

Thailand Must Act on its Commitment to Business and Human Rights Regulations

Released at the Public Seminar on Thai Outbound Investment: Follow-up Meeting on Thailand's Commitment to United Nations Guiding Principles on Business and Human Rights (UNGPs), organized by the National Human Rights Commission of Thailand and the Thai Extraterritorial Obligations-Watch Working Group (Thai ETO-Watch).

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We, the undersigned organizations and individuals, represent communities affected by the Dawei Special Economic Zone (SEZ) and Ban Chaung coal mine and power plant in Myanmar, non-governmental organizations, community networks protecting resources rights, members of Thai ETO-Watch Working Group, and academic think tanks concerned with the human rights and environmental footprint of Thai investments in neighboring countries.

In line with Thailand's commitment to the [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#) and international human rights treaties, we call on the Thai government to implement robust mechanisms to ensure that state and non-state Thai enterprises act with transparency and in compliance with human rights and environmental standards as they pursue projects and business abroad.

On May 31, 2017, Thai Prime Minister General Prayuth Chan-ocha affirmed the Thai government's commitment to implement UNGPs in a speech at a United Nations meeting on business and human rights. His [statement](#) stipulated that businesses are responsible for upholding human rights and guaranteeing dignity, safety, equality, equal opportunity, access to government services, and fair treatment. The Prime Minister also presided over the signing of a memorandum of

cooperation to implement the UNGPs. This memorandum was signed by the National Human Rights Commission, the Ministries of Justice, Foreign Affairs and Commerce, the Federation of Thai Industries, the Thai Bankers Association, the Thai Chamber of Commerce and the Global Computing Network of Thailand.

Thailand's transboundary investment in Southeast Asia has intensified in recent years and there is growing concern over a lack of accountability for the human rights and environmental impacts of these investments. Thai-backed projects in neighboring countries have led to human rights violations, including: [Dawei Special Economic Zone \(SEZ\)](#) and [Ban Chaung Coal Mine](#) in Myanmar; [Koh Kong and Oddar Meanchey sugar plantations](#) in Cambodia; and the Hongsa Mine and Power Station, [Xayaburi Dam](#) and other Mekong hydropower projects, such as [Pak Beng Dam](#), in Laos. Proposed hydropower dams [along the Salween River in Myanmar](#) involving Thai investment are also linked to escalation of conflict and human rights violations.

Local communities affected by these projects have pushed for accountability for human and environmental rights abuses through litigation in Thai courts and non-judicial mechanisms such as the National Human Rights Commission of Thailand (NHRCT). The NHRCT has investigated numerous complaints around Thailand's transboundary investments, developing procedures for concretizing the extra-territorial human rights obligations of Thai state and non-state actors. Based on its investigations, the NHRCT issued policy recommendations to the Thai government to ensure adherence to the UNGPs.

The Thai Cabinet recognized these recommendations in a [resolution on May 16, 2016](#). Thailand's Ministries of Foreign Affairs, Justice and

Trade are mandated to follow up on implementing the UNGPs. The Thai ETO-Watch Working Group was set up by a consortium of Thai NGOs to monitor the implementation of this resolution and the environmental and social footprints of Thai investments abroad.

We reaffirm the main recommendations from the NHRCT, which include establishing a mechanism to ensure that the private sector respects fundamental human rights, in compliance with the UNGPs. Human rights due diligence together with a grievance mechanism are essential to prevent human rights violations and ensure access to effective remedies.

We call for stronger enforcement mechanisms to ensure human rights compliance. While some initial measures to promote accountability of Thai investors operating overseas have already been established, enforcement mechanisms are needed to ensure human rights compliance. Occasionally, Bank of Thailand have discussed human rights risks with companies as part of their process to promote sustainable banking. They do not currently have any specific mechanism to investigate or regulate the behavior of investors or their compliance with human rights standards. Stronger enforcement mechanisms are needed to accompany the Thai Stock Exchange's newly developed mechanism of information sharing on impacts and human rights violations of investment projects. The Thai Stock Exchange will launch this mechanism in March 2018. They have committed to working with the TNHRC to promote annual reporting commitments for companies and investors.

We call on the Thai government to comply with the recommendations and establish such a mechanism, together with other measures to

ensure full adherence to the three pillars of the UNGPs ([Protect, Respect and Remedy](#)) with respect to transboundary investments. We call on Thai investors operating outside the country, especially in the Mekong region and Myanmar, to conduct due diligence in assessing the human rights impacts of all projects, and follow international best practices on environmental standards.

Specifically, the Thai government should:

- Specifically assign responsible ministries to enact a clear regulation that Thai private and state-owned enterprises must respect human rights in their operations abroad.
- Take steps to monitor, prevent, investigate, punish and redress abuses and infringements on human rights, such as enforcing a rule that companies must conduct human rights assessments and develop and adhere to impact mitigation plans.
- Develop a national action plan on business and human rights to begin implementing the UNGPs, including in relation to extraterritorial obligations and transboundary investments. The national action plan should establish a mechanism to provide fair and just compensation to communities and ensure that they have access to remedies.
- Ensure that Thai business enterprises enact human rights policies, conduct due diligence pertaining to the impacts of their transboundary investments, and establish company-level grievance procedures that are accessible to communities affected by their operations.

- Take additional steps to ensure that state-owned enterprises and state-contracted companies with investments in conflict-zones fulfill their obligations, including requiring evidence of comprehensive human rights due diligence before such investments are approved.
- Establish and strengthen accessible and effective state-based judicial and non-judicial grievance mechanisms to address human rights abuses linked to the activities of Thai companies operating abroad.
- If the company is registered at the Thai Stock Exchange, strongly enforce annual reporting on the company's human rights due diligence. If the company is not registered with the Thai Stock Exchange, the company should set up a committee to oversee the project which includes representatives from communities, government and the company to prevent and mitigate impacts.

Specifically, Thai investors operating abroad should:

- Before business activity is undertaken, conduct human rights due diligence to identify, address and act to prevent human rights violations resulting from investment projects.
- Engage communities affected by a project in meaningful, public participation and consultation regarding project impacts.
- Where a project is likely to have transboundary impacts, conduct transboundary impact assessments based on consultations with local communities who will be affected by the project. A

transboundary impact assessment should be done before the decision is made to undertake a project.

- Establish company-level grievance mechanisms for communities who may be impacted by a project to raise their concerns and facilitate their participation in external grievance mechanisms.
- Cooperate fully in state-based judicial and non-judicial grievance mechanisms to address human rights abuses linked to the activities abroad.

Endorsed by:

1. Seven community representatives effected by the Ban Chaung Coal Mine, Heinda Mine and Dawei SEZ projects
2. Thai ETO-Watch Working Group
3. Dawei Watch Thailand
4. The Mekong Butterfly
5. Community Resources Centre
6. Spirit in Education Movement
7. International Rivers
8. Takapaw
9. Dawei Development Association
10. Dawei Probono Lawyers Network
11. Inclusive Development International
12. Focus on the Global South
13. EarthRights International