

**Statement with Intervention from
the National Human Rights Commission of Thailand (NHRCT)**

In a session : “Role of NHRIs in facilitating access to remedy for business-related human rights impacts” of the 2018 UN Forum on Business and Human Rights, on 27 November 2018

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1. As the National Human Rights Commission of Thailand (NHRCT) has witnessed a substantial increase in the prevalence and discussion on business and human rights worldwide within the past decade. This discussion is also timely for Thailand, as a country has accelerated its integration into the regional and global market economy significantly, driven largely by business interests within and outside of it. This development has come with notable changes, including the construction of large infrastructural projects, such as hydropower dams, highways, and coal-fired power plants, the proliferation of the mining industries, the creation of special economic and industrial zones, and the expansion of agro business. While this development has brought rising GDPs across the country, so too has inequality increased. Displacement caused by development, exploitation of marginalized groups, especially indigenous and folk populations, and environmental degradation have been side effects of those developments.

2. However since 1999, the National Human Rights Commission of Thailand (NHRCT) has made tireless efforts for making the rights spectrum protected and promoted in line of all relevant human rights treaties and standards, including the promotion on the implementation of United Nations Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council in 2011, particularly towards the rights of indigenous and folk communities with enhancing of the application of Free, Prior and Informed Consent (FPIC); the rights of human rights defenders with proposing for the Anti-Strategic Lawsuit Against Public Participation (SLAPP) law; the freedom of expression and of assembly with recommending for the revision of at least 35 laws and orders issued under the recent government and military-driven National Council for Peace and Order (NCPO), covering those in conflict with the human rights principles and standards; and etc.

3. The NHRCT’s good practices could be concluded from its full exercise of duties and powers along the working process of complaint handlings with rights protection and promotion as: (i) to verify facts and witnessing of violations; (ii) to summon alleged parties with verbal and written declaration of facts; (iii) to launch preliminary reports with summary of findings; (iv) to finalize a comprehensive investigation report with recommendations for all relevant stakeholders including local governments and relevant business sectors and individuals and international agencies; (v) to play the roles of friend of the Court (*Amicus Curiae*); (vi) to meet and share information with the press, diplomats and relevant UN agencies; and (vii) to promote the rights awareness with application of relevant tools and standards including the Human Rights Due Diligence (HRDD) and the enhancing the meaningful participation and engagement of the making of National Action Plan on Business and Human Rights (NAP).

4. And with the distinction of Thailand’s legal system as dualism and challenges of scope of responsibilities outside its jurisdiction, some cases of businesses violating rights demonstrate stronger mechanisms are needed, particularly in relation to extra-territorial obligations (ETOs) of states, Thailand has still failed to ensure the protection of the rights of civilians marginalized by Thai company’s actions abroad.

5. The UNGPs state that the “responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of states’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations.” This means that despite the ability or willingness of Thailand’s neighboring countries - Myanmar, Laos PDR or Cambodia - to hold accountable the actions of businesses in their jurisdictions, the Thai companies operating there have a responsibility under the UNGPs to respect human rights obligations in their business enterprise operations and supply chains throughout their subsidiaries.

6. However, while the UNGPs are laudable in their aspirations, they nevertheless lack the obligatory nature required to ensure that businesses respect the rights of the citizens in the localities in which they operate. Instead of a voluntary mechanisms or guiding principles, businesses should be held accountable for their actions on a legal basis. As the NHRCT’s investigation with findings, the states have an interest and the legal authority to hold their companies responsible for their actions abroad as they concern human rights. Known as extraterritorial obligations of companies, these standards can be used to judge companies actions abroad and ensure that they comply with all relevant human rights treaties and laws.

7. And in order to protect the human rights of citizens in Thailand and Southeast Asia countries, particularly to those with business-related human rights impacts, the NHRCT urges the governments to hold accountable corporations domiciled in their territory for their actions abroad. Where legal remedy and accountability is not possible, governments have a broad toolbox with which to press companies on their human rights responsibilities. The effective remedies should be ensured, not only for harm suffered based on humanitarian based approach e.g. financial helps, but they should cover the other remedies such as restitution, satisfaction, guarantees of non-repetition and public apology.

9. Furthermore, in cases of huge mega projects operated, e.g. hydropower dam construction and special economic zone developments, the banks and financial institutes can also be important levers to ensure rights of folk communities are respected in development projects by businesses. As they hold a powerful position to influence decisions made by project developers, adherence to corporate social responsibility standards by them could have a significant positive human rights and environmental impacts.

10. The NHRCT strongly urges the making of binding standards, apart from the UNGPs, to be imposed on banks, financial institutions and all relevant actors, including in respect to human rights as existing voluntary standards are too easily disregarded.
