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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS, ENLAWTHAI
FOUNDATION AND LAND WATCH THAI TO THE UNIVERSAL PERIODIC REVIEW OF
THAILAND**

Submitted on 25 March 2021

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

As a result of consensus reached among NGOs working on the environment, energy, human rights and development, ENLAWTHAI Foundation (EnLAW) was established in 2001 with a mission to provide environmental legal support for people, particularly local communities affected by industrial development and pollution, in exercising their rights and accessing environmental justice; to monitor and identify the flaws in the current environmental legal system and to advocate change of the existing law to provide better protection to environment and health. EnLAW works to protect and promote human rights and environmental democracy under the concept "environmental justice in Thailand is made possible by legal mechanisms"

Land Watch Thai (LWT) was established in 2014 by civil society groups that worked on land and environmental issues. LWT was established with the objective to support and promote the works of land and environmental rights movements who were affected by regulations and policies governing land rights and forest management.

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1. The International Commission of Jurists (ICJ), ENLAWTHAI Foundation (EnLAW) and Land Watch Thai (LWT) welcome the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Thailand.
2. In this submission, the ICJ, EnLAW and LWT wish to draw the attention of the HRC and the Working Group on the UPR to the organizations' concern about:
 - a. Human rights defenders and civil society organizations;
 - b. The continuing detrimental impact of the legal framework imposed since the 2014 coup d'état on economic, social and cultural rights;
 - c. The lack of consultation with affected communities;
 - d. Access to land and housing; and
 - e. The environment.

Human Rights Defenders and Civil Society Organizations

3. In 2016, following its second UPR cycle, Thailand accepted recommendations regarding the protection of human rights defenders (HRDs). However, HRDs in Thailand continue to face threats and human rights violations.
4. Physical assaults, abductions and death threats against HRDs and environmental rights activists continue to emerge. For example, on 5 August 2019, Ekkachai Isarata, a human rights defender from southern Thailand, was abducted and locked up at a resort hotel by unidentified men while a public hearing concerning a mining project in Phattalung Province was being held.¹ In September 2019, Sumeth Rainpongnam, an environmental human rights defender and his wife were attacked and shot by unknown assailants in three different incidents. Fortunately, they were not injured. These occurred a month after he and other community members had submitted a complaint to the Provincial Governor calling for an official investigation into the pollution allegedly generated by an industrial waste management company.²
5. Strategic lawsuits against public participation ("SLAPP") continue to be used to harass and intimidate HRDs for their rights advocacy. Laws that have been misused to punish HRDs, activists, lawyers, academics and journalists include the Computer-Related Crime Act and criminal defamation and other provisions of the Criminal Code. For example, Thammakaset Limited Company, a Thai poultry company, has brought several SLAPP lawsuits to silence those speaking out against its allegedly exploitative labour practices.³ According to the International Federation for Human Rights, as of December 2020, Thammakaset had filed a total of 39 criminal and civil cases against 23 defendants.⁴
6. The Thai government has taken some steps against the weaponization of judicial processes to muzzle free expression by adopting articles 161/1⁵ and 165/2⁶ of the Criminal Procedure Code, which allow the courts to dismiss certain SLAPP lawsuits or similar forms of harassment through the legal process. These measures, however, have stopped short of amending or repealing the legal provisions that are misused against HRDs. The continued misuse of judicial processes to silence HRDs over the past year also confirms that the above-mentioned steps are insufficient. Indeed, the ICJ had expressed

concern about articles 161/1 and 165/2, particularly about their limited scope, since they only cover criminal cases filed by a private complainant.⁷ In addition, the courts have failed to consistently apply these sections.

7. On 23 February 2021, the Cabinet approved, in principle, the Draft Act on the Operation of Not-for-profit Organizations ('NPO'), which the Office of the Council of State had proposed. It is scheduled for public consultation between 12 to 31 March 2021.⁸ The draft law aims to provide oversight of CSOs. Among other things, it broadly defines NPOs to include "a group of individuals which are not established by any specific law but implement activities that do not have the purpose of seeking income or profits to be shared", and requires NPOs that receive financial assistance from international sources to use it to fund only "certain activities in Thailand as permitted by the Minister of Interior". Thus far, no list identifying what these activities are has been published. The draft also empowers certain officials "to enter the office of an NPO to inspect the use of money or properties, or the implementation of activities...", and to "investigate and obtain and make a copy of electronic communications traffic of the NPOs" for further investigation. Violators will have their registration revoked. Those operating without registration would be liable to criminal punishment.⁹ Civil society actors are concerned that, in an already restrictive environment, such a law will be used as an additional repressive tool to further restrict space for civil society and CSOs' ability to raise issues deemed hostile to the government or otherwise disfavored, in violation of their rights to freedom of association, assembly, expression, and the right to take part in public affairs. The draft will also place undue obstacles to the essential work of human rights defenders and efforts by Thailand and international stakeholders to engage in international cooperation and assistance on human rights.

Continuing Detrimental Impact of the Legal Framework Imposed Since the 2014 Coup d'état on Economic, Social and Cultural rights

8. Following its second UPR cycle in 2016, Thailand simply noted recommendations calling for the National Council for Peace and Order ('NCPO') orders to be repealed. While Thailand repealed some NCPO orders, in whole and/or in part, by virtue of the HNCPO Order Nos.22/2561 and 9/2562,¹⁰ several others, which infringe on human rights and environmental protections, remain in force. These include NCPO and HNCPO orders that:
 - a. modify the framework for land use in Thailand by converting several plots of land with special forest or public status to State-owned land for the purpose of developing special economic zones (SEZs), and in so doing bypass general protections that otherwise exist in domestic law (e.g. HNCPO Order No.17/2558);¹¹
 - b. allow the acquisition of land that has already been set aside for the benefit of landless farmers for purposes other than agricultural reform (HNCPO Order No.31/2560);¹² and
 - c. modify critical town planning processes with a view to avoid consultations with affected people before developing town plans for certain industrial activities (e.g. HNCPO Order No.3/2559).¹³
9. The constitutional basis of HNCPO and NCPO orders are reaffirmed by article 279 of the 2017 Constitution of the Kingdom of Thailand "irrespective of their constitutional, legislative, executive or judicial force" and can only be repealed or amended by the passage of an Act.

10. Apart from those that remain in force, several other HNCPO and NCPO orders were incorporated as provisions in other legislation. For instance, HNCPO Order No.9/2559,¹⁴ which makes it possible to fast-track the bidding of certain projects before an assessment of its environmental or health impact, was repealed and replaced by section 49 of the National Environmental Quality Act, which provides for fast-tracking in the same way as the provisions of HNCPO Order No.9/2559 (for details, see paragraph 41).
11. Additionally, while several other orders were repealed, the fact that they are no longer in existence has not stopped their detrimental human rights impact.¹⁵ In fact, the human rights violations caused by the execution of some such orders continue to affect certain populations. For example, NCPO Order Nos.64/2557¹⁶ and 66/2557¹⁷ were repealed in 2019 but prosecutions, actions or operations already in effect by virtue of those orders continue (for details, see paragraph 21 to 24).

Lack of Consultation with Affected Communities

12. Reports continue to emerge about the lack of participatory mechanisms and consultations, as well as limited access to information, for affected individuals and communities concerning the execution of economic activities often involving the exploitation of natural resources and other large-scale projects that adversely impact local communities' economic, social and cultural rights. Most concerning is the fact that the Thai government often interprets public participation only as requiring the engagement of local residents in the process of assessing environmental, social and health impacts of project activities, while the public is often excluded from the decision-making, planning and policy formulation process.
13. For instance, in establishing and identifying the location of ten SEZs along Thailand's border regions, no public consultation was conducted with affected people, as required by international law, before their establishment. Similarly, with respect to the Eastern Economic Corridor ('EEC') – an SEZ that was established with the objective of promoting investment in industries that use "innovation and high technology", it was designated from the outset that the EEC should be located within areas in eastern coastal provinces. While consultations were held when determining the industrial land use plan, no report of any public consultation was compiled, as required by international law,¹⁸ prior to the initiation of the project. The establishment of SEZs and EEC was carried out pursuant to a HNCPO orders that modified the framework for land acquisition, resulting in the transfer of land from communities to business entities without adequate consultation.¹⁹
14. There are also reports about questionable designations of industrial areas for development projects, including the re-designation of agricultural, natural and environmental reserved zones in the EEC to industrial zones,²⁰ lacking both transparency and sufficient consultation with affected communities.
15. In July 2020, it was also reported that the public hearing for Chana Industrial Zone, a government large-scale industrial development program in southern Thailand, was held during Ramadan and during the ongoing COVID-19 pandemic with strict curbs on travel still in effect. People from nearby districts and activists who vocally opposed the project were allegedly barred by police officers from attending the sessions.²¹

Access to Land and Housing

16. In 2016, following its second UPR cycle, Thailand accepted recommendations to ensure adequate protection of the human rights of its people, including vulnerable persons living in difficult conditions and/or poverty. Thailand also accepted recommendations regarding

achieving the Sustainable Development Goals, especially, *inter alia*, by ensuring equal access to resources, and protecting the rights of vulnerable groups. However, vulnerable persons living in difficult conditions and people living in poverty continue to struggle to access land, housing and other natural resources upon which they depend for their livelihoods, with inadequate support from government. Several were forcibly evicted from the land, which they had occupied or relied on for generations, with some risking homelessness in violation of Thailand's obligations under international law to ensure the right to housing.²²

Forced Evictions

Evictions resulting from development projects

17. There are reports of large-scale evictions without appropriate procedural protections as required by international law, including in particular ICESCR Article 11, that have affected several households and disrupted entire communities, in violation of international standards prohibiting forced evictions.²³ These have included: evictions without genuine consultations with those affected, lack of adequate and reasonable notice, without conducting the "eviction-impact" assessments and in the absence of legal capacity to access effective remedies.
18. For example, the ICJ and LWT received information that at least 391 individuals, who have lived or used public lands that were designated as SEZs' development zones along Thailand's border region for generations, had been evicted from land slated to be cleared out for industrial activities by virtue of HNCPO Orders. The evictions were reportedly carried out without appropriate procedural protections as required by international law, including consultations with those affected, or appropriate legal remedies or procedures provided to those affected by eviction orders (for details, see paragraphs 27-30). In some cases, residents were reportedly neither informed nor received any notices about the acquisition and/or eviction until immediately prior to its confiscation/eviction.²⁴
19. There are also cases where, notwithstanding the fact that the law guarantees procedural safeguards and international human rights protections, affected communities and civil society groups reported that these safeguards were not effectively implemented in reality. For example, in developing the EEC's plan for land use, public consultations were held several times with the affected populations. However, it was alleged that insufficient time was provided for participants to raise their concerns, no documentation or information about the plans was provided before the public hearing, and individuals who were present at the consultations claimed that attempts to present alternative proposals and articulate their demands and priorities were ignored.²⁵ Consequently, LWT documented that at least 378 fishermen would be affected by the construction of Laem Chabang Port Phase 3, which would deprive them of their access to local/traditional fishing industries that are indispensable for their livelihoods. LWT also received information that the construction of High-Speed Rail Linking 3 Airports project, one of the mega EEC infrastructure projects, would result in approximately 6,700 households being evicted from the land they occupied, with some at risk of becoming homeless.²⁶
20. While the "feasibility studies" were reportedly conducted before initiating several development projects, there is no publicly available evidence that the government conducted "eviction-impact" assessments as required by international standards.²⁷ In some cases, the feasibility study was not even made publicly available, such as the study on the establishment of SEZs at border areas.

Forest Reclamation Policy

21. Many forest conservation areas in Thailand were occupied by forest-dependent communities. These residents, however, were forcibly evicted from such lands in the implementation of the Forestry Master Plan of the NCPO, known as the "Forest Reclamation Policy". As noted by Manushya Foundation, as of February 2021, there were over 25,000 cases of villagers affected by the government's forest reclamation policy. According to P-Move, most of the affected individuals are villagers living in poverty and indigenous people.²⁸
22. The Forest Reclamation Policy had been supplemented by the Forestry Master Plan, which was adopted in 2014, and NCPO orders. NCPO Order No.64/2557 authorized certain State agencies to arrest those who "encroach on, seize, possess, destroy, or act in any manner that may cause damage to the forest". NCPO Order No.66/2557, in contrast, reaffirmed the State's commitment to protect the poor, landless and those who had settled in an area before it was declared as protected from any negative impacts of the implementation of Order No.64/2557. Violators may be subject to a prison sentence in accordance with the Forest Act, the National Reserved Forests Act and the National Park Act, for, *inter alia*, trespassing the land belonging to national reserved forests and national parks, and will be evicted accordingly.²⁹ The Enhancement and Conservation of the National Environmental Quality Act ('National Environmental Quality Act') was also used by authorities to claim compensation from the evicted residents for all alleged environmental damages caused by them to the protected area.
23. While in principle entitled to protection under by Order No.66/2557, many villagers who have lived on their land for decades were reportedly denied such protection.³⁰ For example, 14 land rights activists were convicted of criminal charges in connection with their resistance to eviction from land belonging to Sai Thong National Park. They claimed that they had occupied the land before it was declared a national park. Nonetheless, the Court of Appeal upheld their conviction for allegedly encroaching on the Sai Thong National Park; 13 of them were sentenced to imprisonment, but were released on bail pending their further appeal to the Supreme Court. They were also ordered to vacate their homes and land and remove all structures that could cause damage to the protected area, without being offered relocation or compensation.³¹ On 3 March 2021, the Supreme Court confirmed the conviction of Nittaya Muangklang, one of the original defendants, for violating the Forest Act, the National Reserved Forests Act and the National Park Act. She was sentenced to a suspended three-year prison term with 20,000 THB (650 USD) fine.³² The appeals of the others are pending before the Supreme Court.³³

Indigenous Peoples' Lands

24. The Thai government's denial of the traditional rights of indigenous peoples to their ancestral lands and natural resources remains a persistent problem.
25. This includes attempts by park officials, in coordination with the military and the police, such as in 2011, to forcibly remove Karen indigenous communities from their ancestral lands in the Kaeng Krachan National Park. Their homes, farmland, rice barns and their belongings were reportedly burned down. The Karen communities in question maintained that they had been living in the national park area before the forest's 1981 designation as a national park. The evictions were reportedly carried out without the Karen's free, prior and informed consent, in violation of international law and standards, particularly as articulated in General Comment No. 24 of the Committee on Economic, Social and Cultural Rights (CESCR),³⁴ as well as without fair compensation or allocation of alternative land to enable them to maintain their traditional livelihood.³⁵

26. Most recently, on 5 March 2021, 85 members of the indigenous Karen community, who decided to travel back to their ancestral land to conduct rotational farming in their traditional plantation area in the Kaeng Krachan forest, were again forcibly removed from the area. Twenty-two of them, including women and at least one person with a disability, were arrested on court warrants.³⁶ Male detainees were compelled to have their heads shaven, despite the fact that this is disrespectful of their cultural identity. On 7 March 2021, the Phetchaburi Provincial Court released them on condition that they do not return to the area in which they were arrested or enter Kaeng Krachan National Park without permission.³⁷

Effective Remedies and Reparation

27. On several occasions, compensation provided to affected communities and individuals who were forcibly evicted, regardless of their legal title, has been inadequate and inconsistent. Sometimes, the amount of compensation has depended upon the outcomes of lopsided negotiations and has been an afterthought, rather than part of a planning process.
28. Where evictions were a consequence of the enforcement of HNCPO or NCPO orders, affected communities and individuals have had no opportunity to challenge the eviction orders in Court or elsewhere since such HNCPO or NCPO orders' legality and constitutionality was reaffirmed by the Constitution as described above. Thai courts also have, on several occasions, interpreted the Constitution as preventing them from judicially reviewing NCPO orders and announcements.³⁸ As a result, communities affected by evictions have been forced to bring cases before the courts using other strategic causes of action, such as by challenging the issuance of land title deeds by the Ministry of Finance following the acquisition of the land under HNCPO Orders.³⁹ In such cases, the parties could reach a settlement outside the courtroom. After several negotiation rounds, the affected communities received the remedies that they asked for and withdrew the case from the Court.
29. If provided, the amount of compensation normally depends on the residents' legal title and the negotiations' outcome; they may be paid according to the government's standard estimation of land value or only a small amount of financial support for relocation and compensation for the demolition of their properties.⁴⁰ To our knowledge, the value of business losses and lost or decreased wages or income have never been included in any compensation package, as required by international law and standards.⁴¹ Adequate compensation has also not been provided at all in some cases, for example cases in which buildings were demolished in accordance with the Building Control Act,⁴² and in cases when the evictions concerned State-owned lands or resulted from implementation of the Forest Reclamation Policy.
30. Alternative plots of land were also not always arranged for those evicted.⁴³ On some occasions, where alternative plots of land were provided to those affected by the eviction orders, they did not meet the criteria for adequacy of housing as set out in the CESCR's General Comment No. 4. For example, the resettlement village of the Karen indigenous people, who were forcibly evicted from the Kaeng Krachan National Park in 2011, was criticized for not being sufficient to ensure the livelihoods of affected households, and for not appropriately enabling their expression of cultural identity. Their situation has been made worse by the coronavirus pandemic and food shortages.⁴⁴

Town Plan

31. HNCPO orders and the EEC Act were used to override the usual town planning process required under Thai law, limiting, in turn, meaningful participation of affected communities and individuals in the planning process.
32. HNCPO Order No.4/2559 exempted the enforcement of ministerial regulations under the Town Planning Act for certain types of businesses in the energy and industrial sectors, allowing these businesses to be located in any location regardless of provincial town plans. Under this order, subject to the EIA/EHIA assessment of eligible companies, the laws related to city planning can be bypassed for energy projects, including fuel depots, power and oil lines, gas pipes and waste disposal businesses whose development would otherwise only be authorized in industrial zones.⁴⁵ Consequently, the order exempted at least 29 electric power plants from all laws related to city planning.⁴⁶ According to the Thailand Power Development Plan 2015-2036, a coal power plant in Krabi Province and in Thepha District, Songkhla Province were allowed to be located in an area designated as an agricultural zone;⁴⁷ ordinarily, they could only have been located in industrial zones. Exemptions under HNCPO Order No.4/2559 were applied to town plans that were amended or approved before 19 January 2017.⁴⁸ Since town plans, while reviewable, cannot expire, these exemptions thus continue to affect certain populations and have created environmental risks for communities in areas where significant development in the energy and extractive industries is taking place.
33. HNCPO Order No.3/2559 exempts the enforcement of several town planning and building control laws for SEZ development. HNCPO Order No.47/2560 (later incorporated into sections 30 to 32 of the EEC Act) also required the relevant authorities to prepare new land use plans for the EEC that annul town plans that had been approved under the usual town planning process. While opportunities for meaningful public participation may come in the process of preparing the new provincial general town plan, they will have no impact on the designation of operational zones that have already been allocated by temporary town plan for industrial activities pursuant to HNCPO Order No.3/2559, 47/2560 and the EEC Act.

Environment

Pollution, Hazardous and Industrial Wastes

34. In 2016, following its second UPR cycle, Thailand accepted a recommendation to “monitor enforcement of environmental legislation to protect the rights of local communities and prevent environmental degradation”. However, the widespread and well-documented impacts of hazardous and industrial wastes on the environment continue to be reported. Such degraded or polluted environment has implications for a wide range of human rights, including the rights to life, health and to an adequate standard of living, as well as other rights guaranteed by the ICESCR and the ICCPR,⁴⁹ by which Thailand is bound. In addition, recent amendments to several environmental legislations threaten to further weaken existing regulation aimed at the prevention of environmental degradation.
35. For example, areas in eastern Thailand have been affected by environmental problems since the beginning of the Eastern Seaboard Development Program, which has now been replaced by the EEC. These problems include air pollution from factories affecting nearby communities and drought induced by water scarcity.⁵⁰ There have also been reports of illegal disposal of industrial waste in the region, resulting in both land and water contamination,⁵¹ and of waste water flowing from industrial areas into local canals and into residential areas, mangrove forests and the sea.⁵² Between 2016 and 2018, 56

hazardous material incidents were recorded in the region, including fires, explosions and leakage of toxic substances.⁵³ A recent example was a fire and explosion that occurred on cargo ships carrying toxic chemicals at Laem Chabang Seaport, Chonburi Province, in 2019. Individuals from various communities had to be evacuated from the area.⁵⁴ At least 25 port workers were injured, and nearby communities suffered from smoke and chemical droplets falling from the sky, detrimentally affecting their rights to health, life and their enjoyment of a healthy environment, among others.

36. Air pollution has also become a serious environmental and health issue in Thailand. Particularly between November and February each year, Thailand's air quality has reached dangerous levels with high quantities of PM 2.5 particles – a category of particulate pollutant that is 2.5 microns or smaller in size – that can cause detrimental health effects to the respiratory systems of people who have been exposed to them. According to the study conducted by the UNESCAP, smoke released by agricultural fires and forest fires are the main source of such air pollution. Additional sources of air pollution include: internal combustion vehicles; factories' industrial emissions; coal-burning powerplants; and construction.⁵⁵
37. In 2020, the Parliamentary Ad-hoc Committee that was created to deal with air pollution issues made several recommendations, including the enactment of a law on a Pollutant Release and Transfer Register (PRTR) without further delay. A PRTR would create a national environmental database of potentially hazardous chemical substances and/or pollutants released in air, water and soil. Its data could be used to measure trends in pollutant releases, inform environmental policy decisions, and monitor the progress of facilities' efforts to lessen their environmental impact.⁵⁶ Regrettably, the implementation of this and other Parliamentary Ad-hoc Committee's recommendations remains slow. Additionally, at least three different versions of the draft Clean Air Act are still pending for Prime Minister's approval before Parliament may even consider them.⁵⁷

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

38. Thailand has several laws that include provisions on the protection of the environment. These include the 2017 Constitution; the National Environmental Quality Act (amended in 2018); the Factory Act (amended in 2019); the Hazardous Substances Act (amended in 2019); the Mineral Act (amended in 2017); and the Public Health Act (amended in 2017). There have been some recent amendments to these laws that have introduced new protections in some cases but have also triggered concern about further weakening of the overall environmental protection framework. Such 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 life, health, food, water, work and housing among others, and ensure appropriate legal regulation to respect, protect and fulfil these rights. Gaps and deficiencies in this overall framework include:
 - a. The failure of the **2017 Constitution** to include the right to live in a healthy environment, which was contained in the 2007 Constitution, despite growing calls for global recognition of the right to a healthy environment;⁵⁸
 - b. **The National Environmental Quality Act:** which was amended to facilitate the fast-tracking of certain projects before an environmental impact assessment be conducted, allowing for the *ad hoc* circumventing of environmental assessment regulatory mechanisms in favor of investors;
 - c. **The Factory Act:** weakens regulation of small-sized factories by amending the definition of "factory" to a place that requires machines with a higher total power and

higher number of workers.⁵⁹ Such amended definition results in many factories not falling within the scope of the Act but, instead, under local regulations and the Public Health Act (1992), providing, in turn, less stringent regulations on their impact on the environment. Moreover, a provision that had previously allowed for an authority to refuse to renew a factory license if the factory failed to comply with environmental protection laws and regulations was removed altogether;⁶⁰ and

- d. **Mineral Act:** determines a specific distance from the mine pit that requires to conduct public hearings with the community before mining may commence (100 meters, 500 meters or 1 km from the pit, depend on the type of mining),⁶¹ while environmental impacts of mining may occur at a far wider scale through direct and indirect mining practices.

Environmental Assessment Process

39. The provisions regulating environmental impact assessments featured in the National Environmental Quality Act⁶² were amended in 2018. However, academics, civil society groups and local residents have questioned the effectiveness of the environmental impact assessment process set out in such laws. Concerns have been raised about: the fraudulent or negligent preparation of reports; lack of meaningful participation in the process by affected parties; that full environmental impact assessment reports were not made available to the public during the report preparation phase and during the assessment process by relevant authorities; the limited timeframe provided under the law for relevant committees to review assessment reports; and the limited capacity of supervisory authorities.⁶³
40. Fast-tracking of projects without environmental impact assessments is permitted under Thai law. For instance, HNCPO Order No.9/2559 – later incorporated into Section 49 of the National Environmental Quality Act – made 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 for a project before an assessment of its environmental impact or its public or community health impact has been carried out.⁶⁴
41. “Strategic Environmental Assessment” (SEA), which is a separate assessment process that is normally used at the policy and planning stage for projects that are likely to have significant environmental and health impacts, is not required under Thai law. However, reference to such a process was made in the National Environmental Quality Act and in SEA guidelines that are currently being formulated by the Office of the National Economic and Social Development Council (‘NESDC’), although the process has not yet been enacted under the Thai legal framework.⁶⁵

Effective Remedies and Reparation

42. Several laws – including the Civil and Commercial Code, the Criminal Code and the National Environmental Quality Act – allow affected individuals and communities to access financial compensation for environmental damages/harms 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. However, accessing a remedy for human rights violations in environmental cases might be difficult for affected populations with limited access to information, expertise and financial resources to establish whether or not there is a sufficient link between conduct complained of and the harm suffered for the purpose of liability.⁶⁶

43. In addition, even in the case of a favorable judgment handed down by a Court, enforcement remains problematic. Challenges in this regard include: uncertainties about which government agency is in charge of enforcement; the absence of a standard implementation procedure; limited technical expertise in restoring resources to their original, uncontaminated condition; and obstacles created by polluters who would go to any means to avoid paying compensation.⁶⁷ For example, in the Klity Creek case, environmental restoration has reportedly been slow, and some of the affected communities and individuals have still not received compensation years after the verdict.⁶⁸ One of the main criticisms of the restoration plan is the lack of information communicated to and the participation of affected people, whose demands were allegedly ignored.⁶⁹

Recommendations

44. In light of the above-mentioned concerns, the ICJ, EnLAW and LWT call upon the HRC and the Working Group on the UPR to recommend:

HRDs and civil society organizations

- a) The government to immediately halt any harassment of HRDs, and to set up protection mechanisms for HRDs who face harassment through judicial processes, reprisals and threats for working to bring to light cases of human rights violations;
- b) The legislature to amend or repeal the legal provisions that are misused against HRDs and civil society actors, and review and amend existing laws – article 161/1 and 165/2 of the Criminal Procedure Code - for the striking out of SLAPP cases at the earliest occasion;
- c) The judiciary to enable access to adequate, effective and prompt remedy for all individuals and HRDs who have suffered from harassments.

Continuing impact of the legal and institutional framework imposed since the May 2014 coup d'état

- d) The legislature to repeal section 279 of the Constitution, and amend or, where appropriate, repeal, all laws, existing HNCPO and NCPO orders and announcements that prevent the effective exercise of human rights;
- e) The judiciary and government to ensure that effective, prompt and accessible judicial and non-judicial remedies be provided to those who are affected by the implementation of HNCPO and NCPO orders, including NCPO Order Nos.64/2557 and 66/2557 and HNCPO Order No.4/2559, and by other non-human rights compliant laws as a matter of priority.

Lack of consultation with affected communities

- f) The government to adopt a human-rights based approach to development projects and ensure that affected communities and the public at large have access to information and an opportunity to participate in decision-making that affects them. No decision be made that may affect access to resources without consulting the individuals and communities concerned, including indigenous communities, with a view to seeking their free, prior and informed consent.

Access to land and housing

- g) The government to ensure that evictions be carried out only as a last resort after all procedural protections required under international human rights law, including the ICESCR (see, CESCR's General Comment No.4 and 7), are put in place, with adequate compensation and/or relocation and access to an effective remedy, including judicial review of the decision;
- h) The government to adopt a human-rights based approach in Thailand's forest conservation policies, and the legislature to amend forestry and environment protection laws that have a discriminatory impact on ethnic groups living in forests and other forest-dependent residents.

Environment

- i) All branches of the State to ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights;
- j) All branches of the State to improve standards for the protection of the environment by revising Thailand's legal and policy framework, including the Constitution, the National Environmental Quality Act, the Factory Act and the Mineral Act as a matter of priority, and by ensuring effective implementation of Thailand's environmental legislation in order to prevent harmful health effects on the population;
- k) The legislature to pass legislation and the government to establish a policy framework on environmental quality and industrial activity that is consistent with international law and standards without further delay, including the draft law on Pollutant Release and Transfer Register (PRTR), the draft Clean Air Act and the draft law governing the Strategic Environmental Assessment (SEA);
- l) All branches of the State to address obstacles in accessing a remedy for human rights violations in environmental cases and ensuring the successful enforcement of judgment in environmental cases.

ENDNOTES

¹ Protection International, 'Phattalung Court ordered compensation for abducted human right defender', 25 March 2020, available at: <https://prachatai.com/english/node/8424>

² Protection International, 'PI and Enlaw Foundation coordinated for UN OHCHR visit to Khon Rak Kroksoomboon Group', 4 August 2020, available at: <https://www.protectioninternational.org/en/news/thailand-pi-and-enlaw-foundation-coordinated-unohchr-visit-khonrakkroksomboon-group>

³ Several UN experts have identified these lawsuits as SLAPPs, see: OHCHR, 'Thailand: judicial system abused by business to silence human rights defenders', 12 March 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25714&LangID=E>.

⁴ FIDH, 'Thailand: Thammakaset Watch', 13 February 2020, available at: <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

⁵ Article 161/1 allows the court to dismiss a case and forbid a refiling of a complaint if it appears to the court that a private complainant has "filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled to".

⁶ Article 165/2 protects the right to access to justice, by allowing defendants during the preliminary hearing to submit and test evidence to demonstrate that the case “lacks merit”. This is done through submitting to the court “a significant fact or law”, including “evidence, persons or materials”, and the court “may call such persons, documents or materials to provide evidence in its deliberation of the case as necessary and appropriate, and the complainant and the defendant may examine this evidence with the consent of the court”.

⁷ ICJ and Human Rights Lawyers Association, ‘Re: Recommendations on draft National Action Plan on Business and Human Rights (Dated 14 February 2019)’, 15 March 2019, paras. 12 – 23, available at: <https://www.icj.org/wp-content/uploads/2019/03/Thailand-SLAPP-Analysis-Advocacy-Analysis-brief-2019-ENG.pdf>; ICJ, ‘Re: Concerns on the existing legal frameworks that are designated to prevent strategic lawsuit against public participation (SLAPP lawsuits)’, 20 March 2020, at 4 – 8, available at: <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

⁸ Available at: <https://www.krisdika.go.th/detail-law-draft-under-consideration-by-the-office-of-the-council-of-state?billCode=279&lawdraftType=between>.

⁹ Section 4, 6, 9 and 10, Draft Act on the Operation of Not-for-profit Organizations; RYT9, ‘Cabinet Resolution: Rationales of the Draft Act on the Promotion and Development of Civil Society Organization and Draft Act on the Operation of NGOs’, 23 February 2021, available at: <https://www.ryt9.com/s/cabt/3202452>

¹⁰ ICJ, TLHR and CrCF, ‘Supplementary Submission by the International Commission of Jurists, Thai Lawyers for Human Rights and Cross-Cultural Foundation on Thailand’s Implementation of the Human Rights Committee’s Prioritized Recommendations following its Review of Thailand’s Second Periodic Review at its 119th Session 2020’, 24 April 2020, at 1-7, available at: <https://www.icj.org/wp-content/uploads/2020/04/Thailand-UN-Human-Rights-Committee-Supplementary-Submission-2020-ENG.pdf>.

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¹² Regarding ‘The Use of Agriculture Land Reform Areas in Accordance with Agricultural Land Reform Act for the Benefit of Farmers and the Country’, dated 23 June 2017, available at: https://www.moac.go.th/law_agri-files-422891791121 (in Thai).

¹³ Regarding ‘Exemption from Enforcing the City Plan and Building Control Act in the SEZs’, dated 20 January 2016, available at: <https://data.thailand.opendevlopmentmekong.net/th/dataset/3-2559> (in Thai); See also: ICJ, ‘The Human Rights Consequences of the Eastern Economic Corridor and Special Economic Zones in Thailand’, July 2020, at 35-36, 59-60, available at: <https://www.icj.org/wp-content/uploads/2020/08/Thailand-SEZs-Publication-2020-ENG.pdf> (‘ICJ 2020 SEZ Report’)

¹⁴ Regarding ‘Amendment of the Environment Promotion and Conservation Act’, dated 8 March 2016, available at: <http://www.ratchakitcha.soc.go.th/DATA/PDF/2559/E/059/46.PDF> (in Thai).

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¹⁶ Regarding ‘Suppression and Put an End to the Encroachment and Destruction of Forest Resources’, dated 20 June 2014, available at: <http://www.ptreforestation.com/uploads/Laws/ncpo-order64.pdf>

¹⁷ Regarding ‘Additional Government Agencies who are Tasked to Suppress and Put an End to the Encroachment and Destruction of Forest Resources, and the Interim Policies under the Current Situation’, dated 17 June 2014, available at: <http://phetchabun.mnre.go.th/th/view/?file=GTMgMTqjqP5cBUtjpQygYKqcGTSgnTqHqP1cBkt3pQMgZ3pmGQuqATplqQOcZatkpQIqZKpgGTEgMJqfqTycMatipTIgoUqcGTMgY2q1qTycA3tipQWqY3qxGTSgo2fqUOcKti&n=%E0%B8%84%E0%B8%B3%E0%B8%AA%E0%B8%B1%E0%B9%88%E0%B8%87%20%E0%B8%84%E0%B8%AA%E0%B8%8A&t=GTMgq2qxqS9cMUug>

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- ²³ Ibid
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- ²⁵ ICJ 2020 SEZ Report, at 51.
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- ²⁷ Principles 32 – 33 and 37 – 41, UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.
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⁵⁸ 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: EnlawThai Foundation, ‘right to live in healthy environment that disappeared from the Constitution’, 19 July 2016, available at: <https://bit.ly/2CtzlZT> (in Thai)

⁵⁹ This may result in the amended definition not applying to almost 70,000 out of 140,000 factories nationwide, including businesses that pose a high risk of negative environmental impacts, such as those that deal with waste separation, waste recycling and hazardous chemical storage. The Momentum, ‘The Draft Factory Act: more problems to business owners’, 9 January 2019, available at: <https://themomentum.co/amendment-to-the-factory-act/> (in Thai); iLaw, ‘Draft Factory Act: Time Bomb for Communities and Environment’, 22 February 2019, available at: <https://ilaw.or.th/node/5163> (in Thai).

⁶⁰ 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.

⁶¹ 500 meters or 1 km from the pit, depend on the type of mining

⁶² Sections 46-51, National Environmental Quality Act, available at: http://web.krisdika.go.th/data//document/ext809/099866_0001.pdf

⁶³ ICJ 2020 SEZ Report, at 71-80.

⁶⁴ ICJ 2020 SEZ Report, at 76.

⁶⁵ 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)

⁶⁶ ICJ 2020 SEZ Report, at 80-82

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