

**‘REBEL’ FARMERS AND ‘UNRULY’ EMPLOYEES:  
THE SITUATION OF HUMAN RIGHTS DEFENDERS  
PROMOTING CORPORATE ACCOUNTABILITY  
IN EAST ASIA**

**Joint submission to the UN Working Group on human rights and  
transnational corporations**

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## **INTRODUCTION**

The International Service for Human Rights (ISHR) and Asian Forum for Human Rights (FORUM-ASIA) offer this document as a submission to the UN Working Group on Business and Human Rights. The intention of this document is to lay out the challenges faced by human rights defenders (HRDs) working to promote corporate accountability across East Asia, with a particular focus on investments and operations in ASEAN countries. We encourage the Working Group to effectively and comprehensively consider these issues in its work, and in particular to provide space to address the situation of HRDs at its Asian regional forum announced for 2016.

At the national level, it is hoped that this document will spur conversation among government, civil society, and corporate actors and that those conversations, at minimum, will help to feed into participation at the regional forum. We also encourage domestic and international stakeholders to use the recommendations contained at the end of this report to inform advocacy at the multilateral level, including shaping debates at the Human Rights Council (the Council); informing treaty bodies; and strengthening attention to HRDs working on corporate accountability in recommendations made in the context of the Universal Periodic Review (UPR).

This report does not contain a detailed legal analysis of the legislative frameworks governing foreign direct investment, corporate social responsibility, or land concessions in the selected countries. Country by country differences in approach to commercial, investment, and development law and policy create very different legal environments for the operations of NGOs and corporate accountability HRDs. As such, we hope that national-level groups and international experts will feel free to use this as a possible starting point for additional research to inform the Working Group, and to shape their participation in the upcoming regional forum.

We also note that it would be impossible to address all sectors in all countries. For host countries, we have focused on those sectors that contribute most to a country's overall GDP, whether export or domestic. Home country profiles will focus exclusively on government efforts, and space for civil society, to improve respect for human rights by companies domiciled in that country.

This submission uses engagement with a range of multistakeholder initiatives as a proxy for government engagement and, where possible, as a common benchmark for transparency and community dialogue. However, a more extensive review of international multistakeholder or 'CSR' efforts, including with international and regional financial institutions, may better reflect the attitudes and actions of the corporate sector towards HRDs and host governments.

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## **OVERVIEW: HUMAN RIGHTS DEFENDERS AND BUSINESS OPERATIONS IN EAST ASIA**

East Asia is home to one of the most vibrant regional economies in the world, an engine with over one fifth of the world's population, a huge amount of its youth, an incredible richness of natural and human resources, and a history of economic development that has, in many countries, outpaced expectations several years running. The Association of Southeast Asian Nations, or ASEAN, has received significant support from key trading partners in the region and beyond to facilitate advances in regional economic integration to make business easier and more profitable.

At the same time, actors in this economy do not always operate with the transparency and accountability that civil society and consumer are beginning to demand. In fact, many Western governments and multinational corporations have expressed wariness at the sustainability of the breakneck pace of growth in China; the impact of pending and future trade agreements on emerging economies that play key roles in multinational supply chains; and the degree of official corruption and impunity for many kinds of human rights violations, both in the most advanced of East Asian economies and the least. Conflict, natural disaster, and the impact of current and future authoritarian regimes further contribute to the air of instability and lack of good governance on the part of governments, and the risk calculations and corresponding demands on the part of businesses and investors.

In East Asian countries, as in many developing countries and emerging economies of other regions, the profits gained by the corporate sector – whether multinational or domestic – rarely have a proportionately positive impact on the well-being of workers and affected communities.

ASEAN has, over the last decade, made significant advancements in regularising regional arrangements and building regional institutions that can respond to regional crises. In particular, ASEAN's efforts at combatting smuggling and human trafficking; eliminating trade in illegal wildlife; and facilitating inter-ASEAN trade have received the approval of many Western countries, including the U.S.

However, for reasons including its reliance on a consensus-based approach, ASEAN has yet to meaningfully advance in the area of human rights at the regional level. The 'ASEAN Declaration of Human Rights' was widely criticised for its reference to Asian values and thus, lack of accord with universal human rights and fundamental freedoms. The ASEAN Intergovernmental Commission on Human Rights (AICHR) remains a very weak institution, and human rights experts and international and regional NGOs have called for reforms to make AICHR more independent and effective.<sup>1</sup> A range of reforms have been suggested, including the adoption of practices in line with other regional human rights institutions such as country visits, Special Procedures, and annual country reviews. Nonetheless, even UN experts have

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<sup>1</sup> <https://www.fidh.org/International-Federation-for-Human-Rights/asia/asean/15292-asean-time-to-get-serious-about-protecting-human-rights>

at time raised concerns related to protection for HRDs in the context of the ASEAN Peoples' Forum.<sup>2</sup>

The lack of an effective regional mechanism to address human rights violations linked to business activities and the uneven levels of development, including on human rights issues such as rule of law, transparency, and free civil society, combine to create a raft of challenges to effectively putting in place approaches to economic development and private sector engagement that respect human rights. These include:

- Lack of legislative and policy measures to recognise and protect HRDs and promote a safe and enabling environment for their work
- Efforts to rollback guarantees of 'enabling rights' for HRDs, such as freedoms of expression, assembly, and association
- Absence, or conflicting versions, of 'corporate social responsibility' regimes; where they exist, they do not always reflect international norms and best practices, including the UN Guiding Principles on Business and Human Rights
- Lack of harmonised policies by corporations across the region, and the risk of a 'race to the bottom' by efforts to identify low-cost investments, which arise from a reluctance to view human rights risks and benefits from respecting rights as central to business operations
- High levels of state-owned enterprises, in particular in the extractives and oil and gas sectors, that operate in many ways outside the effective purview of external groups
- A high prevalence of corruption in both the public and private sector and a lack of transparency in the generation and expenditure of revenues
- Lack of common understanding of or approach to free, prior, and informed consent (FPIC), in particular with regard to indigenous and stateless persons, and environmental, social, or human rights impact assessments
- Institutional and practical barriers to participation in public policies and decision-making in the area of economic development

ISHR and FORUM-ASIA firmly believe that HRDs play a critical role in addressing the challenges listed above, and in preventing and mitigating violations and seeking accountability for human rights abuses linked to business activities. They can bridge the gap between local communities – in particular indigenous communities – and powerful companies, national governments, and regional and international bodies and human rights standards. Their work can complement government monitoring efforts, for example in the areas of worker rights or environmental protection, and can help fill in the gaps in rights protection that arise due to limited resources, political will, and knowledge on the part of regional governments.

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<sup>2</sup> Joint allegation letter KHM 3/2012, c.f. A/HRC/21/49.

## **COUNTRY PROFILES AND ILLUSTRATIVE CASES**

The countries below have been listed in alphabetical order. Following each country name, a series of letters signifies the primary sectors in which business-related human rights abuses are particularly salient.

[A] – industrial agriculture, in particular for commodities (e.g. sugar, palm oil)

[E] – electronics

[F] – forestry and logging

[M] – manufacturing, in particular garments/footwear

[O] – oil, gas and mining, and other energy projects

[P] – public participation<sup>3</sup>

[S] – seafood, both farmed and wild-caught, and seafood processing

This is not intended to be an exhaustive list of countries, cases or issues, but to provide illustrative examples of the type of legal, regulatory, and practical challenges confronting HRDs.<sup>4</sup>

Additionally, because of the range of levels of development through the East Asia region, we seek to give a cross-section of challenges facing HRDs both in host countries, or countries that are destinations for foreign direct investment, and also in home countries of businesses and development projects – such as the more advanced economies of Japan, Singapore, and South Korea. Countries of particular focus for ISHR and our partners will, as appropriate, be given more extensive consideration.

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<sup>3</sup> This is intended to capture the suppression of criticism of a country's overseas economic development policies, or the practices of businesses domiciled in that country.

<sup>4</sup> For example, migrant workers are a population particularly vulnerable to human trafficking and other abuses in the context of business operations, and migrant rights defenders often face particular challenges. However, this is an area where extensive work by expert actors in the relevant sectors (in particular, fishing and seafood processing) is already ongoing.

## **Cambodia – A, F, M, O**

Cambodia has since the official end of the conflict in 1991 been a destination for foreign direct investment, initially as a means of helping the country recover from conflict and combat poverty. However, this investment has not occurred without protest from local communities or scrutiny by the international community.

In terms of legal frameworks, Cambodia has in recent years progressively sought to close down space for HRDs to operate. The Law on Associations and Non-governmental Organisations (LANGO), which was adopted in August 2015, imposes mandatory registration for both domestic and international associations, and sanctions for the activities of unregistered organisations. More worrying yet, the law would allow for the government to de-register associations and organisations that it consider critical of government policies, including in the area of economic development.<sup>5</sup>

In light of the increasing attention to plantation agriculture and large-scale development projects in the country, environmental, social, and human rights impact assessments, ESIA's and HRIA's, could go a long way to empowering affected communities and preventing known human rights risks. Although current preconditions for approval of projects include environmental assessments, the scope is inadequate to capture the range of concerns. Additionally, as an administrative requirement, local authorities who have a vested interest in boosting investment often permit companies to consider the assessment a mere box-checking exercise. A new Environmental Impact Assessment law has been drafted, but it does not sufficiently address free, prior and informed consent (FPIC), including the right of indigenous peoples to consent and fair compensation for land. The Land Law and Forestry Law both make reference to the rights of indigenous communities, but the implementation has been limited and would be further challenged by the restrictive environment resulting from the LANGO.<sup>6</sup>

Cambodia has been in the process of amending its Trade Union Law since 2011. On 13 November 2015, the Council of Ministers approved the controversial law. It would seriously restrict the freedom of trade unions, making the work of existing unions difficult and the formation of new unions nearly impossible.<sup>7</sup> Labour leaders would risk fines for 'not securing national development', and freedom of assembly would be restricted so as to effectively prevent strikes and other mass demonstrations. Already, the Law on Peaceful Assembly is used to require that groups receive authorisation (which can be denied without appeal) and to impose overly broad limits on the ability of civil society to organise demonstrations.

There is no national human rights institution in Cambodia, and the judiciary is rife with corruption. In fact, local group note that the Anti-Corruption Unit that does exist is controlled entirely by the executive branch, and so lacks the independence to

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<sup>5</sup> <http://www.ishr.ch/news/cambodia-withdraw-lango-and-ensure-genuine-civil-society-participation>

<sup>6</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>7</sup> Input from ISHR and FORUM-ASIA members ADHOC, September 2015.

do its job effectively. Other policy processes, for example the National Strategic Development Plan (NSDP), have proven of limited utility to activists. While about ten organisations, as well as the umbrella NGO Forum, provided comments during the drafting stages of the 2014-2018 NSDP, only a quarter of their suggestions were incorporated.<sup>8</sup> Furthermore, the NSDP is not a substitute for a full National Action Plan on Business and Human Rights, as its primary focus is on economic growth and business-related concerns; it does not include accountability mechanisms, and does not substantively address the issues of human rights, much less HRDs.

In practice, failure to fully and fairly investigate human rights abuses, including the killings of leaders in the garment and agricultural sectors over the last decade, contributes to widespread acceptance of official impunity. The murder of trade unionist Mr Chea Vichea, the arbitrary detention of Ms Yorm Bopha, and the continued harassment of independent civil society organisations are characteristic of the behaviour of Cambodian authorities who face few if any repercussions.

In contrast, HRDs are targeted using the same laws that should protect them. Arbitrary detention and arrest, and use of excessive force, have been justified by criminal code provisions on destruction of property and protection of social order.<sup>9</sup> Lethal force has been used to disperse demonstrations, the most well-known recent case being the January 2014 garment sector protests. Paramilitary, police, and private security – both uniformed and plainclothes – have been implicated in the death and injury of dozens of demonstrators.

HRDs seeking accountability or advocating on behalf of displaced or evicted communities have been the subject of judicial harassment; since 2012, according to local groups, the use of defamation charges to file criminal cases against HRDs has surged. In July 2015, public prosecutors charged NGO leader Mr. Ny Chakrya with defamation for his public statements regarding the arrest, trial, and imprisonment of two land rights activists from Siem Reap. Foreign national activists have also been targeted for their criticism of government development policies; for example, environmental activist Mr Alejandro Gonzalez-Davidson was arrested and deported in February 2015 for his work with the Koh Kong NGO Mother Nature.<sup>10</sup>

While many global brands based in the U.S. and Europe source from Cambodia, about 65% of the factories are owned by investors from mainland China, Taiwan, and Hong Kong. These owners have gained a reputation for fleeing the country to avoid accountability, for example for failure to provide severance pay upon closure of a factor, or for sexual harassment charges. Global brand policies may sometimes be a challenge to implement on the ground, in particular when they might be more progressive than existing government regulations.

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<sup>8</sup> Input from ISHR and FORUM-ASIA member ADHOC, September 2015.

<sup>9</sup> <http://www.lrwc.org/cambodia-judicial-harassment-and-arbitrary-detention-of-lor-peang-community-activists-letter/>

<sup>10</sup> Input from ISHR and FORUM-ASIA member ADHOC, September 2015.

Positive steps in global supply chains and due diligence by brands, including through the ILO's Better Factories programme, can therefore be easily undone by, for example, the actions of local companies to actively seek the detention of HRDs – with the sometimes-active complicity of the authorities. In cases related to agriculture and land rights, there has been one case of an arrangement between rubber plantation investors and affected communities with the facilitation of the IFC Compliance Advisor Ombudsman. Nonetheless, HRDs still report typically 'hostile and confrontational' relationships with businesses, in some cases with state security forces protecting corporate interests.<sup>11</sup>

Independent UN experts have clearly articulated concerns related to business-related human rights abuses in the country. Most recently in 2015 the Human Rights Committee called on the government to provide effective protection to HRDs, journalists, and other civil society actors; to consider decriminalising defamation; and to consult with minority communities, in particular in relation to 'the allocation of land for extractive industries and agribusiness'.<sup>12</sup> In 2013, the CEDAW Committee called for improvements in government capacity to ensure safe working conditions for women, particularly in the garment sectors.<sup>13</sup> The Committee on the Rights of the Child in 2011 noted progress by the government to regulate the impact of business on children's rights, but noted that the frameworks on social and environmental responsibility for businesses were not yet in place.<sup>14</sup> The CEDAW Committee also requested that the granting of land concessions include steps to follow due process, consult broadly, and compensate communities adequately,<sup>15</sup> and urged the government of Cambodia to 'promptly investigate and, wherever appropriate, prosecute cases of intimidation and harassment by law enforcement personnel against women human rights defenders (WHRDs) advocating for women's land rights'.<sup>16</sup>

Special Procedures of the Human Rights Council have also made clear that attacks on HRDs defending land rights are a critical human rights concern. Of the 24 communications made to the Cambodian government by the Special Rapporteur on Cambodia since June 2006, over half have dealt with land disputes and the harassment of HRDs who work to represent communities, for example like the Boeung Kak lake community. One recent communication, from April 2015, alleges forced eviction and appropriation of land of a Bunong indigenous community. According to the allegation letter, the company in question, Binh Phuoc Rubber, had the explicit support of armed police, a provincial prosecutor, and the Provincial governor in bulldozing the land used by over 200 Bunong families.<sup>17</sup> The SR on Cambodia raised land issues during her most recent trip, 16-24 September 2015.

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<sup>11</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>12</sup> CCPR/C/KHM/CO/2 (2015) para 28

<sup>13</sup> CEDAW/C/KHM/CO/4-5, para 35(b)

<sup>14</sup> CRC/C/KHM/CO/2 (2011) para 26

<sup>15</sup> CEDAW/C/KHM/CO/4-5, para 43(a) and 43(c)

<sup>16</sup> Ibid.

<sup>17</sup> Allegation letter KHM 1/2015, c.f. A/HRC/30/27.

## China – E, M, O

Challenges facing HRDs and civil society are pervasive within China;<sup>18</sup> against this background, it would not be feasible or effective to report on all corporate-related abuses in China. However, it is useful to consider both discrete cases of business-related human rights abuses and regulatory and policy measures that can have impacts on corporate respect for human rights within China, and on the actions and accountability of Chinese companies operating overseas.

- When a tanker carrying hazardous chemicals exploded in August 2015 in Tianjin, the Chinese government actively suppressed independent reporting on the case. The UN Special Rapporteur on human rights and hazardous substances and wastes noted that ‘reported restrictions on public access to health and safety information and freedom of the press in the aftermath [of the disaster] are deeply disturbing’.<sup>19</sup>
- Deaths due to pneumoconiosis, a lung disease caused by particulate matter associated with mining, manufacturing, and construction, are receiving increased attention as victims’ rights activists call for better preventative measures, and more adequate compensation. The cases of Xu Zhihui, a leading advocate, and He Quanguai, were covered by regional English-language media and civil society groups supporting workers’ rights.<sup>20</sup>

While some of these cases may represent a potential step forward in improving awareness of and opening space to discuss human rights impacts of business operations, due caution is recommended. In 2014, the China Chamber of Commerce of Metals, Minerals and Chemicals (CCCMC) launched a set of guidelines to provide for responsible business conduct of Chinese companies operating overseas, specifically in relation to the mining sector.<sup>21</sup> The Guidelines also benefitted from input from GIZ, the OECD, and international NGO Global Witness.

However, the CCCMC Guidelines have been adopted at a time when the Chinese state is engaged in an unprecedented crackdown on domestic civil society; limits on media freedoms have long been a barrier to full and informed reporting on negative impacts of businesses domestically; and the efforts to clean up China’s overseas image in the extractives sector dovetail with its desire for greater legitimacy in the international community – including with host country governments.

In that regard, there are numerous cases, reported by international NGOs and in some instances taken up by UN experts, of abuses by Chinese corporations operating overseas. According to the Guiding Principles, the state-owned nature of the majority of these multinationals should imply a higher bar with regard to the State

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<sup>18</sup> See [http://www.ishr.ch/advanced-search?f\[0\]=article\\_country:China](http://www.ishr.ch/advanced-search?f[0]=article_country:China) for more information.

<sup>19</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16332&LangID=E>

<sup>20</sup> <http://www.clb.org.hk/en/content/workers%E2%80%99-leader-xu-zhihui-finally-loses-his-battle-pneumoconiosis>

<sup>21</sup> <https://mneguidelines.oecd.org/china-oecd-cooperation-responsible-sourcing-of-minerals.htm>

obligation to protect individuals and communities from negative impacts on human rights by business. The UN Independent Expert on Foreign Debt Juan Bohoslavsky noted this in a press release following his July 2015 trip: 'For investments in foreign countries... negative social, environmental, or human rights impacts should be avoided, mitigated, or compensated in a timely, fair, and equal manner'.<sup>22</sup>

In the East Asia region, the negative impacts are clear. Cross-referencing the additional countries covered by this report, the below is an illustration of the range of impacts of Chinese investment in the region in one sector alone – energy infrastructure, including dams. Said Mr. Bohoslavsky, regarding investment banks, 'An effective and independent safeguards mechanism will have to be put in place...[in order to] foster sustainable development in a comprehensive, human rights based, and socially inclusive manner'.<sup>23</sup>

Because of their scale, but also the level of sophistication needed to manage these projects, they are a good measure of the political will of the Chinese government to balance its 'Going Out' investment strategy with demands to mitigate negative impacts on local communities and civil society groups, including HRDs protecting against violations and abuses.

- The Kamchay Dam in **Cambodia** is one example of investment driven by Chinese state-corporate interests. The dam, which came online in December 2011, was built by Sinohydro and financed by the Exim Bank of China. Although initial company EIA's list positive benefits, local communities have criticised it for infringing on national park land, impacting water supply and quality, and loss of livelihoods.<sup>24</sup>
- A Sinohydro project in **Indonesia**, the Jatigede dam, would flood 50 square kilometres and requires the resettlement of 40,000 villagers, many of whom have not received adequate compensation. The company president, Liang Jun, has left it to the Indonesian government to handle relocation, which they say can be justified by a new decree. Commentators argue that political imperatives for energy are alleged to be a higher priority for the executive than protection of human rights.<sup>25</sup>
- China's investment in **Laos** was estimated – nearly 2 years ago – to be over \$5 billion. Much of the interest from investors is in hydroelectric projects, including dams on the Mekong and its tributaries that would have a subregion-wide impact, as well as gold and other mining projects.<sup>26</sup> An

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<sup>22</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16207&LangID=E>

<sup>23</sup> Ibid.

<sup>24</sup> Grimsditch, Mark. *China's investment in Hydropower in the Mekong region: The Kamchay Hydropower Dam, Kampot, Cambodia*. 2012. Available online at <http://www.bankinformationcenter.org/wp-content/uploads/2013/02/Case+Study+-+China+Investments+in+Cambodia+FINAL+2.pdf>

<sup>25</sup> <http://www.bloomberg.com/news/articles/2015-08-31/indonesia-s-widodo-orders-flooding-of-villages-behind-new-dam>

<sup>26</sup> <http://qz.com/172350/china-just-became-the-biggest-investor-in-laos-and-laos-neighbors-are-worried/>

additional \$7.2 billion was reportedly loaned to the Lao government for the construction of a train line linking Vientiane with Kunming, through some of the most diverse highland populations in Southeast Asia.<sup>27</sup>

- The Murum Dam in **Malaysia** was the first project undertaken by Sinohydro in the country, and the building was supervised by Three Gorges Corporation.<sup>28</sup> The construction of the Three Gorges Dam in the 1990s destroyed a number of historical natural heritage sites, and displaced an estimated 1.2 million people.
- The Myitsone dam and Letpadaung mine in northern **Myanmar** offer cases to study Chinese investment – the former by China Power Investment and the latter by China North Industries Corporation, managed by the subsidiary Wanbao. Both projects involved deals with the Union of Myanmar Economic Holdings Limited, a crony-controlled state economic entity headed by the Burmese military and associated in its own right with human rights abuses against ethnic minorities in conflict regions of the country. The Shwe gas pipelines, which have long been a focus of human rights activists in the country, were built by the China National Petroleum Corporation.

In other regions:

- The Hong Kong Nicaragua Development Group (HKND) announced in November 2015 a delay in the start of construction for what would be the world's largest project of its kind: a 127-mile canal from the Atlantic to the Pacific. Local activists have been critical of the efforts to minimise environmental and social impacts, as suggested by the impact assessment report.<sup>29</sup> The Special Procedures sent two communications to the government of **Nicaragua** regarding the mega-project, alleging the use of excessive force in dispersing protestors, and the failure to consult adequately with affected rural communities.<sup>30</sup>
- In a communication dated 18 February 2011, the Special Rapporteur on the Rights of Indigenous Peoples highlighted concerns about food insecurity, health, and conflict related to the development of the Gibe III hydroelectric project in **Ethiopia**.<sup>31</sup> In follow-up communications, the Special Rapporteur highlighted the role of Chinese state banks and construction companies and encouraged the Chinese government to take measure to 'strengthen compliance of the project with relevant international human rights standards'.

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<sup>27</sup> <http://www.rfa.org/english/news/laos/rail-04022013200531.html>

<sup>28</sup> <http://www.internationalrivers.org/campaigns/murum-dam>

<sup>29</sup> <http://www.theguardian.com/world/2015/nov/27/nicaragua-canal-postponed-chinese-tycoon>

<sup>30</sup> Joint allegation letter NIC 1/2015, c.f. A/HRC/29/50 and Urgent Appeal NIC 3/2015, c.f. A/HRC/30/27.

<sup>31</sup> Urgent Appeal CHN 4/2011, c.f. A/HRC/18/51, with follow-up CHN 24/2011.

## China (Taiwan) – M, O, P

While largely an advanced industrialised economy and a country with strong guarantees of political and civil rights, Taiwanese civil society nonetheless faces some challenges in engaging on business and human rights issues.

The lack of a national human rights institution has meant that much of the press for corporate justice is on the part of civil society alone. The Control Yuan, similar to an ombudsperson, has previously refused to intervene when business-related abuses occur. Court decisions have been made largely to the benefit of corporations, and not victims. And despite active, *ad hoc* work by civil society, the government of Taiwan has made no plans to advance discussion of a National Action Plan on Business and Human Rights which could help to provide a framework for comprehensive reforms in the area of business and human rights.

In practice, activists working in this area have been charged with crimes of public danger and obstruction of official business, both criminal charges, as well as administrative penalties, including fines and deportation, under the Social Order Maintenance Act and the Immigration Act.

Some areas of the business and human rights agenda in Taiwan are fairly open, for example internet freedom and privacy. Local NGOs report that cooperation with major multinationals in this space is fairly positive; one company has contributed financial support to activists and yet has respected their independence.

However, other issues related to forced relocation have come under harsh criticism by civil society. The corporate response has been equally harsh, and the relationship between the stakeholders remains one of opposition. For example, activists working on certain issues (environment and energy, forced relocation) have reportedly been the victims of direct harassment, and arrest by public authorities. There have also been cases of physical violence perpetrated against HRDs by security contractors hired by businesses.

In the most high profile case domestically this year, Korean workers at the Hydix Technologies plant travelled to Taipei in May 2015 to protest the acquisition of the company by the Taiwanese Yuen Foong Yu Group and the subsequent dismissal of 300 workers, in violation of relevant Korean laws. Before arriving, union leader Bae Jae-hyoung committed suicide, reportedly as a result of criminal and civil charges threatened by Hydix management.<sup>32</sup> Those who travelled to Taiwan, including Bae's widow, were forcibly and aggressively removed from their demonstration, and at least ten were deported.<sup>33</sup>

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<sup>32</sup> <http://www.taipeitimes.com/News/taiwan/archives/2015/05/27/2003619286>

<sup>33</sup> <http://newbloommag.net/2015/06/12/hydis-workers-and-taiwanese-capitalism/>

## Indonesia – A, E, F, M, O

Indonesia is a member of the G20, and rapid growth over the last 20 years has meant significant increases in purchasing power, moving the country into the middle-income bracket. Almost 40% of the population remains at or clustered near the poverty line of USD22.60 per person per month.<sup>34</sup> In this regard, the high levels of private investment in the country, generally aligned to priorities like agriculture, industry, and energy/infrastructure and comprising an estimated 30% of Indonesia's territory<sup>35</sup> could have benefits for the population. However, for certain populations and for HRDs working to promote corporate accountability, significant challenges remain.

The 1999 Forestry Law allowed the government to convert forests customarily used by local communities into state land, which could then be leased or sold to private entities. The rights of indigenous peoples to customary land were only recognised in 2012, and implementation of the regulations that would set up procedures to settle disputes is seriously lagging.<sup>36</sup> Moratoriums issued by the government may help to protect land from deforestation, including for use in plantation agriculture, specifically palm oil production.

For civil society actors, the 2013 Law on Mass Organisations had a chilling effect on organising and activities of both domestic and international organisations. Although workers can form unions, implementation and enforcement of the regulations protecting the rights to freely associate is weak. Government actors can use discretion to approve registration for associations, and corporate actors have reportedly engaged in union busting in the manufacturing sector.

The Indonesian human rights commission, KOMNAS HAM, will reportedly, have a role to play in developing a National Action Plan on Business and Human Rights.<sup>37</sup> The Commissioner in charge of the project noted a 'dearth of laws that regulated the human rights aspects of business,' leading to 1009 reports of abuses by companies documented by the Commission in 2012.<sup>38</sup> KOMNAS HAM added that the guidelines would be binding on all companies operating in Indonesia.

KOMNAS HAM launched its first inquiry into human rights violations involving land in May 2014, covering 140 formal complaints across seven regions. However, the ability of the Commission to seek accountability is limited by the gaps in law recognising indigenous peoples' rights. The Commission for Missing Persons and Victims of Violence (KONTRAS) has also spoken out on issues of corporate-related

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<sup>34</sup> <http://www.worldbank.org/en/country/indonesia/overview#1>

<sup>35</sup> <http://www.wri.org/blog/2015/09/3-ways-strengthen-customary-land-rights-indonesia>

<sup>36</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>37</sup> <http://www.thejakartapost.com/news/2015/06/20/human-rights-guidelines-prepared-businesses.html>

<sup>38</sup> Ibid.

human rights violations and called on the government to prevent this abuse from occurring.<sup>39</sup>

The National Alliance of Indigenous Peoples (AMAN) and other groups have documented as of May 2015 over 166 individual HRDs who have faced criminal charges for their activities to protect land rights.<sup>40</sup> Many other HRDs report routine harassment and threats, while others are approached with bribes from state and non-state actors.

Rural individuals are also particularly at risk. In East Java, police investigated the death of a farmer known as Salim. His body was found on 26 September, bearing signs of torture, and official comments have confirmed that his death was directly linked to his role leading a protest against an illegal local sand mining operation.<sup>41</sup> Although the communities affected by the operation had repeatedly complained to authorities, including reporting 'being terrorized and intimidated' by individuals associated with the company, no actions had been taken.

Chinese-Indonesia joint venture Asia Pulp and Paper may be implicated in the death of another farmer, Indra Pelani. They could be forced to shoulder responsibility for the actions of their hired security contractors, described as a 'militarised security force' by Human Rights Watch's Indonesia researcher, and for 'thug' tactics used by suppliers.<sup>42</sup>

Issues relating to business and human rights have been raised by several treaty body committees, largely concerning the mining and plantation sectors. In 2014, the CESCR Committee noted its concern at the lack of free, prior, and informed consent of communities affected by these projects, often resulting in violations of 'the right to livelihood, the right to food, the right to water, labour rights and cultural rights'.<sup>43</sup> These violations also stem from the lack of monitoring of extractive projects for potential human rights violations; when individual HRDs take on the task of monitoring and reporting violations, they have been victim to 'violence and persecution'.<sup>44</sup> This is particularly prevalent in cases that involve indigenous peoples, who are often subject to persecution or arrest during their attempts at retaining their 'right of ownership of customary lands and forests' in the face of the development of palm oil plantations, among others.<sup>45</sup>

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<sup>39</sup> <http://www.thejakartapost.com/news/2015/09/29/police-name-18-suspects-over-death-anti-mining-activist.html>

<sup>40</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>41</sup> <http://jakartaglobe.beritasatu.com/news/mining-activities-protested-slain-farmer-illegal-police-confirm/>

<sup>42</sup> <http://www.theguardian.com/sustainable-business/2015/apr/01/indonesia-farmer-death-aisa-pulp-paper>

<sup>43</sup> E/C.12/IDN/CO/1 para 27

<sup>44</sup> Ibid. para 28

<sup>45</sup> Ibid. para 38-39

The CEDAW Committee highlighted this issue in its 2012 concluding observations, where it noted that rural and indigenous women faced ‘discrimination with respect to the ownership and inheritance of land’ as well as suffering violations to their rights ‘to access their land, water, and natural resources’.<sup>46</sup> The CRC Committee emphasised the vulnerability of indigenous children—particularly Papuans—who are subject to extraction of natural resources from their ancestral lands, linking this closely with poverty and poor access to education and healthcare services.<sup>47</sup> Forced eviction from land for the purpose of development projects was raised multiple times, particularly in regards to vulnerable groups like women, children, and indigenous peoples.<sup>48</sup>

Economic exploitation, particularly child labour and the exploitation of women migrant workers, remains a serious problem in many parts of Indonesia. The CEDAW Committee recommended that the State ‘impose substantial penalties on companies that fail to respect the rights of the employees they recruit’ in an effort to cut down on the ‘violence and abuse’ suffered by women migrant workers.<sup>49</sup> The large number of children exposed to ‘the worst forms of child labour working in mines, offshore fishing, construction sites and quarries’ was denounced by the CRC, who encouraged the State to ‘amend legislation to criminalise forced labour and regulate the work of children’.<sup>50</sup>

The Special Rapporteur on the right to adequate housing, following her June 2013 visit to the country, recommended that land policy favour low-income and indigenous communities, including recognition of customary and communal land rights, and that effective, accessible, and affordable mechanisms for settlement of land and natural resource use be developed.<sup>51</sup>

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<sup>46</sup> CEDAW/C/IDN/CO/6-7 para 45(a) and (c)

<sup>47</sup> CRC/C/IDN/CO/3-4 para 69

<sup>48</sup> Ibid. para 23; E/C.12/IDN/CO/1 para 30

<sup>49</sup> CEDAW/C/IDN/CO/6-7 para 43 and 44(e)

<sup>50</sup> CRC/C/IDN/CO/3-4 para 72(b)

<sup>51</sup> A/HRC/25/54/Add.1 paras 81(f), (g), and (l)

## Laos – A, F, O

Relatively little is reported on the situation of HRDs in Laos, due to the extremely restrictive environment for independent organisations in the country. Similarly, although it has been the site of massive hydropower and agribusiness concessions in recent years, there has been relatively light coverage by the international community on the potential impacts of the projects.

In Laos, as in other socialist and post-socialist countries in the region, civil society organisations face a particularly challenging environment in terms of legislation that limits freedom of association, assembly, and expression. The protection of these rights, of course, are central to the work of corporate accountability HRDs. For example, though the Constitution affords these rights, in practice many provisions of the Penal Code are applied to prevent free speech: ‘slandering the state, distorting party or state policies, inciting disorder’, etc.<sup>52</sup>

Registration of civil society organisation is permitted under the Law on Non-Profit Associations, but the operating guidelines stepped up barriers to independence in terms of political positions, programming, and financing; an additional decree applies to the work of international NGOs.<sup>53</sup> The Lao Bar Association and Lao Federation of Trade Unions, again as in other countries in the region, are party organs that are tasked with maintaining mass organisation in line with party principles – not representing the professional ethics or the rights and interests of their members.

Land concessions and leases have grown exponentially. A Swiss Development Cooperation project estimates that from 2000 to 2009, land deals multiplied 50-fold. One finding of the report is that there is no demonstrable scientific effect of investment on incidence of poverty, despite claims by the government that the investment is improving peoples’ livelihoods.<sup>54</sup>

According to some sources, the Lao government has refused to host the annual ASEAN People’s Forum due to fears that the groups will criticise the countries for ‘curtailing freedom and human rights’, especially in politically sensitive areas such as land, environment, minority, and LGBT issues.<sup>55</sup> The Don Sahong dam project, for example, has knock-on effects not just for Lao citizens, but for communities all along the Mekong, including in Cambodia and Vietnam.

Without strong support from civil society organisations, the activities of HRDs in Laos are dramatically circumscribed. The message the government has sent about the consequences of criticism and dissent is deeply chilling. Journalists who report on matters that can be considered ‘obstructing’ the work of the government – which

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<sup>52</sup> <https://www.hrw.org/news/2015/01/15/laos-upr-submission>

<sup>53</sup> Ibid.

<sup>54</sup> *Concessions and Leases in the Lao PDR: Taking stock of land investments*. Available online at <http://www.sdcmekong.org/2013/01/report-gives-national-view-of-land-concessions-in-lao-pdr/>.

<sup>55</sup> [http://www.rfa.org/english/news/laos/refuses-10122015173336.html#.VhyW1CagX\\_A.twitter](http://www.rfa.org/english/news/laos/refuses-10122015173336.html#.VhyW1CagX_A.twitter)

one can imagine might include such issues as hydropower and mining activities – can be imprisoned for up to 15 years. The Lao government has failed to conclude a transparent investigation into the disappearance of well-known advocate and development worker Sombath Somphone, despite over a dozen countries raising the case during the 2015 UPR of Laos. Sombath disappeared on 15 December 2012, and the last official update from the government was on 7 June 2013, according to FIDH.<sup>56</sup> UN experts on freedom of association, the situation of HRDs; and freedom of expression issued a joint press release on *both* the first and second anniversaries of his disappearance, calling for an ‘independent, thorough, credibly, and effective investigation’.<sup>57</sup>

Much of the investment in Laos is from more advanced economies in the region; this has not, however, always led to a progressive stance with regard to basic human rights due diligence. Japanese paper company Oji, for example, has a joint venture in the country that recently lost certification by the Forest Stewardship Council, due to doubts by the independent auditor of full consultation and consent in the acquisition of land.<sup>58</sup> The joint venture, Oji LPFL, not only did not respond to corrective action requests, but claimed further that their actions were fully in line with Lao law that the withdrawal of certification had ‘no negative impact’ on sales.<sup>59</sup> One international NGO reported in 2013 that the rapid movement of Vietnamese rubber companies into Laos had resulted in illegal logging in protected forests, as well as violence against and harassment and displacement of local communities.<sup>60</sup>

While there has not been a visit to the country by a Special Procedures mandateholder since 2009 (the Special rapporteur on freedom of religion), it is useful to note that upcoming accepted visits include the SR on cultural rights, and the SR on adequate housing; the latter is tentatively slated for late 2016. The request from the SR on freedom of peaceful assembly and of association has not received a response. The UN Special Procedures used the formal communication process in December 2012, just days after his disappearance, to raise the case of Sombath on behalf of four mandateholders that requested detailed information about the fate and whereabouts, as well as the status of any investigations.<sup>61</sup> The Lao authorities provided three responses, from January to June 2013, but noted that despite their efforts he had not yet been found. An additional letter was sent by two Special Rapporteurs in December 2013 alleging violations of freedom of association as a result of the draft guidelines for implementation of the Decree on International Non-Governmental Organisations.<sup>62</sup>

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<sup>56</sup> <https://www.fidh.org/en/region/asia/laos/laos-1-000-days-on-sombath-s-enforced-disappearance-remains-a-clear>

<sup>57</sup> <http://www.un.org/apps/news/story.asp?NewsID=49679#.VlxxVXarTGg>

<sup>58</sup> [http://www.mekongwatch.org/PDF/news20150709\\_FSC\\_Eng.pdf](http://www.mekongwatch.org/PDF/news20150709_FSC_Eng.pdf)

<sup>59</sup> <http://business-humanrights.org/en/laos-forest-stewardship-council-terminates-certification-of-japanese-funded-tree-planting-project>

<sup>60</sup> <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/>

<sup>61</sup> Joint urgent appeal LAO 3/2012, cf. A/HRC/23/51

<sup>62</sup> Joint allegation letter LAO 1/2013, c.f. A/HRC/25/74

## Malaysia – A, E, M

Malaysia is the world's second largest producer of palm oil, third largest producer of rubber, and a major producer of oil and gas.<sup>63</sup> It is also the fifth largest recipient of FDI inflows in East Asia, and is strongly favoured by multinational companies.<sup>64</sup> These rankings demonstrate the emphasis placed on economic output, often at the expense of its population's human rights and fundamental freedoms.

Legal measures like the Sedition Bill (Amendment 2015) allow the government to carry out harsh penalties against those who are 'threats against peace, public order and the security of Malaysia' with the new amendments targeting the 'irresponsible misuse of social media platforms and other communication devices to spread divisiveness'.<sup>65</sup> This has clear consequences on civil society's ability to operate freely, as demonstrated by around 160 arrests of activists since February 2015, most arrested under restrictive laws such as the Sedition Bill and Peaceful Assembly Act (2012).

SUHAKAM, the national human rights commission, has played a relatively positive role in regard to business and human rights priorities. For example, after receiving numerous complaints about land-grabbing and the impact on customary land rights, the Commission began a survey and agreed to include indigenous peoples in its strategic framework 2012-2016. However, follow-up on certain cases, for example violations documented by the indigenous Orang Asal, has not materialised.<sup>66</sup>

SUHAKAM has also drafted a 'Strategic Framework on a National Action Plan on Business and Human Rights', to be submitted to the government for review.<sup>67</sup> A relatively comprehensive draft, it nonetheless must still pass through government channels before being adopted—SUHAKAM chairman Tan Sri Hasmy Agam stated that the Commission was a 'toothless tiger' when it comes to affecting government policies.<sup>68</sup>

National-level human rights defender organisations have described the recognition of indigenous peoples, following from the Malaysian Federal Constitution, as 'contentious, incomplete, and non-inclusive'.<sup>69</sup> This results in legal barriers to some peoples to claim and defend traditional land use rights.

In practice, indigenous peoples in Malaysia have faced arrest for protesting even the most blatant violations of human rights linked to development projects. In the case

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<sup>63</sup> [http://www.anzbusiness.com/countries/malaysia.html#.VnAx\\_0orLcs](http://www.anzbusiness.com/countries/malaysia.html#.VnAx_0orLcs)

<sup>64</sup> [http://unctad.org/en/PublicationsLibrary/wir2015\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf)

<sup>65</sup> <http://www.institutrakayat.org/wp-content/uploads/2015/04/IR-Sedition-Amendment-Report-2015.pdf>

<sup>66</sup> Ibid.

<sup>67</sup> <https://drive.google.com/file/d/0B6FQ7SONa3PROHVpMngzc0NhUHM/view?pli=1>

<sup>68</sup> <http://www.themalaymailonline.com/malaysia/article/suhakam-chief-says-watchdog-is-leashed-but-barking-loudly>

<sup>69</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

of the Murum dam in Sarawak, for example, the EIA indicated high risks for local populations related to flooding, and yet conflicting land-use priorities (hydropower and logging) have been approved by local government.<sup>70</sup> This was repeated in March 2015 with Sarawak Energy Berhad's (SEB) plans to build a Trans-Borneo high-voltage line without following proper consultation or compensation procedures among the indigenous communities affected.<sup>71</sup> Members of civil society petitioned the Asian Development Bank to withdraw its loan to SEB in light of these violations; ADB is currently reviewing the loan. Resulting poverty and displacement among these groups has been the focus of the Malaysian Bar Council and SUHAKAM.

In June 2014, six HRDs protesting Australian mining company Lynas Corporation were arrested and charged with 'unlawful assembly' and 'obstructing the police'. They were protesting plans by Lynas Corporation to develop an earth processing plant that would dump toxic waste in the local surroundings. Police allegedly beat and arrested protestors as they were undertaking a peaceful sit-in.<sup>72</sup>

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<sup>70</sup> <http://www.sarawakreport.org/2014/08/murum-dam-is-high-risk-official-report/>

<sup>71</sup> <http://business-humanrights.org/en/malaysia-asian-development-bank-to-review-loan-to-sarawak-energy-amid-allegations-of-failure-to-consult-with-communities-affected-by-trans-borneo-transmission-line-company-responds>

<sup>72</sup> <https://www.frontlinedefenders.org/node/26570>

## Myanmar/Burma – A, F, M, O

Myanmar has undergone unprecedented change over the last four years, and international economic opportunity has grown dramatically. Western governments have increasingly loosened restrictions on trade and investment, while domestically dozens of laws have been drafted or amended to accommodate requests of the international community – both governments and business – and to facilitate further economic growth. However, barriers still remain for full respect of human rights and efforts are necessary to root out the last vestiges of crony capitalism, held guardedly by the Burmese military.

The Right to Peaceful Assembly and Peaceful Procession Act in theory guarantees these rights to citizens, within certain limits. Included in those limits are procedures for obtaining consent from local authorities, outlined in Article 18 of the Act. This Article is widely used to charge and imprison HRDs, with sanctions of up to six months' imprisonment and hefty fines, sometimes by multiple jurisdictions at the same time.<sup>73</sup> The Labour Organization Law similarly allows for some exercise for freedom of association, namely the right to strike and to form unions, but limits include a restriction of the number of national confederations to one. The 2012 Settlement of Labour Disputes Law does not include key components of collective bargaining and gives no authority to enforce arbitration decisions.

Enacted in January 2014, the Special Economic Zone (SEZ) law reportedly offers foreign investors in these zones extensive tax benefits, longer land leases, and ability to repatriate profits.<sup>74</sup> It also, worryingly, gives the executive and legislative branches authority to designate SEZs without requiring a study of the human rights impacts of the zone, and requires payment by developers or investors for relocation or compensation (processes of determining notice and consent for acquisition of land or adequate compensation are not included in the law).<sup>75</sup>

In addition to the legal challenges to HRDs presented by application of the Peaceful Assembly and Peaceful Procession Act, Penal Code Section 505b has been used to charge HRDs and activists with crimes 'against the state or public order'. The Myanmar National Human Rights Commission (MNHRC) has engaged in a limited fashion on specific cases of business-related abuses, but appears to be neither effective nor independent. It enjoys relatively little support or confidence from Burmese civil society.

Opposition to development is not tolerated. For example, local communities near the Dawei (Tavoy) SEZ have raised significant concerns, echoed by international groups, about the negative effect on the environment and on rural livelihoods, due to relocation and rezoning of land. Consultation has been described as 'woefully inadequate', in particular in relation to women's groups. When a local organisation,

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<sup>73</sup> Input from ISHR and FORUM-ASIA partner, September 2015.

<sup>74</sup> [https://www.kpmg.com/MM/en/IssuesAndInsights/ArticlesPublications/TaxAlert/Documents/Tax\\_Alert\\_SEZ-1.pdf](https://www.kpmg.com/MM/en/IssuesAndInsights/ArticlesPublications/TaxAlert/Documents/Tax_Alert_SEZ-1.pdf)

<sup>75</sup> [http://www.thaibizmyanmar.com/upload/pdf/MSEZ\\_Law\\_Eng\\_PDF\\_\(24-6-14\).pdf](http://www.thaibizmyanmar.com/upload/pdf/MSEZ_Law_Eng_PDF_(24-6-14).pdf)

the Tavoy Women's Union, sought more opportunities to provide input, they became the target of stigmatisation by local authorities, being called the 'enemy' of the project. A leader in the organisation also received threats of rape from an individual associated with a power plant in the SEZ.

When villagers and monks protested the forcible eviction of local populations to make room for the Letpadaung mine in Kachin state, Myanmar, security forces allegedly working in tandem with the Chinese investment company violently dispersed the protestors. At least one villager was killed, and dozens of others suffered severe health impacts due to the use by security forces of white phosphorus. The use of this hazardous substance constitutes torture and a violation of international law.<sup>76</sup> A defender working with the community was sentenced to 15 months in prison for his work, under criminal charges of trespassing.

Although the MNHRC conducted an investigation into the Letpadaung incident, and even found the police to be at fault, no follow up actions have resulted in accountability. Operations by the Chinese company at the Letpadaung mine and the surrounding area continue.

In its 2012 observations, the CRC Committee noted that child labour is a prevalent problem in certain industries, particularly the extractive industry (oil and gas) and 'large-scale development projects such as dams and pipelines'.<sup>77</sup> It stated its concern at the hazardous working conditions that children endured, urging the State to create and implement 'regulatory framework and policies' to ensure that business and industry complied with domestic and international human rights standards. These same large-scale energy and extractive projects also often lead to forced evictions of local residents.<sup>78</sup> In particular, the CEDAW Committee noted its concern in its 2015 list of issues that rural women had difficulty ensuring their 'access to land and land ownership'.<sup>79</sup>

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<sup>76</sup> <https://www.amnesty.org/en/latest/news/2015/02/myanmar-foreign-mining-companies-colluding-serious-abuses-and-illegality/>

<sup>77</sup> CRC/C/MMR/CO/3-4 para 22(a)

<sup>78</sup> CRC/C/MMR/CO/3-4 para 77

<sup>79</sup> CEDAW/C/MMR/Q/4-5 para 18

## Philippines – A, F, M, O

The Philippines is rich in natural resources, and receives a significant amount of its GDP from the extractive (mining) and agricultural sectors. Manufacturing accounted for almost two-thirds of domestic industrial output in 2012, which included both clothing/merchandise and food processing,<sup>80</sup> and growth continued through 2014, with an increase of over 60% in net FDI inflow compared to the previous year.

The Philippines Special Economic Zone Act (1995) identified a range of economic zone models that aimed to balance agricultural, manufacturing, and other investment projects. They have ‘minimum government interface,’ but are nominally managed by the Philippines Economic Zone Authority (PEZA).<sup>81</sup> In the labour sector, failure to identify and attribute responsibility between PEZA and DOLE have occasionally exacerbated potential for labour violations. In mining, revised rules and regulations adopted in 2015 simplified licensing processes in an effort to incentivize legal mining operations.

The Philippines government has taken some steps to ensure that businesses work responsibly. In the labour sector, they have a public database of arbitration cases that outline complaints by workers and workers’ associations, and whether and what kind of sanctions were imposed by the Department of Labour and Employment (DOLE). However, this has limited applicability across sectors; despite significant attention and funding by the international community, hazardous child labour occurs regularly in small-scale/artisanal mining.<sup>82</sup>

Constitutional guarantees and the Indigenous Peoples’ Rights Act were drafted with the intention of protecting cultural integrity, including the right to own and develop ancestral lands and to benefit from FPIC in the process of development. However, indigenous organisations have noted that FPIC is not evenly implemented and that conflicts over land rights continue.<sup>83</sup> In some cases, national indigenous organisations have argued that the streamlined permits system, rather than making the process easier for indigenous groups to engage with, in fact simplifies the steps required by businesses to gain access to ancestral lands.<sup>84</sup>

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<sup>80</sup> According to World Bank Manila Office, 2012, c.f. government policy document *Doing Business in the Philippines*, accessed at [http://www.ey.com/Publication/vwLUAssets/Doing\\_business\\_in\\_the\\_Philippines/\\$FILE/Doing-business-in-the-Philippines.pdf](http://www.ey.com/Publication/vwLUAssets/Doing_business_in_the_Philippines/$FILE/Doing-business-in-the-Philippines.pdf)

<sup>81</sup> Ibid.

<sup>82</sup> ‘What if something went wrong?’ HRW, 29 September 2015. Accessed at <https://www.hrw.org/report/2015/09/29/what-if-something-went-wrong/hazardous-child-labor-small-scale-gold-mining>

<sup>83</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>84</sup> International Coalition for Human Rights in the Philippines (ICHRP), statement. Accessed at <http://www.humanrightphilippines.net/2015/11/indigenous-peoples-speak-out-vs-extractive-industries-at-un-parallel-session/>

The Philippines Human Rights Commission has in the past engaged proactively on the question of land rights in the context of business operations. In November 2015, they hosted a conference on human rights and agribusiness with a range of ASEAN regional human rights institutions and non-governmental organisations.<sup>85</sup> The statement resulting from this meeting (the Palawan Statement on Human rights and Agribusiness in Southeast Asia) recognised the heavy burden of complaints related to land being handles by NHRIs and challenge of seeing NHRI recommendations implemented.<sup>86</sup> NHRIs are expected to be critical in the development of National Action Plans on Business and Human Rights in the region.

According to international NGO reports, while freedom of expression and belief are relatively well-protected in the Philippines, respect for freedoms of association and assembly is still a challenge. Many organisations seeking accountability for past abuses, including extrajudicial killings and disappearances, face harassment and occasional raids by government authorities.<sup>87</sup> Trade unions still face some structural challenges in representing workers' interests, and labour leaders continue to be targets of violence.

HRDs working to protect indigenous communities have reportedly been harassed, vilified, arbitrarily detained, and summarily executed, by both state and non-state security actors. In Mindanao in particular, such responses are often justified by branding HRDs as 'rebels'.<sup>88</sup> This is largely attributed to the closely interwoven interests of local government officials, and politicians, and the businesses that seek to operate in the area.

For the Philippines, migrant labour is an area where the government is engaging with significant efforts to improve business practices in labour recruitment. With nearly 2 million Filipinos leaving the country every year to work abroad—almost 2% of the total population—and that number steadily increasing each year, overseas employment is an industry of its own.<sup>89</sup> In 2014, the CMW Committee recognised the efforts taken by the government to regulate the multitude of private recruitment businesses in order to lessen the amount of workers enduring abusive working environments and a 'deprivation of labour benefits'.<sup>90</sup> However, it the Committee remained concerned about the abuses many migrant workers stiff suffer, and recommended that the State 'reinforce the regulatory regime for private recruitment agencies' and 'investigate and punish illegal practices by recruiters'.<sup>91</sup>

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<sup>85</sup> Accessed at

<http://www.forestpeoples.org/sites/fpp/files/news/2015/11/Palawan%20Statement%20as%20adopted%20by%20plenary.pdf>

<sup>86</sup> Ibid.

<sup>87</sup> Freedom House report 2015, available at <https://freedomhouse.org/report/freedom-world/2015/philippines>

<sup>88</sup> Input from ISHR and FORUM-ASIA partner AIPP, September 2015.

<sup>89</sup> <https://publications.iom.int/books/country-migration-report-philippines-2013>

<sup>90</sup> CMW/C/PHL/CO/2 para 42

<sup>91</sup> CMW/C/PHL/CO/2 para 43(a) and (d)

The CCPR Committee voiced its concerns about the increasing incidence of child labour and the hazardous conditions that children often work in; this concern was echoed by the CEDAW Committee in their 2015 list of issues.<sup>92</sup> The CEDAW Committee also requested clarification from the government over reports of indigenous women being victims of ‘sexual violence, land-grabbing and forced relocation and displacement’ by extractive industries developing new mining and large-scale infrastructure projects.<sup>93</sup>

Similarly, the Special Procedures have looked specifically at issues related to HRDs in the context of corporate accountability. In March 2014, six Special Procedures mandateholders (including the Working Group) sent an urgent appeal related to the ‘killings, attempted killings, and death threats’ against HRDs working on indigenous, land, and environmental issues.<sup>94</sup> There has been no reply by the government. In December 2012, an earlier communication raised similar concerns about threats to HRDs working on indigenous and environmental issues, specifically against ‘large scale mining projects... who are allegedly accused by the Armed Forces of the Philippines’ for supporting opposition armed groups.<sup>95</sup>

Additionally, concerns about the broader environment for HRDs continue; communications have also requested information related to death threats against journalist Mr. Arthur Sapanghari and his family;<sup>96</sup> the murder of defender and legal assistant Mr. William Bugatti;<sup>97</sup> and the killing of three journalists working on issues of corruption and drug trafficking.<sup>98</sup>

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<sup>92</sup> CCPR/C/PHL/CO/4 para 23; CEDAW/C/PHL/Q/7-8 para 12

<sup>93</sup> CEDAW/C/PHL/Q/7-8 para 18

<sup>94</sup> JUA PHL 2/2014, c.f. A/HRC/27/72

<sup>95</sup> JUA PHL 7/2012, c.f. A/HRC/23/51

<sup>96</sup> JUA PHL 1/2014, c.f. A/HRC/27/72

<sup>97</sup> JAL PHL 3/2014, c.f. A/HRC/27/72

<sup>98</sup> JAL PHL 2/2013, c.f. A/HRC/25/74

## Republic of Korea – A, E, P

South Korea is an OECD country, and one of the most advanced in the region in terms of respect for human rights and the maintenance of space for civil society. However, HRDs working to raise awareness around issues of corporate accountability, both within the country and in Korean companies' operations overseas, nonetheless face significant challenges.

Freedom of association is generally respected, and civil society can act fairly independently from the government. The Assembly and Demonstration Act has been used to charge labour activists, in particular, with criminal penalties related to strike and public demonstration activity.

The Korean National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises should have an important role to play in receiving complaints made against Korean companies, and in harmonizing policies within the Korean government that deal with business and human rights. However, its location within the Commercial Arbitration Board and a relative lack of awareness about its function have made its impact limited.

The National Human Rights Commission of Korea (NHRCK) has also been unable to effectively provide remedy for abuses, although they have supported some independent civil society organisations (Korean Human Rights Foundation, Korean House for International Solidarity) to conduct research on NAP processes in the UK and Denmark.<sup>99</sup>

The use of defamation charges against corporate accountability HRDs is particularly acute in South Korea. These charges can be used as threats to prevent public action, or retaliation for speaking to the media. For example, when the employment practices of Samsung came under criticism, the government and individual officers of the corporation have sought judicial approval for compensation for alleged slander and/or defamation.<sup>100</sup> In this way, labour unions and civil society organisations face significantly high financial risks in exposing corporate abuses.

Attention to the role of Korean companies in perpetuating human rights abuses overseas is also stymied. Although there have been a number of reports of abuses, from India to Cambodia to Uzbekistan, the options for remedy have been limited. The January 2014 protests in Cambodia were exacerbated when Korean management reportedly requested the intervention of armed private security contractors. In the resulting melee, three garment worker were killed.

A complaint to the Korean NCP, based on a submission by Korean Transnational Corporations Watch, the Cotton Campaign, and Anti-Slavery International, alleged forced labour in the supply chains of Daewoo International subsidiaries in

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<sup>99</sup> Ibid.

<sup>100</sup> Input from ISHR and FORUM-ASIA member, KHIS September 2015.

Uzbekistan.<sup>101</sup> It was accepted by the Korean NCP in December 2014, and closed on 7 July 2015; the NCP recommended that stakeholders ‘monitor the situation’ but provided no further guidance and did not offer mediation between the groups. A complaint made alleging sale of tear gas by a chemical company in Korea to the government of Bahrain, also filed in 2014, was deemed inadmissible.<sup>102</sup>

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<sup>101</sup> KNCP Initial Assessment. Available at [http://www.ncp.or.kr/servlet/kcab\\_encp/info/4000#](http://www.ncp.or.kr/servlet/kcab_encp/info/4000#)

<sup>102</sup> KNCP Initial Assessment. Available at [http://www.ncp.or.kr/servlet/kcab\\_encp/info/4000#](http://www.ncp.or.kr/servlet/kcab_encp/info/4000#)

## Thailand – A, F, M, S

The takeover by the military junta National Council for Peace and Order (NCPO) in 2014 accelerated the trend of increased restrictions on freedom of expression, association, and assembly, particularly in regards to activists working in the area of corporate accountability. Existing laws are implemented in a much more stringent manner—such as Article 15(ii) of the Martial Law, which has been used to detain nearly 600 HRDs, journalists, and NGO workers.<sup>103</sup> This is also true of Article 112 of the Criminal Code, the ‘lèse majesté’ law criminalising ‘defamation’ of the royal family which is frequently used to restrict free speech.

The National Human Rights Commission of Thailand (NHRCT) has been weakened with the NCPO’s rise to power, with the government effectively controlling high-level appointments to the NHRCT. It stands to be further weakened, as s drafts of the new Constitution plan to merge it with the Office of the Ombudsman, creating a single human rights entity that is even further constrained in its authority and independence and even less defined in its scope.<sup>104</sup>

NCPO order No. 3/2015 prohibits ‘political gatherings of five or more persons’<sup>105</sup>, severely curbing freedoms of association and assembly. This is a continuation of previous restrictions on freedom of assembly under martial law, as emblemised in cases such as the June 2014 police crackdown on a peaceful protest against Tungkom Limited mining company by residents of Na Nong Bong village.<sup>106</sup>

There have been multiple incidents of harassment and violence against land rights and environmental activists. Mr Chai Bunthonglek, a land rights activist in Southern Thailand protesting palm oil company Thai Boonthong, was shot dead on 11 February 2015.<sup>107</sup> He was the fifth land rights activist shot dead in the past five years from his village alone; none of the murders have been solved.<sup>108</sup> Other land rights activists have been detained or disappeared, such as Mr Pholachi Rakchongcharoen who disappeared on 17 April 2014 and whose whereabouts remain unknown.<sup>109</sup>

The CESCR Committee reported incidents of ‘enforced disappearances and killings’ of HRDs working on land rights and environmental issues, and urged the State to ‘adopt all measures necessary to protect human rights activists’.<sup>110</sup> The negative environmental effects of industries operating in Thailand is a serious issue, with

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<sup>103</sup> <http://adn21.asia/?p=1242>

<sup>104</sup> <http://www.icj.org/thailand-strengthen-not-submerge-human-rights-commission/>

<sup>105</sup> [https://globalfreedomofexpression.columbia.edu/wp/wp-content/uploads/2015/06/20150611\\_Unofficial-Translation-of-NCPOs-Order-3-2015.pdf?5da84f](https://globalfreedomofexpression.columbia.edu/wp/wp-content/uploads/2015/06/20150611_Unofficial-Translation-of-NCPOs-Order-3-2015.pdf?5da84f)

<sup>106</sup> <http://adn21.asia/?p=1242>

<sup>107</sup> <https://www.frontlinedefenders.org/node/28082>

<sup>108</sup> <https://www.forum-asia.org/?p=18354>

<sup>109</sup> <http://bangkok.ohchr.org/files/ROB%20Press%20Statement%20160415.pdf>

<sup>110</sup> E/C.12/THA/CO/1-2 para 11

CESCR noting that there is a lack of implementation of environmental regulations, resulting in 'harmful effects on the health of the population'.<sup>111</sup>

The CRC Committee also drew attention to this issue in 2012, noting its concern that 'business and fast growing heavy industries, manufacturing, textiles, and export agriculture' resulted in 'pollution and environmental degradation that can undermine the well-being of children'.<sup>112</sup> It recommended that the State strengthen regulations for businesses operating in Thailand and for Thai companies operating abroad. CESCR also recommended strengthening implementation of child labour laws in order to hold businesses accountable for 'non-compliance with legislation'<sup>113</sup>; despite existing child labour laws, it remains a widespread issue, with children of migrants being especially vulnerable to labour exploitation.<sup>114</sup> Forced labour among adults and children alike is particularly prevalent in the fishing industry, with the Committee recommending the State to 'ensure that those employers violating labour rights are prosecuted'.<sup>115</sup>

The CESCR Committee identified ethnic minorities as being disproportionately affected by development projects, noting that they are often denied their right to ancestral lands and suffer the 'disproportionate effects of economic activities connected with the exploitation of natural resources'.<sup>116</sup> It urged the State to 'adopt a human-rights based approach to its development projects'.<sup>117</sup>

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<sup>111</sup> Ibid. para 31

<sup>112</sup> CRC/C/THA/CO/3-4 para 29

<sup>113</sup> E/C.12/THA/CO/1-2 para 25

<sup>114</sup> CRC/C/THA/CO/3-4 para 72

<sup>115</sup> E/C.12/THA/CO/1-2 para 20

<sup>116</sup> Ibid. para 10(a) and (c)

<sup>117</sup> Ibid. para 10 (c)

## **RECOMMENDATIONS**

This submission is intended to be a tool for engagement with, and discussion among, the full range of relevant stakeholders. In that regard, ISHR and FORUM-ASIA propose three sets of mutually reinforcing recommendations to the key actors in the area of business and human rights, which each have a key role to play in protecting HRDs who promote corporate respect for human rights and accountability for violation. Namely, this includes the UN Working Group on Business and Human Rights; the regional intergovernmental bodies of ASEAN; national and sub-national governments; and business enterprises with operations and investments in East Asia.<sup>118</sup>

### **The UN Working Group**

The UN Working Group has a unique ability to set the global agenda on discussions of business and human rights, including on remedy; to cooperate with and reinforce other actors within the UN system to address business-related human rights violations and abuses; and to spur action by States. In that regard, ISHR and FORUM-ASIA urge the Working Group to in the lead up to its Asia regional forum to:

- Systematically integrate the situation of HRDs into its work, including by play a stronger, more assertive role in amplifying the voices of victims of business-related human rights abuses
- Encourage business to proactively contribute to the protection of HRDs and civil society space
- Encourage governments to draft and implement National Action Plans which focus in process and substance on the participation and protection of HRDs
- Encourage governments to fully implement recommendations from the UN Treaty Bodies, Universal Periodic Review (UPR) and Special Procedures mechanisms that relate to the work of HRDs working on corporate accountability issues.
- Consider in its work the jurisprudence, general comments, and recommendations of UN treaty bodies and regional courts, as well as the findings included in thematic reports of the UN Special Procedures
- Ensure continued coordination and incorporation of practices and norms related to rights holders, specifically indigenous peoples per relevant UN standards, and ensure their full and effective participation, as well as that of other marginalised or vulnerable groups, in business and human rights-related multilateral activities (e.g. this regional forum, the UN Forum on Business and Human Rights, and – within the context of the Working Group’s engagement – the OEIGWG on the elaboration of a binding treaty).

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<sup>118</sup> Please note that detailed information from 2011-2012 consultations with HRDs in the region is also available in the FORUM-ASIA report [Corporate Accountability in ASEAN: A Human Rights-Based Approach](#).

- Advance a more effective individual complaint mechanism for reporting alleged human rights abuses committed by corporations, including a stronger focus on such cases when presenting the Working Group's reports to the Human Rights Council
- Develop a regular dialogue with public sector financial institutions, including national and multilateral development banks, to discuss their role in coordinating with the Working Group and advancing the implementation of the Guiding Principles.

### **ASEAN regional structures and bodies**

At least two key pillars of the ASEAN framework can be strengthened with regard to business and human rights. The AICHR and civil society participation through the ASCC and other existing ASEAN fora offer one option. In addition, proposed projects for the evolving ASEAN Economic Community (AEC) include cooperation on transportation, mining, and energy projects that could benefit from efforts to strengthen, through policy and political influence, attention to corporate accountability. ASEAN bodies should:

- Consider setting up a monitoring mechanism at the regional level, based on the highest international human rights obligations among the ASEAN countries, to oversee the implementation of policies, programs, and projects associated with ASEAN Economic Community (AEC) activities.
- Consider establishing a regional mechanism to hold corporations accountable if they violate human rights in their operations and to ensure that the victims receive adequate remedies
- Inaugurate an annual meeting with affected communities and CSOs from across the region to ensure that perspectives on business and human rights challenges from the ground can reach decisionmakers at the regional level, and to create a platform for sharing of experience among communities.
- Encourage governments to simplify procedures to bring witnesses and perpetrators to national courts, and facilitate the review of cross-border cases involving violation of land and other human rights in order to establish jurisprudence.
- Ensure space for independent media and journalists to report openly and without fear of retaliation or intimidation on issues related to business, human rights and environmental issues.

### **Governments in the East Asia region**

Governments need to act with urgency to protect HRDs working to promote corporate accountability, and to ensure that HRDs and communities do not face retaliation or reprisal for their efforts to engage with companies, or to press their own governments for a safe and enabling environment for their work. We call on governments of the East Asia region to:

- In line with their existing duty to promote and protect human rights, amend or repeal laws and policies that restrict the work of HRDs, including WHRDs, and investigate all human rights violations against them
- Enact specific laws on the recognition and protection of HRDs, and that facilitate their work in line with the UN Declaration on Human Rights Defenders, including those HRDs working to promote corporate respect for human rights and accountability for violations
- Strengthen the independence, mandate, capacity and resources of existing NHRIs, or establish NHRIs where they do not yet exist
- Ensure coherence between existing legal and regulatory frameworks related to investment and natural resource development and human rights (for example, ensuring that all impact assessments currently mandated in law and policy include a substantive human rights component)
- Develop National Action Plans on Business and Human Rights that reinforce existing international commitments and that include specific measures to support and protect HRDs
- Support the negotiation, in consultations with defenders and civil society, of a legally-binding international treaty for corporations and business entities with regard to human rights
- When embarking on major development projects, ensure that HRDs and affected communities are consulted; have access to information; and can fully participate in monitoring the implementation and impacts of the project
- Take measures to guarantee access to effective remedy by supporting public interest litigation and removing obstacles for public interest lawyers to represent affected persons and communities
- Ensure that corporations and business entities domiciled in the country are held fully accountable for human rights violations they commit, whether domestically or in their operations overseas
- Introduce legislation requiring public reporting by companies of the results and mitigation measures adopted through mandatory impact assessments

### **Corporate actors**

There is an important role for the private sector to play in the protection of HRDs and the creation of a safe and enabling environment for their work. In line with a recent call on business by a cross-regional group of 38 organisations from around the world, we encourage businesses including state-owned, joint venture, multinational, private and wholly-owned subsidiary companies among others, to consult, respect, and protect HRDs.<sup>119</sup> Concrete action in that regard should include:

- Desist from physical or legal attacks against HRDs, in any way supporting or facilitating direct or indirect interference with, the work of HRDs, including in

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<sup>119</sup> <http://www.ishr.ch/news/business-enterprises-consult-respect-and-protect-human-rights-defenders-says-cross-regional>

relation to their exercise of the rights to freedom of expression, association, peaceful assembly and protest

- Recognise the specific risks and protection needs of women human rights defenders, and taken specific action to address them in all business actions related to HRDs
- Advocate and seek remedy for HRDs at risk by speaking out proactively in support of an enabling environment for civil society, and in response when governments or other companies violate human rights through individual cases or structural (e.g. legal) change
- Facilitate access for HRDs, both to work sites and to information, and commit to transparency of environmental and human rights impact assessments and other safeguard processes
- Encourage host governments to create an enabling environment for investment **not** by easing legal regulations or offering favorable tax regimes, but by protecting human rights and fundamental freedoms, especially freedom of expression, assembly, and association
- Meaningfully consulting with communities HRDs in the design, implementation and evaluation of projects before business operations begin and periodically throughout the project, and in due diligence and human rights impact assessment processes, without preconditions and in line with international norms and best practices, including with relation to free, prior and informed consent
- Strengthen efforts to combat corruption in their operations, and publicly condemn the use of corruption, as well as any act of intimidation, threat, or attack against HRDs and organisations working to fight corruption
- Practice a zero-tolerance policy for human rights abuses throughout the supply chain
- Establish grievance mechanisms throughout the supply chain, and cooperate fully with alternative redress processes, including judicial processes
- Institutionalise and empower efforts to promote and protect human rights within the company's country operations, for example by appointing an ombudsperson or human rights 'team' that is trusted by civil society