

ENVIRONMENTAL DEMOCRACY IN THAILAND & LAOS: BARRIERS AND GOOD PRACTICES



Submission to the United Nations Special Rapporteur on Human Rights and the Environment on Promoting Environmental Democracy: Procedural elements of the human right to a clean, healthy and sustainable environment
October 2023





Submission to the United Nations Special Rapporteur on Human Rights and the Environment re. Promoting Environmental Democracy: Procedural Elements of the Human right to a Clean, Healthy, and Sustainable Environment

SUBMISSION BY

Manushya Foundation



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Environmental Democracy in Thailand & Laos: Barriers and Good Practices

*“We see that the climate change policies, whether enacted on the global level or in Thailand, are limited to the narrow interests of groups and entities leaning towards and benefiting from green capitalism. In this process, the breadth of knowledge of local communities and their deep understanding of the multidimensional climate crisis impacts is disregarded. **Our voices are silenced and decisions about our lives are made without our meaningful participation.**”*

- *The People’s Declaration for a Just, Feminist, Green and Inclusive Transition on Energy, Environment, Natural Resources and Forests, 2022¹*

Introduction

Thailand's consecutive governments, spearheaded by the 2014-2023 military-backed Cabinet, have long disregarded human rights related to the enjoyment of a clean, healthy, and sustainable environment. Local, often marginalized, communities such as rural populations, indigenous peoples, forest-dwelling communities, or ethnic minorities, have been excluded from decision-making processes and denied the right to express their opinion on environmental matters. Other times, it is the Government's measures to conserve and protect the environment that violate communities' rights. Under the one-party rule of the Lao People's Revolutionary Party (LPRP), Laos has been associated with a significant deficit in environmental democracy, limiting the meaningful participation of citizens in decisions concerning environmental policies and resource management.

The present submission to the United Nations (UN) Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment elaborates on the issue of environmental democracy in Thailand and Laos. Specifically, the report analyzes the barriers and good practices concerning procedural and participatory elements of the right to a safe, clean, healthy, and sustainable environment under two highly restrictive civic and legal contexts. The first part of the report identifies the barriers to the fulfillment of this right, illustrating the challenges in four case studies, three from Thailand and one from Laos. The second part offers good practices and recommendations to the concerned stakeholders, especially governments and business enterprises.

The rights examined in this report (especially the right to access information, right to public participation, access to justice with effective remedies, right to freedom of expression, and right to freedom of peaceful assembly) are internationally recognized human rights embedded in instruments such as the International Covenant on Civil and Political Rights,² in particular, Articles 2(3), 19, 21, 25 and relevant general comments of the Human Rights Committee and the United Nations Declaration on the Rights of Indigenous Peoples,³ in particular, the provisions on the free, prior and informed consent (FPIC) such as Articles 10, 11(2), 19, 28(1), 29(2) and 32(2). Responsibilities assigned to non-state actors such as business enterprises are clarified by the UN Guiding Principles on Business and Human Rights.⁴

1. Barriers to procedural and participatory elements of the right to a clean, healthy and sustainable environment

This section presents four case studies, three from Thailand and one from Laos, illustrating barriers to procedural and participatory elements of the right to a clean, healthy and sustainable environment. All of the case studies revolve around the right to access information, right to public participation, right to access justice with effective remedies, right to freedom of expression and peaceful assembly.

1.1. CASE STUDY 1: Decades-long fight against harmful gold mining operations in Phichit, Phetchabun and Phitsanulok provinces, Thailand

Right to access information - right to public participation - access to justice with effective remedies - right to freedom of expression - right to freedom of peaceful assembly

Context

At the border of Central Thailand's Phichit, Phetchabun, and Phitsanulok provinces, over 6,000 villagers have been severely affected by the operations of the Chatree gold mine since 2001. Due to industrial pollution caused by the mine, the villagers' health worsened, and the environment they live in and the natural resources they are dependent on became heavily polluted. As a farming community, contamination of arable land seriously compromised their food security, and pollution of groundwater made drinking local water a health risk.⁵

1.1.1. Inefficiency of the judicial system

For years, villagers fought to protect their rights and the environment, and have undertaken numerous efforts to seek an effective remedy and solutions for the negative impacts they had experienced. While the government closed the mine in 2017, no remedy or compensation was provided, despite the class-action lawsuit filed by 362 villagers in May 2016. The court hearings were repeatedly postponed since 2020, under the excuse of the ongoing Covid-19 pandemic but also per request of the company to allow more time to collect evidence. The case is still ongoing. Similarly, legal cases concerning the company's polluting activities filed by the community members at the administrative court as long as 13 years ago, are still pending.⁶ While the mine operations were suspended between 2017-2023, Chatree was allowed to operate despite the ongoing legal charges against it.

Except for the inefficiency and slowness of the Thai judicial system, ongoing legal cases have not yet been concluded due to the high political and economic stakes of the case. Corporate capture and the Investor-State Dispute Settlement mechanism and their roles as barriers to the fulfillment of procedural and participatory environmental rights are explained below.

1.1.2. Investor-State Dispute Settlement (ISDS) and regulatory chill⁷

After the closure of the Chatree mine in 2017, Kingsgate Consolidated Limited, Australia-based parent company of the mine operator Akara Resources Public Company Limited,⁸ invoked the ISDS mechanism embedded in TAFTA, the Thailand-Australia Free Trade Agreement. Except for being highly expensive, the arbitration process is secretive and no substantive information has been published since the start of the proceedings in 2017. However, the anticipated award of the arbitration caused the "regulatory chill" and influenced the development on the ground. Only a few weeks before the expected conclusion of the ISDS arbitration in January 2022, it was publicly disclosed that Kingsgate had received renewed mining licenses allowing it to reopen the Chatree gold mine.⁹ Given the non-transparency of the arbitration, the concerned community members' access to information has been compromised, and with it, their right to freedom of expression regarding the mine. As mentioned in the previous section (B1), the ongoing ISDS arbitration might be a reason behind the slow judicial proceedings in the pending cases.

1.1.3. Reprisals against Human Rights Defenders (HRDs), including SLAPP, intimidation, and harassment

During the years of resistance against the company's harmful operations, community members have engaged in peaceful protests, negotiations with public institutions, written complaints, petitions, and used various legal avenues. Instead of a constructive dialogue, villagers have faced reprisals, in the form of Strategic Lawsuits Against Public Participation (SLAPP), harassment, and intimidation. SLAPP charges intended to spread fear, are demanding on the individual's time and resources, and dissuade the community from standing up against the company or the local agencies. In the case of the Chatree gold mine, community members have been sued for alleged "defamation" or "perjury", though some of them have also been arrested for merely exercising their right to freedom of peaceful assembly.¹⁰ Reprisals are yet

another way of limiting the right to freedom of expression, the right to access information, and the right to public participation of the community members standing up against the mine.

1.1.4. Corporate capture – the collusion of public agencies with the company's interests

Local officers have promoted the company's interests on various occasions, disregarding their own obligations as State agencies to respect, protect, and fulfill human rights. In the aforementioned cases, community members were arrested by local law enforcement on made-up charges, siding with the company. In 2020, the National Anti-Corruption Commission (NACC) found four public officers guilty of colluding with the company in the context of the unlawful approval of a request by the company to expand its second tailings pond and shift it to a new location without having to conduct an environmental impact assessment (EIA).¹¹ The community was therefore denied their rights to participate and express their opinion regarding the problematic and polluting tailings pond. Public consultations for amendments to the EIA have also been omitted prior to the reopening of the mine in 2023, further silencing communities that have suffered the mine's negative impacts for years.¹²

1.2. CASE STUDY: Criminalization of Environmental Human Rights Defenders from Chana, Thailand

Right to access information – right to public participation - right to freedom of expression - right to freedom of peaceful assembly

Context

Chana Industrial Estate project is a governmental large-scale industrial development plan in Southern Thailand, steered by the Southern Border Provinces Administration Centre (SBPAC), seeking to transform Chana into “an advanced industrial city for the future”. The affected area is home to more than 30,000 residents, many of whom have voiced grave concerns about the massive development project’s effects on the environment and the livelihoods of the citizens. Based on a feasibility study report distributed by SBPAC, there is a significant risk of ecological damage, which would affect the livelihoods and health of people in a vast area, such as by causing respiratory problems.¹³

1.2.1. Lack of rights-based impact assessment under the pretext of the COVID-19 pandemic

Many residents of Chana and its surrounding region only found out about the plans concerning their homelands after the project had been approved by the national Cabinet in May 2020, and the SBPAC has also blatantly stopped them from participating in the public hearing arranged in July 2020. **The government further took advantage of the COVID-19 pandemic to restrict Chana communities’ access to the decision-making processes** and obstructed them from attending public hearings on the construction plans. In July 2020, the government held a public hearing during Ramadan while COVID-19 travel restrictions remained in place, preventing communities from being informed and consulted. Therefore, despite protests from members of the Chana Rak Tin Network, the government moved forward with its plans.¹⁴

1.2.2. Criminalization of peaceful protesters

Demanding a rights-compliant impact assessment, peaceful protests by the Chana community ended with the arrest of 37 people on 6 December 2021, the majority of them being women and children. They demonstrated in front of the Government House calling on the Prime Minister to keep the promise to revoke all cabinet resolutions involving the industrial mega-project in Chana until a community-led Strategic Environmental Assessment is conducted. After a week of protests and a violent crackdown on Chana community members, the Cabinet decided to defer the Chana Industrial project until the project's Strategic Environmental Assessment is resolved and assigned a committee to evaluate the assessment.¹⁵

While the Thai police signaled that it would pursue legal action against the protesters arrested on 6 December 2021 under the COVID-19 Emergency Decree that was in place at the time,¹⁶ charges were eventually dismissed.¹⁷ COVID-19 was once again used as a pretext for harassment and intimidation of

peaceful protesters and showed how the Emergency Decree was misused not only for silencing pro-democracy protesters¹⁸ but also environmental HRDs (EHRDs).

1.3. CASE STUDY: Thailand's False Climate Solutions Violating Communities' Human Rights¹⁹

Right to access information - right to public participation - right to freedom of expression

Context

Thailand's response to the emerging climate crisis has thus far been insufficient and largely incompatible with the International Human Rights Law. The false climate solutions backed by the Thai government aim at the creation of carbon sinks, large forested areas that would “offset” the country's carbon emissions and move it closer to its intended net zero goal without the necessity of reducing the use of fossil fuels.²⁰ The related policies (e.g. the Forest Reclamation Policy and Orders 64/2014 and 66/2014 of the National Council for Peace and Order)²¹ have resulted in forced evictions of forest-dependent communities and indigenous peoples, already threatened by marginalization and poverty. Two cases in particular, the case of Sab Wai villagers²² and indigenous Karen Bangkokloi villagers,²³ showcase Thailand's failure to respect, protect and fulfill procedural and participatory rights of communities while taking steps to conserve the natural environment.²⁴

1.3.1. Community manipulation in land tenure management

The community members' rights to access information and express their opinion accordingly were repeatedly violated in the enforcement of the Forest Reclamation Policy and orders 64/2014 and 66/2014. For example, in the Sab Wai case, officials of the Sai Thong National Park where the community resides repeatedly visited the villagers while carrying weapons, and pressured them into signing documents that denounced their legal claim on their land, in an attempt to evict the villagers and reforest the area currently used for farming.

“They (National Park Officers) gave me a blank paper to sign, asking me to write my name and my children’s names. I signed because I did not know anything. They did not provide any explanations except the NCPO policy.”

- **Thongpun Muangklang**, a Sab Wai villager²⁵

Despite many procedural flaws on the Thai government side, Sab Wai villagers were eventually sued and found guilty of forest encroachment. Thirteen of the villagers were jailed in 2019, following an Appeal Court verdict. Its 2019 decision was upheld by the Supreme Court in 2021 when eleven of the villagers were sentenced to suspended jail terms and three of them were jailed.²⁶

1.3.2. Top-down approach to climate action and conservation

Similar to the Sab Wai villagers, the indigenous Karen from Bangkokloi village (living within the Kaeng Krachan National Park) were criminalized for alleged forest encroachment, in a government drive to increase the total forested area of the country. Both communities are typical of hundreds of other forest encroachment cases that have occurred in Thailand, especially since the enactment of the Forest Reclamation Policy in 2014.²⁷ The Government's top-down approach to climate action and conservation has excluded whole communities, be it indigenous peoples, forest-dependent communities, rural populations, and others, from any decision-making efforts on the legislative, policy or grassroots levels. Communities such as Sab Wai or Bangkokloi have also not been provided with appropriate information related to matters affecting their lives and livelihoods.

1.3.3. Lack of legal recognition of indigenous peoples and their rights

The specific situation of indigenous peoples facing land evictions in Thailand can be traced to the lack of legal recognition of their indigenous status by the Government.²⁸ Especially the indigenous peoples' right to

free, prior, and informed consent is routinely violated, leading to further violations of their right to the environment, in both, its substantive and procedural aspects.

1.4. CASE STUDY: Attapeu Dam Collapse Survivors Denied Access to Remedy, Laos

Right to access information - right to public participation - access to justice with effective remedies - right to freedom of expression - right to freedom of peaceful assembly

Context

On 23 July 2018, an auxiliary saddle dam, ‘Saddle D’ of the Xe-Pian Xe-Namnoy Hydropower Project located in Attapeu and Champassak provinces in Southern Lao PDR collapsed, resulting in a massive flood from the release of five billion cubic meters of water. Given inadequate warning by the dam engineers and provincial government officials of the imminent risk of collapse, local communities in 19 villages were impacted by the massive flood of water, mud, and debris. The flood damage displaced over 7000 people in Lao PDR and left at least 71 people dead or missing in Attapeu province, according to the official toll. Roads, bridges, vehicles, irrigation systems, thousands of livestock, and more than 1700 hectares of agricultural land were destroyed by the mud and debris rendering much of the area inarable. An overall estimated 15,000 people were impacted by the flood in Lao PDR and an additional 15,000 across the border in Cambodia along the Sekong River. The thousands who were displaced in Lao PDR were relocated to emergency camps set up by the government in the Sanamxay district.²⁹

1.4.1. State censorship and information embargo

Due to the lack of meaningful consultations, local communities were not sufficiently informed about the potential negative impacts the dam could have, and prior to the collapse, many people did not receive the warning and evacuation instructions. Immediately after the collapse, the Lao government attempted to maintain an information embargo and discouraged the survivors from following other than state-owned media.³⁰ Without the appropriate consultations, local communities had no way to meaningfully participate in the construction plans or the management of the recovery.

1.4.2. State collusion with business enterprises

The Lao government has repeatedly sided with business enterprises, shifting its emergency response into a development strategy, denying the collapse survivors access to effective remedy and justice. For example, in 2019, the Government used the land allocated for the survivors of the collapse and gave the land title to a Chinese banana company.³¹ Xe-Pian Xe-Namnoy Power Company (PNPC), an enterprise responsible for the operation of the dam, states it has provided \$91.2 million in compensation. However, a majority of this sum has been paid to the Government, rather than directly to the local communities. Instead of providing remedies to survivors, based on their own needs and priorities, the Government seems to non-transparently use the funds for its development strategies instead of providing adequate shelter and restoring the ravaged natural environment destroyed by the collapse.³²

1.4.3. Reprisals against Human Rights Defenders Opposing Mega-dam Projects

The Lao government persecutes human rights defenders who have been vocal about the rights violations linked to Laos’ hydropower dams.³³ Since 2017, Joseph Akaravong, a Lao environmental and community rights activist, has been actively documenting the lack of community consultations, and lack of transparency around the financing and construction of the dam. Due to his activism, he faced reprisals by the Government and fled the country in August 2018.³⁴ In September 2019, Houayheuang Xayabouly, also known as **Muay**, was arbitrarily arrested³⁵ for publicly condemning Laos’ inaction and continued involvement in similar dam projects which detriment communities and the environment.³⁶

2. Good practices & recommendations

Thanks to Manushya Foundation's close engagement with local communities, including indigenous peoples, forest-dwelling communities, ethnic minorities such as Malayu Muslims in the South of Thailand or the Isaan people inhabiting the North-East, together united as the [#WeAreJustTransition Movement](#), we put forward several examples of good practices as well as recommendations. The following list is compliant with the International Human Rights Law, demands of the [#WeAreJustTransition Movement](#), stipulated in its People's Declaration³⁷ as well as [Manushya Foundation's values](#), in particular Local Leadership, Equality, Intersectionality and Feminism.

2.1. Protection of and Safe Spaces for EHRDs

a. Anti-SLAPP legislation

Reprisals against HRDs, including SLAPP charges, are a recurring issue in Thailand that needs to be tackled. Legal recognition of the status of HRDs and a standalone legislation dealing with SLAPP charges would significantly encourage the legitimate work of HRDs. Such legislation should be underpinned by the right to freedom of expression, assembly, and the right to petition and follow the basic principles:

- Defendants facing SLAPP charges should be able to submit a motion to the court to request a dismissal of their case. Courts should dismiss SLAPP lawsuits to protect fundamental rights to participate in public life as a citizen (e.g. denouncing corruption, corporate abuses, and impunity);
- The motion does not allow plaintiffs/companies to provide evidence to justify their actions;
- Defendants (HRDs) should not have the burden of proof to show the lawsuit is in bad faith or lacks merit.³⁸

Protection of HRDs, including against SLAPP lawsuits, is crucial for the enjoyment of procedural and participatory environmental rights as well as for Thailand's Just Transition.

b. Coalition-building

In Thailand, Manushya Foundation, together with Thai Climate Justice for All, the Green South Foundation, the Thai CSOs Coalition for the UPR, and the Thai BHR Network founded the [#WeAreJustTransition Movement](#).³⁹ During the initial workshop in November 2022, communities from all around Thailand, including indigenous peoples, labor rights activists, forest-dependent communities, LGBTIQ+ rights defenders, sex workers' rights activists, Malayu Muslim environmental HRDs, and many others, shared their wealth of expertise and called for a Just, Feminist, Green and Inclusive Transition in their People's Declaration.⁴⁰ Coalitions such as the [#WeAreJustTransition Movement](#) provide a safe space for EHRDs that can exchange their experience, join forces in their respective fights, and provide each other with emotional support, much needed in their mentally demanding work as EHRDs.

2.2. Full recognition of Indigenous peoples' rights, including recognition of their indigenous status, right to ancestral land, and free, prior, and informed consent (FPIC)

As demanded by Thailand's various indigenous peoples' groups for years, it is crucial for the government to acknowledge the existence of indigenous peoples in the country and recognize their indigenous status. Further, new legislation must be enacted in line with the provisions of UNDRIP, in particular, recognizing the indigenous peoples' rights to their ancestral lands and their right to free, prior, and informed consent in all matters that concern them. The new legislation would then be applicable not only in cases of harmful infrastructure and industry projects affecting indigenous peoples but would also act as a protection against false climate solutions, be it flawed conservation laws and policies or the upcoming, potentially harmful, carbon credit schemes.⁴¹

2.3. Promoting community-led initiatives for meaningful energy democracy

Respecting the local leadership and priorities of local communities in the planning and implementing of industrial, infrastructure, energy or other projects, goes a long way in fulfilling the state human rights obligations. Currently, such projects do not have much support from the Thai government, however, first community-led energy production initiatives have already started appearing. For example, in the South of Thailand, in the area originally targeted by the government plans to build coal-fired power plants, Manushya Foundation's subgrantee and a member of the #WeAreJustTransition Movement - Green World Network - is opening its **Green World Renewable Energy Learning Center**, a community-driven solar cell project that aims to provide clean energy to dozens of families and thanks to its educative function will be replicable to other neighboring communities.⁴²

2.4. Mandatory Human Rights and Environmental Due Diligence (MHREDD)

To protect Thailand's Environmental Democracy, in particular the procedural and participatory elements of the right to the environment, more than voluntary measures such as Thailand's insufficient and flawed National Action Plan on Business and Human Rights⁴³ is needed.

Building on the UNGPs⁴⁴ and best practices stipulated in the 2018 report of the UN Working Group on Business and Human Rights⁴⁵ as well as Manushya's experience of working alongside Human Rights Defenders on the ground, legislation for mandatory human rights and environmental due diligence of companies should contain the following components:

- 1) **Impact Assessment of actual and potential human rights and environmental impacts and paths for their mitigation and remediation** in line with the UNGPs. The assessment should be led by communities, be **intersectional** and examine the differentiated impacts of business enterprises on various members of the community. Due diligence obligations should apply to both, the **company's own operations** and its **business relationships**, e.g. through its supply chains.
- 2) **Meaningful and ongoing consultations with concerned rights-holders**, following the requirements for the **free, prior and informed consent** especially for groups such as indigenous peoples, rather than tick-the-box exercises. Respect for **local decision-making** and ownership of the process must be ensured.
- 3) **National administrative body overseeing the implementation of the MHREDD.**
- 4) **Comprehensive access to remedy guarantees and civil and criminal responsibility of companies.**
- 5) **All business enterprises**, regardless of their size, should conduct HREDD, although its complexity might vary. **State-owned enterprises** must not be excluded from the application of MHREDD legislation.
- 6) **Protection of Human Rights Defenders and whistleblowers.**⁴⁶

Such MHREDD legislation and its diligent enforcement alone would allow for voices of communities on the ground to be heard and their solutions integrated.

The Thai government recently made a step in the right direction, setting up the Strategic Environmental Assessment (SEA) Committee to elaborate rules for the mega-projects' SEAs, aiming at reducing conflict between the industry and the people.⁴⁷ It will be of utmost importance for the new SEA guidelines to comply with the International Human Rights Law, similarly to the MHREDD components listed in this section. In particular, MHREDD components (1) and (2) will be paramount for the SEA to achieve its intended goals in a rights-compliant way.

2.5. Legally Binding Treaty

In light of the new legislative developments in Europe where Germany and France passed laws⁴⁸ containing MHREDD provisions and the insufficiency of the non-legally binding UNGPs, there is a strong need for an international legally binding instrument on business and human rights.⁴⁹ Such instrument should address the situation of various marginalized groups such as indigenous peoples, women or the LGBTIQ+ individuals,

clearly stipulate responsibilities of business enterprises of various sizes all along the value chain, contain MHREDD component and address access to justice and remedy for victims of corporate abuses. Manushya Foundation believes the International Legally Binding Treaty would strengthen the protection of procedural and participatory rights regarding environmental matters, especially given the grave impact of business enterprises on such rights.

Endnotes

- 1 Manushya Foundation, *The People's Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>
- 2 International Covenant on Civil and Political Rights, (ratified 29 October 1996), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- 3 United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, (2007), available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- 4 Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
- 5 Manushya Foundation, *#JusticeForPhichit: Fighting for Corporate Accountability*, (2022), available at: <https://www.manushyafoundation.org/justice-for-phichit>
- 6 Information obtained from Manushya Foundation's ongoing court monitoring and information exchange with members of the "Patient Network" (Patient Network Affected by Gold Mining, Phichit and Phetchabun Province).
- 7 The case of Phichit villagers and the ISDS mechanism have been elaborated on in the Special Rapporteur's annual report: United Nations General Assembly, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, (13 July 2023), A/78/168, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute>. We raise the issue once again in the present submission to illustrate and emphasize the impact the ISDS mechanism has on communities' procedural and participatory rights in environmental matters.
- 8 Kingsgate Consolidated Limited, *About Kingsgate*, (2023), available at: <https://www.kingsgate.com.au/company-profile/>
- 9 Manushya Foundation, *Free trade agreements: Corporate greed makes the right to water of Phichit villagers distant reality*, (29 April 2022), available at: <https://www.manushyafoundation.org/post/free-trade-agreements-corporate-greed-makes-the-right-to-water-of-phichit-villagers-distant-reality>
- 10 Manushya Foundation, *SLAPPed: Phichit Villagers Push Back Against Corporate Harassment & Intimidation!*, (6 September 2022), available at: <https://www.manushyafoundation.org/post/slapped-phichit-villagers-push-back-against-corporate-harassment-intimidation>; Manushya Foundation, *Women Human Rights Defenders push back against SLAPP charges!*, (29 September 2022), available at: <https://www.manushyafoundation.org/post/women-human-rights-defenders-push-back-against-slapp-charges>
- 11 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>
- 12 Information obtained from Manushya Foundation's ongoing court monitoring and information exchange with members of the "Patient Network" (Patient Network Affected by Gold Mining, Phichit and Phetchabun Province).
- 13 Manushya Foundation, *UPR Factsheet: People & Planet Over Profit - Development Projects & the Protection of Human Rights Defenders: Thailand's Third Universal Periodic Review Cycle*, (13 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheets>
- 14 Manushya Foundation, *UPR Factsheet: People & Planet Over Profit - Development Projects & the Protection of Human Rights Defenders: Thailand's Third Universal Periodic Review Cycle*, (13 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheets>
- 15 Manushya Foundation, Thai BHR Network and the Thai CSOs Coalition for the UPR, *Joint Civil Society CEDAW Report to Inform the List of Issues to Be Considered by the UN Committee for the Elimination of Discrimination Against Women during the Pre-sessional Working Group for its 85th Session (31 October to 4 November 2022)*, (7 October 2022), p. 17, available at: <https://www.manushyafoundation.org/joint-civil-society-cedaw-report>; Manushya Foundation, *We have to #SaveChana!*, (7 December 2021), available at: <https://www.manushyafoundation.org/post/we-have-to-savechana>; Manushya Foundation, *#SaveChana is possible with the power of the people!*, (15 December 2021), available at: <https://www.manushyafoundation.org/post/savechana-is-possible-with-the-power-of-the-people>
- 16 The Nation, *Police decide to pursue legal action against Chana Rak Thin protesters*, (15 December 2021), available at: <https://www.nationthailand.com/in-focus/40010011>
- 17 Thai Lawyers for Human Rights, *Statistics of Emergency Decree Violation Cases, Convicted, Acquitted and Dismissed by the Prosecutors & Court*, (5 October 2022), available at: <https://tlhr2014.com/en/archives/49231>
- 18 Manushya Foundation, *UPR Factsheet: Civic Space: Thailand's Third Universal Periodic Review Cycle*, (9 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheets>
- 19 Manushya Foundation has written at length about Thailand's false climate solutions and flawed conservation laws. See e.g. Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>; Manushya Foundation and the Working Group in support of the 14 Sab Wai Villagers in the Sai Thong National Park Case, *Joint Submission to the UN Special Rapporteur on the Situation of Human Rights Defenders and Relevant Special Procedure Mandates Re: Human rights violations of woman human rights defender Ms. Nittaya Muangklang and thirteen other villagers in Sai Thong National Park, Chaiyaphum Province, Thailand, calling for urgent actions for their protection*, (23 June 2019), available at: <https://www.manushyafoundation.org/campaign-savesabwaivillagers-submission-of-urgent-action-to-7-un-special-rapporteurs>

- Manushya Foundation, *How do false climate solutions violate human rights in Thailand?*, (17 April 2023), available at: <https://www.manushyafoundation.org/post/how-do-false-climate-solutions-violate-human-rights-in-thailand>; Manushya Foundation, *Thailand's false climate solutions violate human rights!*, (18 January 2022), available at: <https://www.manushyafoundation.org/post/thailand-s-false-climate-solutions-violate-human-rights>; Manushya Foundation, Sai Thong Rak Pah Network, Indigenous Women's Network of Thailand, Thai Business & Human Rights Network and the Thai CSOs Coalition for the UPR, *Joint UPR Submission on Land-Related Rights, Forest Conservation Laws & Climate Change Policies: Thailand's Third Universal Periodic Review Cycle*, (25 March 2021), available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>; and Manushya Foundation, *UPR Factsheet: Thailand's False Climate Solutions with Bad Forest Conservation Laws: Thailand's Third Universal Periodic Review Cycle*, (13 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheet-false-climate-solutions-with-bad-forest-conservation-laws>
- 20 For detailed analysis of Thailand's insufficient climate action and its false climate solutions, see our 2023 submission to the UN Working Group on Business and Human Rights: Manushya Foundation, *Submission to the United Nations Working Group on Business and Human Rights on Extractive Sector, Just Transition and Human Rights*, (May 2023), available at: <https://www.manushyafoundation.org/2023submissiontoun>
- 21 Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>
- 22 For detailed information on the Sab Wai villagers' case, see our complaint submitted to UN Special Procedures in 2022: Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>
- 23 Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>; Manushya Foundation, *Why We Need to #SaveBangkloi*, (11 March 2021), available at: <https://www.manushyafoundation.org/post/why-we-need-to-savebangkloi>; Manushya Foundation, *No to the UNESCO "World Heritage Site"! We Need to #SaveBangkloi!*, (6 September 2021), available at: <https://www.manushyafoundation.org/post/what-s-wrong-with-world-heritage-savebangkloi>; Manushya Foundation, *Joint Statement: Thai authorities must release 22 Bang Kloi Karen and drop all forest encroachment charges*, (6 March 2021), available at: <https://www.manushyafoundation.org/joint-statement-save-bangkloi>
- 24 State obligations in this respect have been clarified e.g. in Framework principle 16 of the Framework principles on human rights and the environment: "States should respect, protect and fulfill human rights in the actions they take to address environmental challenges and pursue sustainable development." See Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, (24 January 2018), A/HRC/37/59, para 54-55, available at: <https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018>
- 25 Manushya Foundation, *#SaveSabWaiVillagers from Forced Evictions & Extreme Poverty! The Unfair Criminalization of 14 Villagers under Thailand's "Forest Reclamation Policy"*, (2022), available at: <https://www.manushyafoundation.org/campaign-savesabwaivillagers>
- 26 Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>
- 27 Manushya Foundation, Sai Thong Rak Pah Network, Indigenous Women's Network of Thailand, Thai Business & Human Rights Network and the Thai CSOs Coalition for the UPR, *Joint UPR Submission on Land-Related Rights, Forest Conservation Laws & Climate Change Policies: Thailand's Third Universal Periodic Review Cycle*, (25 March 2021), available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>; and Manushya Foundation, *UPR Factsheet: Thailand's False Climate Solutions with Bad Forest Conservation Laws: Thailand's Third Universal Periodic Review Cycle*, (13 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheet-false-climate-solutions-with-bad-forest-conservation-laws>
- 28 The Government claims that indigenous peoples do not exist in Thailand and the provisions of the UNDRIP are therefore not applicable in the country. The Government maintained this position e.g. during its 2021 review at the Committee on the Elimination of Racial Discrimination. See Manushya Foundation, *#FightRacism: Why is the Thai government lying to us about Indigenous peoples?*, (17 February 2022), available at: <https://www.manushyafoundation.org/post/fightracism-why-is-the-thai-government-lying-to-us-about-indigenous-people>. For comprehensive information on the situation of indigenous peoples in Thailand, see Manushya Foundation, *UPR Factsheet: Indigenous Peoples' Rights: Thailand's Third Universal Periodic Review Cycle*, (9 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheets>
- 29 Manushya Foundation, *Follow-Up UN Complaint to seek Justice for the Survivors of the Xe-Pian Xe-Namnoy Dam collapse in Attapeu Province, Laos*, (28 February 2022), available at: <https://www.manushyafoundation.org/followup-un-complaint-on-attapeu-xpxn-dam-collapse>

- 30 Manushya Foundation, *Follow-Up UN Complaint to seek Justice for the Survivors of the Xe-Pian Xe-Namnoy Dam collapse in Attapeu Province, Laos*, (28 February 2022), p. 2-4, available at: <https://www.manushyafoundation.org/followup-un-complaint-on-attapeu-xpxn-dam-collapse>
- 31 Manushya Foundation and Asia Indigenous Peoples Pact, *Joint Submission to the UN Universal Periodic Review (UPR) for Lao PDR Third UPR Cycle, 35th Session of the UPR Working Group*, (21 July 2019), p. 12, available at: <https://www.manushyafoundation.org/joint-upr-subm-to-laos-mf-aipp>
- 32 Manushya Foundation, *Joint Statement Lao dam disaster: NGOs decry lack of effective closure and for survivors five years on*, (24 July 2023), p. 1, available at: <https://www.manushyafoundation.org/joint-statement-lao-dam-collapse>
- 33 Besides the Xe-Pian Xe-Namnoy dam, hydropower industry is a rising environmental challenge in Laos that plans to become the “battery of Asia”, using its rich water resources for “renewable” energy exports to neighbouring countries. See e.g. Manushya Foundation, *As Laos is building dams, local communities are sacrificed in the process!*, (18 April 2023), available at: <https://www.manushyafoundation.org/post/as-laos-is-building-dams-local-communities-are-sacrificed-in-the-process>; Manushya Foundation, *Do you know Laos aims to become the "battery of Asia"?*, (7 February 2023), available at: <https://www.manushyafoundation.org/post/do-you-know-laos-aims-to-become-the-battery-of-asia>; Manushya Foundation, *News release: Responsible governments and implicated companies must ensure safety and effective access to information of communities living near the Nam Theun 1 dam in Laos*, (23 August 2022), available at: <https://www.manushyafoundation.org/23-aug-news-release-on-nam-theun-dam-1>
- 34 Manushya Foundation, *News Release: Lao Government and Implicated Companies Must Deliver Justice For Survivors of 2018 Attapeu Dam Collapse*, (26 July 2022), available at: <https://www.manushyafoundation.org/laogovernment-and-implicatedcompanies-must-deliver-justice-for-survivors-of-attapeudamcollapse>
- 35 In December 2020, Manushya Foundation, The Human Rights Foundation (HRF), and Humanity Beyond Borders jointly submitted an individual complaint to the United Nations Working Group on Arbitrary Detention (UNWGAD) to request a formal investigation on the arrest and wrongful conviction of Muay and declare that her arbitrary imprisonment is in clear violation of international law. See: Manushya Foundation, The Human Rights Foundation and Humanity Beyond Borders, *Individual Complaint to the UNWGAD Concerning the Case of Houayheung “Muay” Xayabouly*, (15 December 2020), available at: <https://www.manushyafoundation.org/free-muay-individual-complaint>. In June 2021, the UNWGAD condemned Laos for its persecution of Muay, determining that the arrest and subsequent imprisonment were arbitrary and urging Lao authorities to release her immediately. Please see the UNWGAD decision: <https://www.business-humanrights.org/fr/latest-news/laos-un-finds-detention-of-woman-human-rights-defender-was-arbitrary/>. The Lao government has yet to respond.
- 36 Manushya Foundation, *News Release: Lao Government and Implicated Companies Must Deliver Justice For Survivors of 2018 Attapeu Dam Collapse*, (26 July 2022), available at: <https://www.manushyafoundation.org/laogovernment-and-implicatedcompanies-must-deliver-justice-for-survivors-of-attapeudamcollapse>
- 37 Manushya Foundation, *The People’s Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>
- 38 Manushya Foundation, *Emilie Pradichit denounces corporate capture & calls for anti-SLAPP legislation at #UNForumBHR 2022*, (20 December 2022), available at: <https://www.manushyafoundation.org/post/emilie-pradichit-denounces-corporate-capture-calls-for-anti-slapp-legislation-at-un-forumbhr-2022>
- 39 Manushya Foundation, *All You Need to Know About the #WeAreJustTransition Movement!*, (28 November 2022), available at: <https://www.manushyafoundation.org/post/all-you-need-to-know-about-the-wearejusttransition-movement>
- 40 Manushya Foundation, *All you need to know about the main demands of our People’s Declaration!*, (1 December 2022), available at: <https://www.manushyafoundation.org/post/all-you-need-to-know-about-the-main-demands-of-our-people-s-declaration>
- 41 Kritsada Boonchai, *Thailand: Valuing Forests as Carbon Credits*, (30 March 2023), available at: <https://www.wrm.org.uy/bulletin-articles/thailand-valuing-forests-as-carbon-credits>
- 42 Manushya Foundation, *Community-driven Solar in Southern Thailand: When Energy Democracy Becomes a Reality!*, (8 September 2023), available at: <https://www.manushyafoundation.org/post/community-driven-solar-cell-project-in-the-south-of-thailand-when-energy-democracy-becomes-a-reality>
- 43 *Communities let down by Thailand’s NAP-BHR fight back: It’s time to #StopNAPping!*, (2 November 2022), available at: <https://www.manushyafoundation.org/post/communities-let-down-by-thailand-s-nap-bhr-fight-back-it-s-time-to-stopnapping>
- 44 Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
- 45 General Assembly, *The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, (16 July 2018), A/73/163, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2F73%2F163&Language=E&DeviceType=Desktop&LangRequested=False>
- 46 See Manushya Foundation, *#RBHRForum2022 National Action Plans: Stocktaking and Charting the Way Forward, 21 September 2022*, (25 October 2022), 29:20, available at: <https://www.youtube.com/watch?v=r8VgiqmROCs>

- 47 Thai PBS World, *All mega-projects now require strategic environment assessment*, (4 August 2023), available at: <https://www.thaipbsworld.com/all-mega-projects-now-require-strategic-environment-assessment/>
- 48 European Parliamentary Research Service, *Corporate sustainability due diligence: How to integrate human rights and environmental concerns in value chains*, (May 2023), available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI\(2022\)729424_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI(2022)729424_EN.pdf)
- 49 Manushya Foundation, *We need the legally #BindingTreaty ensuring companies conduct mandatory human rights due diligence!*, (20 September 2022), available at: <https://www.manushyafoundation.org/post/we-need-the-legally-bindingtreaty-ensuring-companies-conduct-mandatory-human-rights-due-diligence>; Manushya Foundation, *Emilie Pradichit: "We elect Governments, not corporate actors!"*, (3 November 2021), available at: <https://www.manushyafoundation.org/post/emilie-pradichit-we-elect-governments-not-corporate-actors>; Manushya Foundation, *Legally #BindingTreaty: Let's put an end to corporate violations of human rights & the environment!*, (29 October 2021), available at: <https://www.manushyafoundation.org/post/legally-bindingtreaty-let-s-put-an-end-to-corporate-violations-of-human-rights-the-environment>



About Manushya Foundation

Manushya Foundation was founded in 2017 with the vision to build a movement of Equal Human Beings #WeAreManushyan. Manushya is an intersectional feminist human rights organization reinforcing the power of humans, in particular women, human rights defenders, indigenous peoples, forest-dependent communities, environmental defenders, LGBTI groups, and Youth, to be at the heart of decision-making processes that concern them and to speak truth to power at the forefront of their fight for Human Rights, Equality, Social Justice and Peace. Through coalition building, capacity building, community-led research, advocacy and campaigning, and sub-granting, local communities become Agents of Change fighting for their rights and providing solutions to improve their lives and livelihoods, pushing back on authoritarian governments and harmful corporations. Manushya defends local communities and seeks justice with them before the United Nations, focusing on women's rights and gender equality, digital rights, climate & environmental justice, and corporate accountability across Asia.



MANUSHYA

#WeAreManushyan ∞ Equal Human Beings

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