism	This must be done in consultation with indigenous peoples. This review must be conducted periodically on a bi-annual basis and reflect an analysis of all the rights of the communities Timeline: 2 years – 2019-2020
Priority Area 3	Addressing the violation of rights of indigenous peoples		



Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Protect Environmental Human Rights Defenders (EHRDs), including indigenous defenders and community members, from Strategic Lawsuit Against Public Participation (SLAPP) cases	Guidelines should be developed to prevent businesses from filing SLAPP lawsuits against EHRDs and indigenous defenders and community members. Any anti-SLAPP legislation implemented should ensure that the burden of proof remains on the business/prosecution	Ministry of Justice, Office of the Attorney General	The number of prosecutions that are SLAPP lawsuits must be tracked, annually Timeline: 1 year – 2019
Design and implement necessary administrative programmes for issuance of community titles to indigenous peoples, with full and secure ownership and ensure their right to use their lands and resources, in line with positive legal measures of protection as provided in CCPR General Comment No.23 and ICCPR Article.27	Adequate financial and technical resources should be allocated for the effective implementation of such programs with formation of independent and fair dispute resolution mechanisms as needed. Arrangements such as special cultural zones for indigenous and ethnic communities should be considered to ensure restoration and promotion of traditional livelihoods of communities.	Department of Land, Ministry of Interior, Ministry of Justice	An assessment process must be carried out at the location of the community land. An independent, multi-stakeholder oversight mechanism must be available as part of these administrative programmes Timeline: 2 years – 2019-2020
Regulate contract farming, agribusiness operations on ongoing as well as future royal projects, in case where it addresses the land-related rights of indigenous peoples, in accordance with the provisions of UNDRIP	Concerned indigenous communities must be informed and their consent obtained in case the operations fall on the land which the communities own.	Ministry of Agriculture and Cooperatives	During implementation, recognition and respect for their land ownership rights must be ensured. Consent should be obtained through FPIC. Timeline: 1 year – 2019
Improve access to education with interventions targeted towards understanding and overcoming specific barriers faced by indigenous peoples and children in line with the 2015 report of the Special Rapporteur on the rights of indigenous peoples	Adopt necessary laws and policies to provide adequate resources for the implementation of mother-tongue based/multilingual education (MTB/MLE) and for the enforcement of the Community Schools Regulation	Ministry of Education	This must ensure inclusive and equitable quality education and promote lifelong opportunities for all as provided by sustainable development goal 4 Timeline: 1 year – 2019
Take concrete steps and comprehensive measures to combat human trafficking of indigenous peoples	Provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.	Ministry of Justice, Ministry of Labour	Appropriate remedies and protections should be guaranteed to these victims. These must be



			accessed for efficacy during implementation
			Timeline: 2 years – 2019-2020
Undertake extensive and meaningful consultations with indigenous and civil society representatives on the ongoing and future investment treaties and free trade agreements to ensure respect for human rights in those treaties and agreements	Such treaties and agreements, if agreed upon, should include clauses on human rights to ensure that internationally recognized human rights are protected at the same level as business interests of the State and companies	Ministry of Industry	Consultations must be public, transparent, should include the opinions of all those present, and provide adequate time for the synthesis of the information in the treaty or agreement. Timeline: 1 year – 2019
Provide trainings on human rights, including the rights of indigenous peoples, so as to ensure human rights obligations policies and practices are understood	These trainings must be conducted for government ministries, departments and agencies such as those related to tourism, natural resources and environment that are responsible for developing and implementing business-related laws and policies	Rights and Liberties Protection Department of Ministry of Justice	Regular assessments must be carried out to ensure that the information and knowledge shared is understood Timeline: 1 year – 2019

5.2. 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
Remove barriers to access effective judicial remedies for indigenous peoples through courts, including by enforcing implementation of existing positive laws and policies effectively through priority over conflicting laws and policies; eliminating biases and discrimination in the laws and justice system through sensitization and awareness-raising of	Support mechanisms such as the Justice Fund should be strengthened by providing more resources and independence while setting up separate dedicated mechanisms should be considered for groups requiring particular attention such as indigenous peoples and women. Judicial remedies should also take into account the customary laws and practices of indigenous peoples where they are in line with human rights standards.	Ministry of Justice	The presence of structural and functional barriers must be reviewed periodically through a study of individual cases Timeline: 2 years – 2019-2020

security and judicial personnel; and addressing practical limitations of language challenges and need for legal assistance through provision of effective interpretation and free legal aid services			
For complaints filed against state authorities and law enforcement officials, ensure prompt investigation through an impartial, independent and an autonomous team of experts	Strengthen the Ombudsman, the Administrative Courts and the National Human Rights Commission of Thailand (NHRCT) at the national and local level through capacity, resource and knowledge building on business and human rights.	Ministry of Justice	A timeline must be provided for the court decision as well as for the implementation of the same. The efficacy of these mechanisms must be analysed, and any inadequacies must be resolved Timeline: 1 year – 2019
Ensure that security forces perform their duties strictly in accordance with the law.	Eradicate the concept of impunity by bringing security personnel guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations.	Ministry of Justice, Royal Thai Police	Perpetrators must be brought to justice through these processes. Timeline: 1 year – 2019
Undertake fair and effective investigation into the disappearance, killing and other reprisals against indigenous leaders, human rights defenders and community members	Create an independent, dedicated and well-resourced mechanism should be developed to protect and support human rights defenders against ongoing and future reprisals, which are on the rise, including in business contexts.	National Human Rights Commission of Thailand, Ministry of Justice	Take steps to ensure access to justice for such reprisals in order to guarantee end of impunity and insecurity in the indigenous communities from the government authorities, businesses or other community members. Timeline: 2 years – 2019-2020
The National Human Rights Commission of Thailand (NHRCT) should enhance its role as an effective non-judicial grievance mechanism as part of a comprehensive State-based system for remedy of business-related human rights abuse, including for	Greater powers and mandate for the NHRCT should also be accompanied by greater resources to undertake its works. Further, setting up new mechanisms such as parliamentary committees could also be considered.	National Human Rights Commission of Thailand	These non-judicial mechanisms should take into account the customary laws and practices of indigenous peoples, where they are in line with human rights standards.



Thai investments abroad.			Timeline: 1 year – 2019-2020
End all land related legal proceedings against indigenous community members 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 to livelihood, the loss caused by unintended deficiencies and the cost incurred as a result of legal proceedings.	Public Prosecutors Office	Full and adequate compensation must be extended to the indigenous community members and their families. Timeline: 1 year – 2019
Increase the capacity and budget of as well as access to the Justice Fund.	Support mechanisms such as the Justice Fund should be strengthened by providing more resources and independence, while setting up of separate dedicated mechanisms should be considered for groups requiring particular attention such as indigenous peoples and women.	Ministry of Justice	Accessibility to the Justice Fund must be extended to include the stateless and indigenous HRDs as well. Timeline: 3 years – 2019-2021

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

6.1. PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT

Priority Area 1	Fulfilment of international obligations, including those under the UNGPs and the SDGs		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Partnership of companies with indigenous peoples to assist in the realisation of the UNGPs and SDG commitments.	Indigenous peoples can help companies implement policies and measures that are in line with and that would help them achieve goals under the UNGPs and SDG.	Businesses	This would result in a successful evaluation by new tools to evaluate companies' human rights due diligence, such as the Corporate Human Rights Benchmark which features an indicator on the commitment to include indigenous peoples in the decision-making process. Timeline: 1 year – 2019
Conduct assessments and due diligence processes to determine	Regulated, periodic and frequent visits to indigenous peoples should be made by business representatives to	Businesses	Representation and participation of communities must be ensured in a meaningful way. The affected



the impact of business activities on indigenous peoples, with respect to individual and community rights	collect information on the detrimental effects of their business, on their rights and the environment		indigenous peoples must be allowed to include a representative in the project review team of the company. Responses received should be integrated in future policy of businesses and acted upon, at the earliest
	Carry out a need assessment study to create a project plans, without adverse impacts		
	Carry out periodic reviews of the project and share the report with indigenous peoples or with their representatives, to ensure transparency in the report		
Priority Area 2	Abstain from policies and actions that violate human rights		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Take all necessary and lawful measures to ensure that business practices do not cause, contribute or remain complicit in violations, with respect to the rights of indigenous peoples	Avoid contributing to any actions amounting to land grabbing and forced evictions; structure arrangements with corporate partners to ensure all parties uphold responsibilities with respect to these rights; and build leverage in pre-existing business relations to prevent or mitigate adverse impacts of development projects or other business activities.	Businesses	All actions resulting from external interactions of the business should be without adverse actual and potential human rights impacts that the business causes, contributes to or is linked with through any operation, investment, product or service in the country or through extra-territorial investments Timeline: 1 year – 2019
Abstain from advocating for legislations that restrict rights of indigenous peoples, in contravention of the duty to respect set out for businesses in the UNGPs through corporate capture of the legislature	Companies should understand and promote the rights of indigenous peoples, which are beneficial to them and their economic well-being as well	Businesses	Coordination with domestic civil society and those affected could ensure a social license to operate Timeline: 1 year – 2019
Investors should ensure that they consider environmental and social risks as mitigating factors while investing in projects, within the country and abroad	Internal policy should mandate the requirement of investment projects to address any negative impacts that projects may have on the environment and at the social level	Businesses	Development in a sustainable manner should be a priority in their investment profile. Independent assessments of mitigating factors should be carried out by investors, before and during the project



			Timeline: 1 year – 2019
6.2. PILLAR III: ACCESS TO REMEDY			
Priority Area 1	Drop Legal actions and forced evictions against indigenous peoples 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	Adequate compensation must be extended to indigenous community members and their families Timeline: 1 year – 2019
End all forms of forced eviction against the indigenous peoples from their habitual place, in line with the CERD General Recommendation No.23.	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 eviction.	Businesses	Adequate compensation must be extended to indigenous peoples Timeline: 1 year – 2019
Priority Area 2	Grievance Mechanisms processes of Businesses		
Recommendations (Goal to be achieved)	Action	Lead Agency/ Jurisdiction	Performance Indicators/ Timeline
Business enterprises and associations or multi-stakeholder bodies should establish and participate in effective non-State-based grievance mechanisms, including at operational levels.	Requirements for such mechanisms can be included in the granting or renewal of licenses and/or agreements with business enterprises or in the statutes of business associations with consideration to the size, operation and experiences or potential of harms of the business/sector.	Businesses	Those mechanisms should be culturally appropriate to indigenous peoples, when engaging with them Timeline: 2 years – 2019-2020



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MANUSHYA

Empowering Communities | Advancing Social Justice

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

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