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**Promotion and protection of all human rights, civil,
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including the right to development**

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Thailand

Comments by the State*

* The present document is being issued without formal editing.



Comments by the Royal Thai Government on the Report of the Working Group on the issues of human rights and transnational corporations and other business enterprises on its Visit to the Kingdom of Thailand (A/HRC/41/43/Add.1)

1. The Royal Thai Government notes the report of the Working Group on the issues of human rights and transnational corporations and other business enterprises on its visit to Thailand from 26 March – 4 April 2018.
2. Thailand thanks the Working Group for its acknowledgment of the practices, efforts and initiatives of the Thai government agencies and business enterprises in preventing and mitigating human rights risks and their impact on business activities.
3. Thailand recognizes the efforts of the Working Group in identifying the gaps in, and challenges concerning, Thailand's human rights promotion and protection. Thailand previously studied the draft Report and proposed corrections to errors of fact and law, accompanied by detailed explanation, but several of these have not been included by the Working Group.
4. Thailand is obliged to point out that some references in the Report are misleading, while others reflected one-sided observations on the part of the Working Group. Some parts of the Report are unfortunately based on unrelated incidents, involve prejudicial cases, and/or ignore counter-evidence suggesting that the accusations made were unfounded and that the conclusions and recommendations formed were predetermined. The Report also insufficiently outlines Thailand's general context and, in some parts, depicts half-truths regarding the temporary political conditions in the country, Thai investment abroad, in particular the case of the Xe Pian Xe Namnoy hydropower project, the issue of human rights defenders, and ethnic minorities, among other things.
5. Nevertheless, Thailand remains committed to cooperating with the Working Group in the promotion of the United Nations Guiding Principles on Business and Human Rights (UNGPs) at home and abroad. The Working Group's visit was a mutual learning experience.
6. Thailand's comments on the Report of the Working Group are set out below.

General context (Paras. 5 – 10)

7. While the Report has been revised to include the **2017 Constitution**,¹ the **20-year National Strategy (2018-2037)** and the 11 supporting **National Reform Plans**, it does not thoroughly elaborate on the significance of these frameworks, which reaffirm the ground rules of human rights promotion and protection, help to create a system conducive to sustainable and responsible business conduct, and ensure access to effective remedies for victims of business-related human rights violations. Thailand views that the Report focuses excessively on the interim Constitution as well as measures and conditions that are not always directly related to the business context. For example, the National Council for Peace and Order (NCPO) Order No. 3/2015, Article 12 on the temporary prohibition of political gatherings of 5 persons or more has been revoked and retrospectively applied to dismiss all previous charges.

Businesses' engagement with the business and human rights agenda (Paras. 11-13)

8. Thailand has a strong network of collaboration among businesses, trade associations and financial institutions. This network has made relentless efforts to raise awareness and harmonize business policies and practices with international standards, including the

¹ For an unofficial translation of the 2017 Thai Constitution, please go to https://cdc.parliament.go.th/draftconstitution2/download/article/article_20180829093502.pdf.

UNGPs, the OECD Guidelines for Multinational Enterprises, ISO 26000, the International Finance Corporation (IFC) Performance Standards, and international labour standards set by the ILO, among others.

9. As mentioned in the Report, the Global Compact Network Thailand (GCNT), Thai Chamber of Commerce, Federation of Thai Industries and Stock Exchange of Thailand (SET) have continued efforts to encourage their members to align their practices with international standards as well as the initiatives on training and workshops on human rights due diligence. Meanwhile, the SET was awarded the UN Sustainable Stock Exchanges (SSE) Market Transparency Award and ranked seventh among 35 global stock exchanges in 2018, moving up from 40th in 2013. It is also the only Asian stock exchange to reach the top 10. The SET has also supported its listed companies in integrating environmental, social and governance (ESG) aspects into business strategies and operations through a variety of capacity-building tools, including sustainability training, consultancy and assessments.

The State as an economic actor (Paras. 14-15)

10. Pursuant to the Prime Minister's instruction for Thailand's 55 State-owned enterprises (SOEs)² to show leadership in aligning their practices with the UNGPs, the "Improved Principles and Guidelines for State-owned Enterprises' Good Governance" have been approved by the Cabinet on 26 March 2019. They have set clear expectations for SOEs, including in the areas of enhancing the participation of stakeholders, sustainability and innovation as well as disclosure and transparency in line with OECD corporate governance practices and the World Bank's Corporate Governance of SOEs toolkit. In addition, the **Act on the Development of Supervision and Management of SOEs**, which took effect on 23 May 2019, will enhance SOEs' performance in terms of effectiveness, efficiency and good governance.

11. The Government Pension Fund (GPF), which is one of the country's largest institutional investors, has adopted corporate governance and ESG practices and promoted them in the investment community.

Environment and social impact assessments (Paras. 17-22)

12. According to the National Human Rights Commission of Thailand, between 2001 and 2017, a total of 10,824 cases were reported to it. Of this number, some 2,199 concerned business activities. The Commission found that 552 of the total complaints had merit and 151 cases demonstrated actual business-related human rights impacts.

13. To strengthen its EIA/EHIA process, Thailand has enacted the Enhancement and Conservation of the National Environmental Quality Act (No.2) B.E. 2561 (2018) (Amendment), which came into effect on 18 July 2018. In line with Sections 58 and 278 of the 2017 Constitution, key amendments include the following: (i) Strategic Environmental Assessment (SEA) results shall be considered in the EIA/EHIA assessment for any project that SEA is required; (ii) a health assessment is required for "significant projects"; (iii) EIA reports shall be valid for development project application only within five years from the approval date; (iv) compliance reports shall be prepared in line with the measures specified in the EIA report, and submitted to the development approving authority at least once a year; and (v) non-compliance penalties include a fine not exceeding 1 million Thai Baht on developers who commence construction before the EIA report is approved or is deemed to be approved and daily fines not exceeding 100,000 Thai Baht throughout the period of construction.

² The 55 SOEs include some of the largest enterprises, investors and banks, such as the Electricity Generating Authority of Thailand, the Industrial Estate Authority of Thailand, PTT Public Company Limited and Krung Thai Bank Public Company Limited.

14. EIA consultants are subject to quality control, a code of ethics and penalties. Complaints about their misconduct will be reviewed by the Expert Committee for Granting EIA Consultation License. In case of any error or fraud, the Committee has the power to suspend or revoke the license in accordance with the Ministerial Regulation No.2 B.E. 2527 (1984).

15. A draft Regulation of the Prime Minister's Office on SEA is being developed. In the meantime, the SEA Guidelines have been implemented in pilot projects in Rayong Province and will also be used in the development of the Smart City in the Eastern Economic Corridor.

16. As explained to the Working Group during its visit, the NCPO Order 9/2016 was applied only to urgent government projects relating to transportation, hospitals, irrigation, disaster prevention and housing. It aimed to speed up projects by allowing the government agencies in charge of the project to seek Cabinet approval of a potential private contractor in parallel to the EIA process. However, it did not allow the responsible agencies to conclude a contract prior to the approval of the EIA. The EIA must also be conducted in accordance with the Enhancement and Conservation of the National Environmental Quality Act.

Special economic zones and the Eastern Economic Corridor (Paras. 22-27)

17. Thailand's **Special economic zones (SEZs)** are located in 10 provinces while **the Eastern Economic Corridor (EEC)** covers areas in 3 Eastern provinces. Investors in the SEZs and EEC are offered tax and non-tax incentives. Existing laws related to the management of labour, environment and natural resources, however, continue to apply. In the case of the SEZs, State-owned lands have been designated for rental and development without land expropriation. For the EEC, if land expropriation is necessary, the 2018 Eastern Special Development Zone Act is strictly applied, that is, the Eastern Special Development Zone Policy Committee shall appoint an ad hoc committee to conduct a feasibility study of the area, financial viability, as well as impacts and guidelines or measures for prevention, rectification or remedy of such impacts and the economic and social values for the local community and the government. Any expropriation will be compensated in accordance with the law.

18. The development of SEZs and the EEC is in line with the 20-year National Strategy and the 12th National Economic and Social Development Plan, which give importance to balanced development and improvement of the people's quality of life.

Thai investment abroad (Paras. 28-31)

19. The Thai listed companies, including those mentioned in paragraphs 8-9, have taken the lead in the region on sustainability and responsible business conduct. The SET's Thailand Sustainability Investment (THSI) list, SETTHSI Index, SET Sustainability Awards and its continued support for listed firms to become constituents of Dow Jones Sustainability Indices (DJSI) are key to strengthening the Thai capital market and achieving sustainable growth at home and abroad. Currently, 19 Thai companies -- the highest number in ASEAN -- are members of DJSI in collaboration with RobecoSAM.

20. The draft National Action Plan on Business and Human Rights has designated 'Cross-border investment and multi-national enterprises' as one of the four priority areas, along with 'Labour', 'Land, the Environment and Natural Resources', and 'Human Rights Defenders'.

21. Royal Thai Embassies and Consulates-General have played a significant role in engaging with Thai investors and businesses operating overseas and promoting responsible business conduct and respect for human rights. The Ministry of Foreign Affairs has included relevant materials in the training of its diplomats and trade officials and is in the process of developing a 'Business and Human Rights' manual for their use.

22. Thailand finds that the case of the dam collapse at the Xe Pian Xe Namnoy hydropower project is irrelevant and an isolated incident and should not be included in the Report of the Working Group.

23. The case mentioned in para. 31 of the Report of the Working Group is still under investigation, so the facts related to the case should be fairly referenced. Any and all prejudicial statements should also be avoided as the case is now sub judice.

Human rights defenders and civic space (Paras. 32-47)

24. Thailand continues to attach importance to the promotion and protection of the rights of human rights defenders and freedom of expression. Recent amendments of **the Criminal Procedure Code** to include **Sections 161/1 and 165/2** provide the courts with an overarching tool to **protect the right to freedom of expression against Strategic Litigation against Public Participation (SLAPP)** and to reinforce a safe and enabling environment for human rights defenders to conduct their work.

25. Thailand is particularly concerned about the Working Group's mislabeling of cases involving Mr. Andy Hall, workers and NGOs and two Thai companies, namely, Natural Fruit and Thammakaset, as SLAPP cases. Thailand is also concerned about the unjust depiction/disapproval/deploration of the Working Group on the courts' sanctions of Mr. Hall as well as the misrepresentation of the factual background of these highly complex cases.

26. Thailand reaffirms that the Thai judicial system adheres to the principle of independence and non-discrimination and Thailand's defamation laws, both in principle and in practice, are consistent with the ICCPR. Under Thailand's jurisprudence, general defamation or libel (published false statement) aim to protect the people's legitimate interest and reputation. They are not to be misused, abused, exploited or subjected to hatred. At the same time, it is important to maintain a balance with the provisions to safeguard those accused of defamation who act in good faith including defense through proven truth or fair comment on any person or thing subjected to public criticism.

27. Thailand's criminal procedures are in line with international standards, such as: (1) 'Truth', 'good faith', and 'fair comment' are legitimate defenses; (2) The principle of the presumption of the defendant's innocence is well respected as the plaintiff bears the burden of proof with regard to both falsity and fact; (3) Private plaintiffs are required to prove a 'prima facie' case at the preliminary hearing before the case's admission to trial. In addition, if the defendant is found guilty, the Criminal Code sets a minimum punishment for criminal defamation other than imprisonment, such as the granting of a probation period for giving sentence, fines, or suspended prison sentences.

Suppression and prevention of human trafficking and forced labour (Paras. 48-54)

28. Thailand takes a holistic approach, aiming to streamline the anti-human trafficking process while promoting effective coordination and cooperation between the relevant agencies, the private sector, CSOs and all stakeholders. Thailand's efforts are driven by the 5P approach: (1) Policy and legal framework, (2) Prosecution, (3) Protection, (4) Prevention, and (5) Partnership. This is in order to address the problems of human trafficking in a systematic and sustainable manner.

29. Thailand is committed to continuously implementing laws and measures to counter trafficking in persons, including the announcement of anti-trafficking in persons as a national agenda in 2015 and the integration of all relevant agencies to combat trafficking in persons. The United States' Trafficking in Persons (TIP) Report 2018 graduated Thailand from Tier 2 Watch List to Tier 2. In addition, a number of pieces of legislation and amended ministerial orders have been passed to sharpen penalties for convicted offenders and to provide better protection for victims. The Royal Decree of 7 April 2019 clarifies the definition of "forced labour" under the Act on the Prevention and Suppression of

Trafficking in Persons to be more in line with the Protocol of 2014 to the Forced Labour Convention, 1930 (P29), which Thailand ratified on 4 June 2018.

30. In conjunction with Thailand's efforts over the years to prevent, deter and eliminate Illegal, Unreported, and Unregulated (IUU) fishing, Thailand has enacted new laws and measures to enhance labour inspections, increase fines for non-compliance with labour laws and fisheries laws and stamp out forced labour in the fishing and seafood processing industry. These efforts, together with comprehensive reform of the fishing industry, have been recognized internationally and on 8 January 2019, the EU formally announced the lifting of a yellow card for Thailand in recognition of the substantive progress the country has made in tackling illegal, unreported and unregulated fishing since 2015. In addition,

the Thai Tuna Industry Association (TTIA) has adopted a code of conduct on ethical labour practices as a requirement for TTIA membership and the commitment to monitor suppliers' compliance with international standards. Furthermore, Thailand's ratification of the ILO's Work in Fishing Convention No. 188, 2007 (C188) on 30 January 2019 and the enactment of the Labour Protection in Fisheries Act B.E. 2562 (2019), which will come into effect in November 2019, demonstrate Thailand's commitment to improving working conditions and living standards as well as raising the level of protection of all workers in the fisheries sector.

31. Such success stories are found not only in the fisheries sector, but also in the livestock sector, which has taken the lead in voluntarily adopting GLP standards in cooperation with the Department of Labour Protection and Welfare and the Department of Livestock. The GLP Guidelines for Poultry Farm and Hatchery in Thailand were issued by the Thai Broiler Processing Exporters Association.

Migrant workers (Paras. 55 – 61)

32. Over the past few years, Thailand has regularized over two million undocumented migrant workers, enabling them to be legally protected and gain access to basic social services such as healthcare and education. Labour MoUs between Thailand and the CLMV countries (Myanmar, Lao PDR, Cambodia and Vietnam) have expanded avenues for legal labour migration.

33. The Ministry of Labour offers a wide range of services and legal aid relating to labour rights to all employees regardless of their legal status, as guaranteed under the Labour Protection Act B.E. 2541 (1998). Migrant workers also have access to a social security system. As of February 2019, 1,135,855 migrant workers were registered as insured persons under the Thai social security system. Migrant workers insured under the Social Security Fund and Workmen's Compensation Fund receive work-related and non work-related benefits and compensation, including sickness benefits and health services. Those not insured under the Social Security Fund are protected by the health insurance system of the Ministry of Public Health.

34. On 5 February 2019, the Cabinet approved in principle the draft amendment of the Labour Relations Act, which will allow representatives of migrant workers to be board members of the labour union. The draft act is now under the consideration of the Council of State.

35. 24-hour Hotline services with interpreters are provided for migrant workers all over the country. About 100 interpreters have been appointed to the "1546" and "1694" hotlines, the Post-Arrival and Reintegration Centers, Migrant Workers Assistance Centers, Provincial Offices of Labour Protection and Welfare and Provincial Employment Offices. 60 language coordinators were appointed to Port-in and Port-out (PIPO) Centers. In addition, DOE Help ME (<http://www.DOE Help Me>) is available in 6 languages (Thai, English, Burmese, Laotian, Cambodian and Vietnamese) to receive complaints from migrant workers and provide consultation for workers and companies 24/7.

Rights of ethnic groups living in Thailand (Paras. 69-75)

36. Thailand recognizes the challenges facing ethnic groups, including those living in conservation areas. Given the Government's policies regarding conservation efforts, people who used to reside in or utilize the areas prior to these policies may be affected to a certain extent. That is why Thailand has undertaken systematic reviews of its laws, policies, measures and practices to make it possible for people to live harmoniously in the forests, including the protected ones. Our work in progress includes the enactment of the National Parks Act B.E, which will come into effect in November 2019 to allow people, including ethnic groups, who are landless and have resided in or utilized the national park within the timeframe under the governing policies, to secure land tenure, continue their traditional way of life (e.g. a traditional rotational farming system), and preserve their cultural integrity.

37. Regarding para. 71, there is no statistical evidence that the ethnic groups living in the Northeastern region are the poorest and have limited access to education.

Access to effective remedies (Paras. 76-85)

38. While various positive developments for judicial remedies have been recognized by the Working Group, one of its recommendations is for Thailand to establish special environment courts. As discussed with the Working Group during its visit, environment divisions with expert judges have been established in the Courts of Justice and Administrative Court at all levels. Since the number of environment-related cases is small, the establishment of special environmental courts does not fulfill will not justification of cost-benefit analysis.

39. In 2017, Thailand enacted the Organic Act on the National Human Rights Commission (NHRC) to strengthen the NHRC in monitoring human rights violations and promoting human rights in the country in accordance with the 'Principles relating to the Status of National Institutions'. The Organic Act addresses a number of drawbacks of the previous act, particularly on the issues of composition and guarantees on the independence and pluralism of the NHRC. The Organic Act protects members of the NHRC from all legal liability for actions undertaken in good faith during the course of their official duties and gives them the power to investigate and request or order any government officials or any person to present information, lodge complaints and "act" as the injured person him/herself in criminal cases related to human rights violations, given that the injured person is unable to do so, and to clarify documents and evidence. The NHRC can also submit recommendations related to human rights issues or problems to the Cabinet for further action.

40. Regarding para. 78, the Administrative Court is currently studying the possibility of allowing class action cases to be filed with it in the same way as at the Court of Justice.

Conclusion (Paras. 91-93)

41. Thailand is concerned about the Working Group's focus on the temporary political conditions that are not always related to business issues. There is no statistical evidence to support any business-related prosecution. In practice, business-related cases against human rights defenders, journalists, and environmentalists, if any, are mostly brought by private plaintiffs.

B. Recommendations

42. Regarding para. 95, Thailand has been active in promoting business and human rights in ASEAN through the ASEAN Intergovernmental Commission on Human Rights (AICHR). AICHR Interregional Dialogues have been regularly held during the Bangkok Business and Human Rights Week. The 2019 AICHR Interregional Dialogue, for instance, focuses on the roles of institutional investors to promote ESG.