



MANUSHYA

Empowering Communities | Advancing Social Justice



EXECUTIVE SUMMARY

Second Experts Meeting to Discuss Findings & Recommendations of the CSO National Baseline Assessment (NBA) on Business & Human Rights in Thailand



Emerald Hotel,
Bangkok, Thailand
28 February - 1 March 2018



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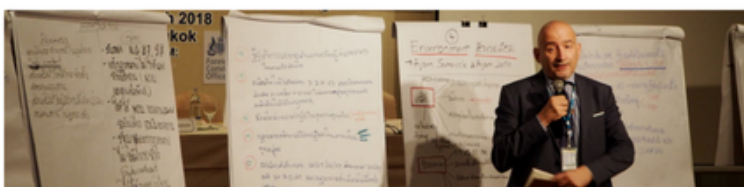
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EXECUTIVE SUMMARY

SECOND EXPERTS MEETING TO DISCUSS FINDINGS
& RECOMMENDATIONS OF THE CSO NATIONAL
BASELINE ASSESSMENT (NBA) ON BUSINESS &
HUMAN RIGHTS IN THAILAND

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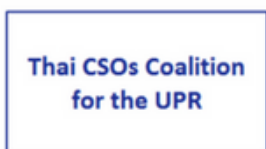




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ABBREVIATIONS

AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
BHR	Business & Human Rights
BHRRRC	Business and Human Rights Resource Centre
CSO	Civil Society Organisations
DIHR	Danish Institute for Human Rights
FTA	Free Trade Agreements
HRD	Human Rights Defenders
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
ICAR	International Corporate Accountability Roundtable
IHRL	International Human Rights Law
ILO	International Labour Organisation
IP	Indigenous Peoples
ISHR	International Service for Human Rights
LGBT	Lesbian, Gay, Bi-sexual and Trans-gender
MNC	Multi-National Corporations
MoJ	Ministry of Justice
NAP	National Action Plan
NBA	National Baseline Assessment
NCP	National Contact Point
NCPO	National Council for Peace and Order
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner on Human Rights
ONEP	Office of Natural Resources and Environmental Policy and Planning



SDG	Sustainable Development Goals
UN	United Nations
UNGC	UN Global Compact
UNDP	UN Development Programme
UNGP	UN Guiding Principles on Business & Human Rights
UPR	Universal Periodic Review



OUR ROLE IN BUSINESS & HUMAN RIGHTS IN THAILAND

At Manushya Foundation, 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 Foundation 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 marginalised communities, sharing knowledge with them so they can assert 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. So 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.



ACKNOWLEDGEMENTS

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 strategy 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".

As part of its Business and Human Rights strategy and in order to inform the development of the CSO National Baseline Assessment, Manushya Foundation organised the **First Experts Meeting to Inform the CSO National Baseline Assessment on Business and Human Rights in Thailand**, on 2-3 September 2017 at



the Sampran Riverside Hotel in Nakhon Pathom, Thailand. This event was much appreciated and gathered more than 35 participants, comprising of representatives from civil society and community-based human rights organisations, academia, regional experts on business and human rights, OHCHR, the NHRCT, the Representative of Thailand to AICHR and the Royal Thai Government.

Following up on the success of the first experts meeting, Manushya Foundation, together with members of the Thai CSOs Coalition for the UPR, brought back together relevant stakeholders for the **Second Experts Meeting to discuss the findings and recommendations of the CSO National Baseline Assessment on Business & Human Rights in Thailand**. The meeting was held from 28th February to 1st March 2018, at the Emerald Hotel, in Bangkok, Thailand, and was kindly co-organised with the Rights and Liberties Protection Department of the Ministry of Justice and the Representative of Thailand to AICHR.

The Manushya Foundation wishes to thank and express its deepest appreciation to all of those who participated in and made the Second Expert Meeting possible. In particular, Manushya Foundation would like to sincerely thank **Professor Surya Deva**, Member of the UN Working Group on Business & Human Rights, and **Professor Vitit Muntarbhorn**, International human rights law expert and Professor Emeritus at Chulalongkorn University, for their invaluable remarks, contribution and great support to Manushya's initiative and to community researchers.

Manushya Foundation wishes to give special thanks to **H.E. Dr. Seree Nonthasoot**, Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR); **Ms. Aimon Singyai**, Deputy Director-General, Rights and Liberties Protection Department, MoJ; **Ms. Katia Chirizzi**, Deputy Representative of the OHCHR, and **Ms. Napaporn Songprang**, Acting Chair, Manushya Foundation, for providing inspiring welcoming remarks.

The panellists and session chairs provided clear and concise presentations on their work and research, facilitating discussion and providing key recommendations to inform the CSO National Baseline Assessment (NBA), and ultimately the NAP. The Manushya Foundation would thus like to highlight the excellent contribution of all the panellists involved and wishes to thank the following individuals:



Community and academic researchers: **Nattaporn Artharn, Chainarong Sretthauchau, Sarawut Pinkanta, Napaporn Songprang, Pakorn Areekul, Wannapong Yodmuang, Watcharachai Jirajindakul, Saovanee Kaejullakarn, Nattawut Chotikan, Sugarnta Sookpaita, Tee Nayod, Suchart Intha, Kongpop Sennunta, Sompha Chaikla, Manavee Dengdo, Kaosar Aleemama, Asmah Tanyongdao, Asmee Pu, Wimonrekha Sirichairawan, Udom Ngammuangsakul, Thissadee Sawangying, Sirisak Chaited, and Chatchalawan Muangjan.**

Experts: **Human Rights Commissioner Angkhana Neelapaijit, Dr. Netithorn Praditsarn, Katima Leeja, Sor. Rattanamanee Polka, Dr. Somnuck Jongmeewasin, Sompong Sakaew, Nattawut Kasem, Prof. Titipol Phakdeewanich, Debbie Stothard, Golda Benjamin, Parchareeboon Sakulpitakphon, and Amara Pongsapich.**

Manushya is also grateful for the insightful closing remarks provided by **Livio Sarandrea**, Rule of Law and Crisis Prevention Specialist, Manager of the Regional Business & Human Rights Programme, UNDP Bangkok Regional Hub; **Nareeluc Pairchaiyapoom**, Director of the International Human Rights Law Division, Rights and Liberty Protection Department, MoJ; and **Simon Lever**, Political Counsellor, British Embassy in Bangkok, Thailand.

Special thanks go to the excellent interpreters, including **Jaruwaree Snidwongse, Darunee Kunchai, and Suvimon Sanguansat.**

Thanks are also extended to Manushya's team who made this event possible, including **Emilie Pradichit** Founder & Director, for her overall guidance in implementing Manushya's strategy, **Nada Chaiyajit**, Capacity Building Coordinator, for her great facilitation, as well as, **Suphamat Phonphra** and **Tanida Itthiwat**, Programme Officers, for organising the event and ensuring its smooth coordination. Manushya would like to sincerely thank **Charlotte Lush**, Human Rights Research & Advocacy Officer, **Emile Kinley-Gauthier**, Human Rights Researcher Consultant, **Juliette Leoni**, Volunteer, **Layla Mohammad**, intern, **Lucy Chandler**, intern for their invaluable input in preparation of the meeting materials and for supporting the development of the executive summary and meeting report, as well as **Linnea Kristiansson**, Human Rights Research Consultant, for its finalisation. Special thanks to **Charlotte Lush**, Human Rights Research & Advocacy Officer, for the design of the executive summary and meeting report.



Manushya Foundation would also like to acknowledge the financial contributions of **Internews** and the **Foreign Commonwealth Office (FCO)** – without whom the Second Experts Meeting would not have been possible.



PARTICIPANTS PROFILES

A total of 96 participants from 51 organisations attended the 'Second Experts Meeting to Discuss Findings & Recommendations for the CSO National Baseline Assessment (NBA) on Business & Human Rights.



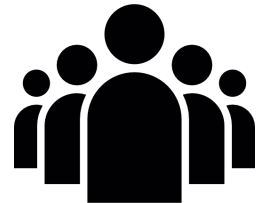
International Level

17 People
5 Organisations



National level

6 People
6 Organisations



Community level

29 People
17 Organisations



UN Agencies

5 People
2 Organisations



Government

23 People
10 Organisations



Diplomats

2 People
2 Organisations



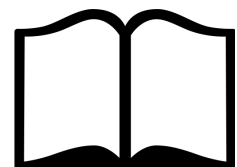
Academics

7 People
6 Organisations



Private Sector

2 People
2 Organisations

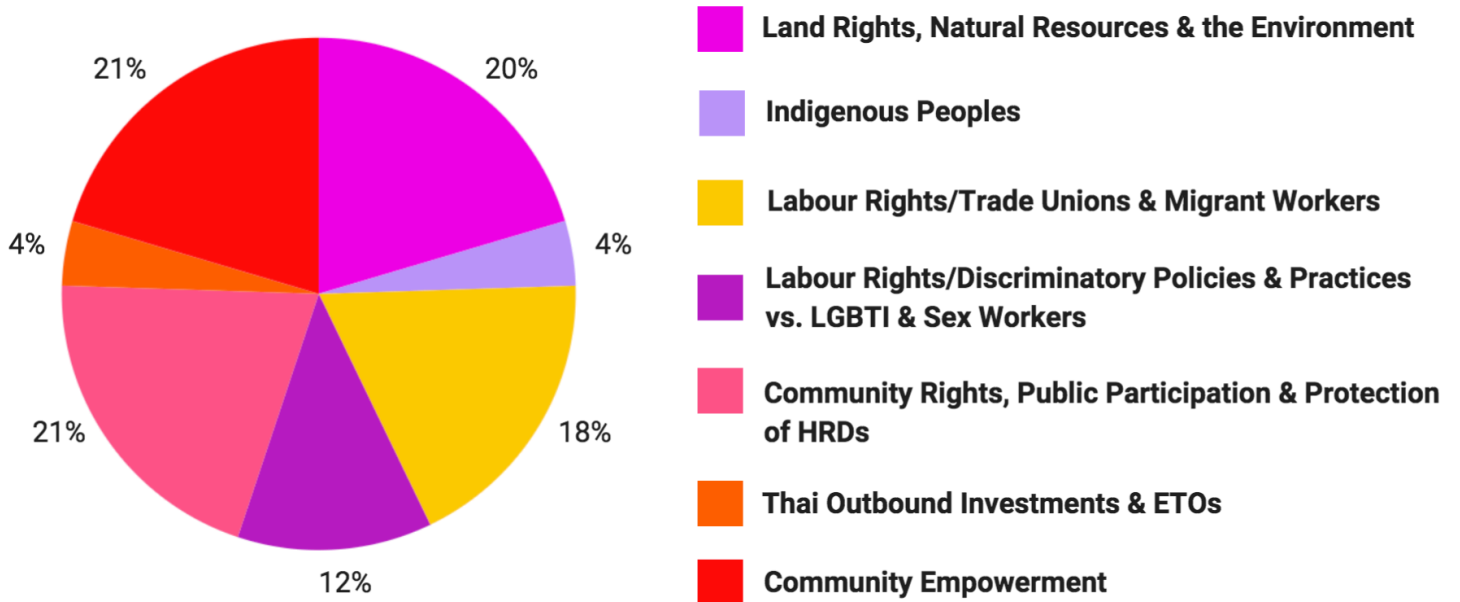


Other

3 People
1 Organisation



A diverse background of participants formed 7 working groups based on their human rights issue. Below, the total number of participants has been shown according to their human rights focus.





EXECUTIVE SUMMARY

On 28 February to 1 March 2018, the Manushya Foundation, together with members of the Thai CSOs Coalition for the UPR, organised the Second Experts Meeting to discuss the findings and recommendations of the CSO National Baseline Assessment on Business & Human Rights in Thailand, at the Emerald Hotel in Bangkok, Thailand. The two-day meeting was co-organised with the Rights and Liberties Protection Department of the MoJ and the Representative of Thailand to AICHR.

This two-day meeting was moderated by: **Emilie Pradichit**, Founder & Director, Manushya Foundation, and **Nada Chaiyajit**, Capacity Building Coordinator, Manushya Foundation.

MEETING OBJECTIVES

- **Follow up on 1st Expert Meeting** outcomes and discuss steps taken by the Government to protect, respect and fulfil human rights;
- **Present baseline research** and further discuss challenges in developing an inclusive and rights-based NAP on business and human rights;
- **Mobilise and reinforce** local communities as central actors to respond to business and human rights challenges in Thailand; and
- **Provide bottom-up inputs** for the development of a successful NAP on business and human rights.

MEETING OUTCOMES

- The importance of active **stakeholder engagement** was stressed as a key element in developing a successful Thai NAP on business human rights. Local communities explained that they rarely were involved in any of – planning and impersonalisation of – development projects taking place on their lands. Many community members stated that they were not aware of their rights, and thus did not know how to access remedy.



- To **build and collect credible evidence** was stated to be key in developing a successful Thai NAP on business and human rights. There is a need to collect data on issues including: land-related rights, indigenous peoples' rights, management of land and natural resources, business conducts' impact on livelihood and the environment, the protection of HRDs, issues related to discrimination against people living with HIV, people with disabilities, migrant workers and LGBTI communities, as well as the criminalisation of sex workers .
- The **limited operational space for CSOs and HRDs** was identified as one of the main obstacles to the inclusive development of a NAP on business and human rights. The continuous harassment, SLAPP and use of defamation law-suits had a severe impact upon human rights activists and defenders.
- The continued discrimination of **indigenous peoples** in Thailand was highlighted as against international human rights standards, and that their particular needs should be incorporated into the NAP on business and human rights – especially when dealing with land rights.
- The criminalisation of **sex work** and its detrimental impact upon sex workers' human rights was discussed, with particular focus upon their right to work, right to health and right to social protections. Many stakeholders thus urged the Government to de-criminalise their work, and recognise their rights as human beings.
- The importance of **incorporating a gender-responsive approach** was revisited many times during the meeting. Presenters emphasized women's specific experiences of corporate human rights violations, and that improved tools needs to be developed to respond to those needs.
- Another vulnerable group discussed was **migrant workers**, which have little or no protection in Thai law. Whilst many of them are exploited in Thailand, the Thai Government has yet to ratify and comply with international human rights standards.
- The **lack of effective remedies** was an issue that permeated most of the discussions. There is a need to raise awareness of existing remedy mechanisms (judicial and non-judicial, formal and non-formal), create alternative routes to remedy, and educate the law enforcement on business and human rights issues.
- The need to work **collaboratively**, following a bottom-up approach, to find common solutions that resonates with international human rights standards.

DAY ONE



28 FEBRUARY 2018

OPENING
KEYNOTE REMARKS
SESSIONS 1 - 4
CLOSING REFLECTIONS ON DAY ONE



DAY 1: 28 FEBRUARY 2018

OPENING REMARKS

On the first day, **Ms. Emilie Pradichit** (Founder and Director, Manushya Foundation) welcomed all the participants to the meeting stressing on the importance of gathering local communities, together with business and human rights experts, who all share the common goal of ensuring affected communities could be heard and at the centre of the business and human rights discourse in Thailand. Opening-remarks were held by **Ms. Aimon Singyai** (Deputy Director-General, Rights and Liberties Protection Department, MoJ) who stated that the information collected from the CSO NBA would complement and help develop future business and human rights plans at national level. Following was **H.E. Dr. Seree Nonthasoot** (Representative of Thailand to the ACHR) who discussed how elements of ownership, comprehension and capacity, policy cohesion and sustainable development would enable Thailand to develop a successful NAP on business and human rights. **Ms. Katia Chirizzi** (Deputy Representative, OHCHR) thereto stressed the importance of undertaking evidence-based prioritisation of human rights issues and inclusive stakeholder assessments. Lastly, **Ms. Napaporn Songprang** (Acting Chair, Manushya Foundation & Human Rights Lawyer, Thai CSOs Coalition for the UPR) stated that it is vital to cooperate and give affected parties a voice when developing policy documents like the NAP on business and human rights.

KEYNOTE REMARKS

Keynote remarks were presented by **Professor Surya Deva** (Member of the UNWG on business and human rights) who provided insightful recommendations on how to implement the UNGPs and aspects to keep in mind to develop a meaningful NAP on business and human rights.



Professor Surya Deva's Recommendations for the development of a meaningful NAP on BHR

- **Rights and rights holders** shall be central in the NAP process;
- **States, businesses and civil society** shall all have a critical role in implementing the UNGPs;
- The planning of the NAP shall integrate **regional and diverse perspectives** to make it national;
- There shall be **concrete actions** in the NAP, taken in a timely manner, and those actions must be reviewed periodically;
- The NAP shall be seen in the **wider plans that a particular State may have**, and all parallel frameworks should be integrated in a cohesive manner;
- There shall be **meaningful consultations** with all stakeholders, and the NAP process shall respond to the needs and experiences of these different stakeholders;
- Special attention shall be given to **marginalised sections of society**, such as women, children, LGBTI, disabilities, indigenous communities and migrant workers;
- The substance that goes into the NAP document must be consistent with **international human rights law (IHRL) and the UNGPs**;
- The role and the responsibility of **State owned enterprises**, and the effects of public procurement, shall be considered in the NAP (see OHCHR guidance to States from 2016);
- The protection of **human rights defenders** shall be considered (see upcoming UNWG guidance for businesses on how to manage their relationships with HRDs);
- Adopt a **gender lens** in the development of the NAP document.



SESSION 1: THE CSO NBA ON BUSINESS & HUMAN RIGHTS – PROCESS, METHODOLOGY, AND CONTENT

During session one, **Ms. Emilie Pradichit** (Founder & Director, Manushya Foundation) and **Ms. Nada Chaityajit** (Capacity Building Coordinator, Manushya Foundation) provided insights into the process, methodology and content of the CSO NBA on business and human rights.

Process

The Manushya strategy is based upon three objectives, including: developing an evidence-based shadow-CSO NBA on business and human rights; building the capacity of local communities on the UNGPs; and empowering local communities by providing them with financial means to conduct their own research, share knowledge with their peers and establish the 'Thai BHR Network'.



Methodology

In terms of methodology, Manushya has analysed the legal and policy framework in Thailand to see whether it was in line with the UNGPs. They undertook desk-based, analysing gaps in the implementation of the laws, and field research, collecting new evidence through a series of dialogues and workshops. In addition to having NBA regional dialogues from January to March 2017, the Manushya Foundation also supported community-led research, to ensure local communities could document on their own their rights violations and propose their own solutions. The kicked-off of the research took place in August 2017 and is on-going. There are also different teams throughout Thailand, who have been working together to document the business and human rights situation in the regions. They also have members of the Thai CSO Coalition for the UPR, who are working on thematic issues, and which are documenting business and human rights cases. Whilst the Manushya Foundation is putting all the information together in the CSO NBA, each working group will be releasing their own research paper. Ensuring that evidence is credible enough when collected by communities on the ground, the Manushya Foundation gave trainings on business and human rights, human rights investigation and human rights documentation to the communities, from May to June 2017. Community members are using a tool that has been developed by the BHRRC, called the 'check-list documenting corporate human rights impacts' to collect data, and complete interview consent forms and methodology forms developed by Manushya Foundation.

Content

Having had NBA dialogues and BHR workshops in four different regions, six themes materialised: land-related rights; impacts on the environment inside and outside Thailand; discrimination policies; migrant Workers, human trafficking, child labour; labour rights; and protection of human right defenders.

In terms of the content of the NBA, Manushya decided to focus on three dimensions:

1. Business activities impacting labour rights and standards;
2. Business activities impacting indigenous peoples, community rights, livelihoods, land-related rights and the environment;
3. Business activities undermining the protection of human rights defenders.



In each of these dimensions, chapters are being developed on specific thematic issues. Manushya is also going to outline relevant international human rights and labour standards connected to these thematic dimensions. In order to support the collection of credible evidence and the practices on the ground, the Manushya Foundation is looking at expert's opinion and academics – their expert opinion will be very important for the development of a NAP. Lastly, each chapter will end with specific recommendations to the government, companies and key stakeholders.

It shall be noted that a fourth dimension related to Thai outbound investments, extraterritorial obligations and trade is being documented by the ETOs Watch Working Group, which has developed briefing papers and lobbied the UNWG on BHR and the Thailand Representative to AICHR with key recommendations to inform the NAP, during the UN Forum on BHR, held in Geneva in November 2017.



SESSION 2: CASE STUDIES AND FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS – PT. 1 VIOLATIONS OF LABOUR STANDARDS

During session two, community members and academics shared their case studies – presenting evidence-based research on corporate violations of labour standards to inform the CSO NBA. More specifically, participants provided examples of migrant workers' unfair working and living conditions at a construction site in Thailand; trade union disputes with the General Motors company in Thailand; the unsafe and exploitative working conditions of sex workers in the entertainment industry due to the behaviour being criminalised; and the precarious situation of transgender workers in the Thai hotel industry.

Participants made the following recommendations during session two:



Recommendations to the Government

On labour rights:

- The state should develop a clear definition of forced labour to prevent exploitative working conditions and allow victims to claim for their rights;
- The state should immediately adopt ILO conventions 87, 98, and 183.
- The state should set up an independent body to monitor labour rights violations.
- The state should enact laws that protect labour rights, in line with international standards. These laws should mandate both the state and the private sector to protect labour rights.
- The state should set up a timeline on labour-related lawsuits with 90 days being the maximum time frame for processing a case (90 days is the maximum amount of time an individual can go without income).
- The state should support the collective organisation of farmers in order to help them gain more negotiating power.

On migrant workers:

- Migrant workers must receive fair wages, in line with Thai national minimum wage.
- The state must ensure migrant workers and their children are able to attain equal access to education with Thai citizens.
- Human rights education should be made mandatory in schools and incorporated into the national curriculum in order to disseminate knowledge about human rights principles and violations within the community.
- The state should ensure businesses provide health insurance to migrant workers and help cover health related expenses.
- The state should legalise the collective unionisation of migrant workers in order to help them gain more negotiating power.

On sex work and gender issues:

- The state should immediately decriminalise sex work by revoking the Prevention and Suppression of Prostitution act, and sex work and empower sex workers through legal means;
- The state should ensure that non-discrimination policies are effectively applied in cases of discrimination against LGBTI individuals.



Recommendations to the Business Sector

General: All businesses should adopt a human rights policy/statement, conduct HRDD throughout their supply chains and yearly report on their human rights performances

On labour rights:

- Implement activities in accordance with international human rights standard and employ workers directly (i.e. not via brokers) to effectively respect their rights;
- Businesses must make contributions to a remedy fund, which is accessible at all workplaces in the case of rights violations.
- The private sector must establish complaints mechanisms with dedicated personnel who have the power to act to remedy abuses. The person in charge must have decision-making power and fix a clear timeframe to solve problems, with worker participation.

On migrant workers:

- Promote the Migrant Workers Federation and solve problems between migrant workers and local communities.
- Businesses should carry out effective human rights due diligence and incorporate this into their business practices to avoid infringing human rights.
- Businesses should provide health insurance to migrant workers and help cover health related expenses.
- Businesses should establish workplace based grievance mechanisms, with grievances being processed within 60 days.

On sex workers and gender issues:

- Ensure that sex workers have access to decent, fair, safe and healthy working conditions and avoid inquiring about gender in hiring practices.



SESSION 3: CASE STUDIES AND FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS – PT. 2 ADVERSE IMPACTS ON INDIGENOUS PEOPLES, COMMUNITY RIGHTS, COMMUNITIES' LIVELIHOODS, HEALTH AND THE ENVIRONMENT

During session three, community members and academics shared their case studies – presenting evidence-based research on corporate activities impacting indigenous peoples and community rights, resulting in land grabbing and harassment of HRDs. Participants also provided insights into the realities of local communities in relation to irresponsible and non-inclusive development projects.

Participants made the following recommendations during session three:



Recommendations to the Government

- Undertake effective documentation and conduct community mapping to secure the communal and ancestral lands of indigenous peoples and local communities, in order to combat land grabbing by investors and businesses;
- Revoke any duplication of land deeds;
- Compensate those affected by land-grabbing and other human rights violations;
- Utilise preventive remedies;
- Make amendments to the law to ensure that local politicians and corporations cannot collude during development projects;
- Collaborate with CSOs, following an inclusive bottom-up approach, respective of the Free, Prior and Informed Consent (FPIC) of indigenous peoples and local communities to ensure meaningful stakeholder engagements;
- Encourage inclusive and participatory processes;
- Make it mandatory for companies to conduct Human Rights Impact Assessments (HRIA) and perform Strategic Environmental Assessment (SEA), involving all communities to be affected by the project, including critical voices;
- Make it mandatory for EIAs and EHIAs in Thailand to comply with environmental and social safeguards of international financial institutions, such as IFC, ADB or OECD;
- Make it mandatory for Thai investors to invest in projects which would have comply with international standards related to HRIA, EIA and EHIA;
- Adopt a legislation imposing the mandatory conduct of human rights due diligence (HRDD) by any State owned enterprise and companies operating in Thailand and Thai companies operating abroad (or subsidiaries of Thai companies), including Thai outbound investments;
- Ensure that companies and investors are held liable for human rights violations in court;
- Crystallise the role of lawyers in Pillar 3 (access to remedy) of the UNGPs to ensure that they operate HRDD when assisting communities;
- Forbid the frequent use of Strategic Lawsuits Against Public Participation (SLAPP) by businesses aiming at silencing HRDs; and
- Ensure the NHRCT can effectively investigate cases of abuses conducted by



businesses, and support the implementation of NHRCT's recommendations.

Recommendations to the Business Sector

- Conduct HRIA and SEA prior to the development of mega projects, inclusive of indigenous peoples and local communities, respecting their FPIC, and providing translators to indigenous communities so they could meaningfully participate;
- Stop any development project violations human rights and the environment;
- Conduct HRDD throughout businesses' supply chains and periodically report on human rights commitments to prevent human rights violations;
- Establish effective, transparent and accessible grievance mechanisms, providing translators for indigenous communities;
- Provide remedies and fair compensation for rights violations.



SESSION 4: CASE STUDIES AND FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS – PT. 3 THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS

Session four, was moderated by **Ms. Debbie Stothard** (Secretary-General at FIDH & Founder at ALTSEAN-Burma) and concerned the protection of human rights defenders in the context of business and human rights.

National Human Rights Commission in Thailand's Work in Protecting HRDs

Commissioner Angkhana Neelapaijit (National Human Rights Commission of Thailand) provided that the role of the NHRCT is to: investigate cases of human rights abuses in Thailand; make reports; and provide recommendations to the government and related agencies. Business and human rights are related to three



main issues which the NHRC have been investigating: firstly, in terms of cultural rights, such as instances of indigenous rights and land evictions; secondly, in terms of political and civil rights, including the protection of human rights defenders; and, thirdly, in terms of issues of public protest against human rights violations.

Recommendations to the Government

- Put up measures to truly protect human rights defenders;
- Adopt the UN Guidelines on Human Rights Defenders in Thailand;
- Initiate anti-SLAPP law;
- Make it easier to access the Justice Fund;
- Investigate all cases of threats towards HRDs; and
- Ratify the UNGPs, UN Convention on Enforced Disappearances and CAT to fight impunity in Thailand.

Indigenous WHRD – Indigenous Women Network of Thailand

Ms. Katima Leeja (Indigenous Lisu Woman, Indigenous Women Network of Thailand) stresses that indigenous peoples are the most at risk of enforced disappearances, extra-judicial killings, harassment, and land grabbing perpetrated by corporate actors or by government officials in support of businesses. She provided insights into her experiences being an indigenous WHRD and her community's challenges, living in the forest, in seeking remedies for the extra-judicial killing of her father - killed by the head of the village, a non-indigenous man, for fighting back to protect his ancestral land from being sold to investors. Katima and her relatives were traumatised and lived hidden for months, afraid to be killed. One day, she took the courage to come out, stand for her father's right to justice and became an IP WHRD, working with indigenous communities, raising awareness on their rights, sharing knowledge on IPs' rights to manage their natural resources and ancestral lands, and empowering other IP women to become leaders in their

"The people who know the problem best is us, the people living with the problem, not the government! So the people who have to live with the impact of business conducts should have the chance to participate"

Katima Leeja,
Indigenous Women Network of Thailand
(IWNT)



communities. Her goal is to ensure indigenous communities' FPIC is always respected and they are systematically included in decision-making processes concerning them.

Case Study: Ancestral Land of Indigenous Peoples vs. Land Concession to Businesses, resulting in Harassment, Disappearances and Killings of IPs

Katima explained in Thailand, the Ministry of Culture's Cabinet Resolution of 3 August 2010 reflects Article 70 of the 2017 Constitution, which refers to the State promoting and protecting ethnic group to live in the society according to their culture, customary and traditional way of life voluntarily and peacefully. But the parochial perception of preservation and conservation of national parks that is devoid of human presence, which is reflected in the Ministry of Natural Resources and Environment's Forest Act of 1941, National Park Act of 1961, and National Reserve Forest Act of 1964, continues to prevail and dominate how indigenous peoples are treated, as illegal settlers in their own lands.

Furthermore, the Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010 does not provide legal recognition to traditional land tenure and resource management systems by indigenous peoples. It only allows communities to collectively manage and use State-owned land for their living while the State still retains its claim to ownership of these lands – and in several cases evict indigenous communities to concede the land to investors. The Cabinet Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand also do not fully meet the aspirations of the indigenous peoples.

The NCPO Order No. 64/2014 and the subsequent Forestry Master Plan have resulted in judicial actions against members of indigenous communities within protected forests. Indigenous peoples have been struggling with expulsion from or restrictions of access to their ancestral lands. Indigenous leaders and activists opposing such injustices have faced harsh reprisals, including enforced disappearances and harassments.



She made the following recommendations:

Recommendations to the Government

- Recognise the rights of indigenous peoples in the Thai Constitution, granting them the right to citizenship, to manage their land and live peacefully in the forest;
- Collaborate with indigenous peoples organisations in implementing Article 70 of the 2017 Constitution and the Cabinet Resolution of 3 August 2010, and in mainstreaming them in the forest and environment acts;
- Make it mandatory for state owned enterprises and companies to systematically include indigenous people in their stakeholders engagement process, to ensure IPs have a chance to participate in decisions impacting their ancestral land, livelihoods and the environment, by respecting their FPIC and by listening to their needs and solutions;
- Revoke NCPO order 64/2014 utilised by the government to evict indigenous communities from their ancestral lands to concede forest land to businesses for the establishment of SEZs.
- Ensure the justice fund is provided to indigenous peoples who are stateless and do not hold the Thai citizenship.

Recommendations to the Business Sector

- Conduct HRIA and SEA prior to the development of mega projects, inclusive of indigenous peoples and local communities, respecting their FPIC, and providing translators to indigenous communities so they could meaningfully participate;
- Stop any development project violations human rights and the environment;
- Conduct HRDD throughout businesses' supply chains and periodically report on human rights commitments to prevent human rights violations.
- Establish effective, transparent and accessible grievance mechanisms, providing translators for indigenous communities;
- Provide remedies and fair compensation for rights violations.



Analysis of the Legal and Policy Framework related to the Protection of HRDs in Thailand – Manushya Foundation

Ms. Emilie Pradichit (Founder & Director, Manushya Foundation) and **Mr. Emile Kinley-Gauthier** (Human Rights Researcher Consultant, Manushya Foundation) emphasized the sensitivity of the issue and how the state should seek to protect human rights defenders' rights. In order to guide their work, the Manushya Foundation has followed a credible and objective methodology, with the intention to protect themselves and their partners. The analysis is therefore based on a NBA template, which focuses on human rights defenders, and which is developed by experts of the ISHR and ICAR. The Manushya's NBA on the protection of HRDs will include a comprehensive analysis of all the laws that are restricting the work of HRDs in Thailand, practices of businesses in obstructing the work of HRDs, and an analysis of all the court cases in the context of BHR in Thailand.

The repressive political climate since the 2014 coup d'état has **exacerbated insecurity for HRDs** who are now facing: increased risk of judicial harassment, arbitrary detention, physical violence and killing.

The **2016 Report of the UNSR on the situation of HRDs**, Michel Forst, analysing the situation of Environmental HRDs found that **Thailand is amongst the 10 most dangerous countries in the world for EHRDs (or community-based)**.

The following laws are (or have been) routinely used to silence HRDs and penalise their activities:

- Article 116 of the Penal Code (Sedition)
- Articles 326 to 333 of the Penal Code (Defamation)
- Article 112 of the Penal Code (Lèse-majesté)
- The Computer Crime Act 2007 (the amended 2017 version remains problematic)
- Head of the NCPO Order No. 3/2015 (and previously, martial law)
- NCPO Announcement No. 7/2014
- NCPO Orders No. 64/2014, 66/2014 and 17/2015 alongside the Forestry Master Plan
- Head of the NCPO Order No. 13/2016
- The Referendum Act
- The Public Assembly Act



Women Human Rights Defenders (WHRDs) are particularly vulnerable. Measures (NCPO orders and announcements, Public Assembly Act, Computer Crime Act etc.) are being adopted that puts them at further risk. They have traditionally been largely excluded from public consultations and decision-making processes, especially regarding issues related to land and natural resources. Excluded from participation in political and economic processes, WHRDs and rural women are amongst the most marginalised sections of the population. Because of poverty, lack of access to essential services and discrimination, they face numerous abuses and persistent barriers to the full enjoyment of their rights.

Business' Responsibility to Collaborate with HRDs

While UNGP 18 addresses the need for businesses to consult HRDs, to consider them as a vital expert resource and to recognise them as watchdogs, advocates and facilitators; in Thailand, instead of consulting them, corporate actors often retaliate against HRDs with SLAPPs and intimidation. In Thailand, private actors are using defamation provisions of the Penal Code (art. 326-333), often in conjunction with the Computer Crime Act, as SLAPP. One corporation in particular, gold mining Thung Kham Co. Ltd, has been particularly virulent in their use of SLAPP against the KRBK group of HRDs opposing their project.

State's Responsibility to Provide Effective Remedy to HRDs

UNGP 26 highlights the risks faced by HRDs and requires States to guarantee that their legitimate actions are not impeded and to remove barriers to prevent legitimate cases from being brought before the courts. However, in Thailand, there is no specific law to protect HRDs, making their access to remedy often denied.

Mixed Efforts to Support HRDs

The Rights and Liberties Protection Department has created a Working Group to develop measures for the protection of HRDs at risk in 2014 - however, the results from this initiative have not yet been published. **The Justice Fund** established in 2006 by the RLPD provides financial assistance to people affected by human rights violations during legal proceedings conducted against them but the procedures to apply for financial assistance have proven to be complex and difficult to access. The majority of eligible applicants have been denied legal aid coverage; from 2006 to 2014, only 43% of those who applied were granted assistance. For instance, the case of reporters from the Phuketwan who attempted to request help from the



Justice Fund after having been charged with defamation, shows the limitations of the justice fund. The reporters received a memo stating “*The request for help from the Justice Fund is denied since the applicants who administrate the website and work as reporters help to spread false information to the public...*”. This accusation from the Justice Fund was made while the case was still pending in court.

Further, RLPD has organised seminars and trainings to promote awareness and understanding of human rights amongst different target groups in Bangkok and in other provinces. In early August 2017, the RLPD stated that it had developed a “Handbook to Protect Human Rights Defenders” in 2016, in collaboration with the OHCHR Regional Office for Southeast Asia and partner CSOs. The handbook apparently outlines current available measures to protect HRDs. However, civil society organisations in Thailand seem to be largely unaware of such an initiative, and the book is not available online. The OHCHR has set up a Human Rights Defenders School Programme, which aims at enhancing the capacity of mid-level HRDs in Thailand. Since the programme started in 2014, 61 HRDs have been trained.

The Witness Protection Act of 2003 set up the Department of Special Investigation and Witness Protection Office. However, the office has not been endowed with sufficient officials who have appropriate expertise and a lack of clear procedures has weakened the mechanism, and contributed to the increasing vulnerability of those who speak out against human rights violations.

The National Human Rights Commission (NHRCT)

The NHRCT plays a leading role in the protection of HRDs, with **Commissioner Angkhana Neelapaijit** investigating cases of violations against HRDs. However, the NHRCT is limited to making recommendations to the government and cannot implement the measures they propose based on their findings. She urged the State to establish protection measures for HRDs and is actively following and investigating cases of HRDs. In January 2018, NHRCT announced the creation of a Working Group on Business, Sustainable Development and Human Rights under **Commissioner Prakairatana Thontiravong**. However, it is not clear whether this WG will receive complaints and investigate cases of adverse business conducts. As of today, civil society groups have been sceptical regarding the effectiveness of Commissioner Prakairatana Thontiravong in investigating cases of rights violations caused by businesses submitted to her. For instance, in the Thammakaset vs. 14



migrant workers case, Commissioner Prakairatana Thontiravong's investigation resulted in the support to the private sector, claiming that Thammakaset did not commit any rights violations against the 14 migrant workers – despite credible evidence of unfair and abusive working conditions.

Recommendations to the Government

- Ratify all international human rights instruments, withdraw reservations to certain treaty provisions and bring national law in line with human rights-related international obligations.
- The RTG, in line with the Concluding Observations of the 2017 review of Thailand's implementation of the ICCPR, should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its international obligations, and make sure that all measures adopted under the current Constitution, including section 279, are consistent with its obligations under the ICCPR, and compliant with the UNGPs, including the obligation to provide effective remedies to victims of human rights violations.
- Cooperate fully with UN Special Procedures, including the Special Rapporteur on the situation of HRDs, by responding to their urgent appeals and letters of allegations and accept the mandate holders' outstanding request to visit the country.
- Adopt the UN Guidelines on Human Rights Defenders in Thailand;
- Combat impunity for violations committed against HRDs by ensuring that investigations are conducted promptly and impartially, and the perpetrators are held accountable, victims obtain appropriate remedies, and authorities further implement the preventive measures to ensure that violation do not happen;
- Close investigations or drop charges against human rights defenders and others relating to their peaceful exercise of rights and freedoms guaranteed by international law;
- Engage in open and transparent dialogue with human rights defenders, community-based organizations, political activists, and the public and promote an environment in which all may safely exercise rights and freedoms without fear of retaliation.



- The government of Thailand should take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the International Covenant on Civil and Political Rights.
- Immediately repeal Announcement 7/2014, 3/2015 and the Public Assembly Act.
- Decriminalise defamation and refrain from using criminal provisions, including the Computer Crimes Act the Sedition Act and other regulations, as tools to suppress the expression of critical and dissenting opinions.
- Adopt an anti-SLAPP law to prevent corporate actors from silencing HRDs.
- The RLPD should provide information regarding the findings and the progress of the Working Group set up to develop measures for the protection of HRDs at risk.
- Review and improve the Justice Fund mechanism and its accessibility
- Ensure that Guidelines for the recognition, support, and protection of human rights defenders are included in the 4th National Human Rights Plan (2019-2023), and guarantee implementation with clearly outlined expected results and outcomes.

Guarantee the participation of HRDs in the implementation and oversight of existing and proposed legislation on the recognition and protection of defenders

Recommendations to the Business Sector

- Comply with **UNGP 18** and consult HRDs, to consider them as vital expert resources and to recognise them as watchdogs, advocates and facilitators.
- Adopt a policy statement to protect human rights defenders and prevent Thai companies and subsidiaries of Thai companies of intimidating and harassing HRDs.
- For Thai investors to adopt a policy statement to commit not to invest in projects which violate the rights of human rights defenders and silence HRDs protesting against the project;
- Provide effective remedy to HRDs.



CLOSING REFLECTIONS

Professor Surya Deva (Member of the UNWG on business and human rights) closed the first day by identifying recurring issues and potential solutions:

- There is a low awareness about human rights and the UNGPs among local communities. It is thus crucial that the affected communities are provided with **long-term capacity building**.
- There is a gap in the implementation of laws. An honest and **open dialogue** about this could be very helpful.
- HRIAs or the EIAs are often very symbolic and superficial. Impact assessment must be **meaningful** and should be done before the project 'gets the go-ahead'.
- There is a perceived conflict/tension between investments and human rights. It is the responsibility of the State to ensure that **development is inclusive, sustainable and equitable**, and that (e.g.) income gaps and inequality issues are responded to.
- There is a continuous collusion between businesses and the administration. This could be solved by **improved transparency, right to information and participation**.
- The operational space for CSOs and human rights defenders is shrinking. Thailand should consider establishing a **parallel network, which is not dependent on the State**.
- There is a lack of access to effective remedies. It may be useful for CSOs to find **pressure points**, inside and outside of Thailand. It is also important to use all mechanisms that exist inside and outside the country. Thailand should also develop a strong network of pro-bono lawyers which can empower business and human rights lawyers.

Professor Vitit Muntarbhorn (International Human Rights Law Expert & Professor Emeritus, Chulalongkorn University) outlined the challenges in implementing the UNGPs and how we should look forward. He states that the current circumstances invite us to:



- **Spread the knowledge of human rights**, law and more, and remedies (access and availability);
- **Enable people to group-up tactically**, even where there are restrictions;
- **Build the roof of human rights defenders**;
- **Decentralise the knowledge** and help local people with pro-bono work;
- **Maximise people's participation** before any human rights violation occur. This should be integrated into Pillars 1, 2 and 3;
- **Strengthen checks and balances of power**, as to strengthen human rights advocacy. This includes access to information, legal aid, anti-SLAPP laws etc.; and
- **Utilise the findings from the NBA** as an instrument of change - for better protection of IHRL.

DAY TWO



1 MARCH 2018

SESSIONS 5 - 8
REPORTING BACK IN PLENARY
REFLECTIONS ON DAY 2
CLOSING REMARKS & WAY FORWARD



DAY 2: 1 MARCH 2018



SESSION 5: ACCESS TO EFFECTIVE REMEDY IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS IN THAILAND

Session five was moderated by **Ms. Golda Benjamin** (Southeast Asia Researcher & Representative, Business and Human Rights Resource Centre) and concerned access to effective remedy in the context of business and human rights.

Overview of Access to Justice in Thailand – Rights and Liberties Protection Department

Ms. Nareeluc Pairchaiyapoom (Director of the International Human Rights Law Division, Rights and Liberty Protection Department, Ministry of Justice) outlined the



role and remedial services provided by the Rights and Liberties Protection Department of the MoJ. The Department currently has 86 **justice clinics** in the country. It also has a **hotline** for the MoJ where anyone can call and ask for consultation. Officers can also make **on-site visits**, for direct assistance and documentation of human rights violations. Whilst the **Justice Fund** takes out fees (e.g. verification fees), but these will be reimbursed. There is also a **Government Compensation Act** in place, which may provide remedy to the public – i.e. a remedy on the Government's behalf. Furthermore, the **Witness Protection Program** assigns police officers to offer protection to witnesses if there would be any type complications or delicate issues. The MoJ has also set up a **Working Group to protect the HRDs**. This may establish a link between the Government, CSOs and other relevant international organisations. There has been a **draft proposal** for the prevention of torture and enforced disappearances, which is currently with the MoJ. After being amended, it will be published for a public hearing.

Lack of Remedy for Extraterritorial Impacts Caused by Thai Companies and Investors – Community Resource Centre

Mr. Kant Tamee (Human Rights Lawyer, Community Resource Centre) and **Ms. Sor Rattanamanee Polka** (Co-founder, Coordinator & Human Rights Lawyer, Community Resource Centre) discussed the law in relation to remedy and the lack of community engagement in many development projects. They showcased two cases studies to showcase the possibilities and limitations of Thai Court. One of the examples provided is related to extraterritorial obligations and the negative impacts caused by Thai investors or companies abroad.



Case study: 'Xayaburi Dam, Mekong River – 80 km from Luang Prabang (Lao PDR)'

Issue: The operations of a company have had a negative impact upon the local community.

What happened: A hydropower plant company, operated by EGAT (Thailand State owned enterprise) and Chalkanchai, never sought to engage with the community when setting up the project – nor did they perform any HRIA/EIA. Its operations have had a huge negative impact upon the agricultural land, alongside the bank – reversing the river's current. Impacts included agricultural changes and environmental degradation, which had direct implications upon the community's livelihoods.

People affected: Communities along the Mekong River (i.e. individuals in several countries).

Remedy: The community brought the case to the administrative court. The court of first instance dismissed the case, saying that the community members were not direct victims of the project and the issue was not for the administrative court to decide. The people from the community appealed the decision, arguing that they were direct victims of the company operations, as the company is a state-owned enterprise. The appeal court accepted the case.

In the Xayaburi dam case, many extraterritorial issues were to consider, since the impacts took place in Lao PDR, outside of Thailand. The challenges lies in the fact that there is no legal framework in Thailand regulating extraterritorial actions and impacts of Thai companies and investors abroad; with few mechanisms existing to protect victims of transnational corporate human rights abuses.

Lastly, CRC stressed on the importance to prevent violation of rights. There is a legal vacuum in Thai law, as human rights violations caused by corporate actors do not constitute an offence or crime. As a result, companies and investors cannot be held liable and cannot be taken to court. However, on a positive note, the administrative court states that: for cases where the State is considered the



perpetrator, the court will accept the case and kick-off the judicial process. There should thus be more discussions about preventative matters.

CRC made the following recommendations:

Recommendations to the Government on Access to Remedy

- Make amendments to the civil law (compensation needs to be applicable to more cases);
- have appropriate grievance mechanisms in place ; and
- Set up a law which promotes good governance among entities in the private sector.

Recommendations to the Business Sector on Access to Remedy

- Create awareness around CSR/business and human rights issues;
- Take a participatory approach when interacting with community members;
- Have a mechanism in place for grievances and negotiations; and
- ‘Walk the talk’ in policy and action.

Working with Local Law Enforcement to Protect Migrant Workers – Labour Rights Promotion Network Foundation

Lastly, **Mr. Sompong Srakaew** (Director, Labour Rights Promotion Network Foundation) highlighted the vulnerable situation of migrant workers in Thailand, and how to help them access remedy mechanisms. He made the following recommendations:

Recommendations to the Government on Access to Remedy for Migrant Workers

- Good law enforcement;
- Multi-disciplinary strategies; and
- Communication with local police enforcement.



SESSION 6: GOOD PRACTICES OF RESPONSIBLE BUSINESS AND MULTI-STAKEHOLDER COLLABORATIONS

Session 6 was moderated by **Professor Amara Pongsapich** (Professor Emeritus, Chulalongkorn University and former Chairperson of the NHRCT) and concerned good practices of responsible businesses and multi-stakeholder collaborations.

UN Global Compact Network Thailand

Mr. Netithorn Praditsarn (VP Charoen Pokphand Group, Deputy Secretary General, Global Compact Network Thailand, CSR Club Thailand) explained the role and activities of the UNGC in Thailand, and how it implements human rights on its agenda. Whilst it is private sector driven, the UNGC work with all stakeholders. All these organisations need to respect our 10 Principles, which are divided into four



categories: **human rights**; **labour**; **environment**; and **anti-corruption**. The UNGPs have been embedded into the UNGC Principles, and the organisation has embedded HRDD into almost all of their businesses (aiming to have all in 4-5 years).

Good Practices: Human Rights Performance and Reporting Indicators

Moreover, **Ms. Patchareeboon Sakulpitakphon** (Business & Human Rights Consultant) spoke about indicators and good practices in terms of the implementation of the UNGPs.

- In terms of **performance**, the UNGPs have a reporting framework and can be easily used by companies. However, these reports must be accessible to the public. There is a need for continuous on-site engagement and to produce impact assessments focusing on the rights holders.
- In terms of **relationship building**, there is a big existing gap. There needs to be openness to dialogue for better stakeholder engagement.
- Moreover, in terms of **dispute resolution**, there are good examples at ILO level including mitigation, which can resolve the issues.
- **In terms of complicity of human rights violations**: from the perspective of companies, it is important to ensure senior management understands the importance of complicity. At this time, most companies are only operating to comply with minimum standards, not with the UNGPs. Therefore, there is a need to bridge the gap and raise awareness with companies for them to understand that they can be directly and indirectly complicit of human rights violations.
- The **Corporate Human Rights Benchmark** is also a useful tool in grading how organisations are performing on the UNGPs.

Evidence-Based Reports as Evidence in Court Cases – the Environmental Justice Foundation, EJF

Mr. Nattawut Kasem (Campaign Assistant, Environmental Justice Foundation) explained how the Environmental Justice Foundation in Thailand produces evidence-based reports on corporate human rights issues within certain industries. The EJF is an NGO that campaigns for environmental justice. Their aim is to be the voice of the voiceless, and works closely with both the state and the people.

Circa 800 000 people are in the fishing or seafood industry. There is significant evidence that the EU IUU regulation have had a direct impact upon the seafood trade flows, since its entry in 2010. Import from Thailand to the EU has declined



with 21 per cent between 2010-2016. The enforcement of this rule has thus had a negative impact in Thailand – changing the landscape at the other end of the world.

Figure 18k: Monthly imports of prepared and preserved crustaceans, molluscs and other aquatic invertebrates (1605) from Thailand reported by the EU-28

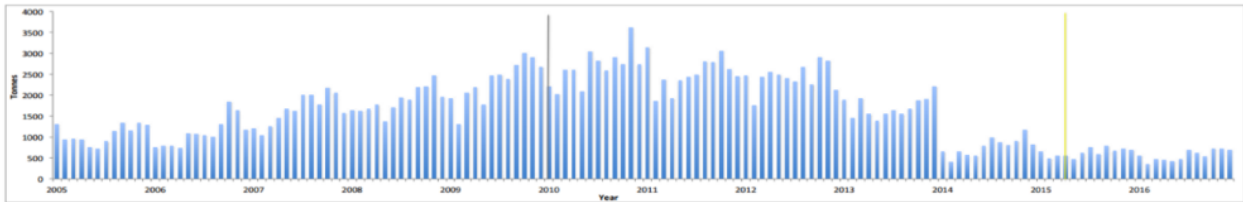


Image: EJF

EJF developed a report on this impact, together with a company. For this report, the EJF wished to emphasize one thing: that they use an evidence-based research method. This means that the report can be used as evidence in court. **Mr Kasem** stressed on the importance not to forget about customers as stakeholders – thus the vitality to include them as contextual actors. Finally, he explained that EJF also works with the government. Together they develop reports and execute auditing.

Building Bridges – Communities at the Centre of the Solution

Dr. Somnuck Jonmeewasin (Silapakorn University International College) emphasized on the importance of relationship building and collaboration between different stakeholders to mitigate impacts resulting from the development projects. He emphasised that it is possible to get access to remedy without having to go through the state mechanism by negotiating with business enterprises, remaining peaceful and exercising patience, without pointing fingers or using hate speech. However, this is not applicable to all cases.



Case Study of Successful Multi-Stakeholder Collaboration: Laem Chabang Deep Sea Port

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

Dr. Somnuck further presented the “5 stages of our change” process to get everyone involved in problem solving. The “5 stages of our change” concept focuses on placing the problem at the centre, leading to multi-stakeholder collaboration. The concept urges all stakeholders to come together to discuss issues, identify problems and find solutions.

5 stages of 'OUR CHANGE':

- **Co-initiating:** Uncover common intents and expand the network
- **Co-sensing:** Requires community to observe
- **Presenting:** Connect to the source of inspiration and willpower, and be honest about the action
- **Co-creating:** Create ways to solve the problems by creating new prototypes and options
- **Co-evolving:** Help each other to push forward for a change



Dr. Somnuck ended his session with points to be taken into consideration when working to solve problems. The points discussed were as follows:

- No community is the same. When trying to solve problems, we should base the solutions on the community knowledge rather than the technical knowledge, as each community has its own uniqueness and the technical knowledge cannot be applied to all communities.
- There is more than one solution to a problem.
- Communities do not want committees, but space to speak up.

He then identified the current obstacles in the Thai context to any fruitful collaboration:

- Ambiguity of critical information released from a few industrial and government players in the EEC areas;
- Delay of problem solving by a few industrial and government players in the areas;
- Individualism vs. Collectivism of the stakeholders;
- Sustainability of bargaining power of the charter against current & new stakeholders for long-term development and continuity of the commitment between all stakeholders in the next generation;
- Top-Down Development Policies from central government / FDI are still existed;
- Section 44 of the Martial Law (Junta Law, under the previous and existing constitution);
- EEC Laws (Eastern Economic Corridors Acts for Eastern SEZs); and
- 20 Years – National Development Strategic Law (Acts under the existing constitution).



SESSIONS 7 & 8: THEMATIC WORKING GROUPS AND RECOMMENDATIONS

During session seven participants broke into six groups to discuss the findings and recommendations of the CSO NBA, review and provide further recommendations. Manushya Foundation had prepared thematic issue briefs, capturing the key findings and recommendations from the CSO NBA, to facilitate discussions. The following six thematic working groups were created: (1) policy – discrimination of sex workers; (2) migrant workers; (3) community rights and stakeholder engagement environment; (4) land rights and indigenous peoples' rights; (5) environmental impacts; and (6) protection of HRDs. Groups presented their recommendations and considerations in plenary during session eight.



RECOMMENDATIONS

The following recommendations are a combination of those included in Manushya's issue briefs capturing the CSO NBA and the ones formulated by the thematic working groups.

Working group 1: Discrimination against LGBTI, sex workers and people living with HIV

- LGBTI -

Recommendations for the government on the legislative and policy framework:

- The state should ensure that non-discrimination policies are effectively applied in cases of discrimination against LGBTI individuals.
- Ensure the implementation of anti-discrimination policies are decentralised and operate at provincial levels.

Recommendations for the government on access to remedy:

- Establish an effective grievance mechanism for LGBTI persons who are the victim of discrimination.

- Sex Workers -

Recommendations for the government on the legislative and policy framework:

- The state should immediately decriminalise sex work by revoking the Prevention and Suppression of Prostitution act, and empower sex workers through legal means.
- Ensure non-discrimination policies and legislation apply to all marginalised groups, including sex workers.

Recommendations for the government on sex work and commercial sexual exploitation:

- Work with sex work groups and victims of commercial sexual exploitation to ensure that the definition of sexual exploitation is accurate and reflective of the reality of the situation for affected communities.
- Ensure that anti-trafficking legislation is modified to ensure that it can protect victims of trafficking and commercial sexual exploitation without impeding on



sex workers rights.

- Develop clearer, more effective mechanisms to determine who is a sex worker and who is a victim of commercial sexual exploitation.

Recommendations for the business sector:

- Ensure that sex workers have access to decent, fair, safe and healthy working conditions.

- PLHIV -

Recommendations for the government:

- Ensure that people living with HIV are not discriminated against by service providers, and are able to access services they need for their health and wellbeing.



Working group 2: Labour rights, migrant workers and forced labour-migration

- Labour Rights -

Recommendations for the government regarding the legislative and policy framework:

- The state should immediately adopt ILO conventions 87, 98, and 183.
- The state should enact laws that protect labour rights, in line with international standards. These laws should mandate both the state and the private sector to protect labour rights.
- Ensure that the Labour Relations Act, which is in the process of being ratified, complies with international standards.

Recommendations for the government on collective bargaining:

- The state should support the collective organisation of farmers in order to help them gain greater negotiating power.

Recommendations for the government on labour rights processes:

- Labour inspections should be more transparent, with reports being made available to the public.
- Minimise the costs, and streamline the process, of employment for workers.

Recommendations for the government regarding access to remedy:

- The state should engage more pro-bono lawyers to assist workers in labour disputes.
- The state should set up a timeline on labour-related lawsuits with 90 days being the maximum time frame for processing a case (90 days is the maximum amount of time an individual can go without income).

**Recommendations for the business sector on access to remedy**

- Businesses must make contributions to a remedy fund that is accessible at all workplaces for cases of rights violations.
- The private sector must establish complaints mechanisms with dedicated personnel who have the power to act to remedy abuses. The person in charge must have decision-making power and fix a clear timeframe to solve problems, with worker participation.

- Migrant Workers -**Recommendations for the government on access to services & benefits:**

- Migrant workers must receive fair wages, in line with Thai national minimum wage.
- Migrant workers should always be afforded interpretation. Translators should be accessible at all levels of the government and its services.
- The state must ensure migrant workers and their children are able to attain equal access to education in line with Thai citizens.
- The state should ensure businesses provide health insurance to migrant workers and help cover health related expenses.

Recommendations for the government on human rights education:

- Human rights education should be made mandatory in schools and incorporated into the national curriculum in order to disseminate knowledge about human rights principles and violations within the community.

Recommendations for the government on collective bargaining:

- The state should legalise the collective unionisation of migrant workers in order to help them gain more negotiating power.

Recommendations for the government on access to remedy:

- The state needs to set up more grievance mechanisms for migrant workers to launch complaints. Information about these (where to find them and how to use them) should be improved.
- Ensure effective law enforcement for human rights violations of migrant workers.
- Implement multi-disciplinary strategies to prevent migrant workers from facing human rights violations.



- Communicate with local police forces to prevent abuses against migrant workers.

- Forced labour -

Recommendations for the government on the legislative and policy framework:

- The state should develop a clear definition of forced labour, based on ILO P29, to prevent exploitative working conditions and allow victims to claim for their rights.

Recommendations for the government on forced labour awareness:

- Law enforcement and businesses should be educated on forced labour.

Recommendations for the business sector:

- In cases of forced labour, all workers - especially migrant workers - should have their wages paid out, through bank transactions or/and a payslips. These should be able to be checked and verified by employees.

Working group 3: Community rights & stakeholder engagement

Recommendations to the government on the legislative and policy framework:

- Adopt legislation imposing the mandatory conduct of human rights due diligence (HRDD) by any state owned enterprise and companies operating in Thailand and Thai companies operating abroad (or subsidiaries of Thai companies), including Thai outbound investments.

Recommendations to the government on the issue of public participation:

- To ensure transparency and respect to community right to public information, establish a mechanism that provides information to communities on upcoming projects on a systematic manner and that allows communities to access information without restriction. This transparency mechanism should be the shared responsibility of businesses and the government to inform the communities prior to the development of a project.
- Set up an independent committee with representatives from the community, business, NGOs, government, and independent academics to ensure the effective and inclusive participation of all key stakeholders.



- Adopt a human-rights based approach in development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC), in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights to Thailand.
- Ensure local communities, including indigenous peoples and ethnic minorities, play a vital role in the environmental management and development of their land, as their knowledge and local wisdom is essential and must be considered in decision-making processes.
- Information on any projects that could impact on communities' human rights and the environment should be clear and publicised.
- The body responsible for grievance mechanisms should be responsible for providing adequate information to affected communities.
- Encourage inclusive and participatory processes, respective of the FPIC of indigenous peoples and local communities.
- Make it mandatory for companies to conduct Human Rights Impact Assessments (HRIAs) and perform Strategic Environmental Assessments (SEAs) involving all communities who may be affected by projects, including critical voices.

Recommendations to the government on grievance mechanisms:

- Multiple channels should be developed to enable communities to lodge grievances.
- Need to have a mechanism in place that allows communities to access information about upcoming projects. This should be the responsibility of both business and government to inform the community's prior to the development of the project.
- EIA and EHIA reports need to be more transparent. There should be two EIA reports and affected communities should always be involved in the process.
- An independent committee comprising of key stakeholders, particularly potentially affected communities, should be set up to review potential investments.
- Utilise preventative remedies.
- Crystallise the role of lawyers in Pillar 3 (access to remedy) of the UNGPs to



ensure that they operate HRDD when assisting communities.

- Ensure the NHRCT can effectively investigate cases of rights abuses caused by businesses, and support the implementation of the NHRCTs recommendations.
- Ensure that companies and investors are held liable for human rights violations in court.

Recommendations to the government on access to remedy:

- Educate the judiciary on community rights.

Recommendations to the business sector:

- Immediately stop any development project that violates human rights and damages the environment.
- Conduct Human Rights Due Diligence throughout businesses' supply chains and periodically report on human rights commitments to prevent human rights violations.
- Provide remedies and fair compensation for rights violations.

Working group 4: Indigenous peoples rights and land-grabbing

Recommendations to the government on the legislative and policy framework:

- Recognise the rights of indigenous peoples in the Thai Constitution, granting them the right to citizenship, to manage their land and live peacefully in the forest;
- Develop a non-discrimination act (i.e. Anti-discrimination), addressing indigenous peoples specifically.
- Collaborate with indigenous peoples' organisations in implementing Article 70 of the 2017 Constitution and the Cabinet Resolution of 3 August 2010, and in mainstreaming them in the forest and environment acts.
- Make it mandatory for state owned enterprises and companies to systematically include indigenous people in their stakeholders engagement process, to ensure IPs have a chance to participate in decisions impacting their ancestral land, livelihoods and the environment, by respecting their FPIC and by listening to their needs and solutions;
- Revoke NCPO order 64/2014 utilised by the government to evict indigenous



communities from their ancestral lands to concede forest land to businesses for the establishment of SEZs.

- Revoke any law that limits indigenous peoples' access to forests.
- Make amendments to the law to ensure that local politicians and corporations cannot collude during development projects.

Recommendations to the government on FPIC & participation:

- Adopt a human-rights based approach in development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC), in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights to Thailand.
- Ensure local communities, including indigenous peoples and ethnic minorities, play a vital role in the environmental management and development of their land, as their knowledge and local wisdom is essential and must be considered in decision-making processes.
- Collaborate with CSOs, following an inclusive bottom-up approach, respective of the Free, Prior and Informed Consent (FPIC) of indigenous peoples and local communities to ensure meaningful stakeholder engagements.
- Make it mandatory for state-owned enterprises and companies to systematically include indigenous people in their stakeholder engagement process, to ensure IPs have a chance to participate in decisions impacting their ancestral land, livelihoods and the environment, by respecting their FPIC and by listening to their needs and solutions.
- Encourage inclusive and participatory processes.

Recommendations to the government on IPs ancestral lands:

- Undertake effective documentation and conduct community mapping to secure the communal and ancestral lands of indigenous peoples and local communities, in order to combat land grabbing by investors and businesses.
- Revoke any duplication of land deeds.

Recommendations to the government on government practice:

- The government should accept the difference in diversity in terms of



livelihood and the heritage of communities.

- Officials should be educated on human rights standards to prevent and mitigate violations.
- The government should actively engage with indigenous communities and work with them towards effective securing rights for all indigenous peoples.

Recommendations to the government on access to remedy:

- Compensate those affected by land-grabbing and other human rights violations.
- Utilise preventive remedies.
- Ensure the justice fund is provided to indigenous peoples who are stateless and do not hold the Thai citizenship.
- Grievance mechanisms should be made accessible at all levels, from the national to the local.

Recommendations to the business sector:

- Conduct HRIA and SEA prior to the development of mega projects, inclusive of indigenous peoples and local communities, respecting their FPIC, and providing translators to indigenous communities so they could meaningfully participate.
- Stop any development project violations human rights and the environment.
- Conduct HRDD throughout businesses' supply chains and periodically report on human rights commitments to prevent human rights violations.

Working group 5: Environmental Impacts

Recommendations to the government on the legislative and policy framework:

- The Royal Thai Government should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its international obligations, and make sure that all measures adopted under the current Constitution, including section 279, are consistent with the UN Human Rights Committee's Concluding Observations (April 2017), including the UNGPs, and including the obligation to provide effective remedies to victims of human rights violations.
- Revoke all laws (Mineral Act 2017; Petroleum Act 2017) and NCPO orders (e.i.



NCPO orders 3/2016; 4/2016; 9/2016; 28/2017) in violation to Article 58 of the 2017 Constitution, which requires the government to protect the environment and conduct a complete EIA for environmentally harmful activities, and Article 77 of the 2017 Constitution, which requires all regulations to pass a Regulatory Impact Assessment.

Recommendations to the government on EIA requirements:

- Make it mandatory for Thai investors to invest in projects that comply with international standards relating to HRIA, EIA and EHIA.
- Make it mandatory for EIAs and EHIAs in Thailand to comply with environmental and social safeguards of international financial institutions, such as IFC, ADB or OECD.
- Set up an independent committee with representatives from the community, business, NGO, government representatives and independent academics to participate in EIA/EHIA processes and review the EIA/EHIA reports.
- Ensure that the findings of social and environmental impact assessments or academic studies of the potential project are taken into account at the decision-making stage, and that the project does not go ahead if the results of the study indicate that the project would negatively impact the community and/or the environment.

Recommendations to the government on public participation:

- To ensure transparency and respect to community right to public information, establish a mechanism that provides information to communities on upcoming projects on a systematic manner and that allows communities to access information without restriction. This transparency mechanism should be the shared responsibility of businesses and the government to inform the communities prior to the development of a project.
- Ensure effective safeguards are in place to prevent the falsification of public hearings.

Recommendations to the government on access to remedy:

- Encourage participation from civil society to resolve environmental disputes faster and more effectively.
- Ensure those with political power are unable to unduly wield this power to



influence development projects at the expense of local communities.

Recommendations to the Office of Natural Resources and Environmental Policy and Planning (ONEP) to review the EIA process and allow for meaningful community participation:

- At the stage of listening to comments of the Expert Committee and the National Environment Board on EIA report, stakeholders and community representatives who are directly affected should be allowed to take part in the process.
- Stop hiring consulting firm to conduct the EIA reports but work closely with local and affected communities, academics, and experts who know how to work with communities, to ensure an inclusive process and an EIA report reflective of the realities on the ground.
- After the EIA report is handed to ONEP, ONEP should allow everyone to see it without any conditions, or refusals or telling people to ask to see it from the consulting firm.
- Affected people should be the ones who can make a decision, whether they want to terminate the project or let it continue. At present, people have no participation in the decision-making process to consider the report and therefore amendment to the laws is needed.
- In case the EIA report is amended, the community of affected people should be informed about progress on the report.
- There should be additional provisions or regulations that allow non-profit organizations (foundations, associations, NGOs, etc) that work on environment, health, community and human rights, to be eligible to do the EIA report.
- There should be establishment of Environmental and Health Independent Organisations as stated in the Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

Recommendations to the business sector:

- HRIAs should be conducted alongside HRIA and EIA.



Working group 6: Protection of HRDs

Recommendations to the government on its compliance with international standards and mechanisms:

- Ratify all international human rights instruments, withdraw reservations to certain treaty provisions and bring national law in line with human rights-related international obligations.
- The RTG, in line with the Concluding Observations of the 2017 review of Thailand's implementation of the ICCPR, should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its international obligations, and make sure that all measures adopted under the current Constitution, including section 279, are consistent with its obligations under the ICCPR, and compliant with the UNGPs, including the obligation to provide effective remedies to victims of human rights violations.
- Cooperate fully with UN Special Procedures, including the Special Rapporteur on the situation of HRDs, by responding to their urgent appeals and letters of allegations and accept the mandate holders' outstanding request to visit the country.
- Issue a standing invitation to the Special Rapporteur on the situation of human rights defenders.

Recommendations to the government on the recognition and protection of human rights defenders:

- Legally recognise 'human rights defenders' and the importance of their work by adopting the UN Guidelines on Human Rights Defenders in Thailand.
- Develop a clear definition of HRDs and create standard guidelines on how to identify and protect them.
- Protect human rights defenders and create a legal environment to support their activities.
- Ensure that Guidelines for the recognition, support, and protection of human rights defenders are included in the 4th National Human Rights Plan (2019-2023), and guarantee implementation by clearly outlining expected results and outcomes.
- Guarantee the participation of HRDs in the implementation and oversight of



existing and proposed legislation on the recognition and protection of defenders.

Recommendations to the government in relation to freedom of expression (FOE) and freedom of assembly (FOA) and to create an enabling environment for HRDs, putting an end to judicial harassment and SLAPP:

- The government of Thailand should take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the International Covenant on Civil and Political Rights.
- Immediately repeal Announcement 7/2014, 3/2015 and the Public Assembly Act.
- Prevent NCPO orders from limiting freedom of expression and freedom of assembly.
- Cease the arrest and intimidation of individuals opposing mining and petroleum projects under special security laws, such as NCPO Order No. 3/2015, Section 44 of the 2014 Interim Constitution, and the 2015 Public Assembly Act, and repeal or amend these laws to ensure they are consistent with international standards.
- The Royal Thai Government should adopt all measures necessary to protect human rights activists, including those working to defend economic, social and cultural rights, from any and all acts of intimidation, harassment and killings, in line with the UN Committee on Economic, Social and Cultural Rights' Concluding Observations, (June 2015).
- Decriminalise defamation and refrain from using criminal provisions, including the Computer Crimes Act the Sedition Act and other regulations, as tools to suppress the expression of critical and dissenting opinions.
- Adopt an anti-SLAPP law to prevent corporate actors from silencing HRDs.

Recommendations to the government on government practices:

- Engage in open and transparent dialogue with human rights defenders, community-based organizations, political activists, and the public and promote an environment in which all may safely exercise rights and freedoms without fear of retaliation.
- Train police forces on HRD issues and rights, to see HRDs as facilitator and



justice holders rather than enemies.

- Build trust between the state and affected people/ communities.
- Business and human rights should be separated from security issues.
- Adopt and apply a gender lens in the protection of HRDs. There should have appropriate measures in place to investigate offences – e.g. female inquiry officers.

Recommendations to the government on access to remedy:

- Combat impunity for violations committed against HRDs by ensuring that investigations are conducted promptly and impartially, and the perpetrators are held accountable, victims obtain appropriate remedies, and authorities further implement the preventive measures to ensure that violation do not happen.
- Close investigations or drop charges against human rights defenders and others relating to their peaceful exercise of rights and freedoms guaranteed by international law.
- Review and improve the Justice Fund mechanism and its accessibility.
- Create an independent body for the protection of HRDs.
- Pending NCPO and SLAPP law cases should be withdrawn.
- Witness protection should be offered to HRDs whenever they feel threatened - even if it is not an immediate threat.

Recommendations to the government on the NHRCT:

- Review the 2017 NHRCT Organic Law to bring it in line with the Paris Principles, to guarantee a gender lens and diversity in its composition and to ensure Commissioners have credible human rights expertise and experience to independently investigate cases of human rights violations.
- Ensure the NHRCT is an independent and impartial national human rights institution, in compliance with the Paris Principles, to comprehensively address the concerns raised by the GANHRI during its review in 2015.
- Remove section 44 of the 2017 NHRCT Organic Law requiring the NHRCT to clarify and report about incorrect and unfair human rights reporting on Thailand. Section 44 is being used by the military government to silence HRDs and any critical voice and does not comply with the Paris Principles.
- Human rights complaints submitted to NHRCT should be confidential so they



do not result in reprisals by businesses, such as the Thammakaset vs. 14 migrant workers case.

- The NHRCT needs to be independent, stronger on human rights, more active in the protection of HRDs, with more dedicated staff based on the field, and in line with the Paris Principles.

Recommendations to the business sector:

- Comply with UNGP 18 and consult HRDs, to consider them as vital expert resources and to recognise them as watchdogs, advocates and facilitators.
- Adopt a policy statement to protect human rights defenders and prevent Thai companies and subsidiaries of Thai companies of intimidating and harassing HRDs.
- Thai investors should adopt a policy statement to commit to not investing in projects that violate the rights of human rights defenders and silence HRDs protesting against the project.
- Provide effective remedy to HRDs.



REFLECTIONS – END OF DAY 2

Ms. Debbie Stothard (Secretary-General at FIDH & Founder at ALTSEAN-Burma) congratulated the participants for their insightful contributions and encouraged Thailand and other ASEAN countries to further engage in and act upon business and human rights issues. She then reflected on the importance to acknowledge indigenous peoples' lives and struggles in Thailand and called on the Thai Government to recognise them in the Thai Constitution, as they are the primary protectors of Thailand's forests – not the encroachers.

Following this, **Mr. Livio Sarandrea** (Rule of Law and Crisis Prevention Specialist, Manager of the Regional Business & Human Rights Programme, UNDP Bangkok Regional Hub) highlighted the importance of a meaningful NAP process. The NAP **action points needs to be specific**; dividing the points into activities, giving them a time-frame, cost and a person responsible to achieve the goal. This makes it easier to monitor it and the CSOs should help the MoJ to identify those priorities. Moreover, the **NHRC should play a greater role in the development of a NAP**. The Commission has access to a lot of data that can be useful for the development of the NAP. Most NAPs do not talk about remedies – the NHRC should be evaluating the capacity of available remedy mechanisms (judicial and non-judicial). **Collecting credible data** is vital – including the development of indicators. We need to use **indicators** to understand where we are now, and where we want to be in the future. In so doing, we can identify a few priorities point that Thailand should seek to achieve under an agreed timeline.



CONCLUSION

The Manushya Foundation captured all the discussions and plans on integrating all feedback, recommendations formulated by communities and experts into the CSO NBA. By giving communities a platform to share their experiences of business and human rights, and highlight the drastic impact business operations have had on local communities, the experts meeting aimed to ensure community voices were acknowledged by the government, and the information they gave was fully implemented into the upcoming NAP. Additionally, the comprehensive, considered recommendations offered by communities together with the support of Manushya presented a key opportunity for the government to ensure the upcoming NAP was representative and truly responded to the needs of Thai people, including affected communities.

Manuhya is deeply grateful to everyone who took part, and hopes the meeting served as an invaluable opportunity for those responsible for developing the NAP and spearheading business and human rights efforts in Thailand to take on board and effectively utilise the wealth of knowledge and information that was shared over its course.

ANNEXES



AGENDA & LIST OF PARTICIPANTS



ANNEXE 1

AGENDA

AGENDA



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Thai CSOs Coalition
for the UPR



SECOND EXPERTS MEETING TO DISCUSS THE FINDINGS & RECOMMENDATIONS OF THE CSO NATIONAL BASELINE ASSESSMENT (NBA) ON BUSINESS & HUMAN RIGHTS IN THAILAND

28 FEBRUARY - 1 MARCH 2018
THE EMERALD HOTEL, BALLROOM II, 3RD FLOOR, BANGKOK, THAILAND

WEDNESDAY, 28 FEBRUARY 2018

Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Ms. Nada Chaipayit, Capacity Building Coordinator, Manushya Foundation

8:30 -
9:15

OPENING // INTRODUCTION & WELCOMING REMARKS

Ms. Aimon Siangyai, Deputy Director-General, Rights and Liberties Protection Department, MoJ
H.E. Dr. Seree Nonthasoot, Representative of Thailand to the AICHR
Ms. Katia Chirizzi, Deputy Representative, OHCHR
Ms. Napaporn Songprang, Acting Chair, Manushya Foundation &
Human Rights Lawyer, Thai CSOs Coalition for the UPR

9:15 -
9:45

KEYNOTE REMARKS

Professor Surya Deva,
Member, UN Working Group on Business & Human Rights

9:45 -
10:30

SESSION 1 // THE CSO NBA ON BUSINESS & HUMAN RIGHTS: PROCESS, METHODOLOGY & CONTENT

Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Ms. Nada Chaipayit, Capacity Building Coordinator, Manushya Foundation

10:30 -
10:45

COFFEE BREAK

10:45 -
12:30

SESSION 2 // CASE STUDIES & FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS

PART 1 - VIOLATIONS OF LABOUR STANDARDS

Dialogue between Communities, Academic Researchers & Experts

Community members and academics sharing their case studies, findings & recommendations
from evidence-based research conducted to build credible evidence and inform the CSO NBA

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AGENDA

12:30 -
13:30

LUNCH BREAK

Panorama II, 14th floor

13:30 -
16:15

SESSION 3 // CASE STUDIES & FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS

PART 2 - ADVERSE IMPACTS ON INDIGENOUS PEOPLES, COMMUNITY RIGHTS, COMMUNITIES' LIVELIHOOD, HEALTH & THE ENVIRONMENT

Dialogue between Communities, Academic Researchers & Experts

Community members and academics sharing their case studies, findings & recommendations from evidence-based research conducted to build credible evidence and inform the CSO NBA

15:30 -
15:45

COFFEE BREAK

Coffee Break will be served in the meeting room during session 3

16:15 -
17:15

SESSION 4 // CASE STUDIES & FINDINGS ON THE ADVERSE IMPACTS OF BUSINESS CONDUCTS

PART 3 - THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS

Commissioner Angkhana Neelapaijit, National Human Rights Commission of Thailand
Ms. Katima Leeja, Indigenous Woman, Indigenous Women Network of Thailand (IWNT)
Ms. Emile Pradichit, Founder & Director, Manushya Foundation
Mr. Emile Kinley-Gauthier, Human Rights Researcher, Manushya Foundation

Moderated by Ms. Debbie Stothard, Secretary-General at FIDH & Founder at ALTSEAN-Burma

17:15 -
18:00

CLOSING REFLECTIONS ON DAY 1

Professor Surya Deva, Member, UN Working Group on Business & Human Rights

Professor Vitit Muntarbhorn, International Human Rights Law Expert & Professor Emeritus, Chulalongkorn University



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AGENDA



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SECOND EXPERTS MEETING TO DISCUSS THE FINDINGS & RECOMMENDATIONS OF THE CSO NATIONAL BASELINE ASSESSMENT (NBA) ON BUSINESS & HUMAN RIGHTS IN THAILAND

28 FEBRUARY - 1 MARCH 2018
THE EMERALD HOTEL, BALLROOM II, 3RD FLOOR, BANGKOK, THAILAND

THURSDAY, 1 MARCH 2018

Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Ms. Nada Chaityajit, Capacity Building Coordinator, Manushya Foundation
Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Ms. Nada Chaityajit, Capacity Building Coordinator, Manushya Foundation

8:30 -
10:30

SESSION 5 // ACCESS TO EFFECTIVE REMEDY IN THE CONTEXT OF BUSINESS & HUMAN RIGHTS IN THAILAND

Ms. Nareeluc Pairchaiyapoom, Director of the International Human Rights Law Division,
Rights and Liberty Protection Department, Ministry of Justice
Ms. Sor Rattanamanee Polkla, Co-founder, Coordinator & Human Rights Lawyer,
Community Resource Centre (CRC)
Kant Tamee, Human Rights Lawyer, Community Resource Centre (CRC)
Mr. Sompong Sakaew, Director, Labour Rights Promotion Network Foundation (LPN)
Moderated by Ms. Golda Benjamin, Southeast Asia Researcher & Representative,
Business and Human Rights Resource Center (BHRR)

10:30 -
10:45

COFFEE BREAK

10:45 -
12:30

SESSION 6 // GOOD PRACTICES OF RESPONSIBLE BUSINESS & MULTI-STAKEHOLDER COLLABORATIONS

Mr. Netithorn Praditsarn, VP Charoen Pokphand Group, Deputy Secretary General,
Global Compact Network Thailand, CSR Club Thailand
Ms. Patchareeboon Sakulpitakphon, Business & Human Rights Consultant
Mr. Nattawut Kasem, Campaign Assistant, Environmental Justice Foundation (EJF)
Dr. Somnuck Jonmeewasin, Silpakorn University International College

Moderated by Professor Amara Pongsapich, Professor Emeritus, Chulalongkorn University

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AGENDA

12:30 -
13:30

LUNCH BREAK

Panorama II, 14th floor

13:30 -
14:00

SESSION 7 // PRESENTATION OF THE ISSUE BRIEFS HIGHLIGHTING FINDINGS & SUGGESTED RECOMMENDATIONS OF THE CSO NATIONAL BASELINE ASSESSMENT (NBA)

Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Mr. Emile Kinley-Gauthier, Human Rights Researcher, Manushya Foundation

14:00 -
15:30

SESSION 8 // THEMATIC WORKING GROUPS TO REVIEW RECOMMENDATIONS

GROUP WORK FACILITATED BY EXPERTS:

Professor Amara Pongsapich, Professor Emeritus, Chulalongkorn University
Ms. Golda Benjamin, Southeast Asia Researcher & Representative, Business and Human Rights Resource Center (BHRRRC)
Ms. Sor Rattanamanee Polkla, Co-founder & Coordinator, Community Resource Centre (CRC)
Ms. Napaporn Songprang, Acting Chair, Manushya Foundation & Human Rights Lawyer, Thai CSOs Coalition for the UPR
Dr. Somnuck Jonmeewasin, Silapakorn University International College
Ms. Debbie Stothard, Secretary-General at FIDH & Founder at ALTSEAN-Burma
Ms. Saovane Kaewjullakarn, Professor Lecturer, Faculty of Law, Thaksin University
Mr. Watcharachai Jirajindakul, Professor of Law, National Institute of Development Administration (NIDA)
Ms. Patchareeboon Sakulpitakphon, Business & Human Rights Consultant

15:30 -
15:45

COFFEE BREAK

15:45 -
17:00

REPORTING BACK IN PLENARY

Each working group to report back in plenary by providing feedback on suggested recommendations and further inputs to the CSO NBA

17:00 -
17:40

REFLECTIONS ON 2-DAY EXPERTS MEETING

Ms. Debbie Stothard, Secretary-General at FIDH & Founder at ALTSEAN-Burma
Mr. Livio Sarandrea, Rule of Law and Crisis Prevention Specialist, Manager of the Regional Business & Human Rights Programme, UNDP Bangkok Regional Hub

17:40 -
18:00

CLOSING & WAY FORWARD

Ms. Emilie Pradichit, Founder & Director, Manushya Foundation
Ms. Nareeluc Pairchaiyapoom, Director of the International Human Rights Law Division, Rights and Liberty Protection Department, Ministry of Justice
Mr. Simon Lever, Political Counsellor, British Embassy in Bangkok, Thailand





ANNEXE 2

LIST OF PARTICIPANTS

LIST OF PARTICIPANTS				
No.	Title	Name	Organisation	Issue
Organisers				
1	Ms	Emilie Pradichit	Founder & Director, Manushya Foundation	UNGPs + Community Empowerment
2	Ms	Charlotte Lush	Human Rights Research & Advocacy Officer, Manushya Foundation	UNGPs + Community Empowerment
3	Ms	Nada Chaiyajit	Capacity Building Coordinator, Manushya Foundation	UNGPs + Community Empowerment
4	Ms	Suphamat Phonphra	Programme Officer, Manushya Foundation	UNGPs + Community Empowerment
5	Ms	Tanida Itthiwat	Programme Officer, Manushya Foundation	UNGPs + Community Empowerment
6	Mr	Emile Kinley-Gauthier	Consultant, Manushya Foundation	UNGPs + Community Empowerment
7	Ms	Juliette Leoni	Volunteer, Manushya Foundation	UNGPs + Community Empowerment



8	Ms	Linnea Kristiansson	Volunteer, Manushya Foundation	UNGPs + Community Empowerment
9	Ms	Layla Mohammad	Intern, Manushya Foundation	UNGPs + Community Empowerment
10	Ms	Lucy Chandler	Intern, Manushya Foundation	UNGPs + Community Empowerment
HRDs, Community Members & Academics				
Labour Rights				
11	Mr	Pakorn Areekul	Central & Eastern Regional Node, Thai CSO Coalition for the UPR	Labour Rights / Trade Unions
12	Mr	Wiroon Sakaekhum	President, The State Enterprise Workers' Relations Confederation (SERC)	Labour Rights / Trade Unions
13	Mrs	Puttan Sakaekhum	Representative, The State Enterprise Workers' Relations Confederation (SERC)	Labour Rights / Trade Unions
14	Mr	Nattawut Kasem	Campaign Assistant, Environmental Justice Foundation (EJF)	Labour Rights / Migrant Workers
15	Ms	Sugarnta Sookpaita	Coordinator, Northern BHR Network	Labour Rights / Migrant Workers



			Manager, Migrant Workers Federation (MWF)	
16	Mr	Tee Nayod	Youth Migrant Worker, Migrants Workers Federation (MWF)	Labour Rights / Migrant Workers
17	Mr	Suchart Intha	Migrants Workers Federation (MWF)	Labour Rights / Migrant Workers
18	Mr	Kongpop Sennunta	Migrants Workers Federation (MWF)	Labour Rights / Migrant Workers
19	Ms	Nattaya Petcharat	STELLA Maris Songkla	Labour Rights / Migrant Workers
20	Ms	Wannapong Yodmuang	Central & Eastern Regional Node, Thai CSO Coalition for the UPR	Labour Rights / discrimination / LGBTI
21	Ms	Chatchalawan Muangjan	Manager, EMPOWER Foundation	Labour Rights / Discrimination / Sex workers
22	Ms	Thissadee Sawangying	Manager, Health & Opportunity Network (HON)	Labour Rights / Discrimination / Sex workers
23	Mr	Sirisak Chaited	LGBTI Activist, Business Owner, Le Spa Massage	Labour Rights / Discrimination / Sex workers
24	Ms	Wimonrekha Sirichairawan	Professor, Faculty of Law, University of Phayao	Labour Rights / Discrimination / Sex workers



25	Mr	Udom Ngammuangsakul	Professor, Faculty of Law, University of Phayao	Labour Rights / Discrimination / Sex workers
Land Rights, Natural Resources & Environmental Impacts				
26	Mr	Chainarong Sretthachau	Professor, Mahasarakham University	Land Rights, Natural Resources & Environmental Impacts
27	Mr	Sarawut Pinkanta	Northern Regional Node, Thai CSO Coalition for the UPR, Human Rights Lawyer, Centre for the Protection & Revival of Local Community Rights, CPR	Land Rights, Natural Resources & Environmental Impacts
28	Ms	Napaporn Songprang	Acting Chair, Manushya Foundation & Human Rights Lawyer	Land Rights, Natural Resources & Environmental Impacts
29	Mr	Somboon Kamhaeng	Community Leader, Pak Bara Community	Land Rights, Natural Resources & Environmental Impacts
30	Mr	Somyot Tohlang	Community Member, Pak Bara Community	Land Rights, Natural Resources & Environmental Impacts
31	Ms	Kaosar Aleemama	Southern Regional Node, Thai CSOs Coalition for the UPR, Paralegal, Muslim Attorney Centre (MAC)	Land Rights, Natural Resources & Environmental Impacts



32	Ms	Asmah Tanyongdao	Southern Regional Node, Thai CSOs Coalition for the UPR, Advocacy Officer, Patani Institute	Land Rights, Natural Resources & Environmental Impacts
33	Mr	Sompha Chaikla	Coordinator, Southern BHR Coordinator Land Rights Activist, Taphan Community	Land Rights, Natural Resources & Environmental Impacts
34	Mr	Manavee Dengdo	Land Rights Activist, Budo Community	Land Rights, Natural Resources & Environmental Impacts
35	Mr	Asmee Pu	Land Rights Activist, Saiburi Community	Land Rights, Natural Resources & Environmental Impacts
Indigenous Peoples				
36	Ms	Kanda Pramongkit	Indigenous Women Network of Thailand (IWNT)	Indigenous Peoples / FPIC, Land Grabbing
37	Ms	Jitti Pramongkit	Indigenous Women Network of Thailand (IWNT)	Indigenous Peoples / FPIC, Land Grabbing
Community Rights, Public Participation & Protection of HRDs				
38	Ms	Katima Leeja	Indigenous Women Network of Thailand (IWNT)	Indigenous Peoples HRDs, Enforced Disappearances, Extra-judicial Killings
39	Ms	Nattaporn Artharn	Environmental Activist & Researcher, Manushya Foundation	Community Rights, Public Participation & Protection of HRDs



40	Mr	Direk Hemnakorn	Community Leader, Thepa Community, Songkla-Pattani Network against the Thepa Coal-fired Power Plant	Community Rights, Public Participation & Protection of HRDs
41	Mrs	Rokeeyoh Samaae	Woman HRD, Thepa Community, Songkla-Pattani Network against the Thepa Coal-fired Power Plant	Community Rights, Public Participation & Protection of HRDs
42	Ms	Tasneem Tanbumrong	Community Member, Thepa Community, Songkla-Pattani Network against the Thepa Coal-fired Power Plant	Community Rights, Public Participation & Protection of HRDs
43	Ms	Saovanee Kaewjullakarn	Professor Lecturer, Faculty of Law, Thaksin University	Community Rights, Public Participation & Protection of HRDs
44	Mr	Nattawut Chotikan	Faculty of Law, Thaksin University	Community Rights, Public Participation & Protection of HRDs
45	Mr	Titipol Phakdeewanich	Dean, Faculty of Political Science, Ubon Ratchathani University	Community Rights, Public Participation & Protection of HRDs
46	Ms	Sor. Rattanamanee Polka	Co-founder, Coordinator & Human Rights	Community Rights & Access to Remedies



			Lawyer	
47	Ms	Kant Tamee	Laywer of Community Resource Centre (CRC)	Community Rights & Access to Remedies
Thai Outbound Investments & Free Trade Agreements				
48	Ms	Amporn Pripanasumpun	Indigenous Women Network of Thailand (IWNT)	Indigenous Peoples / RCEP
49	Mr	Watcharachai Jirajindakul	Professor of Law, NIDA	ETOs, Transboundary violations, Thai outbound investments
Experts				
50	Mr	Vitit Muntarbhorn	Internnational Human Rights Law Expert & Professor Emeritus, Chulalongkorn University	International Expert
51	Dr	Surya Deva	Member, UN Working Group on Business and Human Rights	International Expert
52	Ms	Golda Benjamin	SEA Researcher & Representative, Business & Human Rights Resource Center (BHRRC)	Regional Expert: Corporate Accountability & Access to Remedies
53	Ms	Debbie Stothard	Secretary- General at FIDH & Founder at ALTSEAN- Burma	Regional Expert: Shadow NBA - Myanmar
54	Ms	Krizel Lopez	Senior Rsearcher,	Regional Expert: Shadow NBA - Myanmar



			ALTSEAN-BURMA	
55	Ms	Angkhana Neelapaijit	Human Rights Commissioner, NHRCT	National Expert: Protection of HRDs
56	Ms	Amara Pongsapich	Professor Emeritus, Chulalongkorn University, Former NHRCT's Chair	National Expert: Gender Lens Expert
57	Mr	Somnuck Jongmeewasin	PhD, Silpakorn University	National Expert: Environmental Issues, ETOs & Sustainable Management
58	Mr	Sompong Sakaew	Director, Labour Rights Promotion Network Foundation (LPN)	National Expert: Migrant Worker Issues
59	Ms	Chalida Tajaroensuk	People's Empowerment Foundation (PEF)	National Expert: Community Empowerment
60	Ms	Patchareeboon Sakulpitakphon	Human Rights Due Diligence Expert & Private Sector Engagement Specialist	National Expert: Pillar 2 UNGPs
61	Ms	Netithorn Praditsarn	Vice President, Charoen Pokphand Group, Deputy Secretary General, Global Compact Network Thailand, CSR Club Thailand	Pillar 2 - Corporate Responsibility
62	Mr	Prathomrak Na-	Analyst, PTT	Pillar 2 - Corporate Responsibility



		Ngern	Group Sustainability Management Project	
UN Agencies				
63	Ms	Katia Chirizz	Deputy Representative, OHCHR	OHCHR
64	Mr	Livio Sarandrea	Manager, BHR Project, UNDP	UNDP
65	Mr	Sean Lees	Policy Specialist, Regional BHR Project, UNDP	UNDP
66	Mr	Victoria de Mello	Programme Officer, Rrgional BHR Project, UNDP	UNDP
67	Mr	Ekawut Weskosith	Intern, Regional BHR Proejct, UNDP	UNDP
Government Officials				
68	Dr	Seree Nonthasoot	Thailand Representative to the AICHR	Senior Advisor to NAP Committee & Representative of Thailand to the AICHR
69	Ms	Aimon Siangyai	Deputy Director-General of the Rights and Liberties Protection Department (RLPD), MoJ	RLPD, MOJ
70	Ms	Nareeluc Pairchaiyapoom	Director of the International Human Rights Division, RLPD, MoJ	RLPD, MOJ
71	Mrs	Cheraporn Siripalang	Justice Officer, Professional	RLPD, MOJ



		Thummas	Level	
72	Mr	Phoomjai Manmin	Rights and Liberties and Human Rights Promotion Officer	RLPD, MOJ
73	Mr	Chernpun Chipibhop	Rights and Liberties and Human Rights Promotion Officer	RLPD, MOJ
74	Ms	Pranisa Chinkulkitniwat	Legal Officer, RLPD, MoJ	RLPD, MOJ
75	Mr	Prasit Pivavat	Law Professor, Thammasat University & NAP Writer, Consultant with MoJ	RLPD, MOJ
76	Ms	Supattra Chuapee	Diplomat, MOFA	MOFA
77	Ms	Waritsara Limsamang	Ministry of Foreign Affairs (MOFA)	MOFA
78	Ms	Thanaporn Keeratisamit	Ministry of Foreign Affairs (MOFA)	MOFA
79	Mr	Karin Kunjara Na Ayudha	Ministry of Foreign Affairs (MOFA)	MOFA
80	Mr	Theerasak Charassrivisist	Ministry of Energy	MOE
81	Ms	Wipavee Wannapong	Ministry of Commerce	MOC
82	Ms	Angkhana Chaiviriya	Office of the National Economic and Social Development Board	NESDB



83	Mr	Songpol Kum...	State Enterprise Policy Officer (SEPO)	SEPO
84	Ms	Vorrachaya Latthayapron	State Enterprise Policy Officer (SEPO)	SEPO
85	Ms	Pornpet Punjapiyakul	Ministry of Public Health	MPH
86	Ms	Chalothorn Liewchavalit	Ministry of Labour	MOL
87	Mr	Chunrat Ratchun	Ministry of Labour	MOL
88	Ms	Chayanee Paweerawat	Social Security Officer, Ministry of Labour	MOL
89	Ms	Varatsuda Saradatta	Social Security Officer, Ministry of Labour	MOL
90	Ms	Suchittra Suntanaphorn	Ministry of Transport	MOT
91	Mr	Somkiet Ananrat	Royal Thai Police	Royal Thai Police
Embassies				
92	Mr	Andrew L. Armstrong	Diplomat, US Embassy	
93	Mr	Simon Lever	Political Counsellor, British Embassy in Bangkok	
Interpreters				
94	Ms	Jaruwaree Snidwongse	Translator	
95	Ms	Darunee Kunchai	Translator	
96	Ms	Suvimon Sanguansat	Translator	





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.

Thai CSOs Coalition
for the UPR

