

# SUMMARY OF JOINT COMMENTS ON THE FINAL DRAFT NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS IN THAILAND (NAP-BHR)



**MANUSHYA**  
Empowering Communities | Advancing Social Justice

**#ThaiBHRNetwork**

# SUMMARY OF JOINT COMMENTS ON THE FINAL DRAFT NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS IN THAILAND (NAP-BHR)

## 1 Why is the National Action Plan on Business & Human Rights (NAP-BHR) important?

The National Action Plan on Business & Human Rights (NAP-BHR) is a policy document that once implemented will affect all actions and activities related to businesses, and will affect all communities and individuals including: *formal and informal workers, people with disabilities, LGBTI individuals, people living with HIV, drug users, women, sex workers, migrant workers, indigenous peoples, stateless persons, community rights defenders, land-related and environmental rights defenders, human rights defenders, and civil society in Thailand.*

If well developed and implemented, the NAP-BHR can serve as a starting point and driver force to address corporate accountability, ensure responsible business conduct and promote a Thai economy that is sustainable and respectful of human rights, with Thai businesses meaningfully consulting and engaging with affected and marginalised communities to assess and mitigate human rights risks and impacts of their activities, and to guarantee Thai corporations are not committing or involved in human rights abuses wherever they may operate, in the country and abroad.

## 2 What should be the key components of a NAP-BHR?

According to the UN Working Group on Business & Human Rights, a NAP shall include the following key components:

- The NAP should be founded in the UN Guiding Principles and in line with international human rights standards;
- The NAP should reflect the State's duties under international human rights law well, in order to protect against adverse business-related human rights impacts and provide effective access to remedy;
- The NAP should include the government's expectations of businesses with respect to human rights and should promote businesses to respect human rights in line with the UNGPs, including through due diligence processes and measures to allow for access to remedy;
- The NAP must be based on the principles of non-discrimination and equality;
- The NAP should specifically address challenges and impacts faced by those at risk of becoming marginalised, including differential impacts based on gender;
- The NAP should be context-specific and address the country's actual and potential business-related human rights abuse;
- The NAP should highlight the government's priorities in addressing adverse business-related human rights impacts and discuss current and planned activities on the UNGPs. These should include clear responsibilities of relevant actors, a timeframe, and indicators;
- The NAP should consist of a 'smart mix' of voluntary and mandatory, as well as international and national measures. In doing so, the government should consider its legal obligations, and take into account all possible measures to address adverse human rights impacts of businesses;
- The NAP should be developed through an inclusive and transparent process;
- The development of the NAP should include the needs and views of relevant stakeholders, especially of those who are likely to be impacted. Other stakeholders to be included are national human rights institutions, business representatives, trade unions, and civil society organisations;
- The NAP should include means for monitoring and updating through the creation of a multi-stakeholder monitoring group, which would be mandated to receive, and comment on Government reports;
- The processes involved in the NAP need to be regularly reviewed and updated in order to correspond with the changing context and to strive for cumulative effects and progress.



### 3 What about the Thai NAP-BHR? Is it following the aspirations of affected communities and the Thai BHR Network?

## OVERALL ASSESSMENT OF THE NAP-BHR

### WHAT IS GOOD? ✓

- 1 Includes the **priority areas identified by communities** through a baseline assessment process, including (1) labour rights and standards; (2) communities, land, natural resources and the environment, (3) human rights defenders, and (4) international investments and transnational corporations.
- 2 Attempts to **regulate the activities of businesses** by developing rules on decent working conditions; measures on labour management in the supply chain; promoting implementation of the Good Labour Practices (GLP); and preventing exploitation of workers in large scale businesses registered with the Stock Exchange of Thailand (SET) through Human Rights Due Diligence measures.
- 3 Provides for **assessment of the impact of business activities** through Environmental Impact Assessment (EIA), Environmental Health Impact Assessment (EHIA), and Strategic Environmental Assessment (SEA) process.
- 4 Organises **consultations with HRDs**, to collaborate to prevent, tackle, and provide a remedy against the negative impact of business activities on human rights.
- 5 Provides for the improvement of laws, policies and measures to evaluate negative transboundary human rights impacts to ensure protection, remedy, and transboundary accountability in line with international standards, such as the **OECD Guidelines for Multinational Enterprises**.
- 6 Attempts to use **state-owned enterprises as an example** on respecting human rights and addressing human rights impacts, with respect to international investments.
- 7 **Evaluates the implementation of the NAP**, and what has been achieved to encourage implementing agencies.

### WHAT IS MISSING? ✗

- 1 Only provides for **studying the possibility of ratifying treaties, and considering the amendment of laws** to improve them. Does not provide actual steps for their improvement.
- 2 Does not include an effective **gender lens**. Only sees women and LGBTI individuals as victims of human rights violations, and not rights holders.
- 3 Completely **ignores indigenous peoples**, and the violation of their labour rights, human rights and community rights by business activities
- 4 Leaves out sex workers, and does not recognise **sex work as work**.
- 5 Does not provide for implementation through **legally binding mandatory provisions**, to hold the business sector and state owned enterprises accountable.
- 6 Does not include **mandatory human rights due diligence mechanisms**, including those that evaluate the negative impact of business activities on human rights through Human Rights Impact Assessments (HRIAs), and Community Human Rights Impact Assessments (CHRIAs), Social Impact Assessment; and on specific groups on individuals through Gender Impact Assessments (GIAs).
- 7 On **remedy**, it does not adequately include state-based non-judicial grievance redress mechanisms; customary laws and practices of affected communities; and barriers to accessing remedy.
- 8 Does not include **all stakeholders in the implementation and monitoring** process of the NAP, such as civil society, affected communities, and the business sector.

## WHAT WE WANT?

- 1 Provide for the **ratification of international treaties**, and **amendment of laws** that are flawed, misused, or that violate the rights of individuals.
- 2 **Include a gender lens throughout the NAP**, by adding provisions on labour rights and protections guaranteed to women workers and sex workers; discrimination of women and LGBTI individuals; rights of rural and indigenous women on access to information and participation in decision-making processes including on management of land, natural resources and the environment; and protection of women human rights defenders.
- 3 **The rights of indigenous peoples** must be guaranteed and protected.
- 4 Must **guarantee labour rights and human rights** to all sex workers.
- 5 **Include a smart mix of voluntary and mandatory measures**, to ensure that businesses respect human rights.
- 6 **Remedies** must be provided through mechanisms that take into consideration the gender, legal status, sexual orientation and gender identity, nationality, and ethnicity of individuals; and specific circumstances such as enforced disappearances of defenders, restrictions on online activity, and remedies to victims of exploitative labour practices or through collective bargaining.
- 7 **Implementation and monitoring of the NAP** by a multi-stakeholder committee that includes business enterprises, trade unions, national human rights institutions, CSOs, all affected communities and their representatives (specifically indigenous peoples, environmental rights defenders, HRDs, migrant workers, women, LGBTI, persons with disabilities, persons living with HIV/AIDS (PLHIVs) and sex workers).

## COMMENTS BY PRIORITY AREAS

### PRIORITY AREA 1: LABOUR RIGHTS AND STANDARDS



#### WHAT IS GOOD? ✓

- 1 Supports employment** of persons with disabilities, detainees and ex-convicts, women, ethnic groups, stateless, people without citizenship, migrants and LGBTI individuals.
- 2 Ensures protection at the workplace by training workers on labour rights and protections.**
- 3 Provides protection of whistleblowers against corruption.**
- 4 Regulates activities of businesses** by developing rules on decent working conditions; measures on labour management in the supply chain; promoting implementation of the Good Labour Practices (GLP); and preventing exploitation of workers in large scale businesses registered with the Stock Exchange of Thailand (SET) through Human Rights Due Diligence measures.
- 5 Provides for setting up of complaint mechanisms both in public and private sector,** under the Gender Equality Act, and at the local level, by building the capacity of government officials and other implementing officials on how to handle complaints, confidential information and settling of disputes.



#### WHAT IS MISSING? ✗

- 1 Does not amend national laws and policy** that fails to protect or violate labour rights and standards.
- 2 Does not look at gaps in the proper implementation of national law and policy,** such as difficulty for migrant workers with the registration process, the labour management system being used only to benefit employers, availability of very few labour inspectors to ensure that rights are not being violated at the workplace,
- 3 Only encourages businesses to provide measures on protection** against discrimination of persons with disabilities, on gender equality, and for persons living with HIV/AIDS, as well as against sexual harassment at the workplace.
- 4 Does not train and build the capacity of government officials and the private sector** on labour rights and protections.
- 5 Does not properly address gaps in providing effective remedy,** such as difficulties in accessing them; discrimination faced by marginalized groups such as migrant workers, indigenous peoples, LGBTI individuals, women and victims of exploitative labour practices; problems in collective bargaining through trade unions; providing sufficient compensation; challenges in the litigation process; and retaliation faced by workers trying to access remedies.

#### WHAT WE WANT?

- 1 Recognise important rights and obligations** by ratifying ILO Convention 87 and 97 (on the right to association and collective bargaining through trade unions), 131 (on the fixing of minimum wages), 143 (on migrant workers), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).
- 2 Amend national laws that do not protect or violate international standards,** such as the amendment to the Factories Act; collective bargaining under the Labour Relations Act and the State Enterprise Labour Relations Act; exceptions to the Persons with Disabilities Empowerment Act; the Prevention and Suppression of Prostitution Act; and exceptions of religion and national security to the Gender Equality Act.
- 3 Draft clear stand-alone laws** for businesses to protect workers during employment from sexual harassment; discrimination due to religion, nationality, gender identity, indigenous identity, HIV status, and in accessing rights and social security measures; retaliation at the workplace, and from unfair dismissal.
- 4 Protect sex workers** by stopping the criminalisation of sex work, as well as the discrimination and exploitation of sex workers, and provide them with safe working conditions.
- 5 Promote access to remedy** through trade unions, including for state employees, migrant workers, and women; and setting up of government fund for victims of discrimination and sexual harassment at the workplace.

## COMMENTS BY PRIORITY AREAS

### PRIORITY AREA 2: COMMUNITIES, LAND, NATURAL RESOURCES, AND THE ENVIRONMENT



#### WHAT IS GOOD? ✓

- 1** Promotes **public participation**, through the management of forests by communities; the management of natural resources and the environment; by mandating the provision of information on large-scale development projects to those who are affected; and organising public consultations on land expropriation, land management, the conservation of forests, and on environmental impact assessments.
- 2** Provides for the management of natural resources and the environment with the **accessible and effective participation of all sectors**, while protecting community rights.
- 3** Provides for **impartial, independent, and transparent** Environmental Impact Assessment (EIA), Environmental Health Impact Assessment (EHIA), and Strategic Environmental Assessment (SEA) process.
- 4** Supports the development of **community-led research** on agricultural practices.
- 5** Provides **monetary support** in the form of land banks and hedge funds for people affected by the negative impact of business activities.

#### WHAT IS MISSING? ✗

- 1** Does not **amend national laws and policy** that fails to protect or violate the rights of communities to land, natural resources, and the environment; that were adopted without community consultation and sometimes include conflicting provisions.
- 2** Discusses Free, Prior and Informed consent (FPIC) and its use in management of land, forests and natural resources, **without mentioning indigenous peoples** who exercise this right.
- 3** Fails to include a **Human Rights Impact Assessment (HRIA) and Gender Impact Assessment (GIA)** of communities affected by the negative impact of business activities.
- 4** Does not effectively address violations of the rights of communities to land, natural resources, and the environment by **State authorities and State-owned enterprises**.
- 5** Does not provide **protection from physical and judicial threats** against land, community and environment rights defenders; including in the form of disappearance, killing and other reprisals.

#### WHAT WE WANT?

- 1** **Amend national law and policy** including the Factory Act, the Community Forest Act and amendments to the National Park Act and the Wildlife Conservation Act, the National Reserved Forests Act, the Land Code, Section 43 and 57 of the 2017 Constitution of Thailand, the Forest Mastery Plan and several NCPO orders including NCPO orders 64/2014, 66/2014, 4/2015, 3/2016, 4/2016, 9/2016, 28/2017, and 47/2017.
- 2** **Recognise indigenous peoples and their rights** under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to access information and participate in decision-making processes that affect them by obtaining their Free, Prior and Informed Consent (FPIC).
- 3** HRIAs and GIAs must be conducted with the inclusion of CSOs, institutions or Independent experts with **knowledge of the issues faced by affected communities**. The independent panel assessing impact assessments should include **multi-sectoral experts** on human rights, environment, geoscience, community development, policy, planning, administration and governance.
- 4** **Complaints against law enforcement officials, State authorities and State-owned enterprises** should be addressed through an independent mechanism, with effective penalties and remedies provided for violations.
- 5** **Protect environment, land and community rights defenders** particularly WHRDs and indigenous HRDs, through independent mechanisms to deal with present and future threats, and provide remedy as well as compensation for the violation of these rights.



## COMMENTS BY PRIORITY AREAS

### PRIORITY AREA 3: HUMAN RIGHTS DEFENDERS (HRDs)



#### WHAT IS GOOD? ✓

- 1** Provides for steps to **comply with international and regional standards**, such as the development of a clear definition on HRDs, and by promoting cooperation with UN and ASEAN human rights mechanisms.
- 2** Organises **consultations with HRDs**, to collaborate to prevent, tackle, and provide a remedy against adverse impacts on human rights.
- 3** **Promotes the rights of HRDs** by exchanging good practices to promote freedom of expression, building the capacity of communities, HRDs and law enforcement officials on their rights; by providing knowledge to HRDs on government services available to assist them; and by creating a list of lawyers and legal advisors with an expertise on addressing human rights violations.
- 4** To remedy violations against HRDs, it promotes mediation at all levels and **alternative dispute resolution mechanisms**; as well as **physical, mental, social and professional assistance**.

#### WHAT IS MISSING? ✗

- 1** Does not address the **violations of international standards** that protect and promote the rights of HRDs.
- 2** Does not recognise all the **national laws and policies used by businesses as to silence HRDs**, violate their rights, and restrict civic space.
- 3** **Does not regulate business activities** to prevent the violation of the rights of HRDs.
- 4** Ignores the **disproportionate effect** on the rights of women human rights defenders (WHRDs) and indigenous HRDs.
- 5** Fails to protect HRDs from judicial harassment that arises out of Strategic Litigation against Public Participation (SLAPP) lawsuits, by **using ineffective laws** such as Sections 161/1 and 165/2 of the Criminal Procedure Code and Section 21 of the Public Prosecution Organ and the Public Prosecutors Act.

#### WHAT WE WANT?

- 1** Ensure national laws such as the National Cybersecurity Act and the draft Act on Prevention and Suppression of Torture and Enforced Disappearance are **in line with international standards**.
- 2** **Amend laws and policies that violate the rights of HRDs**, such as articles 44, 47, 48 and 279 of the 2014 Interim Constitution; Articles 265 and 279 of the 2017 Constitution; NCPO Orders 3/2015 and 13/2016; Sections 326-328 of the Criminal Code on defamation; and Section 14 of the Computer-related Crime Act on criminalizing HRDs for online content.
- 3** Effective regulation of the negative impact of business activities through **mandatory human rights due diligence** such as human rights impact assessment and gender impact assessment, and by including HRDs in these processes.
- 4** Threats and attacks that **WHRDs and indigenous HRDs** are specifically vulnerable to should be addressed, and ensure remedies and its access are gender and culturally appropriate to provide them fair redress.
- 5** **Draft a specific anti-SLAPP legislation** to address SLAPP cases and judicial harassment by businesses.
- 6** **Ensure the physical security** of HRDs that are accessing grievance redressal mechanisms, such as through witness protection.

## COMMENTS BY PRIORITY AREAS

### PRIORITY AREA 4: INTERNATIONAL INVESTMENTS AND TRANSNATIONAL CORPORATIONS (TNCs)

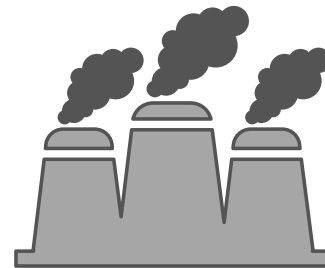


#### WHAT IS GOOD? ✓

- 1** Addresses international investments in a detailed manner, including Thai Direct Investments (TDI) abroad and Foreign Direct Investments (FDI) invested in Thailand.
- 2** Raises awareness, and promotes and encourages Thai investors to implement the environment and social safeguards such as the Equator Principles, the UNGPs and to respect human rights in Thailand and abroad, including in the case of joint private-public investments.
- 3** Provides for the development of guidelines and processes to prevent human rights violations and take into consideration human rights due diligence, for state-owned enterprises to serve as an example where they are operating or investing abroad, or in their supply chain, subsidiaries and in their joint ventures.
- 4** Provides for assessment of international environmental impacts through a central agency.
- 5** Attempts to regulate the activities of businesses through the Securities and Exchanges Commission (SEC) of Thailand, by establishing channels to communicate and educate on the UNGPs, to work with investors on promoting sustainable investments, and through the voluntary or compelled disclosure of information.

#### WHAT IS MISSING? ✗

- 1** Does not address human rights impact of trade agreements at all, particularly the Regional Comprehensive Economic Partnership (RCEP), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the International Union for the Protection of New Varieties of Plants (UPOV) Convention of 1991.
- 2** Does not provide for public participation in the negotiation process for trade agreements.
- 3** Does not provide for investment guidelines to regulate foreign investors, to comply with domestic legislations and international human rights standards.
- 4** Does not sufficiently provide for transboundary impact assessment.



#### WHAT WE WANT?

- 1** Include actions to deal with adverse impact of trade agreements on the rights and livelihoods of persons, by ensuring community consultation before the adoption of trade agreements in order to protect community interests.
- 2** Hold a deliberative referendum and highlight the human rights implications, to enable a transparent negotiation process that involves the views of communities and individuals affected, when considering sensitive issues or for actions that will have severe negative impact on human rights such as on the privatisation of public goods, affect on affordable medicine, and limitation on plants varieties.
- 3** The State must specify what foreign investors should do to comply with domestic legislation and international human rights standards by providing for the principle of 'do not harm', due diligence, and the right of communities to access remedies.
- 4** Transboundary impact assessment should include Environmental Health Impact Assessments (EHIAs), Human Rights Impact Assessments (HRIAs), Social Impact Assessments (SEAs), Gender Impact Assessments (GIAs) and Regulatory Impact Assessments (RIAs), specifically on the management of land and natural resources through transparent processes that include the community.
- 5** Impact assessments must be taken into consideration with respect to marginalised communities as well as small and medium sized enterprises, while conducting negotiations for free trade and other agreements.



## COMMENTS ON MONITORING & IMPLEMENTATION OF THE NAP-BHR

### PROMOTING THE MOBILISATION OF THE NAP-BHR INTO IMPLEMENTATION



#### WHAT IS GOOD? ✓

- 1** Gives a **short term and long term plan for implementation** of the NAP.
- 2** Has in place **measures to raise awareness** on the NAP, the UNGPs and Business and Human Rights by (1) improving e-learning, (2) training trainers at the national level, and (3) organising meetings and exchanging good practices at the ASEAN level.
- 3** Encourages implementation of the NAP and UNGPs amongst **small and medium sized businesses** and by providing **incentives** such as tax benefits.
- 4** Organises meetings to discuss what has still to be achieved by the NAP, to push implementing agencies.
- 5** Develops **mechanisms to receive complaints** on business and human rights issues.

#### WHAT IS MISSING? ✗

- 1** Does not include **clear steps** to act on or **clear responsibilities** of different government agencies.
- 2** Does not provide **indicators to evaluate implementation** of the action plan.
- 3** **Guidelines for the implementation of the NAP** are not accessible and publicly disseminated.
- 4** Implementation of the NAP is **not done in an inclusive manner** with all stakeholders as a part of the process.
- 5** Does not provide **accessibility of the NAP, UNGPs, and grievance mechanisms** by all.



#### WHAT WE WANT?

- 1** **Clear division of responsibilities with collaboration** amongst different agencies and adoption of cross-sectional approach.
- 2** **Implementation of NAP through guidelines developed by a multi-stakeholder committee that also oversees the implementation of the NAP**, specifically with the input of affected communities who have knowledge on the situation on the ground.
- 3** The NAP, UNGPs and grievance mechanisms to address their violation must be made **accessible** to everyone, including rural communities, indigenous peoples, and migrant workers in a language they can understand.
- 4** The implementation of the NAP should be **evaluated** (1) through an independent and transparent process at all levels of implementation, and (2) to make amendments to future NAPs according to this evaluation.



# COMMENTS ON MONITORING & IMPLEMENTATION OF THE NAP-BHR

## REGULATING, OVERSEEING, MONITORING AND EVALUATION



### WHAT IS GOOD? ✓

- 1** Provides mechanisms to regulate, oversee and monitor the NAP.
- 2** Includes a process to evaluate the implementation of the NAP.
- 3** Adds plans for future NAPs.



### WHAT IS MISSING? ✗

- 1** Regulation, overseeing and monitoring NAP (1) does not include civil society and affected communities, and (2) does not include proper gender or regional representation.
- 2** Implementation of NAP only to be evaluated by the National Human Rights Commission of Thailand (NHRCT), which **does not enjoy autonomy from government or independence** in accordance with the Paris Principles.
- 3** Does not provide for a **process to evaluate the benefits and gaps in the implementation** of the NAP through meaningful public participation, with the opinion of affected and concerned communities.
- 4** Report of the monitoring body only has to be **disseminated to government agencies**.
- 5** Does not require **alignment of all policy**, with respect to the NAP.

### WHAT WE WANT?

- 1** Regulation, overseeing and monitoring of the NAP should **include all stakeholders**, with balance of gender and all affected communities.
- 2** Evaluation of the implementation of the NAP should be carried out through a **transparent and independent monitoring committee** that includes all stakeholders specifically affected communities, and with their report being disseminated to the public at large.
- 3** Set out a process to **develop recommendations** that can be acted upon, to improve the implementation of the NAP.
- 4** **Coordination among different government agencies** on the implementation of the NAP; with alignment of the NAP, with the National Human Rights Action Plan, and the work of the National Economic and Social Development Council to make sure that economic activity is carried out while respecting human rights.

# NOTES





# NOTES



### **About Manushya Foundation**

Manushya Foundation is an Asia regional foundation promoting community empowerment to advance human rights, social justice and peace through a process of engagement, mobilisation and empowerment. With concern emerging on Business and Human Rights in Thailand, the bottom-up strategy of Manushya Foundation guarantees the empowerment of communities through a process of community led evidence-based research; the development of a national baseline assessment on BHR; and building capacity on BHR knowledge through the TBHRN, a unified national network comprising communities, academics and experts. For further information on the work of Manushya Foundation, visit:

<https://www.manushyafoundation.org>

### **About the Thai BHR Network**

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

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