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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Tailandia

Informe del Grupo de Trabajo sobre la cuestión de los derechos humanos y las empresas transnacionales y otras empresas* **

Resumen

El Grupo de Trabajo sobre la cuestión de los derechos humanos y las empresas transnacionales y otras empresas se desplazó en misión a Tailandia del 26 de marzo al 4 de abril de 2018.

El Grupo de Trabajo se sintió alentado por los esfuerzos realizados por el Gobierno de Tailandia, en particular por su proceso inclusivo de elaboración de un plan de acción nacional sobre las empresas y los derechos humanos. El Grupo de Trabajo observa un creciente interés y una toma de conciencia en relación con el programa sobre las empresas y los derechos humanos y su importancia en Tailandia, especialmente entre las empresas más grandes que se hallan en contacto con los mercados mundiales. El Grupo de Trabajo tuvo conocimiento de varias iniciativas en materia legislativa y de políticas que había emprendido el Gobierno para promover el respeto de los derechos humanos por las empresas, de conformidad con los Principios Rectores sobre las Empresas y los Derechos Humanos.

No obstante, siguen existiendo numerosos problemas, entre ellos los efectos negativos de las órdenes dictadas por el Gobierno militar provisional en el marco del Consejo Nacional para la Paz y el Orden, que tuvieron como resultado la imposición de restricciones injustificadas e infundadas al derecho de las personas afectadas por las actividades comerciales y de desarrollo llevadas a cabo por una serie de empresas, entre las que figuraban empresas estatales, a expresar sus legítimas preocupaciones y a protestar de manera pacífica. Otras preocupaciones guardaban relación con cuestiones como la criminalización de las protestas pacíficas y la presentación de demandas estratégicas contra defensores de los derechos humanos. El Grupo de Trabajo acoge con satisfacción la decisión del Gobierno de derogar, total o parcialmente, algunas de las órdenes que limitaban los derechos de las personas.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.

** Se acordó publicar este informe después de la fecha de publicación prevista debido a circunstancias ajenas a la voluntad de quien lo presenta.



El Grupo de Trabajo expresa preocupación por las repercusiones negativas de los proyectos de desarrollo en los derechos humanos. Recomienda que el Gobierno redoble sus esfuerzos para hacer frente a las violaciones de los derechos humanos relacionadas con las empresas, lo que entraña establecer, con miras a la ejecución de megaproyectos, un nuevo marco integral de evaluación de los efectos, dotado de un componente general de derechos humanos y sociales de conformidad con los Principios Rectores. El Gobierno también debe celebrar las oportunas consultas con las comunidades afectadas, incluidas las minorías étnicas que se vean perjudicadas por proyectos de desarrollo, incluidos los que lleven a cabo empresas estatales.

*[Inglés únicamente]***Annex****Report of the Working Group on the issue of human rights
and transnational corporations and other business
enterprises on its visit to Thailand****Contents**

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I. Introduction

1. Further to Human Rights Council resolutions 17/4, 26/22 and 35/7, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Surya Deva and Dante Pesce, visited Thailand from 26 March to 4 April 2018, at the invitation of the Government. During the visit, the representatives of the Working Group aimed to assess the efforts made by the Government and business enterprises to prevent, mitigate and address the adverse impact of business-related activities on human rights, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

2. The experts met with the Minister for Foreign Affairs and officials from the Ministry of Foreign Affairs, the Ministry of Natural Resources and the Environment, the Ministry of Agriculture and Cooperatives, the Ministry of Commerce, the Ministry of Energy, the Ministry of Finance, the Ministry of Industry, the Ministry of Justice, the Ministry of Labour, the Ministry of Public Health, the Ministry for Social Development and Human Security, the Ministry of the Interior, the National Council for Peace and Order, the Office of the National Economic and Social Development Board, the Royal Thai Police, the Office of the National Anti-Corruption Commission, the Office of the Public Sector Anti-Corruption Commission, the Revenue Department, the State Enterprise Policy Office, the Electricity Generating Authority of Thailand, the Office for the Eastern Economic Corridor, the Administrative Court, the Office of the Attorney General, the Courts of Justice, the Office of the Council of State, the National Reform Committee on Natural Resources and the Environment and the Standing Committee on Foreign Affairs of the National Legislative Assembly. The experts also met with the Governors of Songkhla and Khon Kaen, and the Vice Governor of Chiang Mai, as well as authorities from provincial offices and local government. They also met with key officials from the Command Centre for Combating Illegal Fishing, the Fisheries Department and the Marine Department in Samut Sakhon.

3. Meetings were held with representatives of indigenous peoples (ethnic minority communities) and with more than 250 representatives of civil society organizations, human rights defenders, affected individuals, migrant workers and academia. The experts also met with representatives of the United Nations country team, the National Human Rights Commission of Thailand, the Stock Exchange of Thailand, the Chamber of Commerce, the Board of Trade, the Federation of Thai Industries, the Thai Bankers’ Association, business associations in the tourism and fishery sectors, members of the United Nations Global Compact Network Thailand and individual business enterprises that made themselves available to share their experiences with the Working Group.

4. The Working Group thanks the Government for its support and assistance, and its willingness to engage in a frank discussion on the challenges faced and lessons learned in promoting respect for human rights in the business community. It also thanks the organizations, businesses, communities and individuals with whom it met for their openness and willingness to engage in a constructive and solution-oriented dialogue.

II. General context

5. The main industries in Thailand include agriculture (rice farming being a significant area), farm product processing, textiles, automotive parts, services and tourism. At the time of drafting, Thailand was ranked 87 on the United Nations Development Programme Human Development Index and the second-largest economy in the Association of Southeast Asian Nations (ASEAN). According to the Stock Exchange of Thailand, outward foreign direct investment by Thai listed firms has continuously increased: in 2016 they invested B180 billion, which was an increase from the B75 billion in 2015, the majority of

that investment (78 per cent) being in the ASEAN region.¹ As part of efforts to promote economic growth, a range of major projects are being promoted by the Government, including the eastern economic corridor and special economic zones.

6. In 2016, the Government launched “Thailand 4.0”, which sets out a series of goals to be achieved by 2032 to transform Thailand into a high-income country and reduce social disparity. The Thailand 4.0 strategy is planned to align with and support the twelfth national economic and social development plan for the period 2017–2021, which is based on the “sufficiency economy philosophy” and aims to set out development directions and strategies to achieve the objectives of security, prosperity, and sustainability.²

7. Since 2014, the country has been headed by an interim military Government under the National Council for Peace and Order. A new Constitution drawn up by the Council was ratified in 2017, after its approval through a national referendum, replacing the interim Constitution that had been enacted by the Council in 2014. That prompted the promulgation of the 20-year national strategies (2018–2037) and national reform plans covering 11 areas and providing guidelines for the country to move forward in line with the Thailand 4.0 agenda and the 2030 Agenda for Sustainable Development.

8. A transition back to civilian rule and the holding of elections under the 2017 Constitution was announced for early 2019; elections were held on 24 March 2019.

9. The 2014 interim Constitution empowered the National Council for Peace and Order to rule by decree, issue any order for the sake of reforms in any field (art. 44) and declare that all such orders were legal, constitutional and conclusive (art. 47). The 2017 Constitution confirmed that orders issued by the Council were constitutional and lawful and should remain in effect until they are revoked.

10. Under the 2014 interim Constitution, the National Council for Peace and Order issued a series of public orders; the Working Group learned that several of them restricted the enjoyment of a number of human rights. Notably, Council order No. 3/2015 restricted the rights of individuals wishing to take part legitimately in non-violent protests, including in the context of large-scale development projects. By order No. 3/2015, political gatherings of five or more persons were prohibited, and the military authorities were permitted to confiscate property and search and detain individuals for up to seven days without a court order. The Government informed the Working Group that moving towards the general elections scheduled for 24 March 2019, the Council had issued order No. 22/2018 to repeal, wholly or partially, nine previous orders, including order No. 3/2015 (art. 12 only).

III. Engagement of businesses with the business and human rights agenda

11. The Working Group held meetings with representatives of the business sector and found that while the business and human rights agenda was still new, there was growing interest in and awareness of its importance, especially among larger companies with exposure to global markets. The Working Group learned about a number of initiatives, such as the code of ethics of the Chamber of Commerce and the code of conduct of the Federation of Thai Industries. The Working Group encouraged the harmonization of these frameworks with the Guiding Principles. During a meeting with the Thai Stock Exchange, the Working Group learned that several major Thai companies were listed in different global sustainability indexes.

12. The Government informed the Working Group that the Global Compact Network Thailand has chosen business and human rights as one of its key themes to streamline the Guiding Principles and the guidelines and standards of Organization for Economic Cooperation and Development (OECD) in their operations and supply chains. In addition,

¹ Stock Exchange of Thailand, “2016 outward foreign direct investment of Thai listed firms”, available at www.set.or.th/highlights/files/20170731_en_setresearch.pdf.

² See www.nesdb.go.th/nesdb_en/ewt_w3c/ewt_dl_link.php?nid=434 5.

training materials on the conduct of responsible business are being developed in cooperation with OECD under the Thailand-OECD country programme.

13. The Working Group was pleased to receive information from the Government that the Thai Stock Exchange had taken up its recommendations on organizing training and workshops on human rights due diligence for its listed companies in 2019, in addition to organizing workshops on child rights due diligence in cooperation with the United Nations Children's Fund (UNICEF).

IV. The State as an economic actor

14. The Working Group was pleased to learn that the Prime Minister had instructed the country's 55 State-owned enterprises, including some of the largest companies in Thailand, to show leadership in aligning their practices with the Guiding Principles. The Working Group noted that this high-level political commitment sends a strong signal about the importance of the business and human rights agenda. The Working Group noted that the commitment needed to be followed up by concrete guidance and incentives, such as key performance indicators for how State-owned enterprises seek to prevent and mitigate human rights risks and impacts.

15. The Working Group notes that States not only have an obligation to protect against human rights abuses by business enterprises, but must also lead by example and ensure that enterprises under their ownership or control fully respect human rights (see A/HRC/32/45). As part of their duty to protect human rights, the Government of Thailand should set out clear expectations for State-owned enterprises and other businesses to respect human rights, including while operating abroad through their subsidiaries, contractors and/or joint ventures. The Government has informed the Working Group that, on 26 March 2019, the Cabinet approved a set of improved principles and guidelines for good governance of State-owned enterprises. In addition, the draft act on the development of supervision and management of State-owned enterprises, which was approved by the National Legislative Assembly on 21 February 2019, would enhance the performance and good governance of such enterprises. The Working Group welcomes the information that the State-owned enterprises authority is seeking to align corporate governance practices with the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

V. Human rights risks and impacts relating to development projects

16. The Working Group learned of several human rights concerns and risks relating to large-scale development projects, including the impact of a number of mega-projects promoted by Thai companies and investments in other countries in the region. From meetings held with a wide range of stakeholders across the country, a pattern of risks and challenges emerged, indicating a systemic problem and underlining the need for improved safeguards and processes related to impact assessments and consultations with communities affected by development projects.

A. Environmental and social impact assessments

17. A recurrent issue raised with the Working Group related to the need to strengthen current procedures for impact assessments in the context of large development projects. Several specific cases were presented to the Working Group relating to projects in the infrastructure, mining and energy sectors. That was consistent with information provided by the National Human Rights Commission of Thailand that, between 2001 and 2017, a total of 10,824 cases had been reported to it, of which 2,119 concerned business activities. The Commission had found that 552 of the complaints concerning business activities had merit and 151 cases demonstrated actual business-related human rights impacts. The three most frequent types of impact recorded related to (a) the adverse effects of environmental pollution on human health; (b) forced evictions of communities with no or inadequate

compensation; and (c) a lack of or inadequate public consultation with communities affected by large-scale development projects.

18. One concern that was consistently raised with the Working Group was the way in which environmental impact assessments and environmental health impact assessments and related public consultations were carried out by private consultants hired by the company promoting a given project. While consultants carrying out such assessments had to be selected from a list of 70 registered companies approved by the Office of National Resources and Environmental Policy and Planning, there was a widespread perception that they were inherently biased in favour of ensuring project approval. Several community members shared with the Working Group instances of interested parties having been prevented from participating in consultations and public hearings, adding to perceptions of a biased process. The Government has informed the Working Group that the Enhancement and Conservation of the National Environmental Quality Act (2018) has been amended and came into effect on 18 July 2018 to strengthen the environmental assessment process.

19. The Working Group also heard concerns about how the push to attract investment could undermine effective impact assessments, including by providing for waivers and introducing a system of fast-tracking project approvals. Reference was made to order No. 9/2016 (of 7 March 2016) of the National Council for Peace and Order, which aimed to speed up the review process for certain public works projects by allowing State-owned enterprises to seek Cabinet approval of projects before the completion of an environmental impact assessment.

20. In Songkhla province, the Working Group met with local authorities and community members to learn more about concerns and protests against a project by the Electricity Generating Authority of Thailand to build a coal-fired power plant. Community members told the Working Group that the public hearing on the project in 2015 had been held under strict security control and that a number of community members opposing the project were barred from participating in the public hearing. Those opposing the project filed a complaint with the National Human Rights Commission and staged several protests, including a march in November 2017 to present a petition to the Prime Minister that resulted in the arrest of 17 community members, and a protest in Bangkok. At that time, the Office of the United Nations High Commissioner for Human Rights (OHCHR) for South-East Asia issued a statement calling upon the Government to drop charges against all those arrested during a peaceful demonstration.³ At the time of the Working Group's visit, the 17 defendants still faced charges of having blocked traffic, marching on a public highway, fighting with police and carrying out an illegal demonstration.

21. In its statement at the end of its visit, the Working Group encouraged the Government to drop the cases against the 17 community members (including 1 juvenile) as a gesture of reconciliation with the affected communities. The Working Group was informed that, on 30 January 2018, the Prime Minister had ordered that the construction of the power plant be suspended, and on 20 February 2018, the Minister of Energy had signed a memorandum of understanding according to which (a) the environmental health impact assessments for the plant projects in Krabi and Songkhla would be withdrawn; (b) the Ministry of Energy would conduct a strategic environmental assessment by independent experts, agreed on by both sides, to consider the suitability of coal-fired power plants in those areas; and (c) the Electricity Generating Authority would have to terminate the project permanently if the strategic environmental assessment was not approved. The Government has informed the Working Group that, on 27 December 2018, the Songkhla provincial court acquitted 15 defendants, with the other 2 defendants ordered to pay a penalty of B5,000 each for failing to acquire the proper permit required under the law on public gatherings. The court ruled that, as the gathering did not involve any harmful weapons or create any disturbance, it was protected under the Constitution.

22. The Working Group notes that the strategic environmental assessment mechanism is a way to improve impact assessments, ensuring that they are conducted independently and include meaningful consultation with the communities affected. The Working Group

³ See <https://bangkok.ohchr.org/news/press/Thailand%20Coal.aspx>.

appreciates the understanding shared by the National Reform Committee on Natural Resources and Environment that there is a need for a paradigm shift to ensure a bottom-up, participatory process that would empower people and communities and provide them with the right tools to participate effectively. Meanwhile, the strategic environmental assessment guidelines have been approved by the National Committee for Sustainable Development, while the draft regulation on strategic environmental assessments is being developed by the Office of the Prime Minister. The Working Group also encourages a more holistic approach to sustainability impact assessments, to include social and human rights dimensions and take into account sector-specific risks and gender considerations.

B. Special economic zones

23. The government plan to establish 10 special economic zones in 10 different provinces⁴ illustrates the need to address other human rights risks and impacts, and provides an opportunity to align policies and practice with the Guiding Principles and international good practice.

24. The special economic zones seek to attract foreign investment through a package of tax and non-tax incentives in a number of labour-intensive industries, such as garment and textile manufacturing and the processing of agricultural and fishery products. They also advertise easy access to a large pool of migrant workers from neighbouring countries and will be strategically based along the north-south and east-west economic corridors.

25. The Working Group learned that there were concerns about the process through which the special economic zones were being established. It was informed that land acquisitions and decisions about the locations of the zones had been carried out through executive orders, with limited consultation with affected communities. Furthermore, while meeting with various affected communities and individual groups, the Working Group was told about the limited opportunity for participation in public debates and peaceful protests against the development of the zones.

26. As the special economic zones will require people to be resettled, it is critical to ensure that the resettlement is done in a human rights-compliant manner. In that regard, the Working Group would like to stress that people and communities who are currently living in areas designated for the zones should be consulted and fairly compensated, in line with the basic principles and guidelines on development-based evictions and displacement. The Working Group notes that people and communities who have been living, and depend for their livelihoods, on land that would be used for special economic zones should not be considered trespassers even if they do not hold title deeds to the land.

27. The Government has subsequently informed the Working Group that, according to the information from the Industrial Estate Authority of Thailand, as of May 2019, of the 10 planned special economic zones, only 3 in Tak, Sa Kaeo and Songkhla have so far been realized and they have utilized government land without expropriation.

C. Thai investments abroad

28. The Working Group learned that Thai companies and investors were promoting several mega-projects in neighbouring countries in the ASEAN region. Concerns were raised with the Working Group that there was a heightened risk of adverse human rights impacts in countries with weak regulatory frameworks and safeguards.

29. The Working Group encourages the Government and Thai companies to step up efforts to identify, prevent and address human rights abuses linked to Thai investments abroad, including by ensuring meaningful consultations, robust environmental and social impact assessments, and providing access to effective grievance mechanisms. Merely complying with the legislation of host countries, which might be weak or insufficient, may

⁴ Tak, Mukdahan, Sa Kaeo, Trat, Songkhla, Chiang Rai, Nong Khai, Nakorn Phanom, Kanchanaburi and Narathiwat.

not be enough to prevent and mitigate adverse human rights impacts in line with the Guiding Principles. In particular, the Government should require businesses to demonstrate an awareness of and commitment to the Guiding Principles as a prerequisite for receiving State support and benefits relating to trade and export promotion. Likewise, the Government should make participation in trade missions, eligibility for trade advocacy and generalized export assistance conditional on such commitments (see A/HRC/38/48).

30. The collapse of a dam on 23 July 2018 at the Xe Pian Xe Namnoy hydropower project in the Champasak province of the Lao People's Democratic Republic, which resulted in more than 30 deaths and the displacement of several thousand people, illustrates the risk of human rights abuses abroad that are linked to Thai businesses. The Working Group was informed that a Thai company owned 25 per cent of the shares in the project, which aimed to generate electricity to be exported mainly to Thailand.

31. Another example of an adverse impact on human rights caused abroad by Thai companies was the filing of a case before a Thai court in March 2018 involving a class action by more than 700 families from Cambodia, alleging that a Thai company had forcibly displaced them from their land to make way for a sugar cane plantation and had destroyed their livelihoods. The case is the first class action filed in a Thai court by plaintiffs from another country. The case is at the stage of the plaintiffs' petition for class action and case admission. The affected communities filing the case were also calling on consumers to put pressure on the company to assume its responsibility, in line with the Guiding Principles, to redress the harm caused.

VI. Human rights defenders and civic space

32. Civil society organizations and human rights defenders have an indispensable role in promoting business respect for human rights and in strengthening corporate accountability. Both the Government and Thai businesses should regard them as "critical partners" and engage with them constructively to prevent, mitigate and remedy adverse human rights impacts.

33. During the visit, civil society organizations and individual human rights defenders brought to the attention of the Working Group various concerns related to the limited space available for exercising their constitutional rights. Their concerns, such as the restrictions on public assemblies, the criminalization of peaceful protests, the practice of "attitude adjustment" and the filing of strategic lawsuits against public participation, stem from the actions of both government authorities and businesses.

34. The Working Group is concerned that the relevant orders issued by the National Council for Peace and Order often result in placing unreasonable and unwarranted restrictions on the rights of people to raise legitimate concerns and protest peacefully. The Working Group heard from community members from across the country that they had been called to meetings by the military for so-called "attitude adjustment" conversations, with the aim of convincing them to stop raising concerns about the adverse impact of business operations and development projects. Such practices create an intimidating environment and hardly serve the purpose of resolving social conflicts.

35. The Working Group received information about several cases that indicated the misuse of legal processes and the courts by business enterprises as a way of silencing civil society organizations and human rights defenders who raise legitimate concerns and grievances related to the adverse human rights impacts of business operations. Such practices are also known as strategic lawsuits against public participation.

36. The Working Group heard at first-hand from 14 workers involved in a defamation case brought against them by the Thammakaset Company. The workers informed the Working Group about their conditions of work, pay and working hours and tasks. The Working Group also met with the owner of the Thammakaset Company to hear concerns from the business owner's point of view. The workers had filed a lawsuit in September 2016, alleging that they had been subject to abuses at a poultry farm, leading the company to file a defamation lawsuit against the workers. The charges brought against the workers

by the company were eventually dismissed and not proceeded on by the courts in 2018. However, in March 2019, the Bangkok Criminal Court agreed to hear new defamation charges brought by the company against 2 of the 14 workers. At the time of completing the present report, the trial was due to start in May 2019.

37. While the company pursued defamation charges, it was ordered to pay the past wages of the 14 workers. Appeals by the company against the order were rejected by the Supreme Court of Thailand in September 2017 and in January 2019, the Supreme Court ordered the company to pay the wages to the 14 workers immediately.

38. On 17 May 2018, the Working Group joined a joint press statement with other special procedures mandate holders to call attention to the case of Andy Hall and the charges brought against him by the Thammakaset Company and the Natural Fruit Company.⁵

39. Mr. Hall, a prominent human rights defender, was convicted in September 2016 on charges of criminal defamation and offences under the Computer Crime Act for his work as the primary researcher for a report published by a Finnish non-governmental organization, Finnwatch, entitled “Cheap has a high price”, which documented serious allegations of rights violations, including the trafficking of migrant workers. He was sentenced to four years in prison and ordered to pay a fine of B200,000 (approximately \$6,000). The sentence was later reduced by one year, with two years suspended, and the fine reduced to B150,000. Mr. Hall also faced further action when, on 26 March 2018, a Bangkok court ordered him to pay B10 million (approximately \$320,000) in damages to the Natural Fruit Company in a related civil lawsuit, together with legal and court fees.

40. Since 2016, the Thammakaset Company has also filed defamation lawsuits against Mr. Hall and other journalists for their work in support of the 14 migrant workers, who allege they have suffered labour rights abuses at the poultry farm owned by the company.

41. In respect to those cases, the Government informed the Working Group that the Ministry of Labour had swiftly organized a thorough inspection of the Natural Fruit Company, with interpreters present to ensure the accuracy of the information collected. The Government had also conducted an investigation into the allegations against the Thammakaset Company and found some labour rights abuses (non-payment of the minimum wage, of overtime payments and of payment for working on official holidays), but no evidence of the use of forced labour as claimed by the workers. The company was instructed to pay the 14 workers in total B1.73 million (approximately \$49,430).

42. The Working Group also met with civil society representatives, who informed them of the case of Tungcum Ltd., in which six criminal defamation cases had been brought against residents and members of the Khon Rak Ban Kerd Group in Loei province.⁶ The Working Group was seriously concerned about the defamation case brought by Tungcum against a 15-year-old child who had taken part in a youth camp on environmental protection and narrated a news snapshot on the Thai Public Broadcasting Service. The Working Group was also concerned to hear that Tungcum had also filed cases against journalists involved in the airing of that broadcast.

43. Another prominent issue that was brought to the attention of the Working Group concerned five criminal defamation cases brought by the Akara Resources Public Company, a subsidiary of Kingsgate Consolidated, against community leaders and activists in relation to mining operations in Phichit province. While the Government has taken action to close the environmentally damaging gold mine, it still needs to take action against the use of litigation, especially litigation against those who were protesting against the environmental damage the mine was causing.

44. The Working Group views these examples as part of the wider systematic use of strategic lawsuits against public participation brought against human rights defenders, communities and individuals involved in highlighting human rights violations with the aim

⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E.

⁶ See www.fidh.org/en/issues/human-rights-defenders/thailand-ongoing-judicial-harassment-against-seven-krbkg-members.

of silencing critical voices through direct abuse of the legal and judicial system. The Working Group calls upon the Government of Thailand to ensure that defamation cases are not used by businesses as a tool to undermine the legitimate rights and freedoms of the rights holders, civil society organizations and human rights defenders who are affected.

45. The Working Group encourages the Public Prosecutor and the Office of the Attorney General to use their discretion under section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act more vigilantly to screen out criminal defamation cases that might be intended to harass human rights defenders, community leaders, environmentalists, academics, civil society organizations and all those involved in protecting and promoting human rights.

46. The Working Group notes that the amendments to sections 165/2 and 161/1 of the Criminal Procedure Code took effect on 20 February 2019 and 20 March 2019, respectively. It is to be hoped that the amendments will make it easier for courts to dismiss or prevent the refiling of cases by individuals or companies, which are found to have been submitted in bad faith to harass a defendant. The Working Group also notes that the Ministry of Justice has established a working group to develop protection measures for human rights defenders and that the Government is working on amendments to the Witness Protection Act (2003) to strengthen the protection of human rights defenders. Despite those measures, companies continue to file civil and criminal defamation cases against civil society organizations and human rights defenders. Additional measures should therefore be pursued by the Government to address legitimate concerns related to the shrinking of the civic space and the critical role of human rights defenders in helping to identify and prevent business-related human rights abuses.

47. The Working Group also welcomes the inclusion of human rights defenders as a new group for special treatment under the draft fourth national human rights plan (2019–2023) and as one of the four priorities of the draft national action plan on business and human rights.

VII. Trafficking and forced labour

48. During the visit, the Working Group learned about the efforts made by the Government to tackle human rights abuses related to trafficking and forced labour. In particular, cases of trafficking and forced labour in the fishing industry have attracted international attention. In June 2014, the annual Trafficking in Persons report issued by the United States of America State Department downgraded Thailand to tier 3 status; Thailand was given tier 2 “watch list” status in 2017 and tier 2 in 2018. That coincided with the European Union issuing a “yellow card” warning for Thailand, which opened the possibility of trade sanctions under European Union regulations on illegal, unreported and unregulated fishing.

49. Thailand is one of the world’s largest exporters of seafood, with annual seafood exports estimated at \$5.9 billion.⁷ The industry employs more than 600,000 workers, of whom around half are registered migrant workers, predominantly from Cambodia, the Lao People’s Democratic Republic and Myanmar. The threat of a ban on exports and pressure from consumers and large supermarket chains spurred the quick enactment of new laws and measures to stamp out forced labour in the fishing and seafood-processing industry.

50. The Working Group welcomes the actions taken by the Government in introducing registration of all commercial fishing vessels, new systems of port-in and port-out controls, enhanced labour inspections and increased fines for non-compliance with labour laws. Action was also taken by industry associations, led by the Thai Tuna Industry Association, which made the adoption of a code of conduct on ethical labour practices a requirement for membership, including a commitment to monitor compliance with the standards of suppliers. Government agencies and business associations have also opened consultations

⁷ Food and Agriculture Organization of the United Nations, “Globefish highlights: a quarterly update on world seafood markets” (April 2018).

with trade unions and associations of migrant workers. In recognition of these efforts, in January 2019 the European Union withdrew its warning on Thai fishing imports.

51. Despite improvements, it is clear that workers in the fisheries sector remain vulnerable to human rights abuses. The Working Group therefore recommends that the Government continue its efforts to improve oversight and regulation of the fisheries sector.

52. Very importantly, the Government needs also to pay attention to the risks of forced labour and trafficking, which are present in other sectors in Thailand that have a large number of migrant workers, such as agriculture, livestock, hospitality, garment manufacturing and domestic work. That is also a main conclusion of the *Thailand Migration Report 2019*, which presents the findings from research undertaken by the United Nations country team in Thailand. The report notes that, despite signs of progress in the fishing and seafood processing sector, labour abuses continue, including indications of forced labour, such as deceptive recruitment practices and the withholding of wages. In line with the observations of the Working Group, the report highlights the fact that a singular focus on the fisheries industry has diverted attention away from similar problems in other sectors. The Working Group was informed by the Government of the efforts made by the livestock sector to voluntarily adopt the International Labour Organization (ILO) Good Labour Practices (GLP) in cooperation with the Department of Labour Protection and Welfare and the Department of Livestock Development.

53. While Thailand does not face the same international pressure to get its house in order in sectors other than fisheries, the Government has demonstrated that it is capable of taking serious steps to stamp out forced labour, provided the political will is there.

54. The Working Group sees the decision by the Government of Thailand to ratify the Protocol to the ILO Forced Labour Convention, 1930 (No. 29) as an indication of its commitment to eliminate forced labour and human trafficking. Thailand became the twenty-fourth country to ratify the protocol and the first Asian country to do so. The Working Group also notes with appreciation that Thailand was the first Asian country to ratify the ILO Work in Fishing Convention, 2007 (No. 188) to protect the living and working conditions of fishermen and women on board vessels.

VIII. Migrant workers

55. Thailand is a key destination country for migrant workers, both regular and irregular, in the Greater Mekong subregion. According to the latest United Nations estimate, approximately 4.9 million foreign nationals reside in Thailand. Some 3.9 million are migrant workers from neighbouring countries, of which it is estimated that more than 800,000 are in irregular status. It is estimated that migrant workers constitute more than 10 per cent of the total labour force and that in some economic sectors, such as construction and fishing, migrants account for almost 80 per cent of workers.⁸

56. The Working Group observes that migrant workers in irregular status are particularly vulnerable to abuse and in that regard welcomes the efforts to formalize labour migration.

57. Thailand has signed agreements and memorandums of understanding aimed at regularizing the status of irregular migrants with neighbouring Cambodia, the Lao People's Democratic Republic and Myanmar. The latest amendment to the memorandum of understanding with those States was signed in 2015–2016, as was a new memorandum with Viet Nam. The Working Group was also informed of the efforts made by the Government to regularize undocumented migrants by allowing them to register during a grace period at one-stop registration offices across the country. The Working Group visited one such centre where people had to wait in line for up to several days. Despite the difficulties faced by migrant workers in travelling to the registration centres and being absent from their workplaces, the Working Group welcomes the fact that, by the end of June 2018, it was

⁸ *Thailand Migration Report 2019*, pp. 11–14.

reported that about 1.2 million migrants had been able to regularize their status through this process.⁹

58. The Government subsequently informed the Working Group that, as at February 2019, there were 163,644 skilled foreign workers, 241 migrants with lifetime permits and permanent residents, 65,480 ethnic minority workers and 3,064,454 migrant workers from Cambodia, the Lao People's Democratic Republic, Myanmar and Viet Nam; 1,198,269 people had been admitted under temporary measures, and there were 36,049 cross-border workers.

59. The Working Group was informed that the private sector often hires migrant workers through subcontracting companies as a way to mitigate the risk of legal liability. The Government should consider requiring businesses to conduct and report on their human rights due diligence, in line with the Guiding Principles, and ensure that migrant workers who are injured while working are provided with compensation and social security benefits.

60. Corruption remains a prevalent risk in the migrant employment process. The Working Group heard that migrant workers had to pay high fees to brokers as part of the recruitment process. A number of steps should be taken to address corruption, such as supporting a policy of no recruitment fees in the hiring process and setting up protection systems to safeguard whistle-blowers who expose corruption. The relevant government authorities should also be proactive in raising the awareness of migrant workers of their legal rights in Thailand. The Working Group notes the draft amendment to the Labour Relations Act, which was passed by the Cabinet on 5 February 2019 and is now under consideration by the Council of State, which would allow migrant workers to be on the Boards of the labour unions. Collaboration with civil society organizations working with migrant workers would be vital in such a situation, in order to empower them.

61. The Government has informed the Working Group that private sector companies, particularly in the construction sector, have adjusted their practices of hiring migrant workers in compliance with the Royal Ordinance concerning the management of the employment of migrant workers No. 2 (2018), which came into effect on 27 March 2018, noting that heavy fines may be imposed for violations.

IX. Persons with disabilities

62. The Working Group was informed that, as at December 2018, there were 1,947,218 registered persons with disabilities, or about 2.81 per cent of the total population, of which 836,304 were persons of working age.¹⁰ The Government notes that a considerable number of them are unavailable for employment owing to their disabilities. A number of measures have been taken in recent years to promote their inclusion in the labour market. Thailand ratified the Convention on the Rights of Persons with Disabilities in 2006 and in 2007 enacted the Persons with Disabilities Empowerment Act (revised in 2013), which introduced a rights-based approach to inclusiveness.¹¹ The Working Group learned about the many challenges faced by persons with disabilities in accessing the labour market, including those related to unmatched location between workers and workplace, skills requirements (around 1,152,254 of persons with disabilities have only primary school education) and the inadequate accessibility of workplaces and of public transport. In that regard, the Working Group encourages the Government to continue its efforts to address such obstacles and to incentivize business to recruit persons with disabilities. One such measure is the quota system introduced in 2008, which requires private companies to employ 1 person with a disability for every 100 persons hired. Companies that do not fulfil

⁹ Ibid., p. 3.

¹⁰ More than 830,000 are male and 730,000 female; 50 per cent have physical disabilities, 18 per cent have hearing disabilities, 11 per cent have visual disabilities, 7 per cent have psychosocial disabilities and 7 per cent have intellectual disabilities. Almost 50 per cent are over 60 years old, reflecting the overall ageing of the population in Thailand.

¹¹ Available from http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78643&p_country=THA&p_count=441.

the requirement are obliged to pay a fee to the Fund for the Empowerment of Persons with Disabilities.

63. Information received from civil society organizations indicated that efforts should be made to make better use of the Fund for the Empowerment of Persons with Disabilities. The Working Group was informed that the Government was exploring different management models so that the Fund could be used more effectively to help persons with disabilities find jobs and truly empower them. The Government may also create other tools, such as offering tax incentives and using the leverage of public procurement, to encourage businesses to hire more persons with disabilities.

X. Sex workers

64. The Working Group learned that sex workers in the entertainment sector were particularly vulnerable to human rights abuse, including human trafficking. It welcomes the steps taken to step up inspections and training for law enforcement officials to detect cases of human trafficking and to provide shelters and support for victims. The Working Group was, however, informed that the main obstacle to protecting sex workers against human rights abuses is the hidden nature and criminalization of sex work under the Suppression and Prevention of Prostitution Act (1996).¹²

65. Many sex workers in Thailand are undocumented migrants from neighbouring countries, whose migration status further exacerbates their vulnerability. Sex workers under the age of 18 are automatically considered to be victims of trafficking and provided with support when detected. However, a large majority of sex workers risk arrest if they report violence and abuse in their employment to the authorities. The Working Group is concerned about the practice of stamping passports of undocumented migrant sex workers, indicating that they have been fined for engaging in prostitution.

66. Rather than criminalizing vulnerable sex workers, the Working Group encourages the Government to focus on regulating the entertainment sector better and ensuring full application of the labour laws, in line with the recommendations made in 2017 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/THA/CO/6-7).

XI. A gender lens on business and human rights

67. Women and men are treated equally under the Constitution and other laws. However, during the visit, the Working Group learned that women continue to receive lower pay and to experience discrimination, sexual harassment and violence in the workplace. They face additional barriers to securing decision-making positions in both the public and private sectors. Women workers in certain settings and circumstances (for example, domestic workers, migrant workers and sex workers) experience specific obstacles that render them vulnerable to human rights abuses. The Working Group was also informed that lesbian, gay, bisexual, transgender and intersex persons in Thailand face a range of forms of discrimination in availing themselves of services or finding employment.

68. The Working Group commends the Government of Thailand for enacting the Gender Equality Act of 2015, which prohibits discrimination based on sex or gender and extends protection to lesbian, gay, bisexual, transgender and intersex persons.¹³ Under the Act, a fund to promote gender equality was created to support activities aimed at promoting gender equality and a committee dealing with complaints about unfair gender discrimination set up to investigate and provide remedies for gender-based discrimination. However, the lack of any complaints of sexual harassment or discrimination based on sex under the 2015 Act in over two years seems to indicate that the full potential of the new law

¹² Available from www.ilo.org/dyn/natlex/docs/WEBTEXT/46403/65063/E96THA01.htm.

¹³ Available from www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100442&p_country=THA&p_count=4.

is not being realized. The Government should therefore take additional steps to enhance awareness of the Gender Equality Act, including its complaint mechanism.

XII. Ethnic minorities

69. Thailand has a rich and ethnically diverse population, with ethnic minorities making up around 15 per cent of the population. Although the Government recognizes the United Nations Declaration on the Rights of Indigenous Peoples, it does not consider ethnic minorities as indigenous peoples. The Government recognizes “five main language families that belong to a total of 62 ethnic groups” (see CERD/C/THA/1-3). That includes: (a) the Tai language family with 24 ethnic groups; (b) the Austroasiatic language family with 22 ethnic groups; (c) the Sino-Tibetan language family with 11 ethnic groups; (d) the Austronesian or Malayopolynesian language family with 3 ethnic groups; and (e) the Hmong-Mien language family with 2 ethnic groups. In its most recent report to the Committee on the Elimination of Racial Discrimination, Thailand classified ethnicities into four main groups by “geographical characteristics of locality, way of living, culture and the condition of problems”. The main groups include (a) persons in the highlands (a population of 1.2 million living in 3,881 villages); (b) Moken (sea gypsies); (c) Malayu-descended Thais; and (d) other ethnic groups, including groups from the north-east or the Korat Plateau, displaced Thais, persons who have not been included in a survey, persons with status problems, rootless persons; and (d) alien populations (*ibid.*).

70. The Government informed the Working Group about a national framework under which the rights of people from ethnic groups were promoted and protected without discrimination, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, including the 1997 Constitution, the 20-year national strategy, the national reform plan on social issues and the plan for promoting coexistence in a multicultural society.

71. Overall, people from ethnic minorities live in a lower socioeconomic bracket than other Thais. For example, those living in the north-eastern region of the country continue to be the poorest population and suffer lower education levels and health standards. The Government therefore needs to step up efforts to ensure that ethnic minorities are prioritized in development strategies, policies and programmes. That would be in line with the aspiration of “leaving no one behind” under the Sustainable Development Goals.

72. The Working Group also learned that ethnic minorities were disproportionately affected by large-scale development projects, with a significant negative impact on the environment, the right to health and their livelihoods and cultural way of life. A serious concern expressed by ethnic minorities (including the hill tribes) related to the lack of meaningful consultation before development projects were approved and/or special economic zones created. The Working Group was told how members of ethnic minorities who had toiled on the land for generations, through rotational farming, were now being regarded as trespassers and were being criminalized, harassed and intimidated.

73. The Government informed the Working Group of its efforts to review systematically laws, policies and measures aimed at humans living harmoniously in the forests, including the approval of the Community Forest Act and the National Parks Act by the National Legislative Assembly on 15 February 2019 and 7 March 2019, respectively, and the establishment of the National Land Policy Committee.

74. Since the life, livelihood and culture of ethnic communities is intrinsically linked to land and natural resources, the Government’s land management and forest conservation policies should be rooted in meaningful consultation and the participation of those communities in decision-making processes, as set out in the United Nations Declaration on the Rights of Indigenous Peoples.

75. Statelessness within ethnic minority communities continues to be a problem, as Thailand is estimated to have around 486,556 stateless individuals from ethnic groups, which has negatively restricted their freedom of movement and access to justice. However, the Working Group is encouraged by the Government’s commitment to ending

statelessness by 2024 and welcomes the decision by the Cabinet potentially to grant legal status and citizenship to around 110,000 stateless children, including those of hill-tribe descent, the children of migrant workers and others born in Thailand. The Working Group encourages the Government to step up its efforts, including by safeguarding collective rights to land and natural resources.

XIII. Access to effective remedies

76. During the visit, the Working Group learned that people and communities adversely affected by business-related human rights abuses had a range of options for making complaints or seeking redress, from using dedicated hotlines to approaching the courts, the National Human Rights Commission and Damrongdharma centres for the resolution of minor issues. However, the victims of corporate human rights abuses (in particular those in a vulnerable condition or at higher risk) seem to struggle to secure effective remedies from the existing mechanisms. The obstacles in access to effective remedies include a low level of awareness of rights, linguistic barriers, the high cost of litigation, the inability of the National Human Rights Commission to issue enforceable orders, the limited civic space to organize protests collectively and the fear of intimidation and of the filing of strategic lawsuits against public participation.

77. In that context, the Working Group appreciates the creation of the Justice Fund as a tool to enable victims to defend themselves and seek effective remedies. However, the Government should ensure that requests to access the Fund are dealt with in an impartial manner and expeditiously. The Government has informed the Working Group that the approval process of the Fund has been reduced from 54 days to a maximum of 24 days. In urgent cases, such as the arrests of human rights defenders and defence against the filing of strategic lawsuits against public participation, provisional financial aid should be offered pending disposal of the application in due course. The Working Group encourages the Government to enhance cross-border cooperation with ASEAN and other States to improve access to effective remedies in cases of a trans-border nature. In that regard, the Working Group refers to the recommendations contained in its recent study on best practices and how to improve the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights (A/HRC/35/33).

78. The Working Group also welcomes a recent amendment of the Civil Procedure Code to allow for class actions and a proposal to improve the standard of interpreters working in the justice system. The Administrative Court also allows class action cases, including those relating to community and environmental rights over land, to be filed at the court in the same way as those that can be filed at the Court of Justice by applying *mutatis mutandis* the Civil Procedure Code.

A. Judicial remedies

79. Individuals and communities affected by business-related human rights abuses can seek remedies from the courts, including certain specialized courts, such as labour courts.

80. Justice delayed is justice denied. The Working Group therefore appreciates the fact that Thai courts are generally able to dispose of cases expeditiously. For example, the courts of first instance and the courts of appeal are able to decide over 99 per cent of cases within one year. However, there are other barriers to accessing judicial remedies that should be addressed. For example, with respect to territorial jurisdiction in line with international legal standards, section 4 of the Civil Procedure Code and its related provisions allow the courts to accept all extraterritorial cases as long as the defendant or the plaintiff has a place of residence in Thailand. Given the complexity of business structures, it can be difficult to satisfy the jurisdiction requirement. The separate legal personality of foreign subsidiaries and contractors also remains a serious hurdle.

81. The Government should review those barriers and try to address them as part of the national action plan on business and human rights. It should also consider establishing

special environmental courts to deal with disputes related to the environment and natural resources.

B. Non-judicial remedies

82. The National Human Rights Commission of Thailand offers good potential for providing non-judicial remedies for corporate human rights abuses and has received over 2,100 complaints on the issue.

83. The Law on the National Human Rights Commission of 2017 seeks to strengthen the independent status of the Commission according to the principles relating to the status of national institutions for the promotion and protection of human rights, provides it with constitutional status, confers the power to examine cases on its own initiative and includes civil society representatives in the selection committee for membership of the Commission. These are steps in the right direction. However, The Working Group also notes concerns relating to the National Human Rights Commission being deprived of its vital power to refer cases to the courts. Civil society organizations also expressed concern about the Commission's new mandate to investigate and prepare reports on any "inaccurate" or "unfair" reports about the human rights situation in Thailand.

C. Operational-level grievance mechanisms

84. According to the Guiding Principles, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely affected. Such mechanisms should meet the effectiveness criteria laid down in principle 31.

85. During the visit, the Working Group found little evidence or practice of "effective" operational-level grievance mechanisms established by business enterprises. Both the Government and industry associations should encourage companies, whether they are operating inside or outside Thailand, to establish such mechanisms so that legitimate grievances may be addressed at an early stage, but without precluding access to other judicial and non-judicial remedial mechanisms.

XIV. National action plan on business and human rights

86. The Working Group welcomes the decision by the Government to prepare a national action plan on business and human rights, in line with the Guiding Principles. As the Working Group has also underlined in its guidance document on national action plans on business and human rights, it is indispensable that such plans be developed and implemented through an inclusive and transparent process with the participation of both civil society and business.¹⁴

87. The Working Group appreciates the productive and frank dialogue with the government agencies leading the process of developing the national action plan under the leadership of the Ministry of Justice. The Working Group was informed that a committee, chaired by the Director-General of the Rights and Liberties Protection Department at the Ministry of Justice and comprising representatives of other ministries and the National Human Rights Commission, has the mandate to draft the plan and oversee its implementation.

88. At the time of completing the present report, the national action plan had yet to be completed. In February 2019, the Government circulated a final draft of the plan for public comment, with plans to approve it in the course of 2019.

89. During the visit, the Working Group advised the Government to take steps to ensure that information about the national action plan process was widely shared among both civil

¹⁴ See www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf.

society and business actors. Several seminars and consultations had already been held and the Ministry of Justice was collaborating with a civil society organization on the development of a baseline assessment to identify the main gaps and priority areas for action. However, the Working Group found that further efforts would be needed to ensure an inclusive process, for example by making information about the process available on the website of the Ministry, putting out an open call for input and comments, and engaging with a wider group of civil society and business actors. The Working Group also highlighted the importance of the plan focusing attention on the third pillar of the Guiding Principles (access to remedy) and gender dimensions, as well as linking it with other relevant initiatives, such as the recently established multi-stakeholder working group on the Sustainable Development Goals.

90. The Working Group acknowledges the steps taken by the Government subsequent to its visit to consult civil society organizations and other stakeholders on developing a national action plan on business and human rights. The Working Group hopes that the process in Thailand will serve as an example for other countries in the Asian region to follow.

XV. Conclusions and recommendations

A. Conclusions

91. One of the central issues observed by the Working Group was the need for Thailand to move back to a democratic system of governance and for the removal of the orders issued under article 44 of the interim Constitution by the National Council for Peace and Order. The Working Group thus welcomed the move towards general elections on 24 March 2019. It notes Council order No. 22/2018, which repealed, wholly or partially nine previous orders, including order No. 3/2015. During military rule, Thailand saw the curtailment of civil society activity and increased surveillance and prosecution of human rights defenders, journalists and environmentalists, all of which has had a chilling effect on the civic space. The Government should work closely with civil society organizations and support their activities, and promote and protect the rights of human rights defenders, journalists and environmentalists.

92. The Working Group was encouraged by the efforts of the Government to make Thailand the first country in Asia to develop a national action plan on business and human rights and the subsequent meetings, regional forums and workshops it has held over the past few years as a regional business and human rights leader.

93. The Working Group was pleased to see that, despite the restrictions on free speech, there was a very active civil society in Thailand, which was leading the way in promoting business respect for human rights. However, the Working Group was very concerned about the persecution of human rights defenders and the so-called attitude adjustment practice. It was moved by the testimonies of individuals from affected communities, whose unyielding efforts to seek justice was admirable, particularly when considering the insurmountable odds they faced in defending their rights and traditional lands.

94. The Working Group saw the need for business, industry associations and civil society to be more engaged in the promotion of the Guiding Principles, as there was limited awareness of them.

B. Recommendations

1. Government of Thailand

95. The Working Group encourages the Government:

(a) To promote business respect for human rights through its public procurement and economic diplomacy, including in providing export credits and trade support for Thai companies involved in mega-projects in the ASEAN region;

(b) To adopt a more holistic approach to sustainability impact assessments that include social and human rights dimensions and take into account sector-specific risks and differentiated impacts on vulnerable or marginalized groups;

(c) To replicate and scale up measures taken in the fisheries sector to improve oversight of labour conditions in other sectors;

(d) To enhance cross-border cooperation with ASEAN and other States to improve access to effective remedies in cases of a trans-border nature.

96. The Working Group recommends that the Government:

(a) Operate special economic zones in accordance with the highest standards of corporate governance and with adequate consultation with the affected communities, ensuring that the establishment and administration of the zones is in line with the Guiding Principles;

(b) Conduct in-depth baseline studies into possible high-risk sectors and require businesses to conduct and report on human rights due diligence in line with the Guiding Principles;

(c) Implement training programmes to help empower migrant workers, in order for them to exercise their rights to freedom of association and collective bargaining;

(d) Ratify the ILO Conventions on Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) and on the Right to Organise and Collective Bargaining, 1949 (No. 98);

(e) Continue and enhance the implementation of policies and programmes that aim to provide migrant workers with information regarding their rights and the complaint procedures available; this information should be made available in their native languages on their arrival in Thailand and through hotlines;

(f) Review the legal basis of all business-related civil and criminal defamation cases to ensure that no strategic lawsuits against public participation are pending;

(g) Develop guidelines and other measures for the protection of human rights defenders who raise concerns about abusive business practices;

(h) Pay greater attention to the relationship ethnic minorities have with their land when conducting informed and meaningful consultations in accordance with the principle of free, prior and informed consent.

2. Business and industry associations

97. The Working Group recommends that industry associations and the Global Compact Network Thailand play a more robust role in disseminating the Guiding Principles and in promoting their implementation by their members carrying out effective human rights due diligence.

98. The Working Group recommends that closer attention be paid to the relationship between large companies and their supply chains, including outsourcing and subcontracting practices, and that businesses assume responsibility not only for adverse impact on human rights directly caused by their activities and operations, but also for human rights abuses that are linked to their operations, products and services in the course of business relations, in compliance with the Guiding Principles.

99. The Working Group recommends that businesses and business associations develop guidance for adopting a gender lens when conducting impact assessments and designing future operational-level grievance mechanisms.

100. The Working Group recommends that all businesses establish effective grievance mechanisms to provide remedies to affected individuals and communities at an early stage. Such mechanisms should not, however, exclude access to judicial remedies.

101. The Working Group recommends that the Thai Stock Exchange encourage its members to respect human rights throughout their operations, in line with the Guiding Principles, and proactively develop and implement appropriate policies.

3. Civil society organizations

102. The Working Group recommends that civil society organizations:

(a) Continue to raise awareness about the respective obligations and responsibilities of the State and business enterprises under the Guiding Principles, in order to prevent and address adverse impacts on human rights related to the operations of business enterprises and to promote access to justice and grievance mechanisms;

(b) Continue to document and raise the cases of human rights abuses, particularly those committed against environmentalists and human rights defenders, in all appropriate national, regional and international forums;

(c) Continue to monitor Thai business operations outside Thailand, particularly in terms of adverse human rights impacts from mega-projects;

(d) Engage in a multi-stakeholder process to contribute to the development of a national action plan on business and human rights and facilitate the full participation of all stakeholders, including ethnic groups, indigenous peoples, children, women, persons with disabilities and lesbian, gay, bisexual, transgender and intersex communities;

(e) Create business and human rights networks to facilitate the sharing of information and the highlighting of human rights abuses facing vulnerable groups and peoples.

4. National Human Rights Commission of Thailand

103. The Working Group recommends that the National Human Rights Commission:

(a) Play a proactive role in raising awareness of the Guiding Principles and contribute to building the capacity of businesses to conduct effective human rights due diligence;

(b) Protect human rights defenders and make recommendations to the Government to revise the relevant laws;

(c) Provide effective remedies to individuals and communities affected by business-related human rights abuses.

104. The Working Group also recommends that the Commission be given powers to mediate disputes and make enforceable remedial orders, including of compensation.

105. The Working Group further recommends that the Commission be given an explicit mandate to collaborate with other national human rights institutions to deal with trans-border cases.