

HUMAN RIGHTS DEFENDERS ARE A CORNERSTONE OF SUSTAINABLE DEVELOPMENT



ON THE NEED TO ENSURE THAT THAILAND'S DEVELOPMENT INTERVENTIONS SUPPORT REALIZATION OF HUMAN RIGHTS, SAFEGUARD HUMAN RIGHTS DEFENDERS AND ENSURE MEANINGFUL PUBLIC PARTICIPATION



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On the need to ensure that Thailand's development interventions support realization of human rights, safeguard human rights defenders and ensure meaningful public participation

27 June 2019

General Prayuth Chan-ocha
Prime Minister
Government House, Thanon Nakhon Pathom, Bangkok 10300

Mr. Pongsathorn Sajjacholapan
Vice-Minister, Ministry of Justice
The Government Complex, 120 Chaengwattana Road, Lak Si Intersection, Bangkok 10210

We, the undersigned organizations and individuals, positively consider the measures undertaken by the Royal Thai Government for protection of human rights defenders (HRDs) in the country, including the activities implemented through the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice (MOJ) and the commitments made in Thailand's final draft National Action Plan on Business and Human Rights (NAP) published earlier this year, on 15 February 2019. We submit this joint letter calling for greater efforts from the Thai Government for protection and promotion of human rights defenders in its development interventions at national and international levels as well as relevant processes related to advancing human rights in business contexts.

In 2018, we marked the 70th anniversary of the Universal Declaration of Human Rights, the 20th anniversary of the United Nations Declaration on Human Rights Defenders, and the 25th anniversary of the Vienna Declaration and Programme of Action. Those instruments, which Thailand have also committed to implementing, have been key to recognising fundamental rights globally and affirming the role that HRDs play in protecting these rights and ensuring sustainable and equitable development for all. While much progress has been made, HRDs face greater risk of retaliation and violence than ever before, especially those working in defence of land, environmental and indigenous peoples' rights. While development interventions can be a powerful tool for the realization of human rights, too often activities undertaken in the name of development fail to adequately consider human rights conditions and impacts and end up exacerbating the risks for HRDs.

In light of this, the Defenders in Development Campaign is calling on Thailand and other States and national and international development finance institutions (DFIs) to ensure that development interventions support the realization of human rights and avoid causing or contributing to rights abuses, promote an enabling environment for public participation within development processes, and safeguard HRDs.

Human rights defenders are a critical force for the protection of human rights and integral to the success of other global initiatives like the 2030 Agenda for Sustainable Development. The important work of HRDs has been repeatedly recognised and their contributions have been vital to protecting the land and the environment, securing just and safe conditions of work, combating corruption, and respecting indigenous cultures and rights.¹ Indeed, through the Declaration on the Right to Development, States agreed that development must be carried out in a manner "in which all human rights and fundamental freedoms can be fully realised" – with the "self-determination of peoples" and the "active, free and meaningful participation" of individuals and populations. **HRDs play a key role in enabling the realisation of the right to development.**

¹ UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, A/72/150 (July 2017).

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Despite the growing awareness of the role of HRDs in sustainable development, the human cost of defending rights remains unacceptably high. **Those working in defence of land, environmental or indigenous peoples' rights—rights most often violated in the context of development and related investment activities—are most at risk.** They are routinely subjected to stigmatization, labelled as “anti-development,” often quickly leading to criminalization, threats and physical attacks and judicial harassment. They are also more likely to be killed than defenders in other sectors. Since the adoption of the Declaration on Human Rights Defenders in 1998, an estimated 3,500 human rights defenders have been killed because of their peaceful work defending the rights of others.² In 2018 alone, at least 321 human rights defenders were killed for their work, 77 percent of whom were defending land, environment or indigenous peoples' rights, often in the context of extractive industries and state-aligned mega projects.³ For women defenders and other marginalized groups, the risks are even more acute, including gendered and sexualized attacks from State and non-State actors against women defenders.

In Thailand, we remain extremely concerned that HRDs continue to face increasing challenges in their important and legitimate work in the form of various risks and reprisals, including threats and intimidations, Strategic Lawsuits Against Public Participation (SLAPP), detentions and arrests, judicial harassment and even killing or disappearances. Various State agencies, including State-owned enterprises, as well as businesses and investors have been involved in those risks and reprisals against the HRDs.

The UN Declaration on Human Rights Defenders recognizes that everyone has the right “to promote and to strive for the protection and realization of human rights and fundamental freedoms.” Of particular importance for development processes, the Declaration affirms the right to effective access to participation in public affairs, including submission of criticism or opposing views or alternative proposals. It additionally “stresses that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction...and reaffirming the particular importance of achieving international cooperation to fulfil this obligation...”

Unfortunately, too often development interventions are designed and implemented without adequate consideration of the human rights context in which they are executed and the human rights impacts that may result. We see this in austerity measures that result in loss of access to essential services, commercial reforms that exacerbate land grabbing, or infrastructure projects that result in social conflict. While development finance institutions and many States have undertaken commitments on transparency and participation, in practice, development decisions are often made without the meaningful participation of civil society, and imposed on communities without their consent or consultation. **Where insufficient attention is afforded to community participation and human rights, even the best intentioned interventions can stoke conflict, fuel corruption, or entrench discrimination.**

Thailand and other States have an obligation to ensure that human rights are respected and protected and that there is an enabling environment for defenders to do their critical work. This obligation includes actions to implement or finance development activities, and extends to membership within multilateral development finance institutions. Development banks themselves have human rights obligations and a critical role to play in ensuring that their investments are not causing or contributing to threats or attacks against defenders. DFIs exert significant influence both through their project lending as well as through policy promotion and standard-setting. As such, they help shape local and national conditions which determine whether individuals

² Amnesty International, (2016), *Remembering those who were killed defending human rights*, available at: <https://www.amnesty.ie/remembering-killed-defending-human-rights/>

³ Front Line Defenders (2019), *Global Analysis 2018*, available at: <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>





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and communities impacted by development activities are able to safely engage or influence development processes.

The Defenders in Development Campaign calls on the DFIs, States, and other development actors to take all necessary measures to ensure that their interventions support the realization of human rights and do not cause or contribute to human rights abuses, and to promote safe space for communities and civil society to engage and shape development processes and to exercise their fundamental freedoms. This includes developing policies on human rights defenders and protocols to prevent and respond to risks of reprisals, ensuring meaningful access to information, and robust free, prior and informed consent of indigenous peoples and consultation of other affected communities. DFIs should also conduct ongoing human rights due diligence to identify and address human rights risks in all of their activities and throughout the lifespan of a project, including those residual impacts that may continue to be felt long after a project is closed. DFIs must ensure effective mechanisms whereby defenders can safely alert them to deteriorating environments or risks of conflict and reprisal. We also emphasize DFIs' responsibility to, through their research, public communications, and dialogue with States and the private sector, promote an enabling environment for public participation and accountability, in which people are empowered to engage in crafting their own development agendas and in holding their governments, donors, businesses, DFIs and other actors to account.

As owners and shareholders of development banks, Thailand and other governments must do more to ensure that DFIs are fulfilling these and other human rights obligations and promoting sustainable development. It is particularly concerning for Thailand as the Government is increasing bilateral development cooperation, particularly in the Mekong countries, through national banks, besides its participation in multilateral banks, such as the Asian Development Bank. Given the alarming increase in attacks on defenders within development activities, we urge you to bring more attention to this issue and to the critical role of DFIs.

Further, it is specifically timely now for Thailand as the Government is finalizing its NAP on business and human rights, in which it has made commitments for further actions for protecting and promoting HRDs and advancing human rights in Thailand international investments. In this context, we urge the Thai Government to:

-  *Take urgent action towards enacting the reforms identified above and promoting an enabling environment for human rights and meaningful public participation in development processes, with regards to Thailand's engagement with multilateral development banks as well as to operations of its national development finance institutions;*
 -  *Undertake immediate steps, in consultation with the concerned defenders and CSOs, to advance effective protection and promotion of human rights defenders in Thailand, including in business contexts as per the commitments in the draft NAP on business and human rights and revisions suggested by various civil society groups;*
 -  *Bring attention to the critical role that human rights defenders play in ensuring effective, equitable, and sustainable development from the local to international levels through appropriate actions in collaboration with the defenders; and*
 -  *Make a public commitment to take all measures necessary to ensure that Thailand's development policies, investments, cooperation, and other activities respect, protect, and fulfil human rights, prevent reprisals, and safeguard defenders.*
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The signatory organizations below, including participants in the Defenders in Development Campaign, look forward to your reply and kindly request a meeting with your office to discuss this issue and explore opportunities for advancing protection for human rights defenders in the context of development interventions. Please contact Ms. Emilie Pradichit, Founder & Director, Manushya Foundation at emilie@manushyafoundation.org, and Ms. Suphamat Phonphra, Programme Officer, Manushya Foundation at suphamat@manushyafoundation.org for scheduling purposes.

Sincerely,

Manushya Foundation
Thai Business & Human Rights Network
International Accountability Project (IAP)
Asia Indigenous Peoples Pact (AIPP)
International Rivers
FORUM-Asia
Community Resource Centre (CRC)

CC:

- Rights and Liberties Protection Department, Ministry of Justice, Royal Thai Government, The Government Complex, 120 Chaengwattana Road, Lak Si Intersection, Bangkok 10210
 - Ministry of Foreign Affairs, Royal Thai Government, The Government Complex, 120 Chaengwattana Road, Lak Si Intersection, Bangkok 10210
 - Khun Angkhana Neelapaijit, Human Rights Commissioner, National Human Rights Commission of Thailand, the Government Complex, 120 Chaengwattana Road, Lak Si Intersection, Bangkok 10210
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