

June 7, 2020

An Open Letter to the Organizers of the *United Nations Virtual Forum on Business and Human Rights: New Challenges. New Approaches, Asia and the Pacific*, to be held on June 9 -11, 2020

*To The UN Working Group on Business and Human Rights (UNWG),
United Nations Development Programme(UNDP),
International Labour Organization (ILO), United Nations Children's Fund (UNICEF),
United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)
and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP),*

We, the undersigned organizations and individuals wish to request the UNWG and other agencies working on Business and Human Rights intervene and highlight the ongoing situation of judicial harassment of women and men Human Rights Defenders (W/HRDs) in Thailand.

One of the stated aims of the Forum is to *“Facilitate learning and networking opportunities for CSOs and human rights defenders and evaluate how they can advocate for change and overcome barriers to access remedy”*.

Judicial harassment remains a significant barrier to the work of W/HRDs in Thailand. Judicial harassment by State and/or Businesses breaches the UN Guiding Principles on Business and Human Rights. The judicial harassment of W/HRDs violate all three pillars of United Nations Guiding Principles on Business and Human Rights, being:

1. The state duty to protect human rights
2. The corporate responsibility to respect human rights
3. Access to remedy for victims of business-related abuses

The Guiding Principles also state that “When human rights are violated by companies, governments must provide a robust and appropriate remedy for those affected”.

We believe that judicial harassment and the use of Strategic Lawsuits Against Public Participation (SLAPP) by businesses will be a key topic of discussion in the Forum.

We call on the organizers to include the protection of W/HRDs into all sessions and proposed actions of the Forum.

Moreover, currently in Thailand, Women Human Rights Defenders (WHRDs) are targeted using lawsuits aimed to undermine their work of protecting rights to land, housing, the environment, and local natural resources.

Since 2014 Protection International reported that over 440 WHRDs have faced charges. Now, since 2017, more than 200 WHRD have been charged. Most of the complaints have been lodged against urban poor women facing eviction. The second largest group of victims have been women defending land and natural resources of their communities. These cases have been filed by, amongst others, mining corporations, palm oil companies and some State-run agencies.

Frequently instead of supporting and protecting W/HRDs the Thai government seems to enable companies to engage in judicial and other forms of harassment and intimidation.

For example, a gold mining company with the involvement of some Thai authorities committed serious human rights violations; including mounting a violent attack in 2014, against members of the women-led community group Khon Rak Ban Kerd (KRBKG), Loei Province. The subsequent actions included lodging about 22 legal cases against the W/HRDs. The cases were brought by both the company and the State. Authorities charged the community leaders with violating the Peaceful Assembly Act simply for gathering to peacefully protest the damage project was causing in their area.

The most common complaint lodged against WHRDs is defamation, which is considered a criminal offense under Thailand's Penal Code: Offence Against Liberty and Reputation Section: 0326 – 0333.

The targeting of WHRDs seems to be strategic. By charging one woman, the whole family and often an entire community is affected. Women carry the responsibility for caring for the family. The time taken up defending these lawsuits is time taken away from the work of caring for the family.

Aside from interfering in the practical needs of the family, their frequent absences can result in women being accused of “neglecting their duties”. The stigma borne by women judged to be failing to take care of the family is very serious, especially in the rural communities.

Court hearings are often held in provincial, a considerable distance from these WHRD's home. The added economic burden of childcare, travel and legal support increases stress and hardship. It also makes it impossible to continue any fulltime waged work by reason of these court processes. Judicial harassment of community WHRDs increases the possibility of silencing these crucial voices that most importantly need to be heard.

Judicial harassment by companies/corporations is also happening against other WHRDs working in support of grassroots women and communities. For example, currently several charges of criminal defamation have been lodged against 2019 Magsaysay Award recipient and former Thailand National Human Rights Commissioner, Ms. Angkhana Neelapaijit, a prominent advocate for human rights and justice.

This same company has to date lodged at least 37 complaints against 22 Human Rights Defenders, amongst others, Ms. Puttanee Kangkun, Ms. Thanaporn Saleephol, Ms. Sutharee Wannasiri, Ms. Suchanee Cloitre (journalist), Ms. Suthasinee Kaewleklai (Unionist), Ms. Ngamsuk Ruttanasatian (a lecturer) and many other prominent W/HRDs.

The defamation charges they face carry penalties ranging between prison sentences of 8 – 42 years, and fines ranging \$US25,000 – US\$133,000. Most of the complaints involve things like the simple act of sharing tweets in support of migrant workers pursuing their struggle for labour rights.

Facing legal charges is not just time consuming and costly but has a tremendous impact on one's emotional well-being. These attacks are deliberate and strategic. When respected and prominent human rights defenders are charged, it can also affect other W/HRDs, who may now become more fearful, wary and thus less effective in their work for human rights and justice.

Judicial harassment and SLAAPs are creating a climate of fear and silence amongst W/HRDs and communities whose rights are being (or at risk of being) violated.

During this Covid 19 pandemic and thereafter, businesses will be looking for ways to recoup their losses and return to making a profit as quickly as possible. The work of W/HRDs will be even more important than ever or the Thai Government and all agencies concerned with Business and Human Rights. W/HRDs are the people

who can best highlight violations or threats to human rights to ensure that businesses comply with human rights principles and obligations.

While continued judicial harassment is allowed to exist unchecked by the government, the important work of defending human rights will become more dangerous and untenable. This will ultimately harm both Business and Human Rights.

Therefore, we the signatories urge the UN Forum on Business and Human Rights to use this opportunity to take a firm stand on the issue of protection of W/HRDs from judicial harassment and other SLAAP actions.

In particular, we ask you to raise the following points with the Thai Government:

1. The need to address such litigious attacks intended to undermine struggles for human rights has been well noted in reports and recommendations made by the U.N. Working Group on Business and Human Rights since 2018. We urge the UNWG and organizers of the Forum to request the Thai government report on their progress towards compliance of these recommendations.

2. The Action Plan for Human Rights Defenders is one of four key areas of the National Action Plans on Business and Human Rights; yet there have been no concrete moves to effectively protect or recognize the work of W/HRDs. The NAP and subsequent Articles regarding judicial protections do not have the status of law. It is merely a resolution by the executive branch of the Thai government and is considered a “by-law” pursuant to section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999). It carries no judicial weight or enforcement capacity.

3. In 2019, Articles 161/1 and 165/2 of the Criminal Procedure Code were also introduced to try and address such SLAPP lawsuits and other similar forms of judicial harassment. These amendments now allow a court to dismiss and forbid the refiling of a complaint by a private individual if the complaint is filed “in bad faith or with misrepresentation of facts in order to harass or take advantage of a defendant.” However, these new Articles in the law have not been effective. Terms such as “bad faith” are not even defined in the law, and it is left to the Court’s discretion. Most applications by W/HRDs to invoke Article 161/1 to date have been denied.

4. Under Section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act, complaints, including those brought to harass, intimidate, or retaliate against human rights defenders or others can be dismissed. However, the decision not to prosecute must be made by the Attorney-General alone. This is a lengthy procedure and it’s not clear whether adequate resources and support have been provided to the Attorney General’s Office to exercise their powers effectively and efficiently.

5. There is also no clear procedure or provision for fining or otherwise penalizing businesses who have been found guilty of trying to resort to judicial harassment of W/HRDs. We urge the State to prevent all threats and harassment. Those responsible for attacks on defenders including judicial harassment must be held accountable. Those found to fail the duty of care to support and protect W/HRDs must face political, financial and judicial consequences.

6. Defamation, even when proven is not an offense that is harmful to one’s life, body or property. It should not be considered or treated as a criminal offense which carries a sentence of imprisonment and/or large fines. Such are sentences usually reserved for serious crimes. We urge the UNWG and other agencies to

strongly encourage the Thai Government decriminalize defamation and remove all criminal penalties for defamation.

7. We call on all stakeholders who work on business and human rights to spend their resources and power to ensure that the Thai Government and all relevant business enterprises immediately end judicial harassment of W/HRDs, especially women, and to take concrete steps to promote good business with a genuine commitment to human rights.

We thank you for your attention to the concerns and issues raised in this letter. We look forward to working alongside the Thai Government and related UN agencies to help ensure the upholding of business and human rights principles for all.

Sincerely,

The following signatories:

1. People Who Own Mineral Resources Network in Thailand
2. The Community Women Human Rights Defenders Collective in Thailand
3. Try Arm Workers Collective
4. Community Resource Centre Foundation (CRC)
5. Fortify Rights
6. ENLAWTHAI Foundation
7. Eco-Culture Study Group
8. Public Policy on Mineral Resources Project (PPM)
9. Empower Foundation
10. Justice for Peace Foundation
11. Greenpeace Thailand
12. Green South Foundation
13. Esan Land Reform Network
14. Rak Luhu Group
15. Union for Civil Liberty (UCL)
16. Buku's Gender, Sexuality and Human Rights Classroom
17. Khon Rak Ban Kerd of Six Villages Group ,Loei
18. Khao Lao Yai-Pha Jun Dai Conservation Group
19. Khon Rak Ban Kerd Bamnejnarong Group
20. Rak Ban Haeng Group
21. Rak Amphoe Wanornniwat Group
22. Namsam Khampalai Conservation Group
23. Law long beach youth society
24. The Southern Peasant Federation of Thailand (SPFT)
25. Cross Cultural Foundation (CrCF)
26. Women and Children Protection Foundation
27. People Empowerment Foundation
28. Human Rights and Environment Promotion Association
29. Foundation for Labour and Employment Promotion (HomeNet Thailand)

30. Center for Protection and Revival of Local Community Rights (CPCR)
31. Thai Lawyers for Human Rights(TLHR)
32. Human Rights and Development Foundation (HRDF)
33. Ecological Alert and Recovery Thailand (EARTH)
34. Isaan Community Institute/ Isaan Community Foundation
35. Legal Advocacy Center for Indigenous Communities (LACIC)
36. EEC Watch
37. Network of Eastern Friends: Agenda of Eastern Change
38. Project SEVANA South-East Asia
39. Human Rights Lawyers Association(HRLA)
40. Community and Civil Society Coalition for Business and Human Rights Watch(CCBHR)
41. Asylum Access Thailand
42. ALTSEAN-Burma
43. Asian Forum for Human Rights and Development (FORUM-ASIA)
44. Mekong Watch
45. The International Service for Human Rights (ISHR)
46. Protection International (PI)
47. Women of Color/Global Women's Strike.
48. Worker Hub for Change (WH4C)
49. Witness Radio – Uganda
50. Oil Workers' Rights Protection Organization Public Union Baku, Azerbaijan,
51. Buliisa Initiative for Rural Development Organisation (BIRUDO) , Uganda
52. Cameroon Network of Human Rights Organizations (RECODH),Cameroon
53. Lawyers' Rights Watch Canada

Individual signatories:

1. Angkhana Neelapajit , 2019 Magsaysay Award recipient and former Thailand National Human Rights Commissioner,
2. Sor.Rattanamane Polkla, Human Rights and Environmental Lawyer
3. Puttanee Kangkun
4. Thanaporn Saleephol
5. Sompong Viengchan
6. Kanchana Di-ut
7. Nuchanart Tanthong
8. Somboon Kongka
9. Vipa Matchachart
10. Thongpoon Sasang
11. Suwit Kularbwong
12. Eakpant Pindavanija
13. Saowanee Keawjulkarn
14. Associate Professor Kanokwan Manrom, PhD. Ubon Ratchathani University
15. Somchai Homlaor, Lawyer
16. Penchom Saetang

17. Ngamsuk Ruttanasatain
18. Assoc Prof Suchart Setthamalinee
19. Parinya Boonridrerthaikul
20. Somnuck Jongmeewasin, Ph.D. - Environmental and Health Academic
21. Joseph Désiré ZEBAZE
22. Mirvari Gahramanli
23. Yuhanee Jehka