

**NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS
(NAP-BHR)**

NEWS RELEASE



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Network calls on Thai Government to adopt its joint commentary to achieve corporate accountability, ensure responsible business conduct and promote a Thai economy that is sustainable and respectful of human rights



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27 June 2019, Bangkok – On the occasion of [Business and Human Rights Day 2019](#), Manushya Foundation and the Thai BHR Network held a press conference ‘Peoples over Profit’, calling on the Royal Thai Government to ensure effective regulation of corporate activity through a strong National Action Plan on Business and Human Rights, which is inclusive of the concerns of the communities affected by adverse impacts of businesses and reflective of all their challenges and recommendations in their [joint commentary on the final draft of the National Action Plan](#), prior to the adoption of the NAP-BHR by the Minister of Justice in July 2019. For implementing the UN Guiding Principles on Business and Human Rights (UNGPs) on the ground, the National Action Plan (NAP) must result in protection and respect of human rights in business contexts in Thailand as well as when Thai companies are operating abroad.

Overall, the [joint commentary](#) highlights the deficiencies of the draft NAP-BHR as it fails to recognise the critical need for mandatory measures to hold Thai businesses accountable for the adverse impact of their activities wherever they operate. The comments also point to weaknesses of the NAP-BHR to regulate transnational corporations investing and/or operating in Thailand, to guarantee these entities respect human rights throughout their supply chains by applying mandatory human rights due diligence processes and other accountability measures inspired by the [UK Modern Slavery Act of 2015](#) and the [French Corporate Duty of Vigilance Law of 2017](#). **“A strong drafting process needs to lead to a NAP-BHR with strong content”**, highlights Emilie Pradichit, Founder & Director of Manushya Foundation. **“For this, it is very important that the NAP has a good mix of voluntary and mandatory measures, following the 2016 Guidance on National Action Plans on Business and Human Rights developed by the UN Working Group (UNWG) on Business and Human Rights (BHR).”** The draft NAP also fails to apply a gender lens in this application of UNGPs on the ground with the gender impact of businesses ignored and fails to provide a detailed action plan to promote responsible business conduct.

For access to effective remedy in line with pillar 3 of the UNGPs, the draft NAP does not reflect on state-based non-judicial grievance redress mechanisms adequately; customary laws and practices of affected communities; practical, societal and jurisdictional barriers to remedy; provision of remedy through mechanisms that are responsive to gender, legal status, sexual orientation and gender identity, nationality, and ethnicity of affected 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. Shortcomings in the draft NAP are also identified in its failure to address the circumstances of affected communities and their particular challenges and recommendations, and to consider communities and their rights in a comprehensive manner as identified in the [Independent CSO National Baseline Assessment \(NBA\)](#) of Manushya and the Thai BHR Network and their joint comments on each of the four priority areas.

With respect to the first priority area on violation of labour rights and standards, Manushya and the Network conveyed their disappointment on the draft NAP for its disregard to recognize certain groups, particularly sex workers, and the gaps in addressing their rights and issues. **“The NAP must identify sex work as work, and labour rights should be guaranteed to all sex workers, specifically taking into consideration the challenges we face,”** stresses Sirisak Chaited, Sex worker and LGBTI activist. **“We call on the Thai government to decriminalise sex work by abolishing the Prevention and Suppression of Prostitution Act, which undermines sex workers’ fundamental right to work”**.

Further, the [joint commentary](#) highlights the failure of the draft NAP to address issues of child labour and informal workers, barriers to access social security measures, occurrences of unfair dismissal and needs for specific mechanisms and adequate measures to tackle discrimination at the workplace against LGBTI individuals, detention of migrant workers and other victims of exploitative labour practices.

On the second priority area on communities, land, natural resources and the environment, the [joint comments](#) highlight that Thailand's conflicting and problematic laws, including the recent Factory Act, the Community Forest Act and amendments to the National Park Act and the Wildlife Conservation Act adopted without community consultation as well as the National Reserved Forests Act, the Land Code, and relevant NCPO orders motivated by business incentives that result in violation of community rights in forest areas, have not been identified specifically in the draft NAP.

“Fourteen land rights defenders, including 9 women Human rights defenders from Chaiyaphum province are facing jail on charges of destroying the forest in Sai Thong National Park. The Forest reclamation policy of the military junta meant to target capitalist investors is hurting communities instead. Thailand's NAP-BHR states the possible review of certain laws. Forest laws need to be reviewed with the participation of concerned communities and for distribution of power to the grassroots levels” says Suwalee Phongam, one of the 14 lands rights defenders whose court hearing is on 3 July 2019.

More concerning is the non-recognition of 'indigenous peoples' as one of the key affected communities most-at-risk of experiencing adverse business conducts despite identification of the challenge to engage them in decision making processes in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the need to obtain Free, Prior and Informed Consent (FPIC) for forced evictions in rural development and land policies.

“Although we heavily engaged in the NAP drafting process, the government continues to deny the existence of indigenous peoples and violations of our rights by businesses in Thailand as well as the disproportionate impacts of those violations on indigenous women in particular,” says Katima Leeja, an Indigenous Lisu activist with the Network of Indigenous Peoples in Thailand. **“The NAP needs to ensure our rights as indigenous peoples to live on our ancestral land, to manage the resources of our lands and to participate in decision-making processes by obtaining our FPIC. We are the ones facing direct impacts of businesses as well as development projects, so we know the best meaningful solutions to stop these violations. It is time for them to acknowledge our existence and contribution to sustaining the economy and protecting the environment by preserving our ancestral lands and traditional ways of life.”**

Further, Rokeeyoh Samae, a Women Human Rights Defender of the Thepa Green World Network, comprising community members opposing the construction of power plants in Southern Thailand, stresses, **“It is important that community consultations are effectively carried out prior to construction of any business project with environmental and human rights impact assessments carried out hand-in-hand with the concerned communities and their experts. The NAP should also address the liability of the State through effective penalties and access to remedy for violations by state-owned enterprises such as those arising from the actions of the Electricity Generating Authority of Thailand (EGAT) in the case of Thepa coal-fired power plant.”**

Regarding the third priority area on the protection of human rights defenders (HRDs), Manushya and the Thai BHR Network in their [joint comments](#) pointed to the failure of the draft NAP to guarantee protection of human rights defenders in the context of increasing Strategic Lawsuits Against Public Participation (SLAPP) they face. The draft NAP does not identify the laws which have been used by businesses to silence Human Rights Defenders (HRDs), such as those of the articles 44, 47, 48 and 279 of the 2014 Interim Constitution; Articles 265 and 279 of the 2017 Constitution; NCPO Order 13/2016 that grants the military the power to arrest, investigate and detain any person without any judicial or legislative oversight; Sections 326-328 of the Criminal Code related to defamation and Section 14 of the Computer-related Crime Act often used to criminalise HRDs and censor online content.

“We urge the Thai government to include in the NAP the aim of enacting a specific anti-SLAPP legislation to address SLAPP cases, as the Sections 161/1 and 165/2 of the Criminal Procedure Code and Section 21 of the Public Prosecution Organ and the Public Prosecutors Act are not sufficient to tackle corporate oppression and repression manifested through judicial harassment and SLAPPs against HRDs,” says Sarawut Pinkanta of the Center for Protection and Revival of Local Community Rights.

Additionally, the draft NAP does not address the violations of international standards that protect and promote the rights of HRDs in unfavourable legislative context with the recent Cybersecurity Bill, and the draft Act on Prevention and Suppression of Torture and Enforced Disappearance. It also ignores the critical role of Women Human Rights Defenders (WHRDs) in business contexts. **“The final draft NAP is completely indifferent to adverse business conduct affecting human rights defenders, particularly women defenders. It also fails to regulate the gendered impacts of business activities on human rights, which must be addressed immediately,”** says Nada Chaipayait, a transgender activist involved since inception in contributing views of affected communities’ to the [Independent NBA on BHR](#).

Furthermore, as per the [joint commentary](#), the draft NAP, although detailed and comprehensive **on the fourth priority area of international investments and transnational corporations**, fails to ensure businesses and investors respect their human rights obligations, through strictly enforceable legislations. **“The NAP must include a strong commitment to develop and implement a law to require Thai companies and investors undertake mandatory human rights due diligence ensuring meaningful multi-stakeholder engagement and transparency in information sharing and hold them accountable for their human rights violations both at home and abroad”** says Angkhana Neelapajit, Human Rights Commissioner, National Human Rights Commission of Thailand (NHRCT). **“Criminal liability must also be imposed by such laws for human rights violation caused by Thai outbound investments.”**

At the same time, the draft NAP completely ignores consideration of human rights impacts of trade agreements, such as 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, including on livelihoods, agriculture, food security and health. **“Thailand will be obligated to change its domestic laws and policies to comply with RCEP and UPOV, which will destroy our traditional practices of seed sharing and diversification,”** says Noraeri Thungmueangthong, Vice-Chair of the Indigenous Women’s Network of Thailand. **“For indigenous women, seeds are means of our food sovereignty and security as well as our culture, identity, and life, so the NAP must ensure community consultations prior to adoption and enforcement of trade agreements to prevent corporate capture and guarantee protection of community rights and interests.”**

For implementation and monitoring process of the NAP, the [joint commentary](#) underscores that the draft NAP does not include a clear outline for implementation measures with specific indicators; overlooks inclusive, participatory, collaborative and cross-sectional implementation approaches with meaningful participation of all stakeholders, specifically the affected communities, which are not included in the NAP committee; and neglects independence, transparency and accountability in the monitoring and oversight processes.

With consideration to many drawbacks in the process and content of the final draft NAP, Manushya and the Thai BHR Network strongly urged the Thai government to make necessary amendments in line with their comments and ensure formulation of an effective and inclusive policy document through detailed, time bound actions and with inclusion of affected communities representatives in the NAP Committee. **“We will continue our advocacy efforts for the adoption and implementation of a NAP-BHR by the Ministry of Justice that reflects all the challenges and recommendations faced by communities affected by the negative impacts of business activities,”** says Sugarnta Sookpaita of the Migrant Workers Federation and the Northern Coordinator with the Thai BHR Network. **“For this, we call on all our comments to be taken into consideration and the usage of multi-stakeholder processes in order to continue an open, constructive and collaborative approach in the adoption, implementation and monitoring of the NAP.”**

“We see this policy document as a starting point to achieve corporate accountability, ensure responsible business conduct and promote a Thai economy that is sustainable and respectful of human rights,” concludes Emilie Pradichit, Founder & Director, Manushya Foundation.

 **Access the Joint Comments on the final draft National Action Plan (NAP) on Business and Human Rights here:**

<https://www.manushyafoundation.org/comments-on-the-nap-on-bhr>

 **Access the Independent CSO National Baseline Assessment (NBA) on Business and Human Rights in Thailand here:**

<https://www.manushyafoundation.org/bhr-cso-nba-thailand>

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About Manushya Foundation (MF)

Manushya Foundation is an Asia regional organisation aiming at empowering local communities to put them at the heart of decision making processes that concern them, to advance human rights, social justice and peace. 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. 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. 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>