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Protection of Human Rights Defenders in Thailand

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Foreword

Over the years, Thailand has seen a growing movement of human rights defenders (HRDs) striving to safeguard and uphold respect for human rights. HRDs increasingly play a crucial role in securing greater protection for victims of human rights abuses and in seeking to hold the perpetrators — be they State actors or from the business sector — accountable for their actions, or lack thereof.

However, such progress has come at a high personal cost to the defenders themselves, when they undertake efforts to raise awareness of the adverse human rights impacts of business operations and the underlying patterns of harmful business conduct. HRDs have more and more become targets of attacks that take diverse forms, including judicial harassment, arbitrary arrest and detention, ill-treatment in detention, physical and other types of abuses, and stigmatization. Underpinning these harms is the violation of various fundamental human rights — such as the right to freedom of expression and the right of peaceful assembly — guaranteed by the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a signatory.

There is mounting concern that the business sector is causing, contributing to, or directly linked to attacks against HRDs; and/or failing to prevent or act against such attacks.

Against this challenging backdrop, it is commendable that there has been positive and visible advancement in the recognition given by key stakeholders, including policy makers, to the vital role that HRDs perform. The protection of HRDs has been identified as one of the four priority areas in Thailand's first National Action Plan on Business and Human Rights (NAP), adopted in December 2019. Measures to strengthen the protection afforded to HRDs have been introduced — amendment of relevant laws to prevent judicial harassment against HRDs through the use of Strategic Lawsuits against Public Participation (SLAPPs), and enhancement of access to complaint and remedy mechanisms for all rights holders, to name a few.

To complement these efforts, Thailand's Ministry of Justice requested UNDP to conduct a study on the protection of HRDs, to lay the groundwork for the formulation of additional policies and measures. This study and its findings will be submitted to the National Committee on Implementation of the National Action Plan on Business and Human Rights for consideration, and for tangible action to be taken to better safeguard HRDs.

The study documents instances of violations of HRDs' rights from 1993 to 2022, and explores pressing issues within the context of business and human rights in Thailand. It also presents an overview of the existing mechanisms to address such violations, their shortcomings, and the necessary steps to improve the situation.

One key finding is that an insufficient and/or inconsistent level of understanding and recognition persists within government agencies and the private sector, especially at the local level, in respect of the invaluable role of HRDs. The study also reveals that key actors in the judicial system — judges, public prosecutors and

even lawyers — play a critical role in the process of ensuring that HRDs enjoy a heightened degree of protection as well as appropriate access to remedial measures. Regrettably, although the court verdicts have often been in the HRDs' favour, these were not supported by a rights-based approach to the HRDs' work. The inadequacies exposed by the study increases the vulnerability of HRDs and remain a major barrier to their safety.

On a broader level, the study's findings point to the urgent need to establish policies and programmes to boost awareness within, and coordination among, both the public sector agencies and the business sector, to buttress the legitimate activities of HRDs and create a safe and enabling environment for HRDs to exercise their rights to defend the public interest.

The protection of human rights lies at the core of a rights-centred development. Undoubtedly, the work of HRDs is vital for the advancement of human rights, democracy, and the rule of law, which all lay a solid foundation for sustainable development. UNDP hopes that this study will bring about a constructive dialogue and foster fruitful collaboration among relevant agencies, to ensure that HRDs are better protected and all individuals can enjoy the full spectrum of their human rights and live in dignity, with no one left behind.

UNDP is committed to working with its partners, including government agencies, business communities, HRDs and civil society, to translate the results of this study into concrete action and to ensure the successful implementation of the 2030 Agenda for Sustainable Development in Thailand, with the ultimate objective of the full realization of human rights for all.



Renaud Meyer

UNDP Resident Representative to Thailand

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UNDP staff behind this report include Tarinee Suravoranon, Manager of the Business and Human Rights Project; Reidun Gjerstad, Advisor on Sustainable Development Goals (SDGs); and Non Boakhem, Coordinator of the Business and Human Rights Project.

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Executive summary

Background

In 2019, Thailand became the first nation in the Asia Pacific region to develop and adopt a National Action Plan on Business and Human Rights (NAP). This document serves as a vital blueprint that delineates the duties of the Government and the business sector to protect, and promote respect for, human rights; and their responsibilities to provide effective remedies for human rights violations. The explicit protection of human rights defenders (HRDs) has even been included as one of the four key issues under NAP. In addition, HRDs have been vital instruments in the promotion, protection and defence of human rights, and their efforts help ensure that the implementation of the 2030 Agenda for Sustainable Development as well as the majority of the Sustainable Development Goals (SDGs) are in line with human rights obligations of United Nations (UN) Member States, including the Thailand.

Despite Thailand's commitment and efforts to protect and defend HRDs, incidents of human rights violations perpetrated by the business sector continue unabated in certain areas. As a result, the United Nations Development Programme (UNDP) embarked on the research on the protection of HRDs in collaboration with a team from the Legal Research and Development Center at the Faculty of Law, Chiang Mai University. The research team was spearheaded by Darunee Paisanpanichkul, Kornkanok Wathanabhoom and Wanna Taemthong.

The research explores the issues faced by HRDs in Thailand in the context of business and human rights (BHR), and develops recommendations for the protection of HRDs in Thailand. The implementation of the research outcomes will reinforce the Government's commitment to human rights, and underpin Thailand's endeavour to accelerate its attainment of SDGs.

Methodology

The research is qualitative, including desk review and in-depth interviews by the research team. These interviews were conducted with individuals and groups of individuals affected by development projects, including the community members in the Northeast affected by mining, ethnic Karen community in the North made vulnerable by mining, community members monitoring the impact of the Eastern Industrial Estate, Muslim and other communities in the South imperilled by large-scale development projects (57 percent), staff of non-profit civil society organization (CSOs), activists who work on issues concerning natural resources and the environment, migrant labourers, LGBT (lesbian, gay, bisexual, transgender, queer and intersex) individuals, staff of international non-governmental organizations (NGOs) (24 percent), attorneys (9 percent), media personnel (5 percent), and academics (5 percent). In addition, 71 percent of the interviewees were women (including youth, older persons, those living in remote areas, ethnic groups, Muslim and migrant workers) while 23 percent were men (including men in ethnic groups in remote areas), and 6 percent were LGBT individuals. The interviews were conducted via *Zoom* due to restrictions during the COVID-19 pandemic.

Findings

The research team's findings and analysis show that:

1. The definition, status and roles of HRDs are clearly recognized at the international level and within various agencies in Thailand, including the National Human Rights Commission (NHRC), which has set out its own definition. However, the concept of HRDs is not well known in Thailand, particularly among public agencies engaging in work at the practical level or even among State-based non-judicial mechanisms. **Recognition of the role of HRDs remains inconsistent — a situation that has significantly contributed to their vulnerability to various forms of harassment.** The Rights and Liberties Protection Department of Thailand's Ministry of Justice (RLPD) and NHRC have both agreed to lead in developing various measures for the protection of HRDs.
2. There are existing mechanisms or measures to protect and offer remedies to the community and HRDs including community justice agencies, witness protection programmes, and assistance given to defendants or aggrieved parties in legal cases. The effort to develop these is certainly commendable; however, the **development of other ongoing measures, including the protection of whistleblowers, should be made open to participation from various sectors.**
3. It is **critical to develop a model law that recognises the role of HRDs and contains provisions to protect HRDs**, as Colombia and the Philippines have done. The process should encourage and reflect participation from all sectors.
4. Law enforcement by public agencies in charge of overseeing the implementation of various development projects, and the supervision of the process to assess and monitor the environmental impact during the implementation of various projects and at the end, are still not inclusive enough to allow participation of stakeholders from all sectors — even though this plays a significant role in supporting the rise of HRDs. The inclusion of such stakeholders increases the overall recognition of HRDs, and could therefore influence the escalation (or de-escalation) of conflicts faced by communities, as well as of the level of harassment targeted at HRDs. **HRDs should therefore be included as stakeholders in the stakeholder analysis.**

5. Despite the amendment of the Criminal Procedure Code B.E. 2562 (2019) to deter the filing of SLAPPs (Strategic Lawsuits Against Public Participation) against HRDs, the ‘indictment’ or the ‘acceptance to review case’ continues to exist based on the reasoning that the plaintiffs may otherwise be deprived of the opportunity to defend their rights. In addition, the mediation effort during the trial, the attempt to persuade HRDs to ‘apologize’, and the lack of recognition of the connection between rights violations and HRD action in response — by an individual or as a community of HRDs — casts doubt on the Thai Government’s understanding of international human rights standards and its human rights obligations. This situation begs the question of whether HRDs have, in reality, the right to defend human rights, such as the right to live in a healthy environment and have a good quality of life, the right to public participation in local development, and the right to protect their own roles as HRDs. Indeed, **it is vital to look at the role the law plays as a tool to stifle or compromise the roles of HRDs in Thailand.**
6. Regulators of the business sector — including the Securities and Exchange Commission, Thailand (SEC) — have tried to develop innovative tools to persuade businesses in the stock market to pay attention to BHR principles. Such efforts are commendable as an initial step to combine regulatory discipline and market forces; however, **going forward it is critical that public agencies apply both mandatory and voluntary tools or mechanisms**, including human rights due diligence (HRDD) measures, operational-level grievance mechanisms (OGMs), the promotion of diversity and inclusion, a policy of zero tolerance against reprisals, and other concepts in compliance with international BHR principles.

Key recommendations

Based on the study, we recommend that the Government and relevant agencies concerned **undertake the following actions for the protection of HRDs.**

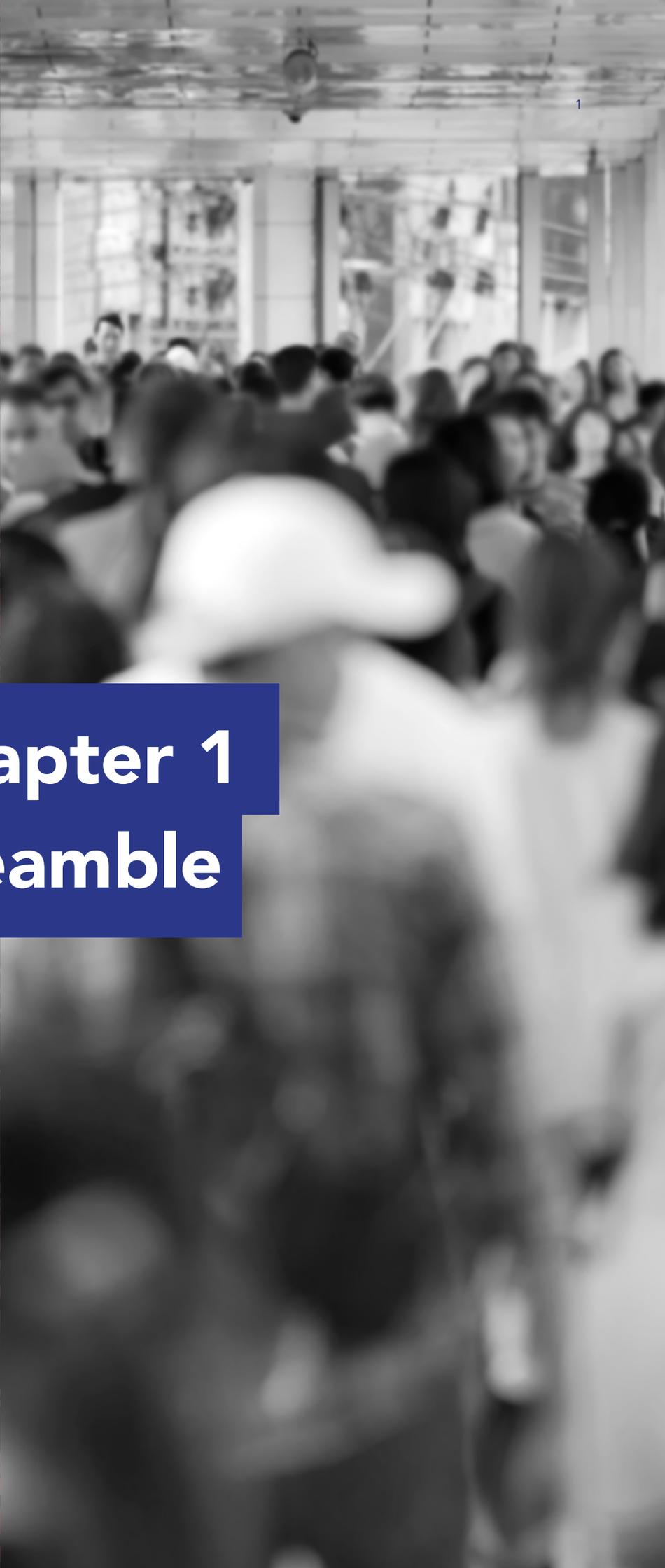
1. Relevant public agencies, and personnel in the judicial system and the private sector need to **recognize the definition, status, and role of HRDs**, and raise public awareness about their important roles.
2. Public agencies should work to **enhance the capacity of HRDs.**
3. The private sector and CSOs should collaboratively **develop mechanisms to protect and assist HRDs**, and consider developing specific laws to protect HRDs.
4. Put in place measures to **mitigate and prevent risks to HRDs.**
5. **Support the business sector to fulfil its human rights obligations** according to the United Nations Guiding Principles on Business and Human Rights (UNGPs).

List of acronyms

| | |
|--------|--|
| B.E. | Buddhist Era* |
| BHR | Business and human rights |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CESCR | United Nations Committee on Economic, Social and Cultural Rights |
| CHIA | Community health impact assessment |
| CSO | Civil society organization |
| EIA | Environmental impact assessment |
| ESG | Environmental, social and governance |
| HRD | Human rights defender |
| HRDD | Human rights due diligence |
| HRIA | Human rights impact assessment |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| LGBT | Lesbian, Gay, Bisexual, Transgender, Queer and Intersex |
| mHRDD | Mandatory human rights due diligence |
| MoU | Memorandum of Understanding |
| NAP | National Action Plan on Business and Human Rights |
| NCPO | National Council for Peace and Order |
| NGO | Non-governmental organization |

| | |
|-------|---|
| NHRC | National Human Rights Commission |
| OECD | Organisation for Economic Co-operation and Development |
| OGM | Operational-level grievance mechanism |
| OPCAT | Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| RLPD | Rights and Liberties Protection Department of Thailand's Ministry of Justice |
| SAO | Subdistrict administrative organization |
| SDGs | Sustainable Development Goals |
| SEA | Strategic environmental assessment |
| SEC | Securities and Exchange Commission, Thailand |
| SLAPP | Strategic Lawsuit Against Public Participation |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNGPs | United Nations Guiding Principles on Business and Human Rights |
| UPR | Universal Periodic Review |

* The Thai calendar is 543 years ahead of the Gregorian calendar, hence the year 2023 in the Gregorian calendar corresponds to B.E. 2566 in the Thai calendar.



Chapter 1

Preamble

Thailand's first National Action Plan on Business and Human Rights (NAP), adopted by the Government in 2019, was unprecedented in the Asia-Pacific region. The document serves as a vital blueprint that delineates the duties of the Government and the business sector to protect, and promote respect for, human rights; and their responsibilities to provide effective remedies for human rights violations. Indeed, the protection of human rights defenders (HRDs) is one of the four key issues under NAP. In addition, HRDs have been instrumental in the promotion, protection and defence of human rights and their efforts help ensure the implementation of the Sustainable Development Goals (SDGs).

Despite Thailand's commitment and efforts to protect and defend HRDs, incidents of human rights violations, perpetrated by the business sector, continue unabated in certain areas. As a result, the United Nations Development Programme (UNDP) has supported research on the protection of HRDs with a team from the Legal Research and Development Center of the Faculty of Law at Chiang Mai University, spearheaded by Darunee Paisanpanichkul, Kornkanok Wathanabhoom and Wanna Taemthong.

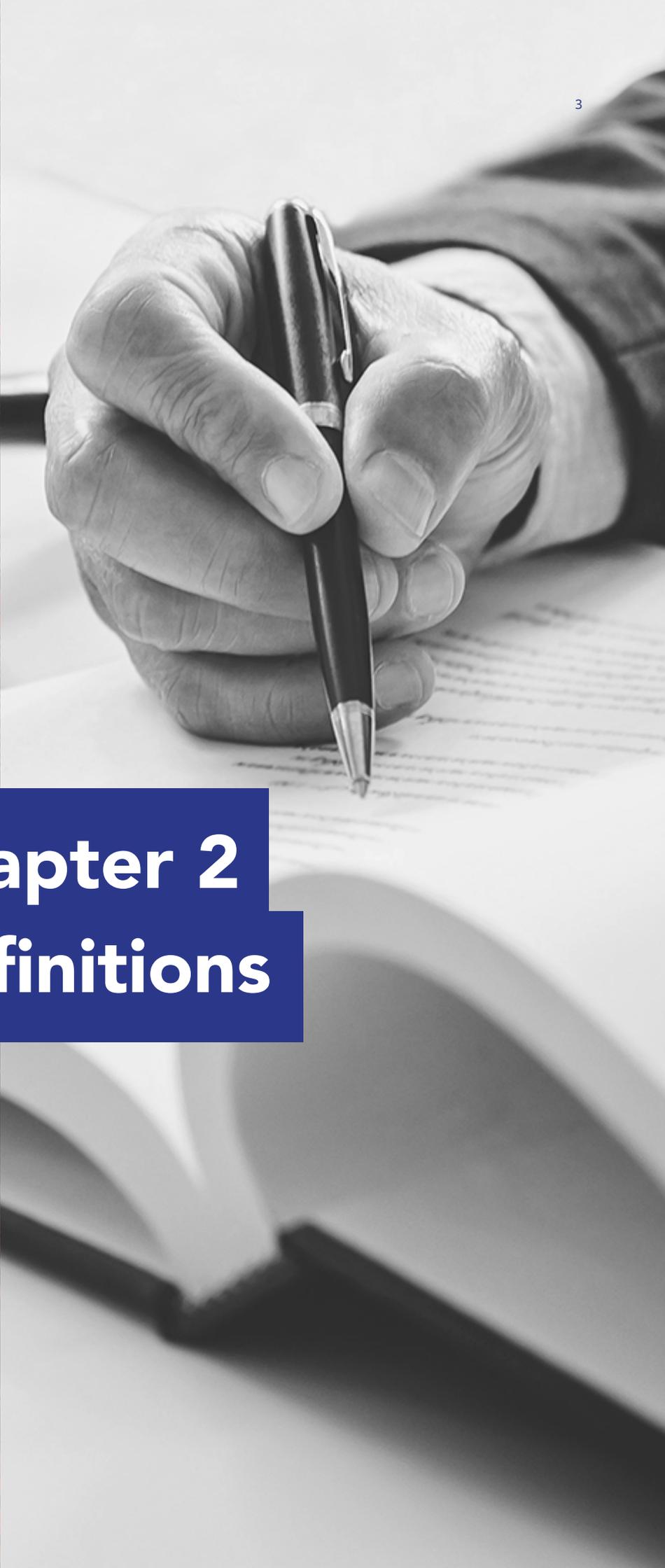
The research explores pressing issues faced by HRDs in Thailand in the context of business and human rights (BHR) and makes recommendations for their protection. This work supports the efforts of Thailand to achieve SDGs and reinforces its commitment to human rights.

1.1 Methodology

The research is qualitative, including desk review and in-depth interviews. These interviews were conducted among individuals and groups of individuals affected by development projects, including the community members in the Northeast affected by mining, ethnic Karen community in the North made vulnerable by mining, community members monitoring the impact of the Eastern Industrial Estate, Muslim and other communities in the South imperilled by large-scale development projects (57 percent), staff of non-profit civil society organizations (CSOs), activists who work on issues concerning natural resources and the environment, migrant labourers, LGBT (lesbian, gay, bisexual, transgender, queer and intersex) individuals, staff of international non-governmental organizations (NGOs) (24 percent), attorneys (9 percent), media personnel (5 percent), and academics (5 percent). In addition, 71 percent of the interviewees were women (including youth, older persons, those living in remote areas, ethnic groups, Muslim and migrant workers) while 23 percent were men (including men in ethnic groups in remote areas) and 6 percent were LGBT individuals. The interviews were conducted via Zoom due to restrictions during the COVID-19 pandemic.

1.2 Report outline

1. **Preamble:** Background of the study and description of the methods adopted during data collection
2. **Definitions:** Definitions of HRDs, including peer studies on its definitions
3. **Human rights defenders in Thailand:** Background of HRDs, how they work, forms of harassment faced, HRD responses and various consequences
4. **Applicable laws and policies:** Laws and policies that are applicable at the national and international levels
5. **Factors that affect safety risks for human rights defenders:** Analysis of HRDs in various contexts
6. **Conclusions:** Exploration and debate on study findings
7. **Recommendations:** Recommendations for private sector and state agencies



Chapter 2

Definitions

2.1 Overview of definitions

Various documents define the term ‘human rights defender’. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, more commonly known as the Declaration on Human Rights Defenders¹ defines HRDs as “Everyone who individually and in association with others promotes and strives for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

According to the National Human Rights Commission (NHRC) (2003),² HRDs include “[e]veryone who individually and in association with others promotes and strives for the protection and realization of human rights concerning the economic, social, cultural, civil and political aspects including the rights to undertakings including peaceful assembly, becoming a member of an organization or association and contacting foreign agencies to implement human rights work in collaboration with various parties, etc.”

The European Union Guidelines on Human Rights Defenders (2004)³ describes HRDs as “individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights. HRDs also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.”

According to Protection International (2013),⁴ “Human Rights Defender means individuals who work to raise the awareness of fundamental rights and freedoms prescribed in the Universal Declaration of Human Rights through peaceful means.”

For Amnesty International (2017)⁵ an HRD “is someone who, individually or in association with others, acts to defend and promote human rights at the local, national, regional, or international levels, without resorting to or advocating hatred, discrimination or violence.”⁶

As part of the research study, diverse informants offered their own definitions. The views of the business sector on how to define HRDs may be summarized as “individuals affected by the operations of a company, NGOs, and leaders who demand the rights related to the business operations of a private sector that may affect community and the environment.”⁷ Public officials in the Ministry of Justice in charge of witness protection

1 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), article 1: Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international levels. Adopted by United Nations (UN) General Assembly resolution no. 53/144 on 8 March 1999 (A/53/625/Add.2) 53/144). <https://undocs.org/A/RES/53/144>

2 National Human Rights Commission (NHRC), “Guidelines and international standards: human rights defenders”, 2002, p.3. <http://library.nhrc.or.th/ulib/document/ebook/E03977/mobile/index.html>

3 European Union Guidelines on Human Rights Defenders, 2004, p.6. https://eeas.europa.eu/delegations/zambia/93204/eu-guidelines-human-rights-defenders-2020_ka

4 Protection International, Security and Protection Manual for human rights defenders, 2013, pp.5-6. <https://www.protectioninternational.org/wp-content/uploads/2013/09/Thai-Handbook.pdf>

5 Previously, Amnesty International Thailand defined it as “. . . adhering to the definition by the United Nations while taking into account debate among human rights defenders and domestic NGOs on a case-by-case basis.” See also “Thailand: An analysis of the situations and mechanisms for the protection and promotion of human rights defenders”, 2558, p.10. https://www.amnesty.or.th/files/2815/5444/3012/-_Final.pdf

6 See also Amnesty International, Human Rights Defenders Under Harassment, 2017, p.6. <https://www.amnesty.or.th/files/8115/5444/4292/-Thai.pdf>

7 Executives and staff of private companies (1), interviewed by Darunee Paisanpanichkul, 20 August 2021.

define HRDs as “individuals who act to defend rights and national interest without any hidden self-interest.”⁸ HRDs described themselves thus: “As to the workers, whether they are Thai nationals or migrant workers with high potential — and they may not be ‘leaders’ among the affected people — they can also be considered HRDs since all of them have to bear the risk even when the groups are formed to conduct the negotiation and even before the exercise of their rights. Their banding together as a group can already disrupt their workplaces. Therefore, everyone can be a human rights defender if they decide to stand up and fight or to carry out an activity to strike the balance of power.”⁹

2.2 Debate surrounding the definitions

Definitions of a HRD have expanded to reflect the universality of human rights. At the core of the definition is that HRDs stand up for human rights, and they are legitimate defenders regardless of whether their stand is generally accepted, or even legally correct according to the relevant laws in place. Further, actions by HRDs should be peaceful and non-violent (peaceful action).¹⁰ The question of whether an activity is peaceful or not is often raised, particularly during debate among public agencies and independent organizations, which point out that there should be an explicit definition of HRDs and who should be considered as such. This issue assumes importance in incidents of HRDs assembling to march, blocking roads, staging sit-in protests, or trespassing on public or private premises, with the objective of delaying or ending an in-progress meeting. Activities that necessitate or give rise to the use of violence would fall outside the definition of peaceful action by HRDs. If protection for HRDs is prolonged in this circumstance, it could be interpreted as an exception made for wrongdoers, resulting in special treatment or privilege.

Similar concerns are shared by the business sector and the Securities and Exchange Commission, Thailand (SEC), with the latter stating, “SEC is yet to define the meaning of ‘human rights defender’. But principally, the definition of HRD should hinge on the definitions commonly accepted at the international level. And even though human rights defenders are people who defend human rights and protect public interest, but [clarification is needed regarding] which action can be called an act to defend human rights and to serve the public interest . . . and . . . each sector in Thai society should ensure that it has the universal understanding about HRDs.”¹¹

Interviewees from private companies offered the following feedback: “It should be noted that some local HRDs, the minority of them, hold biases against the projects carried out by our company. This makes it challenging when we want to approach and discuss with the community. Meanwhile, some HRDs have invited NGOs and the media to join them.”¹²

Based on the study, the research team offers its own definition. Firstly, ‘peaceful action’ is interpreted as ‘non-violence’ (santi-withi) — a term that is itself problematic. Its use and reference should be subject to further debate since the term ‘non-violence’ — and the social action defined as non-violence — is powerful and can legitimize the action of the person who invokes it. Some public agencies or independent organizations, along with members of society, tend to believe that non-violence means obedience or being free of disruption,

8 Public officials in the Ministry of Justice in charge of witness protection (1), interviewed by Darunee Paisanpanichkul, 23 September 2021.

9 HRD (1), interviewed by Darunee Paisanpanichkul and Kornkanok Wathanaboom, 3 August 2021.

10 Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 29 (April 2004). pp.8-9. <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

11 Executives of SEC, interviewed by Darunee Paisanpanichkul, 24 August 2021.

12 Staff from a private company (1), interviewed by Darunee Paisanpanichkul, 20 August 2021.

or that non-violence means compliance with the law.¹³ According to civil society, however, and particularly among HRDs, non-violent action may not mean ‘not causing vexation’, since the goal of such action is to bring to the attention of the State — or applicable agencies in the public sector; the business sector; or the general public — the emerging problems faced by HRDs. Non-violent action by HRDs is also aimed at cultivating empathy from Thai society at large.¹⁴ According to one HRD,¹⁵ “The turbulence of our activities may well impact on the rights of other persons and the public, but it should be understood that causing vexation is not the priority. HRDs thus need to be aware of, and accept, the consequences of the impact on such rights.” The HRD further noted that “during our action, we adhere to non-violence. We do have to admit that about 3 to 4 percent may go overboard, and we need to accept any consequences [of that action] . . .”¹⁶

Secondly, the activities of HRDs are, by definition, supposed to be peaceful. A public assembly is normal in a democracy in which people can gather to express their concerns and their demands for change. Public assembly is a private right used collectively. Key to this right is freedom of peaceful assembly, which warrants protection since it constitutes a fundamental human right according to article 21 of the International Covenant on Civil and Political Rights (ICCPR)¹⁷ and is likewise a right prescribed in the Constitution of the Kingdom of Thailand B.E. 2560 (2017).¹⁸

The United Nations (UN) Human Rights Committee issued General Comment No. 37 (2020) on article 21 of ICCPR regarding the right of peaceful assembly, which states the following:

6. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

. . .

15. A “peaceful” assembly stands in contradistinction to one characterized by widespread and serious violence. The terms “peaceful” and “non-violent” are thus used interchangeably in this context. The right of peaceful assembly may, by definition, not be exercised using violence. “Violence” in the context of article 21 typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.

13 There are various explanations from theories and schools of thought (pacifism, non-violence school, conflict resolution school, etc.). In addition, there are different forms or types of non-violence including non-resistance, active reconciliation, moral resistance, selective non-violence, *Satyagraha*, and non-violent revolution. Any attempt to explore them all falls beyond the scope of this study.

14 Dr. Kwanchanok Kittiwanch, Faculty of Humanities, Chiang Mai University, expert on Peace and Conflict Studies, interviewed on 4 October 2021.

15 HRD (2), interviewed by Darunee Paisanpanichkul and Kornkanok Wathanabhoon, 3 June 2021.

16 HRD (3), interviewed by Darunee Paisanpanichkul, 19 July 2021.

17 ICCPR, article 21: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

18 Constitution of the Kingdom of Thailand B.E. 2560 (2017), section 44: “A person shall enjoy the liberty to assemble peacefully and without arms. The restriction of such liberty under paragraph one shall not be imposed except by virtue of a provision of law enacted for the purpose of maintaining security of the state, public safety, public order or good morals, or for protecting the rights or liberties of other persons.”

16. If the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21. Collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent.
17. There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful. Moreover, isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such. Thus, some participants in an assembly may be covered by article 21, while others in the same assembly are not.
18. The question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. The same applies to violence by members of the public aimed at the assembly, or by participants in counterdemonstrations.
19. The conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent. Isolated instances of such conduct will not suffice to taint an entire assembly as non-peaceful, but where it is manifestly widespread within the assembly, participation in the gathering as such is no longer protected under article 21.
20. The carrying by participants of objects that are or could be viewed as weapons or of protective equipment such as gas masks or helmets is not necessarily sufficient to deem those participants' conduct violent. That has to be determined on a case-by-case basis, dependent on, among other considerations, domestic regulation on the carrying of weapons (especially firearms), local cultural practices, whether there is evidence of violent intent, and the risk of violence presented by the presence of such objects.¹⁹

Thirdly, regarding the concern about the possible use of violent methods, we consider several issues, beginning with the assumption that public assembly is peaceful. It is also important to note, as indicated above, that violent action committed by some participants cannot be generalized as the action of other participants, the organizers, or the public assembly as a whole. In other words, “regardless if the action is violent or not, it should not be used to deprive us of our rights. If such action is wrongful, one has to bear responsibility for it.”²⁰ The issue that all relevant parties — particularly public agencies and the judiciary — have to consider is the intention of such expression or action committed, and whether it was intended to protect, or prevent any impact on, the public interest. Prevention, in this context, differs from the defences of ‘prevention’ and ‘necessity’ that exist in the Penal Code. Therefore, actions by HRDs to protect the public interest cannot be justified through the use of those two defences that are available in criminal cases.²¹ In addition, measures

19 General Comment No. 37 (2020), para 6, 15–20. on the rights of peaceful assembly (article 21), Human Rights Committee. <https://digitallibrary.un.org/record/3884725?ln=en>

20 Human rights lawyer (1), interviewed by Darunee Paisanpanichkul, 4 August 2021.

21 Human rights lawyer (2), interviewed by Darunee Paisanpanichkul, 14 May 2021.

should be put in place to pre-empt Strategic Lawsuits Against Public Participation (SLAPPs) when such cases are filed in bad faith with misrepresentation of facts to harass or take advantage of a defendant.²²

Fourthly, while Thailand has yet to legally recognize the status and role of HRDs, the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and other domestic laws guarantee various rights to all citizens: to live in a healthy environment; have a good quality of life; have freedom of opinion; and participate in decision-making concerning the management of natural resources and the direction of development in one's own community.²³ Moreover, Thailand is bound to accord recognition to HRDs, by virtue of being a State Party to various international human rights conventions. Therefore, the exercise of rights and freedoms by an individual or a group of individuals is lawful. It is incumbent on the State to ensure strict implementation and enforcement of the law.²⁴

This study defines a *human rights defender* as **a person who, individually and in association with others, works to promote and protect human rights.**

Human rights defender is not an occupation but a **status** or a **role** of an individual or a group of individuals such as villagers, peasants, farmers, attorneys, media personnel, activists, artists and others, who strive on the front line to defend public interest or to work for a common good such as human rights, which include civil rights; political rights; and economic, social and cultural rights. In some instances, HRDs may work specifically on the rights of certain individuals or groups such as children, women, indigenous people, LGBT individuals and migrant workers. As a result of their work in the public interest, HRDs can be subject to various forms of harassment, including SLAPPs.

22 Criminal Procedure Code B.E. 2562 (2019), section 161/1: "In a case filed by a private complainant, if it appears to the court — or through examination of evidence called at trial — that the complainant has filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled to, the court shall order dismissal of the case, and forbid the complainant to refile such case again. The filing of a lawsuit in bad faith, as stated in paragraph one, includes incidents where the complainant intentionally violated a final court's orders or judgments in another criminal case without providing any appropriate reason."

23 Constitution of the Kingdom of Thailand B.E. 2560 (2017), sections 25, 26, 27, 34–38, 41–47 and 50.

24 Constitution of the Kingdom of Thailand B.E. 2560 (2017), Chapter V, Duties of the State, sections 51–63; Chapter VI, Directive Principles of State Policies, sections 70–73, 75–76.



Chapter 3
Human rights
defenders
in Thailand

3.1 Overview of situation faced by HRDs

HRDs are those who individually, and in association with others, act to protect their rights to natural resources, to live in a healthy environment, to participate in decision-making concerning the direction of development in their communities, as well as to exercise freedom of opinion and raise awareness regarding the problems they face. The activities of HRDs can include, for instance, inviting the relevant agencies to a meeting to hear problems and explore solutions together, organizing academic meetings and seminars, holding exhibitions, raising awareness using social media, gathering to submit or follow up on demands made to relevant public agencies or the private sector, or holding public rallies.²⁵ As a result of such activities, HRDs might be perceived as ‘troublemakers’, ‘hired protesters’, ‘anti-development luddites’, ‘funded by foreign agents’ or ‘unpatriotic’. They could also become ‘alleged offenders’ or ‘defendants’ in defamation or trespass suits. In many cases, HRDs could be killed or disappeared while public officials are unable to bring the perpetrators to justice, as happened in the cases of lawyer Somchai Neelapaijit, and Polajee ‘Billy’ Rakjongcharoen, an HRD from the Karen community.

According to Protection International, in the first three years following the 22 May 2014 military coup, as many as 179 community-based women HRDs — who fought for the right to land, natural resources and against injustices — found themselves the target of legal prosecution. The number has since increased to 440 as of 2020.²⁶ According to the research team’s documentation of harassment in the context of BHR from 1991 to 2017, harassment against HRDs has taken various forms, including physical intimidation. HRDs received death threats by phone, and firearms were sent to some HRDs. They experienced encirclement by vehicles, and some had their employment terminated. Others have been disappeared and/or killed. HRDs have endured administrative and judicial harassment that turned them into defendants in defamation suits. Statistically, 30 percent of HRDs have been subject to killing, 37 percent to various forms of intimidation, 14 percent to prosecution, 8 percent to various forms of surveillance, 5 percent to arrests, 2 percent to physical abuse, and 2 percent to enforced disappearance.²⁷

Figures 1 and 2 below illustrate the research team’s analysis of harassment against HRDs in the context of BHR.

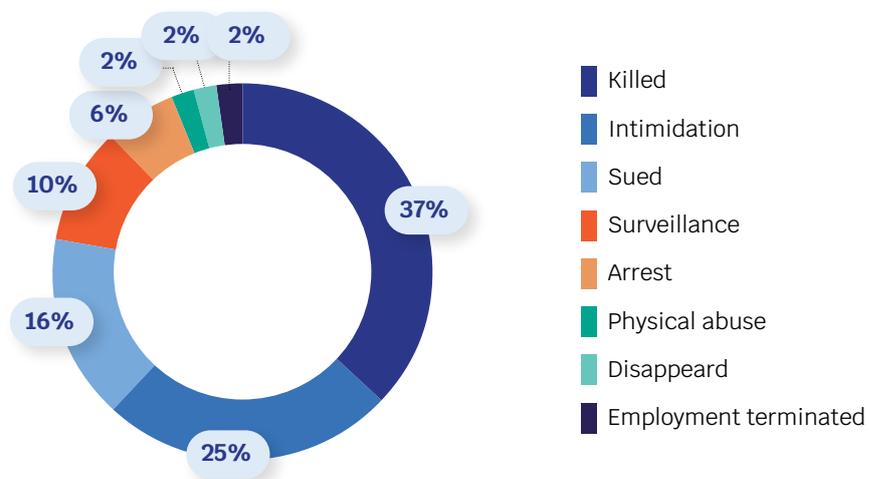
25 The Songkhla-Pattani Against Coal-fired Power Plant Network organized a four-day march from Songkhla’s Thepha District to Muang District to raise public awareness and to submit a letter of petition to General Prayut Chan-o-cha, the Head of NCPO, and the Prime Minister to stop the construction of a power plant that would encroach on their community land in Thepha District on 28 November 2017. On 27 November 2017, the authorities cracked down on the public assembly and arrested 16 villagers who participated in the activity including a 16-year-old boy. They were charged for violating the Public Assembly Act B.E. 2558 (2015), the Road Traffic Act B.E. 2522 (1979), carrying firearms, and obstructing competent officials pursuant to the Penal Code. Eventually, the court found 2 of 16 defendants guilty for failing to provide notification 24 hours before commencing the public assembly and failing to ask to extend the duration of public assembly according to the Public Assembly Act B.E. 2558 (2015). They were fined 5,000 baht (US\$141.80) each and other charges were dismissed. For further details, see <https://www.ilaw.or.th/node/5461>

In 2018, the People Go Network organized the ‘We Walk, Friendship Walk’ from 19 January to 17 February 2018 covering 450 kilometres from Pathumthani to Khon Kaen to assert the four rights of the people including the right to health insurance covering people all over the country, policies that do not dismantle food security, laws that do not restrict human rights and community rights, and for the Constitution of the Kingdom of Thailand B.E. 2560 (2017), the supreme law of the land, to be drafted with public participation. <https://tlhr2014.com/archives/8453> See also the case of the ‘Thalu Fah Walk’ covering 247.5 kilometres from Nakhon Ratchasima to Bangkok with three demands, including ‘Free Our Friends’ (restoring right to bail), a rewrite of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), and repeal of section 112 therein. <https://thematter.co/social/walk-talu-fah/136897>

26 Only 25 women HRDs have had access to the Justice Fund. <https://prachatai.com/journal/2020/02/86223>. In addition, from 1992–2017, 59 HRDs became victims of killings and enforced disappearances. <https://www.bbc.com/thai/thailand-38807815>

27 Documentation by Pitchamon Saabpaiboon, postgraduate student and research assistant, Faculty of Law, Chiang Mai University.

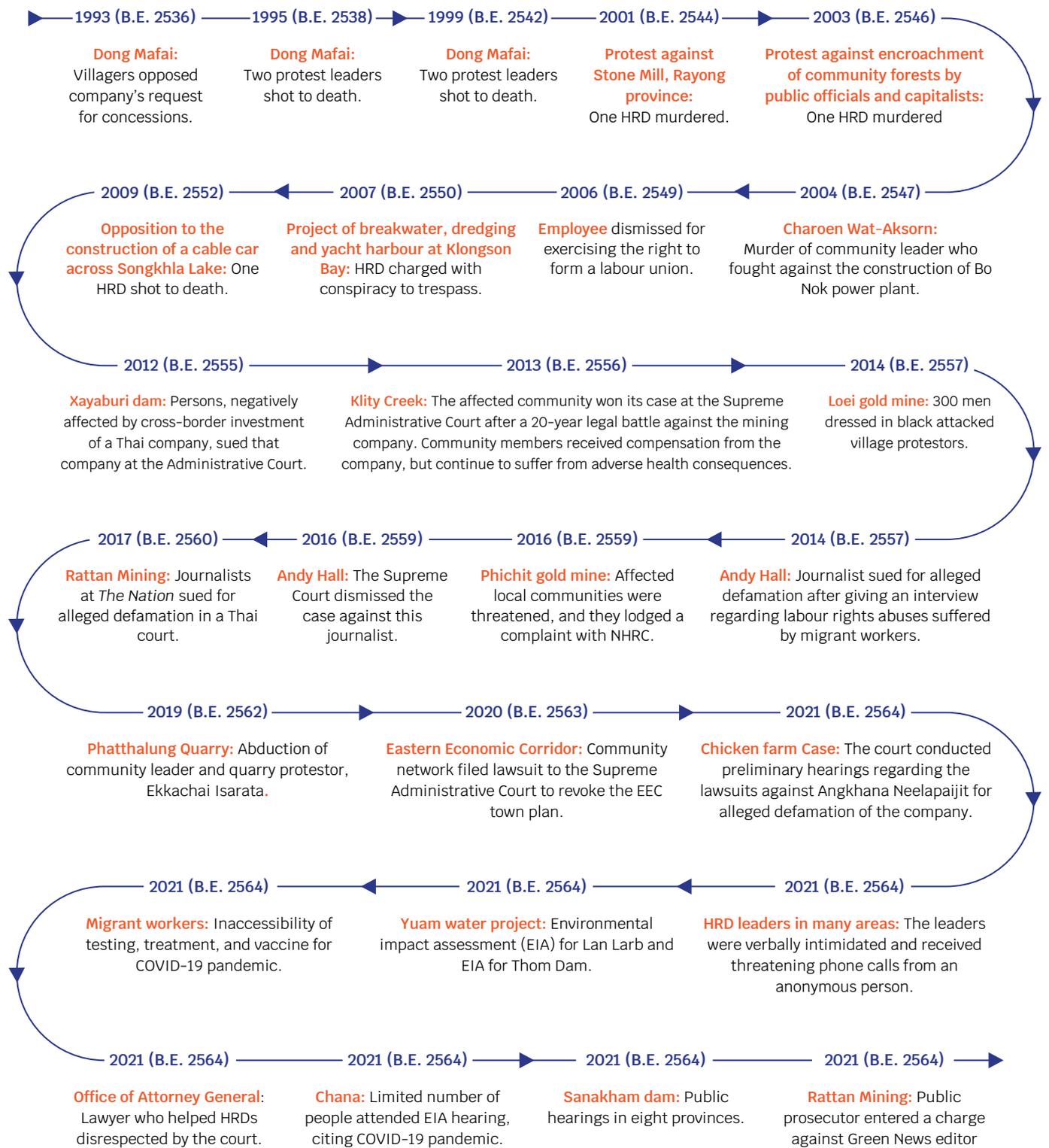
Figure 1. Types of harassment faced by HRDs (1991–2021)



Source: Research project undertaken for this report on the protection of HRDs, September 2021



Figure 2. Cases of harassment against HRDs



Source: Research project undertaken for this report on the protection of HRDs, December 2021.

3.2 Current situation faced by HRDs

The research team interviewed HRDs in various case studies that were divided into individuals and groups of individuals affected by development projects, including the community members in the Northeast affected by mining, ethnic Karen community in the North made vulnerable by mining, community members who have been monitoring the impact of the Eastern Industrial Estate, Muslim and other communities in the South imperilled by large-scale development projects, staff of non-profit CSOs, activists who work on natural resources and the environment, migrant labourers, LGBT individuals, staff of international NGOs, attorneys, media personnel and academics.

Before these individuals and groups of individuals stood up to defend various human rights, they were simply community members who made a living from farming, cultivating fruit orchards, or as small merchants in the community. There are also people affiliated with various organizations, lawyers, media personnel and students who stand up for human rights. HRDs may carry out their activities individually or collectively, as demonstrated in the case studies below.

3.2.1 Ethnic youth HRDs of Ban Ka Boe Din village²⁸

An HRD recounted the following:

“ The applications for mining licences have been filed since 2000 and the community was informed that the EIA [environmental impact assessment] was conducted in 2009. Our opponents claimed to have held public hearings, but in fact, they just came to talk with village leaders. . . . Before, people just said because they [their opponents] had money, we could not fight them off. No need to stand up and say anything. It would only bring us danger. The villagers had no idea what would happen to them. We can understand this since the villagers are ethnic Karen who are neither literate nor know the law. But when lawyers came here to explain about the laws, it made us know we have the right to information and various other rights, including the right to file cases. Now, the villagers have become less worried and are more hopeful about their fight. They clearly see how they will fight. With support from the team to help the villagers, they now fear nothing. I and seven other friends embarked on the activities to defend Ban Ka Boe Din since 2019. I just graduated from my 12th grade. ”

The HRD did not continue in school because she had to help with her family's tomato plantation. The family started experimenting with growing pumpkins. Most people in Ban Ka Boe Din grow tomatoes, pumpkins, cabbages, bell peppers. Tomatoes fetch the best price, with each crop taking two to three months to grow. The HRD recounted how she first heard about the mine coming to their area when she was a child. It was not her intention to speak out on this issue; it happened spontaneously. She asked questions and shared the concern of the villagers for their health, farmland, residential land, and livelihood. With help from outsiders, she and other villagers began to understand the process of mining operations, how to acquire licences and the requirements of an EIA. This new knowledge prompted the people in Ban Ka Boe Din to ask candid questions about the EIA process.

With help from Greenpeace, Ban Ka Boe Din villagers collected data for the community-based environmental and health impact assessment as provided in the National Health Act B.E. 2550 (2007). With legal help from the Center for Protection and Revival of Local Community Rights and the EnLAW Foundation, this HRD and her

28 HRD (4), interviewed by Wanna Taemthong, 13 May 2021.

village associates in Ban Ka Boe Din are now aware of their rights to protect natural resources and to live in a healthy environment. In addition, the young people have learned to help protect the rights of villagers in other areas including Mae Moh and Ban Heang in Lampang province, and Songkhla's Chana Industrial Estate. Recently, on 4 April 2022, 50 villagers in Ban Ka Boe Din filed a case with the Administrative Court to use the judicial process to scrutinize the lawfulness of the EIA.²⁹

These stories attest to how the adverse impact of development policies led by the State, and of the business operations of the private sector, has empowered HRDs to take concrete action in exercising their right to protect the public interest.

3.2.2 Resolute opposition by HRDs in Wang Sa Phung village³⁰

According to one of the village mothers, before mining came to Wang Sa Phung, people earned a living from cultivating rice, fruit orchards and rubber plantations, as well as through extra earnings by selling Government lottery tickets. She stated: "No one said it was a mining project. They just told us they were going to build a school, hospital, and market . . . until construction equipment was brought to the village and it was announced that a gold mine was to be developed here in 2003. By then, the villagers were elated. The men were happy since they could land a job at a place close to their homes."

But after the mine began operating in 2006, a chain of health risks emerged. The mine was located on a mountain on a higher plain than the villagers' paddy fields. When the company blasted the mountain, the rock debris landed on the paddy fields. Some farmers had to run to escape from danger. In addition, the mine blasting rattled houses nearby, causing widespread damage. The villagers started to discuss the negative impact of the mine and subsequently went to meet with and inform the Provincial Governor about them. Eventually, some compensation was given to the villagers directly affected by the falling debris.

The mining operations were also extremely noisy and dusty, around the clock. The authorities measured the dust levels in 2007 but the villagers were not informed of the result. In 2008, the affected villagers started to band together as a group, and became informed about the impact of mining from people outside the area. They started to mobilize, and submitted letters of petition to various authorities including the Governor in the Provincial Industrial Office.

In the same year, the Provincial Public Health Authority sent officials to inspect the area. The following year, this government agency gathered the villagers and announced that they must "refrain from using underground water for drinking and other use since it was contaminated with arsenic." According to an interviewee, "The villagers panicked about the resulting water shortage, and consequently organized a 'Pha Pa' fundraising ceremony to ask for donations of water. Another problem for them was that they lacked sufficient containers in which to store water — there were just a few jars and basins available. The Governor then sent trucks to deliver water to their village. . . . The delivery stopped after just one week. As it turned out, the villagers had to purchase their drinking water. Every house had to have a couple of big jars to store water delivered by the trucks. One truckload of water could fill up a 1,000-litre container, but if there were many people in the family, the water would not last long since it was used for both drinking and other household needs." This quantity used to cost 250 baht (US\$7.10), but has now gone up to 350 baht (US\$9.90).

29 The Chiang Mai Administrative Court's Environmental Division has accepted to hear the Black Case no. S1/2565 filed by Pornchita Fapathanpha and 49 individuals against the Expert Committee to Review the Environmental Impact Assessment Report of the mining project and the Office of Natural Resources and Environmental Policy and Planning. See also <https://thestandard.co/people-gather-suing-chiang-mai-administrative-court-stopping-omkoi-cole-mine/>

30 HRD (5), interviewed by Wanna Taemthong, 5 July 2021.

In addition, problems occurred when fish began to die in natural ponds and the villagers dared not eat them. They continued, however, to catch crabs and pond snails to cook. It was in 2010 that the Provincial Public Health Authority then told them to “refrain from consuming what they had caught, given the arsenic contamination found in aquatic animals.” Academics from Naresuan University took fish samples to test and found that the fish meat was still edible, although the entrails were contaminated with heavy metal. The villagers, who liked to make food from fish entrails and intestines, had to stop making such food. After that, the villagers submitted letters of petition to various relevant agencies.

The situation continued to deteriorate and, by December 2012, the crest of the tailing pond started to sink. The villagers demanded that the problem be addressed. They were also concerned about the condition of the reservoir for keeping chemicals contained. When the rains came and the reservoir collapsed, the villagers feared the residents in the surrounding area would be endangered. They submitted letters of petition to various public agencies asking them to investigate the case. An order to shut down the mine for 15 days was issued to address the problem. After that period, however, it resumed its operations. Since that time, the villagers have submitted letters of petition even more frequently. They began diversifying their activities, organizing public assemblies with children singing songs to raise awareness about the suffering of the community. According to a villager, in 2013 residents across six affected villages:

“... decided to build a wall to block the road but it was torn down at night and the perpetrators could not be identified. They [the villagers] then rebuilt the wall and it was torn down again. They built the third wall on the same day. . . . The funds were raised by us bringing plastic bags around to ask for donations from the villagers. The villagers were instantly cooperative. They felt so frustrated. The economy was still good then. It was quite a heated issue and we had to carry on this gruelling battle without any rest. We took turns to guard the area at night — firstly, to prevent the trucks from transporting the ore outside, and secondly, to guard the wall, which we called the ‘Wall of Spirit’. It was built by our flesh and blood.”

After the coup, the villagers submitted a letter of petition to General Prayut Chan-o-cha, Head of the National Council for Peace and Order (NCPO) asking him to send some forces to help the villagers. As related by an interviewee:

“They sent one company of soldiers here. We were initially happy. We cooked for them food and rice. But on the third day, the company commander said to the villagers, let’s clear up the wall debris! They claimed it was for the sake of cleanliness. In fact, they really wanted to destroy the wall to stop the villagers’ opposition. Upon hearing that, all the villagers were stunned. Some started to cry. They prevented us from talking any further. About 8 pm that night, they called to tell us that they would not clear up the wall. But when the villagers were organizing the campaign ‘Pitching Green Flags to Stop the Mine’ and invited people to join, they [the military] seized the village headman’s sound system as soon as the villagers ended their speech. They even compelled us to participate in an ‘attitude adjustment’ boot camp. We, and all the leaders in the subdistrict administrative organization (SAO), were summoned to attend three ‘attitude adjustment’ sessions. . . . Now, we understood that they were there not for our good.”

The HRDs further recounted how government officials would lurk around the houses of every leader each morning. One HRD noted that “they proposed that a quadripartite MoU [Memorandum of Understanding] should be made including the military, the mining business, the villagers and the Government. We went outside the village about four kilometres to discuss among ourselves and agreed that we would not accept such a

proposal. We issued a letter opposing such a quadripartite committee. That landed us in another ‘attitude adjustment’ session, during which we were asked why we did not accept the quadripartite committee”.

During the ‘attitude adjustment’ sessions, the villagers had to sit down to talk with the military officials at a room in the District Office. The conversation was recorded by video camera, and the public officials tried to pressure the villagers to stop protesting the mine. Some villagers even cried out in frustration during the sessions. As one interviewee stated:

“ We feared nothing, we had been fighting tirelessly. We were both frustrated and angered. We simply wanted to explain to the public officials that they are supposed to look after the people. At that time, we were still thinking they were there to help us. We wanted them to know what villagers like us had been facing. The water was not drinkable; the crabs, fish, and vegetables had to be bought. We were furious. But look at what they have done to us. We hoped they would come to help us. But it turned out not to be so. ”

In addition, the laws were weaponized to attack the local HRDs, who have since faced 27 civil and criminal cases against them.

3.2.3 A civil society HRD striving to empower the community³¹

This case study concerns a staff member from the Foundation for Ecological Recovery who was responsible for campaigns, and documentation of the ecosystem and protests against damming the Songkhram River. The construction of the dam may negatively impact the livelihood of people in Sakhon Nakhon and Nakhon Phanom. After serving as a volunteer in the HRD project, he continued to work on the issue for several more years, and started to pay attention to the effect of development in the E-san region.

The emergence of a Dong Mafai potash mining project in the E-san region in 1993 prompted questions about the impact of the salt industry. In addition, due to the Government’s push to reform the mineral law between 2000 and 2002, the staff member felt that an amendment to that legislation would transfer the ownership of an area of at least 100 metres underground from the landowners to the State. The State could then extend licensing to the private sector, or keep the land for the State and exploit the natural resources, thus breaching the right to ownership by the people.

The staff member’s work for the community obliged him to study the process that informed the EIA report. He also had to look at various other environmental laws to acquire knowledge that could be used to argue against mining projects as well as to develop public policy recommendations on how to mobilize mineral resource work for the community.

He noted the use of violence in the community directly affected by the Dong Mafai mine. Several local protest leaders had lost their lives as a result of expressing their opposition to the mining operations. Despite the safety risks, he continues to support the community. He stated: “I do not want more villagers to lose their lives. . . . I am thinking other people might share the same idea. . . . We all feel why do the villagers have to get killed from coming out to fight for their community. . . . I feel in a violence-infested area like this that if I and other colleagues do not intervene, there would be a fifth or the sixth dead body. As a result, I have decided to work in the area.”

31 HRD (6), interviewed by Wanna Taemthong, 19 July 2021.

In 2019, he and his colleagues thus started working with the Dong Mafai villagers affected by the mining project in after learning that the local villagers wanted support. The villagers were filing a case to have the mine shut down, with help from the EnLAW Foundation. Initially, the Administrative Court ordered the revocation of the mining licences; however, following a successful appeal motion, the mine resumed operating.

In August 2020, another HRD apparently received a death threat. According to villagers, “Those people hired a hitman.”³²

3.2.4 An HRD’s undertakings for a CSO on human rights³³

In this case study, we look at an HRD with a bachelor’s degree in political science and a master’s degree in human rights from the United Kingdom, who started working in human rights in 2009. In 2017, she worked as a human rights expert for a CSO to monitor the situation of human rights violations in Thailand.

During her work, this HRD discovered violations of the rights of migrant workers by a private company. The employees had complained to the Provincial Office of Labour Protection and Welfare and NHRC. The former agreed that there had been a violation of the employees’ rights and ordered their employer to pay compensation. The 14 employees, however, later filed a case against their employer with the Labour Court, where they hoped to secure compensation commensurate with the actual damage inflicted on them.³⁴ Meanwhile, NHRC concluded that it was a violation of labour rights case.³⁵ The employer later sued the 14 employees for alleged defamation.³⁶

At the same time, a criminal suit for alleged defamation was filed against the HRD in the lower court,³⁷ followed by a civil case to demand damages worth several million baht for sharing video clips of news about the violation of the migrant workers’ rights. She found that the video clips featured a report about the facts and hoped it would help to raise public awareness regarding the protection of labour rights. According to the HRD, “During the preliminary hearing, I was asked why I didn’t apologize. I wondered if anyone had read the posts. The posts contained neither swear words nor any mention of any name in a damaging manner.” Eventually both

32 Prachatai, Timeline of death threats against the Leader of the Commoners Party after supporting groups opposing the quarry mine in Nong Bua Lamphu. <https://prachatai.com/journal/2020/09/89635>

33 HRD (7), interviewed by Wanna Taemthong, 12 July 2021.

34 The labour inspector of the Lopburi Labour Protection and Welfare Office conducted an inquiry into the employment and issued an order in August 2016 for the company to pay the employees compensation of 60,000 baht (US\$1,701.20) to 150,000 baht (US\$4,252.90) each, depending on the duration of their employment. Nevertheless, the employees deemed that such compensation was not commensurate with the actual damage inflicted on them and decided to take the case to the Labour Court. On 17 March 2017, the Labour Court ordered the employer to pay the 14 employees the compensation at a rate similar to what was imposed by the labour inspector. The employer later decided to appeal the case and it was dismissed by the Appeals Court. <https://freedom.ilaw.or.th/blog/chickenfarmcases>

35 According to the resolution of the meeting on 1 August 2016, the subcommittee on economic, social and cultural aspects stated that a human rights violation had been committed as the employer had failed to pay wages, and the employment contracts were not legally made since the employer lacked an understanding of the law. His action was deemed not as an act of trafficking in persons nor as forced labour since there was no oppression or compulsion in the employment and/or the employees had not entered the country to work illegally. See also <https://freedom.ilaw.or.th/blog/chickenfarmcases>

36 The employer in this case filed the case with the Don Muang Kwaeng Court accusing the 14 Myanmar employees of committing defamation and reporting false information to NHRC. The Court agreed to review the case and scheduled witness examination hearings. These 14 workers had to be absent from their work to attend every court hearing. On 11 July 2018, the Don Muang Kwaeng Court ruled to dismiss the case, citing that the defendants had lodged the complaint in good faith to protect their personal rights and freedoms. It could not be construed as reporting false information and their action could not be ruled as wrongful. The Thammakaset company appealed the case, but the Appeals Court decided not to review it, citing that no appeal shall be permitted on questions of fact (Verdict of the Specialized Appeals Court no. 597/2017). See also <https://freedom.ilaw.or.th/blog/chickenfarmcases> and <https://freedom.ilaw.or.th/th/case/821>

37 The lower court agreed to review the case on 25 March 2019.

parties agreed to withdraw their cases after the HRD made a public apology on 8 June 2020.³⁸ The Court of Appeal upheld the lower court's verdict on 30 March 2022. Recently, the Appeals Court allowed the plaintiff to appeal the case to the Supreme Court.

Additional Information

In total, the company has launched 37 legal actions against 22 HRDs, including³⁹ two HRDs^{40, 41} who were sued for alleged defamation in relation to social media postings showing solidarity with the one other person who had been sued. An academic on human rights⁴² was sued on 1 May 2019 for using her institution's Facebook page to share a public statement of an international organization that showed solidarity with the HRDs and demanded that legal cases against the employees be dropped. The court of first instance later dismissed the case on 16 July 2020, and its verdict was upheld by the Appeals Court during the plaintiff's appeal. The plaintiff subsequently appealed to the Supreme Court, which upheld the verdicts of the Appeals Court and the court of first instance.⁴³

One HRD was sued⁴⁴ for alleged defamation in two cases. The first case, filed on 25 October 2019, concerned the HRD's tweet to express solidarity with HRDs,⁴⁵ where "there was no mention of the company".⁴⁶ The case is still pending in court. The second case was filed in June 2020 against her and other defendants for a social media posting displaying solidarity with the other persons sued by the plaintiff.

3.2.5 A youth HRD committed to defend her hometown sea⁴⁷

Born and raised in Chana District, Songkhla, the 19-year-old HRD studies mass communication at a university, a course of study spurred by her desire to contribute to her community by making a film to recount stories of the Chana people and share them with the outside world. Her connection to the sea is strong: "My home sits right by the beach, about 20 steps to the sea. The sea is right in front of my home . . . I was born there. I could spot dolphins jumping on some days. It was very exciting, and many people watched this. We were born here. My father fishes while my mother sells fish. I have helped my mother sell fish since I was a child."

The Chana Sea provides shelter and a source of income for almost all the local villagers in Tambon Talingchan, Tambon Sakom and Tambon Nathap. The beach is 29 kilometres wide and the sea is rich in natural resources, including well over 100 fish species caught by the villagers and currently being documented. If the construction of the proposed Chana Industrial Estate goes ahead, it would directly and adversely impact the area.

As a young person in Chana, the HRD has grown up aware of the problems caused by large-scale development projects and how they can endanger local natural resources. Her father is a conservationist of coastal resources

38 Black Case no. O3011/2018, Red Case no. O1128/2020.

39 Fourteen workers and one reporter (Lopburi Provincial Court ruled on 24 December 2019 to convict them). (Black Case no. O118/2019 Red Case no. O775/2019), one academic and six former and current human rights workers. See also <https://prachatai.com/journal/2020/04/87292> and <https://freedom.ilaw.or.th/blog/chickenfarmcases>

40 HRD (8), interviewed by Darunee Paisanpanichkul and Kornkanok Wathanabhoon, on 5 April 2021.

41 HRD (1).

42 Human rights academic (3).

43 Verdict of the court of first instance on 18 September 2019, verdict of the Appeals Court on 26 March 2020 and verdict of the Supreme Court on 17 March 2021.

44 HRD (8).

45 HRD (8) and human rights academic (1).

46 Court scheduling witness examination on case filed by private company for defamation against 'Angkhana' for posting that showed solidarity with HRDs. <https://prachatai.com/journal/2564/10/95672>

47 HRD (11), interviewed by Darunee Paisanpanichkul, Kornkanok Wathanabhoon and Wanna Taemthong on 28 July 2021.

in the Gulf of Thailand through his work of preventing large fishing vessels from dragging nets or fishing where artisanal fishers work. He noted, “During the EIA process of the deep-sea port, the public agencies explained that Chana Sea is home to only two fish species, *Leiognathidae* and sardines. Such information deviates significantly from the truth. How could a person from Chana say such a thing? My children eat crabs every day, eat shrimp every day. The experience touched me deeply.”

This experience prompted him and other villagers to start working on documentation. When people in each ‘tambon’ (village) catch fish, they use their cell phones to take photos of the fish and the data is compiled by local persons. The photos taken by the villagers are shown using a projector to identify each species of fish. Altogether, they have identified 157 species. From their experience campaigning to protect natural resources and the environment, the villagers use data collection and documentation to challenge public agencies and to protect their natural resources.

The young HRD recalled that during the COVID-19 pandemic, having her home right by the beach made her realize the value of her neighbourhood as she had the space to breathe fresh air and to rest during the quarantine period. The villagers also grew herbs to protect themselves from the virus. She remarked, “Transforming the community into an industrial estate is not always good or recommended. Resource-based development could be a better choice than an industrial estate.” As to how to raise awareness about the Chana Sea in her hometown, the HRD stated:

“ I simply want to share what I can do, what I am keen on, and what I can write about since I used to work on documentation and can write stories to spread the information. I have written letters to describe how abundant my village is in natural resources, how I have grown up, how I have acquired things and how I can live with them. One day, people want to take away those things from me. I simply want to share about what has happened.”

3.2.6 A reporter HRD upholds the right to know the truth

After a field investigation, a reporter chose to publicize the suffering faced by residents in Dawei in the Tanintharyi Region of Myanmar. The local people faced harm as a result of the mining operations of a private Thai company. After the news broke, the reporter was sued by the company through the Nakhon Pathom Provincial Court⁴⁸ for cyber libel causing damage to the plaintiff’s reputation and exposure to insult, hatred and possibly the revocation of its mining licence.⁴⁹

The case was settled through mediation at the preliminary hearing. The period of legal action, however, wreaked havoc on the life of the reporter, who stated, “I had to attend a court hearing about once a month, which gave rise to expenses and was a waste of my time since the case dragged on for nearly one year.” The case was recorded by iLAW as the 49th case in which the Computer-Related Crime Act B.E. 2550 (2007) (Computer Crime Act) was used to ‘silence’ mass media or to stifle criticism regarding public interest issues.⁵⁰

Later, the same reporter was sued by a private company in November 2021 for alleged defamation, for reporting news that included content from a verdict of the Dawei Lower Court that ordered a Thai company to compensate villagers for damage it had caused to 882 betel nut trees.⁵¹ The reporter was later indicted but released on his own recognizance.

48 Black Case no. 967/2017.

49 An offence against the Computer-Related Crime Act B.E. 2550 (2007), section 14 and the Penal Code, sections 326 and 328.

50 See also <https://www.facebook.com/iLawClub/posts/10158677808840551/>

51 Green News, Myanmar Court ordering Thai mining company to compensate Dawei villagers for 2.4 million baht (US\$68,046.50) for environmental damage from tin mine. <https://greennews.agency/?p=20072>

In this case, the reporter HRD's attorney explained that his client denied all charges, was ready for witness examination to validate the facts in his report, and insisted that he simply reported in the public interest. The attorney noted that this is a cross-border legal case filed by the mining company operating in Myanmar albeit having Thai managing directors. Nevertheless, since the report was republished by news outlets in Thailand, witness examination must be conducted on Thai and Myanmar witnesses including environmental academics, representatives of the mass media, human rights academics, former National Human Rights Commissioners, a NHRC subcommittee member who used to investigate a mine in Myanmar's Tanintharyi region, an attorney of the Myanmar villagers impacted by business operations, and other affected villagers.⁵² The reporter claimed, ". . . I have no worry since I have done my job in good faith. I did not intend to smear anyone. I just wrote based on the facts, on the realities. I fear nothing . . . but feel it is a waste of money and time."⁵³ In September 2022, the reporter had to attend a witness examination hearing scheduled by the Nakhon Pathom Provincial Court.

3.2.7 All HRDs deserve recognition

As these examples demonstrate, HRDs in Thailand can be ordinary persons until the violation of certain rights affects their livelihood, way of life and health, or the environment. When this happens, such people choose to defend their rights as well as community rights. Their actions may be taken individually or collectively. In addition, HRDs may come from the ranks of various organizations that promote and protect human rights, including community rights, the right to participate in decision-making concerning the management of natural resources and the direction of development in one's community, the right to health and to live in a healthy environment, the right to information, and the right to freedom of opinion. HRDs can be individuals in various occupations, including attorneys and journalists who, during the course of their professional duties, help to promote respect for and the protection of human rights, and ensure a remedy for rights violations.

It is important to note that, until now, there has barely been recognition that staff of CSOs who strive to empower communities, attorneys and journalists can also be considered HRDs.

3.3 Actions HRDs can undertake

1. **In the case of HRDs who are community members**, there are two situations that could be considered. The first scenario relates to development projects or activities that are pending approval by a public agency. The second concerns projects or activities that have already adversely affected the environment, health and livelihood of the community. HRDs in both situations could undertake similar strategies and actions — although the nature of their demands could differ — including efforts to:
 - a. submit a letter of petition to public agencies in charge of the project approval, to demand an investigation or review of the project and to follow up after submission;
 - b. demand suspension or complete stoppage of a public hearing, public consultation or public forum that may pave the way for the project approval. Such events are organized by the private sector or state sector to elicit public participation early on, in order to boost the credibility of the project and thus increase the likelihood of approval;
 - c. organize to demand a solution to address the impact of the project;
 - d. march to raise public awareness;
 - e. block road access to the project site to prevent the transportation of chemicals or minerals in and out

52 For more details, see <https://prachatai.com/journal/2022/03/97807>

53 HRD (13), interviewed by Darunee Paisanpanichkul and Kornkanok Wathanabhoom on 11 June 2021.

of the mining site;

- f. solicit help in terms of information and viewpoints from academics concerned;
- g. raise awareness through mainstream media and social media;
- h. campaign for signatures of people supporting the community's demands;
- i. commence litigation; and
- j. fundraise both within and outside the community to support the activities.

2. In the case of HRDs who carry out activities to protect and promote human rights as part of an organization, or HRDs who work individually, the protection and promotion of human rights often take place through the empowerment of individuals and communities. This can be done by raising awareness on rights violations through training the community regarding the documentation necessary to establish the impact or risk to health and the environment, and providing training on human rights principles and rights according to various laws. Such education helps to enhance understanding about available mechanisms to request an investigation, and helps to ensure that villagers can use the mechanisms by themselves. Furthermore, villagers can receive legal advice and assistance with litigation and legal defence.

3.4 Forms of harassment experienced by HRDs

1. Community-based HRDs

- a. Photographed by officials in plain clothes or in uniform, and by unknown persons.
- b. Surveilled and followed by public officials.
 - Visited by officials at home or in the village.⁵⁴
 - “Being summoned to attend attitude adjustment sessions . . . having military officials watching at the home of every protest leader in the morning. . .”⁵⁵
 - “When I came to submit a letter of petition or our demands in Bangkok, and my father did not join me, the authorities would ‘visit’ him at home in the morning, at noon and in the late afternoon, every day. When I went outside, they also followed me by car.”⁵⁶
- c. Pressured by the authorities or local formal leaders to stop action.
 - “The officials were sent to ask which villagers would attend the public consultation.”⁵⁷
 - “The officials would visit us a day before the holding of public forums.”⁵⁸
- d. Friends and persons who are familiar with the HRDs are contacted.
 - “Even though I am a student, they even dared to call my friends.”⁵⁹
 - Faced with intimidation and harassment, both physically and verbally.
 - They told me to go back and study. “Watch out, you will be summoned by the court.”⁶⁰

54 HRD (5).

55 HRD (5).

56 HRD (11).

57 HRD (11).

58 HRD (11).

59 HRD (11).

60 HRD (11).

- “The unknown official sent a HRD — a villager — a photo of the son.”⁶¹
 - “The officials demanded that the village headman be called out for failing to bring villagers to participate in the public consultation.”⁶²
- e. Targeted for death threats.
- “I received a death threat.”⁶³
 - “Someone drove by my house’s backyard and fired shots to threaten me.”⁶⁴
- f. Subjected to violent ambush.
- “After making a turn in my car, someone fired shots after me. I was in the orchard, a single home in the orchard. It was dark. Five shots were fired. I made a turn into my home and hid myself to see who the shooter was. I heard a car engine noise the other way and it then vanished. I did not report the case, thinking it was an act of intimidation.”⁶⁵
- g. Discredited through negative labelling, e.g. as being “funded by foreign agents”, “forever protesters”, and “anti-development luddites”.
- h. Sued through SLAPPs as a retaliatory tactic to pressure HRDs to back off.
- “I was accused of taking the lead to organize the villagers to submit the letter of petition to the Governor to investigate them. They then sued me for damages and defamation, both criminal and civil cases.”⁶⁶
 - “Both being sued and countersued by the villagers, in 27 cases altogether.”⁶⁷
- i. Disregarded by local public agencies, who do not provide any help or support.

2. HRDs who carry out activities to protect and promote human rights as part of an organization or HRDs who work individually

- a. Targeted for death threats.
- b. Victims of forced disappearances, such as in the case of Ekkachai Isarata.
- c. Sued through SLAPPs as a retaliatory tactic to pressure HRDs to back off.⁶⁸

3.5 How HRDs respond to harassment

61 HRD (14).

62 HRD (14).

63 HRD (5).

64 HRD (15), interviewed by Darunee Paisanpanichkul and Kornkanok Wathanabhoom, on 3 April 2021.

65 HRD (12).

66 HRD (12).

67 HRD (5).

68 As to defendants in defamation cases, according to the database of iLaw and Thai Lawyers for Human Rights (TLHR), the two NGOs documenting SLAPPs during 2014–2020, found 58 defamation cases and cases invoking the Computer Crime Act have been filed against 116 defendants. The most common targets of such cases are protest leaders and activists (55%), media personnel (18%) and others (21%). The most common plaintiffs are private companies (55% in 32 cases), followed by government agencies (16%), public officials (14%), ordinary persons (10%) and politicians (5%). Of the total 58 cases, 34% were dismissed by the courts with 16% being convicted and sentenced to either imprisonment or a fine. The common reason for dismissal is the invocation of section 329 to protect the public interest. See also, Prachatai, The truth be told: Six years of 26,000 defamation cases. <https://prachatai.com/journal/2564/04/92386>

The following are common tactics used by HRDs when confronting harassment.

- State, when photographed without consent, “If you can take my photo, I can take yours.”
- Publicize the incident of harassment.
- Bring harassment to the attention of the relevant public agencies.

// *Public agencies in charge of protecting human rights should recognize people who stand up to fight as human rights defenders, not as ‘anti-development luddites’. After all, these matters are included in international declarations that you should care for.*⁶⁹ **//**

- Seek legal advice from attorneys, civil society, and international organizations, as well as consult academics in various educational institutions for their specialized legal knowledge.

// *“The legal team are the people I trust the most. I trust public officials much less when I need to seek help.”*⁷⁰ **//**

// *The most problematic kind of harassment against the villagers is legal action, since the villagers have been sued in 27 cases. The villagers try to make such legal cases a common issue among them. When someone must attend a court hearing, the whole village will be there as well. They make a public service announcement in the village . . . When someone is indicted, the villagers put money together for bail. They put together land titles and have them assessed to post bail for their fellow villagers.*⁷¹ **//**

- Highlight the situation of harassment against human rights organizations to international organizations.⁷²

3.6 Impact of harassment on the daily life of HRDs

Harassment impacts the daily life of HRDs, since most HRDs still have to earn a living or study even while defending local rights. Interviewees often referred to the fear this engenders for them and their loved ones. They expressed their concerns and daily reality as follows:

- “I am concerned and have an uneasy feeling.”⁷³
- “Slightly concerned and fearful; fear of being disappeared like Billy, but they have money, and we are just village folk.”⁷⁴
- “The ‘hitman’ is invisible to us.”⁷⁵
- “I have less time to spend with my family. They are concerned about me. My mother cries every day. I must live separately from my family. From going home together, now we must return home separately, otherwise, I would not return home at all.”⁷⁶

69 HRD (6).

70 HRD (16), interviewed by Wanna Taemthong on 13 May 2021.

71 HRD (16).

72 HRD (6).

73 HRD (4).

74 HRD (16).

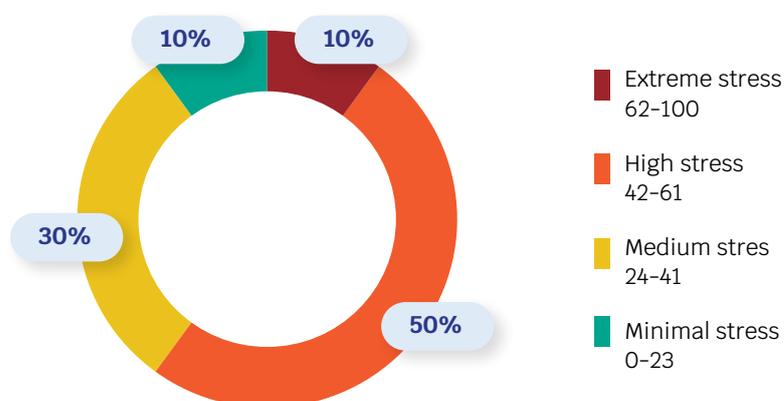
75 HRD (5).

76 HRD (12).

- “I have to close down my shop, where I traded in rubber. Got into a fight with my family. Having to spend time protesting or attending court hearing. It cost me my income.”⁷⁷
- “I must stop working on my farm, stop generating income.”⁷⁸
- “When having to go out to join a protest or an excursion trip, even though I receive some allowance to cover my accommodation and travel, I still have to spend my personal money which comes from my savings.”⁷⁹
- “Receiving a death threat costs me a lot, for I have to move to another place temporarily.”
- “I experience a negative impact on my health.”

In addition, several villagers had no choice but to stop growing rice since their paddy fields are located close to the tailing pond that stores cyanide. They can now only grow sugar cane so that they can “buy rice to eat.”⁸⁰

Figure 3. Impact on mental health of HRDs



Source: Results from tests on HRDs for this report, conducted from May until July 2021.

The research team documented the impact of the persecution on the mental health of HRDs.⁸¹ It was found that 50 percent and 10 percent of HRDs who underwent the test **showed signs of a high level and an extreme level of stress**, respectively.⁸²

77 HRD (5).
 78 HRD (16).
 79 HRD (4).
 80 HRD (5).

81 The form was designed with advice from psychological experts from the Faculty of Medicine, Siriraj Hospital, Mahidol University and psychologists from the Faculty of Law, Chiang Mai University.

82 **Minimal stress level**, 0-23 points, can disappear in a short period of time. It can occur in daily life and can adjust to various situations. This kind of stress is **useful** for daily life. **Medium stress level**, 24-41 points, is the kind of stress that can happen in our daily life. Certain threats or incidents may give rise to such stress, concern or fear. It is still considered a normal level and stress at this level may not be harmful nor affect daily life negatively. **High stress level**, 42-61 points, is the stress due to problems caused by various factors. It gives rise to concern, fear, conflict or being in a state of not being able to handle a problem. Stress at this level should be addressed by talking with a person we trust, exploring the causes or the problems and the solutions. **Extreme stress level**, 62+ points, is the stress sustained at a high level such as when one is facing a life crisis. This level of stress can cause physical or mental health problems and should be addressed promptly by counsellors.



Chapter 4 Applicable laws and policies

4.1 Applicable international laws and norms⁸³

4.1.1 Declaration on HRDs

The Declaration on HRDs is an international instrument that highlights the various roles of HRDs, and calls on UN Member States to protect them. Even though it is a non-binding international instrument, the Declaration on HRDs addresses various freedoms to protect HRDs that are recognized in other instruments. It was adopted unanimously in 1998 at the UN General Assembly,⁸⁴ reflecting the obligations of UN Member States to implement it.^{85,86} On 17 December 2015, Thailand was among 128 UN Member States to co-sponsor a UN resolution to call on UN Member States to refrain from intimidating and retaliating against HRDs.

*The Declaration on HRDs addresses three key areas regarding the protection of HRDs.*⁸⁷ Firstly, it **focuses on the rights and protections accorded to HRDs**. These include the support of human rights at the national and international levels; protection of human rights individually and in association with others; ability to form associations and CSOs; right to peaceful consultation and assembly, and the right to criticize and develop recommendations for the powers that be, to improve their implementation of human rights principles and monitor breaches. The Declaration on HRDs further supports the filing of complaints on policy issues, review of such complaints by Governments based on human rights principles, and provision of professional legal assistance or other relevant advice and assistance in defending human rights. It promotes the ability to attend public hearings, proceedings and trials to form an opinion on a government's compliance with national law and applicable international obligations and commitments, and supports the effective enforcement of laws relating to the protection of HRDs. The Declaration on HRDs notes that HRDs should receive legal protection when opposing human rights violations in a non-violent manner. It also mentions the utilization of resources to protect human rights (articles 1, 5, 6, 7, 8, 11, 12 and 13).

Secondly, UN **Member States have a responsibility⁸⁸ to implement and respect all provisions of the Declaration on HRDs**, which prescribe that each State has a duty to protect, promote and implement all human rights; must ensure that all persons under its jurisdiction, individually and in association with others, can enjoy all those rights and freedoms in practice; and should adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration on HRDs are effectively guaranteed. In addition, each State has a duty to provide an effective remedy for individuals who have become victims of human rights violations, and to raise public awareness about civil rights; political rights; and economic, social and cultural rights (articles 2, 9, 12, 14 and 15). Furthermore, the Declaration on HRDs notes the duty of the State to protect HRDs from a violation by both State and non-State actors and all persons under its jurisdiction, without discrimination,⁸⁹ and the role played by domestic laws to ensure the achievement of the highest attainable standard of human rights.

83 We express our appreciation to Assistant Professor Saovaneek Kaewjullakarn for helping with this part of the research.

84 The Commission on Human Rights resolution 1998/77 on 3 April 1998 agreed with the memo of the United Nations Economic and Social Council 1998 and additional document no. 3 (E/1998/23) Chapter 2, Part A for the draft Declaration on HRDs. The UN General Assembly adopted it with the resolution no. 53/144, on 8 March 1999 (A/53/625/Add.2) 53/144). <https://undocs.org/A/RES/53/144>

85 Office of the United Nations High Commissioner for Human Rights, Fact sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, p. 19. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet29en.pdf>

86 The history of the Declaration on HRDs from <https://www.universal-rights.org/blog/the-un-declaration-on-human-rights-defenders-its-history-and-drafting-process/>

87 See also <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/summaries/thai.pdf>

88 See UDHR, article 2; ICCPR, article 2; CEDAW, article 3; The European Convention on Human Rights, article 1; The African Charter on Human and People's Rights, article 1; The American Convention on Human Rights, articles 1, 2, 9 and 12; Declaration on HRDs, articles 2 and 9.

89 A/65/223, para. 30.

Thirdly, **the Declaration on HRDs emphasizes that everyone has duties toward and within the community, and encourages us all to be HRDs.** It highlights the responsibility of each person to promote human rights, defend democracy and democratic institutions, and refrain from violating the human rights of others. Individuals engaged in an occupation that might affect the human rights of other persons — particularly police officials, attorneys and judges — have a duty to protect all these rights (articles 10, 11 and 18).

4.1.2 Thailand's obligations as a State Party to various international human rights conventions⁹⁰

The rights and protection warranted by HRDs are the rights guaranteed by the State, and are the core principles in international human rights conventions, such as article 2 of the **Universal Declaration of Human Rights (UDHR)**;⁹¹ **ICCPR**, including the right to freedom from torture or cruel, inhuman or degrading treatment (article 7), the right to liberty and security of person (article 9), the right to the judicial process (article 14), the right to privacy, honour, reputation and family (article 17), freedom of opinion and expression (article 19), freedom of peaceful and unarmed assembly (article 21), and freedom of association (article 22); the **International Convention for the Protection of All Persons from Enforced Disappearance**, including the right to not be subjected to enforced disappearance (article 1);⁹² and the **Convention on the Elimination of All Forms of Discrimination against Women** (article 3).⁹³ Therefore, a State Party is obliged to protect human rights and the rights of HRDs, including their right to life, right to privacy, freedom of opinion, and freedom of association. It could be said that such duties always apply to the State,⁹⁴ including the responsibility of the State for the actions of non-State actors and the private business sector or even groups that harbour violence.

4.1.3 SDGs

Thailand pledged, with all other UN Member States at the UN General Assembly, in September 2015 to work towards implementation of the 17 SDGs designed as a “shared blueprint for peace and prosperity for people and the planet, now and into the future”.⁹⁵

4.2 International human rights mechanisms

The protection of HRDs in Thailand is an issue often raised in international forums, such as at the second Universal Periodic Review (UPR) in May 2016 when Thailand received recommendations concerning HRDs. These included the ending of violations and all forms of intimidation against HRDs, prompt and thorough investigation in all alleged cases of abuse of HRDs, and a guarantee to bring the perpetrators to justice.

90 The European Convention of Human Rights (article 1), the African Charter on Human Rights and People' Rights (article 1) and the American Convention on Human Rights (article 1).

91 Article 2 (1): Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Furthermore, no distinction shall be made based on the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

92 Article 1: No one shall be subjected to enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

93 Article 3 States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

94 A/65/223, para 31.

95 <https://sdgs.un.org/goals>

In addition, at the meeting of the UN Human Rights Committee in March 2017, and the meeting of the UN Committee on the Elimination of Discrimination against Women in July 2017, the cases of enforced disappearance of Thai HRDs — including human rights lawyer Somchai Neelapaijit, and Ban Jai Phaen Din (Bang Kloi) villager Polajee ‘Billy’ Rakjongcharoen — were flagged. Questions were also raised about charges levied on HRDs that were disproportionate to their alleged offences.

The 2018 report on HRDs around the world by the UN Special Rapporteur on the situation of human rights defenders raised various issues about the circumstances faced by HRDs in Thailand. These concerns included the ongoing harassment against HRDs by the State and the private sector; the use of law as a tool to restrict freedom of opinion, freedom of expression, freedom of assembly, and freedom of association; and the subjecting of HRDs to assassination and enforced disappearance.

4.2.1 Concluding observations

The concluding observations of the UN human rights treaty bodies reflect these concerns and offer recommendations to Thailand for the protection of HRDs. Examples are the Concluding Observations of the Committee against Torture in 2014, the UN Human Rights Committee in 2017, and the Committee on the Elimination of Discrimination against Women in 2017.

4.2.2 UPR

During the third UPR in 2021, Thailand received recommendations from various countries regarding the protection of HRDs, including the following.⁹⁶

- **Austria** expressed concerns about the right to freedom of expression as well as the prosecution of children, and recommended the amendment of the Penal Code and serious prosecution of human rights violations.
- **Canada** recommended that Thailand end the use of laws that restrict the exercise of rights of expression, association and freedom of peaceful assembly, including online, particularly the Computer Crime Act; adopt the law to prevent torture and to bring perpetrators to justice; and remove any restriction on the work and activities of NGOs and the protection of HRDs, on par with international standards.
- **Finland** recommended the adoption of national legislation criminalizing torture and enforced disappearance, and recognizing the rights of victims.
- **France** offered recommendations on the protection of people from enforced disappearance, the death penalty, and torture; the right to freedom of expression; and the revision of the draft law on the operation of not-for-profit organizations.
- **Germany** concerned about the restriction of the right to freedom of expression and freedom of association, recommended the amendment of the Penal Code’s section 112, the Computer Crime Act, and defamation laws; the revision of measures that restrict the right to freedom of assembly; critical examination of the effect of the repressive draft law on the operation of not-for-profit organizations; and the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

⁹⁶ See also, Prachatai, A summary of recommendations for Thailand during the UPR, civil society calling out negligence to mention arrests of 192 youth members of Thalu Gaz, from <https://prachatai.com/journal/2564/11/95903>. Regarding Thailand and questions on human rights at the third UPR, see recommendations from the world and concerns on various issues at <https://www.amnesty.or.th/latest/news/968/>, Revealing recommendations on human rights from the world to Thailand at the third UPR, from <https://thestandard.co/world-vs-thailand-human-rights/>

- **Iceland** recommended the enforcement of the law for the prevention of torture and enforced disappearance to ensure the safety of everyone, and the protection of the rights of migrant workers and LGBT individuals.
- **Iraq** recommended the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs), and the support of refugees and migrant workers.
- **Ireland** stated that Thailand has tried to promote human rights, including the adoption of NAP, but concerns remain about freedom of assembly.
- **Israel** commended Thailand for the integrated effort of all sectors to promote and protect the rights of the child, the amendment of the Anti-Trafficking in Persons Act B.E. 2560 (2017), and recommended policies to protect the rights of LGBT individuals.
- **Japan** commended Thailand on the adoption of a law on enforced disappearance, and recommended the ratification of international human rights conventions as well as the improvement of the human rights situation, such as in relation to the right to freedom of expression and the protection of the rights of the child.
- **Luxembourg** recommended the protection of the right to freedom of opinion and the reform of criminal law, particularly on same-sex marriage. It also recommended the eradication of all forms of discrimination in compliance with international obligations, particularly the ratification of the Convention relating to the Status of Refugees.
- **The Netherlands** was grateful for the promotion of the rights and freedoms of LGBT individuals, but also raised a question about the enforcement of laws on HRDs and media personnel, particularly the disappearance of activists; the marriage equality law; and the need to ensure that the draft law on the operation of not-for-profit organizations is revised to comply with international standards and best practices relating to the freedom of peaceful assembly and association.
- **Norway** called for respect for the rights to freedom of expression, peaceful assembly, and association; protection of individuals, including political opponents, from judicial harassment; protection of HRDs to ensure the draft law on the operation of not-for-profit organizations shall not impede the work or activities of civil society; ratification of CAT; and promulgation of the law to prevent torture.
- **Peru** stated that Thailand has successfully adopted NAP, but recommended the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance; the development of measures to ensure its NHRC is independent and in compliance with the Paris Principles; putting in place measures to ensure that women have access to the judicial process, particularly rural women, women of ethnic and religious minorities, and women with disabilities.
- **South Korea** congratulated Thailand on accounts concerning the protection of children's rights, and NAP and its progress, but recommended that policies concerning the rights to freedom of expression, peaceful assembly and association comply with international human rights standards; the adoption of legislation to criminalize torture and enforced disappearance; and the independent operation of NHRC according to the Paris Principles.
- **Switzerland** recommended that Thailand ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and amend sections 112 and 116 of the Penal Code.
- **The United Kingdom** recommended that Thailand review the laws and regulations that unduly restrict the right to freedom of expression, devise legal measures to protect HRDs and media from harassment and intimidation, and create a space for exercising the freedom of opinion and freedom of assembly, online and offline.

- **The United States of America** recommended the withdrawal of the draft law on the operation of not-for-profit organizations, and other new legislation that could potentially restrict civic space in Thailand; and the amendment of laws that restrict rights and freedoms, including the Royal Decree on Public Administration in Emergency Situations; and conduct investigations into reports of enforced disappearances.

4.3 Models from abroad

4.3.1 The protection of HRDs

Apart from the Declaration on HRDs and the European Union Guidelines on Human Rights Defenders,⁹⁷ **various countries have adopted domestic laws to protect HRDs.**

- **Brazil** (2009/B.E. 2552) The 2009 Bill for the protection of defenders offers a definition of HRDs similar to the one prescribed in the Declaration on HRDs.⁹⁸
- **Colombia** (2011/B.E. 2554) Decree No. 4065 of 2011 established the National Protection Unit as a legal entity with its own administration and budget. It is regarded as a security agency under the Ministry of the Interior.⁹⁹ Decree No. 2078 of 2017 sets out the regime for the protection of HRDs in compliance with international standards. Its Model Law, including Resolution 805 of 2012, takes into account the protection of women HRDs and specific measures for indigenous HRDs pursuant to Decree No. 4633 of 2011 and Decree No. 4912 of 2011.¹⁰⁰
- **The Philippines** (2022/ B.E. 2565) adopted House Bill No. 10576, or the Human Rights Defenders Protection Act 2022, with a definition of HRDs similar to the one in the Declaration on HRDs.¹⁰¹ It outlines various rights and freedoms of HRDs in 17 aspects, including the right to receive the promotion and protection of fundamental human rights and freedoms; the right to associate as a group, association and organization; and the right to develop and campaign on concepts about human rights; among others.¹⁰² Those who

97 Ensure protection — European Union Guidelines on Human Rights Defenders. https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/2008_EU_Guidelines_HRDefenders.pdf

98 The Bill for the protection of defenders (2009), article 2. Under this law HRDs are defined as: natural persons who act in isolation or as part of a group, organization or social movement for the promotion or defence of human rights and legal entities, groups, organizations or social movements which act with the purpose of defending human rights.

99 See also <https://ishr.ch/defenders-toolbox/national-protection/colombia/>

100 https://www.protectioninternational.org/wp-content/uploads/2012/04/annex_4.pdf and <https://ishr.ch/defenders-toolbox/national-protection/colombia>

101 It is approved by The House of Representatives, on 17 January 2022 (B.E. 2565). **Section 4(b)** Human Rights Defender refers to any person who, by oneself or in association with others, acts or seeks to act to protect, promote or strive for the protection and realization of human rights and fundamental freedoms and the welfare of the people, at the local, national, regional, and international levels.

102 Chapter II Rights and Freedoms of human rights defenders including: 1. **Section 5** Right to promote and protect human rights and fundamental freedoms; 2. **Section 6** Right to form groups, associations, and organizations; 3. **Section 7** Right to solicit, receive, and utilize resources; 4. **Section 8** Right to seek, receive, and disseminate information; 5) **Section 9** Right to develop and advocate for human rights ideas; 6. **Section 10** Right to communicate with non-governmental, governmental, and intergovernmental organizations; 7. **Section 11** Right against vilification. 8. **Section 12** Right to access, communicate, and cooperate with international and regional human rights bodies and mechanisms; 9. **Section 13** Right to participate in public affairs; 10. **Section 14** Right to peaceful assembly; 11. **Section 15** Right to represent and advocate; 12. **Section 16** Right to freedom and movement; 12. **Section 17** Right to privacy; 13. **Section 18** Freedom from intimidation and reprisal; 14. **Section 19** Right to establish a sanctuary for human rights victims and/or their families; 15. **Section 20** Freedom from defamation and stigmatization; 16. **Section 21** Right to exercise cultural rights and to development of personality; 17. **Section 22** Right to effective remedy and full reparation.

violate the rights and freedoms of HRDs can be imprisoned and/or fined.¹⁰³ The Bill invokes the obligations of the State and public agencies to respect, protect and promote the rights of HRDs to carry out various activities to fulfil these rights (Chapter III: Obligation of the State and Public Authorities). It establishes the Human Rights Defenders Protection Committee — an independent organization to protect HRDs, review complaints or carry out an investigation of the violation of rights and freedoms of HRDs, advise HRDs, monitor the enforcement of the laws and propose laws, assess the impact of enforcement of the laws, write and submit reports, and publicize information on the situation of HRDs to human rights mechanisms at all levels.¹⁰⁴ The Philippines's law was developed from the Model Law for the Recognition and Protection of Human Right Defenders.¹⁰⁵

4.3.2 Human rights due diligence

Under the second foundational principle on respect for human rights, UNGPs prescribe respect for human rights as a duty for the business sector. According to article 17 on human rights due diligence (HRDD), a business sector shall responsibly conduct its business operations while preventing and minimizing losses. HRDD is a tool to assess the risks and impact on human rights. Measures must be put in place to prevent or mitigate adverse effects, and to monitor and publicize to the public.¹⁰⁶ To carry out HRDD, **a business must take into account the persons who may be subjected to human rights violations because of its operations. It should also consider entities in its value chain and business relationships.**

At present, the business sector in Thailand has initiated its own HRDD without any legal obligation. As a result, some businesses are unable to carry out such due diligence. Therefore, a law should be promulgated to provide for mandatory human rights due diligence (mHRDD) as was done in the European Union. This has prompted the business sector, investors, and civil society in other places to demand the promulgation of a similar law.¹⁰⁷ For example, on 22 October 2021, the business sector and investors in the United Kingdom demanded the Government promulgate a human rights and environmental due diligence law.¹⁰⁸

At present, countries that have adopted an mHRDD law include:

- **France** adopted a law on the duty of vigilance of parent and outsourcing companies.¹⁰⁹
- **Germany** adopted the Act on Corporate Due Diligence Obligations in Supply Chains.¹¹⁰ Interestingly, this law has expanded to cover environmental risks, and requires the business sector to announce its policies; and come up with a risk management system, prevention and remedial measures, grievance mechanisms, documentation, and reporting. Businesses are also required to conduct an annual risk assessment to identify any risks pertaining to business operations of the company and its direct suppliers.¹¹¹

103 Chapter V Penalties sections 46–50.

104 Section 44 of House Bill No. 10576 or the 'Human Rights Defenders Protection Act'.

105 See also <https://ishr.ch/latest-updates/philippines-l-all-eyes-on-the-senate-to-adopt-the-human-rights-defender-protection-law/>

106 UNGPs, article 17.

107 See also <https://www.ohchr.org/en/special-procedures/wg-business/mandatory-human-rights-due-diligence-mhrdd>

108 Business and Human Rights Resource Centre, UK: Businesses and investors call for new human rights due diligence law. <https://www.business-humanrights.org/en/latest-news/uk-businesses-and-investors-call-for-new-human-rights-due-diligence-law/>

109 <https://media.business-humanrights.org/media/documents/ECCJ-mandatory-HREDD-map-June-2021.pdf>

110 Act on Corporate Due Diligence Obligations in Supply Chains, BGB1 I 2021, 2959 from <https://www.bmas.de/EN/Services/Press/recent-publications/2564/act-on-corporate-due-diligence-in-supply-chains.html>

111 Krajewski, M., Tonstad, K., & Wohltmann, F. (2021). Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction? *Business and Human Rights Journal*, 6(3), 550–558. doi:10.1017/bhj.2021.43. <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/85815FE5F1D1F64208B0068B7FBBECF8/S2057019821000432a.pdf/mandatory-human-rights-due-diligence-in-germany-and-norway-stepping-or-striding-in-the-same-direction.pdf>

- **Norway** adopted the Law on Business Transparency and Human Rights and Decent Working Conditions, in compliance with UNGPs and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The law imposes a duty to identify and assess any adverse impact on fundamental human rights and decent work conditions. Such HRDD is extended to business operations in the supply chain and of business partners.¹¹² A similar bill is being read in the Austrian and Belgian Parliaments while the Governments of Finland, Luxembourg and the Netherlands have pledged to issue a similar law.¹¹³
- **Switzerland** has made an amendment to the Swiss Code of Obligations and the Swiss Criminal Code¹¹⁴ to emphasize the duty to report human rights violations in mining businesses, and the use of child labour.¹¹⁵

4.3.3 Other recommendations for the business sector

Various other documents, including the Declaration of Geneva, offer recommendations for companies and investors regarding the protection of HRDs, and reflect advice from HRDs, environmentalists, and NGOs.^{116, 117.} ¹¹⁸ Other statements and documents with recommendations for companies include ‘Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders’,¹¹⁹ ‘Human Rights Defenders and Business: Searching for Common Ground’,¹²⁰ and various recommendations for investors and financial institutions.^{121, 122} The following are three key recommendations for how the business sector can support HRDs.

Firstly, the company profile should include the firm’s human rights policies in compliance with UNGPs, and that have been put into practice throughout the business chain. The development of such human rights policies should clearly define the meaning of HRD, be open to inputs from HRDs, identify risks stemming from confrontation between the company and HRDs, and acknowledge how the company’s operations may give rise to risks to HRDs, particularly women HRDs. The business profile should demonstrate how the business operations respect the roles of HRDs, and identify and describe the preventative and remedial process if there has been a harmful impact on HRDs. The company should designate a safe space for consultation between civil society and HRDs regarding the company’s business operations.

112 Ibid.

113 Ibid.

114 Bueno, N., & Kaufmann, C. (2021). The Swiss Human Rights Due Diligence Legislation: Between Law and Politics. *Business and Human Rights Journal*, 6(3), 542-549. doi:10.1017/bhj.2021.42 from <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/A05D9400EB89436F1D00EE24121D7E05/S2057019821000420a.pdf/the-swiss-human-rights-due-diligence-legislation-between-law-and-politics.pdf>

115 Swiss Federal Ordinance on Due Diligence and Transparency on Conflict Minerals and Child Labour, effective since 1 January 2022.

116 https://www.zerotoleranceinitiative.org/_files/ugd/fdb8c1_38e222fd81ad4a54a5cbc0a9e98ac2f3.pdf

117 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/75/PDF/N1722075.pdf?OpenElement>, https://hrdworldsummit.org/wp-content/uploads/2018/12/EN_Action-Plan-2.pdf, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/75/PDF/N1722075.pdf?OpenElement>

118 https://hrdworldsummit.org/wp-content/uploads/2018/12/EN_Action-Plan-2.pdf

119 <https://media.business-humanrights.org/media/documents/fdfe07e3d812cfcfed4235fbbf820a3d77599b13.pdf>

120 <https://www.ihrb.org/uploads/reports/2015-12-Human-Rights-Defenders-and-Business.pdf>

121 <https://rightsinddevelopment.org/uncalculatedrisks/>, [http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/\\$file/guide_for_iams_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf](http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/$file/guide_for_iams_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf)

122 See also, https://media.business-humanrights.org/media/documents/files/Safeguarding_Human_Rights_Defenders_Practical_Guidance_for_Investors_FINAL_0.pdf

Secondly, the company profile should include preventative and remedial measures in compliance with HRDD, and should provide for human rights impact assessments (HRIAs).¹²³ HRDs and civil society should be encouraged to participate in the process to develop the measures and participatory documentation process¹²⁴ to assess risks that may occur to HRDs, and to develop prevention and risk management. After developing the criteria for assessing human rights risks, there needs to be a process to collect data, compile evidence, and disclose preventative and remedial measures and solutions when any human rights violation happens.

Lastly, the company profile should contain measures to ensure HRDs have access to a remedy. In other words, mechanisms must be made available to receive complaints from HRDs and to ensure their access to an adequate remedy. Such mechanisms must comply with article 31 of UNGPs. Measures should also be put in place to protect whistleblowers. When a violation happens, the company must respond to it promptly and appropriately, including offering an apology, compensation, rehabilitation, monetary and other forms of restitution; and also be subject punitive measures enforced by the State — these will help garner trust that there will be no repetition of the offence.

4.3.4 Model Law for the Recognition and Protection of Human Rights Defenders¹²⁵

The Model Law for the Recognition and Protection of Human Rights Defenders (Model Law) was developed by the International Service for Human Rights, taking more than three years. The method to develop such a model law is intriguing. It encompassed a comparative study and explores practical limitations in the recognition and protection of HRDs in over 40 countries across various regions. This included a meeting of more than 500 HRDs from 110 countries around the world, and participation from high-level human rights experts and jurists. Such a model law can be a catalyst to help legislators and HRDs themselves develop laws to ensure the recognition and protection of HRDs. For example, the Philippines's law to protect HRDs is adapted from the Model Law.

The Model Law is composed of five sections (39 articles excluding the Appendix to keep the law up to date), which are:

1. General provisions;
2. Rights of HRDs and responsibility to defend human rights, which mentions 19 issues concerning the rights of HRDs that warrant protection;¹²⁶

123 The Danish Institute for Human Rights, Human Rights Impact Assessments: HRIA. Accessed 20 May 2021. https://www.humanrights.dk/sites/humanrights.dk/files/media/document/DIHR%20HRIA%20Toolbox_Welcome_and_Introduction_ENG_2020.pdf

124 Citing the examples of the Community-based Monitoring and Information System. See also <https://www.forestpeoples.org/en/topics/environmental-governance/publication/2015/community-based-monitoring-and-information-systems->

125 International Service for Human Rights, Model Law for the Recognition and Protection of Human Rights Defender. Accessed 20 May 2021. <https://ishr.ch/defenders-toolbox/resources/model-law/>

126 1. **Section 3** Rights to promote and protect human rights and fundamental freedoms; 2. **Section 4** Right to form groups, associations, and organizations; 3. **Section 5** Right to solicit, receive, and utilize resources; 4. **Section 6** Right to seek, receive, and disseminate information; 5. **Section 7** Right to develop and advocate for human rights ideas; 6. **Section 8** Right to communicate with non-governmental, governmental, and intergovernmental organizations; 7. **Section 9** Right to access, communicate with and cooperate with international and regional human rights bodies and mechanisms; 8. **Section 10** Right to participate in public affairs; 9. **Section 11** Right to peaceful assembly; 10. **Section 12** Right to represent and advocate; 11. **Section 13** Right to freedom and movement; 12. **Section 14** Right to privacy; 13. **Section 15** Freedom from intimidation and reprisal; 14. **Section 16** Freedom from defamation and stigmatization; 15. **Section 17** Right to exercise cultural rights and to development of personality; 16. **Section 18** Right to effective remedy and full reparation; 17. **Section 19** Limitation on the rights of human rights defenders; 18. **Section 20** Other rights and freedoms not affected; and 19. **Section 21** Responsibility to defend human rights and fundamental freedoms.

3. Obligation of public authorities, addressing 12 matters;¹²⁷
4. Mechanism for the protection of HRDs;¹²⁸ and
5. Definition and scope of application of the Model Law.

4.3.5 Opinion of the research team

The agencies concerned — including the Rights and Liberties Protection Department of Thailand's Ministry of Justice (RLPD) and NHRC — may consider the possibility of developing a law in Thailand specifically for the protection of HRDs by exploring the adaptation or replication of the Model Law (as was done by various countries, including Colombia and the Philippines). A process that involves participation of all sectors must be put in place to develop Thailand's model law.

In addition, to ensure the development of law in compliance with mHRDD, it is necessary for both the business sector and civil society to be involved in the drafting process. The objective is to compel the business sector to apply HRDD to their business operations, as well as those of their subsidiaries, affiliated companies and throughout the supply chain. While Thailand has yet to adopt an mHRDD law similar to such laws in other countries, mHRDD already applies to the operations of businesses in Thailand, particularly in export businesses that involve supply chains. Thailand's adoption of an mHRDD law will be useful for the business sector but, if a company has the resources, it should not wait until HRDD is mandatory by law.

4.4 Laws and policies in Thailand

Thailand has attempted to promote the protection of HRDs in the following ways, particularly in the implementation by RLPD.

4.4.1 Policies

- **2016: Effort to develop a framework for the protection of HRDs**

RLPD divided HRDs into four colour categories based on their safety levels.¹²⁹ For instance, the **Black Group** is comprised of HRDs who have received death threats. HRDs in this category should receive a remedy, and an effort should be made to contact their relatives and persons concerned if exposure to deadly risks continue. The **Red Group** consists of HRDs who have been threatened, but not with death. For example, someone called to threaten them, or they were ambushed. The **Orange Group** is made up of HRDs who face legal action, including when laws have been used as a tool to attack them for the purpose of impeding and disrupting their campaigns since they must then turn their time and attention to defending themselves in court. Finally, the

127 1. **Section 22** Obligation to respect, promote, protect and fulfil the rights of human rights defenders; 2. **Section 23** Obligation to facilitate the activities and work of human rights defenders; 3. **Section 24** Obligation to provide free access to materials relating to human rights and fundamental freedoms; 4. **Section 25** Obligation not to disclose confidential source; 5. **Section 26** Obligation to prevent and to ensure protection against intimidation or reprisal; 6. **Section 27** Obligation to ensure protection against arbitrary or unlawful intrusion and interference; 7. **Section 28** Obligation to conduct investigation; 8. **Section 29** Obligation to ensure effective remedy and full reparation; 9. **Section 30** Obligation to make intimidation and reprisal an offence; 10. **Section 31** Obligation to promote and facilitate human rights education; 11. **Section 32** Obligation to implement protection and urgent protection measures; and 12. **Section 33** Assistance to human rights defenders abroad.

128 1. **Section 34** Establishment of Mechanism for the Protection of human rights defenders; 2. **Section 35** Consultation with civil society; 3. **Section 36** Resources; 4. Section 37 Training and vetting.

129 Outcome of the workshop to set out the framework for the protection of HRDs, on 1 September 2016, cited in the National Action Plan on Business and Human Rights, Phase I (2019–2022), Rights and Liberties Protection Department (RLPD), Ministry of Justice, p. 103.

Grey Group is comprised of HRDs who have started to be involved in a dispute, but it is not clear if it will escalate to the use of violence.

- **2014 and 2020: Attempt to create a ‘white list’**

RLPD initiated a measure for the protection of HRDs through the establishment of a working group in 2014 and 2020.¹³⁰ The working group proposed that measures should be put in place to protect HRDs in the following three stages.

The first stage is the **creation of a ‘white list’** in seven steps:

1. HRDs can directly apply to be in the list, or can apply through their organizations or agencies;
2. Creating the list, conducted by a screening committee;
3. Announcing of the list;
4. Reviewing or assessing possible threats to HRDs;
5. Sending an alert or notification regarding the list of registered HRDs, in a letter to the provincial authority;
6. Monitoring and providing support measures for HRDs. The Witness Protection Office under RLPD explores relevant regulations and determines the criteria for protection.

During the second stage, **measures are developed for the protection of HRDs**, as part of the regulation of the Office of the Prime Minister.

The third and longer-term stage is the establishment of a national committee chaired by the Prime Minister as well as the recruitment of personnel to take care of HRDs. This final stage is also when **key coordinating agencies are designated to deal with HRDs**. The revision of the definition of a ‘witness in a criminal case’ should include HRDs, because sometimes HRDs are brought to court as witnesses. However, they were subsequently sued for being witnesses in specific lawsuits.

In addition, RLPD has revised the Application and Inquiry Request Form (KPS. 17-20 form) to include the following: the possibility to apply for help or make a complaint relating to the work or activities of HRDs; a fact-finding trip to monitor the situation of HRDs who are, or could potentially be, subject to human rights violations; the development of a report on the situation of the rights, freedoms, and human rights violations of HRDs; a weekly report to the Prime Minister; and the establishment of the Committee to Review Complaints related to Torture and Enforced Disappearance.¹³¹

- **2018: Cabinet resolution to acknowledge recommendations on the measures or guidelines for the promotion and protection of the human rights of HRDs (2 October 2018)**

NHRC recommends to the Cabinet measures or guidelines for the promotion and protection of the human rights of HRDs. The Cabinet issued a resolution on 2 October 2018 to acknowledge a summary of opinions from relevant agencies, and the Cabinet is supposed to adhere to the same guidelines.

¹³⁰ The Order no. 412/2557 on 28 October 2014 to establish a taskforce to develop measures for the protection of HRDs vulnerable to violations (Whitelist), to review criteria and guidelines for the protection of HRDs on par with international standards. And the Order no. 12/2020 on the establishment of a taskforce to set out guidelines to define and support the implementation of HRDs with the powers and duties to: 1. set out the definition and criteria for categorization of HRDs to determine the guidelines for the protection and promotion of HRDs in each category/group; 2. to set out guidelines for the promotion, support and cooperation among public agencies, business sector, private sector and people’s sector in order to promote HRDs; and 3. perform other duties as designated.

¹³¹ National Action Plan on Business and Human Rights, Phase I (2019-2022), p.104-106.

Firstly, HRDs should receive equal protection under the law, like everybody else in Thailand.

Secondly, when demands are made involving various rights, a balance must be struck between the demand for rights and the protection of the public interest. This is a sensitive issue, and public officials must be regularly reminded of the importance of the people's exercise of the right to freedom of opinion and freedom of expression.¹³²

Thirdly, when a case has been reported or filed, and it appears to have been done in bad faith, or with misrepresentation of facts, the judicial process has the measures to regulate the exercise of such legal rights, by punishing the individual who reported false information to competent officials pursuant to section 137 or section 172 of the Penal Code. At the same time, when the right to freedom of opinion has been exercised in good faith, the individual shall warrant protection pursuant to section 329 of the Penal Code, among others.

- **2019: Protection of HRDs is included in NAP¹³³**

The concept of BHR, according to UNGPs, provides three pillars to protect from — and remedy — the negative impact of business operations on human rights. The first pillar is “protect”, whereby a State is supposed to protect people from violation. The second pillar is “respect”, whereby the business sector is supposed to conduct their business operations with respect for human rights. The third pillar is “remedy”, which can be accessed by individuals affected or whose human rights were violated by business operations.

RLPD has been designated by the Government as the lead agency responsible for developing NAP.¹³⁴ The process of developing Phase 1 of NAP (2019–2022) commenced in 2016.¹³⁵ The protection of HRDs was identified as one of four key priority areas, namely labour; community, land, natural resources and environment; HRDs; and cross-border investment and multinational enterprises. Subsequently, a Cabinet resolution was issued on 29 October 2019 to adopt and enforce NAP, thus making Thailand the first country in the Asia-Pacific region to have adopted such a NAP.

132 National Action Plan on Business and Human Rights, Phase I (2019–2022), p.105.

133 Pursuant to the Resolution 17/4 of the Human Rights Council (HRC) on 16 June 2011 to adopt UNGPs.

134 Following Thailand's voluntary pledge and acceptance of recommendations from Sweden during the second UPR of Thailand, the 25th session on 11 May 2016 in Geneva, Swiss Confederation, the Thai Government designated RLPD to proceed to develop NAP in compliance with UNGPs.

135 The process to develop NAP can be divided into three phases. **Phase 1** (2016–2017), RLPD compiled information of the situation of BHR at the local level in collaboration with various sectors including Thai representatives in the ASEAN Intergovernmental Commission on Human Rights, Global Compact Thailand and civil society. Meetings were held locally in regions to compile information about BHR in each region of Thailand. **Phase 2** (2017–2018) was the preparation of a zero draft and debate on the Draft NAP in collaboration with the Faculty of Law, Thammasat University and listening to input and recommendations from the UN Working Group on the issues of Human Rights and Transnational Corporations and Other Business Enterprises during their visit to Thailand at the invitation of the Government. **Phase 3** (2018–2019) was the finalization of the Draft NAP and the holding of small group discussions to listen to input from international organizations, public agencies, civil society, state enterprises and the business sector. The Draft NAP was uploaded to a website to hear feedback and recommendations and was deliberated by the Cabinet. For more details, see National Action Plan on Business and Human Rights, Phase I (2019–2022), Rights and Liberties Protection Department (RLPD), Ministry of Justice, pp. 18–25.

RLPD connects NAP to other national plans and policies,¹³⁶ including SDGs.¹³⁷

- **2020: Fourth National Human Rights Plan (2019–2022) describes the pathway for the protection of HRDs**

The Cabinet endorsed the Fourth National Human Rights Plan on 30 June 2020. It features 10 thematic plans, 12 specific plans for beneficiaries¹³⁸ — including HRDs — and the following six recommendations.¹³⁹

- 1. Promptly advocate for the Draft Act on Prevention and Suppression of Torture and Enforced Disappearance, and the Draft Amendment Act in respect of the Witness Protection Act** B.E. 2546 (2003) (i.e. the Draft Witness Protection Act (No. ...) B.E...), both of which apply to individuals being subjected to intimidation even before becoming witnesses in criminal cases; provide equal and fair access to the judicial process; and offer mechanisms to promote public participation in the investigation and monitoring of the progress of the legal proceedings.
- 2. Study best practices in the exercise of freedom of opinion and freedom of assembly and their application in the context of Thailand.** Review measures for the protection of HRDs, and legal action when HRDs are subjected to intimidation, harassment and assault. Ensure that HRDs are treated in compliance with the Declaration on HRDs and relevant laws.
- 3. Develop mechanisms to guarantee an impartial, independent and transparent investigation when there is an alleged human rights violation perpetrated by security officials,** particularly in the Southern Border Provinces, to bring perpetrators to justice and end the culture of impunity.
- 4. Promote the roles of HRDs,** including capacity-building for groups of HRDs; and giving awards to recognize HRDs who help survivors of human rights violations, as an incentive and to show solidarity and publicize their actions. This also helps ensure the safety of HRDs.
- 5. Create a list of human rights lawyers and labour rights lawyers** who protect those who are judicially harassed due to their work, and whose work also includes protecting the community and offering training for capacity-building among HRDs regarding public services that promote the right to judicial process.
- 6. Offer funding support and resources** to authorities working to protect HRDs, and seek collaboration from civil society.

136 Including the 20-Year National Strategy, National Agenda “Mobilizing Human Rights for Thailand 4.0 and Sustainable Development” endorsed by the Cabinet on 21 November 2017 whereby the issue of BHR was adopted as one of the activities for the National Agendas to be implemented through an inclusive process. Based on the policy statement of the Cabinet General Prayut Chan-o-cha, Prime Minister to the Parliament on 25 July 2019 on the issue concerning the reform of public administration, the reform of regulations and laws to facilitate business operations and daily living, the business operations inside and outside the country must keep up to date with change. See the 12th National Economic and Social Development Plan’s Strategy 2 on the enhancement of fairness, reduction of social inequality, and Strategy 3 on the strengthening of economy and sustainable competition. Nevertheless, the 12th NESDP fails to directly mention the issues of BHR, although it does refer to the promotion of corporate social responsibility (CSR).

137 **Goal 8** to «Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, and **Goal 9** to «Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation” and «Promote peaceful and inclusive societies for sustainable development.”

138 Children and youth, HRDs, prison inmates, persons discharged from prison, older persons, people with disabilities, ethnic people, stateless and nationality-less persons and urban asylum seekers, LGBT individuals, patients (people living with HIV/AIDS, drug users), women, peasants and workers, injured parties and witnesses.

139 National Human Rights Plan no. 4, p.119-120.

The Fourth National Human Rights Plan features indicators concerning the protection of HRDs, by looking at the number of measures and mechanisms that offer protection to HRDs and the number of activities implemented to raise awareness among authorities and the public about the work of HRDs.¹⁴⁰

4.4.2 Laws

- **2017: Constitution of the Kingdom of Thailand B. E. 2560 (2017)**

Chapter 3 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) recognizes people's rights and freedoms. It notes that HRDs are vulnerable to violations of the right to life (section 28); right to judicial process (section 29); right to privacy, honour, reputation and family (section 32); freedom to choose a residence (section 33); freedom of opinion, freedom of speech, writing and publication (section 34); and freedom of unarmed and peaceful assembly (section 44).

- **2019: Amendment to the Criminal Procedure Code B.E. 2562 (2019) to prevent SLAPPs**

Given the incidence of SLAPPs filed against HRDs, the Office of the Court of Justice recommended an amendment to the Criminal Procedure Code B.E. 2562 (2019)¹⁴¹ to halt the filing of these cases by the addition of section 161/1. This section states that in a case filed by a private complainant (i.e. where the injured party is a natural person or a legal entity), the court may use its discretion to order a dismissal. If the court finds that the complainant filed the lawsuit in bad faith, or distorted facts to harass or take undue advantage of a defendant, the complainant shall be prohibited from refiling such a case — although the public prosecutor may refile the case. The amendment was approved by the National Legislative Assembly on 2 November 2018, and promulgated on 17 February 2019.

- **2019: Law on dispute mediation**

RLPD advocated the Government to promulgate the Dispute Mediation Act B.E. 2562 (2019). RLPD views mediation as a suitable alternative for people who want to settle or end a dispute voluntarily and satisfactorily for both parties through the mediation mechanisms provided by public agencies. Mediation of criminal cases at the investigation level is also possible, as RLPD deems that such mediation can enhance the protection of HRDs.¹⁴² The law came into force on 22 May 2019.

140 National Human Rights Plan no. 4, p.118.

141 The reason invoked to support the amendment was that “since at present, the right to file a criminal case has been exercised in bad faith or with misrepresentation of facts to harass the defendant in various cases. For example, the case has been filed with the court in a remote area to cause the defendant burden to travel a long distance to defend themselves. Or the filing of a case against the defendant in an offence more serious than it should be to compel the defendant to act or not to act unlawfully. Or the case has been filed to stifle the exercise of fundamental rights and freedoms of the defendant to defend themselves or to protect the public interest . . .” (National Action Plan on Business and Human Rights, Phase I (2019–2022), p. 106). As well, there is the reason prescribed in the Annex of the Criminal Procedure Code B.E. 2562 (2019). The 34th amendment, 2019, states: “. . . as it appears that cases have been filed in bad faith or with misrepresentation of facts to harass or take undue advantage of a defendant in various instances, or cases that have been filed to procure any advantage to which the complainant is not rightfully entitled and which has caused trouble to the defendant and other individuals concerned, the court shall be authorized to order dismissal of the case. Therefore, to ensure that the adjudication of a criminal case fits with current society and to protect people's rights and freedoms effectively and fairly, it is deemed expedient to have this Act promulgated.”

142 Cited in the National Action Plan on Business and Human Rights, Phase I (2019–2022), p. 107.

- **2021: Attempt to expand the definition of ‘witness’ to extend protection to HRDs**

The Witness Protection Act B.E. 2546 (2003) ensures the safety¹⁴³ of witnesses¹⁴⁴ through general measures and special measures of protection.¹⁴⁵ HRDs, however, are not included among the beneficiaries of this law since the protection measures apply to HRDs only when they become an injured party or a plaintiff in a criminal case at dispute.¹⁴⁶ It was thus recommended that the definition of ‘witness’ should be expanded to include victim witnesses and whistleblowers who provide information useful to the case. This was done to ensure that HRDs can apply for protection due to their exposure to risk and danger¹⁴⁷ stemming from intimidation, harassment and assault.¹⁴⁸ To reduce their reluctance to testify as witnesses, protection should be offered to HRDs before, during and after trials. It was also recommended that revision should be made to the Granting of Compensation to Aggrieved Parties and the Accused in Criminal Cases Act B.E. 2544 (1991) with its amendment no. 2 in B.E. 2559 (2016).

The Draft Witness Protection Act (No. ...) B.E. ..., proposed by the Government,¹⁴⁹ recommends that the definition of “witness” in section 3 should be expanded to include the following: “A witness who is going to or has already given evidence to an official with power to investigate a criminal case, the competent official with power to prosecute a criminal case, or the court with jurisdiction over the criminal proceeding, as well as an expert.” Therefore, persons who warrant protection would include:

1. the witness in the expanded definition;¹⁵⁰
2. the husband, wife, ascendant or descendant of the witness, or other persons with close relationships to the witness, who shall bear responsibility for the fact that the witness will give evidence and could be exposed to insecurity, in which case the witness can apply to the relevant authorities for the protection of the person;¹⁵¹ and
3. the defendant as well.¹⁵²

143 The Witness Protection Act B.E. 2546 (2003), section 3: Safety means safety of life, body, health, liberty, reputation, property, or any rights of a witness before, during and after being a witness.

144 Regulation on Witness Protection and Compensation of Witness in Criminal Cases B.E. 2548 (2005) and Regulation on Witness Protection in Criminal Cases B.E. 2546 (2003).

145 According to the principles of witness protection, witnesses in criminal cases warrant security, compensation, and the right to proper treatment. The legal measures offered include general protection measures (such as keeping confidential the first name, last name and address of the witness according to the Regulation’s article 14 (3) which notes that since the disclosure of such information may compromise credibility of the witness and evidence and the witness’s right to rebuke evidence adduced by the plaintiff. In some cases, their personal identities could be exposed since there are some people who have access to the information. There are also special protection measures which are available depending on the level of necessity. Intimidation and harassment that are not too violent, can be responded to by strict enforcement of traditional witness protection measures and by placing the witness under the care of public officials during a particular period. Existing issues include the duration of protection and the payment of allowance, the change of first name and last name, and the provision of temporary protection.

146 Until now, the witness protection law has given rise to a question that “The husband, or wife, or ascendant, or descendant of the witness or other persons with close relationships to the witness” could be vulnerable to insecurity due to that the person becoming a witness.

147 Danger means a risk and frightening hazard, according to the Royal Society of Thailand.

148 Penal Code section 1(6).

149 Approved by the Office of Council of State, completed matter no. 364/2020.

150 Amended to “specialized expert”, to reflect the amended provisions of sections 243 and 244 of the Civil Procedure Code and section 128/1 of the Criminal Procedure Code B.E. 2562 (2019), Bureau of Academic Services, Secretariat of the House of Representatives, handouts for the review of the Draft Witness Protection Act (No. ...) B.E. ... OP20/2564, regular annual meeting no. 2. p.2.

151 Bureau of Academic Services, Secretariat of the House of Representatives, handouts for the review of the Draft Witness Protection Act (No. ...) B.E. ... OP20/2564, regular annual meeting no. 2, pp. 3-1.

152 Bureau of Academic Services Secretariat of the House of Representatives, handouts for the review of the Draft Witness Protection Act (No. ...) B.E. ... OP20/2564, regular annual meeting no. 2, p.2.

In addition, there was yet another amendment to **authorize the Commissioner-General of the Royal Thai Police or agencies of the officials** involved in witness protection to issue secondary laws concerning the assessment of the circumstances of insecurity and the extension of the duration of witness protection under general protection measures, if such criteria may affect the measures of witness protection.¹⁵³

At present, the Draft Witness Protection Act (No. ...) B.E. ... has gone through the Special Vetting Committee of the House of Representatives and will be tabled for deliberation by the House of Representatives.¹⁵⁴ ASDF

- **2021: Attempt to advocate against the draft law to restrict the roles and activities of civil society**

The draft law on the operation of not-for-profit organizations, proposed by the Office of Council of State, was approved in principle by the Cabinet on 23 February 2021 and has subsequently gone through public consultations.¹⁵⁵

The draft law went through public consultation from 18 January to 30 April 2022, and was criticized by civil society as being a key mechanism to undermine the strength and impede the activities of civil society. Regarded as another attempt to restrict HRDs, critics claimed it infringes on the right to freedom of association and various other rights and freedoms enshrined in the Constitution of the Kingdom of Thailand B.E. 2560 (2017). The draft law may also be incompatible with the freedom of association, freedom of opinion and freedom of peaceful assembly guaranteed in international laws to which Thailand is a State Party, including ICCPR's articles 22, 19 and 21; UDHR's article 19 on freedom of expression and article 20 on freedom of peaceful assembly; and the Siracusa Principles on the Limitation and Derogation Provisions in ICCPR. Critics also claimed that is also not necessary to enact a law to specifically regulate the activities of not-for-profit organizations, given the redundancy of the legislations. This opinion is echoed by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders.¹⁵⁶

The research team is of the view that the imposition of a law to regulate the activities of civil society — which comprises both HRDs and supporters of HRDs — would make the work and activities of HRDs even more challenging and difficult, and affect the status and roles of HRDs.

153 In addition, an amendment has been made on other issues including: 1. the competent official must be the person appointed by the Minister in charge (section 3); 2. adding criteria concerning the implementation of special witness protection measures by requesting that the Office of Witness Protection offers adequate allowance to the witness, their husband, or wife, or ascendant, or descendant of the witness or other persons with close relationships to the witness during the period of protection and the payment can last longer than one year, or throughout the entire period under witness protection (section 10(2)); 3. increasing power to search a person or a vehicle if there are reasonable doubts that it may cause danger or threat to the witness, their husband, or wife, or ascendant, or descendant or other persons with close relationships to the witness and the power to seize objects or property (section 13/1); and 4. the witness who has given facts or testified in court is entitled to receive necessary and adequate expenses including a witness who has already travelled to the court but is unable to give evidence or testify to the court due to a mistake for which the witness cannot be held accountable (section 17).

154 A summary of meeting, the Special Vetting Committee of the Draft Witness Protection Act (No. ...) B.E. ... House of Representatives, no. 5., 14 September 2021.

155 Via online consultation, 12–30 April 2021.

156 Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders, 26 March 2021. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26320>

4.4.3 State-based non-judicial mechanisms

- **NHRC**

NHRC has power to execute its duties pursuant to the Constitution of the Kingdom of Thailand B.E. 2560 (2017) (section 247) and the Organic Act on the National Human Rights Commission B.E. 2560 (2017), including promptly investigating and reporting proper facts pertaining to all cases of human rights violations; proposing recommended measures or solutions to prevent and address human rights violations; offering a remedy to the parties affected by human rights violations; and developing an Assessment Report on the Human Rights Situation in Thailand, submitting it to the Parliament and the Cabinet, and publicizing it to the public.

NHRC regularly receives complaints about the various forms of harassment HRDs encounter, which are perpetrated by public agencies or the private sector. This includes intimidation, threats, physical assault, killing, concealing or destroying a corpse to convince others that the person died by accident or from natural causes, enforced disappearance, and SLAPPs filed against HRDs in bad faith or with an intent to harass. In addition, some public agencies and other groups of people neither understand nor recognize the roles of HRDs. Attempts have been made to impede the HRDs' work, discredit supportive organizations, intimidate HRDs, and even commit violence against HRDs. In several such cases of violence, the perpetrators have yet to be brought to justice. NHRC has investigated several cases of human rights violations, including the arrests of protesters against a coal-fired power plant project and natural gas pipeline (2002), the murder of Phra Supot Suvajo, Chairperson of Metta Thammarak Foundation at the Metta Tham Monastery (2005), and the disappearance of Polajee 'Billy' Rakjongcharoen (2014).

- **Justice Fund**

The Justice Fund, under the Office of the Permanent Secretary of the Ministry of Justice, was established by the Justice Fund Act B.E. 2558 (2015) to ensure citizens enjoy equal and fair access to justice, particularly low-income individuals and marginal groups in society.¹⁵⁷ The Fund has four missions:

1. Offering financial assistance for the judicial process, including attorney fees, court fees, or other related expenses;
2. Requesting the provisional release of the accused or defendant, including bail payment;
3. Offering help to survivors of human rights violations or those affected by human rights violations, such as assistance for medical expenses, physical and mental rehabilitation, and loss of income; and compensation for damages suffered; and
4. Supporting initiatives and funding to educate the public about the law.¹⁵⁸ Support is provided in criminal cases, civil cases, administrative cases, juvenile and family cases, specialized court cases, and other cases; and legal execution through the provincial assistance provision subcommittee that has powers and duties to review applications for help from the Justice Fund.

¹⁵⁷ Rights and Liberties Protection Department (RLPD), Ministry of Justice, A summary of the key implementation on human rights in Thailand, p. 6.

¹⁵⁸ Section 11, the Justice Fund Act B.E. 2558 (2015) prescribes for the Justice Fund to: 1. receive an application for assistance under this Act; 2. propose opinions relating to the application under Clause 1 for the consideration of the relevant subcommittee; 3. coordinate and cooperate with government organizations, state agencies and private organizations in the operation of the Fund; 4. receive, pay and keep the money of the Fund in accordance with the rules specified by the Committee with the approval of the Ministry of Finance; 5. develop the system, format, procedure and the provision of service of the Fund in support of the operation of the Fund; 6. collect, gather, analyse and research the information relating to the support of the operation of the Fund; and 7. perform other duties or activities as assigned by the Committee or the subcommittee.

In principle, the Justice Fund is a key mechanism to ensure protection for HRDs, particularly when legal cases are filed against them due to their activities to protect community rights. Nevertheless, to access the Fund, HRDs must meet certain criteria.

- **For financial assistance¹⁵⁹**

An applicant for assistance¹⁶⁰ can seek financial aid to cover the following expenses:

1. Attorney's fees;
2. Legal consultant, legal assistant or expert's fees;
3. Court fees;
4. Expenses relating to preparation for the legal case, including for testing, supplies and equipment, tools to acquire facts and evidence, document preparation, cadastral surveying, satellite and aerial images and the reading, translation, interpretation or analysis of satellite imagery; and
5. Other expenses relating to the litigation, as deemed fit by the Justice Fund Committee.¹⁶¹ In the review of applications, the provincial assistance provision subcommittee considers the conditions¹⁶² and the 'behaviour and facts' concerning the applicant, to ensure compliance with the criteria.¹⁶³

- **For assistance in securing provisional release¹⁶⁴**

The applicant for assistance¹⁶⁵ can apply for help to secure provisional release at the investigation, prosecution, and court levels or from any agency with power to detain or hold a person in custody according to the law. In reviewing the application, the provincial assistance provision subcommittee must ensure that the suspect or defendant is not a flight risk and cannot tamper with evidence or commit other harmful acts,¹⁶⁶ and has to ascertain that:¹⁶⁷

1. the nature of the alleged offence is not incompatible with public order or people's good morals, or national security; and is not an act that may damage the public interest or may undermine the credibility of the judicial process;
2. based on the causes or circumstances, it can be assumed that the offence should not have been committed;

159 Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

160 'Applicant for assistance' means a person who applies for assistance relating to litigation in Thailand, including the filing of applications, the filing of complaints, litigation, legal defence, legal execution, and other relevant actions.

161 Article 9, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

162 Article 10, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

163 Articles 11 and 12, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

164 Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

165 Article 3, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016) refers to an alleged offender or a defendant who is remanded in custody or is going to be remanded in custody or other cases.

166 Article 10, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

167 Article 11, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016), the application of article 10 shall be made taking into account article 11 as well.

3. the status of the applicant;
4. the applicant's criminal record, habits, behaviour, and other relevant facts; and
5. the opinion of the injured party or relevant official, should the suspect or defendant be released provisionally.

The review of the status of the applicant can be done based on specific criteria.¹⁶⁸ An official can be dispatched to interview, carry out fact-finding, and observe behaviour — as appropriate and necessary — to aid in the review of the application for help according to the objectives of the Justice Fund. This may include issuing a letter to ask questions or inviting the applicant for an interview, requesting a letter to certify behaviour, and requesting the submission of relevant evidence or information required for the review of the application. The official in charge of acquiring the facts shall promptly prepare a written opinion to present to the provincial assistance provision subcommittee, Chairperson or designated person.¹⁶⁹ After the request for funds to secure the provisional release has been approved, the applicant enters into a contract for assistance within thirty days following the notification of the decision.¹⁷⁰

- **For help to address the needs of survivors of human rights violations or those affected by human rights violations¹⁷¹**

The following persons are eligible to apply for assistance:¹⁷²

1. An injured party who employed self-defence lawfully;
2. A defendant who has been imprisoned longer than what was imposed by the verdict;
3. A defendant who is eligible to receive compensation and expenses pursuant to the Granting of Compensation to Aggrieved Parties and the Accused in Criminal Cases Act B.E. 2544 (1991) and who is being remanded in custody during the investigation;
4. Survivors of human rights violations in other cases, as deemed fit by the Justice Fund Committee.¹⁷³

The application for assistance must be filed within two years of the applicant becoming aware that a human rights violation has occurred.¹⁷⁴

The applicant may receive financial assistance for harm suffered directly as a result of a human rights violation, such as:

168 Article 12, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

169 Article 14, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

170 Article 21, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions for Temporary Release of Alleged Offenders or Defendants B.E. 2559 (2016).

171 Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).

172 Article 4, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).

173 Article 9, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).

174 'Applicant for assistance' means an individual who has been subject to human rights violation, has been injured or who has been affected by the fact that another person has been killed by the human rights violation (article 6, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010)).

1. Expenses necessary for medical treatment;
2. Expenses for physical and mental rehabilitation;
3. Loss of opportunity to earn a normal living;
4. Assistance for those affected by human rights violation, where the victim of such human rights violation has died; and
5. Other financial remedy, as deemed fit by the Justice Fund Committee.¹⁷⁵

In reviewing the application for assistance, the provincial assistance provision subcommittee shall consider:

1. the behaviour and facts pertaining to the applicant;
2. the status of the applicant for assistance; and
3. the likelihood of the applicant for assistance receiving assistance or other remedy from other laws,¹⁷⁶ while also taking into account the financial status of the Fund.¹⁷⁷

An official can be dispatched to interview, carry out fact-finding, and observe behaviour — as appropriate and necessary — to aid in the review of the application for help according to the objectives of the Justice Fund. This may include issuing a letter to ask questions or inviting the applicant for an interview, requesting a letter to certify behaviour, and requesting the submission of relevant evidence or information required for the review of the application. The official in charge of acquiring the facts shall promptly prepare a written opinion to present to the provincial assistance provision subcommittee, Chairperson or designated person.¹⁷⁸

175 Article 10, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010) and the criteria, conditions and rates of the aforementioned assistance shall be subject to decision of the Committee.

176 Article 11, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).

177 Article 12, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).

178 Article 13, Regulation of the Justice Fund Committee on the Criteria, Methods, and Conditions to Provide Assistance to Human Rights Violations Survivors or Those Affected by Human Rights Violations B.E. 2553 (2010).



Chapter 5

Factors that affect safety risks for human rights defenders

The emergence of HRDs in Thailand and other countries is significant. HRDs support various rights: to live in a healthy environment; have a good quality of life; have freedom of opinion; and participate in decision-making concerning the management of natural resources and the direction of development in one's own community — all of which are rights enshrined in the Constitution of the Kingdom of Thailand B.E. 2560 (2017)¹⁷⁹ and other domestic laws. As noted earlier, respect for these rights is also an obligation for Thailand as a State Party to various international human rights conventions.¹⁸⁰ Indeed, it is incumbent upon the State to ensure strict implementation and enforcement of the law.¹⁸¹

In addition, HRDs are entitled to the protection of the right to privacy — including the right to bodily integrity and bodily autonomy — and other fundamental rights. Nevertheless, there are gaps in the laws, policies and various measures that render HRDs more vulnerable to harassment than other people, as highlighted in Chapter 3. Chapter 5 presents various factors that either contribute to the safety of, or increase the risk to, HRDs in the context of their activities in the public interest.

5.1 Legal protection

At present, Thailand has neither adopted a specific law to offer protection to HRDs nor recognized their status and roles. In interviews with HRDs, human rights lawyers, activists and academics, all agree that interpreting and enforcing a specific law to recognize and protect HRDs in the context of Thailand may be problematic. In interviews with sample groups, some participants suggested that adopting such a law might not be the sole solution. As one interviewee stated, “Having yet another law might not be necessary if every party understands the role of HRDs, particularly personnel in the judicial process, the business sector and public agencies. The creation of mechanisms to support each agency to effectively execute their duty in protecting HRDs would certainly help a lot.”¹⁸²

Nevertheless, recognition of the vital role played by HRDs is urgent. Relevant public agencies with direct authority and responsibilities relating to HRDs — such as RLPD and NHRC — can take the lead in cultivating understanding and boosting awareness of the mission and role of HRDs among agencies in the public sector, and also among business sector actors.

Regarding the proposal to issue a statutory law to protect HRDs, there are differences of opinion on this issue among the interviewed HRDs. Interviewees stated that there should be a law specifically for the protection of HRDs and the legislative process should be carried out with the meaningful participation of the public and business sectors and civil society. To raise public awareness, guidelines should be adopted by various sectors — both public and private — that acknowledge the critical role of HRDs. As noted above, some interviewees believe that it may not be necessary to have a specific law since it could be difficult to enforce. A law alone is insufficient; there should also be guidelines for its interpretation and enforcement.

In addition, HRDs agreed with the research team that a Memorandum of Understanding (MoU) should be made among public agencies, the business sector, civil society and HRDs, and that this MoU should recognize the vital role played by HRDs. The MoU can be developed with assistance from RLPD and/or NHRC, in collaboration with the academic sector.

179 Constitution of the Kingdom of Thailand B.E. 2560 (2017), sections 25-27, 34-38, 41-44, 46, 47, and 50.

180 The rights to live in a healthy environment, have a good quality of life, have freedom of opinion, and participate in decision-making concerning the management of natural resources and the direction of development in one's own community are recognized in the UDHR, ICCPR, ICESCR, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women.

181 Constitution of the Kingdom of Thailand B.E. 2560 (2017), Chapter 5 Duties of the State, sections 51-63; Chapter 6 Directive Principles of State Policies, sections 70-73, 75, and 76.

182 HRD (2).

5.2 State-based non-judicial mechanism

A State-based non-judicial mechanism should reflect grievances and call for solutions and remedies. While Thailand has yet to adopt a specific law to protect HRDs, there are some existing mechanisms or measures that may help to protect HRDs — with some adaptations in response to risks or problems encountered by HRDs.

5.2.1 An attempt to advocate protection measures for HRDs

Despite the effort by the Ministry of Justice to initiate legal reform to expand the definition of ‘witness’ to include HRDs, this matter remains a work-in-progress draft law that is yet to be promulgated. The draft law expands the definition to include HRDs and people close to them who could be similarly vulnerable. Under the existing mechanisms, there has been some observation of witness protection officials carrying out their duties in relation to local witnesses. Some HRDs expressed concern about the lack of impartiality of local public officials,¹⁸³ given their attitudes toward HRDs; HRDs may have to agree to restrict and censor themselves since they are prohibited from participating in public assemblies.¹⁸⁴

It is also important to note that while the witness protection process offers options whereby witnesses can choose their preferred level of protection — general protection measures or special protection measures — there is no flexibility to modify the specific conditions attached to each option. The person in need of protection thus has little meaningful participation in the process, given these rigid conditions.¹⁸⁵ In addition, the approach to witness protection may not adequately comply with international human rights standards.¹⁸⁶

5.2.2 NHRC

HRDs are a key aspect of NHRC’s mission. NHRC is assigned to operate as a “State-based non-judicial mechanism” according to the law — section 247(1) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), and section 26(1) of the Organic Act on the National Human Rights Commission B.E. 2560 (2017).¹⁸⁷ This duty also complies with article 27 of UNGPs.¹⁸⁸

NHRC has defined HRDs as “**human rights fighters**” (1991–2003)¹⁸⁹ and “individuals and groups of individuals who work to promote, protect and defend the human rights of all persons, community groups and society. . . . The work of human rights fighters is aimed at demanding social justice.”¹⁹⁰ Between 2004 and 2007, NHRC referred to the definition in the universally recognized Declaration on HRDs.¹⁹¹ The NHRC report described the rights of HRDs during this period when their right to life was in jeopardy and they were without protection, remedy or the

183 Staff of international human rights organization, interviewed by Darunee Paisanpanichkul, on 31 October 2021 and HRD (3).

184 Staff of international human rights organization, human rights lawyer (3), interviewed by Darunee Paisanpanichkul, on 29 June 2021.

185 Staff of international human rights organization as cited above, and human rights lawyer (3).

186 <https://www.ohchr.org/sites/default/files/Documents/Publications/Chapter14-56pp.pdf>

187 National Human Rights Commission (NHRC), Assessment Report on Human Rights Situation in Thailand for Fiscal Year of 2018, Bangkok: National Human Rights Commission (NHRC), 2019, p. 118.

188 UNGPs, article 27 on non-judicial grievance mechanisms.

189 National Human Rights Commission (NHRC), Assessment Report on Human Rights Situation in Thailand for B.E. 2543–2546, p. 97, Bangkok, 2006.

190 Ibid.

191 National Human Rights Commission (NHRC), Assessment Report on Human Rights Situation in Thailand B.E. 2547–2550, Bangkok: 2009, p. 60.

right to information.¹⁹² Its 2018 report used the term “**human rights defender**”;¹⁹³ and likewise in the 2019 report, which elaborated on how HRDs were subjected to, among others, forced disappearance, killing, harassment by Government authorities, and judicial harassment through Strategic Lawsuits Against Public Participation (SLAPPs).¹⁹⁴

NHRC has been conducting regular investigations into complaints concerning HRDs, and its work on the investigation of transboundary violations under the framework of BHR has reached a watershed moment. In the past, NHRC received complaints concerning the role of the Thai business sector in rights violations against local people and communities in other countries. NHRC has investigated and offered recommendations in various cases. For example, NHRC’s policy recommendations to the Government prompted the Cabinet to issue a resolution on 16 May 2016 and 2 May 2017¹⁹⁵ on community rights concerning the implementation of the Deep-Sea Port and the Dawei Special Economic Zone.¹⁹⁶

In 2020, however, NHRC issued an order to end the investigation and recommended to various agencies that “the impact from the implementation of the project falls under the powers and duties of the destination state. NHRC therefore cannot conduct an investigation on the act, or the omission of an act, of the respondent that may have given rise to human rights violations in a foreign state. According to this complaint, the case is considered beyond the purview of NHRC pursuant to section 39(2) of the Organic Act on the National Human Rights Commission B.E. 2560 (2017).”¹⁹⁷

In 2021, in respect of an allegation that a Thai business could be involved in rights violations against the community in a neighbouring country, NHRC indicated in its report that the injured parties were not Thai citizens.¹⁹⁸ Nevertheless, according to interviews with current NHRC representatives, “any complaint that meets the criteria shall definitely be accepted for investigation by NHRC.”¹⁹⁹ As an NHRC representative explained:

. . . implementation has already complied with the NHRC Act B.E. 2560 (2017) and the UN Committee on Economic, Social and Cultural Rights (CESCR)’s General Comment as follows: Firstly, NHRC has the power to review a complaint regarding human rights violations committed by a business, and may agree to review a complaint regarding the operations of a Thai company in another country that have caused an impact on the human rights of the people in that country, pursuant to the CESCR’s General Comment No. 24 (2017), articles 54 and 26.

Secondly, during the investigation of the complaint on transboundary violations, NHRC can invite a Thai company to explain or give information, pursuant to NHRC’s powers and duties. However, the NHRC investigation can be restricted in its ability to invite foreign individuals or agencies to give information since this may infringe on the sovereign rights of another country, and may undermine the obligations of the country to protect the human rights of a person living in its jurisdiction, pursuant to the CESCR’s General Comment No. 24 (2017), article 26.

192 National Human Rights Commission (NHRC), Assessment Report on Human Rights Situation in Thailand B.E. 2547-2550, Bangkok: 2009, p. 61.

193 National Human Rights Commission (NHRC), Progress Report of the National Human Rights Commission (NHRC) for the Fiscal Year of 2018, Bangkok: National Human Rights Commission (NHRC), 2019, p. 10.

194 National Human Rights Commission (NHRC), Progress Report of the National Human Rights Commission (NHRC) for the Fiscal Year of 2019, Bangkok: National Human Rights Commission (NHRC), 2019, p. 109.

195 National Human Rights Commission (NHRC), Progress Report of the National Human Rights Commission (NHRC) for the Fiscal Year of 2019, Bangkok: National Human Rights Commission (NHRC), 2019, p. 109.

196 Secretariat of the Cabinet of Thailand no. NR 0503/17511 LW 17 May 2016 from https://resolution.soc.go.th/PDF_UPLOAD/2016/993193691.pdf

197 National Human Rights Commission Investigation Report no. 126/2020 on 13 May 2020 Business and human rights: The allegation that Thai investment abroad is causing human rights impact, p. 8.

198 National Human Rights Commission no. SM 0006/1304 on 25 May 2021 Result of the review of complaint.

199 Pornprapai Ganjanarintr, Chairperson of NHRC, interviewed by Darunee Paisanpanichkul on 24 December 2021.

Thirdly, NHRC has been monitoring Thailand's compliance with its business and human rights obligations and has recommended to the Government to develop mechanisms to regulate investment activities of Thai businesses abroad, to ensure compliance with the UNGPs, i.e. the Deep-Sea Port and the Dawei Special Economic Zone in Myanmar and the operations of a Thai company in Cambodia, as aforementioned.²⁰⁰

In the words of one HRD, "NHRC is simply a paper tiger!"²⁰¹ Indeed, several interviewees shared the same scepticism, with one stating, "[We] do not place our hope [in them]." The attitude of HRDs towards NHRC have not changed significantly from earlier periods; however, some noted that they will probably try resorting to NHRC again. In addition, NHRC returned to 'A' status in March 2022, after having been downgraded to 'B' status in January 2016.²⁰²

By considering complaints relating to transnational human rights violations, the research team observed that NHRC's interpretation of the Organic Act on the National Human Rights Commission B.E. 2560 (2017) is unclear, limits NHRC's own duties, and might even be contrary to NHRC's actual obligations under that legislation. Section 33 states: "The Commission shall carry out its activities with the aim to systematically promote and protect human rights, and to monitor and follow the country's events or situations of human rights regularly." In addition, such interpretation could be incompatible with Thailand's international human rights obligations. The CESCR's General Comment No. 24 on State obligations in the context of business activities²⁰³ defines business activities as including those that operate transnationally, and reiterates that "the Covenant establishes specific obligations of States Parties at three levels — to respect, to protect and to fulfil." These obligations are in effect nationally and internationally.²⁰⁴ Furthermore:

. . . the Committee reiterated that States parties' obligations under the Covenant did not stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.²⁰⁵

CESCR also addresses the duties of NHRC, stating, "National human rights institutions should be encouraged to establish appropriate structures within their organizations in order to monitor States' obligations with regard to business and human rights, and they could be empowered to receive claims from victims of corporate conduct."²⁰⁶

In light of the above, NHRC should therefore separate its duties to provide respect, protection and remedy to a victim who is a Thai national from its regulatory role to keep the operations of Thai investors in check — regardless of whether they have committed a violation outside Thailand. It is important that NHRC adhere to the obligations outlined in General Comment No. 24 to ensure that HRDs who have been affected by human rights violations by the Thai business sector, both inside and outside Thailand, have access to non-judicial remedies. Collaboration with destination countries to fulfil Thailand's obligations regarding BHR is vital.

200 Clarification by NHRC regarding the observations and recommendations toward the draft research report, January 2023.

201 HRD (14).

202 <https://www.nhrc.or.th/NHRC-Work/Statements-Press-Releases-Open-Letters/Press-Releases/>

203 CESCR, General Comment No. 24 (2017) on State obligations under the ICESCR in the context of business activities, 10 August 2017, E/C.12/GC/24. See article III Obligations of States Parties under the Covenant, C Extraterritorial obligations from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/237/17/PDF/G1723717.pdf?OpenElement>

204 E/C.12/GC/24, para 10.

205 E/C.12/GC/24, para 26.

206 E/C.12/GC/24, para 54.

5.2.3 Justice Fund

As mentioned earlier, HRDs are vulnerable to SLAPPs, particularly since the approach taken by HRDs may not be well understood. Various instances of confrontation may give rise to HRDs being taken to court. Meanwhile, HRDs may invoke their right to take legal action against hostile parties as well. This is difficult, however, as some HRDs cannot access the Justice Fund's resources in order to acquire financial support to post bail or hire a lawyer.

This challenge was faced by HRDs in the case of land rights involving the Nam Daeng Pattana community and the Southern Peasants Federation of Thailand, who sought help from RLPD. According to interviewees, "Until now, the Justice Fund has not prevented HRDs from landing in jail, by refusing to approve their applications for funding. Access to justice from the State has often not been a painless process for the villagers."²⁰⁷ In Ban Sab Wai, one of several thousand villages affected by NCPO's Forest Reclamation Policy, 14 village HRDs working on land rights, including nine women, have been sentenced to jail and a fine of up to as much as one million baht (US\$28,352.70). These HRDs applied for financial assistance to cover their legal fees during the appeal process, and other costs such as making copies of document, but their applications were turned down. When they submitted a letter seeking a review of the decision, their request was rejected by the provincial assistance provision subcommittee.²⁰⁸ In denying the applications for assistance from the HRDs, the Justice Fund explained that "there is ground to believe the suspects have committed the alleged offence, and their applications do not meet the criteria²⁰⁹ to receive financial assistance to be used to post bail".²¹⁰ This absence of the presumption of innocence is problematic. Members of the Rak Ban Heang Group eventually acquired access to the Justice Fund's resources to post their bail after they appealed the initial unfavourable decision,²¹¹ but the resulting delay in the appeal procedure caused an additional burden for the affected HRDs.

5.2.4 Local mechanisms

Several HRDs reported that some local authorities — such as the *kamnan* (village heads), or local administration organizations — have strong connections with the business sector. These close relationships can erode trust in local mechanisms. As one interviewee stated, "The local leadership is mostly unreliable [when we confront them or are at dispute with the other parties]. . . . We cannot divulge anything to them since they will leak it to the investors or to hostile parties. The authorities like to ask to be friends with us on *Facebook*, to ask for our phone numbers and to ask about our current actions. They 'talk sweet' but we cannot trust them."²¹²

5.2.5 External mechanisms: community justice

Based on interviews with HRDs and the research team's observations, there are several important issues concerning community justice, such as the effectiveness of mediation for public issues. For instance, can a mediator ensure a level playing field during the negotiation? As one HRD stated, "The negotiation should be fair for all parties, and should take into account the imbalance in bargaining power between community members and the project owners."²¹³ In addition, HRDs expressed doubt regarding the impartiality and effectiveness of the process, as indicated by the following quotations:

207 HRDs meeting with representative from RLPD to seek approval from Justice Fund, from <https://voicetv.co.th/read/7NXySxSdL>

208 Pranom Somwong, Access to Justice Fund. <https://prachatai.com/journal/2019/09/84309>

209 According to the Regulation of the Justice Fund Committee regarding the criteria, methods and conditions for the provision of funds as surety for provisional release B.E. 2554 (2011), and the version of B.E. 2559 (2016).

210 National Human Rights Commission, p. 14.

211 Regulation of the Justice Fund Committee regarding the criteria, methods and conditions for the provision of funds as surety for provisional release B.E. 2559 (2016), article 19.

212 HRD (18), interviewed by Wanna Taemthong on 14 August 2021.

213 Human rights lawyer (1).

1. “Such mediation does not mean to benefit the villagers. The mediators tend to speak on behalf of the hostile parties. . . . We lack confidence in the impartiality of the mediators.”²¹⁴
2. “Can mediation really work with public issues? For a large-scale project like the Chana Industrial Estate Project, mediation must be done at the level of the Cabinet.”
3. “We will look into the committee or the mediator to see if they really have the power to make a decision. After the talk, do they need to submit the matter for other people to decide? If they are still required to ask other agencies to make the decision, it will be a waste of time for us. To engage with a person who has no power will only cause a protracted delay. It’s like we must send our complaint against public authorities by post. Instead of doing that, we can directly approach and complain with the agencies in charge.”²¹⁵

5.3 Role of the business regulator

SEC is yet another organization with a vital role to play in mobilizing human rights in the business sector because it is in charge of the regulation and development of the Thai stock market. SEC works on creating an environment favourable for all stakeholders, and supports the business sector in its capitalization and business operations regarding environmental, social and governance (ESG) practices.²¹⁶ As mentioned in NAP, SEC is one of the public agencies designated to implement ESG practices.

Part of SEC’s mission is certainly to encourage the business sector to consider human rights and UNGPs.²¹⁷ In this regard, SEC requires listed companies to disclose relevant information regarding their ESG policies and practices. The criteria were revised in 2022 to require the disclosure of information by the securities-issuing companies listed on the Thai Stock Exchange, through the filing of an annual 56-1 One Report. The new criteria enhance the disclosure of information concerning business operations based on ESG factors, including respect for human rights.

5.3.1 The filing of annual report (56-1 One Report)

The 56-1 One Report is a form of public commitment. The revision of SEC’s reporting criteria means that a listed company must prepare both financial and non-financial statements through the filing of a 56-1 One Report, to be submitted to SEC. The availability of information disclosed in the 56-1 One Report has enabled investors and stakeholders to make their investment decisions based on the performance of the companies.

In addition, SEC has cooperated with the Faculty of Law, Chulalongkorn University, — through the project of BHR for the business sector in the Thai capital market — to prepare guidelines and offer trainings and seminars on BHR to the business sector. This cooperation is part of the effort to promote and encourage the business sector to operate in a manner that is grounded in respect for human rights, and based concretely on compliance with HRDD and UNGPs. Furthermore, SEC has embarked on an effort to raise human rights awareness in accordance with UNGPs and NAP.

SEC representatives shared their perspectives on HRDs, with one SEC official observing, “HRDs can play an important role in promoting respect for human rights in the business sector. By securing proper mechanisms, measures and cooperation from all agencies concerned, SEC can provide an important tool to help HRDs

²¹⁴ HRD (11).

²¹⁵ HRD (2).

²¹⁶ The role of financial institutions including the Bank of Thailand as a regulator and adviser to the business sector.

²¹⁷ Rights and Liberties Protection Department (RLPD), Ministry of Justice, National Action Plan on Business and Human Rights, Phase 1 (2019-2022), pp. 103–106.

perform their duties efficiently.” The SEC representative also mentioned that under SEC’s mechanisms, if an HRD or anyone else has learned that a business under SEC’s supervision has committed a human rights violation, its operations could constitute a breach of laws under the oversight of SEC. The HRD can then report the case and any information anonymously — including evidence or documents pertaining to the alleged human rights violation — via SEC’s channels, including the SEC Help Centre. The SEC website posts guidelines for the handling of complaints and features a phone number. The SEC representative also noted that to mobilize on the issue of BHR, it might not be sufficient to exclusively rely on law enforcement. Collaboration from all sectors is key to enhancing the mobilization and management of such mechanisms.

The 56-1 One Report filing system is a tool to promote the disclosure of information on listed companies to stakeholders. It can become a tool to track the operations of businesses and support access to information. It remains to be seen whether SEC will eventually develop additional measures to ensure the scrutiny of reports and grievance mechanisms if listed companies have submitted false information through the filing system. Other issues could be added to the system as well, including a remedial approach to address the needs of those affected by the business operations of a listed company, and reporting on implementation of the remedial approach in collaboration with the affected community.

5.4 Judicial mechanism: when HRDs are taken to court

When HRDs work to protect human rights, or to raise public awareness about human rights violations perpetrated by the private sector, the affected companies may perceive the HRDs’ actions as a smear campaign against them. The efforts of the HRDs may place the private sector in disrepute, thus prompting the companies to take legal action. Several such legal cases match the definition of SLAPPs, as the corporate plaintiff neither seeks justice nor expects to win its case, but rather employs the SLAPP as a means to harass or silence the HRDs, and to send a clear signal to society at large.²¹⁸ In such situations, HRDs are forced into the role of defendants. As one HRD noted, “What the plaintiff wants is an apology, but we human rights defenders have done nothing wrong. . . . what we try to do is protect rights [of the affected people]. We do not do it out of personal interest.”²¹⁹

The Criminal Procedure Code B.E. 2562 (2019) has been amended to prevent SLAPPs against HRDs, and the law gives power to the court to use its discretion to order the dismissal of such cases.²²⁰ Indeed, the court may do so if it deems that a case was filed in bad faith; or relied on distorted facts to harass or take undue advantage of a defendant; or to procure any advantage to which the complainant is not rightfully entitled. The use of this legal provision, however, is not common. Based on interviews with personnel in the judicial process, judges might fear that by invoking such a provision they could be accused of wielding broad discretionary power even before conducting a trial to hear the facts of the case. This research is not, however, the place for debate on the issue of SLAPPs; rather, we turn now to an exploration of the status and role of HRDs as perceived by personnel in the judicial system.

218 For more details, see Human Rights Lawyers Association (HRLA): “The recommendations for the protection of persons exercising rights and freedoms to participate in public issues against legal action”, published by the Union for Civil Liberties (UCL) and Cross-Cultural Foundation (CrCF), pp. 8–10. <https://naksit.net/wp-content/uploads/2019/10/20190811-thai.pdf>

219 HRD (7).

220 Section 161/1 of the Criminal Procedure Code B.E. 2562 (2019) pursuant to the Act for the Amendment of the Criminal Procedure Code (no. 34) B.E. 2562 (2019): “In a case filed by a private complainant, if it appears to the court — or through examination of evidence called at trial — that the complainant has filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled to, the court shall order dismissal of the case, and forbid the complainant to refile such case again. The filing of a lawsuit in bad faith as stated in paragraph one includes incidents where the complainant intentionally violated a final court’s orders or judgments in another criminal case without providing any appropriate reason.”

5.4.1 Case study I (2016): use of placards and signs — an exercise of freedom of expression in good faith

A private company sued six protest leaders and community leaders of the Khon Rak Ban Kerd Group, accusing them of disrupting the plaintiff's mining operations, by using trucks to carry placards featuring protest messages and installing an arch at the entrance of the village emblazoned with the words "This village does not want a mine" and "Shut down the mine and restore [the environment]". The company filed for damages, alleging that the arch dented its credibility among public agencies and jeopardized its upcoming listing on the Thai Stock Exchange.

The Lower Court dismissed the case, based on its finding that the villagers' signs and demands were acts undertaken to express their opinions and to urge public agencies to tackle the problems the villagers faced. Following an appeal by the company, the Appeals Court upheld the verdict of the Lower Court.

. . . The plaintiff's operations caused a negative impact to the environment and the villagers, and it was not a personal matter. Since the villagers' problems have not been addressed by the authorities concerned, the villagers had to complain and take action to keep the authorities informed by exercising their rights. The acts were done based on adequate reasons and in the interest of the villagers, as direct stakeholders. The actions of the villagers did not include laying siege to the mine and obstructing the lawful operations of the plaintiff. Rather, they have simply demanded solutions to the problems by expressing their opinions to the relevant authorities with power to address the problems in their community. What they have done was justifiable on the basis of self-defence or of properly defending their interests, and was therefore lawful. It is considered an act in good faith. Therefore, it cannot be construed as an act in bad faith, and was thus not an infringement on the plaintiff (Verdict of the Loei Provincial Court, p.13).²²¹ . . .

By installing the sign that read "This village does not want a mine", the defendants used no phrase to discredit the plaintiff or to place them in contempt or hatred by the public. They simply exercised freedom of expression in good faith and peacefully informed the relevant authorities that the community was not confident in the safety of their lives, nor confident about the potential impact of the mine on the environment, and on their health and quality of life. They wanted to participate in the decisions made by the Government that were also important to the community. It was the right to freedom of expression in good faith and was [exercised] peacefully, and because it was done so lawfully it is not considered an infringement on the plaintiff. . . .²²²

This case study is important for a couple of reasons. Firstly, the court did not exclusively deliberate on the signs and what they stated, nor delve into whether all the elements of the crime of defamation were present.²²³ Rather, the court paid attention to evidence concerning the "background information that gave rise to the sign". The court focused on how the operations of a private business — namely, the plaintiff — had affected the environment and health in the community.²²⁴

Secondly, in the analytical part of the verdict, the court invoked the evidence presented by the defendants, which could imply that the court recognized the mobilization of the villagers to defend their rights and to serve as HRDs. The court observed the following: "The community members have banded together with an aim: to protect and preserve their community's natural resources and the environment, monitor the impact,

221 Verdict Black Case no. 574/2558 Red Case no. 261/2016 on 30 March 2016 p.13.

222 Verdict Appeals Court Black Case no. 600/2016 Red Case no. 401/2017 on 14 February 2017, pp. 15–16.

223 Civil and Commercial Code, section 420: A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation.

224 Verdict Provincial Court p.9-14, Verdict Appeals Court p.8-16.

and demand that relevant authorities act to address the problems. The authorities have, however, failed to solve the problems directly.”²²⁵ The verdict also noted that “the six defendants are villagers in the area suffering from the environmental impact as a consequence of the plaintiff’s operations. It is therefore their community right to submit a letter of petition to complain to the relevant authorities.”²²⁶

5.4.2 Case study II (2018): filing a court case must not be an abuse of the right to a judicial remedy

The second case study concerns the same dispute, but focuses on the civil case subsequently filed by the villagers against the private company, to demand compensation.²²⁷ In its verdict in favour of the villagers, the court observed the following:

Since the sign contained no statement that might smear or offend the defendant, it is reasonable to assume that the defendant knew, or should have known, that the installation of the sign by the six plaintiffs was an exercise of freedom of expression in good faith. Yet, the defendant filed the case against the plaintiffs and demanded damages, claiming that the sign caused it damage, placed it in disrepute, and affected its credibility on the Stock Exchange. During the trial of this case, the defendant only brought one witness to give evidence. Since there is no supporting evidence that the defendant is a listed company in the Stock Exchange, it is therefore considered an unfounded claim. . . .²²⁸

While an exercise of the right to file a case with the court is a right prescribed by law, if it was done with an aim and intention to inflict an injury on another person using the court as a shield while levying an accusation against other person, it is an act in bad faith, and could be construed as an offence.²²⁹ “The defendant had [previously] filed six civil cases against the plaintiffs, all of which were subsequently dismissed by the court, which deemed them to be an exercise of rights in bad faith and an exercise of rights to inflict damage on another person, which is an offence²³⁰ against the six plaintiffs. . . .”²³¹

The topic of SLAPPs is important and warrants further discussion and academic debate — in particular the approach used to determine if a legal case is indeed a SLAPP.

5.4.3 Case study III (2018): status and role of HRDs not recognized by court

Before the legislative amendment was passed to authorize the court to dismiss a case if it is deemed a SLAPP,²³² an HRD who was sued in one case argued that the case could have been filed as a tool of harassment and thus constituted a SLAPP. The court, however, decided to allow the case to go to trial, citing the following:

It should be mentioned here that the role of being a human rights defender should not be invoked as a reason to receive special legal protection compared with the general public, including ordinary persons who came across an unjust incident and exercised their right to express their opinion or to

225 Verdict Black Case no. 574/2558 Red Case no. 261/2016 on 30 March 2016 p.11.

226 Verdict Black Case no. 574/2558 Red Case no. 261/2016 on 30 March 2016, p.13.

227 Verdict Black Case no. 603/2016 Red Case no. 1305/2018 on 25 December 2018, p.19.

228 Verdict Black Case no. 603/2016 Red Case no. 1305/2018 on 25 December 2018, p.15.

229 Verdict Black Case no. 603/2016 Red Case no. 1305/2018 on 25 December 2018, p.16.

230 Civil and Commercial Code, see section 421: The exercise of a right which can only have the purpose of causing injury to another person is unlawful.

231 Verdict Black Case no. 603/2016 Red Case no. 1305/2018 on 25 December 2018, p.16.

232 Section 161/1 of the Criminal Procedure Code B.E. 2562 (2019), as amended by the Act for the Amendment of the Criminal Procedure Code (no. 34) B.E. 2562 (2019).

exercise their right to a judicial remedy even once. On the contrary, a human rights defender should be informed and careful to differentiate between a genuine allegation of a human rights violation and an unfounded allegation, to some extent. This is because being a human rights fighter entails a responsibility to fully accept the consequences of her actions on the public and individuals; otherwise, the defender might instead become a human rights perpetrator. . .

The plaintiff in this case did not initiate legal action against the defendant when the defendant made an initial attempt to scrutinize the plaintiff's operations. The plaintiff only initiated legal action following an attempt by the National Human Rights Commission and the labour inspector to investigate the defendant's allegations. The Labour Court Region 1 has issued a verdict on the case. In addition, the legal action was only initiated after the conclusion of the legal dispute between the plaintiff and its employees in the Don Muang Kwang Court. The fact that the plaintiff filed the case against the defendant shall bear no effect in terms of intimidation, or the suspension of the investigation into the human rights violations of the plaintiff, which has already been completed. It also does not appear that the plaintiff tried to cause any additional burden to the defendant through this litigation, such as by filing the case in different courts in a remote area, making an attempt to protract the progress of the case, or requesting for a large amount in damages, etc. Therefore, the claim that the plaintiff filed the case because the defendant worked to protect human rights does not convince the court that the plaintiff filed the case in bad faith. Otherwise, it would deprive the plaintiff of the right to the judicial process. The court thus finds that the plaintiff has legal standing in this case.²³³

In the verdict at the conclusion of the trial, the court did not mention 'human rights defender' but instead used the term 'defendant':

For the defendant who has posted messages on social media . . . it is natural for the defendant who has been monitoring the issue since the beginning to reveal to the public the truth that they have obtained based on the interview of the first defendant.. In addition, the facts are not unfounded and not made up by the defendants themselves, nor alleged just to smear the plaintiff. The dispute did not only attract the attention of the defendant but has been reported by other news outlets as well. The act of the defendant — to criticize by way of fair comment — has therefore been committed in good faith, which can be done by any person. The act is therefore not an offence against Penal Code section 329(3), and the case is therefore dismissed.²³⁴

The research team is of the opinion that the enforcement of, or the use of discretion by the court by way of, section 161/1 of the Criminal Procedure Code B.E. 2562 (2019) is still an issue that warrants further academic debate. It is important to underscore is that during the legal defence, HRDs and their attorneys invoked BHR principles and concepts that have been adopted by the Thai Government and developed into Phase 1 of NAP (2019-2022). Further, the status of HRDs has been clearly recognized.

It is noteworthy that the court verdict failed to explicitly mention BHR or even NAP. This lack of a direct reference presents yet another challenge for HRDs — akin to how the doctrine of human rights was not invoked or recognized in the verdict. The attitude reflected in the court decision to allow the case to go to trial is a stumbling block to efforts to promote understanding about the role and status of HRDs and, perhaps most importantly, to garner greater acceptance by the general public. **This is a key challenge for RLPD.**

233 Black Case no. O3054/2018 pp.14–16.

234 Black Case no. O3054/2018 pp.19–21.

Not defamatory, not prosecuted by public prosecutor

Some cases have not yet reached the court, as the public prosecutor declined to prosecute them, reasoning that the HRDs had not committed defamation.

“None of the statements has impaired the reputation or exposed such other person to be hated or scorned. The statement is simply a criticism and a comment made by [the HRD] regarding the objectives of the Foundation that has been established. Therefore, it is considered a criticism and expression of opinion made by way of fair comment. It is a fair criticism that can be made by the second alleged offender as an ordinary person. It cannot be considered an attempt to smear and to impair reputation. Even though the article mentions the reported value of the alleged offender’s property, this detail is still subject to further validation through the submission of accounts of assets and liabilities as required by law, and the demand that this information be made public. Therefore, the facts are just the information that ordinary people can normally search for and investigate. . . . The allegation that the article constitutes collusion, or corrupt practice or mutual assistance to commit corruption, stems exclusively from mere speculation by the accuser. No sufficient evidence can be found to prosecute the case.”²³⁵

5.4.4 Case study IV (2020): judicial recognition that defendants fought to protect human rights

On the night of 15 March 2020, 300 villagers from Pak Bara community who were soon to be affected by the Pak Bara Deep Sea Port Project in La-ngu District, Satun, attempted to enter a school where a public agency was due to hold a public hearing the next day. The hearing was to determine the scope of, and method used in, the environmental and health assessment section in the project’s EIA. To gain entry, the villagers destroyed the locks at the entrance (causing damage amounting to 300 baht, i.e. US\$8.50), tore down barbed wire barriers (causing damage totalling 1,000 baht, i.e. US\$28.40), and occupied the meeting venue. The following morning, several other villagers arrived and obstructed the authorities and people who wanted to participate in the meeting.

The facts are mentioned in the verdict which summarized the public prosecutor’s complaint against nine villagers and staff of NGOs for disturbing the peaceful possession of immovable property by the injured party and the public — an offence against the Penal Code for trespassing.^{236 237} The complaint indicates that apart from the gate locks and barbed wire, damage has been inflicted on 25 desks in the school. The case was filed before the amendment of section 161/1 of the Criminal Procedure Code B.E. 2562 (2019). The court found that a *prima facie* case had been established, and allowed it to proceed to trial.

In the courtroom

The plaintiff (public prosecutor) described why it had been necessary to hold a public hearing on the Pak Bara Deep Sea Port Project, as it was an activity that could have a serious impact to the community in terms of the environment, natural resources and health, and it required the preparation of an EIA report. According to the

235 Order no. OS. 00098/0302 in the case filed by a private sector company against an HRD in a case involving alleged criminal defamation by publication, pursuant to the Penal Code’s sections 83, 326 and 328, where the public prosecutor decided to not prosecute the case.

236 Penal Code section 83, sections 362 and 365.

237 Verdict of Satun Provincial Court, Black Case no. O686/2592, Red Case no. O887/2020 on 25 December 2020.

notification from the Office of Natural Resources and Environmental Policy and Planning, this public hearing was the first meeting, and would last five days.

The nine defendants described how the first and sixth defendants, and the villagers, were members of the traditional community in Satun, and lived around the Pak Bara Bay. The nine defendants and villagers who owned the land had been affected by the Pak Bara Deep Sea Port Project and thus exercised their constitutional rights, as members of a traditional community,²³⁸ to seek justice; they had not intended to intimidate the Government. They stated that if the injured parties presented the EIA report using false information, it would affect the decision to approve the construction of the project in Pak Bara Bay and the adjacent area — an area holding historical and cultural importance, and that housed artefacts. The nine defendants and the villagers had entered the school to negotiate and ask for the postponement of the public hearing since, if the public hearing were held, the consequences would be hard to reverse. They had not laid siege to the premises, had no intention to trespass, and had proposed that prior to holding a public hearing on the EIA report, the strategic environmental assessment (SEA) report of the overall Southern region should have been completed.

A police official who was a witness stated that there were about 100 protesters who sat blocking both sides of the school gate to prevent anyone from entering, and megaphones were used. The police asked for the meeting to take place and tried to negotiate with the protestors, who insisted that it be called off. The villagers formed a human chain without any scuffle. The tyres of vehicles used for publicizing the event were punctured with sharp objects. Billboards were spray-painted while the handouts and microphones went missing. Four or five teenagers pulled Mr. M. until he fell, and then started to trample on him while the police tried to intervene to stop them. Mr. M. was rescued, and subsequently went to make a police report. Meanwhile, the villagers continued to take turns speaking to educate people about the positive and negative impacts of the development of the Pak Bara Deep Sea Port Project. They encouraged the listeners to oppose the public hearing. Eventually, the meeting was cancelled by order of the Provincial Governor, who came to the venue when the conflict was unfolding.

The verdict

[The court] . . . deemed that the injured party was the owner of the school's meeting hall where the incident occurred and where the public hearing was to be held. The photo evidence showed that all the doors had been closed, and military officers were clearly on guard. The nine defendants and about 300 to 500 supporters had not breached the defensive lines of the military to enter the school's meeting hall and to occupy the area. The photos showed that the protesters were gathered in tents and in the school field and did not disturb the possession of the premises by the injured party. Pak Bara Bay is a public property that a lot of people have used for tourism and artisanal fishing for a long time. The local people have a legitimate right to use Pak Bara Bay's resources in order to earn their living and to support their livelihoods as long as their use not violate the law. Such rights are not exclusive to any particular person nor agency. . . . [but] the injured party will develop . . . the Pak Bara Deep Sea Port Project, which will require blocking of boat access to the area, and the blasting of rocks for reclamation purposes. This will bring about substantial change to the natural environment, and it will unquestionably adversely affect the way of life of local people and those living along the various coastal areas of Pak Bara Bay. Therefore, a thorough study must be carried out to gauge the harmful impact before making a decision about the project.

238 Constitution of the Kingdom of Thailand B.E. 2560 (2017), section 43: A person and community shall have the right to: 1. conserve, revive or promote wisdom, arts, culture, tradition and good customs at both local and national levels; and 2. manage, maintain and utilize natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law.

Attention should not be exclusively paid to the benefits to the transportation and logistics of the country without considering the suffering of the people who will bear the brunt of the damaging effects. According to the evidence adduced by the plaintiff, it did not appear that the injured party had adequately studied whether the construction of the deep sea port would affect the people's livelihoods, and how. The nine defendants and their supporters had been campaigning long before the day of this incident.

The police official who was a witness has been reporting and monitoring the movement of the protesters since 16 March 2017 when they had assembled at Lan Sip Paed Lan. From the gathering of intelligence, the witness learned that the protesters' main intention was to request the postponement of the public hearing. The incident occurred because the person in authority had refused to negotiate with the protesters from the outset. The aim of the public assembly was to demand that the Government and the injured party take action to address the suffering of the protesters. After the protesters had entered the school (according to the police), the persons who held talks with the protesters were still those from the company, who had no power to make decisions regarding the demands of the protesters or to alleviate their suffering. The nine defendants and their supporters had gathered peacefully, were unarmed, and did not use force to inflict violence.

The nine defendants and their supporters did not lay siege to the meeting venue, and their action was therefore considered not to be a breach of the right of the injured party to possess the premises. They were unarmed and did not commit violence. . . . Following the negotiation led by the Governor of Satun and the decision to call off the meeting, the protesters thus dispersed. The act of the nine defendants, therefore, was committed without intent to trespass, and they cannot be held liable, as alleged by the plaintiff.²³⁹

The research team analysed the court verdict using the keywords it contained, and drew the following conclusions regarding the court's opinion on the actions of the nine defendants and the villagers.

Firstly, they had gathered to protest in the public interest since Pak Bara Bay is a public property that does not belong to a particular person. The implementation of a large-scale project that may have an impact on the environment and on health should be preceded by a thorough and comprehensive study and public hearing. Even the plaintiff failed to present to the court proof that the injured party had adequately studied whether the construction of the port would affect the people's livelihoods. Until now, the affected villagers have been demanding that the Government and relevant agencies listen to and address their problems; these efforts have been to no avail.

Secondly, the public assembly and making of speeches by the villagers were conducted peacefully and unarmed.

Thirdly, the villagers simply wanted the meeting to be called off because, if it took place, it could conceivably lead to decisions and actions that would be difficult to reverse. They had no intent to trespass.

In addition, it should also be noted that while the verdict did not appear to recognize the status or role of HRDs, it did accept that the nine defendants and affected villagers — individually, as well as in association with others — fought to protect various rights: to live in a healthy environment, have a good quality of life, and participate in decision-making concerning the management of natural resources and the direction of development in one's own community, including the implementation of any large-scale development projects.

239 Verdict in Satun Provincial Court, Black Case no. O686/2592, Red Case no. O887/2020 on 25 December 2020 pp. 31–36.

5.4.5 How personnel in the judicial process perceive HRDs

The issue of HRDs is still new for Thailand's judicial process. Although there were earlier cases when the court mentioned a "human rights fighter" (Black Case no. O3054/2018), the adjudication and the reasons offered by the court attest to the predominant perceptions regarding HRDs. The verdicts demonstrate that there are still hurdles to overcome in terms of the application of section 161/1 of the Criminal Procedure Code B.E. 2562 (2019) by the court when an HRD is sued for alleged defamation. This issue warrants further discussion.

While most examples cited in this study feature verdicts that are favourable to HRDs — who were referred to as either "affected villagers" or "defendants" — there remain other cases in which the verdicts are not in their favour. Our research indicates that it is critical to create a space for discussion to better understand the role of HRDs since the protection of HRDs, and of human rights generally, is of paramount importance for all relevant agencies.

Attention should also be paid to another group of personnel in the judicial system, namely attorneys. It is noteworthy that in the legal defence of the aforementioned cases, the HRDs and their attorneys tried to invoke BHR concepts and principles. However, not all attorneys understand international human rights standards, and their applicability. As such, another mission for RLPD, NHRC, and public agencies, in collaboration with professional guilds — such as the Lawyers Council of Thailand — is to enhance the capacity of attorneys to employ international human rights principles and mechanisms as a tool to defend the rights of clients.²⁴⁰

5.5 Law enforcement by relevant public agencies

Data collected for this research revealed that a galvanizing factor for the villagers to band together with — or to become — HRDs is the efficacy of law enforcement. Delays in investigation at the scene of an incident and slow solutions have prompted the HRDs/villagers to take action to monitor, investigate and solve problems themselves. This situation can lead to a stand-off between the HRDs/villagers, and the parties behind the development projects, as happened in the first and second case studies summarised earlier. The verdicts in both cases pointed to delays by local public agencies in solving the problems. This inaction eventually led to a confrontation between the two sides, which ultimately caused legal action to be taken. In such a scenario, local public agencies become irrelevant.

Most importantly, even in a situation where HRDs and villagers are likely to win a case, they have to pay a high price in terms of time, absence from work, loss of income, mental stress and so forth. In the first two case studies alone, more than 10 cases have been filed by either the private company or the HRDs/villagers since 2015. This number includes cases filed by the company against HRDs/villagers,²⁴¹ as well as cases filed by the company against the media,²⁴² and countersuits filed by the HRDs/villagers against the company.²⁴³

A crucial point here is that if public agencies (especially those at the local level) perform their duties effectively, conflicts can be reduced or avoided altogether, and risks to HRDs and villagers thus likewise diminished.

240 Human rights lawyer (1).

241 Initial information: Verdict of the lower court, on 9 September 2558; 30 March 2016; 29 November 2016; 14 February 2017; 9 March 2018; 19 April 2018; 24 July 2018; 9 August 2018; 30 July 2019; verdict of Appeals Court on 4 March 2016, 30 October 2017, 13 March 2019.

242 Initial information: Verdict of the lower court in November 2016, Verdict Appeals Court in January 2018.

243 Initial information: Verdict on 31 May 2016, 13 December 2018, 25 December 2018.

5.6 Impunity of private companies increases risks to HRDs

It is critical that relevant public agencies respond to the concerns of HRDs and villagers in a timely manner. If action by the agencies is not forthcoming, the HRDs and affected villagers might have to resort to taking action themselves, by confronting the private companies. Furthermore, the lack or delay in action by the agencies permits the private companies to proceed with their projects without any accountability for the resulting impact on the environment, health, and way of life in affected communities. When a business is not punished and/or held responsible, and is allowed to act with impunity, HRDs face increased risks.



Chapter 6 Conclusions

The research team drew the following conclusions from this study:

1. The characteristics and role of HRDs have been clearly defined at the international level as well as among agencies in Thailand such as NHRC, but are yet to be widely recognized, particularly at the practical level of public agencies. Even with the existence of State-based non-judicial mechanisms, recognition of the role of HRDs is inconsistent and not comprehensive. These factors have contributed significantly to the risks of many forms of harassment faced by HRDs. It is critical that RLPD and NHRC take the lead to develop and implement measures for the protection of HRDs.
2. The development of measures and mechanisms to protect and provide a remedy to communities and HRDs — including community justice and witness protection — and assistance for defendants or injured parties, is laudable. The evolution of other measures, including the protection of whistleblowers, should be inclusive in order to encourage participation from various sectors. It would also be helpful to review best practices from abroad.²⁴⁴
3. There are existing specific laws for the protection of HRDs — such as the Model Law for the Recognition and Protection of Human Rights Defenders — that can be adopted or replicated in Thailand, as was done in various countries (including Colombia and the Philippines). The goals of such laws, and the process to adopt and apply them, should reflect the participation of all sectors.
4. Various factors are key to the emergence of HRDs: the effectiveness of law enforcement by public agencies in charge of the development of projects; regulation of the EIA, community health impact assessment (CHIA), and SEA processes; and monitoring of environmental quality before, during and after the termination of a project. When not all stakeholders can come to terms with the roles of HRDs, conflict can escalate and evolve into various forms of harassment against HRDs, including through weaponization of the law. HRDs should therefore be included during the stakeholder analysis phase of each major project.
5. Although the Criminal Procedure Code B.E. 2562 (2019) has been amended to prevent SLAPPs against HRDs, in practice the relevant provision has not been employed, due to fear that dismissal of a lawsuit might deprive plaintiffs of the right to seek a legal remedy through a court proceeding. There have also been efforts to mediate at the trial and to persuade HRDs to ‘apologize’. Such circumstances highlight the weak understanding of, and compliance with, international human rights standards, and jeopardize Thailand’s fulfilment of its human rights obligations relating to various rights: to live in a healthy environment, have a good quality of life, participate in decision-making at the local level, and protect the role of HRDs. An inadequate comprehension and/or application of international human rights principles can also contribute to the weaponization of law to minimize the role of HRDs or stymie their efforts.
6. Commendably, regulators of the business sector, such as SEC, have made an effort to develop new tools to encourage businesses listed on the Thai Stock Exchange to pay attention to the concept of BHR. Coupled with the use of regulatory discipline, market forces and self-discipline, this becomes a challenging commitment for SEC. Nevertheless, it is pertinent for SEC to consider developing and applying both mandatory and voluntary tools or mechanisms, including HRDD measures; operational-level grievance mechanisms (OGMs); the promotion of gender equality, cultural diversity and inclusion; a policy of zero tolerance against reprisal; and other concepts in compliance with international BHR principles.

²⁴⁴ Including Guidelines for protection programmes cited in A/HRC/13/22, para. 113 and 111, accessed 20 May 2021. <https://www2.ohchr.org/english/issues/defenders/docs/a.hrc.13.22.pdf>



Chapter 7 Recommendations

Based on the study and assessment of the risks HRDs are exposed to in the previous chapters, the following recommendations are aimed at both the state agencies and the private sector.

| Goal | Method | Indicator |
|---|---|---|
| 1. Raise awareness, understanding and recognition of the status and role of HRDs | 1.1. Recognize the status and role of HRDs through a Memorandum of Understanding (MoU) among public agencies, the business sector, civil society and HRDs. | <ul style="list-style-type: none"> • An MoU among public agencies, the business sector, civil society and HRDs is adopted. |
| | 1.2. Increase systematic awareness and recognition of the role of HRDs to ensure that the state, the business sector and the public share a mutual understanding. | <ul style="list-style-type: none"> • Public agencies and the business sector collectively develop a pathway to nurture the understanding of the status and role of HRDs. • The number of SLAPPs declines. |
| | 1.3. Promote understanding of the status, role and work methods of HRDs in the context of international standards, among personnel in the judicial system, including the police, public prosecutors, and judges at both central and regional levels. | <ul style="list-style-type: none"> • The Royal Thai Police adopts guidelines on how to treat HRDs. • A training curriculum is developed for the relevant agencies, to bring about an understanding of human rights principles and international standards on the protection of HRDs. The development process should be inclusive and participatory, with a space for dialogue with public prosecutors, judges and HRDs, during which the curriculum materials can be promoted and distributed. • The courts issue guidelines on how to use discretion pursuant to section 161/1 of the Criminal Procedure Code B.E. 2562 (2019). • The number of SLAPPs declines. • Action plans for agencies in the judicial process are adopted to promote the protection of HRDs. |
| | 1.4. Develop laws for the comprehensive protection of HRDs. Although poor law enforcement is a key issue in Thailand, it is still crucial to promulgate and enforce legislation for the protection of HRDs. The legislative drafting process should be made inclusive of all sectors by reviewing, applying and/or replicating the Model Law for the Recognition and Protection of Human Rights Defenders. ²⁴⁵ | <ul style="list-style-type: none"> • An inclusive legislative drafting process is established. • A draft law is produced. • The law is promulgated. |

²⁴⁵ See also, Research topic 4.3.4 or <https://ishr.ch/defenders-toolbox/model-law/#:~:text=A%20Model%20Law%20was%20developed,experts%20and%20jurists%20in%202016>

| Goal | Method | Indicator |
|--|---|--|
| 2. Engage in capacity-building and empowerment of HRDs | 2.1. Organize training and education on defence of human rights to help keep the community safe, including training on digital safety and security. | <ul style="list-style-type: none"> The number of educational activities in each region of the country increases. |
| 3. Develop and strengthen mechanisms to protect and assist HRDs | 3.1. Develop and strengthen mechanisms and measures to aid HRDs, including the Justice Fund. Minimize the requirements for obtaining financial assistance from the Justice Fund, and increase its capacity to alleviate the financial burden shouldered by HRDs and the public in order to access the judicial process. Revise the mediation process to ensure a level playing field for all parties. | <ul style="list-style-type: none"> The Justice Fund revises its requirements and in order to give HRDs greater access to financial assistance, without any discrimination based on nationality or immigration status. A study is conducted, with public participation, to review various mechanisms and measures to protect and assist HRDs, and make recommendations for their improvement. |
| | 3.2. Develop a mechanism to protect whistleblowers (including review of the 'whitelist' concept) through a participatory process with civil society. ²⁴⁶ | <ul style="list-style-type: none"> Establish a new mechanism for the protection of HRDs, through an inclusive process. |
| 4. Formulate measures to minimize or prevent risks that may arise for HRDs | 4.1. Public agencies must enforce the law to regulate the implementation of projects, and ensure any violations of personal and community rights as a result of the project — including any adverse impact on health, the environment, and livelihood — are addressed and remedied promptly. | <ul style="list-style-type: none"> Confrontations involving HRDs and/or the community relating to projects that give rise to rights violations are addressed. Pilot site for public consultation is founded, involving the community and the project proponent, business sector or state sector. |
| 5. Mobilize the business sector to adhere to business and human rights (BHR) principles | 5.1. Develop both mandatory and voluntary tools or mechanisms, including human rights due diligence (HRDD) measures, operational-level grievance mechanisms (OGMs), the promotion of diversity and inclusion, and a policy of zero tolerance against reprisal. | <ul style="list-style-type: none"> Policy of zero tolerance against reprisal is adopted. Grievance mechanisms are set up in the business sector. Mandatory measures and/or tools are put in place. Voluntary measures and/or tools are put in place.. |
| | 5.2. Disseminate information on good practices of companies that adhere to international human rights standards, through creation of spaces for dialogue whereby the business sector and HRDs can exchange views and learn from each other. | <ul style="list-style-type: none"> A curriculum is developed for training to raise the awareness of the business sector regarding international human rights standards and leads to exchange and learning between the business sector and HRDs. Guidelines and manuals for the business sector are produced to increase understanding of the status and role of HRDs.²⁴⁷ LGBT business standards are developed |

²⁴⁶ See review guidelines from abroad including guidelines for protection programmes cited in A/HRC/13/22, para. 113 and 111.

²⁴⁷ See 4.3.3 including the formulation of human rights policies and preventative and remedial measures in compliance with HRDD, the creation of HRIAs, including measures to ensure HRDs have access to a remedy, in the company profile.

Appendix A. Guideline for research questions



Guideline for research questions on the protection of human rights defenders

Name Title

Department and organization

Questions for all organizations

- 1. Definition and characteristics of human rights defender (HRD):** What is your view of the following definition of an HRD developed by the United Nations?²⁴⁸
 - 1.1 Definition:** “A person individually and in association with others as groups and organs of society who works to promote and protect universally recognized human rights and fundamental freedoms.”
 - 1.2 Characteristics of HRDs:**
 - a. Defend the rights of other persons (in the public interest);
 - b. Defend rights in compliance with law, tradition, custom, universally recognized practice, international laws; and
 - c. Engage in non-violent acts in the name of rights.
2. How much can the existing positive law and policy effectively protect HRDs? And how?
3. Please share your department and organization’s previous implementation of actions to protect HRDs, and outline constraints faced by those acting to protect HRDs.
4. Do you have any recommendations on how to develop measures and solutions to protect and defend HRDs?

Questions for the business sector

1. As a business, what are your concerns if there were to be a confrontation between businesses and HRDs?
2. Do you think that the existing mechanisms to cope with a conflict — including the mediation process, and the judicial process (police, public prosecutor, and judge) — are sufficient and effective to address and overcome the nature of the problems?
3. As part of the business sector, do you have any recommendations for the protection of HRDs in order to achieve respect for business and human rights?

248 Fact Sheet 29: <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>

Appendix B. Key national documents and references

Key national documents

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