The Human Rights Consequences of the Eastern Economic Corridor and Special Economic Zones in Thailand

July 2020

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GLOSSARY

Special Economic Zone (SEZ)	A geographically delimited area where governments facilitate industrial activity through fiscal and regulatory incentives and infrastructure support within which investment and business activities are governed under a distinct legal regime. In some cases, separate administrative and governance bodies and legislative frameworks are set up to facilitate investment and avoid bureaucratic delays. These may even include separate judicial or quasi-judicial institutions to adjudicate disputes. In this report, the term SEZ also refers to 10 SEZs at Thailand's border areas. They cover the area of 90 Sub-districts (*tambon*) in 10 different provinces of Thailand.
Eastern Economic Corridor (EEC)	An SEZ in Thailand. It is being developed in the eastern coastal provinces of Rayong, Chonburi, and Chachoengsao, which are located on the Gulf of Thailand, with the objective of promoting investment into next-generation industries that use innovation and high technology.
SEZ Development Areas	Specific plots of mostly State-owned land in every SEZ area where investors can rent the area for industrial or service activities. The areas were designated by the SEZ Policy Committee.
EEC Promotional Zones	Any area within the EEC designated by the EEC Policy Committee with the objective of promoting investment in Special Targeted Industries.
State Land	Land over which no one has possessory rights, including: (i) forest lands; (ii) Agriculture Land Reform Areas; (iii) *Ratchaphatsadu* Land; and (iv) Land which is the Domain Public of State for the Common Use of People.
Private Land	Land acquired by a person in personal capacity in accordance with the law.
***Ratchaphatsadu* Land**	State-owned land under the ownership of the Treasury Department and Ministry of Finance. It includes: (i) every kind of immovable property which is State property; (ii) land which is reserved or secured for the State; and (iii) land which is reserved or secured for official use, as prescribed by laws.
Forest Area	Land which includes mountain, creek, swamp, canal, marsh, basin, waterway, lake, island and seashore not acquired by a person for personal capacity in accordance with the law.
National Reserved Forest Area	Forest land designated as a National Reserved Forest under the provisions of the National Reserved Forest Act, with the objective to preserve its nature, timber, forest products or other natural resources.
Permanent Forest Area	Forest land designated as Permanent Forest Area by a Cabinet Resolution, with an objective to preserve it as a State treasure.

Agricultural Land Reform Area	An area of land designated by Royal Decree as an Agricultural Land Reform Area, before allocation to farmers who have no land of their own or who have little land insufficient for making a living and to farmers' institutions for hire-purchase, lease or utilization with the assistance of the State in developing agricultural occupation, improvement of resources and factors of production, as well as production and distribution.
Public Domain of State for the Common Use of the People	Land for the common use of the people, including areas for the general population such as foreshores, cemetery, water-ways, land-ways, parks, and public areas in villages.
General Town Plan	A plan, a policy or a project including a general control measure to be used as guidelines for development and maintenance of a town and an associated area or a countryside area.
EEC Land Use Plan	A plan providing an overview of the development of the EEC for land use, with the objective of identifying land use that is suitable to the conditions and potential of the areas.
Strategic Environmental Assessments (SEA)	A tool for decision-makers to assess the cumulative environmental and socio-economic impacts of a policy.
Environmental Impact Assessment (EIA)	A study for forecasting the environmental impacts, both negative and positive, from development projects or significant activities.
Environmental Health Impact Assessment (EHIA)	A study for forecasting the environmental impacts for projects or activities which may seriously affect the community. Its process is more complicated than that of EIA.
Subcontracted Workers	Workers who are employed by any individual entrusted by a company to recruit.

LIST OF ACRONYMS USED IN THIS REPORT

AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
ACMECS	Ayeyawady-Chaophraya-Mekong Economic Cooperation Strategy
BOI	Board of Investment
BRI	Belt and Road Initiative
CESCR	Committee on Economic, Social and Cultural Rights
CHIA	Community Health Impact Assessment Report
DPT	Department of Public Works and Town and Country Planning, Ministry of Interior, Thailand
EEC	Eastern Economic Corridor
EHIA	Environmental and Health Impact Assessment
EIA	Environmental Impact Assessment
ESA	Environmental and Safety Assessment
FTA	Free Trade Agreement
GMS	Greater Mekong Sub-region
HNCPO	Head of National Council for Peace and Order
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEAT	Industrial Estate Authority of Thailand
IEE	Initial Environmental Examination
NAP	National Action Plan on Business and Human Rights
NCPO	National Council for Peace and Order
NESDC	Office of the National Economic and Social Development Council
NHRCT	National Human Rights Commission of Thailand
OECD	Organisation for Economic Co-operation and Development
SEA	Strategic Environmental Assessment
SEZ	Special Economic Zone
UNGPs	UN Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

The establishment and development of Special Economic Zones (SEZs) and the Eastern Economic Corridor (EEC) are a central part of the Thai government's strategy to expand infrastructure and attract foreign investment. These areas have been designated for development pursuant to special legal and regulatory frameworks. SEZs can play a useful role in a country's economic development strategy. However, in many instances, their establishment results in the dilution of legal protections for human rights and the environment. Though SEZs can create opportunities to increase transparency and accountability, this is often not the case. This report will assess the legal frameworks governing Thailand's SEZs and EEC against international standards and good practices, as well as offer recommendations to help protect human rights in the context of their further development.

Violations and abuses of economic, social and cultural rights are commonly found in SEZs, due to a lack of adequate legal protections or enforcement. These occur in planning and construction as well as during the operational phases of development. A lack of transparency and accountability are common concerns. The development that takes place in SEZs also often involves the exploitation of natural resources that adversely impacts the economic, social and cultural rights of local communities. Affected communities tend to have limited legal and advocacy capacities and generally lack access to effective remedies for violations of their human or environmental rights.

This report will examine the human rights implications of the legal frameworks governing: (i) Ten SEZs established along Thailand's borders with neighbouring countries; and (ii) the EEC, which is being developed in the eastern coastal provinces with the objective of promoting investment into high technology industries. The incentives offered by the Thai government to investors in these areas include improved infrastructure, expedited approval, issuance of permits and special arrangements for employing migrant workers and the easing of certain regulatory requirements.

Relevant legal frameworks include a patchwork of more than 10 orders issued by the National Council for Peace and Order ("NCPO"), established after the 2014 military *coup d'etat*, as well as Regulations of the Office of the Prime Minister and laws passed by the NCPO-appointed Legislative Assembly. The origin of these laws, along with a general lack of transparency and consultation by the NCPO, calls into question their democratic legitimacy. This report will examine these laws alongside other relevant parts of the post-coup national legal framework governing land, environment and labour, as well as general human rights protections. All of the analysis and recommendations will draw upon international law and good practices, including Thailand's obligation to protect human rights in the context of economic development and ensure that national laws are consistent with its international obligations.

There are a number of consequential weaknesses or gaps in the existing legal framework that, if addressed, could prevent human rights violations and abuses in the future and provide reparation to victims. While there are some exceptions, most of the laws do not consider human rights and environmental concerns in a meaningful way. Many of the inadequacies in the legal framework could be remedied by more transparency and greater consultation with affected communities. International law can offer a number of tools to law and policy makers in this regard. In some cases, Thailand need only make the effort to incorporate already existing international obligations into its approaches to designation, development and accountability measures for the EEC and other SEZs. Such a commitment is, in any case, also included in the Thai government's own National Action Plan for Business and Human Rights.

The report offers findings in four main areas:

Transparency and Consultation in Governance. SEZ and EEC Policy Committees have broad discretion, including the power to designate SEZ and EEC areas, and amend the criteria, procedures, and conditions of operation of businesses in these development areas. Unfortunately, neither committee has operated in a consultative and inclusive manner. This has contributed to conflict with local communities, and prevented the concerns of affected communities, including adverse human rights impacts, from being considered in the development and oversight of these areas. Although the secretary of the SEZ Policy Committees has a regulatory mandate to engage with local communities as part of the process of developing SEZs, meaningful and effective participation of communities in the decision-making process remains elusive.

Protecting Rights to Adequate Housing and Food. Thai law sets out a modified framework for land acquisition in the case of SEZs, that has resulted in the transfer of land from communities to business entities without adequate consultation. There are reports of large-scale evictions, sometimes with little or no notice, that have affected hundreds of households and disrupted entire communities in violation of international standards prohibiting forced evictions. Compensation provided to affected communities and individuals, regardless of their legal title, has been inconsistent and dependent upon the outcomes of lopsided negotiations. Displaced communities struggle to access livelihoods, with inadequate support from government. Criminal trespass actions have been brought against farmers who refuse to leave owned or rented land.

Environmental Impacts. Laws affecting the EEC and SEZs have been largely based upon prior laws governing large-scale industrial enterprises, which did not include strong environmental protections. Recent or proposed amendments to laws such as the Enhancement and Conservation of the National Environmental Quality Act and the Factory Act, threaten to further weaken regulation, including by placing limitations on the investigative and monitoring powers of the supervisory authorities responsible for compliance with environmental regulations. Despite robust requirements to conduct environmental impact assessments, in practice, such assessment have lacked meaningful participation from communities, involved fraudulent or negligent production of reports, and been conducted so as to sidestep or undermine the already limited capacity of supervisory authorities.

Labour Rights and Impacts on Migrant and Subcontracted Workers. The report also makes a number of findings regarding rights abuses suffered by migrant, seasonal and subcontracted workers, as well as restrictions on freedom to join and form trade unions. Thai labour law protections are often ignored by employers, and enforcement is weak. The law allows for expansive restrictions on movement, and imposes limitations on access to certain social security and other entitlements that affect the rights of migrant workers. Migrant workers may subject to criminal penalties for violations of these laws. Bureaucratic requirements to gain access to entitlements are burdensome, and migrant workers are subject to discrimination throughout the process. Under Thai law, the right to establish a labour union does not extend to migrant workers. This has egregious consequences as in many SEZs, particularly in export-oriented border areas, almost all employees are migrant workers. In some instances, employers dismissed employees for their labour union involvement, despite protections under the law against exactly such action.

The report offers a number of recommendations to the Thai government, business sector, international community and other stakeholders. Detailed recommendations are provided at the end of the report. General recommendations include:

1. Protect human rights by amending SEZ legal frameworks, EEC laws, laws governing land acquisition, and environmental and labour protections, through meaningful public consultation in accordance with international standards, to ensure:

    a. the governing bodies of SEZs and the EEC operate with independence, efficiency and inclusiveness - including public participation in planning and decision-making processes;
    b. all persons have, at the very least, a minimum degree of security of tenure, sufficient to protect them from forced eviction, harassment and other threats;

c. improved standards for the protection of the environment, and the impacts of environmental degradation on communities; and
d. all workers enjoy equal rights protections based on the principles of non-discrimination and equality.

2. Adopt an amended SEZ Act, that contains provisions that are in compliance with Thailand's international human rights obligations;

3. Ensure that effective, prompt and accessible judicial and non-judicial remedies are provided to those affected by the implementation of SEZ and EEC policies; and

4. Ensure that companies operating in SEZs and the EEC carry out business activities in line with the UNGPs, and uphold their obligations to respect human rights.

1. INTRODUCTION

The establishment of special economic zones ("SEZs"), geographically-bound areas within a State subject to a special set of legal and regulatory frameworks, is a common tool used by States throughout the world to attract international direct investment.[1] Most governments offer relief from customs duties and tariffs, fiscal and regulatory concessions, and infrastructure support to businesses and investors who operate in SEZs.[2]

Unfortunately, the imposition of these special legal regimes has often led to the dilution of important human rights and environmental protections. Despite evidence that the economic performance of many SEZs remains below expectations,[3] these legal frameworks tend to prioritize narrowly-defined investor benefits over community well-being, and often reduce rather than enhance transparency and accountability. This has long-term negative consequences for communities, governments and investors.

In Thailand, SEZs, and particularly the Eastern Economic Corridor ("EEC"), also known as the Eastern Special Development Zone,[4] are flagship economic schemes set up by General Prayut Chan-o-Cha's government after the military coup in 2014. The post-coup government established special economic zones in 13 provinces of Thailand (a map of the SEZ and EEC designated areas can be found at Part 1.3).[5] Even though SEZs and the EEC are in their developmental phase, allegations of human rights violations and negative environmental impacts have already been raised by local communities.

As discussed through this report, the current legal frameworks governing SEZs do not include adequate procedural safeguards and human rights protections, including for the rights to food, health, water, work, and adequate housing. A loosening of the legal requirements for land acquisition has reportedly resulted in evictions from, and/or loss of access to land by at least 391 individuals. This includes farmers who have lived on and used their land for generations. In the EEC, individuals in at least 143 households who live on, occupy, or rent areas also reportedly faced removal.

SEZs are currently governed by a diverse and inconsistent body of laws and regulations. A draft SEZ law was shared publicly by the Thai government in June 2016, but was never introduced in the legislature. In any case, the draft only focuses on the establishment and operation of an SEZ's governing body and the benefits and privileges granted to investors. It makes no reference to the rights of affected individuals or communities.

In contrast, the EEC has a dedicated law that governs its operation, and which contains a number of provisions that refer to the rights of affected individuals or communities. Notably, it also makes reference to certain international standards on business and human rights derived from the United Nations Guiding Principles on Business and Human Rights ("UNGPs"). However, concerns remain regarding the lack of consultation and inadequate transparency in the drafting process of the law, broad discretionary powers provided for under the law to the EEC governing body, and the lack of adequate preventive and remedial frameworks to ensure respect of human rights and environmental protections in EEC designated areas.

1 The United Nations Conference on Trade and Development (UNCTAD) defines an SEZ as a "geographically delimited areas within which governments facilitate industrial activity through fiscal and regulatory incentives and infrastructure support." United Nations Conference on Trade and Development (UNCTAD), 'World Investment Report 2019: Special Economic Zones', UN, 2019, at 128, available at: https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf

2 Ibid., at 128.

3 Ibid., at 128 – 129.

4 Eastern Economic Corridor (EEC) is the term that was used in the Title of the NCPO Orders, while Eastern Special Development Zone is the term that was used in the EEC Act.

5 On 9 June 2020, the Cabinet passed a Resolution adopting the Regulation of the Office of the Prime Minister regarding the Development of Special Economic Zones 2020. The Regulation expanded the definition of SEZs to include: (i) 10 SEZs at border area; (ii) Southern Economic Corridor (SEC); (iii) Northern Economic Corridor (NEC); (iv) Northeastern Economic Corridor (NeEC); and (v) Central-Western Economic Corridor (CWEC). SEZs in (ii) to (v) are in the initial phase of development.

SEZs have a mixed record of economic success and remain controversial. Poor legal frameworks that fail to protect human rights or guard against corruption and environmental degradation can undermine development goals.[6] Without a legal framework that seeks to integrate human rights and the well-being of communities into its pro-investment agenda, large-scale projects risk having adverse effects on individuals and local communities, and on the sustainability of businesses themselves.

Drawing on legal research and interviews, this report examines specific laws and regulations that were developed to govern the operation of SEZs and the EEC, alongside other applicable national laws on land, environment and labour. The section on labour focuses on migrant workers and subcontracted workers. For a list of the principal elements of the domestic legal framework for SEZs and the EEC, see Annex 3.

The report assesses these legal frameworks against Thailand's international legal obligations; in particular, its duty to respect, protect, and fulfil human rights, and to promote the rule of law. It offers recommendations to relevant authorities in order to strengthen the current legal framework in a way that respects human rights, and contributes to a more sustainable business environment.

As Thailand is currently considering and developing several other special development zones such as the Southern Economic Corridor and the Northeast Economic Corridor, this report and its recommendations should also be useful for the decision makers and legislators because any impact on human rights that arises from the operation of the SEZs and EEC will likely arise in the context of future SEZs.[7]

1.1 Structure of the Report

Part One provides an overview and describes the research methodology for this report.

Part Two provides an overview of international standards and good practices.

Part Three provides an overview of legal frameworks governing SEZs and the EEC.

Part Four explores the weaknesses of current law to protect the land rights and rights to adequate housing of individuals and communities.

Part Five examines concerns arising with respect to environmental laws relevant to SEZs and the EEC.

Part Six set out key concerns arising with respect to labour laws in SEZs and the EEC, with a focus on migrant and subcontracted workers.

Part Seven offers recommendations for improving current law and policy.

6 There is evidence that lowering human rights standards can jeopardize a country's ability to attract foreign direct investment. Studies have found that increased respect for human rights increased investment flow directly, also indirectly by fostering a skilled and healthy labour force while, at the same time, reducing transnational risk of reputational damage. See Blanton and R. Blanton, 'What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment', Journal of Politics, Vol., 69, No. 1, 2007; Blanton and R. Blanton. 'Human Rights and Foreign Direct Investment: A Two-Stage Analysis.' Business and Society, Vol. 45, No. 4, 2006. This study examines FDI inflows to all non-OECD countries during 1980–2003. The authors found that countries that respect human rights receive higher FDI inflows.

7 Bangkok Post, 'Somkid: EEC, SEC on track', 25 March 2019, available at: https://www.bangkokpost.com/business/1650540/somkid-eec-sec-on-track

1.2 Special Economic Zones and Investment Frameworks in Southeast Asia

Investment is expanding rapidly within the States of the Association of Southeast Asian Nations (ASEAN). In 2015, ASEAN formed the ASEAN Economic Community (AEC) and established a 'blueprint' for regional economic integration by 2025. The stated objective of the AEC is to "transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital."[8] An integrated AEC would constitute the seventh largest economy in the world, and the third largest in Asia.[9] SEZs are an important part of this picture. Nearly every country in Southeast Asia, including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand and Vietnam, has introduced some form of SEZ, though their legal frameworks vary.

Special economic zones attract investment from around the world, although a large proportion of investment originates in East Asia, particularly China. In some cases, SEZs are established by governments with the explicit objective of attracting, or responding to the demands of, Chinese investors. This was the case in Malaysia, where, as of May 2016, about 38.5% of all investment in the East Coast Economic Region came from Chinese investors.[10] In addition, according to Land Watch Thai, 160 Chinese companies have poured more than USD 1.5 billion into SEZs in Lao PDR. Between 2016 and 2018, China also invested USD 1 billion in Cambodia's Sihanoukville SEZ alone.[11]

The proliferation of SEZs in Southeast Asia has disproportionately affected the most marginalized communities in the region.[12] Land acquisition for SEZs has resulted in prolonged land disputes and even conflict, with communities being displaced by governments, landowners and companies from their lands,[13] including through the use of forced evictions and killings.[14] Affected communities often face retaliatory legal action and intimidation when they seek to defend their rights, and they generally lack legal capacity to access effective remedies.[15] An overarching culture of impunity underpins most human rights violations perpetrated in SEZs.[16]

Many SEZs are established along border provinces. These SEZs are usually set up to promote cross-border trade and investment and increase socio-economic development on both sides of a border. However, as in the case of Thailand, they have been shown to exploit low labour costs of hiring foreign migrant workers without adequately protecting their rights and have been justified as mechanisms to contain foreign migrant workers at the border to prevent their movement towards urban areas. [17] In Myanmar, the ICJ has documented human rights impacts associated with the development of SEZs, including those in border areas, in Dawei, Kyauk Phyu and Thilawa SEZs.[18]

8 AEC, 'ASEAN Economic Community', available at: http://asean.org/asean-economic-community/]
9 Ibid.
10 Geoff de Freitas, 'Malaysia Looks to SEZs to Rebalance National Economic Growth', 19 May 2017, available at: https://beltandroad.hktdc.com/index.php/en/insights/malaysia-looks-sezs-rebalance-national-economic-growth
11 The Economist, 'South-East Asia is sprouting Chinese Enclaves', 30 January 2010, available at: https://www.economist.com/asia/2020/01/30/south-east-asia-is-sprouting-chinese-enclaves
12 ICJ, 'ICJ workshop in Myanmar: strategic litigation and corporate accountability in South East Asia', 13 May 2016, available at: https://www.icj.org/icj-workshop-in-myanmar-strategic-litigation-and-corporate-accountability-in-south-east-asia/
13 See for example, with respect to the Kyauk Phyu SEZ in Myanmar, ICJ, 'Special Economic Zones in Myanmar and the State Duty to Protect Human Rights', 27 February 2017, at 55, available at: https://www.icj.org/myanmar-amend-special-economic-zones-law-to-protect-human-rights-new-icj-report/; With respect to SEZs in the Philippines, Eduardo Climaco Tadem, 'The pitfalls of Special Economic Zones', 10 November 2016, available at: http://www.rappler.com/business/151850-special-economic-zones-pitfalls; With respect to SEZs in Vietnam, Tan Hui Yee, 'Land disputes cloud fast-developing Cambodia, Vietnam and Myanmar', Straits Times, 22 May 2017, available at: http://www.straitstimes.com/asia/se-asia/land-disputes-cloud-fast-developing-region.
14 For example, with respect to SEZs in the Philippines, Jerome Patrick Cruz, Hansley Juliano, and Enrico La Viña, 'A Feast for Crows?: Probing Disaster-Related Land-Grabs in the Philippines', 2015, Conference Paper, available at: https://www.researchgate.net/publication/307174630_A_Feast_for_Crows_Probing_Disaster-Related_Land-Grabs_in_the_Philippines; See also: Thomas Farole and Gokhan Akinci, 'Special Economic Zones: Progress, Emerging Challenges, and Future Directions', the World Bank, 2011, available at: http://documents.worldbank.org/curated/en/752011468203980987/Special-economic-zones-progress-emerging-challenges-and-future-directions
15 ICJ, 'ICJ workshop in Myanmar: strategic litigation and corporate accountability in South East Asia', 13 May 2016, available at: https://www.icj.org/icj-workshop-in-myanmar-strategic-litigation-and-corporate-accountability-in-south-east-asia/
16 Ibid.
17 Kriangsak Teerakowitkajorn, 'Arrested Development Why and how the Thai junta disciplines labour', Kyoto Review of Southeast Asia, Y.A.V. Issue 18, October 2015, available at: https://kyotoreview.org/yav/why-how-thai-junta-disciplines-labour/
18 ICJ, 'Special Economic Zones in Myanmar and the State Duty to Protect Human Rights', 27 February 2017, available at: https://www.icj.org/myanmar-amend-special-economic-zones-law-to-protect-human-rights-new-icj-report/

1.2.1 SEZs and ASEAN Trade Agreements

The use of special economic zones is also increasingly part of region-wide trade and investment strategies and cooperation agreements. ASEAN has signed several agreements to support ASEAN Economic Community realisation, including the ASEAN Trade in Goods Agreement, the ASEAN Framework Agreement on Services, and the ASEAN Comprehensive Investment Agreement. In order to facilitate the above agreements, facilitation measures were concluded, including the ASEAN Agreement on Movement of Natural Persons and Mutual Recognition Arrangements on Services.[19]

In addition, ASEAN has signed several Free Trade Agreements (FTAs) including the ASEAN-Australia-New Zealand FTA, ASEAN-China FTA, ASEAN-India FTA, ASEAN-Korea FTA, and ASEAN-Japan Comprehensive Economic Partnership. The aim of these FTAs is to promote businesses to trade regionally as well as internationally without tariff barriers.[20]

This economic expansion already includes the establishment of SEZs, including as part of the Greater Mekong Sub-region ("GMS") Economic Cooperation Program, launched in 1992; the Ayeyawady-Chaophraya-Mekong Economic Cooperation Strategy ("ACMECS"), introduced in 2003; and China's Belt and Road Initiative ("BRI"), adopted in 2013. The GMS Economic Cooperation Program comprises China, Lao PDR, Myanmar, Thailand, Cambodia, and Vietnam, and includes plans to establish SEZs as an impetus to stimulate economic activity along GMS economic corridors, especially in border areas.[21]

The ACMECS is a cooperation framework amongst Cambodia, Lao PDR, Myanmar, Thailand and Vietnam. The initiative promotes investment in industrial infrastructure through the establishment of SEZs in order to enhance cooperation and development of border provinces, and encourage the establishment of "sister cities" to connect cities across borders.[22] According to the ACMECS Master Plan (2019-2023), sister cities will host industrial estates and SEZs.[23] These sister cities include Trat (Thailand) – Koh Kong (Cambodia), Mukdahan (Thailand) – Savannakhet (Laos) and Mae Sot (Thailand) – Myawaddy (Myanmar).[24]

Promotion of SEZs in ASEAN is also closely linked with China's BRI to connect China to other Asian countries, Africa and Europe via land and maritime networks.[25] SEZs are recognized as an important dimension of international cooperation within the framework of the BRI. Countries in ASEAN are also seeking to boost cooperation in developing SEZs within the BRI framework.[26]

1.3 Special Economic Zones and the Eastern Economic Corridor in Thailand

SEZs in Thailand are modelled in part on similar efforts elsewhere in the region. Prior to the designation in Thailand of SEZs and the EEC, many special economic zones or industrial zones were established in neighbouring countries, including in several border areas. For example, in Cambodia, there are two SEZs situated along the Thai border – Poi Pet O'Neang SEZ in Banteay Meanchey Province and Neang Kok Koh Kong SEZ in Koh Kong Province. Lao PDR has one SEZ close to the Thai border – Savan-Seno SEZ in Savannakhet province. [27] Malaysia has the Bukit Kayu Hitam industrial estate in Kedah state which is not far from Songkhla SEZ of Thailand. [28] Myanmar also has the Myawaddy Industrial Zone that is already

19 Investment in ASEAN, 'About AEC', available at: http://investasean.asean.org/index.php/page/view/asean-economic-community/view/670/newsid/755/about-aec.html
20 ASEAN Briefing, 'ASEAN's Free Trade Agreements: An Overview', 7 December 2017, available at: https://www.aseanbriefing.com/news/aseans-free-trade-agreements-an-overview/
21 ADB, 'The Role Of Special Economic Zones In Improving Effectiveness Of Greater Mekong Subregion Economic Corridors', November 2018, available at: https://www.adb.org/sites/default/files/institutional-document/470781/role-sezs-gms-economic-corridors.pdf
22 ACMECS, 'Plan of Action: 2013-2015', March 2013, available at: http://www.mfa.go.th/acmecs/contents/images/text_editor/files/hilights/Plan.pdf
23 ACMECS, 'Plan of Action: 2019-2023', available at: http://www.mfa.go.th/main/contents/files/information-20180618-142227-835103.pdf
24 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
25 EBRD, 'Belt and Road Initiative (BRI)', available at: https://www.ebrd.com/what-we-do/belt-and-road/overview.html
26 Xin Hua, 'Economic zones expected to play bigger role in global BRI cooperation', 26 April 2019, available at: http://www.xinhuanet.com/english/2019-04/26/c_138009876.htm
27 Export-Import Bank of Thailand, 'Checking the SEZs in Neighbouring Countries…A Channel to Connect to the International Clusters', available at: https://www.exim.go.th/getattachment/747984d3-0b8a-4616-8e58-79bb5af96219/สำรวจเขตเศรษฐกิจพิเศษเพื่อนบ้าน.ช่องทางเชื่อมสู่คลัสเตอร์ระหว่างประเทศ-หนังสือพิมพ์ประชาชาติธุรกิจ-ฉบับวันที่-8-10-กันยายน-2557.aspx (in Thai)
28 Ibid.

operational and close to the Thai SEZ in Tak province.[29]

These SEZs, including the EEC, launched in 2015 and 2016, as part of Thailand's 20-year National Strategy (2018-2037).[30] Notably, that strategy (which goes well-beyond SEZs, extending to nearly all aspects of Thai governance) compels all future government administration to develop SEZs including the EEC for the next 20 years.

SEZs and the EEC in Thailand are governed by special governing bodies, the Office of the National Economic and Social Development Council ("NESDC"), and the Board of Investment ("BOI").[31] The BOI offers attractive and competitive promotional privileges such as tax incentives in SEZ and EEC areas.[32] Most institutions involved with their governance at the national and zone levels are public bodies, including the Industrial Estate Authority of Thailand ("IEAT"), a state enterprise under the Ministry of Industry, that rents the land from the Ministry of Finance and plays an important role in developing SEZs.[33]

1.3.1 Special Economic Zones (SEZs)

Thailand did not have any SEZs until early 2015, when the Thai military government officially announced the establishment of 10 SEZs, covering the area of 90 Sub-districts (*tambon*) in 10 different border provinces of Thailand - a total of 6,220.05 sq. km or 3,887,507.21 *rai* (See Annex 1). These were established in two phases:

(i) Phase 1: 36 sub-districts in Tak, Mukdahan, Sa Kaeo, Trat and Songkhla provinces (commenced in 2015); and

(ii) Phase 2: 54 sub-districts in Nong Khai, Narathiwat, Chiang Rai, Nakhon Phanom and Kanchanaburi provinces (commenced in 2016).34

In these areas, the Thai Government committed to providing necessary basic infrastructure and investment incentives, conducting cross-border management for migrant workers on seasonal work basis, and establishing "one-stop service centers".[35]

29 Thailand Board of Investment, 'A Guide to Investment in the Special Economic Development Zones SEZ', March 2018, available at: https://www.boi.go.th/upload/content/BOI-book%202015_20150818_95385.pdf

30 The Plan was published in the Government Gazette on 13 October 2018, with immediate effect, setting the long-term strategy for national development and is expected to help the country to achieve sustainable development. As stipulated in Strategy 2, Development Guideline 4, in 4.4.2 regarding 'the Establishing and Developing the Special Economic Zones', SEZs and EEC will be Thailand's tools for "regional economic development and contribute to (economic) prosperity of the regions", whereas measures to promote the investment in targeted industries and services "have to consider sustainability". See: 20-year National Strategy, 13 October 2018, at 29-30, available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/082/T_0001.PDF (in Thai)

31 Post Today, 'How good is SEZ and EEC', 16 May 2019, available at: https://www.posttoday.com/economy/news/589308 (in Thai)

32 Incentives include corporate income tax ("CIT") exemption from 3-8 years; additional 50 percent reduction in CIT for five years for certain businesses; double deductions for expenses related to transportation, electricity and power supplies for 10 years; exemption from import duty on raw materials and inputs used in the production of exported products. Other incentives specifically for the investment in the EEC include 5-year tax holidays; additional tax incentives (3 years of 50% reduction of corporate income tax or 2 year tax holidays) for projects which are engaged in human resource development programs; and additional corporate income tax benefits (2 years of 50% reduction of corporate income tax or 1 year of 100% exemption) for certain businesses. See, BOI, 'A Guide to Investment in SEZ', 2018, available at: https://www.boi.go.th/upload/content/BOI-book%202015_20150818_95385.pdf; BOI, 'Investment Promotion Measure in the EEC', available at: https://www.boi.go.th/un/Policy_EEC (in Thai)

33 NESDC, 'Progress : Land Acquisition and Management', March 2020, at 6, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=5195

34 SEZ Policy Committee, 'Announcement No. 1/2558', 19 January 2015, available at: https://data.opendevelopmentmekong.net/th/laws_record/1-2558 (in Thai); and SEZ Policy Committee, 'Announcement No. 2/2558', 24 April 2015, available at: https://bit.ly/3hoAjFE (in Thai)

35 NESDC, 'Thailand's Special Economic Zones', 1 March 2015, available at: http://thaiembdc.org/wp-content/uploads/2015/06/BROCHURE-ENG-19-3-58-เวลา-23.45-มีนาคม-2558.pdf

MAP 1: SEZ Designated Zones[36]

There are 13 target industries, depending on each location's development plan and provincial strategy. These range from agriculture; fisheries; ceramics; garments; and manufacture of leather, furniture, jewellery, medical equipment, vehicle parts; to activities to support tourism.[37] Several companies have already registered to conduct business and requested for investment promotion in the SEZs listed above. According to the NESDC, from 2014 to January 2020, 4,024 companies registered to conduct business in 10 SEZs.[38] From 2015 to January 2020, investors had submitted their requests for investment promotion from the BOI for 68 projects, valued 10,990.23 million baht (approx. USD 361 million). Sixty-seven projects have been approved.

36 Ibid.

37 The full list includes Agro-industry, fishery industry, and related activities; Ceramic products manufacturing; Textile and garment industries, and manufacture of leather products; Manufacture of furniture or parts; Manufacture of gems and jewelry or parts; Manufacture of medical devices or parts; Manufacture of engine and vehicle parts, and manufacture of machinery, equipment, and parts; Electronics and electrical appliances industries; Manufacture of plastic products; Production of Medicine; Logistics; Industrial zones / industrial estates; and Tourism promotion service and activities to support tourism. See: NESDC, 'SEZs', January 2020, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=5195 (in Thai)

38 Ibid.

However, some of the "development areas" are still in the process of land acquisition. SEZ "development areas" are plots of State-owned land in every SEZ area which investors can rent for industrial or service activities.[39] In setting up the development areas, the Government has used mostly state-owned lands, most of which were converted from land which was previously restricted to use as reserved forest areas or agricultural use. Others are privately owned. Several basic infrastructure projects and border checkpoints are expected to be completed between 2020 to 2023 in already designated SEZ areas.[40]

TABLE 1: Total Area of SEZs and their Development Areas[41]

SEZs	Total Area (*rai*)	Development Areas (*rai*)
Tak (14 Sub-districts in 3 districts)	886,875.00 (1,419 sq. km) amounting to 9% of total provincial area	Approx. 2,182 (3.5 sq. km)
Mukdahan (11 Sub-districts in 3 districts)	361,542.50 (578.5 sq. km) amounting to 13% of total provincial area	Approx. 1,081 (1.7 sq. km)
Sakaeo (4 Sub-districts in 2 districts)	207,500.00 (332 sq. km) amounting to 4.6% of total provincial area	Approx. 1,186 (1.9 sq. km)
Trat (3 Sub-districts in Khlong Yai district)	31,375.00 (50.2 sq. km) amounting to 1.7% of total provincial area	Approx. 888 (1.4 sq. km)
Songkhla (4 Sub-districts in Sadao district)	345,187.50 (552.3 sq. km) amounting to 7% of total provincial area	Approx. 1,069 (1.7 sq. km)
Nong Khai (13 Sub-districts in 2 districts)	296,042.00 (473.7 sq. km) amounting to 15% of total provincial area	Approx. 718 (1.1 sq. km)
Narathiwat (5 Sub-districts in 5 districts)	146,981.25 (231.2 sq. km) amounting to 2% of total provincial area	In the process of requesting budget to purchase land in Narathiwat province
Chiang Rai (21 Sub-districts in 3 districts)	952,266.46 (1,523.6 sq. km) amounting to 13% of total provincial area	No Development Area
Nakhon Phanom (13 Sub-districts in 2 districts)	496,743.75 (794.8sq. km) amounting to 14% of total provincial area	Approx. 1,363 (2.2 sq. km)
Kanchanaburi (2 Sub-districts in Mueang district)	162,993.75 (260.8 sq. km) amounting to 1.3% of total provincial area	8,193 (13.1 sq. km)
Total	3,887,507.21 (6,220 sq. km) amounting to 1.2% of total area of Thailand	Approx. 16,680 (26.6 sq. km)

In addition, Thailand is in the initial phase of developing other SEZs, including the: (i) Southern Economic Corridor (SEC); (ii) Northern Economic Corridor (NEC); (iii) Northeastern Economic Corridor (NeEC); and (iv) Central-Western Economic Corridor (CWEC).[42]

1.3.2 Eastern Economic Corridor (EEC)

The EEC is a special economic zone, but was established and operates pursuant to a unique set of laws. These laws are implemented by different governing bodies, focus on different economic opportunities, and are perceived as a different initiative by the Thai public and government. This report therefore describes and includes a separate assessment of the EEC alongside the appraisal of legal frameworks covering other SEZs.

39 Ibid. For example, in Tak SEZ, 2,182-3-64 *rai* (approx. 3.5 sq. km) of 886,875 *rai* (approx. 1,419 sq. km), equal to 2.5% of the total SEZ area, was allocated to "development areas".
40 Ibid.
41 Ibid.
42 Cabinet Resolution regarding the draft Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones dated 9 June 2020, available at: https://bit.ly/2Dcgmmk (in Thai)

MAP 2: EEC Designated Zones[43]

The EEC is an enhancement of the Eastern Seaboard Development Project, one of the largest infrastructure development projects in Thailand.[44] Launched in 2016, the EEC is being developed in the eastern coastal provinces of Rayong, Chonburi, and Chachoengsao, located on the Gulf of Thailand and which spans a total of 13,285 sp. km. It was established with the objective of promoting investment into industries that use "innovation and high technology" – called "Special Targeted Industries" by the Thai government.[45]

As of April 2020, the EEC is not yet fully developed. As of July 2019, according to the IEAT, there were 34 industrial estates operating in the EEC, covering an area of 134,805 *rai* (215.6 sq. km). 21 of the estates are located in so-called EEC Promotional Zones, and 13 estates are located outside the EEC Promotional Zones.[46] Other industrial estate operators have applied to set up 18 more industrial estates, covering 35,788 *rai* (57.2 sq. km) in the EEC.[47]

The EEC's Plan for Land Use, Development of Infrastructure and Public Utilities provides an overview of the development of the EEC and determination of land coverage or land use categories. It came into force on 10 December 2019 following its publication in the Government Gazette.[48] Following this, the Ministry of

43 ASEAN Briefing, 'Thailand's Eastern Economic Corridor – What You Need to Know', 29 June 2018, available at: https://www.aseanbriefing.com/news/2018/06/29/thailand-eastern-economic-corridor.html; BOI, 'Thailand's Eastern Economic Corridor (EEC): Excellent Hub for Aircraft Manufacturing and Maintenance', available at: https://www.boi.go.th/upload/content/Aviation_BOI%20roadshow_Full%20version_5ab4f81a06c70.pdf

44 Eastern Seaboard Development Project ("ESDP") was established in the eastern seaboard-comprised of Chachoengsao, Chonburi and Rayong provinces, after natural gas was discovered in the Gulf of Thailand in 1973. The areas were also in a good environment for industrial development due to their proximity to the capital of Bangkok and the possibility for topographical deep-sea port construction. ESDP was one of the priority issues in Thailand's Fifth National Economic and Social Development Plan (1982-1986), which actively promoted the foundation of the Eastern Seaboard Development Committee with the Prime Minister serving as chairperson. ESDP includes the construction of the Map Ta Phut Industrial Estate, which focuses on the development of heavy chemical industries, the construction of the Laemchabang Industrial Estate, as a location for export-oriented industry, and the establishment of related infrastructure (such as ports, roads, and subways). The idea behind the EEC is to replicate the phenomenal success of ESDP, however, in an upgraded fashion for the digital development era. See: Japan International Cooperation Agency, 'Eastern Seaboard Development Program', available at: https://www.jica.go.jp/english/our_work/evaluation/reports/2000/pdf/2001_0420.pdf .

45 Includes the Next-Generation Automotive Industry; the Intelligent Electronics Industry; the Advance Agriculture and Biotechnology; the Food Processing Industry; High Wealth and Medical Tourism Industries; Digital Industry; the Robotics Industry; Aviation and Logistics Industry; Comprehensive Healthcare Industry; Biofuel and Biochemical Industry; Defence Industry; and Education. See: EEC Office, 'Business Opportunities', available at: https://eng.eeco.or.th/en

46 According to Article 39 of the EEC Act, EEC Promotional Zones are areas designated for use by limited set of targeted industries, or for the purposes of transfer of knowledge and expertise from the zones' operators, educational institutions and research institutions.

47 The Nation, 'Cabinet set to deliberate on EEC land-use, development plans', 9 October 2019, available at: https://www.nationthailand.com/noname/30377209

48 EEC Policy Committee, Announcement, EEC's Plan for Land Use, Development of Infrastructure and Public Utilities, 9 December 2019, available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/301/T_0001.PDF (in Thai)

Interior's Department of Public Works and Town and Country Planning ("DPT") announced that it would begin the revision of associated "town plans", including the general town plan of Chachongsao, Chonburi, and Rayong provinces to bring them in compliance with the EEC Land Use Plan (For more information, see Part 4.3.3).[49] This will be discussed further below.

1.4 Methodology

Information produced in this report was gleaned from interviews, secondary research and formal inquiries with government authorities and affected communities. Legal and background research is based on national and international legal materials, reports, and news in both the Thai and English languages.

During the period from July to September 2019, 70 people were interviewed in Bangkok and Chonburi, Chachong Sao, Rayong, Songkhla and Tak provinces, including:

- 38 affected residents in Chonburi, Chachong Sao, Rayong, Songkhla and Tak provinces (group interviews);
- 11 lawyers and civil society actors;
- 2 academics and researchers focusing on business and human rights; and
- 19 government officials at provincial and central levels, including:
  - the Ministry of Finance's Treasury Department;
  - the Ministry of Interior's Department of Public Works and Town and Country Planning;
  - Tak and Songkhla Provincial Offices;
  - the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning;
  - the Board of Investment; and
  - a Commissioner and former Commissioner of the National Human Rights Commission of Thailand.

Letters requesting an interview were sent to the Office of the Eastern Special Development Zone Policy Committee ("EEC Office") on 2 August 2019 and 12 November 2019. However, the meeting was postponed and never took place. The EEC Office declined our request for an interview.

During the period between March and May 2020, 22 people were interviewed by telephone, including:

- 2 affected residents in Songkhla and Tak provinces;
- 10 lawyers and civil society actors; and
- 10 government officials at provincial and central levels, including:
  - the Ministry of Finance's Treasury Department;
  - the Ministry of Labour's Social Security Office;
  - the Board of Investment;
  - the EEC Office; and
  - Tak District Office's Immigration Department.
  - Immigration Office, Tak province.

Important insights were also drawn from structured discussions and consultations with various stakeholders and representatives of impacted communities that the ICJ held in Bangkok on 13 July 2019. 14 participants attended the discussion, including lawyers, members of civil society organizations and academics from across Thailand (Details provided in Annex 2). [50]

49 ICJ Interview, Senior Officials of the Ministry of Interior's Department of Public Works and Town and Country Planning, Bangkok, August 2019; Prachachart, 'EEC Board Approved the General Town Plan but Might not be able to Enforce it by 9 August, and Insisted that Premium Lands for Cropping are Remained', 5 August 2019, available at: https://www.prachachat.net/economy/news-357325 (in Thai)

50 ICJ, 'Thailand: ICJ hosts discussion on human rights consequences of Special Investment Zones', 15 July 2019, available at: https://www.icj.org/thailand-icj-hosts-discussion-on-human-rights-consequences-of-special-investment-zones/

2. INTERNATIONAL LAWS AND STANDARDS

The creation of SEZs involves the acquisition of land from private actors or diversion of publicly owned land to create industrial zones or provide land for business activities or related infrastructure. Such acquisition or diversion processes can have considerable implications for the rights to adequate housing, food, work, and adequate standard of living of people who live or on occupy these lands. There are also environmental concerns which negatively impact access to food, water and other natural resources, upon which they depend for their livelihoods. Pollution of land, air or water sources can also negatively impact people's health. Surveys and studies undertaken by the International Labour Organization ("ILO") have also highlighted problems with the protection of rights with respect to work, collective bargaining, freedom of association and gender equality within SEZs.[51]

This section sets out international human rights law and standards that will form the basis of the analysis and recommendations presented in the body of the report. As will become clear, the full range of civil, cultural, economic, political and social rights are impacted when the concerns of individuals and communities are not adequately taken into account by law and policymakers. International human rights law and standards, which are binding on Thailand, have much to offer to help better inform policymakers in the business and human rights context. The summary of relevant international law and standards set out below is also meant to be a resource for lawyers, human rights defenders, business and policymakers to assess these frameworks moving forward.

2.1 Thailand's Obligations Under International Law

Thailand is a party to several international human rights treaties, including:

(i) International Covenant on Civil and Political Rights (ICCPR);
(ii) International Covenant on Economic, Social and Cultural Rights (ICESCR);
(iii) Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
(iv) Convention on the Rights of the Child and its three Optional Protocols;
(v) International Convention on the Elimination of All Forms of Racial Discrimination;
(vi) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
(vii) Convention on the Rights of Persons with Disabilities.

In addition to these binding legal treaties, there are numerous international standards of relevance to the human rights impacts of SEZs and business and investment more broadly. These include the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, and the UN Guiding Principles on Business and Human Rights.

51 ILO, 'Promoting Decent Work and Protecting Fundamental Principles and Rights At Work in Export Processing Zones', Report for discussion at the Meetings of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones, Geneva, 21 – 23 November 2017, para 126, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf

TABLE 2: Human Rights Treaties Signed, Acceded /Ratified by Thailand

No.	Treaty	Signed	Date of accession or ratification
1.	Convention on the Elimination of All Forms of Discrimination against Women		09 August 1985
2.	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women		14 June 2000
3.	Convention on the Rights of the Child		27 March 1992
4.	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography		11 January 2006
5.	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict		27 February 2006
6.	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure		25 September 2012
7.	International Covenant on Civil and Political Rights		29 October 1996
8.	International Covenant on Economic, Social and Cultural Rights		5 September 1999
9.	International Convention on the Elimination of All Forms of Racial Discrimination		28 January 2003
10.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		02 Oct 2007
11.	Convention on the Rights of Persons with Disabilities	30 Mar 2007	29 July 2008
12.	Optional Protocol to the Convention on the Rights of Persons with Disabilities		2 September 2016
13.	Convention for the Protection of All Persons from Enforced Disappearance	9 Jan 2012	Not yet ratified

No.	ILO Conventions ratified by Thailand	Date of ratification
1.	**C029** - Forced Labour Convention, 1930 (No. 29)	26 February 1969
2.	**C105** - Abolition of Forced Labour Convention, 1957 (No. 105)	02 December 1969
3.	**C100** - Equal Remuneration Convention, 1951 (No. 100)	08 February 1999
4.	**C182** - Worst Forms of Child Labour Convention, 1999 (No. 182)	16 February 2001
5.	**C138** - Minimum Age Convention, 1973 (No. 138)	11 May 2004
6.	**C111** - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	13 June 2017
7.	**C188** - Work in Fishing Convention, 2007 (No. 188)	30 January 2019

2.2 Obligations to Protect, Respect and Fulfil Human Rights

The International Covenant on Economic, Social and Cultural Rights recognizes that the full realization of economic, social and cultural rights requires progressive realization according to the maximum resources available to each State Party. However, the UN Committee on Economic, Social and Cultural Rights ("CESCR"), the supervisory body for the ICESCR has clarified that States Parties have various immediate obligations related to economic, social and cultural rights which are not dependent on available resources.[52] These include the duty "to take steps" which are deliberate, concrete and targeted; to use "all appropriate means"

52 CESCR, 'General Comment 3, The Nature of States Parties' Obligations (Art. 2.1)', contained in UN Doc. E/1991/23, para 1, available at: https://www.refworld.org/pdfid/4538838e10.pdf.

such as the adoption of legislative measures; to prioritize "minimum core obligations" and the achievement of the minimum essential level of each right; not to discriminate; and to prioritize the most disadvantaged.[53]

The obligation of States to realize human rights has been generally conceptualized as involving three types of duties: to respect, protect and fulfil.[54]

The obligation to respect requires that States (and/or their agents) refrain from interfering with the existing enjoyment of rights. States must, for almost all rights, respect the rights of all persons both within their territories and, within a somewhat narrow scope, extraterritorially.[55] A bedrock principle of human rights law is that rights are not dependent on citizenship, and human rights treaties and other instruments intentionally do not limit rights protection to citizens.[56] State obligations include the adoption of positive measures to prevent interference with such rights by establishing appropriate institutions, and by providing for an effective system of administration of justice to conduct proper investigations and to provide for remedy and reparation for any violation by State agents.[57]

The CESCR has clarified that the "obligation to respect economic, social and cultural rights is violated when States Parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights."[58] It has also stressed that "States Parties should identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist … as required under the principle of the binding character of treaties".[59]

The obligation to protect requires States to take measures that prevent third parties, including business entities, from interfering with the enjoyment of these rights. Violations could arise due to omissions such as the failure to regulate the activities of individuals, groups or corporations to prevent them from interfering with rights or to enforce laws.[60]

Provision of an effective system to administer justice is also critical to enforce regulations and enable access to effective remedies and reparation in cases of rights violations or abuses. In respect of the duty to protect, measures may include: reform or repeal of laws inconsistent with rights obligations; regulation, inspection and monitoring of private party conduct; enforcing administrative and judicial sanctions for violations or abuses by third parties; ensuring those affected by abuses have access to effective remedy; and taking into account international legal obligations related to human rights when entering into agreements with other States, international organizations or companies.

53 Ibid., paras 2 -4, 10, 12.

54 See for e.g., CESCR, 'General Comment No. 12: The Right to Adequate Food (Art. 11)', UN Doc. E/C.12/1999/5, 12 May 1999, available at: https://www.refworld.org/pdfid/4538838c11.pdf; CESCR, 'General Comment 13: The Right to Education (Art. 13)', UN Doc. E/C.12/1999/10, 8 December 1999, at 14-20, available at: https://www.refworld.org/pdfid/4538838c22.pdf; Office of the High Commissioner of Human Rights ("OHCHR"), 'Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies', UN Doc. HR/PUB/06/12, 2005, paras. 47-48, available at: https://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf.

55 Principle 19, Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, available at: https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

56 For instance, each of the ICCPR rights apply to all persons, with the limited exception on voting and the right to take part in public affairs, in Article 25 of the ICCPR. The Human Rights Committee's General Comment 15 on the position of aliens under the Covenant gives full detail, but starts with the statement "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens." See: Human Rights Committee, 'General Comment No. 15: The Position of Aliens Under the Covenant', UN Doc. HRI/GEN.1/Rev.7, 11 April 1986, available at: https://www.refworld.org/pdfid/45139acfc.pdf. Similarly, for ICESCR, CESCR's General Comment No. 20 ensures that "the ground of nationality should not bar access to Covenant rights" and "the Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation" See also: Human Rights Committee, 'General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights', UN Doc. E/C.12/GC/20, 2 July 2009, available at: https://www.refworld.org/docid/4a60961f2.html.

57 ICJ, 'Practitioners' Guide N°8: Adjudicating Economic, Social and Cultural Rights at National Level' ("Practitioners' Guide N°8")), 2015, at 58, available at: https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf

58 CESCR, 'General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities', UN Doc. E/C.12/GC/24, 10 August 2017, para 12, available at: https://www.refworld.org/docid/5beaecba4.html

59 Ibid., para 13.

60 CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)', UN Doc. E/C.12/2000/4, 11 August 2000, para 51, available at: https://www.refworld.org/pdfid/4538838d0.pdf

The CESCR has stated that "States would violate their duty to protect Covenant rights, for instance, by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or … by exempting certain projects or certain geographical areas from the application of laws that protect Covenant rights."[61] This obligation has particular relevance to SEZs given the creation of different legal frameworks which may offer lower levels of protection to economic, social and cultural rights or make certain general protections or remedies inapplicable to people who are negatively impacted by activities linked to SEZs.

The obligation to fulfil requires States to take legislative, administrative, budgetary, judicial and other measures towards the full realization of rights.[62]

The CESCR has stressed that discharging "such duties may require the mobilization of resources by the State, including by enforcing progressive taxation schemes."[63] The ICESCR generally prohibits any measures that are retrogressive, involving a step back in the level of enjoyment of economic, social and cultural rights.[64] The Committee has indicated that retrogressive measures include laws, policies or practices that undermine protections afforded to economic, social and cultural rights and are a breach of State obligations under the ICESCR.[65]

Acknowledging that limitations on resources can place constraints upon States, the CESCR has emphasized the importance of international cooperation to achieve these rights. However, a lack of international assistance should not be interpreted as justification for the State to cease or delay the actions necessary for progress toward the full realization of human rights.

The CESCR has also clarified that States have extraterritorial obligations, including the obligation to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control.[66] In relation to the extraterritorial obligation to fulfil economic, social and cultural rights, the Committee has emphasized the requirement of collective action, through international cooperation, by all States Parties. It has also stated:

> "[t]o combat abusive tax practices by transnational corporations, States should combat transfer pricing practices and deepen international tax cooperation, and explore the possibility to tax multinational groups of companies as single firms, with developed countries imposing a minimum corporate income tax rate during a period of transition. Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights. As such, this practice is inconsistent with the duties of the States Parties to the Covenant."[67]

61 CESCR, 'General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities', UN Doc. E/C.12/GC/24, 10 August 2017, para 18, available at: https://www.refworld.org/docid/5beaecba4.html

62 ICJ Practitioners' Guide N°8 at 57- 62,. See also, inter alia, CESCR, 'General Comment No. 12: The Right to Adequate Food (Art. 11)', UN Doc. E/C.12/1999/5, 12 May 1999, para. 15, available at: https://www.refworld.org/pdfid/4538838c11.pdf; CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)', UN Doc. E/C.12/2000/4, 11 August 2000, para 34-37, available at: https://www.refworld.org/pdfid/4538838d0.pdf; and CESCR, 'General Comment No. 19: The Right to Social Security (Art. 9)', UN Doc. E/C.12/GC/19, 4 February 2008, para. 43, available at: https://www.refworld.org/docid/47b17b5b39c.html

63 CESCR, 'General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities', UN Doc. E/C.12/GC/24, 10 August 2017, para 23, available at: https://www.refworld.org/docid/5beaecba4.html.

64 CESCR, 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2. Para. 1, of the Covenant)', contained in UN Doc. E/1991/23, 14 December 1990, para 2, available at: https://www.refworld.org/pdfid/4538838e10.pdf

65 Ibid.

66 CESCR, 'General Comment No. 24: State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities', UN Doc. E/C.12/GC/24, 10 August 2017, para 26-28, available at: https://www.refworld.org/docid/5beaecba4.html

67 Ibid., para 37.

This too has relevance to Thailand's SEZs and EEC given that investment promotion measures that are provided to businesses by the BOI involve corporate income tax exemption and additional reduction of corporate tax (See Part 1.3.3), which may undermine the ability of Thailand to mobilize resources to realize economic, social and cultural rights.

2.2.1 Rights to an Adequate Standard of Living, Water and Housing

The right to an adequate standard of living is guaranteed in Article 11 of the ICESCR. The right to an adequate standard of living encompasses food, clothing, housing and the "continuous improvement of living conditions."[68]

Enjoyment of these rights can be undermined by depriving people of access to the means to procure food, including access to land.[69] The State would be in violation of its obligations if, for instance, the sale or leasing of land to investors for the development of SEZs or the EEC deprived people of access to resources indispensable for their livelihoods.[70]

The CESCR has recognized the right to water as one of a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living.[71] It is also inextricably related to the rights to the highest attainable standard of health, adequate housing and food.[72] The right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.[73] The CESCR has also highlighted the importance of ensuring sustainable access to water resources for living and agriculture and the State's obligation to ensure that disadvantaged and marginalized farmers have equitable access to water and water management systems.[74]

The right to water is of particular concern in areas affected by Thailand's EEC because these regions, particularly in Chonburi and Rayong provinces, suffer from a lack of available water resources and are impacted by saltwater intrusion during the hot season.[75] As demands upon water resources are sharply increased when an EEC project is implemented, the EEC risks affecting access to water resources for personal use and agriculture, as will be documented in Annex 5.

The right to an adequate standard of living is also derived from the right to adequate housing.[76] Relevant factors for assessing the adequacy of housing include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.[77] The enjoyment of this right is particularly contingent on access to land.[78]

The CESCR has clarified that security of tenure is a crucial element to determine adequacy of housing. The Government of Thailand is under an obligation to take immediate measures aimed at conferring a minimum degree of security of tenure, at the very least, sufficient to provide legal protection for people against forced eviction, harassment and other threats. According to the CESCR:

68 Article 11(1), ICESCR.
69 Olivier De Schutter Special Rapporteur on the right to food, 'Access to Land and the Right to Food', Report of the Special Rapporteur on the right to food presented at the 65th General Assembly of the United Nations, A/65/281, 21 October 2010, available at: http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf
70 Olivier De Schutter Special Rapporteur on the right to food, 'Large-Scale Acquisitions and Leases: a set of core principles and measures to address the human rights challenge', 11 June 2009, para. 15, available at: https://www.oecd.org/site/swacmali2010/44031283.pdf
71 CESCR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', UN Doc. E/C.12/2002/11, 20 January 2003, para. 3, available at: https://www.refworld.org/docid/4538838d11.html
72 Ibid., para 3. See also OHCHR and WHO, 'Factsheet No. 31: The Right to Health', June 2008, available at: https://www.refworld.org/docid/48625a742.html
73 CESCR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', UN Doc. E/C.12/2002/11, 20 January 2003, paras 2, 10-12, available at: https://www.refworld.org/docid/4538838d11.html; Raoul Wallenberg Institute of Human Rights ("RWI"), 'Women's Human Rights and the Right to a Clean, Safe, Healthy, and Sustainable Environment', 2019, available at: https://www.icj.org/wp-content/uploads/2019/12/Women%E2%80%99s-Human-RigHts-and-tHe-RigHt-to-a-Clean-safe-HealtHy-and-sustainable-enviRonment-Reference-Manual-for-Judges-2019.pdf
74 CESCR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', UN Doc. E/C.12/2002/11, 20 January 2003, para. 7, available at: https://www.refworld.org/docid/4538838d11.html
75 Bangkok Post, 'EEC water shortage risk plan to be studied', 7 December 2019, available at: https://www.bangkokpost.com/business/1810294/eec-water-shortage-risk-plan-to-be-studied
76 CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)', UN Doc. E/1992/23, 13 December 1991, para 8(a), available at: https://www.refworld.org/docid/47a7079a1.html
77 Ibid., para. 8.
78 Human Rights Council, 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari', UN Doc. E/CN.4/2005/48, 3 March 2005, available at: https://www.refworld.org/docid/42d66e8a0.html

> "legal security of tenure takes various forms, including, rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States should consequently take immediate measures to confer legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups".[79]

The United Nations Declaration on the rights of peasants and other people working in rural areas, adopted by the UN General Assembly in 2018, recognizes a number of land rights for protected persons, including that "Peasants and other people living in rural areas have the right to land, individually and/or collectively, … including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures."[80]

2.2.2 Indigenous Peoples' Rights

The UN Declaration on the Rights of Indigenous Peoples affirms a range of human rights with respect to "the lands, territories and resources which [Indigenous Peoples] have traditionally owned, occupied or otherwise used or acquired." The Declaration states that they shall not be forcibly removed from these lands or territories,[81] nor shall any relocation take place without their free, prior and informed consent. The Declaration also specifies that relocation should only take place after agreement on just and fair compensation and, where possible, with the option of return.[82] The Declaration provides that indigenous peoples have the right to participate in decision-making in matters which affect their rights, through representatives chosen by them, according to their own procedures, as well as the right to maintain and develop their own decision-making institutions.[83] States should consult and cooperate in good faith with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing measures that may affect them.[84] The Declaration outlines States' duties to recognize and protect indigenous peoples' rights to lands, territories and resources, and to provide effective remedies.[85] Article 32 states:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.[86]

The provisions of the UN Declaration, including those referring to free, prior and informed consent do not create new rights for indigenous peoples but "provide a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples."[87] Various international human rights monitoring bodies have affirmed the obligation of States Parties to seek the free, prior, and informed consent of indigenous peoples including the CESCR,[88] the UN Committee on the Convention on the Elimination of all forms of Racial Discrimination,[89] the UN Human Rights

79 CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)', UN Doc. E/1992/23, 13 December 1991, para 8(a), available at: https://www.refworld.org/docid/47a7079a1.html
80 UN Doc A/Res/73/165, article 17.
81 Article 10, UN Declaration on the Rights of Indigenous Peoples, Resolution 61/295 adopted by the UN General Assembly on 13 September 2007, available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
82 Ibid.
83 Ibid., Article 18.
84 Ibid., Article 19.
85 Ibid., Articles 26(3), 27 and 28.
86 Ibid., Article 32.
87 UN Expert Mechanism on the Rights of Indigenous Peoples, 'Free, prior and informed consent: a human rights-based approach', UN Doc. A/HRC/39/62, 10 August 2018, para 3, available at: https://undocs.org/en/A/HRC/39/62
88 CESCR, 'General comment No. 21: Right of everyone to take part in cultural life', UN Doc. E/C.12/GC/21, 21 December 2009, para 36, available at: https://www.refworld.org/docid/4ed35bae2.html
89 UN Committee on the Elimination of Racial Discrimination, 'General Recommendation XXIII: Indigenous Peoples', UN Doc. A/52/18, annex V, (adopted on 18 August 1997), para 5.

Committee,[90] the African Commission on Human and Peoples' Rights,[91] and the Inter-American Court of Human Rights.[92]

According to the UN Expert Mechanism on Rights of Indigenous Peoples, free, prior and informed consent "constitutes three interrelated and cumulative rights of indigenous peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources. Pursuant to the Declaration, free, prior and informed consent cannot be achieved if one of these components is missing. States' obligations to consult with indigenous peoples should consist of a qualitative process of dialogue and negotiation, with consent as the objective."[93]

The Expert Mechanism has also identified a series of elements that should be in place to ensure the process is "free", "prior" and "informed" including:

- The context or climate of the process should be free from intimidation, coercion, manipulation;
- Indigenous peoples should have the freedom to be represented as traditionally required under their own laws, customs and protocols, with attention to gender and representation of other sectors within indigenous communities;
- Indigenous peoples should have the freedom to guide and direct the process of consultation, they should have the power to determine how to consult and the course of the consultation process;
- Indigenous peoples should be involved as early as possible. Consultation and participation should be undertaken at the conceptualization and design phases and not launched at a late stage in a project's development, when crucial details have already been decided;
- The information made available should be both sufficiently quantitative and qualitative, objective, accurate and clear, presented in a manner and form understandable to indigenous peoples, including translation into a language that they understand;
- The substantive content of the information should include the nature, size, pace, reversibility and scope of any proposed project or activity; the reasons for the project; the areas to be affected; social, environmental and cultural impact assessments; the kind of compensation or benefit-sharing schemes involved; and all the potential harm and impacts that could result from the proposed activity;
- Adequate resources and capacity should be provided for indigenous peoples' representative institutions or decisions-making mechanisms, while not compromising their independence.[94]

The Expert Mechanism has also stressed that "[t]he principle of free, prior and informed consent, arising as it does within a human rights framework, does not contemplate consent as simply a "yes" to a predetermined decision … This means that consent can only be received for proposals when it fulfils the three threshold criteria of having been free, prior and informed, and is then evidenced by an explicit statement of agreement."[95]

2.2.3 Forced Evictions

Thailand is obliged under a range of human rights treaties, including the ICCPR and ICESCR, to refrain from and prevent forced evictions. A forced eviction is defined by the CESCR as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."[96]

90 UN Human Rights Committee, Ángela Poma Poma v. *Peru*, 27/3/2009, Communication No. 1457/2006, UN Doc. CCPR/C/95/D/1457/2006, 27 March 2009, para 7.6, available at: https://juris.ohchr.org/Search/Details/1495

91 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council* v. *Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010, available at: http://www.unhcr.org/refworld/docid/4b8275a12.html

92 *Saramaka People* v. *Suriname*, Judgment of the Inter-American Court of Human Rights, Series C (No. 172), 28 November 2007, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf

93 UN Expert Mechanism on the Rights of Indigenous Peoples, 'Free, prior and informed consent: a human rights-based approach', UN Doc. A/HRC/39/62, 10 August 2018, paras 14 - 15, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/245/94/PDF/G1824594.pdf

94 Ibid., paras 20 – 23.

95 Id., para 24.

96 CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 3, available at: https://www.refworld.org/docid/47a70799d.html

The CESCR has emphasized that evictions may only be carried out as a last resort, once all other feasible alternatives have been explored. It has clarified that evictions can only be carried out when appropriate procedural protections are in place. These include:

(i) an opportunity for genuine consultation with those affected;
(ii) adequate and reasonable notice for affected people prior to the eviction;
(iii) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
(iv) government officials or their representatives to be present during an eviction;
(v) everyone involved in carrying out the eviction to be properly identified;
(vi) evictions not to take place in particularly bad weather or at night unless the affected people consent otherwise;
(vii) provision of legal remedies;
(viii) provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.[97]

The CESCR has further stated that an eviction may be considered to be justified only if it is carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.[98] Moreover, evictions must not ever "render individuals homeless or vulnerable to the violation of other human rights".[99]

The UN Special Rapporteur on Adequate Housing developed the Basic Principles and Guidelines on Development-based Evictions and Displacement ("Basic Principles"), which reflect existing standards and jurisprudence on the issue of forced eviction.[100] They include detailed guidance on steps that should be taken before, during and after evictions in order to ensure compliance with relevant principles of international human rights law. Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they rent, own, occupy or lease the land or housing in question.

The Basic Principles spell this out further: "At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions."[101]

The Basic Principles provide guidance about how consultations should be undertaken with those likely to be affected in urban or rural planning and development processes. They require States to carry out impact assessments which should "be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions." [102]

In addition, the Principles indicate that such assessments must "take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed."[103]

97 Ibid., para 15.
98 Ibid., para 14
99 Ibid., para 16.
100 Human Rights Council, 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari' ("Basic Principles"), UN Doc. A/HRC/4/18, 5 February 2007, Annex 1, available at: https://undocs.org/A/HRC/4/18
101 Basic Principles, para. 52.
102 Basic Principles, paras. 32 – 33.
103 Basic Principles, paras. 32 – 33.

2.2.4 Right to Health

Article 12 of the ICESCR provides "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", including the "improvement of all aspects of environmental and industrial hygiene".

The CESCR recognized in its General Comment No. 14 that the right to health extends to access to safe and potable water and adequate sanitation, adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions. The Committee further clarified that "the improvement of all aspects of environmental and industrial hygiene" includes:

- preventive measures in respect of occupational accidents and diseases;
- ensuring an adequate supply of safe and potable water and basic sanitation; and
- prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions.

The Committee also highlighted that the failure of the State to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries would lead to a violation of its obligation to protect the right to health.[104]

2.2.5 A Safe, Clean, Healthy and Sustainable Environment

The UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr. John H. Knox, has proposed 16 principles that set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. These 16 Framework Principles "do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context."[105]

The Principles[106] highlight the obligations of States to:

- ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Framework principle 1);
- conduct prior assessment of possible environmental impacts of proposed projects and policies (Framework principle 8);
- provide for and facilitate public participation in decision-making related to the environment (Framework principle 9);
- provide access to effective remedies for violations of human rights and domestic laws relating to the environment (Framework principle 10); and
- ensure the effective enforcement of environmental standards against public and private actors (Framework principle 12).

2.2.6 Rights to and at Work

The rights to and at work are protected under articles 6 to 8 of the ICESCR. International standards on labour rights are also contained in numerous other instruments, including conventions and recommendatory instruments of the ILO. Article 22 of the ICCPR protects the right to freedom of association, including the right to form and join trade unions.

Article 6 of the ICESCR obliges States to take steps to ensure the full realization of the right to work in order "to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual." Article 7 provides

104 CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)', UN Doc. E/C.12/2000/4, 11 August 2000, para 51, available at: https://www.refworld.org/pdfid/4538838d0.pdf

105 OHCHR, 'Framework Principles on Human Rights and the Environment', 2018, para. 8, available at: https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx

106 John H. Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to The Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', Human Rights Council, 24 January 2018, A/HRC/37/59, available at: https://undocs.org/A/HRC/37/59

that everyone has the right to just and favourable conditions of work, and sets out a number of specific aspects of work conditions, which States must ensure. Article 8 provides for a number of labour rights, including the right to form and join trade unions and trade union federations, as well as the right to strike. The CESCR has clarified aspects of the right to work in its General Comments relating to article 6 and article 7.[107]

Thailand has ratified 17 ILO Conventions, including 5 of 8 fundamental conventions. These include the:

- Forced Labour Convention, 1930 (No.29);
- Equal Remuneration Convention, 1951 (No.100);
- Abolition of Forced Labour Convention, 1951 (No.100);
- Abolition of Forced Labour Convention, 1957 (No.105);
- Discrimination (Employment and Occupation) Convention, 1958 (No.111);
- Minimum Age Convention, 1973 (No.138) and Worst form of Child labour (No.182); and
- Work in Fishing Convention (No.188).[108]

Civil society organizations have called on the Thai government to ratify ILO Conventions No. 87 and 98,[109] as freedom of association and collective bargaining are among the founding principles of the ILO and guaranteed by the ICESCR. However, the Thai government has not yet ratified these Conventions.[110]

As a member of the ILO, the Government of Thailand is obligated to abide by the principles embodied in the ILO Constitution and Declaration of Philadelphia, including freedom of association and collective bargaining.[111] The ILO Declaration on Fundamental Principles and Rights at Work and its Follow up, adopted in 1998,[112] also declares that all members, including Thailand, have obligations by virtue of their membership of the ILO to respect certain "fundamental rights" even if they have not ratified the Conventions in question. These rights clearly include the freedom of association and collective bargaining.

2.2.7 Access to Information and Public Participation

International human rights law imposes on States an obligation to ensure that affected communities and the public at large have access to information and an opportunity to participate in decision-making that affects them. This is particularly relevant in the context of SEZs with respect to the severe impacts that SEZs can have on the environment, and the special vulnerabilities of indigenous communities.

These rights are guaranteed by a number of international human rights treaties, in particular, Principle 10 of the Rio Declaration on Environment and Development. Principle 10 establishes the key access rights in environmental matters, in clarifying that: "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."[113]

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention") sets out international best practice measures for procedural obligations and public participation in environmental decision-making and calls for transparency and

107 CESCR, 'General comment No. 18: The Right to Work (Art. 6 of the Covenant)', UN Doc.E/C.12/GC/18, 6 February 2006, available at: https://www.refworld.org/docid/4415453b4.html; CESCR, 'General comment No. 23: the Right to Just and Favourable Conditions of Work (Art. 7 of the Covenant)', UN Doc. E/C.12/GC/23, 7 April 2016, available at: https://www.refworld.org/docid/5550a0b14.html

108 The Work in Fishing Convention C188 was ratified on 30 June 2019 and entered into force on 30 January 2020.

109 ILO Conventions C 087, Freedom of Association and Protection of the Right to Organise Convention 1948, and C 098, the Right to Organize and Collective Bargaining Convention 1949.

110 According to the Ministry of Labour, the ratifications were reportedly delayed until legislation had been enacted to give domestic effect to the treaty. See, Wassana Lamdee, 'Ministry of Labour Clarified the Reasons for Not Ratifying ILO Conventions 87 and 98', 31 January 2020, available at: https://bit.ly/3gp3cRk (in Thai)

111 ILO, 'Freedom of association: Digest of Decisions and Principles of the Freedom of Association, Committee of the Governing body of the ILO', 5th rev. ed. 2006, para. 15, available at http://www.ilo.org/ilolex/english/23e2006.pdf

112 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up; Available at: https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm

113 UNGA, 'Rio Declaration on Environment and Development', UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

participation. Thailand is not a party to the Aarhus Convention.[114]

Access to timely and relevant information, and opportunities to engage in meaningful consultations, are required to enable people to be involved in decision-making processes as informed participants where such decisions affect communities and their surrounds.[115] Effective participation in decision-making means that those who are likely to be impacted upon by a decision have a right to be involved and seek to influence that decision. Affected communities and individuals must be included in the analysis of impacts and the development of decision-making processes.[116] This is consistent with the principles recognized by States that all persons are entitled to participate in the decisions of their government,[117] and participation is key to good governance and, thereby, to sustainable development.[118]

For decisions that affect communities and their environment, the established international best practice is to have a process of meaningful consultation in which: the public is provided with access to relevant information in a timely manner (e.g. proposed plans, alternatives, impact assessments, proposed eviction and resettlement plans); and the public has an opportunity to present comments, objections and propose alternatives.[119] It is critical that information is released in a timely manner during the planning process, with reasonable time for public review, and that public hearings are convened that offer opportunities to challenge decisions and/or present alternate proposals.[120] The failure to meet these procedural obligations not only disregards the obligations themselves, but can also result in, among other things, a degraded environment which in turn interferes with people's enjoyment of rights and so can constitute a human rights violation.[121]

UN treaty bodies including the CESCR, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination have recommended that States ensure consultation with affected communities prior to conducting development projects or other land acquisitions or concessions.[122] Opportunities for dialogue and consultation must be extended to the full spectrum of persons affected, including women and vulnerable and marginalised groups, through the adoption of special measures when necessary.[123]

2.2.8 Right to Effective Remedy and Reparation

A general principle of international law is that every right must be accompanied by the availability of effective remedies and reparation in the event of any violation or abuse of rights. Remedies must be prompt and effective, and be simple and accessible to all.[124] States must also take measures to remove or amend laws, policies and regulations that impede access to justice.[125]

114 RWI, 'Women's Human Rights and the Right to a Clean, Safe, Healthy, and Sustainable Environment', 2019, available at: https://www.icj.org/wp-content/uploads/2019/12/Women%E2%80%99s-Human-RigHts-and-tHe-RigHt-to-a-Clean-safe-HealtHy-and-sustainable-enviRonment-Reference-Manual-for-Judges-2019.pdf

115 See, for example: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters [Aarhus Convention], 2161 UNTS 447; 38 ILM 517 (1999), (while Myanmar is not a party, the Aarhus Convention sets out international best practices for procedural obligations and public participation in environmental decision-making and calls for transparency and participation in decision-making).

116 Rio Declaration on Environment and Development, Principle 10; see also Maastricht Principles, Principle 7.

117 See: The Universal Declaration of Human Rights, (UDHR), art. 21 (right to participate in government); CEDAW, art. 7 (right to participate in forumulation of government policy); CRC, art. 13 (right to information); see also UDHR, arts. 19, 20 (rights to information, association, assembly, and freedom of expression, which includes right to receive and impart information); International Covenant on Civil and Political Rights, art. 19 (right to freedom of expression includes right to receive and impart information); ICESCR, art.13 (component of right to education is the right to participate effectively in a free society).

118 1993 Vienna Declaration and Report of the United Nations High Commissioner for Human Rights on the role of the public service as an essential component of good governance in the promotion and protection of human rights, UN Doc A/ HRC/25/27 (2013); The World Bank, Governance: The World Bank's Experience (Washington DC, 1994), p.vii; Robert Zoellick, 'Fragile States: Securing Development', speech to Institute for Strategic Studies, 12 September 2008.

119 See, for example: Aarhus Convention.

120 Basic Principles and Guidelines on Development-based Evictions and Displacement, principle 37.

121 John H Knox, 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' UN Doc. A/HRC/22/43 (2012), para. 42.

122 CESCR, Concluding observations on Cambodia (E/C.12/KHM/CO/1, 2009), Chad (E/C.12/TCD/CO/3, 2009) and Madagascar (E/C.12/MDG/CO/2, 2009); CERD Concluding observations on Argentina (CERD/C/ARG/CO/19-20, 2010), Chile (CERD/C/CHL/CO/15-18, 2009) and Congo (CERD/C/COG/CO/9, 2009); HRC Concluding observations on United Republic of Tanzania (CCPR/C/TZA/CO/4, 2009). See generally UN OHCHR "Land and Human Rights: Standards and Applications," June 2015.

123 Basic Principles and Guidelines on Development-based Evictions and Displacement, principle 39.

124 ICJ, 'Practitioners' Guide N°2: The Right to a Remedy and Reparation for Gross Human Rights Violations', revised edition 2018 ("Practitioners' Guide N°2")available at: https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/

125 ICJ, 'Declaration on Access to Justice and Right to Remedy', adopted on 12 December 2012 in Geneva, para. 2, available at: https://www.icj.org/wp-content/uploads/2013/02/Congress-Declaration-adoptedFINAL.pdf

For a remedy to comply with the requirements of international law, it must:

(i) Be effective, prompt and accessible;
(ii) Be before an independent authority;
(iii) Ensure the victim has access to legal counsel and, if necessary, to free legal assistance;
(iv) Be capable of leading to relief, including reparation and compensation;
(v) Include a prompt, effective and impartial investigation;
(vi) Be expeditious and enforceable by the competent authorities; and
(vii) Include access to judicial remedies, notwithstanding the availability, and in some cases the desirability, of non-judicial remedies.126

The right to effective remedies and reparation also entails the right to due process resulting in an enforceable decision that is not subject to interference from authorities.[127] This includes the right to access an independent authority that can determine with impartiality if a rights violation is occurring or has occurred, has the power to order a thorough and impartial investigation, and has the power to offer a remedy in the form of cessation and reparation.[128] In accordance with the Universal Declaration of Human Rights and international human rights treaties, States are obliged to provide effective remedies to victims of human rights abuses including when third party actors, such as a business enterprise, are responsible for rights violations or abuses.[129]

The UN Basic Principles on Remedy and Reparation reiterate the importance of judicial mechanisms in ensuring access to remedy, and reaffirm the obligations of States to take appropriate steps to ensure the judiciary can effectively address human rights violations and abuses arising in the conduct of business activities by State or non-State actors.[130]

Non-judicial mechanisms – remedial procedures undertaken outside of the judicial process – may also provide effective access to remedy and should be established as a means of complementing the availability of judicial mechanisms to provide for redress. Administrative procedures, national human rights commissions and ombudspersons can play and important complementary role in contexts where the judiciary may lack the resources and/or independence to effectively deliver redress.[131]

The UNGPs make clear that, where persons may be adversely affected by business activities, business enterprises have a responsibility to provide or facilitate access to a remedy.[132] This may include grievance mechanisms. For example, an "Operational Grievance Mechanism" ("OGM") is a non-judicial procedure that a business may employ at site or project level as a means to resolve disputes early on and to provide access to remedy where persons have been adversely affected by business activities. The UNGPs state that businesses should provide for or cooperate in legitimate remediation processes in response to instances in which they have caused or contributed to adverse impacts.[133]

126 Ibid., at 83.
127 Human Rights Committee, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 15, available at: https://www.refworld.org/docid/478b26ae2.html; European Court of Human Rights, 'Case Keen an v the United Kingdom', Judgment of 3 April 2001, Reports 2001-III, para 122; Inter-American Court of Human Rights, 'Advisor y Opinion OC-9/ 87, Judicial Guarantees in States of Emergency', 6 October 1987, Series A No 9, para 24.
128 ICJ, 'Practitioners' Guide N°2: The Right to a Remedy and Reparation for Gross Human Rights Violations', revised edition 2018 ("'Practitioners' Guide N°2") available at: https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/
129 OHCHR, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', General Assembly Resolution 60/147, 16 December 2005, available at: https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx
130 Id., at VIII.
131 ICJ, 'Need and Options for a New International Instrument in the Field of Business and Human Rights', June 2014, available at: https://www.icj.org/wp-content/uploads/2014/08/International-Instrument-BHR-Exec-Sum-elec-version-light.pdf
132 OHCHR, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' ('UNGPs'), 2011, principles 29 – 31, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
133 Ibid., principle 22. For more information about the companies' practices to address complaints relating to their negative impacts on human rights, see: ICJ, 'Companies around the World Must Do More to Ensure Effective Operational Grievance Mechanism Practices and Provide Clear and Transparent Information', 26 November 2019, available at: https://www.icj.org/companies-around-the-world-must-do-more-to-ensure-effective-operational-grievance-mechanism-practices-and-provide-clear-and-transparent-information/

2.3 United Nations Guiding Principles on Business and Human Rights

The UNGPs, the global standard on business and human rights, unanimously endorsed by the UN Human Rights Council in 2011, reiterates the State's duty to "protect" against human rights abuse by business enterprises. This includes adoption of "effective policies, legislation, regulations and adjudication" and requires the State to take appropriate steps to ensure the protection of rights through "judicial, administrative, legislative or other appropriate means". Those affected by human rights abuses should have access to effective judicial or non-judicial grievance mechanisms (Principles 1, 25 to 28).[134]

The UNGPs establish that corporations have a responsibility to "respect" all "internationally recognized human rights"[135], understood "at a minimum" as those expressed in the International Bill of Human Rights consisting of the UDHR, ICCPR and ICESCR, and the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.[136]

Corporations should also respect other instruments of the United Nations, including those that have elaborated on the "rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families".[137] In order to meet their responsibility to respect human rights, UNGPs also require corporations to:

(i) have a policy commitment to meet their responsibility to respect human rights;
(ii) carry out a human rights due diligence process to identify, prevent, mitigate and account for how corporations address their impacts on human rights; and
(iii) enable the remediation of any adverse human rights impacts they cause or to which they contribute.

134 See also: ICJ, 'Corporate Accountability for Abuses of Economic, Social & Cultural Rights in Conflict and Transition', February 2020, available at: https://www.icj.org/wp-content/uploads/2020/02/Universal-ESCR-accountability-guide-Publications-Reports-Thematic-report-2020-ENG.pdf
135 UNGPs, Principle 12.
136 UNGPs, Principles 13-14.
137 Ibid.

Thailand's National Action Plan on Business and Human Rights

On 29 October 2019, the Cabinet approved and adopted the First National Action Plan on Business and Human Rights (2019-2022) ("NAP"), making Thailand the first country in Asia to adopt a stand-alone NAP. [138] The NAP does not have the status of a law, as it is a resolution issued by the executive branch, but is considered a "by-law".[139]

The NAP sets out guidelines for public and private actors to ensure that businesses respect human rights, and that the government fulfils its duty to ensure a remedy in cases of business-related human rights violations. The NAP has identified its four key priority issues as: (1) labour; (2) land, environment and natural resources; (3) human rights defenders; and (4) cross-border investment and multi-national enterprises.[140]

The NAP emphasizes the duties of relevant State agencies to review and amend laws, regulations and orders that are not in compliance with human rights laws and standards and ensure their full implementation. It also requires the government to ensure that mechanisms exist to provide redress and accountability for damage done to affected communities and individuals. It commits the government to ensuring meaningful participation of communities, and to take measures to strengthen the role of corporations in protecting and promoting human rights.

The NAP includes several requirements specifically focused on SEZs and the EEC, including that: (i) the Ministry of Transport, Ministry of Natural Resources and Environment, NESDC, and Ministry of Industry must "consider appropriate measures for land expropriation, including measures for consultation and compensation for those affected by fair expropriation"; (ii) the NESDC, Ministry of Commerce, Ministry of Industry and the DPT must "consider preparing guidelines/measures to regulate SEZs and the EEC, to bring them in compliance with the highest standards of good governance and corporations' standard operating procedures," and (iii) "the UNGPs should be reflected in the establishing and administering of SEZs and the EEC."[141]

The NAP also recommends that Thai ministries, in the development of government development projects, "consider determining measures to certify rural development and land policies with gender-based dimensions in mind. A person should not be forced to be evicted, if there is a need to act, there should be a Free Prior Informed Consent form and the evicted person must also be compensated".[142]

138 First National Action Plan on Business and Human Rights (2019–2022)('NAP'), available at: https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/nap-thailand-en.pdf.

139 Under Thai law, a Cabinet Resolution is considered a "by-law" in accordance with section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) (Decisions of the Supreme Administrative Court No. For.26/2546 and 501/2548). Section 3 provides that "by-law" is "a Royal Decree, a Ministerial Regulation, a Notification of a Ministry, an ordinance of a local administration, a rule, a regulation or any other provision which is of general application and not intended to be addressed to any specific case or person"

140 NAP, at 4.

141 Ibid., at 83-84. The action point was the same as the recommendations made by United Nations Working Group on Business and Human Rights (WGBHR) to Thailand at the end of their visit in 2018. See also: WGBHR, 'Statement at the End of Visit to Thailand by the United Nations Working Group on Business and Human Rights', 4 April 2018, available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E

142 NAP, at 92.

3. LEGAL FRAMEWORKS GOVERNING SEZs AND THE EEC

This section will provide an overview of the legal frameworks governing SEZs and the EEC and assess them in reference to Thailand's obligations to protect human rights and promote the rule of law. It begins by describing some of the general characteristics of Thai law and governance, including the continuing legacy of military rule. It then situates some of the particular legal and regulatory instruments most relevant to SEZs and the EEC within that context – including a basic introduction to the governance architecture for the EEC and SEZs more broadly. This will form the basis for legal analysis of the consistency of these frameworks with Thailand's international obligations, in Parts 4 to 6 of the report.

3.1 Thailand's Post-Coup Legal and Governance System

Thailand is a civil law country with a strong common law influence. The Thai legal system is a statutory law system mostly based on written law passed by the legislature. Primary sources of law include the Constitution and other legislative instruments such as codes, acts and decrees.

From 20 May 2014, the military-led National Council for Peace and Order ("NCPO") replaced civilian power with military rule by staging a coup on 22 May 2014, dissolving the civilian government and suspending all but one chapter of the 2007 Constitution. On 22 July 2014, the NCPO promulgated an interim Constitution that gave the military Head of the NCPO sweeping and unchecked powers to issue orders.[143]

The current SEZ and EEC projects are flagship economic schemes announced by the military government after the 2014 coup. The legal frameworks that govern the establishment and operation of SEZs and the EEC are mainly based on this post-coup legal framework, which includes a patchwork of more than 10 orders of the Head of the NCPO ("HNCPO") and the NCPO, Regulations of the Office of the Prime Minister, and laws that were passed by the NCPO-appointed National Legislative Assembly. These orders and laws must be read in connection with other national laws, in particular, specific land, environmental and labour laws, which will be examined more closely in Parts 4 to 6 of the report.

The orders which facilitated the establishment of SEZs included: NCPO Order No. 72/2557; HNCPO Order No. 17/2558; HNCPO Order No. 3/2559; HNCPO Order No. 4/2559; and HNCPO Order No. 9/2559. These orders, as will be discussed and examined in greater detail in Section 3.2.1 below, contain some key provisions over-riding existing law – such as offering exemptions to the normal town planning process and related safeguards, and allowing the bypassing of the usual checks and balances to prevent negative impacts on the environment, health and on the rights of community groups living in affected land areas. Some of these HNCPO orders remain in force, while others are incorporated as provisions in legislation adopted since then, including a number of regulations of the Office of the Prime Minister.

There were three HNCPO orders pursuant to which the EEC was established, including HNCPO Order No. 2/2560; HNCPO Order No. 28/2560 and HNCPO Order No. 47/2560. These orders, as will be discussed in greater detail in Section 3.2.1 below, include the order over-riding the town planning process required under Thai law. All of these orders were repealed by and incorporated as sections in the EEC Act.

3.1.1 Concerns Regarding the Legality of NCPO and HNCPO Orders

Article 44 of the Interim Constitution gave the Head of the NCPO, General Prayuth Chan-o-Cha, unfettered power to pronounce any order deemed necessary for "the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs". According to Article 47, orders and announcements of the NCPO and its Head (HNCPO) are deemed to be "legal, constitutional and conclusive", and are thus not subject to judicial review.

143 ICJ, 'Thailand: interim Constitution seems to ignore key pillars of rule of law', 24 July 2014, available at: http://www.icj.org/thailand-interim-constitution-seems-to-ignore-key-pillars-of-rule-of-law/

Some HNCPO and NCPO orders directly restrict rights, while others concern bureaucratic processes.[144] While some of these orders remain in force, others were adopted into new legislation including provisions that infringe on human rights and protections for the environment. Some orders were repealed before the national elections in March 2019.

The constitutionality of all HNCPO and NCPO orders was reaffirmed by Article 279 of the 2017 Constitution "irrespective of their constitutional, legislative, executive or judicial force" and can only be repealed or amended by the passage of an Act. While the 2017 Constitution was approved through a national referendum, the referendum has been criticized by Thai civil society groups and independent observers[145] for having been conducted in a non-transparent and undemocratic manner. Activists who opposed the charter were prosecuted for campaigning against it.[146]

Sweeping, unchecked powers to issue orders was given to the NCPO and its Head by the Interim Constitution, inconsistent with the fundamental principles of the rule of law and human rights, including equality, accountability, and predictability of the law.[147]

The exercise of such unilateral power by the Head of NCPO and NCPO has also been used to exclude affected individuals and communities from taking part in decision-making processes. Affected communities are unable to have actions taken pursuant to these orders judicially reviewed, and are forced to bring cases before the courts using other strategic causes of action. For example, individuals in Mae Sot province have filed legal claims challenging the legitimacy of the issuance of land title deeds by the Ministry of Finance as there can be no judicial review of the HNCPO orders which allow for the designation of lands as a SEZ development area and govern land acquisition processes.[148]

3.1.2 Lack of consultation and transparency by the NCPO-Appointed Assembly

The NCPO also appointed members of the National Legislative Assembly ("NLA") – the legislative branch of the government. After the 2014 coup until 18 February 2019, according to Thai non-governmental organization Internet Law Reform Dialogue ("iLaw"), the NLA passed at least 412 legislative bills.[149] These included the law that governs the EEC's operation – the EEC Act – and amendments of several laws governing environmental protection, including the Enhancement and Conservation of the National Environmental Quality Act, the Factory Act, and the Hazardous Substances Act.

Affected populations had no meaningful opportunity to participate in the development of these laws. Although a public hearing with stakeholders is required before the passage of an Act pursuant to Article 77 of the 2017 Constitution, affected populations were not meaningfully consulted with respect to special investment regimes. In enacting the EEC Act, apart from a few hearings conducted with State authorities, no public

144 ICJ and TLHR, 'Joint submission to the UN Human Rights Committee by the ICJ and Thai Lawyers for Human Rights', February 2017, available at: https://www.icj.org/joint-submission-to-the-un-human-rights-committee-by-the-icj-and-thai-lawyers-for-human-rights/

145 Asian Network for Free Election (Anfrel), 'Thailand Constitutional Referendum 2016: A Brief Assessment Report', November 2016, available at: https://anfrel.org/wp-content/uploads/2019/05/Thailand-Referendum-2016-Report-FIN-2.pdf. Anfrel noted the modest turnout of the Constitution Referendum which was perhaps an indication that there was unwillingness on the part of many in Thailand to come out and vote for the new Constitution, especially given the fact that the build-up to the process was marked by a restricted political environment. It further noted the military government's control of the political environment through cracking down on expression and opinions relating to the constitution and arbitrary arrests of people who expressed dissent against it. The government's insistence that people should campaign only for a "yes/acceptance" for the constitution and explicit warnings against those that dared to speak out against it vitiated the atmosphere from the very beginning.

146 ICJ and TLHR, 'Joint submission to the UN Human Rights Committee by the ICJ and Thai Lawyers for Human Rights', February 2017 ('ICJ and TLHR Joint submission to UNHRC 2017'), para 65, available at: https://www.icj.org/joint-submission-to-the-un-human-rights-committee-by-the-icj-and-thai-lawyers-for-human-rights/. During the run-up to the Constitutional Referendum in August 2016, HNCPO Order No. 3/2558 - banning political gatherings of 5 or more people - and the Organic Act on Referendum for the Draft Constitution B.E.2559 (2016) were used to suppress criticism, debate, campaigns and other expression related to the referendum process. Specifically, Article 61 criminalizes a number of acts including the vaguely worded "instigation of trouble in order to cause disorder in the voting" which includes "any person who disseminates texts, pictures, sound in newspaper, radio, television, electronic media or any other channels that are distorted from the fact or having violent, aggressive, rude, inciting, or threatening characteristics aiming to induce eligible voters refrain from voting or vote in a certain way or abstain from voting." The maximum penalty for violating article 61 is ten years' imprisonment and a fine amounting to a maximum of 200,000 Thai baht. At least 207 persons who had been engaged in campaigning prior to and during the referendum were prosecuted with the offence of violating the ban on political gathering under these laws.

147 ICJ and TLHR Joint submission to UNHRC 2017, paras 4-17.

148 Prachatai, 'Mae Sot Villagers Take Junta to Court to Challenge SEZ', 2 November 2016, available at: https://prachatai.com/english/node/6686. The parties could reach a settlement outside the courtroom. After several times of negotiation, the affected communities received the remedies that they asked for and withdrew the case from the Court.

149 Khaosod, 'Stats Reveled After 5 Years of the NLA Voted to Pass More Than 400 Legislations', 21 February 2019, available at: https://www.khaosod.co.th/politics/news_2234486 (in Thai)

hearing was conducted in affected areas. Affected individuals were expected to register their concerns about the draft EEC law through the website of the IEAT (at http://www.ieat.go.th)[150] between 20 May and 5 June 2017, leaving local residents with limited time and access to a channel to voice their concerns. According to the EEC Office, only four people provided recommendations through this online channel.[151]

The EEC Office nonetheless insisted that the EEC law was drafted in a manner consistent with constitutional requirements, and that public hearings were conducted with "all stakeholders through all possible channels."[152]

3.1.3 Absence of Reference to Human Rights in the 20-year National Strategy

The entire legal framework is also subject to the military government's 20-year National Strategy, which was imposed upon all current and future administrations without any consultative or democratic process evident in its promulgation.

On 13 October 2018, Thailand's 20-year National Strategy (2018-2037), developed by the government-appointed National Strategy Drafting Committee, was published in the Royal Gazette. SEZ and EEC projects form part of Thailand's 20-year National Strategy "as a tool to enable economic development, distribute prosperity to the regions, to increase the income and quality of life of local populations, and to ameliorate security problems at border areas."[153] Future administrations that fail to comply with this National Strategy risk investigation by the National Anti-Corruption Commission ("NACC"), and representatives risk suspension from public office, or expulsion, for non-compliance.[154]

While noting that investment promotion measures must be "sustainable"[155], the 20-year National Strategy fails to identify potential human rights risks or risk management strategies relating to the implementation of EEC and SEZ projects, and focuses instead on the benefits and privileges that will be granted to the investors and designated regions.[156]

3.2 SEZ and EEC Legal Frameworks

The legal frameworks that were drafted and passed to establish and regulate SEZs and the EEC consist of certain HNCPO and NCPO Orders, the EEC Act and the draft SEZ Act. This section provides a brief summary of these laws. Human rights concerns arising from such frameworks in SEZs and the EEC will be examined in greater detail in Parts 4 to5.

3.2.1 HNCPO and NCPO Orders

The relevant HNCPO and NCPO orders that were drafted to establish and regulate SEZs and the EEC are detailed in Tables 3 and 4 below. The legal implications of these orders will be discussed and examined in greater detail in Parts 4 to 5 of this report.

To summarize briefly, these NCPO and HNCPO orders have modified the framework for land acquisition for SEZs, bypassing general protections that otherwise exist in domestic law. They have also converted land, which was previously restricted in usage as reserved forest areas or land designated for agricultural use, to *Ratchaphatsadu* (Treasury-owned) lands and transferred this land to SEZs. This has resulted in evictions

150 EEC Office, 'Summary of the Findings of the Public Hearing on the Draft EEC Act B.E….' ('EEC Office Summary'), available at: https://www.eeco.or.th/sites/default/files/5_0.pdf (in Thai)

151 EEC Office Summary, at 8; ICJ Interview, NHRCT's Commissioner, Bangkok, August 2019. See also: Matichon News, 'NHRCT Proposed Recommendations for Amending the EEC Law after they Found that the Law Violated Human Rights and Inconsistent with the Constitution', 12 December 2017, available at: https://www.matichon.co.th/politics/news_763707 (in Thai). Hearings relating to the Environmental Quality Act, were equally problematic, see: iLaw, 'When Public Hearing is Just a Ceremony of the State', 18 July 2017, available at: https://www.ilaw.or.th/node/4569 (in Thai)

152 EEC Office, 'A Note to Clarify the News of Krungthepthurakit Newspaper, entitled Cabinet-NLA to amend the EEC Law as it Violated Rights', available at: https://bit.ly/2zbOfC2 (in Thai)]

153 20-year National Strategy, 13 October 2018 ('20-year National Strategy 2018') at 29-30, available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/082/T_0001.PDF (in Thai)

154 Section 25, Act on Developing the National Strategy B.E. 2560 (2017), available at: http://www.ldd.go.th/www/files/81731.pdf (in Thai). See also: Bangkok Post, '20-year National Strategy comes into effect', 13 October 2018, available at: https://www.bangkokpost.com/thailand/general/1557462/20-year-national-strategy-comes-into-effect

155 20-year National Strategy 2018, at 29-30.

156 This was raised by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

from, and/or loss of access to land for people who own, live on, occupy or use these areas. Section 4 will examine the legality of these modifications and conduct, in particular whether they breached the prohibition on forced evictions or resulted in other violations of the rights to adequate housing, food and other human rights.

The orders have also modified critical processes around town planning to reduce requirements to undertake consultations with affected people before developing plans for land use, infrastructure and public utilities, or for certain business and industrial activities. They have also weakened requirements to undertake environmental impact or health impact assessments. The legality of these regulatory changes is examined in greater detail in Parts 4 to 5, including whether they violate the Thai government's obligations in relation to the rights to adequate housing, health, food, water, and effective remedies.

TABLE 3: NCPO and HNCPO Orders Affecting the Establishment of SEZs

Order(s)	Description	Status
NCPO Order No. 72/2557[157]	In June 2014, the order established the Special Economic Zones Policy Committee ('SEZ Policy Committee').	Repealed by HNCPO Order No. 9/2562. SEZ Policy Committee was replaced by a new Committee pursuant to the Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones B.E. 2558 (2015).
HNCPO Order No. 17/2558[158]	The order converted several types of lands – including "National Reserved Forest", "Permanent Forest Areas", "Public Domains of State for the Common Use of the People", and "Agriculture Land Reform Areas", to "Ratchaphatsadu Land" – State-owned lands under the ownership of the Ministry of Finance - for developing SEZs.	Still in Force
HNCPO Order No. 3/2559[159]	The order overrides the usual town planning process required under Thai law in SEZs. It exempts the enforcement of several town planning and building control-related laws in SEZ areas, and authorizes officials to exercise their power under the Building Control Act to temporarily change the use of building designation through an Interior Ministerial Announcement.[160]	Still in Force
HNCPO Order No. 4/2559[161]	The order exempts the enforcement of ministerial regulations regarding town planning under the law governing town planning for certain types of businesses in the energy and industrial sectors.	Currently invalid. The order was in force from 20 January 2016 to 19 January 2017.
HNCPO Order No. 9/2559[162]	The order allowed for the bidding of projects related to "transport projects, water management projects, disaster prevention projects, hospital and housing" before an assessment of environmental or health impact has been carried out.	The order was repealed, and incorporated as a section in the Promotion and Conservation of National Environmental Quality Act (No. 2) B.E. 2561 (2018).

157 Regarding 'The Policy Committee on Special Economic Zones ("SEZ Policy Committee"), dated 27 June 2014, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-order72-2557.pdf (in Thai).

158 Regarding 'Land Acquisition for the Use in the SEZs', dated 15 May 2015, available at: http://www1.mof.go.th/home/projectM/accmaster/doc4/04/03/02.pdf (in Thai).

159 Regarding 'Exemption from Enforcing the City Plan and Building Control Act in the SEZs', dated 20 January 2016, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order3-2559.pdf (in Thai).

160 Section 13 of the Building Control Act provides that the Minister, with the advice of the Town Planning Department or the local competent official, shall have the power to announce by publication in the Government Gazette the temporary prohibition of construction, modification, demolition, move, use, or change the use of building in such area. Such an announcement normally expires within one year from the date it comes into force. However, section 2 of HNCPO Order No. 3/2559 extends the expiration period of such an announcement from one year to until the general town plan is approved in accordance with the usual Town Planning Act.

161 Regarding 'Exemption from Enforcing of Ministerial Regulations regarding the Imposition of Town Plan for Certain Business Types', dated 20 January 2016, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order4-2559.pdf (in Thai).

162 Regarding 'Amendment of the Environment Promotion and Conservation Act', dated 8 March 2016, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order9-2559.pdf (in Thai).

TABLE 4: NCPO and HNCPO Orders Affecting the Establishment of the EEC

Order(s)	Description	Status
HNCPO Order No. 2/2560[163]	The order set up several Committees, namely (i) the EEC Policy Committee; (ii) the Management Committee for Development of the EEC; and (iii) the EEC Office.	The order was repealed, and incorporated in the EEC Act. [164]
HNCPO Order No. 28/2560[165]	The order established an ad hoc committee of experts appointed by the National Environment Board to provide advice on or approve environmental impact assessment reports within one year from the date of receipt of the correct and complete report.	The order was repealed, and incorporated as sections in the EEC Act.
HNCPO Order No. 47/2560[166]	The order overrides the town planning process required under Thai law. It requires the Management Committee for Development of the EEC to formulate and propose a plan for the development of the EEC, land use, infrastructure and public utilities to the EEC Policy Committee for their approval. The order requires the Ministry of Interior's Department of Public Works and Town and Country Planning to prepare new town plans, and cancels town plans previously approved under the Town Planning Act.	The order was repealed, and incorporated as sections in the EEC Act.

3.2.2 The EEC Act

In 2018, the NCPO legal framework regulating the EEC was superseded by the passage of the Eastern Special Development Zone Act B.E. 2561 (2018) ("EEC Act"). [167] The Act came into force on 15 May 2018. It consists of 75 sections, covering the governing authorities, the development of the EEC and its promotional zones, the EEC Fund and penalties for non-compliance. The Act also incorporated provisions from repealed HNCPO legal frameworks, including HNCPO Order No. 2/2560; HNCPO Order No. 28/2560, and HNCPO Order No. 47/2560.

As earlier mentioned, no public hearing was conducted prior to the passage of the EEC Act in affected areas, but for the online mechanism to register concerns. Dissatisfaction with the lack of consultation and public hearings in affected areas was consistently raised by civil society groups, the National Human Rights Commission of Thailand ("NHRCT"), and members of the affected communities in interviews conducted by the ICJ.[168]

163 Regarding 'The Development of the Eastern Economic Corridor', dated 17 January 2017, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order2-2560.pdf (in Thai).

164 Section 71, EEC Act. After the EEC Act was entered into force, the power of the EEC Policy Committee and the EEC Office, previously functioning under orders of the HNCPO was transferred to the "Eastern Special Development Zone Policy Committee" ("EEC Policy Committee") and the "EEC Office" under the EEC Act. The Management Committee for Development of the EEC was dissolved. However, any act approved, consented, permitted, licensed, or undertaken by the mechanisms that was set up by the NCPO, including those related to the enforcement of law in the promotional zones, continue to be in full force and effect unless cancelled or specified otherwise by the newly set up mechanisms under the EEC Act.

165 Regarding 'Measures to Enhance Efficiency in Development of the EEC', dated 26 May 2017, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order28-2560.pdf (in Thai)

166 Regarding 'Land Use Regulation in the EEC', dated 25 October 2017, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order47-2560.pdf (in Thai)

167 Available at: https://www.eeco.or.th/sites/default/files/EEC%20Act%20English%20Ver%28unofficial%29.pdf

168 This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok; ICJ Interview, Commissioner of the NHRCT, August 2019.

Notably, the obligation to adhere to human rights by the State and corporations are explicitly guaranteed under the EEC Act. The EEC Act recognizes the three pillars of the UNGPs – the "protect, respect and remedy framework" for affected persons, as well as the "principle of promotion and protection of human rights" in the process of preparing policies and plan for land use, infrastructure and public utility development.[169]

It further requires State authorities to take into consideration "the relationship with communities, health and well-being of the people, environment, and ecological system under the principle of sustainable development by means of creating true awareness in the local community", and "conduct a public hearing and consultation with stakeholders, the public, and relevant communities in support of the consideration" when itemizing and completing details of land use, infrastructure and public utilities development plans.[170] The Act also establishes "the Eastern Special Development Zone Fund" ("EEC Fund") with the objective of "promoting the development of the areas, communities, and people residing in or affected by the development of the EEC".[171]

However, as earlier noted with regard to the HNCPO and NCPO orders, the EEC Act overrides enforcement of a number of laws including the Town Planning Act and the Enhancement and Conservation of National Environmental Quality Act.[172] While the law recognizes that local communities should be taken into consideration, some affected communities and civil society groups asserted that this was not implemented in practice (see below, Parts 4 to 5). The Act also grants the EEC Policy Committee and the Secretary-General of the EEC broad powers to register operations in the EEC and to amend or recommend amendment of the criteria specified by several applicable laws.[173]

3.2.3 The Draft SEZ Act

On 13 June 2016, the draft Special Economic Zone Act ("draft SEZ Act") was made available to the public.[174] In August 2019, the Cabinet considered the draft SEZ Act and forwarded it to the Council of the State for its review.[175] Since then, there has been no further progress on the draft Act.

The draft Act, consisting of 19 sections, covers the composition and scope of power of the SEZs' governing body, the establishment of "one-stop service centres", and benefits and privileges to be offered to investors. Unlike the EEC Act, the draft law does not contain any requirements for public consultation nor any provisions protecting the rights of affected individuals or communities.

In the absence of the SEZ Act, a number of regulations of the Office of the Prime Minister have been issued to regulate the SEZs, including the Regulation regarding the Development of the Special Economic Zones B.E. 2558 (2015). There is also a draft Regulation regarding the Development of the Special Economic Zones B.E. 2563 (2020), which was recently adopted by the Cabinet on 9 June 2020 and is yet to be published on the government gazette. Those Regulations, however, only cover the composition and scope of power of the SEZs' governing body.

3.3 Governing Bodies of SEZs and the EEC

The institutional architecture for the governance of SEZs in Thailand involves a number of bodies and a diverse range of actors (government, SEZ authorities, zone developers, operators and users). Zone management and oversight involves government at the local and national levels, investors, as well as other stakeholders, such as financiers and industry associations.[176]

This section looks at the broadly defined powers granted to three bodies: the SEZ Policy Committee, the EEC Policy Committee, and the Secretary-General of the EEC Office - management and oversight mechanisms of SEZs and the EEC.

169 Section 29, EEC Act
170 Section 30, EEC Act.
171 Section 61-64, EEC Act.
172 Section 8 and 32, EEC Act.
173 Sections 37 and 43, EEC Act.
174 Available at: https://data.opendevelopmentmekong.net/th/laws_record/key-summary-on-draft-special-economic-zones-act-be (in Thai).
175 Ibid.
176 For more information on different governance models for SEZs, see: UNCTAD, 'World Investment Report 2019: Special Economic Zones', UN, 2019, at 131, available at: https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf

3.3.1 Lack of Inclusiveness of the EEC and SEZ Policy Committees

Scope of Power

Pursuant to NCPO Order No. 72/2557, the Policy Committee on Special Economic Zones ("SEZ Policy Committee") was established in June 2014 by the NCPO. It has the power to "approve and propose the draft criteria and procedures in establishing and operating the SEZ…to the NCPO for their approval" or "determine the guidelines for other agencies to implement in developing the SEZs", and "to supervise, monitor, and evaluate the projects' implementation in accordance with the master plans".[177] NCPO Order No. 72/2557 was repealed by HNCPO Order No. 9/2562 in July 2019 after the NCPO was dissolved after the general election in March 2019.

However, in December 2015, the SEZ Policy Committee and its Sub-Committee were replaced by a SEZ Policy Committee pursuant to the Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones B.E. 2558 (2015). On 9 June 2020, the Cabinet also adopted draft Regulation regarding the Development of the Special Economic Zones B.E. 2563 (2020). After its publication in the government gazette, a new SEZ Policy Committee will be established pursuant to this Regulation. The powers of the new committee will be very similar to its predecessors, including the power to "determine policies, measures, and procedures for operating and governing the special economic zones", "approve and announce the designated special economic zones, targeted industries and the benefit of investors in each SEZ", and "to supervise and monitor the projects' implementation of several agencies in accordance with the development plans".[178]

Under the 2015 and 2020 Regulations, the secretary of the SEZ Policy Committee[179] are vested with the power and duty to "study and conduct research to support the development of special economic zones" and, most importantly, "promote and support local administrative offices, private sector actors, and local population, to involve in the developing of the special economic zones in accordance with the development plan".[180] The fact that the Regulations establishing the SEZ Policy Committee requires the secretary to promote the inclusion of the local administrative offices, private sector actors, and local population in the development on the SEZs is a welcome development.

Similarly, pursuant to HNCPO Order No. 2/2560 (later incorporated within Section 11 of the EEC Act), the EEC Policy Committee has the authority to "formulate policies for the development of the EEC", "designate areas as the EEC", "approve the overall plan for the development of the EEC", "monitor and evaluate EEC developments", and "resolve any issues and obstacles arising in the course of implementation" of EEC policies.[181]

Under the SEZ draft Act, the EEC Act, and other relevant regulations, these committees should be required to take into consideration human rights and environmental concerns of affected individuals and communities. This is essential to comply with Thailand's domestic laws and its international obligations, including under the UNGPs.

In addition, the EEC Policy Committee has the power to "approve, permit, grant the right or concession" to anyone who undertakes any act that directly benefits the development of the EEC under several laws as specified in section 37 of the EEC Act.[182] It can also amend or revise the criteria, procedures, or conditions to "increase the efficiency" in approving, permitting, and granting the aforementioned right or concession.[183]

177 SEZ Policy Committee Order No. 1/2558, available at: https://enlawfoundation.org/newweb/wp-content/uploads/SECBAnnoucement1-2558_SEZphase1.pdf (in Thai) and SEZ Policy Committee Order No. 2/2558, available at: https://enlawfoundation.org/newweb/wp-content/uploads/SECBAnnoucement2-2558_SEZphase2.pdf (in Thai)

178 Section 9, Draft Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones 2020.

179 According to the 2015 Regulation, Office of the Secretary-General of the Ministry of Industry is the secretary of the SEZ Policy Committee. According to the draft 2020 Regulation, the Office of the National Economic and Social Development Council (NESDC) is the secretary of the SEZ Policy Committee.

180 Section 12, Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones B.E. 2558 (2015); and Section 10, Draft Regulation of the Office of the Prime Minister regarding the Development of the Special Economic Zones 2020

181 Section 11, EEC Act.

182 Including the law governing navigation in Thai waters; the law governing royal irrigation; the law governing the energy industry; the law governing concession highways; and the law governing nuclear energy for peace.

183 Section 37, EEC Act. Based on section 37, the EEC Policy Committee shall also notify its opinion to the party who has the duty and is authorized under the relevant law. Additionally, the Policy Committee shall publish the criteria, procedures, or conditions in the

This gives the EEC Policy Committee sweeping, unfettered oversight executive power, without sufficient emphasis on ensuring it assesses and prevents negative human rights impacts.

The powers of the Secretary-General of the EEC Office are similarly unfettered. He or she is appointed by and reports to the EEC Policy Committee,[184] has the power to "issue regulations in the interests of compliance with the EEC Act",[185] and has the authority to "grant approval, permission, license, or consent or has the authority to accept registration or declaration" under section 43 of the EEC Act.[186] The Secretary-General also has the power to propose amendments to the EEC Policy Committee, of which he or she is also a member and the secretary,[187] regarding "the criteria, procedures, and conditions" including granting approvals, permissions, licenses, consent, registration, or declarations if they will "increase efficiency".[188] There are no specific grounds for proposing amendments aimed at ensuring adequate human rights safeguards or minimising and managing negative impacts on affected individuals and communities.

Such provisions of the EEC Act should be amended to build in safeguards which require that any amendments or approvals made by the EEC Policy Committee and the proposal given by the Secretary-General of the EEC do not negatively impact and ensure adequate protection for the human rights of the affected communities and individuals. Such safeguards are essential to ensure that actions taken by the EEC Policy Committee and the Secretary-General and the policies adopted for EEC areas comply with Thailand's domestic laws and are consistent with its international human rights obligations. In addition, if members of the SEZ Policy Committee or their representatives at provincial level are given the same extensive powers to amend the criteria, procedures, and conditions of operations as the EEC Policy Committee, adequate safeguards must be stipulated in the law to prevent their abuse.

Notably, under Thai law, an administrative agency or a State official, including the SEZ Policy Committee, EEC Policy Committee, EEC Office and EEC Secretary General[189], can be subject to administrative sanctions if any dispute arising from their unlawful acts is beyond the scope of their powers, inconsistent with the law, or executed in bad faith.[190] These sanctions include ordering revocation of a by-law or an order or restraining an act in whole or in part, and are subject to appeal before the Administrative Court, under sections 9 and 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999).[191] The Administrative Courts thus have the power to order termination of licenses and permissions granted by administrative agencies such as the SEZ and EEC Policy Committee, and order the administrative agency or government official to act in accordance with the law.

Composition

The SEZ and EEC Policy Committees comprise representatives from both central government agencies and the business sector. Under the 2015 Regulation and the new draft Regulation, the SEZ Policy Committee is chaired by the Prime Minister. A few members of the SEZ Policy Committee are also representatives from agencies that are responsible for national security such as the Commissioner of the Royal Thai Police and the Secretary-General of the National Security Council. Ministers from relevant ministries, such as the Ministry of Industry, Ministry of Interior, Ministry of Finance, and Ministry of Labour, and representatives from business and investment sectors are also members of the Committee.[192] Unelected provincial governors[193] are members of the SEZs' Sub-Committee in charge of implementing SEZ policies at provincial level[194].

Government Gazette as it deems expedient.

184 Section 16, EEC Act

185 Section 20, EEC Act.

186 Including the law governing land excavation and land filling; the law governing building control; the law governing machine registration; the law governing public health; the law governing immigration, solely for the purpose to permit foreigners under Section 54 (1) or (2) to stay in the Kingdom; the law governing commercial registration; the law governing factories; and the law governing land allocation.

187 Section 10, EEC Act.

188 Section 37 and 43, EEC Act.

189 ICJ Telephone Interview, Lawyers from ENLAW Foundation, 1 April 2020.

190 Article 9 of the Act on Establishment of Administrative Courts and Administrative Court Procedure.

191 According to Article 72 of the Act on Establishment of Administrative Courts and Administrative Court Procedure.

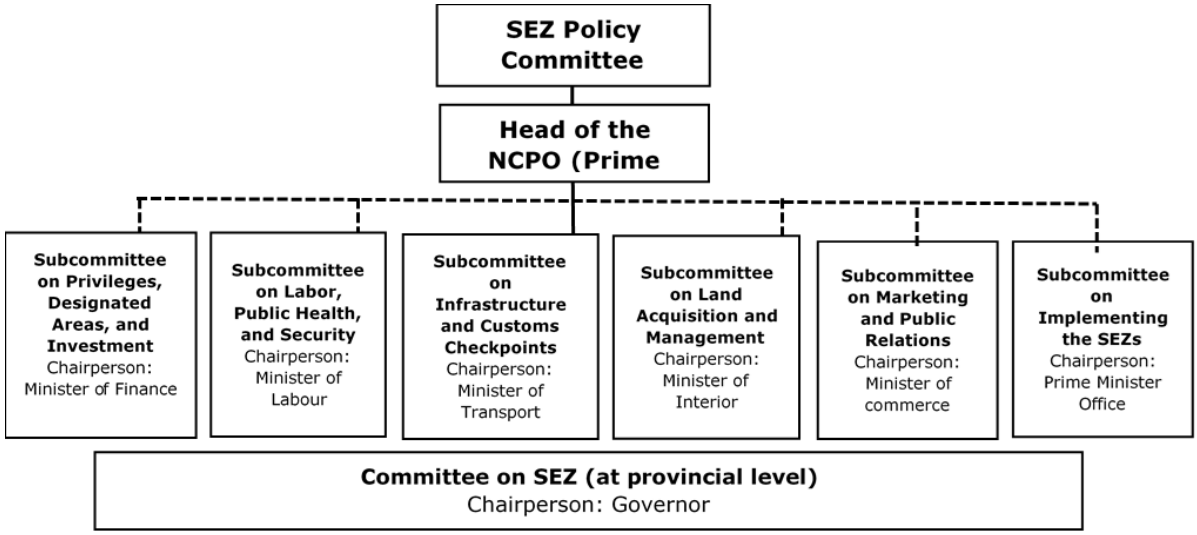
192 Including from the Thai Chamber of Commerce, Board of the Federation of Thai Industries, and Thai Bankers' Association.

193 In Thailand, provincial governors are not elected by local residents but are appointed and represent the central government.

194 According to SEZ Policy Committee Order No. 2/2558 regarding the Creating of Sub-Committees under the SEZ Policy Committee, dated 3 April 2015, the key responsibilities of this Sub-Committee is to "coordinate, monitor, and evaluate the implementation of SEZs policies at provincial level, identified obstructions, and provide recommendations to overcome such challenges".

Within the SEZ Policy Committee, several sub-committees were established, including: (1) Sub-Committee on Privileges, Determining Zones, and One-Stop Service for Investors; (2) Sub-Committee on Labour, Health and National Security; (3) Sub-Committee on Basic Infrastructures and Customs; (4) Sub-Committee on Land Acquisition and Management; (5) Sub-Committee on Marketing and Public Relations; and (6) Sub-Committee on Implementing the SEZs at Local Levels. [195]

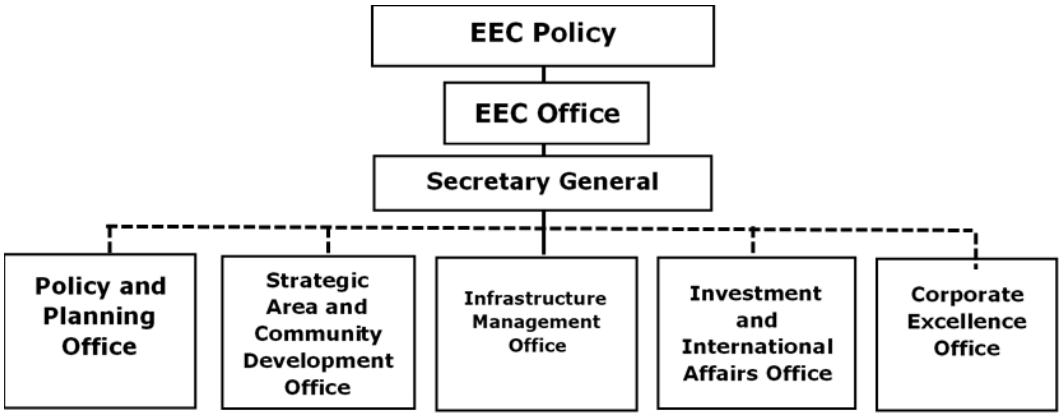
CHART 1: SEZ's Organizational Chart[196]



The EEC Policy Committee is comprised of the Prime Minister as the Chairman; Deputy Prime Minister assigned by the Prime Minister as the Vice-Chairman; at least 14 Ministers from relevant Departments, chiefs of three other governmental bureaus,[197] representatives from business and investment sectors,[198] and no more than five qualified persons appointed by the Prime Minister as members.[199]

Within the EEC Office, several sub-offices were established, including the: (i) Policy and Planning Office; (ii) Strategic Area and Community Development Office; (iii) Infrastructure Management Office; (iv) Investment and International Affairs Office; and (v) Corporate Excellence Office. [200]

CHART 2: EEC Office's Organizational Chart201



195 SEZ Policy Committee Orders No. 1/2558 and 2/2558.
196 Ibid.
197 Notably the Bureau of the Budget, the National Economic and Social Development Council and the Board of Investment.
198 Thai Chamber of Commerce, the Board of the Federation of Thai Industries, and the Thai Bankers' Association.
199 Currently, the Prime Minister has nominated three qualified persons, Air Chief Marshal Prajin Juntong, Mr. Don Pramudwinai and Mr. Prasert Bunsumpun as members of the EEC Policy Committee.
200 Available at: https://eng.eeco.or.th/en/organization-structure
201 Ibid.

Considering the extensive executive powers that the Policy Committees have been given, it is unfortunate that within the SEZ and EEC governing bodies, there are no sub-committees with specific mandates for ensuring regular consultations with affected communities to seek their input. It would also be useful to have a formal complaints procedure which would allow affected individuals or communities to seek redress or register concerns with the Policy Committees through the standing Sub-Committee. This lack of a consultative and inclusive process has had consequences with respect to designation of SEZ and EEC areas and their development zones, as will be seen below.

Several ad hoc committees have been established in provinces where SEZ are located. These committees have mandates to consult with affected populations about the land acquisition for SEZs' development, and include members of affected populations as members, such as the Joint Working Group between State Agencies and Local Population in Determining Criteria for Diversion of Land for Population whom were Affected by Tak SEZ.[202]While these ad hoc mechanisms have some potential to increase public engagement and transparency, in order for affected individuals or communities to participate in decision-making, it would be advisable to establish one or more standing sub-committees under the SEZ and EEC Policy Committees with specific mandates for consultation with affected populations that include representatives of civil society organizations, unions and affected communities.

202 ICJ Interview, Affected Communities, Songkhla, August 2019. The ICJ received a copy of meeting minutes from an affected individual who was a member of the Committee.

4. IMPACTS ON ACCESS TO LAND AND HOUSING

The legal frameworks governing SEZs and the EEC described in Part 3 raise several human rights concerns relating to the diversion of land, including:

(i) inadequacies in the designation of SEZ and EEC development and promotional zones;
(ii) overriding of social and environmental checks and balances; and
(iii) a lack of redress and accountability mechanisms for the confiscation of land for SEZ use.

4.1 Overview of the General Framework for Land Use in Thailand

4.1.1 Public Lands

The Land Code B.E. 2497 (1954) classifies lands in Thailand into private land, legally protected by land titles, and State land, which includes all land to which "no one has possessory rights".[203] Pursuant to the Land Code, State land may be given by concession, granted or made available for use for a limited time.[204] Those without a right to possession of such land or without permission from the competent authority are forbidden to "enter, occupy or possess such land including the building of structures or burning of forests thereupon"; "by any means to destroy or cause deterioration in the condition of the land"; or "do anything to imperil the resources of the land".[205] Some who occupy and use State lands are given a *"Por Bor Tor 5"* certificate, which shows that the occupier of a plot of land has paid tax. It does not confer ownership, only a possessory right over such land.[206]

State lands include:

(i) Forest lands such as national reserved forest areas, permanent forest areas, and national parks, governed by separate provisions pertaining to forestry such as National Reserved Forest Act, Forest Act, and National Parks Act;
(ii) Agricultural land reform areas, which, under the supervision of the Agriculture Land Reform Committee in accordance with the Agricultural Land Reform Act, are allocated to citizens for agriculture purposes;
(iii) *Ratchaphatsadu* Land, under the ownership of the Treasury Department, Ministry of Finance[207]; and
(iv) Land which is the Domain Public of State for the Common Use of People, under the supervision of local administrative agencies.[208]

In border areas where SEZs are located, most of the land is State property.[209]

4.1.2 Private Lands

There are different types of land titles relating to private land in Thailand – all issued by the Land Department of the Ministry of Interior. They show that the holders of such titles possess rights to either temporarily occupy or use the land, or own the land. The main title documents that show that title holders own the land include: (i) *"Chanote"* which grants the holder full rights over the land; and (ii) *"Nor Sor 3"*, "*Nor Sor 3 Gor*" and "*Nor Sor 3 Khor"*, which are temporary forms of title while awaiting a full title deed.[210]

In contrast to SEZ areas, which are primarily developed on public land, EEC areas are mostly private lands where the owners have full rights (*"Chanote"* holders). Many farmers have rented these lands upon which they live, and which they cultivate. EEC designation generally drives up land prices, causing landowners to terminate rental arrangements and evict farmers in order to free up the land to sell to investors. According

203 Sections 2 and 3, Land Code.
204 Section 12, Land Code.
205 Section 9, Land Code.
206 Siam Legal, 'Tile Deeds', available at: https://www.siam-legal.com/realestate/thailand-title-deeds.php]
207 According to the Ratchaphatsadu Land Act B.E. 2562 (2019), Ratchaphatsadu Land includes: (i) every kind of immovable property which is State property; (ii) land which is reserved or secured for the State; or (iii) land which is reserved or secured for official use, as prescribed by laws.
208 One Map, 'State Land', available at: http://www.pacc.go.th/pacc_2015/onemap/pages-left-sidebar.html (In Thai)
209 This was raised by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.
210 Siam Legal, 'Tile Deeds', available at: https://www.siam-legal.com/realestate/thailand-title-deeds.php.

the EEC Watch, at least two criminal and civil trespass cases were brought by companies against farmers who rented land in EEC areas, and refused to leave (described below in Section 4.2.2).[211]

4.2 Inadequacies with Respect to the Designation of SEZ and EEC areas

International law and standards, as described in Part 2, require governments to take immediate measures to ensure at least a minimum degree of security of tenure to guarantee legal protection to people from forced eviction, harassment and other threats. They also require States to consult with affected people before transferring land, which they occupy or rely on, for business or other projects and undertake "eviction-impact" assessments.[212] They must also put in place adequate legal safeguards to ensure that all evictions comply with requirements set out under international law and standards.[213] Governments must also consult affected people about any potential impacts that proposed projects or industrial activities could have on their communities as well as measures that will be put in place in order to mitigate risks of negative impacts before approving projects.

Both SEZs and the EEC have their own procedures for designating special economic development areas. Unfortunately, both are plagued by the same set of issues – a lack of clear criteria for designation, and inadequate consultation with affected communities.

4.2.1 Designation of SEZ Areas

Designation and Acquisition Process

The SEZ Policy Committee, before its dissolution, designated 10 SEZs in 90 sub-districts in 10 provinces of Thailand. The announcements did not provide the reasons why the designated areas were selected other than indicating that the designations were made "for SEZs to be promptly and effectively established and operated".[214] This is emblematic of the overall lack of information provided by the government regarding its strategy and criteria for the establishment of SEZs.

Within each of the SEZ, a "development area" was designated within a pilot area to attract investors for investment ("SEZ Development Area"). These areas are plots of State-owned land, amounting to a very small percentage of the SEZ designated areas, which investors can rent for industrial or service activities.[215] However, much of this land had already been occupied or used by residents in the area.

Most of the lands that were selected as SEZ Development Areas are restricted to use as reserved forest areas, agricultural land or for public use (for details, see Annex 4). In order to use them for SEZ purposes, the SEZ Policy Committee must first annul or re-designate the land for other uses. The process requires at least nine months to complete (see Section 4.3.1 below). At the time, the Committee used Article 44 of the Interim Constitution to issue HNCPO Orders No. 17/2558 and 74/2559 which allowed the Committee to directly order the conversion of restricted lands to *Ratchaphatsadu* Land, which are State-owned lands under the ownership of the Treasury Department, Ministry of Finance.

The Cabinet ordered the NESDC to undertake a feasibility study on the establishment of SEZs at border areas but this report was not made publicly available.[216] The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement provides that States must prioritize exploring strategies that minimize displacement.[217] It is not clear that the feasibility study explored such strategies. The UN Basic Principles also require States to carry out "eviction-impact" assessments "with a view to securing fully the

211 ICJ Telephone Interview, Representative of the EEC Watch, April 2020.
212 Principles 32 – 33, 37 – 41, UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.
213 CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 13-17, available at: https://www.refworld.org/docid/47a70799d.html
214 SEZ Policy Committee Announcement No. 1/2558, See: https://data.opendevelopmentmekong.net/th/laws_record/1-2558 (in Thai); and SEZ Policy Committee Announcement No. 2/2558, See: https://data.opendevelopmentmekong.net/th/laws_record/2-2558-2 (in Thai)
215 ICJ Interview, officers of a State agency involved in formulation of SEZ policy, Bangkok, July 2019 (interviewee wishes to remain anonymous)
216 ICJ Telephone Interview, Official of a State agency involved in formulation of SEZ policy, March 2020. (interviewee wishes to remain anonymous)
217 Principle 32, UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

human rights of all potentially affected persons, groups and communities, including their protection against forced evictions".[218] They stipulate that such assessments should also include exploration of alternatives and strategies for minimizing harm.[219] There is no publicly available evidence that eviction-impact assessments were carried out before areas were designated and selected lands were converted. As discussed below, this combined with the lack of adequate legal safeguards left the people living in these areas and lands at risk of forced evictions.

TABLE 5: Timeline for Establishing and Determining SEZ Areas

31 March 2013	The Cabinet ordered NESDC to conduct a feasibility study on the establishment of the SEZs at Thailand's border areas.[220] Such feasibility study report is not made available to the public.[221]
19 June 2014	The NCPO issued Order No. 72/2557, establishing the SEZ Policy Committee. The order was published on the Government Gazette on 27 June 2014.
19 January 2015	SEZ Policy Committee issued the Announcement No. 1/2558, designating several areas as SEZs in Phase 1, including 36 sub-districts in Tak, Mukdahan, Sa Kaeo, Trat and Songkhla provinces.
16 March 2015	SEZ Policy Committee held a meeting to discuss about suitable areas to be designated as SEZ Development Areas for investors to rent in Tak, Mukdahan, Sa Kaeo, Trat, Songkhla and Nongkhai provinces. Most of the selected areas were State lands (See Annex 4)[222]
24 April 2015	SEZ Policy Committees issued Announcement No. 2/2558, designating several areas as SEZs in Phase 2, including 54 sub-districts in Nong Khai, Narathiwat, Chiang Rai, Nakhon Phanom and Kanchanaburi provinces.
15 May 2015	Head of the NCPO issued HNCPO Order No. 17/2558, which converted several types of lands – including "National Reserved Forest Areas", "Permanent Forest Areas", "Public Domain of State for the Common Use of the People" and "Agriculture Land Reform Areas" to "*Ratchaphatsadu* Land" – State-owned lands for the purpose of developing SEZs in Tak, Mukdahan, Sa Kaeo, Trat, and Nong Khai.
After 15 May 2015	Officials of the Treasury Department or other local administrative officials in provinces where acquisition would take place informed the affected communities about the acquisition. For example, the ICJ was informed by affected communities in Tak province that the first meeting between affected communities and local administrative officials about the acquisition/ eviction was conducted on 21 May 2015.
25 June 2015	After HNCPO order No. 17/2558 was published in the Government Gazette, the SEZ Policy Committee highlighted that "relevant agencies must help the people to understand about such annulation of [forest or public status of] State lands for the purpose of SEZs, and look after the people in the area so they will not face difficulties".[223]
18 January 2016	SEZ Policy Committee held a meeting to discuss about suitable areas to be designated as SEZ Development Areas for investors to rent in Chiang Rai, Nakhon Phanom and Kanchanaburi provinces. All of the selected areas were State lands. As for Narathiwat SEZ, the Committee gave the Industrial Estate Authority of Thailand the authority to purchase privately owned lands for developing. (See Annex 4)[224]
9 July 2019	SEZ Policy Committee was dissolved by HNCPO Order No. 9/2562 due to the dissolution of the NCPO, its sub-committees were also dissolved and have yet to be replaced.

218 Ibid.
219 Ibid.
220 Cabinet Resolution regarding the Development of SEZs, 31 March 2013, available at: http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=99307320 (in Thai). See also BOI, 'SEZs', Investment Promotion Journal, Ed.25, 11 November 2014, available at: https://data.opendevelopmentmekong.net/dataset/b8ddb891-6842-434c-9e48-ccf42e4c437c/resource/ade721be-3b7d-44c3-bbae-fde1212cda7b/download/3boi_november57_30162.pdf (in Thai)
221 ICJ Telephone Interview, Official of a State agency involved in formulation of SEZ policy, March 2020. (interviewee wishes to remain anonymous)
222 SEZ Policy Committee, 'Minutes of Meeting: SEZ Policy Committee Meeting No. 2/2558', 16 March 2015, available at: http://nakhonphanom.go.th/sez2018/annual_report/2558/1534580531-2558.pdf (in Thai)
223 SEZ Policy Committee, 'Minutes of Meeting: SEZ Policy Committee Meeting No. 3/2558, 25 June 2015, available at: http://www.otp.go.th/uploads/tiny_uploads/PolicyPlan/1-PolicyPlan/SpecialEconomic/ReportKNP3-2558.pdf (in Thai)
224 SEZ Policy Committee, 'Minutes of Meeting: SEZ Policy Committee Meeting No. 1/2559, 18 January 2016, available at: https://www.nesdc.go.th/ewt_news.php?nid=4865&filename=index (in Thai)

According to information that the ICJ obtained from an officer of a State agency involved in formulation of SEZ policy, all 10 SEZ designations (and the designation of their Development Areas) were based upon information provided by the Joint Public and Private Sector Consultative Committee ("JPPSCC") at the provincial level.[225] The JPPSCC is a body composed of local administrative offices and representatives from other governmental agencies and the private sector. They submitted the list of suitable areas to the SEZ Policy Committee. No public consultation or eviction-impact assessments were conducted with affected people, as required by international law, before these determinations were made.[226]

Indeed, an officer at provincial level who was involved in one such determination informed the ICJ that, when the joint committee made its decision about the Development Area, the provincial officers had not had sufficient time, documentation or information to fully understand the policies and expectations. The same officer further stated that while his office had sent three possible SEZ designated areas (one of which was later selected), the final decision was made by the central government without the involvement of the provincial office. He said that if he knew that the policy would be implemented this way, he would not have proposed the plot of land that was ultimately chosen, because it was occupied by many people, who were subsequently evicted from their land.[227]

According to information that the ICJ obtained in Tak and Songkhla provinces, affected residents, who own the lands or stay on public lands that were designated as SEZ Development Areas which had to be cleared out entirely for industrial activities, were neither informed nor received any notices about the acquisition and/or eviction, as required by international law,[228] until immediately prior to its confiscation/eviction.[229] According to officials in two areas where SEZs are operating, officials of the Treasury Department are the ones who informed the affected communities about the acquisition/eviction but only after HNCPO Orders No. 17/2558 and 74/2559 were published on the Government Gazette. They sent letters to all individuals who occupy or own lands located in the selected areas as set out in the Order, or heads of villages/local administrative officials, to schedule meetings in order to discuss land acquisition with owners of the selected lands and evictions with residents who occupied State-owned land.[230] The ICJ received information that, in at least one SEZ area, a written eviction notice was not given until almost one year after HNCPO Orders No. 17/2558 and 74/2559 were published on the Government Gazette.[231]

In sum, the ICJ received information indicating that at least 242 households had been evicted from their lands in Tak and Songkhla provinces. The evictions were reportedly carried out without appropriate procedural protections as required by international law, not including consultations with those affected, or adequate and reasonable notice of eviction.[232]

Based on information gathered by the NHRCT,[233] non-governmental organization Land Watch Thai,[234] and other sources, the ICJ has identified other examples of the designation of lands resultingin at least 391 individuals being forcibly evicted from the Development Areas in Tak, Songkhla, Mukdahan, Nakhon Phanom and Kanchanaburi SEZs. Deprived of access to productive resources indispensable for their livelihoods, some individuals were effectively compelled to move to stay with relatives in other provinces.[235] In almost all cases, compensation and adequate alternative housing or land were not offered prior to the evictions.

225 ICJ Interview, officers of a State agency involved in formulation of SEZ policy, Bangkok, July 2019.
226 Ibid. This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok; ICJ Interview, Affected Individuals in Songkhla SEZ, Song Khla, August 2019; ICJ Interview, Affected Individuals in Tak SEZ, Tak, September 2019. See also: Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
227 ICJ Interview, an officer at provincial level who was involved in the SEZ determination process, September 2019.
228 CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 15, available at: https://www.refworld.org/docid/47a70799d.html
229 ICJ Interview, Affected Communities, Tak, September 2019; ICJ Interview, Affected Communities, Songkhla, August 2019.
230 ICJ Telephone Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, March 2020.
231 ICJ Interview, Affected Communities, Songkhla, August 2019. Affected communities in Songkhla told the ICJ that they first received a written eviction notice from Songkhla Provincial Office on 1 March 2016 - almost one year after they were informed about the eviction.
232 CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)', E/1992/23, 13 December 1991, para 8(a)& 15, available at: https://www.refworld.org/docid/47a7079a1.html
233 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.
234 Ibid. See also: Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
235 ICJ Interview, Affected Individuals in Tak SEZ, Tak, September 2019.

Case Studies of Issues Arising from Designation and Acquisition Process

In Tak SEZ, according to the NHRCT, 65 residents, mostly farmers, claimed that the designated Development Area (which had been categorized as National Reserved Forest and Permanent Forest Areas) had been occupied by their families for a long time.[236] Some claimed that they had occupied the lands prior to the areas being declared a national forest reserve or permanent forest.[237] While holding no legal title to the land, they claimed that they paid local administrative tax for the lands (*Por Bor Tor 5*).[238] In 2017, two years after HNCPO Order No. 17/2558 (allowing the conversion of restricted lands to *Ratchaphatsadu* Land for SEZ development) entered into force and after the affected communities was informed about the evictions and acquisitions,[239] 82 individuals were financially compensated pursuant to a Cabinet Resolution but no alternative land was provided or made available to them.[240] In 2019, another five individuals, who initially refused to accept compensation, were financially compensated and assisted by the government to find some alternative lands to rent.[241] Consequently, the areas were cleared out entirely for industrial activities.[242]

Designated Development Area in Tak SEZ

236 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.
237 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
238 ICJ Interview, Affected Communities, Tak, September 2019
239 The ICJ was informed by affected communities in Tak province that the first meeting between affected communities and local administrative officials was conducted on 21 May 2015. In this meeting, the participants were informed about the SEZ and the acquisitions and evictions.
240 With the exception of at least an owner of a land in the selected Development Area (*Chanote* holder), who asked for an exchange of *Ratchaphatsadu* Land with her lands. (See: Part 4.3.1) ICJ Telephone Interview, Affected Communities, Tak, April 2020.
241 Ibid.
242 Ibid.; ICJ Interview, Officials of Treasury Department, Ministry of Finance, in the areas where SEZs are operating, September 2019.

In Songkhla SEZ, 160 families submitted a petition to relevant governmental agencies, claiming that the designated Development Area affected families who rented the lands from the Anti-Money Laundering Office for living and farming.[243] After HNCPO Order No. 17/2558 (allowing the conversion of restricted lands to *Ratchaphatsadu* Land for SEZ development) entered into force, financial support for relocation was provided. Alternative lands were arranged.[244] Part of the disputed areas had already been cleared out and transferred to the IEAT for SEZ development. The rest are still in dispute.[245] Currently, at least 41 people continue to stay in the area and refuse to leave.[246] They were issued with eviction notices several times. The first written notice was reportedly issued from Songkhla Provincial Office on 1 March 2016 - almost one year after they were informed about the eviction. On 21 May 2020, they were given final eviction notices from the same agency and asked to relocate by September 2020 or face forced removal by the authorities pursuant to the Building Control Act.[247] In such cases, the owners of the building are not eligible to claim compensation for damage caused by officials.

Designated Development Area in Songkhla SEZ

In Nakhon Phanom SEZ, a designated Development Area categorized as the Public Domain of State for the Common Use of the People was occupied by at least 29 individuals who had legal title prior to the categorization of the land as Public Domain.[248] The villagers claimed that they possess *Nor Sor 3 Gor* and *Nor Sor 3 Khor* documentation, and refused to leave the area.[249] Consequently, 33 villagers were sued for trespass by the public prosecutor. On 6 February 2019, the Regional Appeal Court acquitted the villagers and affirmed that they had occupied the land from before the land's categorization as Public Domain, and had a right to occupy the land.[250]

243 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017. ICJ Interview, Affected Communities, Songkhla, August 2019.
244 Ibid.
245 Ibid.
246 ICJ Telephone Interview, Officials of the Treasury Department, Ministry of Finance, in the areas where SEZs are operating, March 2020; In contrast, a representative of the affected communities told the ICJ that there are 85 people who continue to stay in the area. ICJ Telephone Interview, Affected Communities, Songkhla, March 2020
247 ICJ Telephone Interview, Affected Communities, Songkhla, May 2020.
248 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017
249 Ibid.; Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
250 Ibid.

National Human Rights Commission of Thailand ("NHRCT")

The NHRCT is a non-judicial mechanism, tasked with promoting and protecting human rights in Thailand.[251] In some of these cases, individuals brought complaints to the NHRCT. The NHRCT has played an important watchdog role, despite significant weaknesses in its investigative capacity and the enforcement of its recommendations.

Section 247 of the 2017 Constitution sets out the powers and duties of the NHRCT, including its responsibility to suggest suitable measures or guidelines in order to prevent or redress human rights violations, and to render recommendations regarding the promotion and protection of human rights to relevant agencies. This has been criticized as a weak mandate without greater powers to enforce their recommendations. [252]

The powers of the NHRCT under existing legal frameworks were diminished after the 2007 Constitution. The former Constitution provided the authority to the NHRCT to submit cases and opinions to the Constitutional Court and the Administrative Court, including the filing of lawsuits to the Court of Justice on behalf of complainants. These powers are no longer enshrined in the current Constitution. This creates significant challenges with respect to the implementation of the recommendations of the NHRCT.[253]

Despite these limitations in enforcing recommendations and providing remedies, the NHRCT's role has proven to be important to monitor and investigate human rights violations, including in the context of SEZs and the EEC. In response to 12 complaints of human rights violations allegedly committed in the course of implementing SEZ policy submitted to the NHRCT,[254] the commission collected information and conducted field visits to several SEZ areas, including Tak SEZ, Chiang Rai SEZ and Songkhla SEZ.

Unfortunately, the findings and recommendations of the NHRCT remains pending before the Board of Commissioners because of the resignation of more than half of the seven-member commission[255] (which resulted in the commission being unable to muster a quorum necessary to make decisions). On 1 November 2019, the Chief of the Supreme Court and Supreme Administrative Court appointed four interim Commissioners.[256] The new Commissioners are reportedly considering 206 pending reports.[257] No progress about the investigation on the SEZ has been reported.[258]

In Mukdahan SEZ, according to Land Watch, the designated Development Area has been occupied and used by local people.[259] Almost two years after HNCPO Order No. 17/2558 (allowing the conversion of restricted lands to *Ratchaphatsadu* Land for SEZ development) entered into force, on 30 January 2017, the Treasury Department in Mukdahan Province allocated budget to compensate five affected households.[260]

251 The NHRCT is governed by the Constitution and the Organic Law on NHRCT B.E. 2560 (2017); See also: HRW, 'The End of Thailand's Human Rights Commission?', 3 August 2019, available at: https://www.hrw.org/news/2019/08/03/end-thailands-human-rights-commission

252 HRW, 'Thailand: Don't Weaken Rights Commission', 23 August 2017, available at: https://www.hrw.org/news/2017/08/23/thailand-dont-weaken-rights-commission

253 Business & Human Rights Resource Centre, 'Human rights institutions in Southeast Asia: Are the "paper tigers" coming to life?', available at: https://www.business-humanrights.org/en/human-rights-institutions-in-southeast-asia-are-the-%E2%80%9Cpaper-tigers%E2%80%9D-coming-to-life-0

254 ICJ Interview, Commissioner of the NHRCT, August 2019

255 HRW, 'The End of Thailand's Human Rights Commission?', 3 August 2019, available at: https://www.hrw.org/news/2019/08/03/end-thailands-human-rights-commission; Prachatai, 'Two Human Rights Commissioners Resigned, Said New Regulations Made Them Feel Restricted', 1 August 2019, available at: https://prachatai.com/english/node/8156 (in Thai).

256 Temporary commissioner appointments were recently made, which may soon create a quorum to pass pending resolutions. See: Matichon, 'Chiefs of the Supreme Court and Supreme Administrative Court appointed 4 Temporary Commissioners of the NHRCT', 1 November 2019, available at: https://www.matichon.co.th/local/crime/news_1736576 (in Thai).

257 According to sections 42 and 43 of the Organic Act on the NHRCT B.E. 2560 (2017), the NHRCT has the power to submit recommendations to the Parliament, the Cabinet and other relevant governmental organizations, and those organizations "shall amend [laws, regulations and orders], as appropriate, without delay. If such process cannot be carried out or must be delayed, reasons must be provided to the NHRCT".

258 NHRCT, 'Interim NHRCT Attends a Meeting After Their Appointment and Prepare to Consider Pending Complaints and Reports', 6 November 2019, available at: https://bit.ly/35CNj5K (in Thai)

259 Ibid. Exact number was not revealed.

260 Mukdahan Provincial Office, 'Background Information about Mukdahan Province and its SEZ', June 2018, available at: http://www.mukdahan.go.th/data/pg.pdf (in Thai). The compensation was approved by the Cabinet on 18 October 2016. See: Subcommittee on Land Management, 'Minutes of the Meeting', 3 February 2016, available at: http://www.taksez.com/images/file_document/F00158.pdf (in Thai)

Lastly, in Kanchanaburi SEZ, the designated Development Area reportedly affected at least 115 individuals who occupied the area for farming.[261] While HNCPO Order No. 74/2559 (allowing the conversion of restricted lands to *Ratchaphatsadu* Land for SEZ development) entered into force on 20 December 2016, the budget for compensation is yet to be approved by the Cabinet.[262] People continue to stay in the area.[263]

For some other examples of the problems that arise from the designation of lands for SEZ Development Areas, see: Annex 4.

4.2.2 Designation of EEC Areas

EEC Land Use Plan

With respect to the EEC, it was designated from the outset that the EEC shall be located within areas in Chachoengsao Province, Chonburi Province and Rayong Province – overlapping with its predecessor regime, the Eastern Seaboard Development Project. The designation was carried out pursuant to an HNCPO order. No report that any public consultation or impact assessments were conducted, as required by international law, prior to the initiation of the project.[264] No information about such assessment was made available by the government to the public.

The EEC Act provides that the EEC Office shall formulate development plans, including plans for land use. It further states that the process must take into consideration the plans of adjacent areas while "adhering to the protection, respect, and remedy framework for affected persons in line with the principle of promotion and protection of human rights in the context of business operations and rights under the relevant laws." Notably, this is a specific reference to the three Pillars of the UNGPs.[265]

After the EEC Policy Committee approved the above noted development plans, the EEC Office and other relevant State agencies were required to provide details of the land use, infrastructure and public utilities development plan ("EEC Land Use Plan"). This included identifying how each zone would be used – for example, through designating industrial, rural, agricultural, and natural and environmental reserved zones.

The law requires relevant agencies to take into consideration "the relationship with communities, health and well-being of the people, environment, and ecological system under the principle of sustainable development by means of creating true awareness in the local community" and conduct "a public hearing and consultation with the stakeholders, the public, and relevant communities in support of the consideration."[266]

The EEC Act further stipulated that the EEC Land Use Plan, after being approved by the EEC Policy Committee and the Cabinet, would cancel the "general town plan" under the Town Planning Act[267] applicable to the EEC area prior to approval from the Cabinet. The Ministry of Interior's Department of Public Works must then prepare a new town plan that aligns with the new land use plan.[268] This means the "general town plans" in Chachoengsao Province, Chonburi Province and Rayong Province that had previously been approved under the Town Planning Act would be rendered void by the EEC Land Use Plan, which entered into force in December 2019. (further examined below in Section 4.3.3).

With respect to the process of drafting the EEC Land Use Plan, the EEC Act provided a series of procedural safeguards and references to international human rights protections. Specifically, it recognized several of Thailand's obligations under the ICESCR and provided opportunity for genuine consultation with affected

261 ICJ Interview, Officials of Treasury Department, Ministry of Finance, in areas where SEZs are operating, March 2020.
262 Ibid.
263 NESDC, 'Progress on the Developing of SEZs', March 2020, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=10024 (in Thai)
264 ICJ Telephone Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, March 2020. See also: Industrial Estate Authority of Thailand ("IEAT"), 'Explanation of the Importance of the Draft EEC Act', August 2017, at 9, available at: https://www.ieat.go.th/assets/uploads/attachment/file/20170920150620130804545.pdf (in Thai). According to IEAT, the three provinces were selected because "the land, sea and air transportation in the area is readily available. The area can be connected with Bangkok and other regions easily. In the eastern area, public facilities and basic infrastructure can be effectively and economically developed."
265 Section 29, EEC Act.
266 Section 30, EEC Act.
267 Originally, land use in Thailand, including in SEZ and EEC areas was regulated by "general town plans", whereby land use would be categorized in accordance with provisions in the Town Planning Act B.E. 2518 (amended in B.E. 2562 (2019)). The categorization sets out the purpose for which each zone in a province is to be used –industrial, rural, agricultural, and natural and environmental reserved zones.
268 Section 32, EEC Act.

individuals. However, communities and civil society groups reported that these safeguards were not effectively implemented in reality, as will be further described below.

According to Senior Officials of the Ministry of Interior's Department of Public Works and Town and Country Planning, public consultations were held 18 times in the three provinces of the EEC in order to develop the EEC Land Use Plan.[269] However, a number of local residents in the areas affected by the EEC and civil society organizations informed the ICJ that insufficient time was provided for participants to raise their concerns. Organizers allowed only 30 minutes for participants to voice their concerns, and no documentation or information about the plans was provided before the hearing.[270] This falls far short of requirements for "genuine consultation" which require that people are given sufficient information in advance of meetings and an opportunity to present alternatives to the plans set before them.

Individuals who were present at the consultations claimed that attempts to present alternative proposals and articulate their demands and priorities were ignored, against international law and good practices.[271] They felt that they were not treated as stakeholders in assessing concerns for sustainable development, and that their inputs did not appear to have been considered in decision-making about the EEC Land Use Plan.[272] Therefore, there are serious questions as to whether the free, prior, and informed consent of affected communities was obtained in the process of developing the EEC Land Use Plan, as required by Thailand's NAP.[273]

Without addressing these criticisms,[274] on 9 December 2019, the EEC Policy Committee published the "Announcement of the EEC Policy Committee Regarding the Plan for Land Use, Development of Infrastructure and Public Utilities in the EEC" in the Government Gazette.[275] The EEC Land Use Plan that was attached to the Announcement came into force the day after its publication in the Gazette.

TABLE 6: Timeline of Establishing and Determining EEC Area

28 June 2016	Cabinet approved the concept of the EEC.[276]
4 January 2017	Cabinet approved the EEC Development Plan (2017-2021). [277]
17 January 2017	HNCPO Order No. 2/2560 was published on the Government Gazette. The order set up several Committees, namely (i) the EEC Policy Committee; (ii) the Management Committee for Development of the EEC; and (iii) the EEC Office.
25 October 2017	HNCPO Order No. 47/2560 was published on the Government Gazette. The Order overrode the usual town planning process required under Thai law in the EEC. It required relevant authorities to prepare new town plans (known as the "EEC Land Use Plan"), and cancelled town plans that had previously been approved.
15 May 2018	The EEC Act came into force after its publication on the Government Gazette. The Act repealed HNCPO Orders No. 2/2560, 28/2560 and 47/2560.
10 December 2019	The EEC Land Use Plan came into force after its publication in the Gazette.

269 ICJ Interview, Senior Officials of the Ministry of Interior's Department of Public Works and Town and Country Planning, Bangkok, August 2019; EEC Office, 'Meeting of the Sub-Committee to Draft the Plan in Developing the EEC No. 1/2562', 15 May 2019, available at: https://bit.ly/3hnqs2I (in Thai)

270 This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok. See also: Transborder News, 'Villagers Protests Against the EEC which Allow the Investors to Use Premium Agriculture Areas', 14 February 2019, available at: http://transbordernews.in.th/home/?p=20131 (in Thai); Manager Online, 'ICD Project in Chachongsao Might Not be Smooth Sailing; Villagers Call for the Areas to be Green Zone', 26 January 2019, available at: https://mgronline.com/local/detail/9620000009076 (in Thai)

271 E.g. CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 13, available at: https://www.refworld.org/docid/47a70799d.html

272 This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

273 Action Plan No. 8 of the State Duty to Protect in the context of land right require relevant authorities to "consider determining measures to certify rural development and land policies with gender- based dimensions in mind. A person should not be forced to be evicted, if there is a need to act, there should be a Free Prior Informed Consent form and the evicted person must also be compensated". See: Thailand's NAP, at 92.

274 Consequently, on 16 July 2020, several representatives of the communities in Chachoengsao, Chonburi, and Rayong provinces who were affected by the designation of the EEC submitted their complaint to Central Administrative Court against the EEC Policy Committee and the Cabinet, requesting the Court to repeal the EEC Land Use Plan that was approved and published on the government gazette, demanding the defendants to conduct a strategic environmental assessment and ensure that affected communities will be meaningfully consulted in the process of formulating plans for land use.

275 Available at: https://www.eeco.or.th/sites/default/files/L_2562.PDF (in Thai)

276 Thailand Business News, 'What's in for Thailand in the Eastern Economic Corridor Project?', 25 April 2017, available at: https://www.thailand-business-news.com/business/57135-thailand-eastern-economic-corridor.html

277 NESDC, 'Eastern Economic Corridor', February 2017, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=6383

EEC Promotional Zones

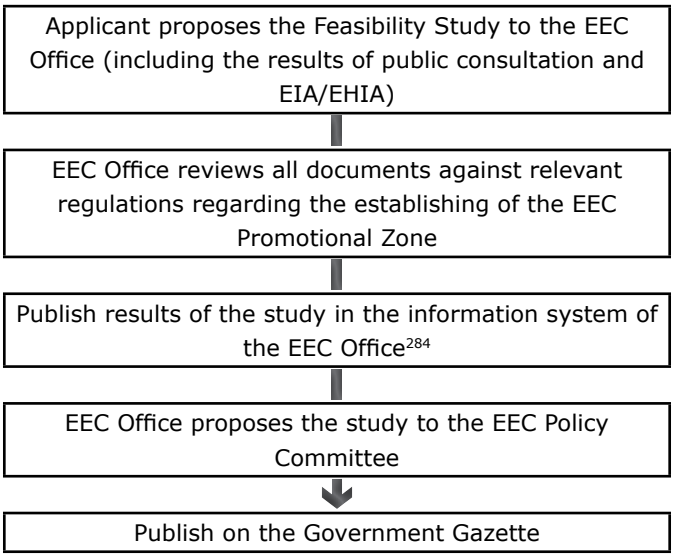
In addition, pursuant to HNCPO Orders No. 2/2560 and the EEC Act, the EEC Policy Committee has the power to designate any area within the EEC as a "Special Economic Promotional Zone" ("EEC Promotional Zone") with the objective of promoting investment in Special Targeted Industries.[278] Such a designation is limited to areas in Chachoengsao Province, Chonburi Province, Rayong Province, and other provinces[279] located in the eastern region of Thailand. To date, 29 areas in the EEC have been announced as Promotional Zones by the EEC Policy Committee. [280]

According to the EEC Act, prior to designating an EEC Promotional Zone, the EEC Office should arrange for a "feasibility study" to be conducted with respect to "implementation, benefits, impacts and remedial measures against potential impacts on the people or communities that may be suffered or damaged", as well as a draft land use plan.[281]

As described in the EEC Office's Manual for the Establishment of Promotional Zones in the EEC,[282] these feasibility studies, including information about potential impacts on affected people or communities, are prepared by investors themselves. This is problematic as investors are likely to seek to obtain privileges from the EEC's Promotional Zones, as opposed to public authorities or institutions, which would be more likely to focus on a broader range of policy considerations and exercise greater independence.

The Manual requires the applicants to hold public consultations, conduct an environmental impact assessment (EIA/EHIA), and submit the results. There is no reference made to other measures to secure the human rights of affected persons, including any explicit protections against forced eviction.

CHART 3: Process of Registering an EEC Promotional Zone[283]



278 Section 40, EEC Act; and section 3(4), HNCPO Order No. 2/2560.
279 Section 6, EEC Act. Prior to the enactment of the EEC Act, HNCPO Order No. 2/2560 allowed the expansion of the EEC Act to other connected or relevant provinces as determined by the Policy Committee, upon the approval of the Cabinet. Therefore, in the past, there was also at least one approved project located outside eastern Thailand – i.e. the High-Speed Rail Linked 3 Airport Project that covers some parts of Bangkok and Samutprakarn provinces.
280 See the list of the approved Promotional Zones, available at: https://eeco.or.th/th/announced-promotion-area (in Thai)
281 Section 40, EEC Act.
282 EEC Office, 'Manual for the Establishment of Promotional Zones in the EEC', November 2018, available at: https://bit.ly/3eM4ox7
283 Ibid., at 5-8.
284 For example, https://eeco.or.th/sites/default/files/FS%20เขตส่งเสริมเศรษฐกิจพิเศษ%20กลุ่มพาณิชย์อิเล็กทรอนิกส์%20บางปะกง_1.pdf (in Thai); https://eeco.or.th/sites/default/files/fs%20โครงการยกระดับนิคมฯแหลมฉบัง%20เป็นเขตส่งเสริมเศรษฐกิจพิเศษ_0.pdf (in Thai)

Questionable Designation of Lands for the EEC

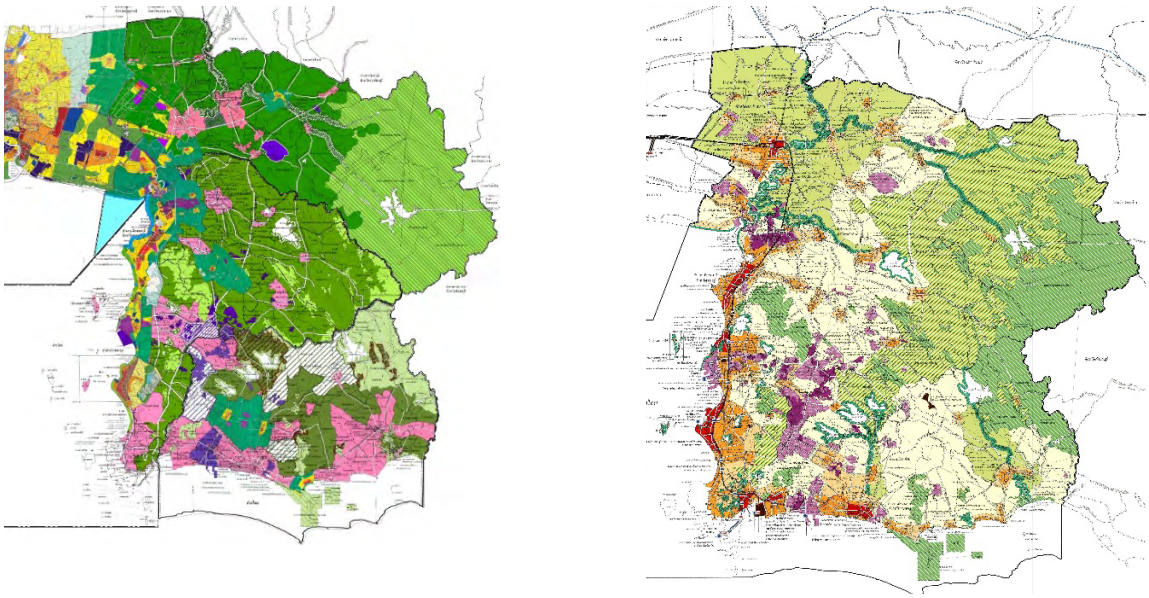
In addition to concerns raised as part of the limited public consultations described above, other concerns raised by residents were not addressed in the Land Use Plan that was ultimately approved by the EEC Policy Committee and the Cabinet. These include the re-designation of areas in the 2015 general town plans of Chachoengsao Province, Chonburi Province and Rayong Province,[285] including the re-designation of agricultural, and natural and environmental reserved zones to industrial zones. In addition, military areas are not classified as any land type, and their use is subject to the military's discretion.[286]

Affected communities claimed that there are other areas that could have been allocated for industrial activities that would not have affected the livelihood of local communities. Affected communities also claimed that some industrial zones in the EEC Land Use Plan were not designated in the areas which they were best suited for their proposed purposes.[287] The ICJ also received information that industrial zones included plots of land which had previously been designated as National Reserved Forest Areas.[288]

The DPT Director General pushed back in the media when confronted with this criticism, denying that lands had been mis-categorized or improperly designated. He explained that the EEC Land Use Plan would increase industrial zones from 45,000 *rai* (72 sq. km) to 70,000 *rai* (112 sq. km.), and stated that: "this EEC Land Use Plan will not affect agriculture zones much as such areas will be decreased by approximately 8% including rural zones which will be increased by 3%, industrial zones which will be increased by 2%, and the remaining 3% will be reserved as environmental reserved zones."[289]

MAP 3: General Town Plan for the EEC (Left) and the Land Use Plan for the EEC Area Approved by the Cabinet in 2019 in Line with the EEC Act (Right)

Map 3, below, illustrates the expansion of industrial zones (in purple), commercial zones (in red), urban zones (in orange) and rural zones (in light yellow) to agricultural, and natural and environmental reserved zones (in light and dark green).



285 Before the Land Use Plan entered into force, classification of land in the area was governed by the 2015 general town plans of Chachoengsao Province, Chonburi Province and Rayong Province.
286 For example, in Nakorn Nayok riverside area, Yothaka Sub-district, Bang Nam Prew District and Chachongsao province. ICJ Interview, Senior Officials of Ministry of Interior's Department of Public Works and Town and Country Planning, Bangkok, August 2019. The officials claimed that military and palace areas are normally not classified as any land type. However, such exceptions were not written in the Chachongsao Provincial General Town Plan B.E. 2555 (2012), See: http://www.ratchakitcha.soc.go.th/DATA/PDF/2556/A/039/1.PDF (in Thai)
287 Prachatai, 'Evaluate the Situation: Protest Against the EEC in Front of the Government House', 6 August 2019, available at: https://prachatai.com/journal/2019/08/83745 (in Thai)
288 Ibid. For example, in Khao Yang Dong area, the area between Plaeng Yao and Phanom Sarakham disrticts, Chachoengsao province.
289 Prachachart, 'EEC Board Approved the General Town Plan but Might not be Able to Enforce it By 9 August, and Insisted that Premium Lands for Cropping are Remained', 5 August 2019, available at: https://www.prachachat.net/economy/news-357325 (in Thai)

Notably, one of the most consequential differences between the new EEC Land Use Plan and prior plans devised pursuant to the Town Planning Act was the expansion of rural zones to agriculture, and natural and environmental reserved zones. The expansion reportedly made the rural zone one-fourth of the total EEC area.[290]

This is problematic because, according to non-governmental monitor EEC Watch Group and an academic whom the ICJ interviewed,[291] expansion may open up the land for development in ways that can have potentially devastating impacts on local communities. Based on an "Announcement of the EEC Policy Committee",[292] rural zones can be used for residential use, agriculture, government services, public utility services, and "other businesses". Although "other businesses" does not include large factories or mega projects prohibited by current domestic law,[293] the EEC Watch Group and others have raised concerns that those prohibitions are not broad enough and may allow the operation of businesses that adversely affect communities in rural areas. While safeguards exist in some laws, particularly the Factory Act, and can be used to mitigate such concerns, the law was recently amended and its regulations of small-sized factories have been weakened (described below in Section 5.2.1).

The province most heavily affected by the EEC was Chachongsao Province, which used to be an agricultural province where farmers rented lands for farming of rice, fruit, animals and other agricultural activities. After the EEC Policy was announced, many tracts of land were purchased by investors, resulting in the premature termination of contracts for small farming households. At least 43 households who rented the land for farming in Bang Pakong District, Chachoengsao Province, reportedly had their contracts terminated. In addition, such notices of termination were served to at least 100 households in Bang Lamung District, Chonburi Province. Deprived of access to land, farm and rental accommodation, enjoyment of their rights to food, work and housing were affected. The companies subsequently sued several of them for civil and criminal trespass after they refused to leave the land.[294]

In case of Bang Pakong District, based on the EEC Land Use Plan, the area – which is currently used for traditional premium rice plantation fields – was transformed from a rural and agricultural zone (in the 2015 General Town Plan) to an industrialized zone (in the EEC Land Use Plan).[295] At least 43 households renting the area for farming are affected by the policy, with some at risk of becoming homeless.[296] One person claimed that, before it was sold to the company, she rented the area of approximately 74 *ra*i (0.12 sq. km.) for farming for 70 years.[297] According to the EEC Watch, she is being prosecuted for trespass – a case currently pending before the Court of the First Instance.[298]

290 Thai PBS, 'Concerns on the EEC Town Plan: Industries Might be able to Operate in the Full Area of 420,000 Rai', 23 December 2019, available at: https://news.thaipbs.or.th/content/287326 (in Thai)
291 Ibid.; ICJ Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachongsao, August 2019; and ICJ Interview, representative of the EEC Watch, August 2019.
292 Section 14, Announcement of the EEC Policy Committee Regarding the Plan for Land Use, Development of Infrastructure and Public Utilities in the EEC, available at: https://www.eeco.or.th/sites/default/files/L_2562.PDF (in Thai)
293 The law prohibits the following businesses to be operated in the rural zone: (i) Eight industries that are listed in the Notification of the Ministry of Industry on Industrial Projects or Activities Which May Seriously Impact Environmental Quality, Natural Resources, and Health of the Peoples such as underground mining, lead-zinc mines, smelting factories, certain petroleum industries that may cause hazardous air pollutants or highly toxic, industrial estates, industrial waste disposal factories, fossil fuel power plant, and nuclear power plants; (ii) the allocation of lands for commercial purposes in accordance with the Land Allocation Law; (iii) the allocation of lands for industrial purposes in accordance with the Land Allocation Law; (iv) residence or commercial businesses that are operated in any tall or big buildings.
294 ICJ Telephone Interview, Representative of the EEC Watch, April 2020.
295 Land Watch Thai, 'Khao Din and the Purchasing of Land for Setting Up an Industrial Estate in the EEC', 11 February 2019, available at: http://landwatchthai.org/2884 (in Thai)
296 Voice TV, 'Bangpakong of the EEC, from 'green area' to 'industrial zone'', 16 November 2019, available at: http://www.voicetv.co.th/read/Gc_dZ7tR7 (in Thai)
297 Ibid.
298 ICJ Telephone Interview, Representative of the EEC Watch, April 2020.

Satellite Image of the designated industrial zone (marked in red)
in the middle of agriculture areas in Bang Pakong District

In a case in Bang Lamung District, an area of Khao Mai Kaew Subdistrict classified as an industrial area is also in dispute. A title deed ("*Chanote*") was issued to a company which bought the land. Local residents claimed that the land is a National Preserved Forest Area where approximately 100 households have been residing for 50 years.[299] Currently, 10 individuals are facing prosecution by the company for criminal trespass. As of August 2019, the case was still under investigation by the police.[300] For other questionable designation of lands for the EEC, see: Annex 5.

Concerns regarding the designation of lands for the EEC under the EEC Land Use Plan were also raised publicly by affected communities. In response, the Director-General of the Ministry of Interior's DPT confirmed in a press conference that the lands had been re-designated "based on the capacity and suitability of the areas."[301] The Secretary-General of the EEC Office, in his media response, reaffirmed that the EEC Land Use Plan "was prepared in accordance with the principle of town planning", and also took into consideration "the relationship with communities, health and well-being of the people, environment, and ecological system under the principle of sustainable development", as required by the EEC Act.[302]

299 Manager Online, 'Villagers from Khao Mai Kaew Opposed Provincial Land Office, Chonburi Province, for Surveying Lands in National Preserved Forest and Preparing to Issue Title Deeds for a Company', 14 August 2019, available at: https://mgronline.com/local/detail/9620000077395 (in Thai). Some sources stated that there are approximately 400 households that were affected by the issuing of such title deeds, see: Thammachart Greeaksorn, 'EEC: No Coup, No Way', Prachatai, 24 December 2019, available at: https://prachatai.com/journal/2019/12/85663 (in Thai)

300 Siamrat, 'Kao Mai Kaew Villagers Went to Rojana Office and Asked if They Have a Policy to Force Villagers Out of the Area', 27 August 2019, available at: https://siamrath.co.th/n/99423 (in Thai)

301 Prachachart, 'EEC Board Approved the General Town Plan but Might not be able to Enforce it by 9 August, and Insisted that Premium Lands for Cropping are Remained', 5 August 2019, available at: https://www.prachachat.net/economy/news-357325 (in Thai)

302 Thairath, 'EEC Office Answered 10 Questions about the EEC', 13 August 2019, available at: https://www.thairath.co.th/news/business/1636213 (in Thai)

4.3 Overriding Checks and Balances in Land Acquisition and Town Planning

4.3.1 Fast-tracking of Land Acquisition Process for SEZs by HNCPO Order

Procedures for land acquisition are often by-passed or ignored in order to fast-track the establishment of SEZs. This has had damaging impacts on local communities, which are often unaware of and uninformed about these procedures. Land acquisition often moves forward without taking into account local, including customary, forms of land use which are often vital for the basic subsistence of such communities.

SEZs and their Development Areas are in border areas, and consist of "*Ratchaphatsadu* land" and lands which used to be "National Reserved Forest Areas", "Permanent Forest Areas", "Agricultural Land Reform Areas" and "Public Domain of State for the Common Use of the People", which were converted to "*Ratchaphatsadu* Land" by HNCPO Order or a court judgment.[303] Some areas include privately-owned lands.[304]

Local residents who reside or work on such lands occupy lands differently – either through ownership of land title, other forms of legal land ownership (for example, *Nor Sor 3 Gor*) or without any legal title at all, such as lessees who occupy and use lands for a long time, and in some cases, have paid local administration tax on the lands (i.e. *Por Bor Tor 5*).

HNCPO Order No. 17/2558, dated 15 May 2015, regarding "Land Acquisition for the Special Economic Zones" (amended by HNCPO Order No. 74/2559) was used to convert several lands to "*Ratchaphatsadu* Land" by bypassing procedures required by Thai law, for the purpose of developing SEZs. These HNCPO orders were issued pursuant to Article 44 of the Interim Constitution. Without Article 44, speedy conversion of lands and bypassing of procedures would not have been allowed under domestic law.[305]

In order to annul the special status of a designated land, certain requirements must be fulfilled, as set out in Table 7. Land which is designated Public Domain, for example, may be annulled or transferred for other use by an Act or Royal Decree, provided that public bodies, State or private enterprises make other lands available.[306] Similarly, the cancellation of boundaries of a National Reserved Forest Area can only be made by a Ministerial Regulation.[307] In the case of Agriculture Land Reform Areas, lands can only be used for agriculture purposes in accordance with the Agricultural Land Reform Act though that status can be annulled or transferred by Royal Decree.[308] These requirements were overridden by HNCPO Orders No. 17/2558 and 74/2559.

303 For example, the designated Development Area in SEZ Songkhla included lands that were obtained by a court judgment. The lands were seized from a convicted party by virtue of the Anti-Money Laundering Act, B.E. 2542. The Supreme Court Judgment 21821/2556 rendered such lands State-owned *Ratchaphatsadu* Land under the ownership of the Ministry of Finance's Treasury Department.

304 For example, the designated Development Area of Narathiwat SEZ will be purchased by the Ministry of Finance's Treasury Department from private individuals who hold the legal title to lands. Some plots of land in the designated Development Areas in Tak SEZ also used to belong to private individuals who held legal titles to the lands.

305 These include the National Reserved Forest Act B.E. 2507 (1964), which protects National Reserved Forest lands, Agricultural Land Reform Act B.E.2518 (1975) which protects lands set aside for agricultural production, Forest Act B.E. 2484 (1941), which protects designated forest areas, or Land Code B.E. 2497 (1954) which protects the designated Public Domain of State for the Common Use of the People.

306 Section 8, Land Code, and the Regulation of the Ministry of Interior regarding the Annulment, Registration, and the Use of Public Lands in Accordance with the Land Code B.E. 2550 (2007).

307 Section 7, National Reserved Forest Act.

308 Land Watch, 'SEZs Policy in Thailand: Cases on SEZ in Tak, Chiang Rai, Nongkai, Nakornpranom and Mukdahan', April 2016, at 96.

TABLE 7: Conversion of Lands Under their Generic Laws [309]

Land which is Domain Public of State for the Common Use of People	Land can be annulled or transferred for other use by an Act or Royal Decree, provided that public bodies, State or private enterprises make other land available for people in lieu thereof. The process takes more than one year.[310]
National Reserved Forest Areas	Land can be annulled by a Ministerial Regulation.[311] The process takes more than one year.[312]
Permanent Forest Areas	Permanent Forest Area designation can be revoked by Cabinet resolution. Such revocation normally requires five steps of implementation, involving surveying of land plots and public hearings. The process takes more than nine months.[313]
Agriculture Land Reform Areas	Lands cannot be used for SEZs because they must only be used for agriculture purposes in accordance with the Agricultural Land Reform Act. They may be annulled or transferred for other use by a Royal Decree. The process takes more than one year.[314]

Consequently, the government carried out conversions of land use without undertaking "eviction-impact" assessments and consultations with affected communities. It also failed to put in place adequate legal protections against forced eviction. All of these are necessary in order for the Thai government to comply with its international obligations, including under the ICESCR and ICCPR.[315] These HNCPO orders were issued pursuant to Article 44, which did not require consultations to be conducted with affected populations. Actions taken pursuant to these orders cannot be judicially reviewed.[316] Many residents were evicted from the lands they had occupied for generations by virtue of the HNCPO Orders No. 17/2558 and 74/2559.

In addition, according to Land Watch, many plots of lands, before being granted with any special forest or public status, were occupied by local residents. For example, affected residents in Tak SEZ's Development Area claimed that they had inherited the disputed lands from their ancestors before the lands were categorized as National Reserved Forest Area in 1981 and as Permanent Forest Area in 1982.[317]In another case, in Nakhon Pranom SEZ, before conversion to *Ratchaphatsadu* Land, the Ministry of Interior's Department of Land allegedly incorrectly announced that the land was Public Domain land even though it was occupied and owned by local residents who hold legal titles to the lands (For more information, see: Annex 4).

HNCPO Order No. 17/2558 also allows for the acquisition of land owned by private individuals for SEZ development. The Order provides that if any parts of designated lands belong to private individuals or State enterprises, the SEZ Policy Committee will have the power to order concerned agencies to exchange *Ratchaphatsadu* Land with the lands of private individuals. "[I]f necessary for the benefit of government services", the Committee can decide to provide financial compensation, instead of such an exchange.[318]

309 Ibid.
310 SEZ Policy Committee, 'Minutes of Meeting: SEZ Policy Committee Meeting No. 2/2558, 16 March 2015, available at: http://www.otp.go.th/uploads/tiny_uploads/PolicyPlan/1-PolicyPlan/SpecialEconomic/Confirm-22558.pdf.pdf (in Thai)
311 Articles 7, National Reserved Forest Act.
312 SEZ Policy Committee, 'Minutes of Meeting: SEZ Policy Committee Meeting No. 2/2558, 16 March 2015, available at: http://www.otp.go.th/uploads/tiny_uploads/PolicyPlan/1-PolicyPlan/SpecialEconomic/Confirm-22558.pdf.pdf (in Thai)
313 Ibid. Land Watch, 'SEZs Policy in Thailand: Cases on SEZ in Tak, Chiang Rai, Nongkai, Nakornpranom and Mukdahan', April 2016, at 96 and 98..
314 Ibid.
315 For example, Article 17, ICCPR.
316 CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 15, available at: https://www.refworld.org/docid/47a70799d.html
317 Land Watch Group, 'SEZs Policy in Thailand: Cases on SEZ in Tak, Chiang Rai, Nongkai, Nakornpranom and Mukdahan', April 2016.
318 Section 5, NCPO Order No. 17/2558.

This provision was used in Tak SEZ.[319] A plot of privately-owned land that was surrounded by *Ratchaphatsadu* Land was purchased from a local resident. Officials from the Ministry of Finance's Treasury Department told the ICJ that compensation in these circumstances is higher than the government's estimation of land value.[320] However, the ICJ received information about delays in residents on that land receiving compensation.[321]

4.3.2 The Use of Agriculture Land Reform Areas for SEZ and EEC Purposes

Land that has already been set aside for the benefit of landless farmers has also been acquired for SEZ and EEC development. This both negatively affects the most vulnerable communities and undermines existing Thai law and policy intended to alleviate the problem of landlessness. The diversion of these lands, especially if there is a shortage of agricultural land areas or no suitable alternatives provided, is inconsistent with Thailand's obligations to realize the right to food and reduce food insecurity.

Pursuant to the Agricultural Land Reform Act, land reform areas shall be allocated to farmers "who have no land of their own or who have insufficient land for making a living" and to farmers' institutions "for developing agricultural occupation".[322] However, HNCPO Order No. 17/2558 has been used to convert Agriculture Land Reform Areas – lands which are only supposed to be used for agricultural purposes in accordance with the Agricultural Land Reform Act – to *Ratchaphatsadu* Land for SEZ purposes. The order bypasses procedures set out under the Agricultural Land Reform Act and other relevant regulations,[323] without providing adequate guarantees to alternative lands and/or adequate compensation for affected farmers. For example, in Mukdahan SEZ, a plot of the Agriculture Land Reform Area was selected to form the Development Area. It, together with Permanent Forest Area and Public Domain land, was later converted to *Ratchaphatsadu* Land pursuant to HNCPO Order No. 17/2558 for SEZ purposes. Five affected households were reportedly evicted and compensated,[324] but no alternative land was provided.

In addition, HNCPO Order No. 31/2560 can be used to acquire Agriculture Land Reform Areas for purposes other than agricultural reform. The Order grants authority to the "Committee on Land for Agricultural Reform", subject to approval from the Cabinet, to allow lands that were acquired for agricultural reform to be used for other businesses "if necessary, for the benefits of energy efficiency, natural resources, or the benefits for the public". The order also provides that such a decision shall take into consideration "the national strategies, benefit of the farmers, and benefit of the country".[325] The order provides that those who apply to use such land should be the ones who provide compensation to the affected farmers.

Interestingly, section 36 of the EEC Act[326] provides that the EEC Policy Committee has the power to instruct the EEC Office to make use of any designated Agriculture Land Reform Area for the purpose of any undertaking or operation of any other business other than those specified in the law governing agricultural land reform, without being required to revoke the agriculture land reform status for that particular land. The EEC Office may also confer the right to use such land to any other person in consideration of payment. However, if there is a person who is entitled to the right to use such land, the EEC Office can procure other land for the person's use instead, or alternatively make payment of compensation.

Clearly, neither HNCPO Order No. 17/2558 nor 31/2560 provides an adequate guarantee to provide suitable resettlement including access to alternative productive lands. These orders, therefore, may result in shortage of agricultural land areas and risk breaching Thailand's obligations to realize the rights to housing and food and to reduce food insecurity.

319 ICJ Interview, Officials of Treasury Department, Ministry of Finance, in areas where SEZs are operating, September 2019.
320 Ibid.
321 ICJ Telephone Interview, Affected Individual, Tak SEZ, April 2020.
322 Section 4, Agricultural Land Reform Act.
323 For example, the Agreement between the Department of Land and the Office of Agricultural Land Reform regarding the Guidelines on Issuing Land Title Documents on the Land Reform Area B.E. 2558 (2015), available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER3/DRAWER078/GENERAL/DATA0000/00000312.PDF (in Thai). Notably, based on such Agreement, a land title document can be issued in the land reform areas only in cases where the applicants have certain ownership or right of possession over such lands.
324 Mukdahan Provincial Office, 'Background Information about Mukdahan Province and its SEZ', June 2018, available at: http://www.mukdahan.go.th/data/pg.pdf (in Thai)
325 Section 1, Head of the NCPO Order No. 31/2560.
326 ICJ Interview, Commissioner of the NHRCT, August 2019; This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

On the other hand, under the EEC Act, both alternative land or compensation can be provided to affected farmers. However, such exchange and compensation must be "in accordance with the criteria, procedures and conditions specified by the EEC Policy Committee".[327] If the EEC Policy Committee took into account impacts on the rights to food and adequate housing of affected people, it would provide more reliable access to resettlement, including alternative land suitable for agriculture, and appropriate compensation.

4.3.3 Overriding the Town Planning Act

Originally, land use in urban and rural areas in Thailand, including in SEZ and EEC areas, was regulated by "general town plans", whereby land use would be categorized in accordance with provisions in the Town Planning Act B.E. 2518 (amended in B.E. 2562 (2019)). The categorization sets out the purpose for which each zone in a province is to be used – as industrial, rural, agricultural, or natural and environmental reserved zones.

The Town Planning Act mandates that local residents have the opportunity to take part in town planning and contains several procedural protections against evictions as required by international law. During the process of designing "general town plans", public consultations must be carried out, plans must be advertised to the public, and stakeholders must be given the opportunity to challenge the plans and have complaints considered by the Sub-Committee for Considering Complaints set up by the Ministry of Interior's DPT.[328]

In addition, section 9 of the Town Planning Act guaranteed that a consultation must be "advertised through different means to the full range of people" and "provide sufficient information that any individual can understand impacts on peoples, communities, environment, ecological system and remedy frameworks." However, HNCPO Order No. 3/2559 exempts the planning of land use in SEZs from guaranteeing public participation in the planning process as required by the Town Planning Act.

Specifically, HNCPO Order No. 3/2559 exempts the enforcement of several town planning and building control laws for SEZ development. It authorizes officials under the Building Control Act to temporarily amend pre-existing land designations by passage of an "Interior Ministerial Announcement",[329] until a revision is made to the relevant provincial general town plan to accommodate SEZ development.

This is problematic because the general town plan should normally be finalized in accordance with procedures set out in Thai law for town planning – including the public participation and transparency requirements described above. An Interior Ministerial Announcement shortens the time for officials to amend land designation and removes the obligation to conduct public consultations, limiting meaningful participation of affected communities and individuals in the planning process.

In addition, section 3 of HNCPO Order No. 17/2558 provides that designated lands that were converted to *Ratchaphatsadu* Land for SEZ development shall not be governed by regulations relating to land use in accordance with the Ministerial Regulations of the Provincial General Town Plan. Conversions of lands under HNCPO Order No. 17/2558 to SEZ Development Areas *(Ratchaphatsadu* Land) for industrial activities therefore need not comply with provincial town plans, which were drafted with participation of the public. SEZ Development Areas can therefore be located in any areas, including in rural, agricultural, and natural and environmental reserved zones.

In a meeting with the ICJ, the Ministry of Interior's DPT clarified that in drafting the above noted Interior Ministerial Announcements for SEZ areas, the Department had conducted public hearings with stakeholders.[330]

327 Section 36, EEC Act.
328 The process is also known as '18 Steps of Town Planning'. See: DPT, 'Processes in Planning and Finalizing General Town Plan', available at: http://eservices.dpt.go.th/lawmap1/ (in Thai)
329 Section 13 of the Building Control Act provides that "the Minister, with the advice of the Town Planning Department or the local competent official, shall have the power to announce by publication in the Government Gazette the temporary prohibition of construction, modification, demolition, move, use, or change of use of building in such area. Such an announcement normally expires within one year from the date it comes into force. However, section 2 of HNCPO Order No. 3/2559 extends the expiration period of such an announcement from one year to until the general town plan is approved in accordance with the usual Town Planning Act.
330 ICJ Interview, Senior Officials of the Ministry of Interior's Department of Public Works and Town and Country Planning, Bangkok, August 2019.

The Department informed the ICJ that it is in the process of drafting new provincial general town plans to accommodate SEZ development. Public consultation meetings will be conducted with local residents in all provinces. These new provincial general town plans will replace the Interior Ministerial Announcements for SEZ areas.

As the Town Planning Act has just been amended, the new provincial general town plans will likely be finalized in mid-2021.[331] Consultations will allow stakeholders to have the opportunity to challenge the classification of land use through this town planning process. However, opportunities for public participation that may arise will have no impact on the designation of operational zones in SEZ Development Areas as the lands have already been allocated for industrial activities by virtue of HNCPO Orders No. 17/2558, 3/2559 and the Interior Ministerial Announcements under the Building Control Act.

In relation to the EEC, both HNCPO Order No. 47/2560 and sections 30 to 32 of the EEC Act require the EEC Office and the DPT to prepare new land use plans which cancel town plans which have been approved under the Town Planning Act. As a result, the Town Planning Act is no longer at the centre of planning processes. However, as examined in Section 4.2.2, although the EEC Act contains strong human rights language about consultation and classification of land use, communities and civil society groups claim that these safeguards have not been implemented. In addition, opportunities for public participation that may come will have no impact on the designation of operational zones that have already been allocated for industrial activities pursuant to HNCPO Order No. 47/2560 and the EEC Act.

Additionally, HNCPO Order No. 4/2559 also exempts the enforcement of ministerial regulations under the Town Planning Act for certain types of businesses in the energy and industrial sectors. This means that these businesses may be located in any location regardless of the type of lands that were determined in the provincial town plans. The order exempts at least 29 electric power plants from all laws related to city planning, including the Town Planning Act.[332] Under this order, subject to the EIA/EHIA assessment of eligible companies, the Town Planning Act can also be bypassed for other energy projects including fuel depots, power and oil lines, gas pipes, and waste disposal businesses which usually can only be developed in industrial zones.[333] This order was in force only for a period of one year (between 20 January 2016 and 19 January 2017).

These exemptions create extraordinary risks for communities in areas where significant development in the energy and extractive industries is taking place. For instance, according to the Thailand Power Development Plan 2015-2036 (PDP2015), an 800-Megawatt coal power plant in Krabi Province and 1000- Megawatt coal power plant in Thepha District, Songkhla Province (Phase 1), which usually can only be developed in industrial zones, will be located in an area designated as an agricultural zone pursuant to HNCPO Order No. 4/2559.[334]

4.4 Failure to Provide Alternatives and Compensation

Under international human rights law, adequate alternative housing and compensation should be provided to those who are affected by evictions, regardless of whether they rent, own, occupy or lease the land or housing in question. Indeed, such safeguards should be put in place even prior to the evictions.[335]

331 Ibid.

332 Prachathai, 'Prayuth Unlocked the Exemption of the General Town Plan by HNCPO Order to Allow 29 Electric Power Plants to Operate', 1 April 2016, available at: https://prachatai.com/journal/2016/04/65007 (in Thai). On 31 March 2016, an Announcement of the National Energy Committee was also published on the Government Gazette, providing that such projects shall also "have measures to guarantee that it will reserve environment and communities' quality of life".

333 ENLAW Foundation, 'Summary of the Head of the NCPO Order 4/2559', 1 February 2016, available at: https://enlawfoundation.org/newweb/?p=2688 (in Thai)

334 Thansettakij, 'Building Power Plants in 44 Provinces in Thailand, Extended NCPO Orders, But not on the Regulations Regarding Town Planning', 1 February 2017, available at: https://www.thansettakij.com/content/127495 (in Thai)

335 CESCR, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand', UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, para 10. The CESCR, in its review of Thailand's periodic report in June 2015, recommended Thailand, among other things, to take all necessary steps, including revising its legal and policy framework, to "ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation, bearing in mind the Committee's General Comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions", and "adopt a human-rights based approach in its development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent".

4.4.1 Compensation

According to the UN Basic Principles on Evictions and Displacement, fair and just compensation for any losses of personal, real or other property or goods should be provided to those affected. While "cash compensation should under no circumstances replace real compensation in the form of land and common property resources", all those evicted, "irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process."[336] In addition, "where the home and land provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses; equipment or inventory; livestock; land; trees or crops; and lost or decreased wages or income."[337]

In cases where lands were converted to *Ratchaphatsadu* Land, committees (including the Committee Managing *Ratchaphatsadu* Lands Obtained by HNCPO Order No. 17/2558 in SEZs) were established in each SEZ to consider "financial and other support"[338] that will be provided to affected communities and individuals. These include provision of support to those who are forced to move out of SEZ Development Areas, regardless of whether they own legal titles to the land. These committees thereafter proposed financial support packages to the Cabinet. The budgets were later approved via Cabinet Resolutions, providing financial support to affected individuals.[339] These Resolutions, however, came almost two years after HNCPO Order No. 17/2558 (allowing the conversion of restricted lands to *Ratchaphatsadu* Land for SEZ development) entered into force, and affected individuals were ordered to be evicted from their land.[340] In Kanchanaburi SEZ, where the designated Development Area reportedly affected at least 115 individuals who had possessed the area for farming, a financial package was proposed to the Cabinet but the budget is currently still pending approval by the Cabinet.[341]

The precise nature of the "support frameworks" used by the committees in each province were dependent upon the outcomes of negotiations[342] between affected communities or individuals and authorities from the Ministry of Finance's Treasury Department, as well as the resources and types of support made available to each of the Treasury Department's local offices in affected localities.[343] For instance, in some SEZs, alternative plots of land were arranged, while in other areas, only financial compensation was provided to affected individuals.

In Tak SEZ, Mukdahan SEZ, Songkhla SEZ, and Kanchanaburi SEZ, financial compensation provided to affected individuals by the government included payments for the price of land, building and crops (details in Annex 4).[344] However, amounts paid to affected households in each SEZ Development Area has varied. In some SEZ Development Areas, residents who did not hold legal title to the land were paid according to the government's standard estimation of land value.[345] In other areas, residents received only a small amount of financial support for relocation and compensation for the demolition of their properties.[346] In some other areas, compensation was paid for both immovable and movable property, including crops and trees in accordance with regulations of the Royal Irrigation Department, as in Tak and Songkhla SEZs.[347] No compensation was provided for the value of business losses and lost or decreased wages or income in any of these areas.[348] This disparity in how compensation has been handled from place to place suggests that

336 UN Basic Principles on Evictions and Displacement, paras 60-61.
337 UN Basic Principles on Evictions and Displacement, para 63.
338 An official of a Treasury Department in an area where an SEZ is operating explained to the ICJ that they used the term "support" not "compensation" because "the villagers who are entitled to such financial support are not victims of any unlawful acts or wrongdoings. Rather, they illegally stayed in State lands [forest or public areas], which were transformed to *Ratchaphatsadu* lands". ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019.
339 See: NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017; Subcommittee on Land Management, 'Minutes of the Meeting', 3 February 2016, available at: http://www.taksez.com/images/file_document/F00158.pdf (in Thai)
340 Ibid.
341 ICJ Telephone Interview, officers of a State agency involved in the formulation of SEZ policy, Bangkok, March 2020. (interviewees wish to remain anonymous)
342 In Tak SEZ, unlike others, the last group of villagers who refused to move out of the acquired land, in addition to the financial support, were also assisted by the government to find new plots of land of the same quality but at a lower price.
343 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, September 2019.
344 Ibid.; Crop prices are paid based on standard prices as determined by Royal Irrigation Department. ICJ Interview, Local Administrative Official in areas where SEZs are operating, August 2019.
345 The standard estimation of land value is calculated by the Treasury Department, Ministry of Finance. ICJ Interview, Officials of Treasury Department, Ministry of Finance, in areas where SEZs are operating, September 2019.
346 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019; ICJ Interview, Local Administrative Official in areas where SEZs are operating, August 2019.
347 ICJ Interview, Affected Communities, Tak, September 2019; ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, September 2019.
348 UN Basic Principles on Evictions and Displacement, para 63.

compensation and other support have been an afterthought rather than part of a planning process.

Adequate compensation has also not been provided in cases in which buildings were demolished in accordance with the Building Control Act.[349]

Under Thai law, in acquiring lands, concerned authorities are equipped with the authority to evict residents pursuant to several laws, including the Building Control Act and Ratchaphatsadu Land Act B.E. 2562 (2019) (which superseded the Ratchaphatsadu Land Act B.E. 2518 (1975)). Under sections 40 to 43 of the Building Control Act, local officials have the power to demolish any building that "was constructed, modified, demolished, or moved" in violation of the law, if the owner of the building fails to comply with an order of a local official to rectify such construction, modification, demolishment or move.

Importantly, the local official – or person acting in place of a local official – must take reasonable care in ordering such demolition and the owner of the building is not eligible to claim compensation for damages caused by officials.[350] The provision imposes a penalty for illegal constructions; however, the ICJ received information that it was misused in Songkhla SEZ by relevant authorities to forcibly evict residents from their rental accommodation after two years of unsuccessful negotiation, but without remedy or compensation.[351]

Under international law, governments must provide just compensation immediately upon eviction.[352] In the case of demolitions in Songkhla SEZ, this did not happen.[353] Thailand is also under an obligation to amend such laws which impede access to justice and effective remedies and must prohibit officials from acquiring lands without complying with safeguards against forced evictions.

In the EEC, because lands are mostly owned by private individuals or entities, military-owned lands,[354] or lands in the Eastern Seaboard Industrial Estates, compensation for affected communities who rent the land is decided through negotiation with the land owners. Families who had leased land within a designated area but from different owners received differing amounts of financial compensation depending on negotiations between them and specific landowners. In some cases, land contracts were terminated without any compensation provided. In other cases, "compassionate money" was paid by the landlord to residents in compensation.[355] There is no minimum amount ensured by the government as it was deemed to be a matter of private actors to negotiate compensation. This is problematic because, subject to the UN Basic Principles on Evictions and Displacement, State should take a more active role and has an obligation to ensure fair and just compensation for any losses of property or goods to all those evicted, irrespective of whether they hold title to their property.

4.4.2 Resettlement and Alternative Livelihoods

Under international human rights law, the provision of alternative housing or land that will be provided to those affected by the eviction orders must meet the criteria for adequacy of housing as set out in the CESCR's General Comment No. 4. These criteria are:

- legal security of tenure;
- availability of services, materials, facilities and infrastructure;
- affordability;
- habitability;
- accessibility;
- location;
- and cultural adequacy.[356]

349 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019. ICJ Interview, Affected Communities, Songkhla, August 2019.
350 Available at: http://asean-law.senate.go.th/file/law/pdf/file-192-13.pdf
351 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019; ICJ Interview, Affected Communities, Songkhla, August 2019.
352 Principle 52, UN Basic Principles on Development-Based Evictions and Displacement.
353 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019; ICJ Interview, Affected Communities, Songkhla, August 2019
354 For example, in Yothaga Subdistrict, Nang Nam Preaw District, Chachongsao Province, the rental contracts of local residents were reportedly terminated by the Royal Thai Navy. However, after some negotiation, they are still allowed to rent the areas but on a short-term basis.
355 ICJ Interview, two affected individuals by EEC policies, Chachongsao, August 2019.
356 CESCR General Comment 4, para. 8.

There was no consultation with communities and individuals before undertaking measures that may affect them and no remedies were put in place prior to the evictions. Since evictions were as a result of HNCPO orders, affected communities and individuals have no opportunity to challenge the eviction orders. No alternative lands were provided to affected residents in most SEZ areas.[357]

In at least one case, the alternative lands arranged by concerned agencies were criticized by affected communities for not being sufficient to ensure the livelihoods of affected individuals and households. While the government has provided all other necessary amenities and services at the proposed site, economic opportunities of the relocated households are restricted and housing is at times not affordable. As described earlier, resettlement sites must meet all seven elements of adequacy of housing including that "[a]dequate housing must be in a location which allows access to employment options"[358] and it must be affordable; governments must ensure that the percentage of housing-related costs is commensurate with income levels.[359]

In the Songkhla SEZ, for example, new plots of land were arranged by the Treasury Department for local residents to lease. While this land is in a good location with accessibility and availability of public services, facilities and infrastructure, affected individuals informed the ICJ that the proposed land, due to limited availability of resources, has no space to grow plants or raise animals, and is not suitable for agriculture or other work.[360] In addition, displaced individuals, as they received only small amounts of financial support for relocation and compensation for demolishment, had to build a new house on the new land at their own expense. While the government provided assistance in facilitating access to bank loans for housing for those unable to obtain affordable housing, a few affected residents informed the ICJ that they could not access such loans because they are older than the eligible age (60 years old) and do not own any asset-backed security.[361] In this case, as in many others, the government's measures fail to ensure adequacy of resettlement for all those affected.

Alternative lands that were arranged by Songkhla Treasury Department for local residents to lease

357 See also Part 4.2.1 and Annex 4.
358 CESCR, General Comment 4, para 8 (f).
359 Ibid., para 8 (c).
360 ICJ Interview, Affected Communities, Songkhla, August 2019; ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019.
361 Ibid.

Houses that were built by affected individuals, financed by bank loans for housing on alternative lands

Similarly, with the EEC, in Chachongsao province, the ICJ found an instance in which an investor company purchased the lands and arranged for new plots of land to be leased to affected individuals. However, the plots were reportedly smaller than their original plots of land and not suitable for their livelihood.[362] For example, an affected individual in the area claimed that she had leased approximately 74 *rai* (0.112 sq.km.) of land for 70 years for farming. After it was sold by the owner to a company, alternative land[363] that was allocated to her was much smaller and not suitable for rice farming.[364]

Concerns were also raised by affected residents in SEZ Developed Areas and EEC, particularly those who were resettled, about a lack of action by the government to provide opportunities for them to maintain their livelihoods or access alternative jobs. In many cases, local residents have limited experience in income generation outside agriculture. There are no legal or other guarantees that the development of an SEZ or EEC area will lead to employment opportunities for affected residents, and there are no legal obligations on employers within SEZ and EEC areas to hire local residents. In all of the communities studied for this report, no support was provided to assist affected residents who had to resettle and switch their mode of livelihood from agriculture to jobs in industry.[365]

4.4.3 Lack of Clarity Regarding the EEC Fund

The EEC Act, under section 61, establishes a "Eastern Special Development Zone Fund" with the objective of "promoting the development of the areas, the communities, and the people residing in or the people who are affected by the development of the EEC". Section 64 of the EEC Act thereafter provides a list of activities that the Fund can be used for, including "development of areas or communities", "providing assistance or taking remedial actions to people and communities who may be affected by the development of the EEC" and "other expenses that will enhance efficiency and promptness of the development of the EEC as specified by the Policy Committee".

362 For example, see: http://www.bluetechcity.net/1411 (in Thai). ICJ Interview, two affected individuals by the EEC policies, Chachongsao, August 2019.

363 See for example: Blue Tech City, 'Double P Land Co., Ltd., Chachongsao Blue Tech City Industrial Estate's developer, allocated 12 rai (0.02 sq.km.) to Villagers whose Lands and Housing Were Affected', 13 December 2018, available at: https://www.bluetechcity.net/1011 (in Thai). Accordingly, the alternative lands were allocated to 14 households.

364 ICJ Interview, two affected individuals by the EEC policies, Chachongsao, August 2019; Voice TV, 'Bangpakong of the EEC, from 'Green Area' to 'Industrial Zone'', 16 November 2019, available at: http://www.voicetv.co.th/read/Gc_dZ7tR7 (in Thai).

365 ICJ Interview, Affected Communities, Tak, September 2019; ICJ Interview, Affected Communities, Songkhla, August 2019. Nevertheless, in a Cabinet Resolution dated 25 December 2017, the Cabinet acknowledged the proposal of the Ministry of Industry to provide occupational trainings to communities around the industrial estates in Songkhla, Tak and Sa Kaew SEZs. Available at: http://www.ldd.go.th/Web_Cabinet/PDF/2561/Dec/25122018.pdf (in Thai). The ICJ, however, was not informed about such projects being provided to communities studied in this report.

Currently, the scope of the EEC Fund is uncertain.[366] From the ICJ's communications with an officer of the EEC Office, however, it appears that the Fund will not be used to support those who are affected by the process of land acquisition, because the "EEC is not responsible for the process of land acquisition". The Fund will be used only to "support those who are affected by activities carried out in the EEC".[367] The efficacy of the Fund is yet to be accessed.

No such similar mechanism exists with respect to SEZs.

366 Regulation of the EEC Policy Committee regarding the EEC Fund, available at: https://www.eeco.or.th/th/filedownload/1464/fe12aad4f3d0e32fed8016f1eda3dac0.pdf

367 ICJ Telephone Interview, Legal Officer, EEC Office, Bangkok, July 2019.

5. CONCERNS ARISING WITH RESPECT TO ENVIRONMENTAL LAWS

There is a well-developed body of international law and good practice that pertains to the protection of the environment in the context of economic development and access to a clean and healthy environment. A degraded or polluted environment has implications for a wide range of human rights, including the rights to health, water, food, housing and an adequate standard of living, as well as other rights under the ICESCR and ICCPR.

5.1 General Legal Framework for Environmental Protection in Thailand

Protecting the environment in the context of EEC and SEZ development has been a crucial challenge. Development in EEC areas has been affected by environmental problems since the beginning of the Eastern Seaboard Development Program. These have included air pollution from factories affecting nearby communities, drought induced by water scarcity and resulting tensions between communities and industries.[368] There have also been reports of illegal disposal of industrial waste in the region, resulting in both land and water contamination[369] and of waste water flowing from industrial areas into local canals and into areas of residence, mangrove forests and the sea.[370]

Some problems have, however, been positively resolved by collaboration and partnership between the government, private sector and local residents, such as in the case of Ao Udom community in Chonburi Province. In Ao Udom, to mitigate the environmental impacts of business activities on the community, local residents, private companies, and the local government reached an agreement on plans for sustainable development, environmental conservation and restoration, and signed a memorandum of understanding (MOU) in May 2013.[371]

The widespread and well-documented impacts of industrial waste on the environment, however, continue to cause concern. A key case study in the EEC area is the pipeline leakage near Mabtaphut Port, Rayong Province, which, in 2013, caused a massive crude oil spill into the sea from a pipeline operated by PTT Global Chemical Plc (PTTGC). Though the company had stated that residents and fishermen near Mabtaphut would not be affected by the crude oil spill, local residents claimed that the spill resulted in local fishermen being unable to fish in shore areas affected by the oil spill. Local fisherman now have to spend more money to travel farther to fish in areas that were not affected.[372]
Another recent example was a fire and explosion which occurred on cargo ships carrying toxic chemicals at Laem Chabang Seaport, Chonburi Province, in 2019. At least 25 port workers were injured, and nearby communities suffered from smoke and chemical droplets falling from the sky, violating their rights to health, life, and their enjoyment of a healthy environment. Individuals from many communities had to be evacuated from the area.[373] Both ports are key infrastructure components of the EEC project.

In May 2019, the EEC Office launched the "Environmental Plan of the EEC (2018-2021)", in response to some of these concerns.[374] The Plan listed 86 projects for which a large fund would be allocated to build waste management centres and waste water treatment facilities in several areas, and contribute to other environmental conservation projects, in order to increase the effectiveness of environmental protection in

368 Mabtaphut was designated as a pollution controlled area since 2009, see: http://www.pcd.go.th/info_serv/pczs/pczDetail.cfm?id=13 ; Ekkapol Bunlue, 'Conclusion: 10 Years of Map Ta Phut case. Pollution Controlled Area and Priceless Cost Paid by Society for Society', The Standard, 18 October 2017, available at: https://thestandard.co/10-years-of-map-ta-phut-case/

369 Mabtaphut Watch, 'Pollution at Mabtaphut', available at: http://www.mtp.rmutt.ac.th/?page_id=1158

370 Somnuck Jongmeewasin, 'Lesson Learned: Eastern Seaboard before the EEC', 19 October 2017, available at: https://ilaw.or.th/node/4656

371 Ibid.; The MOU is available at: https://bit.ly/3co0XvW. The MOU set out plans of collaboration, including: (i) plan of the communities' heritage management; (ii) conservation plan; (iii) restoration plan; (iv) sustainable area use plan; (v) sea area use management plan; (vi) pollution management plan; (vii) political development and civil space plan; (viii) area and peoples' identity plan; (ix) capacity building plan, and (x) networking.

372 In this case, the Court's ruling noted that the ecosystem and environment were slowly being restored to a prior unpolluted state , as confirmed by the relevant Ministry. The Court, however, ordered the company to provide more than 400 local residents with compensation for loss of employment. Thairath, '1 Year After, Oil Leak at Ma Phrao Shore, Samet Island', 31 July 2014, available at: https://www.thairath.co.th/content/439975; ICJ Interview, Mr. Somnuck Jongmeewasin, leading environmental expert of EEC Watch and academic, Chachongsao, August 2019; ICJ Interview, Affected Residents, Rayong, August 2019. See also: Isranews, 'Rayong Court Ordered PTTGC to Compensate Villagers for their Loss of Employment from Oil Spill 5 Years Ago', 28 September 2019, available at: https://www.isranews.org/isranews-news/69851-pttgc.html

373 The Nation, 'Toxic chemicals cause seaport fire', 26 May 2019, available at: http://www.nationthailand.com/national/30370019 ; National News Bureau of Thailand, 'Container catches fire at Laem Chabang Port', 26 May 2019, available at: http://thainews.prd.go.th/en/news/print_news/TCATG190526133633257.

374 Available at: http://www.mnre.go.th/rayong/th/news/detail/45949 (in Thai)

the EEC.[375]

Thailand has several laws which include provisions on the protection of the environment from industrial production processes. These include provisions in the Constitution, Enhancement and Conservation of the National Environmental Quality Act, Factory Act, Hazardous Substances Act, Building Control Act, and Public Health Act. There have been some recent amendments to these laws which have introduced new protections in some cases (described in greater detail below) but have also triggered concerns of further weakening the overall environmental protection framework. The framework as it stands does not meet Thailand's obligation to ensure that environmental pollution or degradation does not impair people's enjoyment of their rights to health, food, water, work and housing amongst others, and ensure appropriate legal regulation to protect and fulfil these rights.

More specifically, academics, civil society groups and local residents have questioned the effectiveness of the environmental impact assessment process set out in these laws. Concerns have been raised about the fraudulent or negligent preparation of reports, lack of meaningful participation in the process by affected parties, the limited time frame provided under law for relevant committees to review assessment reports, and the limited capacity of supervisory authorities.

Since neither the EEC Act nor the laws governing SEZs provide detailed provisions on environmental protection, they must be read in connection with the totality of the laws regulating environmental protection in Thailand. However, as discussed further below, the EEC Act could feasibly improve upon the current legal framework if properly implemented – for instance, if it can facilitate speedy environmental impact assessments in such a way that does not undermine or override protective mechanisms contained within existing law.

In view of environmental problems in the EEC since the beginning of the Eastern Seaboard Development Program, laws regulating environmental protection should be carefully assessed with affected communities, with sustainable development and the environment at the forefront of the minds of policy-makers. Many of the weaknesses identified in the implementation of the existing framework can be addressed largely through better access to information and improved opportunities for communities to participate in decision-making processes, as guaranteed in the ICCPR and ICESCR and other international environmental instruments and treaties.[376]

Several laws – including the Civil Code, Criminal Code and the Enhancement and Conservation of the National Environmental Quality Act - provide affected individuals and communities with access to financial compensation and, in some cases, compensation representing the total value of natural resources destroyed or including expenses incurred by the government to clean up the pollution.

Cases have been brought by affected individuals and communities under these laws to claim compensation for all types of environmental damages they suffered, not unique to the context of SEZs and the EEC. Challenges however remain in the enforcement of such judgments, violating affected populations' rights to effective remedy and reparation.[377]

5.2 Lack of Adequate Legal Protections for the Right to Health and Environment

Under international human rights law, as described in Part 2, ineffective legal provisions that govern development within special investment zones may result in environmental conditions that directly or indirectly impact upon human health. The failure to enact or enforce laws to prevent such impacts violate the State's obligation to protect the right to health as guaranteed by the ICESCR. Such impacts also impose serious threats to the right to life as guaranteed by the ICCPR.[378]

375 National News Bureau of Thailand, 'EEC to Build Environmental Infrastructures to Fix the Wastes and Waste Water Crisis', available at: http://thainews.prd.go.th/th/news/detail/TCATG190517155732919 (in Thai).
376 For example, Framework principle 8, Framework Principles on Human Rights and the Environment (2018); Principle 17, Rio Declaration on Environment and Development; and Aarhus Convention.
377 This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.
378 UN Human Rights Committee, 'General comment no. 36', CCPR/C/GC/R.36/Rev.4, 20 May 2016, para 62, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

The existing legal frameworks on environmental protection in Thailand's national laws apply in the context of SEZs and the EEC. Laws governing SEZs contain no specific provisions on environmental protection or assessment processes. The EEC Act also does not contain specific provisions to protect the environment. However, it contains a section that overrides the usual assessment processes.

While section 6 of the EEC Act stipulates that economic activities in the EEC should be "modern and environmentally-friendly to enhance the country's competitiveness",[379] there is no provision which explains what "environmentally-friendly" means in this context. Section 30 thereafter provides that in the process of drafting the plan for land use and development of infrastructure and public utilities in the EEC area, authorities must take into consideration "the environment and ecological system under the principle of sustainable development". However, section 8 actually acts to facilitate the fast-tracking of environmental impact assessments within the EEC.

In this case, the more lenient provisions regarding environmental impact assessments adapted for the EEC context, if implemented in a way that undermines the protective mechanisms contained within existing domestic and international law, might result in diminished protections nation-wide. This section illustrates the dangers of governments utilizing EEC legal frameworks to "pilot" looser regulations which can then result in an overall lowering of standards meant to protect the environment and local communities.

5.2.1 Existing Protections under Relevant Laws and the Constitution

The legal frameworks for SEZs and the EEC must be read in connection with other domestic laws relating to the environment. The Constitution, the Enhancement and Conservation of the National Environmental Quality Act B.E. 2535 (amended in 2018), and the Factory Act B.E. 2535 (amended in 2019) are the laws which regulate environmental protection in the EEC and SEZs.

Protections under the Constitution

The 2017 Constitution contains many provisions regarding the duties of people, communities and the State to protect the environment, including the right of a person and community to "manage, maintain and utilise natural resources, the environment and biodiversity in a balanced and sustainable manner".[380]

The Constitution therefore sets out the duty of the State to "conserve, protect, maintain, restore, manage and use or arrange for utilisation of natural resources, environment and biodiversity in a balanced and sustainable manner, provided that the relevant local people and local community shall be allowed to participate in and obtain the benefit from such undertaking as provided by law".[381] It goes further, requiring explicitly that the State "study and assess the impact on environmental quality and health of the people or community and…. arrange a public hearing of relevant stakeholders, people and communities in advance".[382]

However, as noted by Enlawthai Foundation, a Thai environmental non-governmental organization, the right to live in a healthy environment which was contained in the 2007 Constitution was removed from the current Constitution promulgated in 2017.[383] Despite growing calls for global recognition of the right to a healthy environment and the fact that other states have granted constitutional recognition to such right, members of civil society have expressed disappointment that the right was removed from the current Constitution of Thailand.[384]

379 Section 6, EEC Act.
380 Section 43, 2017 Constitution.
381 Section 57, 2017 Constitution.
382 Section 58, 2017 Constitution.
383 Section 67 of the 2007 Constitution provides that "The rights of a person to give to the State and communities' participation in the conservation, preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be appropriately protected." See: Enlaw, 'right to live in healthy environment that disappeared from the Constitution', 19 July 2016, available at: https://bit.ly/2CtzlZT
384 RWI, 'Women's Human Rights and the Right to a Clean, Safe, Healthy, and Sustainable Environment', 2019.

Protections under the National Environmental Quality Act

The National Environmental Quality Act[385] regulates environmental quality standards;[386] determines the conservation of environmentally protected areas and pollution control areas;[387] regulates the process of environmental impact assessments (EIA/EHIA);[388] and imposes measures to control pollution – including air, noise, hazardous waste, and water pollution – through measures such as prescribing emission or effluent standards for the control of wastes or pollutants.[389] The National Environmental Quality Act was amended in 2018, but only with respect to the provisions regulating environmental impact assessments.

Concerns regarding the environmental impact assessment process as set out in the Act include fraudulent or negligent assessments, lack of meaningful participation of all stakeholders, and fast-tracking of projects before an environmental impact assessment can be carried out. Concerns also exist with respect to the effectiveness of the report-producing and monitoring process itself, which directly affects a number of SEZ and EEC projects. (described below in Section 5.3)

Protections under the Amended Factory Act and Regulations of Smaller-Sized Factories

The Factory Act regulates and monitors the establishment and operation of factories, covering the period of application, operation and renewal of factory licenses.[390]

The Act was amended in 2019, effective from 1 May 2019.[391] Some of the amended provisions have triggered concerns that the Act may weaken regulation of smaller-sized factories. For instance, the definition of "factory" was amended from being a place which "uses a machine or machines with a total power or an equivalent of five horsepower or more, or which employs seven workers or more", to a place which "uses a machine or machines with a total power or an equivalent of 50 horsepower or more, or which employs 50 workers or more".

This may result in the amended definition not applying to almost 70,000 out of 140,000 factories nationwide,[392] including businesses which pose a high risk of causing negative environmental impacts, such as those that deal with waste separation, waste recycling and hazardous chemical storage.[393] Moreover, a provision which had previously allowed for an authority to refuse to renew a factory license if the factory fails to comply with environmental protection laws and regulations was removed altogether, narrowing the investigatory role of the Department of Industrial Works and reducing penalties for non-compliance.[394] Penalties for failing to comply with an order to stop or improve operations of the factory have been criticized as inadequate.[395]

These provisions are particularly relevant for SEZs and the EEC as the variety of types of targeted industries designated in each special investment zone includes small and medium-sized factories in these industries.[396] There is no doubt that at least some of the industrial activities taking place or envisioned to take place in SEZ and EEC development areas will have profound environmental impacts – some of which may not trigger an environmental impact assessment, but which in practice will still cause significant environmental damage to surrounding areas.

385 Available at: http://web.krisdika.go.th/data//document/ext809/809866_0001.pdf
386 Sections 32-34, National Environmental Quality Act.
387 Sections 42-45, National Environmental Quality Act. For example, Bang Lamung District and Sattahip District, Chonburi Province.
388 Sections 46-51, National Environmental Quality Act.
389 Chapter 4, National Environmental Quality Act. In addition, in sections 12, 23 and 31, the Act also established the Environmental Fund within the Ministry of Finance. The Fund is granted to government agencies or local governments for investment in and operation of a central wastewater treatment or waste removal system, or as a loan to a local government or a state enterprise or private entity, to provide for treatment of pollutions caused by his or her activities, whether in the course of business or otherwise.
390 For the purpose of control of factory operations, the Industry Minister is authorized to issue regulations to prescribe criteria relating to factory location, environment, nature of its buildings or its interior, equipment, production process, as well as standards and methods of controlling the discharge of wastes, pollution, pollutants or anything affecting the environment as a result of the factory's operation.
391 Factory Act (No. 2), B.E. 2562 (2019), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0213.PDF; Factory Act (No. 3), B.E. 2562 (2019), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/056/T_0227.PDF
392 The Momentum, 'The Draft Factory Act: more problems to business owners', 9 January 2019, available at: https://themomentum.co/amendment-to-the-factory-act/
393 iLaw, 'Draft Factory Act: Time Bomb for Communities and Environment', 22 February 2019, available at: https://ilaw.or.th/node/5163. Instead, these businesses will fall under local regulations or the 1992 Public Health Act.
394 Previously, subject to section 15 of the 1992 Factory Act, the authority could refuse to renew a factory's license if the factory fails to comply with regulations.
395 See also: iLaw, 'Draft Factory Act: Time Bomb for Communities and Environment', 22 February 2019, available at: https://ilaw.or.th/node/5163.
396 ICJ Interview, Senior officials of the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning, Bangkok, August 2019.

The amendment also expands the powers of local administrative authorities to exercise authority over smaller-sized factories that do not require a license prior to operation - instead of the Department of Industrial Works.[397] In the case of the EEC, the Secretary-General of the EEC Office has the authority to grant approval, permission, license or consent and has the authority to accept registration or declaration under the Factory Act.[398] Although this measure was introduced to decentralize decision-making in order to minimize bureaucratic delays, it raises concerns about the adequacy of the expertise and understanding of local administrative officials in cases involving potentially complex environmental issues.[399]

Protections under Other Relevant Laws

The Hazardous Substances Act B.E. 2535 (1992)[400] (amended in 2019) sets out rules for the regulation of hazardous substances.[401] It incorporates a "preliminary compensation" scheme pursuant to which insurers must pay preliminary compensation to any person who is injured and to organizations that are tasked to treat damage caused by the hazardous substance,without waiting for proof of liability.[402]

Between 2016 and 2018, it was recorded that 56 hazardous material incidents had occurred in the EEC (32 incidents in Rayong Province, 19 incidents in Chonburi Province, and 5 incidents in Chachongsao Province), including fires, explosions, and leakage of toxic substances.[403] Considering the high number of hazardous material incidents in Thailand, especially in the EEC area, this provision is important because affected individuals can immediately gain access to effective and prompt remedy for harms suffered, and do not have to wait for a lengthy court process or the enforcement of judgment procedures. It will reduce the population's exposure to harmful substances, which is a crucial element for the improvement of all aspects of environmental and industrial hygiene as guaranteed in Article 12 of the ICESCR.[404]

The Building Control Act B.E. 2522 (1979) and ministerial regulations or local ordinances issued pursuant to this Act[405] set out other rules which are consequential for the protection of the environment, such as the structural building regulations, and requirements for environmental management systems of buildings.

The Public Health Act B.E. 2535 (1992) (amended in 2017)[406] regulates the disposal of sewage and solid waste, and prevents the establishment of any building, factory, or business establishment that does not have adequate air ventilation, water drainage, or measures to control toxic substances hazardous to health.[407]

There are significant concerns about the lack of effective enforcement of the Public Health Act.[408] In 2017, the government attempted to address this concern by adopting a decentralized decision-making model, granting local government and officials powers to issue or amend local provisions controlling and overseeing activities that may affect public health;[409] issue licenses and impose conditions upon businesses which

397 The Environmental Act (No. 3) (2018). Previously, according to sections 35, 37 and 57 of the 1992 Factory Act, the Act vested competent authorities with the power to inspect the condition of all kind of factories and machineries. It authorized the authority to order violators to cease commission violations or to improve or conform within a specified period. Failing to comply is subject to imprisonment not exceeding one year, a fine not exceeding 100,000 Baht or both and an additional fine not exceeding 5,000 Baht throughout the period of violation or non-compliance. See: ICJ Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachonesao, August 2019. He also questioned the effectiveness of punishment noting it may be disproportionate and suggested that a fine should be in line with the actual damage. See also: iLaw, 'Draft Factory Act: Time Bomb for Communities and Environment', 22 February 2019, available at: https://ilaw.or.th/node/5163

398 Section 43, EEC Act.

399 ICJ Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachongsao, August 2019.

400 Available at: https://www.jetro.go.jp/ext_images/thailand/e_activity/pdf/hazsubact2535.pdf

401 The law prescribes criteria to regulate importing, transiting, producing, transporting, using, discharging and exporting hazardous substances.

402 Section 69/1, Hazardous Substance Act (No.4). The "preliminary compensation" scheme makes the insurer responsible to pay preliminary compensation to any person injured by a hazardous substance and to any state organization or a private organization authorized by a state organization, tasked to salvage, remove, treat, alleviate or eliminate the damages caused by the hazardous substance, without waiting for proof of liability. An insurer shall thereafter have the right to recourse against the person who caused the damages. See also: Bangkokbiznews, 'Factory Department said the New Factory Act will enter into force this October', 1 June 2019, available at: https://www.bangkokbiznews.com/news/detail/836729 (in Thai)

403 EEC Public Health Watch Center, 'Public Health and Environmental Situation', 1 August 2019, available at: https://ddc.moph.go.th/uploads/ckeditor2/files/001/4_E-Newsletter.pdf (in Thai)

404 CESCR, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)', UN Doc. E/C.12/2000/4, 11 August 2000, para 51, available at: https://www.refworld.org/pdfid/4538838d0.pdf

405 Sections 8 and 10, Building Control Act.

406 Available at: http://laws.anamai.moph.go.th/ewtadmin/ewt/laws/ewt_dl_link.php?nid=2058&filename=1HLaws2016

407 Section 25, Public Health Act.

408 Department of Health, 'Handbook for Public Health Act and its Amendments', December 2018, available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER17/DRAWER002/GENERAL/DATA0001/00001422.PDF (in Thai)

409 Section 6-7, Public Health Act.

employ production methods potentially detrimental to health,[410] including sewage and solid waste management, textile, automotive, paper, medical and health care industries;[411] and order the owner or occupant of any building to repair or demolish buildings that may endanger health or are unsanitary, and to eliminate or control health hazards.[412] Notably, the Secretary-General of the EEC Office has the authority to grant approval, permission, license, or consent under this Act and the Building Control Act. The effectiveness of this decentralized decision-making model is yet to be assessed.

Recent amendments to these laws have resulted in some improvement – such as a preliminary compensation scheme that has been incorporated into the Hazardous Substances Act, as described above. Other amendments, however, weaken the overall environmental protection framework. For example, the National Environmental Quality Act that facilitates the fast-tracking of certain projects before an environmental impact assessment can be carried out (described below in Section5.3.3) allows for the circumventing of environmental assessment regulatory mechanisms in favour of investors. The recently amended Factory Act also weakens regulation of small-sized factories and limits the investigatory role of the Department of Industrial Works with respect to checking a company's compliance with environmental regulations.

Any analysis of the legal framework governing the EEC and SEZs must take into account the interplay between these various laws – some of which have been amended with the EEC in mind, and pre-existing laws that are being applied or in some cases misapplied to the EEC context. While there has been some positive movement toward stricter environmental regulation in some cases, certain amendments have resulted in the lowering of standards meant to protect the environment and local communities. Weak legal frameworks and ineffective implementation of these frameworks can result in pollution of water, air and soil by extractive and manufacturing industries and increase the population's exposure to harmful substances, which amount to a violation of Thailand's obligation to protect the right to health. The Thai government must address these gaps and amend relevant laws and regulations through meaningful consultation to ensure conformity with international human rights law obligations.

5.3 The Environmental Assessment Process

International human rights law imposes obligations on the State to ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. It requires that environmental impact assessments be undertaken to identify negative impacts that proposed projects or industrial activities may have on communities, including air, water or land pollution, and that public participation in decision-making related to the environment must be facilitated.[413] Failure to meet these procedural obligations not only disregards the obligations themselves, but can also result in, among other things, a degraded environment which in turn interferes with people's enjoyment of their rights to life,[414] food, health, water and adequate housing.[415]

The United Nations Environmental Programme (UNEP) in 1987 published a "Preliminary Note on Goals and Principles of Environmental Impact Assessment". It underscored that:

- Activities should not be undertaken or authorized without prior consideration, at an early stage, of their environmental effects (Principle 1);
- Information provided as part of the assessment should be examined impartially prior to the decision (Principle 6);

410 For list of businesses being detrimental to health, see: Announcements of the Ministry of Public Health regarding Businesses being Detrimental to Health, dated 17 July 2015, available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER17/DRAWER002/GENERAL/DATA0000/00000348.PDF (in Thai); No. 2, dated 12 February 2018, available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER17/DRAWER002/GENERAL/DATA0000/00000763.PDF (in Thai); and No. 3, dated 16 October 2019, available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER17/DRAWER002/GENERAL/DATA0001/00001958.PDF (in Thai)

411 Sections 19-20 and 31-33, Public Health Act.

412 Sections 21-26, Public Health Act.

413 Framework Principles 1, 8 and 9, Framework Principles on Human Rights and the Environment; Aarhus Convention; Principles 10 and 17 of the Rio Declaration on Environment and Development

414 General comment no. 36, para 62. The UN Human Rights Committee, in its General Comment No. 36, also stated that in order to respect the right to life, states should – among other things – conduct environmental impact assessments and provide appropriate access to information on environmental hazards.

415 John H Knox, 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', UN Doc. A/HRC/22/43, 2012, para. 42.

- Government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the assessment before a decision is made on an activity (Principle 7); and
- A decision as to whether a proposed activity should be authorized or undertaken should not be taken until an appropriate period has elapsed to consider comments from interested groups (Principle 8).[416]

Operating principles of environmental impact assessment best practice was also developed by the International Association for Impact Assessment in response to a request by the EIA Global Guidelines Project. It provides that environmental impact assessments should be rigorous, practical, relevant, cost-effective, efficient, focused, adaptive, participative, interdisciplinary, credible, integrated, transparent and systematic.[417]

Importantly, the principles highlight that in order to fulfil the "participative'" requirement, the process should provide appropriate opportunities to inform and involve interested and affected members of the public, and their inputs and concerns should be addressed explicitly in documentation and decision-making.

In view of environmental problems which have already emerged in the Eastern Seaboard Development Project areas, effective preventive measures, such as environmental, ecological and public health impact assessments must be put in place to protect the environment. Adequate environmental assessments are a primary tool for evaluating potential impacts and taking remedial measures to forestall negative impacts on the environment by business activities. Such impacts can quickly have a cascading effect on the enjoyment of other rights.

5.3.1. Types of Environmental Impact Assessments under Thai law

Under Thailand's legal framework, there are several types of environmental impact assessment reports, including: (i) "Environmental and Safety Assessment" (ESA);[418] "Initial Environmental Examination" (IEE);[419] "Environmental Impact Assessment" (EIA); "Environmental and Health Impact Assessment" (EHIA); and "Monitoring Report on the implementation of EIA or EHIA recommendations" ("Monitoring Report").

The EIA, EHIA and Monitoring Report are the most important and relevant reports for the purposes of this paper as they have been used extensively to assess impacts caused by businesses in the EEC. Their effectiveness has also been challenged by affected communities and experts. Whether a company needs to conduct an EIA or EHIA depends on its size and type of business. Notably, EEC and SEZ developments do not need to conduct the more rigorous Strategic Environmental Assessment required in other contexts. The overall result is a patchwork of different requirements, some strong and some weak, which leave a number of problematic loopholes that weakens the impact of the environmental assessment requirements. Civil society-led Community Health Impact Assessment Reports also have some potential to fill gaps in the assessment process, though they are not officially recognized, or given the same status as the formal assessments (more below).

416 UNEP, 'Goals and Principles of Environmental Impact Assessment', 16 January 1987, available at: https://elaw.org/system/files/unep.EIA_.guidelines.and_.principles.pdf

417 International Association for Impact Assessment, 'Principles of Principles of Environmental Impact Assessment Best Practice', January 1999, available at: https://www.sdwg.org/wp-content/uploads/2019/05/EIA-principles.pdf

418 ESA is a report to be submitted to Ministry of Industry. It is typically for small-sized factories that do not have to produce EIA reports such as textile, bleaching, artificial leather, and paper making factories. See: Notification of Ministry of Industry Re: Report on the Feasibility Study of Preventive and Corrective Measures on the Effects of Environmental Quality and Safety B.E. 2552 (2009).

419 Section 50 of the Environmental Quality Act (2018) refers to the IEE. IEE is a report to be submitted to the Ministry of Natural Resources and Environment. It contains a preliminary examination of potential environmental impacts of small-scaled projects such as projects in the environment protection areas – including Bang Lamung Sub-District and Sattahip District of Chonburi Province in the EEC area. The IEE report contains fewer details and procedures than the EIA report. At least one public hearing is required. See: Notification of the Ministry of Natural Resources and Environment on the guidelines in preparing IEE and EIA reports for the Environmental Protected Area in Banglamung District, Chonburi Province (2010), 5 November 2010, available at: http://app-thca.krisdika.go.th/Naturesig/CheckSig?whichLaw=cmd&year=2548&lawPath=c2_0672_2548; and Council of the State, 'Summary of the Opinion on the EIA', 672/2548, October 2008, available at: http://app-thca.krisdika.go.th/Naturesig/CheckSig?whichLaw=cmd&year=2548&lawPath=c2_0672_2548

An *Environmental Impact Assessment* report[420] is required for 35 types of projects or activities that may have "material impact on natural resources, environmental quality, health, sanitation, quality of life or other material interests of people, society or the environment," according to the National Environmental Quality Act.[421]

Several projects in SEZs and the EEC, such as industrial estates, big-scale factories, land allocation for establishing SEZ Development Areas and public utility systems, require that an EIA be conducted. The procedure, type and size of projects or activities that must conduct EIA are defined in the National Environmental Quality Act and Notifications of the Ministry of Natural Resources and Environment. In the process of preparing an EIA report, at least two public hearings are required.[422] EIA reports are valid for project permission or approval for five years after receipt of the letter of environmental approval.[423]

An *Environmental and Health Impact Assessment* is required for 12 types of projects or activities that may severely affect natural resources, environmental quality, health, sanitation, and the quality of life of people in the community.[424] This includes industrial estates, petrochemical or smelting industries, airline business projects, ports, dams, reservoirs or, thermal power plants.[425] As with an EIA, the procedure, type and size of projects or activities that must conduct EHIA assessment are elaborated in the National Environmental Quality Act and relevant Notifications of the Ministry of Natural Resources and Environment. In the process of preparing the report, at least three public hearings are required. Similar to the EIA, EHIA approvals are valid for project permission or approval for five years after receipt of the letter of environmental approval.

A *Monitoring Report* is required to be submitted to the Ministry of Natural Resources and Environment at least once a year, as determined by the Ministry of Natural Resources and Environment's Expert Committee, in accordance with the rules set out in the applicable Ministerial Notifications.[426] It is the monitoring mechanism for the implementation of recommendations set out in the EIA and EHIA reports.

All of these reports are required under law to be prepared by "licensed companies",[427] which are paid for by the applicant – a corporation – before being reviewed and approved by state agencies, including the Ministry of Natural Resources and Environment. In considering EIA/EHIA reports, the Ministry of Natural Resources and Environment will conduct a preliminary examination of the EIA/EHIA report. If it is found that the report is incorrect or incomplete, the report will be sent back to the project proponent to recheck and fulfil the report within 15 days. If the report is complete and accurate, the authorities will give a preliminary opinion within 30 days, which will then be considered by an Expert Committee, appointed by the Ministry of Natural Resources and Environment.[428] The Expert Committee must provide a ruling within 45 days.[429]

420 Section 46 and 48, Environmental Quality Act.

421 These include mining, industrial estates, petroleum development and its pipeline transportation system, cement, iron or steel industries, waste treatment plants for industrial waste, thermal power plants, expressway systems, highways, roads, ports, irrigation networks, residential buildings of 4,000 sq.m. or more, or more than 100 *rai* (0.16 sq.km.) of land allocation for residential or commercial purposes. Notification of the Ministry of Natural Resources and Environment on Projects, Undertakings, or Operations Required to Provide an Environmental Impact Assessment Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report, 19 November 2018, available at: http://www.onep.go.th/eia/wp-content/uploads/2019/04/Eialaweng.pdf

422 Ibid.

423 Section 51(6), Environmental Quality Act.

424 Notification of the Ministry of Natural Resources and Environment on Projects, Undertakings, or Operations which may seriously impact Natural Resources, Environmental Quality, Health, Sanitation, Quality of Life of People in a Community that are Required to Provide an Environmental Impact Assessment Report and Rules, Procedure, and Conditions in Providing an Environmental Impact Assessment Report, 19 November 2018, http://www.onep.go.th/eia/wp-content/uploads/2019/04/lawengEHIA.pdf

425 Ibid., see also: Annex 1.

426 Section 51(5), Environmental Quality Act. Notification of the Ministry of Natural Resources and Environment on criteria and steps in preparing the Monitoring Report on the Implementation of Measures as Determined in the Environmental Impact Report that the Operators and Applicants Must Prepare After They Receive Approval (2018), 4 January 2019, http://www.onep.go.th/eia/wp-content/uploads/2019/01/Monitor40162.pdf (in Thai)

427 As of 26 July 2018, there were 64 companies registered with the Ministry of Natural Resources and Environment, see: Division of Environmental Impact Assessment Development, 'List of Companies that are Environmental Impact Assessment Reports Developers', 26 July 2018, available at: https://bit.ly/3hqxBiF (in Thai). For qualification and licensing process, see: Registration Handbook for Developers of Environmental Impact Assessment Reports, February 2020, available at: https://bit.ly/2WKq4CP (in Thai)

428 Section 51, National Environmental Quality Act. For selection procedures, qualification of the candidates, scope of power and duties of the Expert Committee, see: Announcement of the National Environmental Committee on Criteria and Procedures in Appointing Expert Committee to Consider Environmental Impact Assessment Reports, 27 August 2018, available at: http://www.onep.go.th/eiathailand/wp-content/uploads/2019/05/2.expert-committee-to-consider-the-report.pdf (in Thai)

429 Currently, there are nine thematic Expert Committees, considering assessments in the field including on Development of Water Sources; Land and Air Infrastructure; Water Infrastructure; Mining; Petroleum Development; Petroleum, Petrochemical and Natural Gas Resources; Industries and Industrial Infrastructure; Buildings, Land Allocation and Communities' Services; and Thermal Power Plants. A Committee comprises of at least 13 members. The Committee's members can hold the office for three years, which can be extended to six years. See: Office of Natural Resources and Environmental Policy and Planning, '9 Expert Committees', available at: https://bit.ly/2Lrivf6 (in Thai)

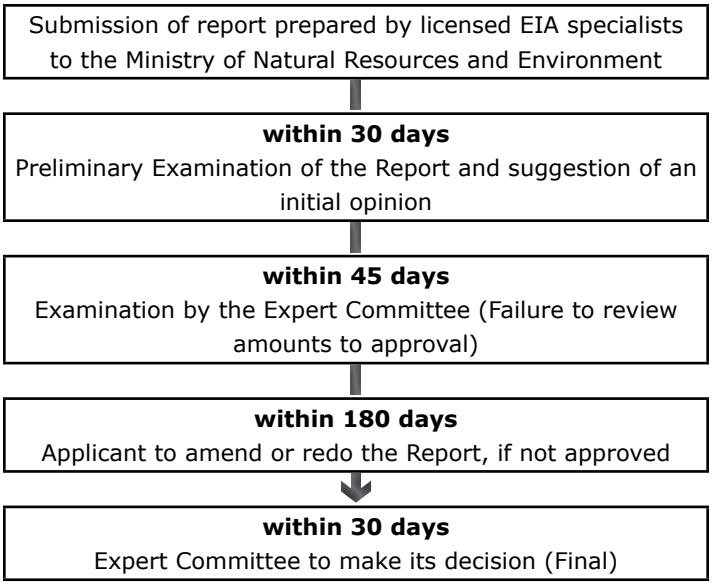
Importantly, according to the Environmental Quality Act, if the Expert Committee fails to review or return a decision within 45 days, the report is deemed to have been approved.[430] The designated period cannot be extended. This is a problematic provision which incentivizes bureaucratic delay that could result in approval for controversial projects.

While these decisions can be judicially reviewed by Thailand's Administrative Court, communities find the process challenging because, as in other environmental cases, they are expected to prepare the evidence supporting their case which requires technical expertise and can be costly.[431] At the same time, this clause can negatively affect investors as if the Expert Committee cannot thoroughly examine the report within the designated period, the Committee may decide to reject the application.[432]

When the Expert Committee fails to approve a report, the applicant is required to amend and resubmit the EIA/EHIA report within 180 days. The Expert Committee is then required to make its decision within 30 days. Similarly, the law does not allow this period to be extended. The decision is deemed to be final, though the rejected applicant can resubmit the application for assessment.

This process is necessary to ensure that the assessment can provide decision makers and other stakeholders with sufficient, reliable and usable information that takes into consideration environmental protection and community well-being, and to ensure that the Expert Committee conducts a transparent and participative assessment.

CHART 4: Timeline of Thailand's EIA Procedure



5.3.2 Absence of Strategic Environmental Assessments under Thai law

Pursuant to section 58 of the Thai Constitution, the National Environmental Quality Act and the EEC Act, the Government is obliged to study and assess potential impacts on the environmental quality and health of people or communities prior to the start of certain business activities or projects within SEZ and EEC areas. These provisions, however, do not include a "Strategic Environmental Assessment" (SEA), which is a separate assessment process that is normally used at the policy and planning stage for projects which are likely to have significant environmental and health impacts. Many experts and members of civil society whom the ICJ interviewed called for SEAs to be conducted in the process of developing SEZ and EEC policies, and designating SEZ and EEC areas.[433]

430 Section 51/1, National Environmental Quality Act.
431 See also: Prachatai, 'Many Activists were Sued, Academics Said Political and Community Rights Must be Considered Together', 10 May 2016, available at: https://prachatai.com/journal/2016/05/65689 (in Thai)
432 International Association for Impact Assessment, 'Principles of Principles of Environmental Impact Assessment Best Practice', January 1999, available at: https://www.sdwg.org/wp-content/uploads/2019/05/EIA-principles.pdf. Based on the Principles, the assessment should be "efficient". It means that the process should impose the minimum cost burden in terms of time and finance on proponents and participants consistent with the requirements and objectives of the EIA.
433 This was raised by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

According to the "United Nations Economic Commission for Europe (UNECE) Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context", an SEA is:

> "the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme".[434]

The purpose of an SEA is to ensure that environmental considerations inform and are integrated into strategic decision-making. It has evolved as an extension of international standards on environmental assessment principles, but it also offers a number of advantages compared to the EIA/EHIA process set out in Thai law. For example, an SEA facilitates deeper consideration of environmental impacts in the context of a country's overall development strategy, as opposed to focusing on individual projects.[435] In addition, while an EIA is prepared by corporations which may be inclined to obtain privileges from the approval, SEAs are led by public authorities or institutions that can focus on policy considerations without conflict of interest.[436]

The National Environmental Quality Act, as amended in 2018, covers SEAs. Section 47 of the Act provides that in a case "where there is a strategic environmental assessment in accordance with any other regulation or law, the environmental impact assessment shall take into consideration the findings of such strategic environmental assessment".

SEA guidelines are also currently being formulated by the Office of the NESDC, although the procedure has not yet been enacted under the Thai legal framework.[437] However, in view of the government's questionable performance in reviewing EIAs and EHIAs conducted by businesses themselves (as will be further described below in Section 5.3.4), there is some doubt as to whether SEAs conducted entirely by the government would be effective. Nonetheless, the more nuanced analysis that an SEA requires and its greater safeguards against conflict of interest (if developed in accordance with international standards) would be an improvement over the current approach.

The designation of SEZ and EEC development areas have been repeatedly challenged by several stakeholders on the grounds that an SEA had not been conducted. The ICJ received information from residents who live in the EEC area that, from the outset, while there are no laws or guidelines on SEA in Thailand, the residents had filed a request to the EEC Policy Committee for an SEA to be conducted in accordance with international standards in EEC designated areas, even though such an assessment was not carried out.[438] Indeed, an earlier version of the draft EEC Act had provided that the EEC Office would be tasked to do an SEA for the whole EEC region.[439] This provision was subsequently removed, without any reason provided by the authorities.[440]

434 Article 2. See: UNECE, 'Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context', 2017, available at: https://www.unece.org/fileadmin/DAM/env/documents/2017/EIA/MOP7/ECE_MP.EIA_SEA_8_T.pdf

435 UNECE, 'Resource manual to Support Application of the UNECE Protocol on Strategic Environmental Assessment', 2012, available at: http://www.unece.org/fileadmin/DAM/env/documents/2011/eia/ece.mp.eia.17.e.pdf

436 OECD, 'Applying Strategic Environmental Assessment: Good Practice Guidance for Development Co-Operation', 2006, at 31, available at: https://www.oecd.org/environment/environment-development/37353858.pdf

437 Currently, Draft SEA Guidelines are being developed by the NESDC. Primarily, there are seven categories of plans or programmes: 1) Development plan on transportation; 2) Development plan on energy and petroleum sector; 3) Development plan on mineral resources; 4) Development plan on city planning; 5) Development plan on watershed management and coastal development; 6) Development plan on special areas, including for example,the Eastern Economic Corridor; and 7) Development plan on industrial estates or similar areas. See, NESDC, 'NESDC organized a meeting to discuss with relevant parties about the amendment of the SEA Guidelines', 9 August 2019, available at: https://www.nesdc.go.th/ewt_news.php?nid=9175&filename=index (in Thai)

438 This was raised by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

439 The draft Act however provided that an SEA report by the EEC Policy Committee is equivalent to the EIA report, and there is no need to complete the EIA report if an SEA report has been passed – which is worrying because assessment should be carried out at both the policy level (SEA) and project level (EIA/EHIA). This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok; see also: Baan-d, 'Disclosed the EEC Act, Push Chonburi-Rayong-Chachongsao to EEC', 11 August 2016, available at: https://bit.ly/3gAClSB (in Thai)

440 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

5.3.3 Fast-tracking of Projects Without Environmental Impact Assessment

Fast-tracking of projects without environmental impact assessments is permitted under Thai law. For instance, HNCPO Order No. 9/2559 makes it possible to fast-track projects related to "transport, water management, disaster prevention, hospital and housing, which is urgently necessary for the public interest" by allowing the bidding of a project before an assessment of its environmental impact or its public or community health impact has been carried out in accordance with the National Environmental Quality Act. This provision was repealed and replaced by section 49 of the National Environmental Quality Act, which applies nationwide, including to SEZs and the EEC. Section 49 however provides for fast-tracking in the same way and incorporates the provisions of HNCPO Order No. 9/2559.

This type of fast-tracking causes difficulties for the enforcement of recommendations following an environmental impact assessment, as there is inadequate time to engage a private sector actor to undertake an assessment. Even though a state agency must not sign a contract for commitment before an assessment is finished, the budget of a fast-tracked project might have already been approved and agreed to during a fast-tracked bidding process.[441] The laws should be amended to ensure that projects cannot be commenced without completion of necessary impact assessments, which should be conducted before budgets are approved. Members of the public, experts and interested groups should be consulted and allowed to submit comments on the assessment before any decision is made on an activity, as required by international standards.[442]

In other cases, developers who commence construction before an EIA/EHIA report is approved are subject to fines not exceeding 1 million baht (approx. USD 32,144), and daily fines not exceeding 100,000 baht (approx. USD 3,214) through the period the construction continues.[443] This provision, however, does not apply to projects that fall under the scope of section 49 of the National Environmental Quality Act.

In the case of development that has potentially serious environmental impacts which may affect the enjoyment of the right to health, and other human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, environmental assessment and public participation in the process should take place before any decision is made, in accordance with international standards.

5.3.4 Environmental Impact Assessments in SEZ and EEC Areas

The following section will examine how various environmental impact assessments have been applied in EEC and SEZ Development Areas in Thailand. With respect to SEZs, the process of environmental impact assessment is similar to assessments conducted outside the special investment zone as set out above. In contrast, the process in the EEC is slightly different by virtue of the EEC Act. Similar concerns were nonetheless raised in both contexts, including fraudulent or negligent assessments; lack of public participation; lack of transparency in and time for the review process; limited monitoring capacity, and questions about the status of Community Health Impact Assessment Reports.

Fraudulent or Negligent Assessments

There is a lack of appropriate legal sanctions for licensed environmental impact assessors who do not act independently or impartially, or private sector clients who report false information during the environmental impact assessment. The government has attempted to tackle these problems through issuing regulations[444] which allow for the suspension or termination of assessor companies who prepare reports negligently, intentionally falsify a report, or conceal important information.[445] However, such suspensions or terminations have only been imposed on the companies themselves.

441 ICJ Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachongsao, August 2019.
442 For example, Principles 6 and 7, UNEP's Goals and Principles of Environmental Impact Assessment.
443 Section 101/1, Environmental Quality Act.
444 ICJ Interview, Senior officials of the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning, Bangkok, August 2019. Currently, Notification of the Ministry of Natural Resources and Environment on Criteria, Procedure, and Conditions in Requesting, Approving, Extension, Replacing, Suspension and Termination of Licenses of the Environmental Impact Assessment Consultants B.E. is being drafted by the Ministry.
445 For example, Issara News, 'Resolution of the Expert Committee to Terminate License of Earth & Sun Co., Ltd for Reporting False Information on a EIA of a Condominium', 12 January 2019, available at: https://www.isranews.org/isranews/72856-news-72856.html (in Thai); see also: the case of Ban Groud Power Plant, Prajuabkirikan Province, where the Expert Committee found that there was some false information in the report, and suspended the license of the specialist's company. See: Thai Publica, 'EIA-EHIA' 6 Gaps by which Corporates can Avoid Responsibility to the Environment', 2 May 2015, available at: https://thaipublica.org/2015/05/ehia-eia-1/ (in Thai)

Concerns were raised by several environmental rights experts and academics that some environmental impact specialists who worked with companies which had their licenses terminated have thereafter merely set up new companies with different identities and names, or supported other assessor companies by ghost-writing impact assessment reports.[446] These experts expressed concerns that newer companies would follow in their predecessors' foot-steps. This concern can be mitigated by a prompt and effective monitoring mechanism implemented by the relevant governmental agency to suspend or terminate the license of a new company which prepares reports negligently or intentionally falsifies a report. There have also been allegations that project developers seek to avoid conducting EIA/EHIA assessments by dividing their projects into several small projects such that they do not reach the EIA/EHIA's threshold,[447] or through corruption.[448]

Civil society organizations and a number of academics had also expressed their concern to the ICJ regarding the independence of environmental impact specialists, noting that under the law they are private consultants[449] hired by a project company wishing to promote a given project, and not by any independent body.[450] This concern is exacerbated by allegations made by environmental rights experts that Expert Committees are open to political influence or conflicts of interest,[451] and the fact that the law allows approvals to be issued simply because legal reporting deadlines have not been met by the government. While this concern may be mitigated by an SEA conducted by public bodies, it can also be mitigated by addressing the gaps which impeded the Expert Committees' operations in order to ensure that these assessments would still need to be, at the minimum, reviewed by a public agency which could operate independently and was empowered with sufficient legal authority and technical expertise.[452]

With respect to the EEC, an additional concern arises. Section 8 of the EEC Act provides that in the absence of an insufficient number of environmental impact assessment experts for projects or activities, a non-Thai national may be permitted to prepare environmental impact assessment reports. Domestic legal provisions governing licensing facilitation and qualifications of the licensees do not apply to such non-Thai experts.[453] Several civil society groups and academics highlighted concerns about the lack of regulation of foreign assessors, who are also more difficult to hold accountable should they not perform their duties in accordance with the law.[454]

446 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok. See also: Sal Forest, 'Towards an Environmental Impact Assessment (EIA) System with Good Governance', February 2017, at 122.

447 For example, in the EEC area, there was a project to build 6 ports and 35 warehouses in the same area in Chachongsao province. The proposals were submitted separately and did not reach the threshold for EIA/EHIA assessments (not altogether as one project, which require EIA/EHIA to be conducted). This case was submitted to the Administrative Court. In 2017, the Administrative Court ruled that because these six ports (while located in the same area) were not connected with each other, they could be submitted separately. EIA was not required. See: Green News, 'Dismissed the Case of Bang Pa Kong Port's EIA, Villagers Appealed to the Supreme Administrative Court', 3 October 2016, available at: https://greennews.agency/?p=10651 (in Thai)

448 In March 2011, Akara Mining Company (or Akara Resources Plc), a gold mining company, reportedly sent a letter to the provincial industry office asking to change the construction plan and location of its second tailings pond, and requesting approval without having to conduct an EIA. The project was later approved, without any EIA report. However, in March 2020, the National Anti-Corruption Commission announced that a former senior State official and five other parties, including a former managing director of the company, were found guilty of colluding to help a gold mining company avoid a mandatory EIA. See: Bangkok Post, '6 found guilty of colluding over EIA', 12 March 2020, available at: https://www.bangkokpost.com/thailand/general/1876624/6-found-guilty-of-colluding-over-eia

449 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok

450 Ibid, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachongsao, August 2019; and ICJ Interview, Senior officials of the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning, Bangkok, August 2019. See also, Issaranews, 'Academic Suggested the EIA Fund to Avoid Corruption through EIA Report', 3 July 2011, available at: https://www.isranews.org/thaireform-other-news/30967-eia_30967.html

451 See also: Sal Forest, 'Towards an Environmental Impact Assessment (EIA) System with Good Governance', February 2017, at 134.

452 See: UNEP, 'Assessing Environmental Impacts – A Global Review of Legislation', 2018, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/22691/Environmental_Impacts_Legislation.pdf. The report noted that the assessment system is centralized in many countries, thus national environmental agencies are in charge of the assessment process or at least the assessment review, depending on the division of competencies between environmental and sectoral agencies. In terms of responsibility for preparing reports, whereas in some jurisdictions a government agency is responsible for conducting environmental impact assessments (for example in the USA), the responsibility to conduct assessments in the majority of countries lies with the project proponent. However, many national laws require the use of government-licensed or registered consultants or agencies.

453 Section 8, EEC Act.

454 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

Lack of Meaningful Participation of Affected Individuals

Civil society and affected individuals interviewed by the ICJ expressed concerns regarding a lack of meaningful participation in the assessment process at the report preparation stage, inconsistent with government guidelines.[455] They reported that hearings had been conducted for too short a period and provided participants with limited time to voice their concerns, no information had been distributed prior to the hearings, and no alternative plan of project implementation had been offered or explored in the process.[456] They also reported instances of having been intimidated by police presence at consultations, or having been prevented from participating in consultations and public hearings.[457] There was even one case of an abduction of a community activist prior to a hearing, presumably to prevent his participation, in apparent violation of the rights to security, bodily integrity, protection from ill-treatment and arbitrary detention.[458]

In addition, full environmental impact assessment reports were reportedly not made available to the public, including during the report preparation phase, and during the assessment process by relevant authorities.[459] These reports are often published only after approval is granted, making it impossible for affected communities to provide their inputs during the decision-making process and for any meaningful consultation.

Public participation is crucial for sound environmental decision-making, and is central to all human rights standards and good practices on the development of environmental policy.[460] A number of human rights bodies and international environmental instruments and treaties have reaffirmed the duty of States to facilitate public participation in environmental decision-making.[461] Thailand has an obligation to ensure freedom of information, the right to participation and to ensure environmental impact assessments are conducted in accordance with international law and standards.

Lack of Clarity about Scope and Time for Review

In order to provide planning security for the developer and reduce delay in the implementation of a planned project, several laws include provisions on the maximum duration for the review. By way of example, the maximum review period in Panama is only 40 days, in India and Lebanon, 60 days, and in Peru, 70 days.[462] Thai deadlines are subject to almost the same period, but cannot be extended.

Under the National Environmental Quality Act, from the date of receipt of the report, the Expert Committee has 45 days to review the report after the preliminary examination is conducted. If rejected, after the submission of the amended or new report by the applicant within 180 days, the Expert Committee has another 30 days to make its decision. As a result, the Expert Committee has a total of 45 to 75 days to review the application. The law does not allow for any extension of the deadline.

The duration of the review is significantly longer in relation to developments within the EEC area, for which, pursuant to section 8 of the EEC Act, an *ad hoc* committee of experts[463] appointed by the National Environment Board must provide opinions on or approve environmental impact assessment reports within 120 days from

455 See also: Notification of the Ministry of Natural Resources and Environment on Guidelines for Public Participation in Environmental Impact Assessment Process, 8 February 2019, at 5, available at: http://www.onep.go.th/eia/wp-content/uploads/2019/02/S080262.pdf. The guidelines guarantee meaningful participation of relevant stakeholders in the process, provide that relevant stakeholders must be able to freely render their opinion, exchange information and explore alternatives from the outset. Information must also be given before the hearings.

456 This was raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok. See also: Sal Forest, 'Towards an Environmental Impact Assessment (EIA) System with Good Governance', February 2017, at 122.

457 For example, the case of Kon Rak Ban Kerd Group from Loei Province who was stopped from entering the public scooping of the gold mine to other areas. See, Thai Publica, 'When Phutabfah suffered from Cyanide, 6 villages around Gold Mine Protest Against the Approval given to the new Mine', 9 September 2013, available at: https://thaipublica.org/2013/09/phu-thap-fah-hit-cyanide/ (in Thai)

458 For example, the case of Eakachai Itsaratha, a community rights activist in Phatthalung province, who was abducted by unidentified men as he was about to attend a public hearing on a planned rock quarry project in the province. See: Human Rights Watch, 'Thailand: Investigate Activist's Abduction in Phatthalung', 15 August 2019, available at: https://www.hrw.org/news/2019/08/15/thailand-investigate-activists-abduction-phatthalung.

459 Prachatai, 'Dechrat Sukkamnerd: NCPO Order that Move the EIA Backward', 19 March 2016, available at: https://prachatai.com/journal/2016/03/64733 (in Thai)

460 For example, Rio Declaration on Environment and Development; the Framework Principles on Human Rights and the Environment (2018); and Aarhus Convention.

461 Framework Principles on Human Rights and the Environment; CESCR, General Comment No. 15 (2002), para. 56

462 UNEP, 'Assessing Environmental Impacts – A Global Review of Legislation', 2018, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/22691/Environmental_Impacts_Legislation.pdf

463 Similar Committees of Experts were also established by the Ministry of Natural Resources and Environment for 10 SEZs by virtue of the Environmental Quality Act, available at: https://bit.ly/2Lrivf6

the date of receipt of the report.[464] It is unclear, however, if under the EEC Act, failure to review by the Committee within the designated period means that it shall be deemed to have been approved, similar to the provision under the National Environmental Quality Act (as described in Section 5.3.1). It is also unclear if the 120 days include the period during which the applicant is required to amend the report – which will instead make the EEC Act's deadline significantly shorter than the normal deadline. Nevertheless, similar to the National Environmental Quality Act, the EEC Act does not allow extension of the review period.

This is problematic because such fixed deadlines, where extensions are not permitted, might be too short for a rigorous, efficient and credible assessment of mega-projects which may pose complex environmental challenges,[465] inconsistent with principles of environmental impact assessment good practices.[466]

There is also lack of clarity about whether the EEC Act timelines apply within the EEC area, or if the National Environmental Quality Act instead applies with respect to assessment review. The ICJ received information from relevant officials at the Ministry of Natural Resources and Environment that, currently, assessment of business activities in the EEC area is still subject to the National Environmental Quality Act, not the EEC Act, as most projects had applied for environmental impact assessments before the passage of the EEC Act. There is no direction as of date about switching from a process under the National Environmental Quality Act to one under the EEC Act from the policy level.[467] This creates further confusion as to whether the stricter requirements of the National Environmental Quality Act apply, rather than the less stringent EEC Act.

In this regard, in order to fulfil Thailand's obligations to ensure the rights to life, health, water, adequate standard of living amongst others and protection of the environment, a clear timeframe must be set which allow for comprehensive assessments and public consultation. Provisions on the maximum duration must be determined for a reasonable period of time, and should be explicit about under what circumstances an extension is permissible, to ensure that it achieves the requirements and objectives of the assessment, consistent with international good practices.

Limited Monitoring Capacity

External monitoring is necessary to ensure that the recommendations of an environmental impact assessment are implemented in a human rights-compliant manner. In the monitoring phase, in addition to concerns about the independence of the assessors and the lack of participation of stakeholders, there are a limited number of authorities who can evaluate such assessments, including authorities with the Ministry of Natural Resources and Environment. By most accounts, they have insufficient budget and resources to monitor and ensure that the recommendations of an EIA are achieved.[468]

Another key concern relates to the limited power of reviewing authorities once a problem is raised by a stakeholder or the authorities themselves during the monitoring process. The Reviewing Committee that was established in the Ministry of Natural Resources and Environment ("Reviewing Committee") has no power to compel the business sector to comply with their recommendations. They only have the power to evaluate the follow-up report, and have to refer their concerns to other agencies, which have the power to take enforcement action.[469] Authorities who work closely with the Reviewing Committee have themselves expressed confusion about who has enforcement responsibility among a long list of agencies which operate under a diverse set of laws.[470]

In addition, while there are guidelines for developing assessment reports in each thematic area for report developers and applicants,[471] the standards and criteria that the Reviewing Committee uses to review the

464 Section 8, EEC Act. See also, EEC, 'Questions and Answers: 9-16 February 2018', Question no. 12, available at: https://bit.ly/2D25VBG
465 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.
466 See also: International Association for Impact Assessment, 'Principles of Principles of Environmental Impact Assessment Best Practice', January 1999, available at: https://www.sdwg.org/wp-content/uploads/2019/05/EIA-principles.pdf
467 ICJ Interview, Senior officials of the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning, Bangkok, August 2019.
468 Ibid.; This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.
469 Ibid.
470 ICJ Interview, Senior officials of the Ministry of Natural Resources and Environment's Office of Natural Resources and Environmental Policy and Planning, Bangkok, August 2019.
471 For example, see: https://bit.ly/2ztBu5X (in Thai). They were developed by the Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment.

assessment reports are inaccessible to the public.[472] This makes it difficult for stakeholders to assess if the assessment was a rigorous one that used methodologies and techniques appropriate to address the problems being investigated, as required by international good practices.

Status of the Community Health Impact Assessment Report

The Community Health Impact Assessment Report ("CHIA")[473] is a report prepared by local residents and civil society. In the absence of meaningful opportunities to input community concerns into the official assessment processes set out above, the CHIA can play a potentially crucial role. Although they are not officially recognized under the law,[474] they are sometimes prepared (in cases where local residents and civil society have capacity to do so) with the assistance of the Ministry of Public Health's National Health Commission Office and academics. The reports act as another tool to assess impacts on natural resources, environmental quality, health, sanitation, and the quality of life of people in the community, and should be considered alongside the EIA/EHIA and other formal reports. [475] Unfortunately, the CHIA is not officially recognized under Thai law and the authorities do not make any resources or support available to local residents at the community level to conduct them.[476]

In EEC areas, several CHIAs have brought to light key environmental side-effects of development projects overlooked in the formal assessment process. For example, in 2011, there was a CHIA report on a 600 megawatt coal-fired power station at Khao Hinsorn Sub-district, Phanom Sarakham District, Chachoengsao Province, which suggested that the activities of the operator may create water, soil and air pollution, affect mango production in the area, and worsen the problem of a lack of sufficient available water resources.[477] The CHIA was submitted to the Expert Committee of the Ministry of Natural Resources and Environment. The project was rejected, partly due to the CHIA. This is a good example of how a CHIA can play a crucial role in protecting the environment and right to health of communities.

5.4 Accessing a Remedy for Human Rights Violations in Environmental Cases

Under international law, the Thai government is under an obligation to take appropriate steps to ensure that the judiciary can effectively address human rights violations and abuses arising in the conduct of business activities by State or non-State actors. This right to effective remedies and reparation also entails the right to due process and the right to an enforceable decision if a violation is found to have occurred.

Several laws – including the Civil and Commercial Code, Criminal Code and the National Environmental Quality Act – allow affected individuals and communities to access financial compensation for environmental issues. However, challenges remain in the enforcement of judgments and, for the most part, affected populations have faced significant obstacles in accessing the rights to effective remedy and reparation as guaranteed under international law.

5.4.1. Remedies under the Civil and Commercial Code

The Civil and Commercial Code provides for damages to be given to people who are affected by wrongful acts causing death and bodily harm under its section 420 tort provision. Damages available in Thailand for tortious injury are compensatory and aimed at restoring the injured party to the state that he or she would have been had the injury not occurred. Traditional claims for monetary damages generally result in the recovery of actual and foreseeable damages, such as the cost of actual and future medical expenses,[478] loss

472 Sal Forest, 'Towards an Environmental Impact Assessment (EIA) System with Good Governance', February 2017, at 134.
473 Somporn Pengkam, 'Revitalizing CHIA', National Health Commission Office, available at: https://en.nationalhealth.or.th/wp-content/uploads/2017/11/2012_Revitalizing-Thais-Community-HIA.pdf (in Thai)
474 While CHIAs are not officially recognized under the law, local residents and civil society usually cited section 11 paragraph 1 of the National Health Act B.E. 2550 (2007) as a ground to conduct CHIA. The law provides that "an individual or group of people has the right to request for an assessment and participating in the assessment of health impact resulting from a public policy." The National Health Act is available at: http://thailawforum.com/laws/National%20Health%20Act_2007.pdf
475 This was also raised and discussed by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.
476 The National Health Commission Office as per the National Health Act (B.E. 2550) supports a number of communities in the CHIA process.
477 National Health Commission Office ("NHCO"), 'Pad Reaw People revealed that the 600 MW Power Plant Destroys Agriculture Area and Took the Water from Tha Lat River', 22 August 2011, available at: https://www.nationalhealth.or.th/node/418 (in Thai)
478 Section 443 para 2 and 444, Civil and Commercial Code.

of total or partial ability to work in the present and future,[479] loss of the injured party's services to eligible third parties,[480] and non-pecuniary loss.[481]

There is a remedy for mental distress in consumer cases.[482] Mental distress remedies were rarely awarded in other tort cases. However, in a civil tort case between a quarry firm and local villagers on environmental impacts of quarry operations (Supreme Court Decision No. 516/2555)[483], Thai courts awarded compensation for mental health-related damages.

As a practical matter, it has not been easy to successfully bring cases under these provisions to the Civil Court as it is difficult to prove actual damages and to prove whether pollution is the result of a wilful or negligent act.[484] The National Environmental Quality Act, discussed below, therefore provides a more appealing option for accountability for affected individuals or communities as it imposes strict civil liability on the owner or possessor of a source of pollution.

5.4.2. Remedies under the Criminal Code

There are several provisions under the Criminal Code that can be used to hold individuals accountable for environmental abuses. For example, section 228 of the Criminal Code can be used to prosecute those who "cause inundation or obstruction to the supply of water, which is a public utility", if such act is "likely to endanger" another person or their property.

Section 237 of the Criminal Code can be used to prosecute those who "introduce a poisonous substance or any other substance likely to cause injury to health into food or water in any well, pond or reservoir, or any such food or water to be provided for public consumption". Section 380 of the Criminal Code can be used to prosecute those who "cause water in wells, ponds or reservoirs provided for public use to become filthy". However, the Criminal Code has rarely been used in these cases, due to the high standard of proof as compared to the National Environmental Quality Act (discussed below).[485]

5.4.3 Remedies under the National Environmental Quality Act

The National Environmental Quality Act imposes criminal and civil liabilities on the owner or possessor of a source of pollution if leakage or dispersion of pollutants is the cause of death, bodily harm or injury of a person or has caused damage to property. If found in violation, all expenses incurred by the government for the clean-up of pollution, regardless of whether such leakage or dispersion is the result of a wilful or negligent act of the owner or possessor, must be paid as well as compensation to affected individuals.[486] The Act also imposes civil liabilities on those who destroy or damage natural resources owned by the State or belonging to the public domain, including compensation that "represent[s] the total value of natural resources destroyed, lost or damaged by such an unlawful act or omission".[487] In addition, the Act imposes criminal liability against any person or owner or possessor responsible for a source of pollution for specific acts such as the failure to comply with the order of the competent official, or the failure to provide for an on-site facility for wastewater treatment or waste removal.[488]

479 Section 444, Civil and Commercial Code.
480 Section 444 and 445, Civil and Commercial Code.
481 Section 446, Civil and Commercial Code.
482 For product liability claims as a result of damage to the body, health or sanitation of the injured party based on the Consumer Case Procedure Act in August 2008 and the Product Liability Act in February 2009.
483 Narached Khunthongphet and Narit Doungsuwan, 'Community Rights and the Protection of Khao Khuha', Hatyai Journal 14(1) : 63-77, 8 April 2016, available at: https://bit.ly/3fNyHVB (in Thai).
484 Sor.Rattanamanee Polkla, 'Legal Remedies Do Not Only Mean Compensation - They Mean Prevention', available at: https://www.business-humanrights.org/en/legal-remedies-do-not-only-mean-compensation-they-mean-prevention
485 Article 227 of the Criminal Procedure Code provides that "the Court shall exercise its discretion in considering and weighing all the evidence taken. No judgment or conviction shall be delivered unless and until the Court is fully satisfied that an offence has actually been perpetrated and that the accused has committed that offence. Where any reasonable doubt exists as to whether or not the accused has committed the offence, the benefit of doubt shall be given to him."
486 Section 96, National Environmental Quality Act.
487 Section 97, National Environmental Quality Act.
488 Sections 98-111, National Environmental Quality Act.

Cases have been brought by affected individuals and communities under these laws to claim compensation. Examples of cases include compensation claimed for cadmium contamination in a zinc mine operated in Mae Sot District, Tak Province;[489] lead contamination of Klity Creek in Kanchanaburi Province;[490] contamination of heavy metals on lands and waters from a gold mining business in Loei Province;[491] and illegal disposal of industrial wastes and chemical-contaminated water in Nong Nae District, Chachongsao Province, in the EEC area.[492]

In most of these cases, the courts granted the affected communities certain forms of remedy, including awards of financial compensation and/or orders to the defendant to rehabilitate damaged areas. This suggests that the Thai judicial system has been able to ensure some level of remedy to affected communities despite various limitations and weaknesses in the legal framework set out elsewhere in this report. Unfortunately, the record on implementation is poor. Of the four cases set out, none of the victims have received the full amount of compensation prescribed by courts.

Even in the case of a favourable judgment, enforcement remains problematic. Various challenges[493] in this regard include: uncertainties about which government agency is in charge of enforcement; the absence of a standard of procedure for implementation; limited technical expertise in restoring resources to their original, uncontaminated condition; and problems posed by polluters who exhaust all means to avoid paying compensation.[494] For example, in the Klity Creek case, environmental restoration has been reportedly slow and obscure, and affected communities and individuals have still not received compensation years after the verdict.[495]

489 Isranews, 'Pha Daeng PCL Lost, Paid 1.8 million to Villagers in the Cadmium Contamination Case in Mae Sot district', 10 June 2019, available at: https://www.isranews.org/thaireform/thaireform-news/77375-pdi77375.html (in Thai)

490 Bangkok Post, 'Klity Creek villagers win 19-year legal battle', 11 September 2017, available at: https://www.bangkokpost.com/thailand/general/1322371/klity-creek-villagers-win-19-year-legal-battle#targetText=The%20lead%20contamination%20of%20Klity,factory%20owned%20by%20the%20company

491 Isaan Record, 'Gold Mining Case in Loei, a Victory of Communities with More Cases Against Them', 27 January 2019, available at: https://isaanrecord.com/2019/01/27/loei-gold-mining-community-rights/ (in Thai); Bangkok Post, 'Court fines mining firm B15m', 14 December 2018, available at: https://www.bangkokpost.com/thailand/general/1593478/court-fines-mining-firm-b15m

492 The case was filed with the Administrative Court regarding the allegedly delayed action of relevant authorities to rehabilitate the area. See: EnLaw, 'Court Dismissed Case that Villagers in Nong Nae, Chachong sao Province, saying the Factory Department and Pollution Control Department did not Delay in Rehabilitating the Area that Was Damaged from Industrial Wastes', 13 June 2019, https://enlawfoundation.org/newweb/?p=4577 (in Thai)

493 ADB, 'Third ASEAN Chief Justices' Roundtable on Environment: ASEAN's Environmental Challenges and Legal Responses', 2013, available at: https://www.adb.org/sites/default/files/publication/42866/3rd-asean-chief-justices-roundtable-environment.pdf

494 This was raised by participants at a workshop held by the ICJ on 13 July 2019 in Bangkok.

495 Nation, 'Lead-contaminated villages await justice two decades after verdict', 11 April 2018, available at: https://www.nationthailand.com/national/30343011

6. CONCERNS ARISING WITH RESPECT TO LABOUR RIGHTS

Thailand has obligations under the ICESCR to respect, protect and fulfil rights to work and at work. These rights include several interrelated components, including the rights of individuals to form and join a trade union of their choice, associate with one another and bargain collectively for improved working conditions and living standards.[496]

Efforts have been made by Thailand to enhance workers' protection, including by increasing the minimum wage and amending several laws[497] to enable greater adherence to its international human rights obligations. Unfortunately, as in the case of environmental laws, many of these provisions are ineffectively implemented or left unenforced.

SEZs and the EEC present unique problems. SEZs, located in border areas, attract non-citizen migrant labour from neighbouring countries and also aim to maintain secure borders and a health control system through the One Stop Service ("OSS") for labour, public health and security management.[498] OSS Centres for labour have been established by the Ministry of Labour in 10 SEZ areas.

Several concerns have been raised by labour rights experts whom the ICJ interviewed with regard to labour conditions in SEZs. Highlighted concerns included: problems of registration of migrant workers; restrictions on movement of migrant workers; lack of basic labour protections for seasonal migrant workers; and difficulties in accessing entitlements such as social security funds.

The EEC has particular labour issues. Since it was established to promote advanced technology industries, there is a need for high-skilled labour. In order to prevent a skilled labour shortage, [499] the government has established the EEC Labour Administration Centre which facilitates labour issues for employers, investors, entrepreneurs and workers, to meet the labour needs of all sectors.[500] To maximize efficiency and address the problem of labour shortages, firms utilize numeric flexibility in employment, including the utilization of temporary, subcontracted workers, who reportedly make up a large proportion of the workforce in industrial zones in Thailand.[501] However, their rights, welfare and benefits were reportedly significantly less than those provided to regular employees.[502]

Restrictions on freedom of assembly and association, particularly of migrant and subcontracted workers, is another concern, not just within SEZs and the EEC but for Thailand as a whole, as will be further explained in Section 6.2. The Thai government has been repeatedly called upon by civil society to amend the law to strengthen unions within the country and to improve dispute resolution and labour relations mechanisms.[503]

496 Articles 6-8, ICESCR; CESCR, 'General comment No. 18: The Right to Work (Art. 6 of the Covenant)', UN Doc.E/C.12/GC/18, 6 February 2006, available at: https://www.refworld.org/docid/4415453b4.html

497 Including the Social Security Act (amended in 2015), Maritime Labour Act (amended in 2015), Labour Protection Act (amended in 2017 and 2019), and Migrant Worker Management Royal Decree (amended in 2018). See: Ministry of Justice, 'National Action Plan on Business and Human Rights (2019-2022)', October 2019, at 19.

498 ICJ Interview, Officials of a State agency involved in formulation of SEZ policy, August 2019, Bangkok.

499 The business community estimates the EEC will need about 400,000 skilled workers over the next five years. In addition, research has shown that in the next 10 years, targeted industries in the EEC will require an additional one million workers. Based on the EEC Office's estimates, while 60% of the estimated positions can be filled by low-skilled but qualified vocational workers, the remaining 40% of the positions that will need to be filled require high-skilled labourers. See: Nation, 'EEC policy panel to focus on education to meet labour', 15 February 2019, available at: http://www.nationthailand.com/national/30364215; Bangkok Post, 'Lack of skilled labour threatens EEC', 20 May 2019, available at: https://www.bangkokpost.com/business/1680704/lack-of-skilled-labour-threatens-eec

500 Ministry of Labour, 'MOL Opens EEC Labour Administration Center', 18 January 2019, available at: https://www.mol.go.th/en/news/mol-opens-eec-labour-administration-center-2/

501 ILO, 'Case No 3164 (Thailand) - Complaint Date: 07-OCT-15', para 1052, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068#T

502 Prachatai, 'Migrant/Subcontracted Workers Are Facing Difficulties Without Their Rights Probably Protected', 31 January 2016, available at: https://prachatai.com/journal/2016/01/63797 (in Thai)

503 For example, Bangkokbiz News, 'Regional Labour Network Submitted 4 Proposals, Asked the Government to Allow All Labour Groups to Set Up their Union – End SLAPP', 15 December 2019, available at: https://www.bangkokbiznews.com/news/detail/858354 (in Thai); Prachatai, 'Labour Network call for the Ratification of ILO Convention 87-98 and Pay Rise', 7 October 2010, available at: https://prachatai.com/journal/2010/10/31409 (in Thai).

6.1 Concerns Regarding Laws Governing Non-Citizen Migrant Labour

Labour management policies in Thailand have been developed in line with economic policies of the government and to address labour shortages. Hiring migrant workers from neighbouring countries has been an essential part of these policies. [504]

As of March 2020, there were 2,814,484 registered migrant workers and approximately 800,000 unregistered migrant workers in Thailand. 2,551,246 individuals were workers from Cambodia, Lao PDR, Myanmar and Vietnam. 50,018 individuals were seasonal workers.[505]

Within SEZs, according to the Office of the NESDC, between October 2017 and 25 November 2019, 423,066 workers of all nationalities worked in all 10 SEZs, 350,488 of whom worked on a temporary or seasonal basis.[506] There is no official record of the number of non-Thai workers in the EEC but it was estimated by the EEC Office in 2019 that the demand for labourers will exceed 475,000 individuals in the next five years.[507]

6.1.1 Concerns about Remuneration and Benefits

As a State Party to the ICESCR, Thailand is obliged to ensure fair wages and equal remuneration for work of equal value for all persons without distinction of any kind. Workers should be guaranteed remuneration, including fair wages that allows for a decent living for themselves and their families. Working conditions must be safe and healthy. Employees must be provided with reasonable work hours, adequate rest and leisure time, as well as periodic, paid holidays.

The CESCR has emphasized that the right to just and favourable conditions of work is a right of everyone, without distinction of any kind, and applies to all workers including migrant workers. The Committee has stated that:

> "Laws and policies should ensure that migrant workers enjoy treatment that is no less favourable than that of national workers in relation to remuneration and conditions of work."[508]

The minimum wage in Thailand is determined by a national wage committee and applies to all employees, regardless of their nationality and the form of their work contract. The most recent minimum wage levels took effect on 1 January 2020. [509] The current minimum wage varies by province from 313 to 336 baht (approx. USD 10) per day. Remuneration and other conditions of work of migrant and subcontracted workers are also protected alongside other workers under the Labour Protection Act B.E. 2541 (1998).

However, there are still instances in which migrant workers have sued their employers in labour courts or reported to labour inspectors[510] that they had not been paid their full wages, overtime or severance pay and that they have been subjected to unreasonable working conditions.[511]

504 On the general rights of non-citizens to work, see: ICJ, 'Promoting Non-Citizens' Right to Work in South Africa', April 2020, available at: https://www.icj.org/wp-content/uploads/2020/04/South-Africa-Non-Citizens-Right-to-Work-Advocacy-Analysis-Brief-2020-ENG-.pdf

505 Ministry of Labour's Department of Employment, 'Statistic of Migrant Workers in Thailand: March 2020', March 2020, available at: https://www.doe.go.th/prd/assets/upload/files/alien_th/cfd5266a7529106b9fdd751603d77d31.pdf (in Thai).

506 NESDC, 'Progress of SEZs', January 2020, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=9813 (in Thai).

507 Bangkok Post, 'Lack of Skilled Labour Threatens EEC', 20 May 2019, available at: https://www.bangkokpost.com/business/1680704/lack-of-skilled-labour-threatens-eec

508 CESCR, 'General Comment No. 23: Right to Just and Favourable Conditions of Work (article 7 of the Covenant', UN Doc. E/C.12/GC/23, 27 April 2016, paras 5 and 47 (e), available at: https://www.refworld.org/docid/5550a0b14.html

509 Following the resolution passed by the national wage committee on 6 December 2019, the notification of the national wage committee prescribing new minimum wages for workers was published in the Government Gazette on 27 December and has already entered into force, with effect from 1 January 2020. Available at: https://www.mol.go.th/wp-content/uploads/sites/2/2020/01/Prakadwage10-6Jan2020.pdf (in Thai).

510 According to the Ministry of Labour's Department of Labour Protection and Welfare, as of 2016, Thailand had 880 labour inspectors who are responsible for monitoring all enterprises that employ one or more workers. This number is significantly lower than the ILO recommendation - 1 inspector for every 15,000 employees in an industrializing country, which would require 2,563 labour inspectors in Thailand.

511 For example, HRDF, 'Press Release: Tak Labor Inspector Ordering Employer to Pay Over 10 Million Baht to 71 Migrant Workers From Myanmar for Breach of Labor Protection Law', 7 February 2020, available at: http://hrdfoundation.org/?p=2262 . On 30 January 2020, the Tak Labour Inspector issued Order No. 2/2563 dated 20 January 2020 for the employer to make payment for wages, holiday pay, overtime pay, holiday overtime pays, severance pay and compensation in lieu of advance notice, altogether 10,298,124 baht to 71 migrant employees from Myanmar. See also, Bangkok Post, 'Myanmar Farm Workers Get B1.7m', 13 March 2019, available at: https://www.bangkokpost.com/thailand/general/1643436/myanmar-farm-workers-get-b1-7m In this case, 14 migrant workers from Myanmar were awarded after a 3-year trial, a total of 1.7 million baht in compensation, covering penalty fees, deducted salaries and overtime

In addition, while migrant workers can be granted entitlement to severance pay like all other workers, those who entered Thailand to work at SEZs by procuring a border pass (which allows them to work for 3 months) are particularly vulnerable (for more information, see: Section 6.1.2). According to section 118 of the Labour Protection Act, an employer shall provide severance pay to an employee who is terminated if the employee has worked for an uninterrupted period of 120 days or more. However, some border pass holders, who were employed as regular workers, reported having been terminated without severance. The seasonal nature of the workers' employment has been used as a ground to justify such termination without severance by employers. Most migrant workers unaware of their rights do not report mistreatment.[512]

The CESCR, in its review of Thailand's periodic report in June 2015, expressed concern at consistent reports of abuse and exploitation of migrant workers, in particular migrants in irregular situations and working in special economic zones, noting potential violation of article 7 of the ICESCR, which guarantees the enjoyment of just and favourable conditions of work. The Committee recommended that Thailand institute additional measures to ensure that all migrant workers, regardless of legal status, are entitled to labour and social protection and can access justice for violations of their rights. The Committee also encouraged Thailand to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[513]and take necessary steps to ensure that all workers receive a minimum wage that enables them to enjoy decent living conditions for themselves and their families.[514]

Similarly, while the rights, welfare and benefits of regular and subcontracted employees are guaranteed under section 11/1 of the Labour Protection Act[515] and by Supreme Court judgments,[516] subcontracted workers reportedly receive lower salaries without benefits.[517] This results in inequality between the wages and benefits of regular and subcontracted employees. Notably, most migrant workers in Thailand are part of subcontracting chains, rendering them even more vulnerable to labour exploitation.[518]

6.1.2 Concerns Regarding the Restriction of Movement of Migrant Labourers

As with other laws, after the coup in 2014, many labour laws were amended and passed, including those dealing with migrant workers in SEZs and the EEC.[519] These amendments rarely, if ever, take into account human rights or labour concerns, and allow for the imposition of severe movement restrictions on migrant workers, which might constitutes an interference with the workers' enjoyment of the right to freedom of movement.

The government's migrant labour policy is set out in section 64 of the Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) (amended in 2018) and Memorandum of Understanding (MOU) between Thailand and its neighbouring countries. These laws regulate work permits for foreign labourers from countries sharing a border with Thailand.

pay during the two-year working period. See also: Prachathai, '115 migrant Workers Were Compensated 8 Million Baht After Regional Labour Court Region 6 Acknowledged the Resettlement', 13 September 2018, available at: https://prachatai.com/journal/2018/09/78687 (in Thai).

512 ICJ Telephone Interview, Representative of HRDF, March 2020. For example, HRDF, 'Press Release: Tak Labor Inspector Ordering Employer to Pay Over 10 Million Baht to 71 Migrant Workers From Myanmar for Breach of Labor Protection Law', 7 February 2020, available at: http://hrdfoundation.org/?p=2262; MWG, 'Migrant Working Group (MWG)'s Recommendations for the Thai Government with Regard to the Development of the National Action Plan on Business and Human Rights', 5 August 2018, available at: https://bit.ly/2D138sQ

513 CESCR, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand', UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, paras 21 and 23.

514 Id., para 22.

515 Section 11 (1) of the Labour Protection Act provides that "where an operator authorises a person to provide personnel to work, which is not a job placement business, and such work is part of the production process or business under the responsibility of the operator, and regardless of whether such person will supervise the performance of work or be responsible for payment of wages to those who do such work, the operator shall be deemed the employer of those engaged to do such work. The operator shall arrange for an employee hired for a wage who works in the same manner as an employee under a direct employment contract to, without discrimination, receive fair rights, benefits, and welfare."

516 For example, Supreme Court Judgment No. 22326-22404/2555.

517 Nattaporn Arunno, 'Exploitation Process in Labor Sub-contracting System: A Case Study of Chonburius Automotive Industry', Burapha Journal of Political Economy Vol. 7 No. 1 (2019).

518 Prachatai, 'Migrant/Subcontracted Workers Are Facing Difficulties Without Their Rights Probably Protected', 31 January 2016, available at: https://prachatai.com/journal/2016/01/63797 (in Thai).

519 In the EEC, provisions regulating foreign workers are set out in sections 48 and 54 of the EEC Act, and the Notification of Ministry of Labour dated 29 January B.E.2561 (2018). These laws grant operators the right to bring foreigners who are persons with expert knowledge or executives, and their spouse and dependents, into the Kingdom and to reside, with the EEC Secretary-General able to determine the total number of foreigners and period of stay, even if the number of foreigners or period of stay exceeds prescribed numbers or periods of stay under the law governing immigration.

There are different categories of registered migrants in Thailand, including:

(i) migrant workers who enter Thailand pursuant to an MOU with their home country;
(ii) migrant workers with a registration card (pink card) obtained through the nationality verification procedure; and
(iii) seasonal migrant workers with a border pass.

Bilateral memoranda of understanding (MOUs) were developed between Thailand and its neighbouring countries to formalize migration processes. Under the MOU process, migrants can enter Thailand through recruitment agencies certified by Thailand's Ministry of Labour. An employment contract lasts for two years and can be extended for another two years.[520] MOUs were signed between Thailand and Cambodia, Lao PDR and Myanmar in 2002 and 2003, though the deployment of migrant workers did not begin in Cambodia and Laos until 2006 and in Myanmar until 2009.[521]

For migrants who entered the country irregularly but did not go through the MOU scheme and do not possess any documentation, the government introduced a mechanism to register migrants outside of the MOU process. These migrants were given a registration card (pink card), and were instructed to verify their nationalities (known as the "nationality verification (NV) procedure") and obtain a certificate of identity, with which they could apply for a visa and work permit.[522]

For seasonal workers, section 64 of the Foreigners' Working Management Emergency Decree B.E. 2560 (2017) was enacted to help employers along the borders, including those in SEZs, hire migrant workers. Section 64 states:

> "a foreigner who is a national of a country sharing a border with Thailand, in the case of entering the Kingdom with a border pass, may be granted permission by the Registrar to work in Thailand temporarily for a period or a season and in a specified area".

This provision allows workers to cross the border with a border pass to work on a seasonal basis. With a border pass, migrants are allowed to work in Thailand for 3 months per visit and stay in Thailand for 30 days per visit within a "specific area" along the border. Between 30 days to three months after their arrival,[523] they must return to the border check point where they entered to renew their border pass.[524]

Based on bilateral agreements, the freedom of movement of migrants is limited to "specific areas" for those entering across border crossings from Cambodia[525] and Myanmar,[526] with a similar agreement with Lao PDR under consideration.[527] For example, based on the agreement between Thailand's Ministry of Foreign Affairs and the Myanmar government, migrant workers who enter Thailand through border checkpoints at Myawaddee Province in Myanmar[528] to Tak Province in Thailand may only stay and work in four districts in Tak Province, including districts where Tak SEZ is located. Migrant workers who hold border passes but leave "specific

520 Mekong Migration Network ("MMN"), 'Jobs In SEZs: Migrant Garment Factory Workers in the Mekong Region', June 2019, available at: http://dds.ait.ac.th/wp-content/uploads/sites/19/2019/06/SEZ_Book-1.1.2_TT_v2-web.pdf

521 ILO, 'Review of the Effectiveness of the MOUs in Managing Labour Migration between Thailand and Neighbouring Countries', 2015, at 5, available at: http://un-act.org/publication/view/review-of-the-effectiveness-of-the-mous-in-managing-labour-migration-between-thailand-and-neighbouring-countries/

522 MMN, 'Jobs In SEZs: Migrant Garment Factory Workers in the Mekong Region', June 2019, available at: http://dds.ait.ac.th/wp-content/uploads/sites/19/2019/06/SEZ_Book-1.1.2_TT_v2-web.pdf

523 Ibid. Normally, the pass must be renewed every 30 days, but if migrants are to work, they need to go through a health check and obtain a 90-day work permit under a particular employer.

524 Ibid.; NESDC, 'Progress : Labour Management and One Stop Service Center', January 2020, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=5195

525 RYT9, 'Amendment of the Agreement regarding Cross Boarding Between the Two Countries', 2 June 2015, available at: https://www.ryt9.com/s/cabt/2172996 (in Thai)

526 Agreement between the Government of Thailand and Myanmar regarding Cross Boarding Between the Two Countries, 24 June 2016, available at: http://www.takimmigration.go.th/attach/m14.pdf (at 40-61)

527 Ibid. On 11 February 2015, Thailand and Cambodia entered into an agreement, delineating "specified areas" along Thailand's border. They cover the areas of seven provinces of Thailand including Ubon Ratchathani, Srisaket, Surin, Buriram, Sakaew, Chanthaburi and Trat Provinces. On 24 June 2016, Thailand and Myanmar entered into an agreement and decided the "specified areas" along Thailand's border. They cover the areas of eight districts in four provinces of Thailand including Maesai, Maechan and Muang Districts, Chiang Rai Province; Maesot, Maelamad and Pobpra Districts, Tak Province; Muang District, Kanchanaburi Province; and Muang District, Ranong Province.

528 Only Myanmar citizens who reside in Myawadee are entitled to this benefit. This has reportedly led to systematic corruption. The ICJ was informed of instances where Myanmar nationals from other provinces apart from Myawadee wishing to move over the border to work in Thailand were forced to employ the assistance of brokers to facilitate the move, making them vulnerable to corruption, exploitation and physical violence. ICJ Interview, Representatives of HRDF, Tak, September 2019.

areas"[529] will be imprisoned for up to two years or fined up to 20,000 baht (approx. USD 643). or both.[530]

According to Article 12 of the ICCPR, to which Thailand is a State party, "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence". This includes migrant workers. However, such right may be restricted in accordance with article 12, paragraph 3, i.e. by restrictions which are "provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the ICCPR" such as the fundamental principles of equality and non-discrimination.[531]

In light of the above, even if such restrictions of movement[532] have been justified by the Thai government as necessary to protect national security,[533] the imposition of harsh penalties such as imprisonment are disproportionate and may constitute an unwarranted interference with the workers' enjoyment of the right to freedom of movement.

6.1.3 Lack of Access to Benefits for Seasonal Employees and Subcontracted Workers

This section examines the human rights concerns that arise from difficulties in accessing entitlements of social security and other government benefits by migrant workers, seasonal workers and subcontracted workers.

Under international law, Thailand has an obligation to ensure the right of everyone to social security, without discrimination, in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; and (c) insufficient family support, particularly for children and adult dependents.[534]

General Comment No. 19 of the CESCR reaffirms that "all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination". This includes "part-time workers, casual workers, seasonal workers, and the self-employed, and those working in atypical forms of work in the informal economy". The CESCR has further stated that qualifying conditions for benefits must be "reasonable, proportionate and transparent", and if a social security scheme requires contributions, "contributions should be stipulated in advance", and "affordable for all".[535]

Work-place injury and sickness

Under international law, Thailand has an obligation to ensure the protection of workers who are injured in the course of employment or other productive work, which covers the costs and loss of earnings from injury or morbid conditions and the loss of support for spouses or dependents suffered as the result of the death of a breadwinner.[536]

529 ICJ Telephone Interview, Official at Tak Immigration District Office, March 2020; ICJ Telephone Interview, Mr. Adisorn Kerdmongkol, Migrant Working Group, March 2020; and ICJ Telephone Interview, Lawyer from HRDF, March 2020.

530 Section 81, Immigration Act. Royal Thai Police, 'Memorandum Regarding Guidelines in Examining Foreign Migrant People', 12 November 2015, available at: http://www.edupol.org/eduOrganize/announceDoc/2015/12/02.pdf (in Thai). On the other hand, other non-citizen groups who have resided in Thailand for a long time, including for example hill-tribe communities, are also forbidden to leave the specific area of their home towns; however, they can seek approval from the District Chief and will not be subject to any penalty. See: Announcement of the Ministry of Interior regarding the Determination of Restricted Areas and the Permission for Certain Aliens who Stayed in the Kingdom Temporarily to Leave the Restricted Areas Temporarily, dated 5 August 2016, available at: https://www.doe.go.th/prd/assets/upload/files/singburi_th/cf729cf094ea06e58e27a4b35db036f0.pdf (in Thai)

531 Human Rights Committee, 'General Comment No. 27: Article 12 (Freedom of Movement)', UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, available at: https://www.refworld.org/pdfid/45139c394.pdf

532 Notably, migrants given a registration card (pink card) through the nationality verification (NV) procedure were also restricted to remain in the province where their employer is located until the NV process is completed. See: ILO, 'Thailand Migration Report 2019', 2019, at 32, available at: https://thailand.iom.int/sites/default/files/document/publications/Thailand%20Report%202019_22012019_HiRes.pdf

533 ICJ Interview, officers of a State agency involved in the formulation of SEZ policy, Bangkok, July 2019. (interviewee wished to remain anonymous)

534 CESCR, 'General comment No. 19: The Right to Social Security (Art. 9 of the Covenant)', UN Doc. E/C.12/GC/19, 4 February 2008, para 2, available at: https://www.refworld.org/docid/47b17b5b39c.html

535 Ibid., paras 23-27.

536 Ibid., para 17.

Such protections are also stipulated in the Compensation Act. Pursuant to the Act, if an employee suffers from a work-place injury or sickness, the employer must make medical treatment immediately available for the employee, including migrant and seasonal workers. The necessary medical expenses must be paid by the employer without delay upon being informed about such injury or sickness. Employees are entitled to this type of compensation immediately after they start to work for the employer, regardless of their length of employment or any payment of contributions.[537] The expenses should include rehabilitation costs, funeral expenses, monthly compensation to the employee, and family support in case of death or disappearance.[538]

In this regard, Thailand has established a Compensation Fund under the Social Security Office in order to pay work-related compensation to an employee under section 26 of the Compensation Act. The employer has a duty to pay contributions to the Fund. Rates of contributions are determined by several factors, including statistics relating to workplace injury and sickness of each category of business (sections 44 to 45).

According to sections 48 and 49 of the Act, to be entitled to support from the Fund, the employer must submit a claim to the Social Security Office within 15 days from the date on which the employer knows or should have known of the injury, sickness or disappearance of the employee. The employee in each case must submit a claim either by themselves or through their representative to the Social Security Office within 180 days from the date of injury, sickness or disappearance. Requirements for filing a claim can make it difficult for injured migrant workers to obtain compensation, particularly in terms of documentation and paperwork.

In reality, many of these provisions have been ineffectively implemented or left unenforced. One study conducted by Thai academics highlighted barriers faced by migrant construction workers in accessing such compensation, and found that barriers included that: (i) workers believed that injuries or illnesses sustained were not work-related; (ii) workers worried that they would be fired if they submitted claims for compensation; (iii) workers thought that they were at fault in incurring injuries or illness; and (iv) medical officers did not decide whether it was a work-place injury or illness. As a result, statistics on occupational injuries and illness were lower than the actual total.[539] Moreover, the long duration and administrative complexity of the process can also prevent migrant workers from receiving compensation that they are entitled to, as many are unable to remain in Thailand long enough to see it through.[540]

Social Security Benefits and Non-Occupational Injuries

Subject to the Social Security Act B.E. 2533 (1990), an employee may be entitled to receive benefits from the Social Security Fund, including: (1) injury or sickness benefits; (2) maternity benefits; (3) disability benefits; (4) death benefits; (5) child benefits; (6) old-age benefits; and (7) unemployment benefits. All categories of employees can access such social security schemes, including registered migrant workers, seasonal workers and subcontracted workers. The enrolment of illegal or undocumented migrant workers is precluded. However, even documented migrant workers encounter difficulties in accessing benefits because of limited compliance with the law by employers.

Thailand's social security schemes require contributions. Section 34 of the Social Security Act provides that an employer is required to file all necessary documents to the Social Security Office within 30 days from the date on which an employee begins work with the employer. In order to be covered by the social security programme, employers and workers need to pay five percent of the workers' monthly wages to the programme. The government will contribute 2.75 percent of the monthly wage to the programme. Migrant or seasonal workers are entitled to receive the same coverage as Thai citizens for health services, maternity, disability, death benefits, as well as children's allowances, pension and unemployment.[541] However, in order to be

537 Office of the Official Information, 'Compensation Fund', available at: http://www.oic.go.th/FILEWEB/CABINFOCENTER2/DRAWER056/GENERAL/DATA0000/00000087.PDF (in Thai)
538 Sections 5, 13 to18, Compensation Act.
539 The study was presented at the seminar on 28 November 2019. See: Wasana Lamdee, 'Decent Works - Migrant and Platform Workers', 8 December 2019, available at: https://bit.ly/2DeC2OW (in Thai)
540 ILO, 'Thailand Migration Report 2019', 2019, at 151, available at: https://thailand.iom.int/sites/default/files/document/publications/Thailand%20Report%202019_22012019_HiRes.pdf
541 Mekong Migration Network ("MMN"), 'Jobs in SEZS: Migrant Garment Factory Workers in the Mekong Region', June 2019, available at: http://dds.ait.ac.th/wp-content/uploads/sites/19/2019/06/SEZ_Book-1.1.2_TT_v2-web.pdf

eligible for social security coverage, there are minimum periods over which contributions have to be made, ranging from one to 180 months (15 years) (For minimum periods for contributions to social security, see: Annex 6).

These qualifying period requirements have reportedly led to instances in which employers refused to enrol migrant workers working in SEZs with a border pass into the social security system on the basis that the employment was seasonal. This was despite the reality that often such work was regular work for which contributions to the Social Security Fund should have been made for longer than the minimum periods of contributions.[542]In addition, as the procedure relies on the employer to file the registration form, employers are often unwilling to help short-term or seasonal employees, like those who work in SEZs, to file the registration form and contribute money to the social security fund.[543] In practice, employers are required to file the necessary paperwork, and go through a registration process. For seasonal workers with border passes, the employers are also required to update information about border passes every three months. This requirement is reportedly one of the main reasons for employers' unwillingness to enrol migrant workers in SEZs into the social security system[544] and leads to migrant workers being denied their right to social security as guaranteed under Article 9 of the ICESCR.

In addition, based on the Social Security Act, women migrant workers are also entitled to maternity leave and child support. However, the UN Thematic Working Group on Migration in Thailand[545] has documented instances where women migrant workers faced termination from their employment upon becoming pregnant.[546]

Under section 40 of the Social Security Act, workers may also apply to the social security program under the Social Security Act themselves, without relying on the employer.[547] In such a case, the employee and the government will both make contributions to the Fund. The worker will be entitled to non-occupational injury and sickness benefits, disability benefits, death benefits and old age benefits.[548] However, according to the Social Security Fund Handbook, those who are entitled to benefits under this provision must be Thai nationals,[549] which is discriminatory to non-citizen workers. This breaches Thailand's international obligations to ensure that the rights under the ICESCR are exercised without discrimination of any kind, including national origin.

Considering the lack of willingness of employers to enrol employees to social security programmes, the exclusion of non-citizens from the programmes set up under section 40 is a critical gap. In addition, coverage provided under section 40 of the Social Security Act is insufficient even for Thai subcontracted workers. Its coverage is less than that provided by the average social security programme, and does not cover the nine principal branches of social security as determined by the CESCR in General Comment No. 19[550] and ILO Convention No. 102 (1952) on Social Security. Unemployment, maternity and family benefits are absent. In addition, minimum periods over which contributions have to be made are stricter than the general social security programme (For minimum periods for contributions to social security, see: Annex 6).

With restricted access to social security programmes and other non-occupational benefits, according to section 6 of the Announcement of the Ministry of Public Health regarding the Health Checkup and Health

542 HRDF, 'Press Release: Tak Labor Inspector Ordering Employer to Pay Over 10 Million Baht to 71 Migrant Workers From Myanmar for Breach of Labor Protection Law', 7 February 2020, available at: http://hrdfoundation.org/?p=2262; MWG, 'Migrant Working Group (MWG)'s Recommendations for the Thai Government with Regard to the Development of the National Action Plan on Business and Human Rights', 5 August 2018, available at: http://hrdfoundation.org/wp-content/uploads/2018/08/30-07-20-18-%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B9%80%E0%B8%AA%E0%B8%99_-NAP-BHR-Eng-22-aug-2018.pdf; ICJ Telephone Interview, lawyer of HRDF, March 2020.

543 ICJ Telephone Interview, Official at Tak Immigration District Office, March 2020; ICJ Interview, Representatives of Solidarity Center, Bangkok, September 2019; ICJ Interview, Representatives of HRDF, Tak, August 2019.

544 ICJ Telephone Interview, Official at Social Security Office at Tak province, March 2020. The officer explained that forseasonal migrant workers, their passports will be updated every three months with the renewed border pass, thus, the employer has to submit additional documents after such update to the Social Security Office.

545 Members include FAO, IOM, ILO, OHCHR, UN-ACT, UNAIDS, UNCDF, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, the World Bank and WHO.

546 United Nations Thematic Working Group on Migration in Thailand, 'Thailand Migration Report 2019', at XII, available at: https://thailand.iom.int/thailand-migration-report-2019-0

547 Section 40, Social Security Act.

548 Social Security Office, 'Social Security Fund Handbook', at 36, available at: http://www.sa.nu.ac.th/attach/files/M-person.pdf (in Thai)

549 Ibid.

550 CESCR, 'General comment No. 19: The Right to Social Security (Art. 9 of the Covenant)', UN Doc. E/C.12/GC/19, 4 February 2008, paras 12-20, available at: https://www.refworld.org/docid/47b17b5b39c.html. Nine principal branches of social security include health care, sickness, old age, unemployment, employment injury, family and child support, disability, maternity, and survivors and orphans.

Insurance of Migrant Workers B.E. 2562 (2019),[551] the Thai government will provide health insurance to migrant workers and their dependents, including seasonal workers who entered Thailand with border passes, at the workers' own expense. The Announcement states that such migrant workers should undertake a health check-up at least once a year, and must have health insurance which covers the period that they are allowed to stay and work in Thailand.

In summary, while Thai law guarantees access to social security benefits of all workers, migrant, seasonal and subcontracted workers have less access to social security benefits because employers are often unwilling to help them to enrol to the social security schemes. This includes workers that typically work in SEZ and EEC areas as construction workers or day labourers. Non-Thai migrant workers are also excluded from accessing the social security programme set up under section 40 of the Social Security Act, which is discriminatory.

6.2 Limitations on Workers' Rights to Freedom of Assembly and Association

In Thailand, the rights to freedom of assembly and association of foreign workers are impermissibly restricted. Workers are denied the rights to engage in collective bargaining, and to join and form trade unions under domestic laws governing unions. As set out above, under international law, Thailand has to ensure the right of everyone to form trade unions and join the trade union of his or her choice as well as the right of trade unions to function freely.[552] It is also under an obligation to remove all legal and practical obstacles that prevent workers from their realizations of freedom of association and the right to collective bargaining.

Thailand has only approximately 1,400 unions with around 610,000 members, amounting to only 3.62% of approximately 17 million formal workers.[553] Of these, at least 173 unions represent some workers in three provinces of the EEC.[554] No public information is available at present about the number of unions in SEZ areas.

One law that affects workers' rights to freedom of association is the Labour Relations Act B.E. 2518 (1975).[555] It protects freedom of association by explicitly allowing employees to form trade unions, and engage in collective bargaining, which involves negotiation between employers and workers with the aim to ensure good conditions of work through means of a binding collective bargaining agreement.

However, according to the Labour Relations Act, the right to establish a labour union only extends to Thai citizens[556] and does not extend to migrant workers. While the law does not prohibit a non-Thai worker from becoming a member of (but not establishing) a labour union, there are so few Thai workers in factories in SEZ border areas that it is almost impossible to form a union.[557] Under international law, such rights cannot be restricted in such a way based only on citizenship status.[558]

In addition, subcontracted workers, which make up approximately 50 per cent of the workforce in Thailand's industrial zones specializing in export,[559] are restricted from joining a union of their own choosing.[560] Subcontracted workers have the right to form and join their own trade unions and bargain, but only with their agency employer or subcontractor employer. They cannot join an existing union that is already operating in the industrial zone or manufacturing enterprise where they are sent by an agent or subcontractor. This is because under the Labour Relations Act, persons who have the right to establish and become a member

551 Available at: https://bit.ly/3blFena (in Thai)
552 CESCR, 'General comment No. 18: The Right to Work (Art. 6 of the Covenant)', UN Doc.E/C.12/GC/18, 6 February 2006, para 2, available at: https://www.refworld.org/docid/4415453b4.html;
553 Dr. Yongyut Chaleamwong and Ratee Prasomsap, '3 Reasons why Thailand should Ratify ILO 87 and 98', 19 December 2019, available at: https://tdri.or.th/2019/12/ilo-87-and-98/ (in Thai)
554 Thailand's Labour Union Database, available at: http://www.thailabordatabase.org/th/union.php?c=by_province&p=41 (in Thai)
555 Available at: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/14497/132167/F-577929038/THA14497%20Eng.pdf
556 Sections 86 and 88, Labour Relations Act.
557 MMN, 'Jobs in SEZs: Migrant Garment Factory Workers in the Mekong Region', June 2019, available at: http://dds.ait.ac.th/wp-content/uploads/sites/19/2019/06/SEZ_Book-1.1.2_TT_v2-web.pdf
558 CESCR, 'General Comment No.20: Non-discrimination in economic, social and cultural rights (Art. 2.2)', UN Doc. E/C.12/GC/20, 2 July 2009, paras 24 and 30, available at: https://www.refworld.org/docid/4a60961f2.html ; 'General comment No. 18: The Right to Work (Art. 6 of the Covenant)', UN Doc.E/C.12/GC/18, 6 February 2006, para 18, available at: https://www.refworld.org/docid/4415453b4.html; Article 2 of Convention No. 87.
559 ILO, 'Case No 3164 (Thailand) - Complaint Date: 07-OCT-15', para 1052, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068#T
560 For example, Article 2 of Convention No. 87.

of the same labour union must be employees of the same employer.[561] Subcontracted workers are regarded as employees of their employment agency.[562] This practice makes it difficult for subcontracted workers to negotiate working conditions with the firm where they work.

These limitations on the ability of migrant and subcontracted workers to establish or join unions in SEZ and EEC areas need to be urgently addressed for Thailand to comply with its international obligations.

In 2015, the ILO Committee on Freedom of Association considered a complaint submitted by IndustriALL Global Union regarding Thailand's legislative shortcomings which deny and restrict rights of migrant and subcontracted workers to form and join a union. In response to the allegations, the Thai government highlighted preventative measures that were adopted to reduce vulnerabilities of migrant workers and the list of benefits under several laws that they were entitled to. The government unfortunately did not provide any response regarding migrant workers' rights to form a union.[563]

In its conclusion, the ILO Committee noted that restricting non-Thai workers' right to form a union "prevents migrant workers from playing an active role in the defence of their interests, especially in sectors where they are the main source of labour."[564] The Committee stated that "article 2 of Convention No. 87 is designed to give expression to the principle of non-discrimination in trade union matters", and "should be guaranteed without discrimination of any kind", including based on nationality. It requested Thailand "to eliminate, without delay, the restrictions placed on the freedom of association rights of migrant workers". It also stated that all workers have the right to establish and join organizations of their own choosing.[565]

Although Thailand has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Thai government has obligations by virtue of their membership of the ILO to respect certain fundamental rights even if they have not ratified the Conventions in question. These rights clearly include freedom of association and collective bargaining.[566]

Thailand has set up a tripartite working group which is in the process of revising the Labour Relations Act and State Enterprise Labour Relations Act[567] so that they incorporate Convention Nos. 87 and 98 and protect freedom of association and collective bargaining. However, based on the latest draft that was approved by the Cabinet in 2019,[568] the law still does not allow migrant workers to set up a trade union, and requires members of a labour union to be employees of the same employer without any exception for subcontracted workers.[569]

Another issue is the ease with which employers have been able to terminate employees for their labour union involvement, despite protections under the law against exactly such action. Section 31 of the Labour Relations Act provides that during the negotiation, settlement or arbitration of an agreement relating to condition of employment, an employer cannot dismiss or transfer committee members or members of a union. Termination or transfer is, however, lawful if the persons concerned dishonestly performs their duties or commits a criminal offence against the employer; causes damage to the employer; neglects work for three consecutive working days; or violates the rules, regulations or lawful orders of the employer, provided the employer has issued a warning in writing.[570]

561 Section 88, Labour Relations Act. ICJ Telephone Interview, Representative of the Solidarity Center, April 2020.
562 Section 95, Labour Relations Act. ICJ Telephone Interview, Representative of the Solidarity Center, April 2020.
563 With regard to the allegation concerning subcontracted workers, the government simply cited section 11/1 of the Labour Protection Act, which provides that even where an entrepreneur entrusts another individual to recruit a person to work for him or her, the entrepreneur is considered as the employer of the worker, with no further explanation.
564 ILO, 'Case No 3164 (Thailand) - Complaint Date: 07-OCT-15', para 1052, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068#T
565 Ibid., at 1050.
566 ILO, 'ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up', 18 June 1998, available at: https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm
567 Wassana Lamdee, 'Ministry of Labour Clarified the Reasons for Not Ratifying ILO Conventions 87 and 98', 31 January 2020, available at: https://bit.ly/2Wvi3Tr (in Thai); ILO, 'Case No 3164 (Thailand) - Complaint date: 07-OCT-15', para 1052, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068#T
568 Cabinet Resolution regarding Draft Labour Relations Act B.E…., dated 5 February 2019, available at: https://cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=99331445; The draft law is available at: http://legal.labour.go.th/2018/images/law/draft/labour_relation_bill01.pdf (in Thai)
569 Ibid. Sections 89 and 94, Draft Labour Relations Act (2019)
570 ILO, 'Substantive Requirements for Dismissals (justified and prohibited grounds) - Thailand - 2013', available at: https://www.ilo.org/dyn/eplex/termdisplay.dismissReqts?p_lang=en&p_country=TH

In practice, however, there have been several instances of termination in the midst of union negotiations. For instance, in 2011, one restaurant company dismissed three trade union leaders after they had successfully registered a trade union and proposed their demands to the company. Two union leaders accepted the company's offer and resigned, while the third one obtained reinstatement at court. The case is still pending before the Supreme Court. In December 2017, the same union leader was again dismissed by the company after the union made demands in April 2017. She was dismissed during the negotiation process. The company claimed that she was dismissed because the company had sold their business but could not find her a new position.[571]

Sections 121 to 123 of the Labour Relations Act also define specific "unfair labour practices" that violate employees' right to participate in unions. These practices include termination of employment or retaliation for labour union involvement, pressuring an employee to resign for union activity, or termination of a contract while employees are engaged in collective bargaining.[572]

However, as with section 31, there is evidence that sections 121 to 123 are less than effective. Workers report that employers routinely dismiss union leaders and committee members on the pretence of layoffs or downsizing in order to remove them from leadership positions.[573] Additionally, during the process of registering unions, it was highlighted to the ICJ by a labour activist that the Ministry of Labour often contacts employers to confirm that workers listed in the registration application are their employees. When the employer learns the names of the workers involved, some employers reportedly dismiss workers, claiming that they were not protected by section 31 as the union had not yet been registered.[574]

International law and standards deal directly with these kinds of restrictions and the failure by governments to protect the rights of workers, in particular migrant workers, from organizing without fear of threat of retaliation. Drawing on the international law analysis provided earlier in this report, Thailand must take steps to ensure that all employees can effectively enjoy the right to freely form and join trade unions of their own choosing and extend the right to non-nationals. Domestic laws should be amended without further delay to incorporate ILO Convention Nos. 87 and 98 and ensure compliance with the requirements of articles 6 to 8 of ICESCR.[575] Provisions which prohibit unfair labour practices must also be enforced to protect and promote all workers' rights to participate in unions and to engage in collective bargaining without fear of dismissal or sanction.

571 Bangkok Post, 'Staff Seek Help For 'Unfair Dismissal'', 9 January 2018, available at: https://www.bangkokpost.com/thailand/general/1392650/staff-seek-help-for-unfair-dismissal; Prachatai, 'Workers-Women Groups Protested KFC After the Unfair Dismissal of its Union Leader', 19 December 2017, available at: https://prachatai.com/journal/2017/12/74638 (in Thai)

572 Pimvimol Vipamaneerut, Piyawat Kayasit And Chusert Supasitthumrong, 'Fair treatment of employees under Thai labour law'; Bangkok Post, 4 February 2020, available at: https://www.bangkokpost.com/business/1850259/fair-treatment-of-employees-under-thai-labour-law

573 American Federation of Labor & Congress of Industrial Organizations (AFL-CIO), 'Petition to Remove Thailand From the List of Eligible Beneficiary Developing Countries Pursuant to 19 Usc § 2462(D) of the Generalized System of Preferences (GSP),'13 November 2018, at 4.

574 Ibid.; ICJ Telephone Interview, Representative of the Solidarity Center, April 2020.

575 Similarly, the CESCR, in its review of Thailand's periodic report in 2015, expressed concern that educational personnel of private and public universities, workers of public organizations and non-Thai nationals do not have the right to form trade unions. The Committee urged Thailand to ensure that all employees in both the private and public sectors effectively enjoy the right to freely form and join trade unions and extend the right to non-nationals. The Committee also emphasised the importance of recognizing migrant workers' right to form and join trade unions so that they can represent their interests and improve enjoyment of their economic, social and cultural rights. See CESCR, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand', UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, para 23.

7. CONCLUSION AND GENERAL RECOMMENDATIONS

While the EEC Act and other laws contain provisions that should protect the rights of affected individuals or communities, these provisions remain largely unimplemented or arbitrarily enforced. And while Thai law also acknowledges and, in some cases, incorporates international standards on business and human rights, these standards have not been actualized through effective law and policy. The SEZ Act, which is still in the drafting process, is an opportunity to address key regulatory gaps, and to repair the damage done to the legal framework by NCPO and HNCPO orders that were passed without regard to human rights and environmental concerns.

The ICJ offers the following recommendations to assist the development of law and policy that is consistent with international law and best practice:

7.1 Recommendations for SEZ and EEC Policy Committees

1. Adopt a human-rights based approach to development projects and ensure that decisions are made in consultation with individuals and communities about development that will potentially harm their communities and the environment;

2. Ensure that evictions are only carried out as a last resort after all other feasible alternatives to eviction have been explored. Procedural protections required under international human rights law should be in place before any evictions are carried out, in particular, requirements on genuine consultation, due process safeguards, provision of legal remedies, compensation and adequate alternative housing;

3. Establish standing Sub-Committees with a specific mandate to consult with affected populations and other stakeholders, and monitoring projects. The Sub-Committees should include representatives of civil society organizations, unions and affected communities;

4. Provide trainings and strengthen expertise and understanding of officials with respect to the granting of approval, permission, license, or consent over operations in SEZs and the EEC, including evidence-based data on environmental impacts, natural and cultural resources management, damage assessments, and restoration of damaged natural resources to their uncontaminated condition;

5. Ensure a prompt, simple, accessible, and cost-effective process for registration of non-citizen migrant workers, and ensure that they and subcontracted workers have access to the legal protections available to other workers; and

6. Ensure that effective, prompt and accessible judicial and non-judicial remedies are provided to those who are affected by the implementation of SEZs and EEC policies, including through the enforcement of HNCPO Orders No. 17/2558, 3/2559, 4/2559, 74/2559, Announcements of the SEZ Policy Committee, and the EEC Act.

7.2 Recommendations for the Parliament of Thailand

1. Amend and adopt the SEZ Act, and ensure that the Act contains provisions that are in compliance with Thailand's international human rights obligations, including the ICCPR and ICESCR. The Act should:

    a. Ensure that the SEZ Policy Committee is able to operate with independence, efficiency and inclusiveness. Its scope of power, lines of accountability, and composition must be in compliance with the rule of law;

b. Require relevant authorities to carry out impact assessments prior to the initiation of any project that could result in development-based eviction and displacement, with genuine participation of the public, in compliance with the requirements under international law and standards; and

c. Ensure that meaningful public hearings and consultations with stakeholders, the public and communities are conducted in a manner which comply with the requirements under international law and standards, before undertaking measures that may affect them;

2. Review and, where appropriate, amend the EEC Act in order to bring it into compliance with Thailand's international human rights obligations, including the ICCPR and ICESCR and other international standards, including:

   a. Requiring relevant authorities to carry out impact assessments prior to the initiation of any project that could result in eviction or other negative impacts, with genuine consultation with affected communities, and which comply with all requirements under international law and standards;

   b. Ensuring that in conducting a public hearing and consultation, including under section 30 of the EEC Act, relevant information is disseminated by the authorities in advance and stakeholders have sufficient time to understand proposals and prepare meaningful responses;

   c. Amending section 8 of the EEC Act or issuing an Announcement to:

      i. Clarify the ambiguity regarding the EIA process under the EEC Act as listed in Section 5.3.4;

      ii. Explicitly allow an extension of the duration of the review for exceptional cases, for instance relating to the nature, complexity, location or size of the project. Such extensions must be done in writing and inform the applicant of justifications for the extension and of the date when its determination is expected; and

      iii. Put in place safeguards to regulate the qualifications and liabilities of non-Thai experts who are permitted to prepare environmental impact assessment reports.

   d. Amending section 61 of the EEC Act to ensure that the EEC Fund will be used to support those who are affected by activities carried out in the EEC, including to support those who are affected by the process of land diversion.

3. Review and, where appropriate, amend laws governing land acquisition for development activities, through meaningful consultation, in order to bring them in compliance with Thailand's international human rights obligations, including the ICCPR, ICESCR and UNGPs, to:

   a. Ensure that penalties in sections 40 to 43 of the Building Control Act will not be misused to forcibly evict any persons and is applied in a manner which ensures effective protection of human rights of affected individuals, as guaranteed under international law and standards;

   b. Provide alternatives and safeguards to prevent forced evictions and food insecurity allowed for under HNCPO Order No. 31/2560, which regulates the use of Agriculture Land Reform Areas for purposes other than agricultural reform;

   c. Enact and enforce a clear prohibition on forced evictions, and adopt guidelines for evictions which should be based on the Basic Principles and Guidelines on Development-Based Evictions and Displacement and must comply with international human rights law.

4. Review and, where appropriate, amend laws governing environmental protection, which also apply in SEZ and EEC areas, through meaningful consultation, in order to bring them in compliance with Thailand's international human rights obligations, including the ICCPR, ICESCR and UNGPs, to:

    a. Ensure that Strategic Environmental Assessments ("SEA") must be carried out by public authorities or institutions, that they involve genuine public participation in line with international standards, and are undertaken prior to strategic decision-making;

    b. Prohibit the tender and bidding for a project before an assessment of its environmental or health impacts has been carried out under section 49 of the National Environmental Quality Act;

    c. Ensure that environmental impact assessments must be carried out in line with international standards and best practices, including:

        i. Conducting a public hearing and consultation under section 48 of the Act in a manner in which relevant information is effectively disseminated by the assessor in advance and stakeholders have sufficient time to understand and respond to proposals;

        ii. Explicitly allowing an extension of the duration of the review under Sections 50 to 51(6) of the Act for exceptional cases, for instance relating to the nature, complexity, location or size of the project. Such extensions must be done in writing and communicated to the applicant with reasons justifying the extension and the date when a determination is expected; and

        iii. Expanding the power of relevant authorities in the monitoring process so that they can enforce their recommendations. Sufficient budget must be allocated to monitor and ensure that the recommendations of environmental impact assessments are implemented;

    d. Amend the Factory Act to define "factory" under section 4 to include smaller and middle-sized factories which pose a high risk of causing detrimental environmental impacts, and reinstate the provision which allows for an authority to refuse to renew a factory license if the factory fails to comply with relevant environmental protection laws and regulations; and

    e. Ensure the successful enforcement of environmental judgments, including addressing obstacles to obtaining compensation for environmental damages by polluting companies who use legal loopholes to avoid paying compensation.

5. Review and amend laws governing labour protection in SEZs and the EEC, through meaningful consultation, in order to bring them in compliance with Thailand's international human rights obligations, including the ICCPR, ICESCR and UNGPs, including to:

    a. Relax restrictions on freedom of movement of seasonal migrant workers work full time but enter Thailand with border passes under section 64 of the Emergency Decree on Managing the Work of Aliens, and other arrangements which makes them especially vulnerable to the abusive practices and limit their ability to access legal protections available to other workers;

    b. Amend sections 48 and 49 of the Compensation Act to remove obstacles such as time limits on filing a claim which prevent injured migrant workers from claiming compensation, or improve upon services that provide counselling and assistance to migrant workers in preparing and submitting claims;

    c. Amend sections 39 and 40 of the Social Security Act to ensure prompt, simple, accessible, non-discriminatory and cost-effective access of migrant and other workers to social security benefits;

d. Amend section 88 of the Labour Relations Act to remove the restriction on non-citizens forming trade unions; and

e. Amend section 95 of the Labour Relations Act to allow subcontracted workers to join an existing union in the manufacturing enterprise to negotiate over working conditions with firms;

6. Ratify ILO Conventions No. 87 (concerning Freedom of Association and Protection of the Right to Organize) and No. 98 (concerning the Application of the Principles of the Right to Organize and to Bargain Collectively).

7.3 Recommendations for private sector actors

1. Carry out all business activities in line with UNGPs, uphold Thailand's responsibility to respect human rights and take steps to implement Thailand's National Action Plan on Business and Human Rights, including action plans regarding protection of labour, land, environment and natural resources;

2. Comply with all national laws related to protection of the environment, labour and human rights, and their related rules and procedures;

3. Ensure that residents who were forcibly removed from their rental accommodations or leased land, or affected by environmental damages caused by operations of manufacturing industries or other corporate activities, have access to effective reparation and remedy in accordance with the UNGPs and other international laws and standards;

4. Assist affected residents who had to resettle to protect their livelihoods or support alternative jobs;

5. End legal harassment – including through defamation cases - of individuals or communities affected by SEZ and EEC policies and seeking to legitimately bring into light their grievances and human rights violations;

6. Ensure that environmental impact assessments are carried out independently, impartially, lawfully and effectively;

7. Ensure that migrant, seasonal and subcontracted workers enjoy treatment no less favourable than other workers in relation to remuneration, conditions of work, social security, mobility, and equal access to decent work;

8. Ensure that all employees can effectively enjoy the right to freely form and join trade unions of their own choosing, and not be subject to dismissal due to anti-union discrimination;

9. Conduct human rights due diligence to ensure investments are responsible and are not complicit in human rights abuses, including to ensure that lands have been lawfully acquired and human rights have been respected in all processes for acquisition, conversion of land use and evictions; and

10. Establish accessible and effective Operational Level Grievance Mechanisms (OGM) to address concerns affecting individuals and local communities that arise from their operations, in accordance with the UNGPs.

7.4 Recommendations for civil society actors and lawyers

1. Monitor and document SEZ and EEC developments and engage in advocacy with a view to ensuring that they are in line with international and domestic law and standards;

2. Seek and make use of international and domestic cooperation and assistance, including legal, technical and technological support from local, regional, and international NGOs, international, regional, and domestic civil society and international experts to strengthen advocacy work on SEZs and the EEC;

3. Consider opportunities to collaborate with lawyers on strategic litigation cases where rights violations and/or abuses are at risk of occurring, are occurring or have occurred;

4. Support local communities, workers and other rights holders to ensure fulfilment of their human rights;

5. Engage, where feasible and appropriate, with parliamentarians, political parties, government officials and SEZ and EEC bodies, to call for laws, policies and practices to be in line with international law and standards; and

6. Undertake, where feasible, strategic litigation test cases as a means to ensure effective remedies and reparation for rights violations and to prevent or stop current rights violations associated with SEZs and the EEC.

7.5 Recommendations for the UN, Diplomatic and Donor Communities

1. Monitor and document SEZ and EEC developments and engage in domestic and international advocacy, including through UN mechanisms - including the Universal Periodic Review process – with a view to ensuring that they are in line with international and domestic law and standards;

2. Ensure that investment policies support human rights, environmental protection, labour rights, and corporate compliance with rights protection measures – including ensuring that bilateral investment treaties (BITs) make reference to human rights;

3. Expressly address and comment on issues such as human rights, labour, the environment, including in the context of SEZs and the EEC;

4. Engage, where feasible and appropriate, with parliamentarians, political parties, government officials and SEZ and EEC bodies, to call for laws, policies and practices governing SEZs and the EEC to be in line with international law and standards; and

5. Provide international and domestic cooperation and assistance, including legal, technical and technological support for authorities, local, regional and international NGOs, and international, regional and domestic civil society to strengthen advocacy work on SEZs and the EEC.

ANNEXES

ANNEX 1: SEZ Designated Zones Along the Border Regions

A. Tak Special Economic Zone

14 Sub-districts in 3 Districts (1,419 sq. km. or 886,875 *rai*), including:

- 8 Sub-districts in Mae Sot District: Mae Sot, Mae Tow, Ta Sai Luad, Phra That Pha Dang, Mae Gasa, Mae Pa, Mae Ku and Mahawan;
- 3 Sub-districts in Pob Phra District: Phob Phra, Chong Kab and Valet; and
- 3 Sub-districts in Mae Ramad District: Mae Ja Rao, Mae Ramad, Ka Ne Jue.

B. Mukdahan Special Economic Zone

11 Sub-districts in 3 Districts, including:

- 5 Sub-districts in Muang District: Sri Bun Ruang, Mukdahan, Bang Sai Yai, Kam Ar Huan and Na Si Nuan;
- 4 Sub-districts in Wanyai District: Bang Sai Noi, Cha Note, Wanyai and Bongkham; and
- 2 Sub-districts in Don Tan District: Pho Sai and Don Tarn.

C. Sa Kaeo Special Economic Zone

4 Sub-districts in 2 Districts, including:

- 3 Sub-districts in Aranyaprathet District: Ban Dan, Pa Rai and Tha Kam; and
- 1 Sub-district in Wattananakorn District: Pak Kha.

D. Trad Special Economic Zone

3 Sub-districts in Klongyai District: Khlong Yai, Had Lek, and Mai Rood

E. Songkhla Special Economic Zone

4 Sub-districts in Sadao District: Sadao, Samnak Kham, Samnak Taew, Padang Bazar

F. Chiang Rai Special Economic Zone

21 Sub-districts in 3 Districts, including:

- 7 Sub-districts in Chiang Khong district: Krueng, Boon Ruang, Rim Khong, Vieng, Sri Don Chai, Sa Tan, Huay Kho;
- 6 Sub-districts in Chiang Saen district: Baan Saew, Pa Sak, Mae Ngern, Yo Nok, Vieng, Sri Don Moon; and
- 8 Sub-districts in Mae Sai district: Koh Chang, Baan Dai, Pong Ngam, Pong Pha, Mae Sai, Vieng Pang Kam, Sri Muang Chum, Huay Krai.

G. Nong Khai Special Economic Zone

13 Sub-districts in 2 Districts, including:

- 12 Sub-districts in Muang District: Kai Bok Wan, Nai Muang, Baan Duer, Phra Tat Bang Puan, Pho Chai, Pon Sawang, Mee Chai, Vieng Kook, See Kai, Nong Kom Kor, Hat Kam, Hin Ngom; and
- 1 Sub-district in Sa Krai District: Sa Krai

H. Nakhon Phanom Special Economic Zone

13 Sub-districts in 2 Districts, including:

- 10 Sub-districts in Muang District: Gu Ru Ku, Tha Kho, Na Sai, Na Raj Kwai, Nai Muang, Baan Pueng, Pho Tak, Nhong Yat, Nhong Saeng, Art Samart; and
- 3 Sub-districts in Tha U Ten District: Non Tarn, Ram Raj, Vern Phra Baht.

I. Kanchanaburi Special Economic Zone

2 Sub-districts in Muang District: Kang Sian, Baan Kao.

J. Narathiwat Special Economic Zone

5 Sub-districts in 5 Districts, including:

- 1 Sub-district in Muang District: Khok Kian;
- 1 Sub-district in Tak Bai District: Jae Hae;
- 1 Sub-district in La Han District: Yi Ngor;
- 1 Sub-district in Wang District: Loh Jood; and
- 1 Sub-district in Su Ngai Ko Lok District: Su Ngai Ko Lok

ANNEX 2: List of Interviewed Persons

Participants of the Workshop on 13 July 2019

Academics

- Dr. Arpha Wangkiat, Faculty of Engineering, Rangsit University
- Dr. Nutthamon Kongcharoen, Faculty of Law, Chiang Mai University

Lawyers/ Civil Society Groups

- Mr.Sumitchai Huttasan, Center for Protection and Revival of Local Community Rights
- Ms. Sor Rattanamanee Polkla, Community Resource Center Foundation
- Ms. Chalermsri Prasertsri, Community Resource Center Foundation
- Ms. Pornpana Kuaycharoen, Land Watch
- Mr.Prayong Doklamyai, Northern Peasant Federation
- Ms. Supaporn Malailoy, Enlawthai Foundation
- Ms. Chanajit Ronmai, Enlawthai Foundation
- Mr. Surachai Trongngam, Enlawthai Foundation
- Mr.Adisorn Kertmongkol, Migrant Working Group
- Mr. Gunn Tattiyakul, EEC Watch
- Dr. Somnuck Jongmeewasin, EEC Watch

Field Interviews (August – September 2019)

Government officials

- Four representatives, a State agency involved in formulation of SEZ policy
- Four representatives, Town Planning Department, Ministry of Interior
- Three representatives, Office of Natural Resources and Environment Policy and Planning, Ministry of Natural Resources and Environment
- Official, Board of Investment
- Official, Plan and Policy Analysis Department, Tak Provincial Office
- Official, Tak Treasury Department, Ministry of Finance
- Two representatives, Songkhla Treasury Department, Ministry of Finance
- Two representatives, Strategy and Development Department, Songkhla Provincial Office
- Three representatives, Songkhla Justice Department, Ministry of Justice
- Representative, Plan and Policy Department, Songkhla Provincial Administrative Organization

Academics

- Dr. Thunradee Taveekan, Faculty of Management Science, Prince of Songkhla

Lawyers/ Civil Society Groups

- Ms. Nattaya Petcharat, Stella Maris Songkhla
- Ms. Sutasidee Kaewleklai, Mirant Labour Rights Networks
- Ms. Chonthicha Tangworamongkon, HRDF
- Ms. Jirarat Moonsiri, HRDF
- Ms. Sunida Piyakunpanit, HRDF
- Ms. Puttan Sakaekum, State Enterprises Workers' Relation Confederation (Hatyai)
- Mr. Gunn Tattiyakul, EEC Watch
- Dr. Somnuck Jongmeewasin, EEC Watch
- Mr. Santee Chokchaichumnadkit, EEC Watch
- Mr. Piya Kritayakirana, Solidarity Center
- Ms. Preeda Tongcumnum, Solidarity Center
- Mr. Adisorn Kertmongkol, Migrant Working Group

Affected communities

- 10 representatives from the affected community in Sadao district, Songkhla Province
- 13 Representatives from the affected communities in Maesot district, Tak province
- Two representatives from the affected community, Chachongsao province
- 12 Representatives from the affected communities, Rayong province
- One representative from the affected community, Chonburi province

Others

- Ms. Prakairatna Thontiravong, National Human Rights Commission of Thailand
- Ms. Tuenjai Deetes (Former Commissioner), National Human Rights Commission of Thailand
- Dr. Saowaruj Rattanakhumfu, Thailand Development Research Institute Telephone Interviews (March – April 2020)

Telephone Interviews (March – April 2020)

Government officials

- Two Officials, a State agency involved in formulation of SEZ policy
- Official, EEC Office
- Official, Board of Investment
- Official, Sakaeo Treasury Department, Ministry of Finance
- Official, Kanjanaburi Treasury Department, Ministry of Finance
- Official, Songkhla Treasury Department, Ministry of Finance
- Official, Tak Treasury Department, Ministry of Finance
- Official, Social Security Office, Tak province
- Official, Immigration Department, Tak District Office

Lawyers/Civil Society Groups

- Ms. Supaporn Malailoy, Enlawthai Foundation
- Mr. Amarin Saichan, Enlawthai Foundation
- Ms. Jirarat Moonsiri, HRDF
- Ms. Nattaya Petcharat, Stella Maris Songkhla
- Ms. Puttan Sakaekum, State Enterprises Workers' Relation Confederation (Hatyai)
- Mr. Gunn Tattiyakul, EEC Watch
- Dr. Somnuck Jongmeewasin, EEC Watch
- Mr. Piya Kritayakirana, Solidarity Center
- Ms. Preeda Tongcumnum, Solidarity Center
- Mr. Adisorn Kernmongkol, Migrant Working Group

Affected communities

- Representative, affected community in Sadao district, Songkhla Province
- Representative, affected communities in Maesot district, Tak province

ANNEX 3: Principal Elements of Legal Framework for SEZs and the EEC

Constitutional Law	• Interim Constitution 2014 • Constitution 2017
SEZ Legal Framework	• NCPO Order No. 72/2557 • HNCPO Order No. 17/2558 • HNCPO Order No. 3/2559 • HNCPO Order No. 4/2559 • HNCPO Order No. 9/2559 • HNCPO Order No. 74/2559 • HNCPO Order No. 9/2562 • Regulation of the Office of the Prime Minister regarding the Development of the SEZs 2015 • Draft Regulation of the Office of the Prime Minister regarding the Development of the SEZs 2020
EEC Legal Framework	• Eastern Special Development Zone Act (EEC Act) • HNCPO Order No. 2/2560 • HNCPO Order No. 28/2560 • HNCPO Order No. 47/2560
Land Law	• Building Control Act • *Ratchaphatsadu* Land Act • Town Planning Act • Land Code • National Reserved Forest Act • Agricultural Land Reform Act • HNCPO Order No. 31/2560 • Forest Act • Community Forest Act
Environmental Law	• Enhancement and Conservation of the National Environmental Quality Act • Factory Act • Hazardous Substances Act • Building Control Act • Public Health Act
Labour Law	• Foreigners' Working Management Emergency Decree • Immigration Act • Social Security Act • Labour Protection Act • Labour Relations Act • Compensation Act
Others	• National Human Rights Commission Act • National Action Plan on Business and Human Rights • Investment Promotion Act

ANNEX 4: Questionable Designation of Lands for SEZ Development Areas

SEZs	Total Area	Development Area(s)	Impacts from the Diversion of Land	Remedy
Tak	• 14 Sub-districts • 886,875 *rai* (1,419 sq.km) • 9% of the total provincial area	• Approx. 2,182 *rai* (3.5 sq. km) • The areas were National Reserved Forest, Permanent Forest Area and Land which is the Domain Public of State for the Common Use of People. Some were privately owned lands. • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 17/2558	Sixty-five residents claimed that they had occupied the designated Development Area for living and farming for generations. Some claimed that they had occupied the lands before the area was declared a national forest reserve in 1981 and permanent forest in 1982,[576] and claimed that they used to pay local administrative tax for the lands since 1958 (*Por Bor Tor 5*).[577] The areas were cleared out entirely for industrial activities.	• The Cabinet Resolution (28 February 2017) allocated budget for more than 400 million baht (approx. USD 12 million) to compensate 82 affected households. • Financial compensation at the government's standard estimation of land value was provided. • No alternative to the lands was provided.[578]
Mukdahan	• 11 Sub-districts • 361,542.50 *rai* (578.5 sq. km) • 13% of the total provincial area	• Approx. 1,081 *rai* (1.7 sq. km) • The areas were Agriculture Land Reform Area, Permanent Forest Area and Land which is the Domain Public of State for the Common Use of People. • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 17/2558.	According to Land Watch, the designated Development Area has been occupied and used by local people (exact number was not revealed).[579] The areas were cleared out entirely for industrial activities.	The Cabinet Resolution (18 October 2016) allocated budget for 880,000 baht (approx. USD 26,900) to compensate five households. Compensation was given to the affected households by Treasury Department on 30 January 2017.[580]

576 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016; see also: NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.
577 ICJ Interview, Affected Communities, Tak, September 2019
578 Ibid.; ICJ Interview, Officials of Treasury Department, Ministry of Finance, in the areas where SEZs are operating, September 2019.
579 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
580 Mukdahan Provincial Office, 'Background Information about Mukdahan Province and its SEZ', June 2018, available at: http://www.mukdahan.go.th/data/pg.pdf

SEZs	Total Area	Development Area(s)	Impacts from the Diversion of Land	Remedy
Sakaeo	• 4 Sub-districts • 207,500.00 *rai* (332 sq. km) • 4.6% of the total provincial area	• Approx. 1,186 *rai* (1.9 sq. km) • The areas were National Reserved Forest, Permanent Forest Area and Land which is the Domain Public of State for the Common Use of People. • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 17/2558.	The designated Development Area is reportedly State land with no local people occupying them, therefore, the entire areas could be cleared out for industrial activities smoothly.[581] However, in the areas outside the Development Area, the NHRCT conducted initial research and found that some local residents had been affected by the construction of infrastructure, and would like factories to move to industrial estate areas. No complaint was officially submitted to the NHRCT.[582]	
Trat	• 3 Sub-districts • 31,375.00 *rai* (50.2 sq. km) • 1.7% of the total provincial area	• Approx. 888 *rai* (1.4 sq. km) • The area was Land which is the Domain Public of State for the Common Use of People. • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 17/2558.	No information is made available to public about the impacts from the diversion of lands for Trat SEZ on local communities.	

581 ICJ Interview, Officials of Treasury Department, Ministry of Finance, in the areas where SEZs are operating, March 2020.
582 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017

SEZs	Total Area	Development Area(s)	Impacts from the Diversion of Land	Remedy
Songkhla	• 4 Sub-districts • 345,187.50 *rai* (552.3 sq. km) • 7% of the total provincial area	• Approx. 1,069 *rai* (1.7 sq. km) • The area was privately owned land, which was confiscated to the State by virtue of a court judgment.	160 families who rent the lands in the designated Development Area, for living and farming submitted a petition to relevant governmental agencies.[583] They claimed that losing the lands deprived them of their livelihood. In 2019, four buildings on leased lands owned by tenants were demolished by local officials in accordance with the Building Control Act.[584] Half of the areas could be cleared out entirely for industrial activities. 41 people continue to stay in the area.[585]	• Financial support for relocation and demolishment of their properties were provided to the affected households. • Alternative lands were arranged.[586] • The Treasury Department and affected communities could not reach an agreement on compensation and alternative lands.[587]
Nong Khai	• 13 Sub-districts • 296,042.00 *rai* (473.7 sq. km) • 15% of the total provincial area	• Approx. 718 rai (1.1 sq. km) • The area was Land which is the Domain Public of State for the Common Use of People. Others were under the ownership of the State Railway of Thailand or an industrial estate. • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 17/2558.	The designated Development Area was also a "Community Forest"[588] area. Such designation reportedly restricts the local population from managing their community-based forest. [589]	

583 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017; ICJ Interview, Affected Communities, Songkhla, August 2019.
584 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019. ICJ Interview, Affected Communities, Songkhla, August 2019.
585 ICJ Telephone Interview, Officials of the Treasury Department, Ministry of Finance, in the areas where SEZs are operating, March 2020; In contrast, a representative of the affected communities told the ICJ that there are 85 people who continue to stay in the area. ICJ Telephone Interview, Affected Communities, Songkhla, March 2020.
586 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019.
587 ICJ Interview, Officials of the Treasury Department, Ministry of Finance, in areas where SEZs are operating, August 2019. ICJ Interview, Affected Communities, Songkhla, August 2019.
588 Subject to the Community Forest Act B.E. 2561 (2019), an area that is designated as "Community Forest" area allows local residents living in the forests to work with the State to manage and use natural resources in a way that sustains the environment.
589 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.

SEZs	Total Area	Development Area(s)	Impacts from the Diversion of Land	Remedy
Narathiwat	• 5 Sub-districts • 146,981.25 *rai* (231.2 sq. km) • 2% of the total provincial area	• In the process of requesting budget to purchase land in Narathiwat province.	The Committee could not identify appropriate State-owned land to set up the SEZ Development Area, it then decided to purchase privately-owned lands.[590]	
Chiang Rai	• 21 Sub-districts • 952,266.46 *rai* (1,523.6 sq. km) • 13% of the total provincial area	• No Development Area	The SEZ Policy Committee considered several areas to be the designated Development Area. In one of the selected areas, 51 local residents rent this area since 1972 for their tobacco plantations.[591] The lands are under the responsibility of the Tobacco Authority of Thailand. Another area which includes wetlands and Community Forest area, had many local residents come out to protest designation.[592] As the government cannot identify a suitable area, there is no Development Area. SEZ is only promoted through investment promotion measures such as the BOI scheme.[593] Tobacco plantations areas, wetlands and Community Forest areas are being left as they are.	

590 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.
591 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
592 Manager Online, 'Chiang Rai SEZ to Begin Again, State Withdrew, Privates have to find their Own Lands', 11 September 2018, available at: https://mgronline.com/local/detail/9610000090954.
593 NESDC, 'Progress : Land Acquisition and Management', March 2020, at 6, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=5195

SEZs	Total Area	Development Area(s)	Impacts from the Diversion of Land	Remedy
Nakhon Phanom	• 13 Sub-districts • 496,743.75 *rai* (794.8 sq. km) • 14% of the total provincial area	• Approx. 1,363-2-17.1 (2.2 sq. km) • The area was Land which is the Domain Public of State for the Common Use of People. • Converted to Ratchaphatsadu Land by HNCPO Order No. 74/2559.	The designated Development Area is reportedly the area where at least 29 individuals have owned and resided with legal titles since 1941 prior to categorization as Public Domain in 1978.[594] The villagers claimed that they possess *Nor Sor 3 Gor* and *Nor Sor 3 Khor*.[595] 33 villagers were sued for trespass by the public prosecutor. On 6 February 2019, the Regional Appeal Court acquitted the villagers and affirmed that they had occupied the land from before they were categorized as the Public Domain. They were thus deemed to have the right to stay on such land.[596]	
Kanchanaburi	• 2 Sub-districts • 162,993.75 *rai* (260.8 sq. km) • 1.3% of the total provincial area	• 8,193 *rai* (13.1 sq. km) • The area was Reserved Areas under the Royal Decree in Determining the Reserved Areas B.E. 2481 (1938). • Converted to *Ratchaphatsadu* Land by HNCPO Order No. 74/2559.	The designated Development Area reportedly affected at least 115 individuals who occupy the area for farming.[597] People continue to stay in the area.[598]	The Treasury Department and the affected communities reached an agreement on compensation. However, the budget is yet to be approved by the Cabinet.[599]

594 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017
595 Land Watch, 'Report of Study on Implementation and Impacts of the Greater Mekong Sub-region Economic Corridor, Asian Development Bank – Policies on Special Economic Zones in Thailand', April 2016.
596 NHRCT, 'Workshop Materials in Preparing Recommendations for Amending Laws and Policies: Cases of SEZs, dated 24-26 August 2017', 25 August 2017.
597 ICJ Interview, Officials of Treasury Department, Ministry of Finance, in the areas where SEZ is operating, March 2020.
598 NESDC, 'Progress on the Developing of SEZs', March 2020, available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=10024
599 ICJ Interview, Officials of Treasury Department, Ministry of Finance, in the areas where SEZ is operating, March 2020.

ANNEX 5: Questionable Designation of Lands for the EEC [600]

Areas	Impacts from the Classification of Land
Area of Khao Din Sub-district, Bang Pakong District, Chachoengsao Province	Based on the EEC Land Use Plan, the area – which is currently used for traditional premium rice plantation fields – was transformed from a rural and agricultural zone to an industrialized zone. The land was sold to a company.[601] At least 43 households that were renting the area for farming are reportedly affected by the policy. One of the affected persons claimed that, before it was sold to the company, she rented the area of around 74 *rai* (0.12 sq. km.) for farming for around 70 years.[602] According to the EEC Watch Group, she is being prosecuted by the Company for trespass. The case is pending before the Court of the First Instance.[603] Some people continue to stay in the disputed area.
Area between Chachoengsao and Chonburi Provinces	The area regularly floods but was designated to be an EEC promotional zone. Currently, it is being used by local residents who rent the land from the company directly for fish farming. [604] EEC Watch Group raised concern that expansion of industrial areas will render nearby agricultural areas vulnerable to flooding.[605]
Upstream areas of Bangpakong River in Khoa Hin Sorn Sub-district, Phanum Sarakham District, Chachoengsao Province	An additional 2000 *rai* (approx. 3.2 sq. km) of industrial area was added in the EEC Land Use Plan. Alongside the industrial estate, the area is currently being used for mango plantations. Based on the Community Health Impact Assessment Report, launched in 2011, the findings suggested that industrial activity may have affected mango production in the area and worsened the problem of a lack of sufficient available water resources.[606]
Nakorn Nayok riverside area, Yothaka Sub-district, Bang Nam Prew District, Chachongsao Province	Under the ownership of the Royal Thai Navy. Based on the EEC Land Use Plan, the area is not classified as any particular land type.[607] Its use will be subject to the military's discretion. According to Land Watch, there are 166 households renting this area for living and rice farming for generations. The residents are worried that their rental contracts will be terminated for EEC development.[608]

600 See also: Prachatai, 'Evaluate the Situation: Protest against the EEC in Front of the Government House', 6 August 2019, available at: https://prachatai.com/journal/2019/08/83745
601 Land Watch Thai, 'Khao Din and the Purchasing of Land for Setting Up an Industrial Estate in the EEC', 11 February 2019, available at: http://landwatchthai.org/2884
602 Voice TV, 'Bangpakong of the EEC, from 'green area' to 'industrial zone'', 16 November 2019, available at: http://www.voicetv.co.th/read/Gc_dZ7tR7
603 ICJ Telephone Interview, Representative of the EEC Watch, April 2020.
604 ICJ Interview, representative of the EEC Watch, August 2019.
605 Ibid.
606 National Health Commission Office ("NHCO"), 'Pad Reaw People revealed that the 600 MW Power Plant Destroys Agriculture Area and Took the Water from Tha Lat River', 22 August 2011, available at: https://www.nationalhealth.or.th/node/418
607 ICJ Interview, Senior Officials of Ministry of Interior's Department of Public Works and Town and Country Planning, Bangkok, August 2019. The official claimed that military and palace areas are normally not classified as any land type.
608 Land Watch, 'Yothaka Rakthin Group submitted a letter to the Parliament's Committees regarding the Solutions for Residents who are Residing in Ratchapatsadu Area which Belongs to the Royal Thai Navy', 13 February 2020, available at: https://m.facebook.com/landwatchthai/photos/a.156665737031776 2/2624433964540092/?type=3&source=57&__tn__=EHH-R

Areas	Impacts from the Classification of Land
Khao Dong Yang Area, the area between Plaeng Yao and Phanom Sarakham District, Chachoengsao Province	The National Preserved Forest areas have disappeared from the EEC Land Use Plan. [609]
Area of Khao Mai Kaew Subdistrict, Bang Lamung District, Chonburi Province	Based on the EEC Land Use Plan, this area was classified as an industrial area. However, in this area, there is a dispute regarding the issuing of title deeds (*Chanote*) by a company which bought the land. Local residents claimed that the land is National Preserved Forest Area where approximately 100 households are residing for more than 50 years.[610] Currently, 10 affected individuals are facing prosecution by the company for trespass. As of August 2019, the police were investigating the case.[611] No progress has been reported to the public.
Area of Pa Yup Sub-district, Wang Chan District, Rayong Province	This zone is designated to be a Promotional Zone, but agreements that were reached between communities, businesses and the government, which banned certain businesses which may cause environmental impacts from operating in the area – including for example energy, petroleum and oil producers, hazardous waste management, were not included in the EEC Land Use Plan. Rayong Provincial Town Plan was also amended in August 2018 and allowed such businesses to be stationed in the area, inconsistent with the above noted trilateral agreement. [612]
Industrial Sea Port Projects	Complaints have been raised by local fishermen that several sea port projects might affect sea currents, and harm local/traditional fishing industries. They requested to participate in the problem-solving process.[613]

609 See also: Prachatai, 'Evaluate the Situation: Protest against the EEC in Front of the Government House', 6 August 2019, available at: https://prachatai.com/journal/2019/08/83745

610 Manager Online, 'Villagers from Khao Mai Kaew Opposed Provincial Land Office, Chonburi Province, for Surveying Lands in National Preserved Forest and Preparing to Issue Title Deeds for a Company', 14 August 2019, available at: https://mgronline.com/local/detail/9620000077395 . Some sources stated that there are approximately 400 households that were affected by the issuing of such title deeds, see: Thammachart Greeaksorn, 'EEC: No Coup, No Way', Prachatai, 24 December 2019, available at: https://prachatai.com/journal/2019/12/85663

611 Siamrat, 'Kao Mai Kaew Villagers Went to Rojana Office and asked if they have a Policy to Force Villagers from the Area', 27 August 2019, available at: https://siamrath.co.th/n/99423

612 See also: Ministerial Regulation, 'Enforcing Provincial Town Plan (No. 2)', 7 August 2018, available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/060/T3.PDF; ICJ Telephone Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, March 2020.

613 Manager Online, 'Public Hearing for Mab Tha Put Deep Sea Port Phase 3 with Association of Traditional Fishing', 19 November 2015, available at: https://mgronline.com/local/detail/9580000128638; Manager Online, 'Traditional Fishing Groups in Rayong Province Rejected the Construction of the Mab Tha Put Deep Sea Port Phase 3, Afraid that the Project will Affect their Fishing Areas', 30 October 2015, available at: https://mgronline.com/local/detail/9580000121283

Areas	Impacts from the Classification of Land
Chonburi and Rayong Provinces	Concerns were raised by academics that Chonburi and Rayong Provinces may not suitable for use as industrialized zones without adequate plans to resolve impending problems of lack of sufficient water resources, which affect peoples' access to water resources for living and agriculture in the region.[614] In the eastern part of Thailand, while there is a lot of precipitation during the rainy season, there is insufficient reservoir or water storage areas, which mean that, during the summer, the area lacks sufficient available water resources and is impacted by saltwater intrusion. [615] This year, the EEC area is also facing water scarcity crisis. Some companies in the EEC expect drought will impede their production.[616] In 2018, the Office of National Water Resources found that the demand for water consumption for all economic activities in the EEC provinces was 1,984 billion cubic metres, while water supply in the three provinces was 1,682 billion cubic metres. Their study also estimated that water demand in the three EEC provinces would rise to around 2,242 billion cubic metres by 2027.[617] Without any suitable or sustainable measures to combat this potential problem, conflict and confrontation between the agricultural and industrial sectors could arise. In light of the above, EEC Office announced that several measures will be adopted to address the drought situation, including three urgent measures to increase water supply in the EEC by diverting water from at least three reservoirs, and approved budget for 53 long-term water management development projects.[618] Reservoirs in Chanthaburi and Sa Kaeo – the EEC neighbouring provinces - were built to supply water to the EEC project scheme. At least 200,000 *rai* (320 sq. km) of land in Chanthaburi province was reclaimed.[619] However, under the current levels of climate variability, an academic raised concern that such projects may not help the situation, and proposed that a durable solution could be for the government to manage water demand in a more effective manner.[620] In addition, as the companies still needs to share raw water supplies from reservoirs with farmers and household sectors, local people have reportedly started to protest that water resources in their area are only allocated for the industrial sector.[621]

614 Chulit Watcharasin, 'Water Management and the EEC', Document at the Seminar of the Thailand Development Research Institute, 2 October 2017; ICJ Interview, Mr. Somnuck Jongmeewasin, environmental expert of EEC Watch and academic, Chachongsao, August 2019.
615 Royal Irrigation Department, 'Water Management and Guideline for Development Toward the EEC', the document for presentation during the meeting on the EEC, Bangkok, August 2016
616 For example, Bangkok Post, 'PTT: Drought likely to limit production', 7 February 2020, available at: https://www.bangkokpost.com/business/1852254/ptt-drought-likely-to-limit-production
617 Nation, 'Water resources in EEC area being studied', 18 November 2018, available at: https://www.nationthailand.com/national/30358810
618 EEC Office, 'NO.1/2020: The Eastern Economic Corridor Policy Committee (1st issue.)', 1 April 2020, available at: https://eng.eeco.or.th/en/news/NO-1-2020-The-Eastern-Economic-Corridor-Policy-Committee-1st-issue
619 Bangkok Post, 'Water wars looming', 16 January 2020, available at: https://www.bangkokpost.com/business/1836554/water-wars-looming
620 ICJ Telephone Interview, Mr. Somnuck Jongmeewasin, leading environmental expert of EEC Watch and academic, April 2020.
621 Bangkok Post, 'Water wars looming', 16 January 2020, available at: https://www.bangkokpost.com/business/1836554/water-wars-looming

ANNEX 6: Minimum Period for Contributions to Social Security

Non-occupational injury or sickness benefits	The insured person must have paid contributions for not less than three months during a period of 15 months before the date of receiving medical services. (Section 62, Social Security Act)
Maternity Benefits	The insured person must have paid contributions for not less than five months during the period of 15 months before the date of receiving medical services. (Section 65, Social Security Act)
Disability Benefits	The insured person must have paid contributions for not less than three months during the period of 15 months before being disabled. (Section 69, Social Security Act)
Death Benefit	The insured person must have paid contributions for a period of not less than one month during the period of six months before his death. (Section 73, Social Security Act)
Child Benefit	The insured person must have paid contributions for a period of not less than 12 months during the period of 36 months before the month of entitlement to child benefits. (Section 74, Social Security Act)
Old Age Benefit	The insured person must have paid contributions for a period of not less than 180 months whether or not consecutively. (Section 76, Social Security Act) Entitled to monthly living allowances or lump sum payment.
Unemployment Benefit	The insured person must have paid contributions for a period of not less than six months within a period of 15 months before unemployment. (Section 78, Social Security Act)

Minimum Period for Contributions to Social Security (Section 40 of the Social Security Act)[622]

Non-occupational injury or sickness benefits	The insured person must have paid contributions for not less than three months during a period of four months before the date of receiving medical services.
Disability Benefits	The insured person must have paid contributions for not less than six months during the period of 10 months before being disabled.
Death Benefit	The insured person must have paid contributions for a period of not less than six months during the period of 12 months before his death.
Old Age Benefit	The insured person must have paid contributions for a period of not less than 180 months whether or not consecutively. entitled to lump sum payment.

622 Social Security Office, 'Social Security Fund Handbook', at 36, available at: http://www.sa.nu.ac.th/attach/files/M-person.pdf

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