



To: Mr. Dante Pesce and Professor Surya Deva, Members of United Nations Working Group on Business and Human Rights

From: The Extraterritorial Obligation Coalition (ETOs-Watch)

Subject: Adverse impacts of Thai investments in ASEAN countries and **Thailand's** extraterritorial obligations

26 March 2018

Dear Mr. Dante Pesce and Professor Surya Deva, Members of the UNWG on Business and Human Rights

We, ETOs-Watch Coalition, are a coalition of Thai CSOs and NGOs (local, national and international) working to stop human rights abuses and adverse environmental and social impacts caused by **Thailand's outbound investments in ASEAN countries**. We are preeminent organizations who conduct research and policy advocacy to advance greater responsibility of Thai investors in their investments (such as coal, dams and land concessions) in ASEAN countries. Our goal is to bring about a just resolution for the individuals and communities who have been harmed by Thai investments in other countries such as: Dawei Special Economic Zone, Banchaung coal mine<sup>1</sup>, Heinda mine<sup>2</sup> and Hatgyi dam, in Myanmar; Koh Kong<sup>3</sup> and Oddarmeanchey sugar plantations<sup>4</sup> in Cambodia; and Xayaburi dam and Hongsa coal mine and power plant in Laos.

Over the past years, we have worked directly with and supported the affected communities to seek remedies through both litigation and non-judicial channels, such as the National Human Rights Commission of Thailand (NHRCT). We have partnered with grassroots NGOs (such as Dawei Development Association, Dawei Watch, Equitable Cambodia and Tarkapaw) to undertake human rights impact assessment studies and collect testimonies of the affected communities.

Through intensive evidence gathering and direct observation of the investigations by the NHRCT into those eight cases, we have established the following conclusions:

1. There are more than 100,000 people<sup>5</sup> (in the aforementioned eight cases of Thai investments) who are affected by Thai outbound investments in Cambodia, Laos, Myanmar, and Thailand, who are both directly and indirectly affected by Thai outbound investments and their transboundary impacts. Affected communities struggle to access justice and

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<sup>1</sup> [http://www.burmalibrary.org/docs21/TRIPN-2015-10-We\\_Used\\_to\\_Fear\\_Bullets-Now\\_We\\_Fear\\_Bulldozers-en-red.pdf](http://www.burmalibrary.org/docs21/TRIPN-2015-10-We_Used_to_Fear_Bullets-Now_We_Fear_Bulldozers-en-red.pdf)

<sup>2</sup> <https://www.irrawaddy.com/news/burma/dawei-village-sue-thai-mining-firm-environmental-impacts.html>

<sup>3</sup> [http://www.clec.org.kh/web/images/Resources/Res\\_Koh%20Kong%20ASEAN%20Case%20Study%202013%20-%20ENG1374035991.pdf](http://www.clec.org.kh/web/images/Resources/Res_Koh%20Kong%20ASEAN%20Case%20Study%202013%20-%20ENG1374035991.pdf)

<sup>4</sup> <http://phnompenhpost.com/national/mitr-phol-disputants-testify>

<sup>5</sup> [https://earthrights.org/wp-content/uploads/voice\\_from\\_the\\_ground\\_eng\\_online.compressed.pdf](https://earthrights.org/wp-content/uploads/voice_from_the_ground_eng_online.compressed.pdf)

remedies in part because there is no legislation in Thailand to ensure that Thai investors fulfill their extraterritorial responsibilities on human rights.

2. Human rights violations are common across Thai outbound investments, as acknowledged by the NHRCT. These violations are caused by land grabs, forced evictions, and a disregard for host country and international laws.
3. A systematic mechanism of monitoring and regulating Thai investors operating abroad should be established. The system should include a grievance mechanism for the affected people to raise their concerns and complaints in order to seek justice and remedies.

Thailand has taken no concrete steps to implement binding laws for investors operating abroad, whether through a National Action Plan on Business and Human Rights (NAP) or other measures. We have lobbied various stakeholders to make sure that the NAP integrates regulations around outbound investment and the obligations of Thai investors operating internationally as well as communities' rights to remedies. We observe that loopholes and gaps remain, particularly around remedies for affected communities and those who face human rights abuses from Thai investors in ASEAN countries.

We would like to provide additional information and suggestions regarding practical steps for Thailand to improve the accountability in its expanding investments abroad. We draw our suggestions on General Comment No. 24 of the ICESCR, the United Nations Guiding Principles on Business and Human Rights (UNGPs), and other international best practices, as well as from the Cabinet Resolutions on Thai outbound investments released in May 2016 and 2017.

1. The Thai government and agencies responsible for implementing the Cabinet Resolutions (such as the Ministries of Trade, Justice and Foreign Affairs) should set up a framework or mechanism to monitor and investigate human rights abuses committed or allowed by Thai investors abroad. They must enforce this mechanism to ensure that Thai business enterprises conduct due diligence and disclose their findings publicly.
2. The Thai government and agencies responsible for implementing the Cabinet Resolutions should discuss how to address the need for remediation processes, especially for abuses associated with Thai investments in ASEAN countries.
3. The Thai government should include extraterritorial obligations as one of the most important elements in the NAP.
4. Thai investors registered at the Stock Exchange of Thailand (SET) must make greater commitments to implement the UNGPs and to conduct human rights due diligence, while releasing the information on their activities in public domain.

We would be honored to provide additional information if needed. This information is designed to support your mission to Thailand regarding monitoring the situation of human rights abuses and the scope of the National Action Plan on Business and Human Rights.

Sincerely,

The Extraterritorial Obligation Coalition