

**ASSESSMENT ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS IN THAILAND  
FOCUSING ON BUSINESS AND HUMAN RIGHTS  
AND CASES OF CROSS-BORDER HUMAN RIGHTS INFRINGEMENTS**

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By  
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(Sub-Committee on Community Rights)

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**INTRODUCTION**

1. The past decade has seen a substantial increase in the prevalence and discussion on business and human rights. This discussion is timely for ASEAN, as the region has accelerated its integration into the global market economy significantly, driven largely by business interests within and outside of ASEAN. This development has come with notable changes, including the construction of large infrastructural projects, such as hydropower dams, highways, and fossil fuel-fired power stations, the proliferation of the mining industry, the creation of special economic and polluting industry zones, and the expansion of agro-business. While this development has brought rising GDPs across the region, so, too, has inequality increased. Displacement caused by development, exploitation of marginalized groups, especially indigenous populations, and environmental degradation have been side effects of such development. Responding to the human rights abuses caused either directly or indirectly by businesses, John Ruggie, the Special Representative for former Secretary General Kofi Anna, developed and proposed the UN Guiding Principles on Business and Human Rights, known as the “Protect, Respect, Remedy” Framework, which offered a set of 31 guidelines for businesses and governments to ensure rights are respected in business dealings.

2. However, as the following cases of businesses violating rights demonstrate, stronger mechanisms are needed, in relation to extra-territorial obligations of States, to protect economic, social, and cultural rights. Specifically, in the cases documented in this report, Thailand has failed to ensure the protection of the rights of civilians marginalized by Thai company’s actions abroad. This report will study each case in turn and conclude by arguing for stronger laws that obligate companies to respect human rights while conducting business abroad.

## CASE STUDIES:

### Dawei Development Project, Myanmar

3. The Dawei Deep Sea Port and Special Economic Zone project is proposed to be Southeast Asia's largest industrial complex, with an estimated infrastructural investment of over US\$50 billion that would include a deep seaport, industrial estate (including large petrochemical industrial complex, heavy industry zone, oil and gas industry, as well as medium and light industries) and a road/pipeline/rail link that will extend 350 kilometers to Bangkok via Kanchanaburi Province. The proposed project is located within Myanmar's southernmost region, the Tenasserim Division, which borders Thailand to the east. This highly populated and prosperous region is significant because of its ecological diversity and strategic position along the Andaman coast.

4. Laying the foundation for the project, in May 2008, the Governments of Myanmar and Thailand signed a Memorandum of Understanding (MoU) on the project's development on the sideline of an ASEAN ministerial meeting. Less than a month later, in June, the Myanmar Port Authority (MPA) and the Italian Thai Development Public Co. Ltd. (ITD), Thailand's largest construction company, signed another MoU that gave the Company the right to conduct a ground survey for feasibility of the deep seaport and the road link to Thailand. More recently, in September 2012, ITD reduced its share in the project to 25% and the Governments of Myanmar and Thailand have taken a stronger role in leading the project's development.

5. The project developers have suggested the project site to be strategic for its geographic location, which connects to the Greater Mekong Subregion (GMS) Southern Corridor spanning Southeast Asia, and could serve as a western gateway for the ASEAN to shorten their reach to the Indian Ocean. However, as former Thai Prime Minister Abhisit Vejjajiva famously stated in January 2011, "some industries are not suitable to be located in Thailand. This is why they decided to set up there in Dawei." Due to Thailand's increasingly progressive human rights and environmental legal framework, public and private actors have struggled to escape the strengthening development project regulations. In Myanmar, however, lack of protection and laws could result in serious risks to the environment and human rights should the Dawei project proceed.

6. Concerns regarding investment standards were flagged in 2011 when the project drafted its own legal framework to ensure the industrial state's attractiveness to potential investors. Concerns for human rights abuses and environmental damage are serious as the industrial zone has the potential to produce an enormous amount of toxic emissions polluting the air, fresh water sources, rivers and coastal areas. The proposed petrochemical industrial development plant has raised strong apprehensions regarding health, livelihood and environmental consequences, which remain largely unaddressed. Loss of land is a major concern and there is an urgent need to address the issue of land entitlements as thousands face displacements, resettlement and loss of livelihood by the project. ITD officially reports that the project will relocate 32,274 people in the Special Economic Zone (SEZ), with another 182 households in the proposed Dam Reserve area, and unavailable numbers for the road link. It is speculated that the road link would displace an additional 50,000 individuals. However, it is estimated that up to an additional 500,000 people within the region surrounding Dawei will be directly and indirectly affected by land grabs and the decimation of the current local economy upon which the existence depends.

#### **Xayaburi Dam, Laos PDR**

7. In May 2007, the Government of Lao signed a Memorandum of Understanding (MoU) with Thailand's 2<sup>nd</sup> largest Construction Company, Ch. Karnchang Public Company, for the development of the Xayaburi Dam, a hydroelectric dam under construction in the Lower Mekong River. The following year, the project development agreement was agreed upon and a feasibility study and an environmental impact assessment were conducted. In July 2010, the Electricity Generating Authority of Thailand (EGAT) signed an MoU with the Lao Government, agreeing to purchase 95% of the 2360 MW generated by the dam with four Thai commercial banks agreeing to finance the US\$3.5 billion project.

8. Months later, in September 2010, the Laos Government submitted the Xayaburi Dam to the Mekong River Commission (MRC) for a regional decision-making process, pursuant to the [1995](#) Mekong Agreement between Laos, Cambodia, and Vietnam. According to the Agreement, intra-basin use of the Mekong River "shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee." By April of the following year, the MRC announced that it could not reach a consensus on how to proceed with the project and agreed that a decision on the prior consultation process be tabled for ministerial discussion. However, in June 2011, the Laos Government gave the Thai developer Ch. Karnchang the

green light to continue work on the dam, declaring that the MRC process and consultation had been completed.

9. The Laos Government's unilateral move to continue construction flies in the face of the purpose of establishing a regional decision making body. Accordingly, the law firm Perkins Coie, as well as international NGOs, including International Rivers, decried the move and its illegality in international law. Additionally, despite requests from Cambodia and Vietnam, Laos and Thailand even refused to study the dam's transboundary impacts before beginning construction. The project's current environmental impact assessment only examines impacts 10 kilometres downstream from the dam site. Laos' engineer for the project, the Pöyry Company of Finland also claims that it can rely on unproven technologies to mitigate any harm the dam might cause. The full extent of the dam's impacts remains unknown. Despite these intense outcries by regional actors across civil society and Government, Laos has not ordered the construction to be halted and the project is currently 30% complete.

10. However, beyond the legal issues at stake in this case of cross-border investment are the livelihoods of nearly 60 million citizens of Southeast Asia who live along the Mekong delta and who, according to International Rivers, would be detrimentally affected by the proposed dam. As the Xayaburi dam required the resettlement of 2,130 people, the Laos Government agreed to resettle the Laotians from ten different villages, even though roughly 202,000 people living near the dam site will also be directly affected, with impacts to their livelihoods due to a loss of fisheries, agricultural land, and riverbank gardens. An investigation by Radio Free Asia found that the majority of those who had been resettled by the project to Houay Hip village were unemployed, had no access to farmland, and had lost access to electricity. These negative impacts on the livelihoods of farmers are violations of their economic, social, and cultural rights, specifically articles 1.2, 6.1, and 11.1.

11. Despite the controversy and widespread decrial of the dam, the project's four Thai banks and construction company, Ch. Karnchang, have not withdrawn support or suspended their ongoing construction in Laos, even though they have made commitments to Corporate and Social Responsibility, including identifying society and environment as an external stakeholder to be considered and requiring compliance with countries laws. Siam Commercial Bank, for example, states that it will "abide by environmental laws and regulations, implement effective safety and environmental management measures to prevent

negative impacts on local communities, and promote employees' awareness of and concern for the environment.”

12. In August 2012, riparian communities from the North and Northeast of Thailand that would be affected by the Xayaburi Dam, submitted a case to Thailand's Administrative Court suing EGAT, the Thai Cabinet, and three other state entities, over their failure to follow the Thai Constitution before approving the Power Purchase Agreement (PPA) for the project. The lack of a transboundary EIA and an incomplete public consultation, due to the potential negative impacts on Thai communities, are the source of the complaints. However, the court case was declared as not eligible for submission in 2013.

### **Koh Kong and Oddar Meanchey, Cambodia**

13. In January, 2008, the Ministry of Agriculture, Forests, and Fisheries gave Angkor Sugar Company, Tonle Sugar Cane Company, and Cane and Sugar Valley Company three 70-year Economic Land Concessions, totaling 19,700 hectares in the Samron and Chong Kal districts of Oddar Meanchey, Cambodia for sugar production and a processing plant. The directors of the three companies are or were senior figures in the Thai sugar giant Mitr Phol Sugar Corporation. Due to the illegality of owning more than 10,000 hectares of land, the concessions were divided among the three companies, one of which is owned by Mitr Phol and two of which are partnered with them. And for the Koh Kong province in Cambodia with industrialization and huge land grabbing, it started from the announcement of European Union's project in Cambodia, namely "Everything But Arm (ERA)" with stimulating exploitation of lands for the increase of agribusiness, particularly export of raw sugar serving demands of European markets, with waive of tariff. The Land Concession Act was approved by the Cambodian Congress in March 2006, granting claims of proprietary right over the lands in Koh Kong causing 456 families in 3 villages lose their lands in total 19,100 hectare. A lot of local communities' properties were demolished and burnt at the time of land grabbing. This caused the infringement of rights: over the land, earning for life, self-determination; education and right to life of more than 456 families.

14. The ELC covered areas of private land, owned and occupied by Cambodian citizens. In August 2012, the Council of Ministers issued three sub-decrees retroactively reclassifying the land as State private land. This reclassifying and concession of land allowed the sugar companies and their security forces to forcibly evict thousands from their own land, leading to serious human rights abuses.

15. A human rights impact assessment by Equitable Cambodia and Inclusive Development International found that forced evictions were carried out to clear land for sugarcane plantations in all research areas. Police and state security forces carried out arbitrary arrest and detention and used physical violence at the behest of sugar companies against local communities attempting to defend their land.

16. Specifically, in violation of international law, the assessment found that “the evictions were not authorized by law or undertaken for the purpose of promoting the general welfare. Alternatives to eviction were not explored in consultation with potentially affected people and no impact assessments whatsoever are known to have been conducted. As a result, strategies were not developed to avoid or minimize displacement. Effective dissemination of information and meaningful consultation about compensation and resettlement options were not conducted and appropriate notice of eviction was not provided to affected people. On the contrary, some affected communities did not learn that their land had been granted to sugar companies until bulldozers turned up with the police and military. Others faced a campaign of intimidation and pressure to give up their land and accept the minimal compensation on offer.”

17. Those who were evicted suffered from a severe retrogression in their enjoyment of economic and social rights, including the rights to adequate housing, food, work, education, and health. Over 1,000 men, women and children were left homeless and landless, while those who were provided with alternative land were unable to use it. Others reported increased food insecurity, deterioration of livelihoods, and loss of sources of income as a result of their de-capitalization and loss of natural resources in the area.

18. In May 2013, Equitable Cambodia lodged a complaint to the National Human Rights Commission of Thailand (NHRCT) with information on serious human rights violations occurring in Oddar Meanchey involving a Thai company. Due to the extraterritorial obligations of companies to respect human rights, and the responsibility of the NHRCT to investigate violations of rights by Thai actors, the NHRCT accepted the case. In August 2014, the NHRCT conducted site visits to three villages and one resettlement area in Oddar Meanchey Province, where they confirmed that there had been illegal confiscation of land from local Cambodians, killing of livestock, destruction of homes, arson, looting of crops, beatings, threats, intimidation and arrest of villagers, all of which had led to extreme food insecurity and impoverishment over a period of several years.

## CONCLUSION

19. The Special Representative of the United Nations Secretary General appointed by then UN Secretary General Kofi Annan developed the “Protect, Respect, Remedy” (“PRR”) Framework that articulates three key responsibilities: 1) the state duty to protect against human rights abuses by third parties, including corporate actors; 2) the corporate responsibility to respect human rights; and 3) the need for greater access by victims to effective remedy, both judicial and non-judicial. The PRR framework was welcomed by the Human Rights Council in 2008 and is supported by many other bodies. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (“UNGPs”). The ASEAN has also identified the UNGPs as a key standard for the development of the ASEAN framework on Corporate Social Responsibility. This is affirmed in the Press Release of the Fifth ASEAN Intergovernmental Commission on Human Rights in Jakarta, 25-29 April 2011. The NHRC is committed to promoting the implementation of the UNGPs as endorsed by the UN Human Rights Council and the ASEAN Intergovernmental Commission on Human Rights. The UNGPs state that the “responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations.” This means that despite the ability or willingness of Myanmar, Laos PDR or Cambodia to hold accountable the actions of businesses in their jurisdictions, the companies operating there have a responsibility under the UNGPs to respect human rights obligations in their business enterprise operations through subsidiaries.

20. However, while the UNGPs are laudable in their aspirations, they nevertheless lack the obligatory nature required to ensure that businesses respect the rights of the citizens in the localities in which they operate. Instead of a voluntary mechanism, or guiding principles, businesses should be held accountable for their actions on a legal basis. As the three cases presented here demonstrate, States have an interest and the legal authority to hold their companies responsible for their actions abroad as they concern human rights. Known as extraterritorial obligations of companies, these standards can be used to judge companies actions abroad and ensure that they comply with all relevant human rights treaties and laws.

21. In order to protect the economic, social, and cultural rights of citizens in Southeast Asia, governments should hold accountable corporations domiciled in their territory for their



actions abroad. Where legal remedy and accountability is not possible, governments have a broad toolbox with which to press companies on their human rights responsibilities. Specifically, they can verify facts and witnessing of violations; Summon alleged parties with verbal and written declaration of facts; Launch of preliminary reports with summary of findings; Play role of friend of the Court (Amicus Curiae); Meet the Press, EU Ambassador and relevant UN agencies; Finalize a comprehensive investigation report with recommendations for all relevant stakeholders including local governments and relevant business sectors, ASEAN governments, and international agencies.

22. Furthermore, as in the case of the Xayaburi Dam, banks can also be an important lever to ensure economic and social rights are respected in development projects by businesses. As banks hold a powerful position to influence decisions made by project developers, adherence to corporate social responsibility standards by banks could have a significant positive human rights and environmental impact. The Xayaburi Hydropower Dam illustrates the need for binding standards to be imposed on banks in respect to economic and social rights as existing voluntary standards are too easily disregarded.

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