



CORPORATE ACCOUNTABILITY IN THE CONTEXT OF HUMAN RIGHTS AND CLIMATE CHANGE IN THAILAND

Submission to the United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change regarding corporate accountability in the context of human rights and climate change in Thailand

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Manushya Foundation



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Submission to the United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change regarding Corporate Accountability in the context of Human Rights and Climate Change

1. Introduction

The 28th Conference of Parties to the United Nations Framework Convention on Climate Change (COP28) has further highlighted the strong influence business enterprises hold over the global climate efforts. With the record 2456 fossil fuel lobbyists attending the talks,¹ there is no doubt that corporations are strongly determined to sway climate action in the direction most convenient to them. The accountability of such enterprises is therefore of utmost importance, if we are to avoid the devastating impacts of global warming over the 1.5 degrees Celsius, as delineated by the Paris Agreement.

At this time, Manushya Foundation is responding to the call for input of the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, to inform its report on corporate accountability in the context of human rights and climate change, to be presented to the 56th Session of the UN Human Rights Council in 2024.

The first part of the submission presents several corporate accountability frameworks in Thailand, their scope, potential to hold corporate actors accountable for their environmental and human rights violations and also their limitations. Importantly, the chapter focuses on the role and capability of these mechanisms in climate-related reporting and offers several regulatory routes that could strengthen it, and consequently contribute to the global greenhouse gas emission mitigation efforts.

The second part deals with one of the most important current issues in Thailand: the carbon markets that have the potential to exacerbate the human rights violations on the forest-dwelling and indigenous communities that have been happening in Thailand for years. The submission also elaborates on their human rights safeguards and links to international frameworks.

2. Climate-related reporting and disclosure mechanisms in Thailand

2.1. National Action Plan on Business and Human Rights

Due to the ongoing efforts of the Thai government representatives as well as some UN agencies, the corporate accountability framework in Thailand has been mostly associated with the National Action Plan on Business and Human Rights (NAP-BHR).² The document published in 2019 was originally prepared with participation of the civil society sector, led by Manushya Foundation and our intersectional coalition, Thai BHR Network. In-depth inputs provided by representatives of Thailand's indigenous peoples, forest dwelling communities, women, LGBTIQ+ or sex workers groups, and many others, were eventually disregarded and crucial provisions on the protection of indigenous peoples, sex workers or human rights defenders were left out.³

Importantly, the NAP-BHR omitted any legally binding measures, or robust strategies to adopt them, be it mandatory human rights and environmental due diligence (mHREDD) or standalone legislation

on the protection of human rights defenders against strategic lawsuits against public participation (SLAPP). Equally lacking in the climate change-related concerns, the NAP-BHR has not provided any obligations or guidance for corporations to report on their climate targets, e.g. their greenhouse gas emissions reductions.

In 2022, the former Thai government introduced the draft NAP-BHR 2 that, however, did not address any of the serious shortcomings of the first version. Despite the strong opposition of community members and civil society led by Manushya Foundation in the second half of 2022,⁴ the NAP-BHR 2 was adopted on 25 July 2023.⁵ Although the document contains provisions that reference international human rights standards more than the previous version,⁶ it is still highly problematic. The drafting process was not adequate as public participation was limited, with restricted access to information. While the second NAP-BHR acknowledges the need to address climate change, indicating that “business must consider climate change issues into account when conducting operations” and *encourages* corporations to establish greenhouse gas accounting, the document repeats the same pattern of voluntary measures that have failed the first version of the Thai NAP-BHR. Hence, the Thai NAP-BHR 2 is likely to be ineffective.⁷

2.2. Flawed EIA reporting

The Environmental Impact Assessment (EIA) in Thailand is regulated by the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992), amended in 2018⁸ to be in line with the 2017 Constitution of Thailand. The law deals with the procedural aspects of the EIA, state agencies involved and timeframes of the process. Section 48 gives the Minister of Natural Resources and Environment the power to issue ministerial notifications that further specify the types of business projects that require an EIA report.⁹ The notification is also responsible for listing conditions of public hearing that should be organized as a part of the EIA process.

The EIA in Thailand contains certain guarantees for participation of communities but lacks in explicit provisions recognizing their rights, especially in the case of indigenous peoples and their right to ancestral lands and the right to a free, prior and informed consent, as per the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁰ The law or the ministerial notifications also do not require any climate-related reporting, e.g. on future greenhouse gas emissions, as the case is in other jurisdictions such as Japan.¹¹ The Thai government has also recently established a Strategic Environmental Assessment (SEA) Committee to elaborate on new rules for the SEA process.¹²

Despite the existing legislation on EIA, its practical application and enforcement are dysfunctional and subordinate to the interests of corporate actors. Even if mandatory climate-related reporting was integrated into the EIA, in the current situation, there are no guarantees that corporations would truly disclose their relevant data. Several cases below demonstrate the ineffectiveness of the EIA reporting and simultaneous violations of community members' rights to freedom of expression, right to access information or their right to a peaceful assembly.

2.2.1. Communities from **Nabon district**, Nakhon Si Thammarat province in the South of Thailand, staged a week-long protest in Bangkok in July 2022, to demand a Strategic Environmental Assessment as the Government had earlier promised the SEA needed to evaluate environmental risks of a planned biomass-burning plant.¹³ This type of a power plant could be

potentially dangerous to the health of the neighboring communities, however, sufficient assessment was not conducted.¹⁴

2.2.2. In **Thepa district**, Songkhla province, similarly in the South of Thailand, the government enterprise EGAT (Electricity Generating Authority of Thailand) planned a construction of a coal-powered plant, one of the flagship projects for “clean coal” power generation in the country. Despite its claims on successful public hearings,¹⁵ the EIA process was flawed and failed to provide accurate information to the nearby communities, ensure their effective participation and transparency of the process.¹⁶

2.2.3. The Chana Industrial Estate is a planned project in **Chana district**, Songkhla province, that became well-known all over Thailand, after more than 50 community members were arrested during their peaceful protest in Bangkok.¹⁷ The villagers demanded a Strategic Environmental Assessment of the project that would have far-reaching effects on their lives, livelihoods, and the environment. However, the community only learnt about the project after it had already been approved by the Cabinet and they were later actively prevented from attending public hearings and expressing their concerns.¹⁸

2.2.4. **Phichit** villagers have been fighting against the devastating impacts of a gold mine for over twenty years, after it had polluted groundwater, contaminated their farming land, and caused them serious health problems.¹⁹ Transparent EIA process had been a recurring issue since the start of the operations, during the expansion of the facilities and again, during the reopening of the mine in 2023, after a 5-year suspension.²⁰

2.3. ESG reporting

Thailand currently lacks a mandatory framework on ESG reporting applicable to all business enterprises, including the related reporting on climate change targets. In 2022, however, Thailand's Securities and Exchange Commission established an ESG reporting obligation on companies listed at Stock Exchange of Thailand (SET) which now must annually submit the so-called 56-1 One Report.²¹ While the report form requires information on human rights-related policies,²² including potential human rights violations cases, there are several shortcomings:

2.3.1. The 56-1 One Report requirements are not human rights-based and miss crucial elements such as specific information on meaningful consultations with concerned communities, protection of human rights defenders, gender focus or specific steps to protect indigenous peoples.

2.3.2. No International Human Rights Law sources (core human rights treaties or voluntary frameworks such as the UNGPs) are provided as a reference framework for human rights reporting.

One Report requests information on companies' greenhouse gas (GHG) emissions and policy framework on GHG emissions management. The GHG emissions are required to be reviewed by an entity registered with Thailand Greenhouse Gas Management Organization or “the reviewer the Company regards as having work widely accepted according to international standards.” The vague provision leaves in doubt the reliability of such GHG emission reporting data.²³

While the SET reporting requirements go further than the rest of Thailand's regulatory framework on corporate accountability with regards to reporting, they are still considerably limited in scope, as they are only applicable to SET-listed companies.

The SET also issued the “Sustainability Reporting Guide” which provides for more detailed reporting indicators on both human rights and GHG emissions. For instance, the human rights reporting indicators encourage companies to provide information on human rights due diligence measures, mitigation of negative human rights impacts, and provide the Universal Declaration of Human Rights and the UNGPs as a reference point.²⁴ The Guide, nevertheless, is completely voluntary and intended, for example, for SET-listed companies that would like to go beyond the requirements of 56-1 One Report.

2.4. Opportunities

2.4.1. mHREDD - Mandatory Human Rights and Environmental Due Diligence

The Thai experience shows that voluntary measures are not enough to prevent human rights violations by companies. Similarly, voluntary measures might not be enough to shed light on GHG emissions by corporate actors and reputation alone will not force them to reduce such emissions. MHREDD could be an effective instrument that would require companies to report on the future and current amount of GHG emissions from each project and emissions reduction target and progress. Human rights and environmental impact mitigation measures disclosed by companies should also take into account the impending effects of climate change such as the heightened risk of extreme weather events, and plan for appropriate adaptation measures.

Building on the UNGPs²⁵ and best practices stipulated in the 2018 report of the UN Working Group on Business and Human Rights²⁶ as well as Manushya's experience of working alongside Human Rights Defenders on the ground, legislation for mandatory human rights and environmental due diligence of companies should contain the following components:

1. **Impact Assessment of actual and potential human rights and environmental impacts and paths for their mitigation and remediation** in line with the UNGPs and the OECD Guidelines for Multinational Enterprises. The assessment should take into account the impending effects of climate change (e.g., the heightened risk of extreme weather events) and analyze how they will play out together with the impacts of the business operation itself. It should be led by communities, be **intersectional** and examine the differentiated impacts of business enterprises on various members of the community. Due diligence obligations should apply to both, the **company's own operations** and its **business relationships**, e.g., through its supply chains.
2. **Meaningful and ongoing consultations** with concerned **rights-holders**, following the requirements for the **free, prior and informed consent** (FPIC) especially for groups such as indigenous peoples, rather than tick-the-box exercises. Respect for **local decision-making** and ownership of the process must be ensured.
3. National **administrative body overseeing the implementation** of the mHREDD.
4. Comprehensive **access to remedy** guarantees and **civil and criminal responsibility** of companies.

5. **All business enterprises**, regardless of their size, should conduct HREDD, although its complexity might vary. **State-owned enterprises** must not be excluded from the application of mHREDD legislation.
6. Protection of **Human Rights Defenders** and **whistleblowers**.²⁷

2.4.2. Legally Binding Instrument (LBI) on Business and Human Rights

In light of the new legislative developments in Europe where Germany and France passed laws²⁸ containing mHREDD provisions and the insufficiency of the non-legally binding UNGPs, there is a strong need for an international legally binding instrument on business and human rights.²⁹ The most recent round of negotiations in October 2023 has made certain progress,³⁰ though more work is needed on the clarification of the scope of the instrument, integration of a feminist perspective,³¹ or clear and robust provisions on corporate accountability in the context of armed conflict.³²

The LBI should also address the situation of various marginalized groups such as indigenous peoples, women or the LGBTIQ+ individuals, clearly stipulate responsibilities of business enterprises of various sizes all along the value chain, contain mHREDD component and address access to justice and remedy for victims of corporate abuses. As mentioned in the previous section on mHREDD legislation, the due diligence component in the LBI could include climate-related reporting as one of the elements companies must cover in their disclosures of human rights and environmental risks and mitigation measures.

3. Carbon Credit Market in Thailand

Thailand aims to reach carbon neutrality by 2050 and net zero GHG emissions by 2065, a commitment they made at COP26.³³ However, Climate Action Tracker (CAT) states that Thailand's actions are insufficient. If all countries were to take the same steps as Thailand, we could expect global warming of 4°C.³⁴ As their reductions are measured against Business-as-usual (BAU) levels, which are disproportionately high, it makes their targets seem more ambitious than they are. The climate strategy strongly relies on reforestation to compensate for carbon emissions (instead of phasing out fossil fuels), which is where carbon credits enter the picture.

3.1. Carbon credit scheme in Thailand and T-VER program

Carbon credits were developed as a tool to aid the energy transition from fossil fuels to renewable energy, and as a mitigation technique against climate change. Their aim is to cut down on GHG emissions. A singular carbon credit is usually equivalent to a metric ton of CO₂. Each credit is priced on the carbon market, where governments and companies can buy credits to compensate for their own emissions and instead, reduce, sequester, or avoid them somewhere else. Once a credit is used, it is no longer tradeable, and becomes an offset³⁵

In 2007, the Thailand Greenhouse Gas Management Organization (TGO) was established, under the Ministry of Natural Resources and Environment (MNRE), with the responsibility of managing Thailand's greenhouse gas (GHG) emissions.³⁶ TGO launched the first carbon credit trading available in Thailand in 2014: Thailand Voluntary Emission Reduction Program (T-VER), which has since become one of the key schemes to reduce carbon emissions in the country.³⁷

There is no mandatory carbon market.³⁸ Instead, Thailand's carbon credit market is classified as voluntary, offset, and regional.³⁹ This means buyers and sellers can trade directly with each other. In 2023, Thailand launched FTIX, a Carbon Credit Exchange operated by the Federation of Thai Industries designed to allow private companies, foreign and local, and government agencies to trade carbon credits while keeping track online.⁴⁰ Thailand's carbon credit market is currently seeing positive developments thanks to Thailand's private sector, who have set climate action targets.⁴¹

T-VER also introduced their revised premium T-VER⁴² to meet international standards such as VERRA, allow foreign companies to take part in the carbon credit market, and use the credits towards their own climate action targets.⁴³ Premium T-VER has stricter safeguards in place, with a more rigorous application process, that requires project developers to submit a modality of communication (MoC) stating the project will not result in double counting of GHG gas emissions, including a variety of other forms to ensure the carbon credits contribute to SDG goals.⁴⁴ It also contains a provision that "Project activities shall not negatively impact the natural environment or local communities and do no net harm,"⁴⁵ however, no further details or references to human rights standards are provided.

Representatives of the TGO signed a Memorandum of Understanding with VERRA, an organization creating carbon credit standards and certifications, in 2022, agreeing that VERRA would support the Thai agencies on harmonizing the T-VER program with international standards. While the matter of this cooperation is purely VERRA's support for the T-VER program, not an application process for its certification, it could be a positive development in the long term, if Thailand decides to pursue one of VERRA's standards such as the Verified Carbon Standard (VCS). The VCS standard includes rights-based safeguards, specifically strengthened for projects in "Agriculture, Forestry, and Other Land Use", that mandate an environmental and social impact assessment, aim to minimize land conflict, take into account the customary land rights, forbid land evictions and work with the concept of free, prior and informed consent.⁴⁶ Nevertheless, the integration of a standard such as VCS into the premium T-VER program might still take a long time and until then, no robust safeguards are provided for rights-holders potentially affected by the project.

3.2. The role of carbon credits in Thailand's false climate solutions and greenwashing

Carbon credit trading has continued to grow since its introduction, and so have the complications arising from relevant policies. While carbon credits can be a short-term solution to aid climate mitigation, it is very far from a long term one. Voluntary Carbon Markets (VCMs) such as Thailand's, have been found to be "worthless"⁴⁷, as they often lack a comprehensive regulatory framework to verify the emissions. Recent research has found carbon offset projects to be massive scams, while businesses, governments, and even the UN, have taken part in these projects.⁴⁸ Thailand's carbon market is often referred to as an "Over The counter" market, where buyers and sellers can trade directly. This leads to a lack of transparency as only they know exactly where the carbon emissions and reductions are occurring. This allows space for companies to greenwash their emissions, claiming that they have offset their business operations without proper verification in place.⁴⁹

Additionally, land that is being used to create carbon sinks through reforestation projects allow authorities to evict communities from their homes. These forest communities have been maintaining their land and the forest for generations. Often making them well-preserved forest lands, therefore lacking the ability to adequately yield high results. It is also unfair for the communities who are losing

rights to their own land, instead corporations are able to sell these carbon credits and gain even more.⁵⁰ Worse still, the carbon market is introduced in the context of Thailand's false climate solutions, reforestation and conservation policies that are used to achieve the country's climate goals but have caused criminalization and forced evictions of thousands of people from their homes.⁵¹

Some of the most prominent cases where forest-dwelling and indigenous communities have been threatened by reforestation policies and are in danger of being evicted from their own lands are the cases of Sab Wai and Bangkloi villagers:

3.2.1. #SaveSabWaiVillagers: 14 villagers in Sab Wai village, Chaiyaphum province, were unfairly convicted of trespassing, utilizing, and clearing land in Sai Thong National Park, under Thailand's 2014 Forest Reclamation Policy and Orders 64/2014 and 66/2014 of the National Council for Peace and Order. Manushya Foundation has supported the community in advocating on the national and international level, however, the security of their land tenure is still not guaranteed.⁵²

3.2.2. #SaveBangkloi: In a similar case, since February 2021, over 100 residents of Bang Kloi have been forcibly removed from their homes and accused of encroaching on the forest. 22 of them have been detained as they refused to leave, and they were denied access to their lawyers.⁵³ Their case has lasted for years and the land conflict even involved an enforced disappearance of a land rights defender Billy.⁵⁴ The main suspects of the case, four national park officers, people who were last seen with Billy before he disappeared, were acquitted of murder in September 2023.⁵⁵

3.3. Application of Article 6 of the Paris Agreement in Thailand

Article 6 of the Paris Agreement⁵⁶ allows for carbon credit trading among countries. Any country can enter into a bilateral agreement with another country and purchase carbon credits from them. This reduction in greenhouse gas emissions is then counted towards the purchasing country's Nationally Determined Contributions (NDCs), the share of each country in global greenhouse gas mitigation efforts.⁵⁷ In other words, Article 6 enables transactions between two states where one state finances measures to reduce greenhouse gases (e.g. renewable energy projects) on the territory of a host state and in exchange, counts the greenhouse gas emissions savings towards its own net zero targets.

One of the issues that have not been fully clarified for the application of Article 6 have been so-called "corresponding adjustments", an accounting mechanism that would prevent the buyer and seller country from both counting the same reductions in GHG emissions.⁵⁸

Thailand has so far proved attractive to foreign countries seeking to purchase carbon credits abroad. It is one of only 42 countries worldwide which have already signed a bilateral agreement for a project under Article 6, and 3 out of only 7 purchasing countries have chosen Thailand as a host country (Switzerland, Singapore and Japan).⁵⁹ Under Thailand-Switzerland partnership, the Swiss Klik Foundation finances an electrification of Bangkok's privately run bus fleet⁶⁰ and the subsequent carbon credits will represent the first ITMOs (Internationally transferred mitigation outcomes) transfer to happen under Article 6.⁶² Japan, through its Joint Crediting Mechanism, supports the transfer of low-carbon technologies (including renewable energy solutions) in Thailand, and currently has 11

registered projects in the country.⁶³ No details on the Singapore-Thailand partnership have been disclosed yet.

The fact that Thailand is on track to become a popular option for buyer countries under Article 6 is also showcased by two further initiatives, both of them supported by the International Climate Initiative (IKI): (1) IKI is currently conducting a pilot project in Thailand's Krabi, scoping the ITMOs potential of electrification of its busline.⁶⁴ (2) Thailand became one of 4 countries globally to be included in the "Supporting Preparedness for Article 6 Cooperation" project, intended to prepare these countries for Article 6 carbon credit trading.⁶⁵

While there is no information on human rights violations linked to current projects under Article 6 in Thailand, it is necessary to remain cautious and exert pressure on regulatory bodies to create and enforce human rights-compliant safeguards for these projects. As per the Carbon Credit Management Guide and Mechanism,⁶⁶ greenhouse gas emission reductions from the forestry sector are one of the project types eligible for the international carbon credit trading. However, in the context of persistent violations of the rights of indigenous peoples and forest-dwelling communities, as showcased in the previous section, carbon credit schemes for international trading could have devastating impacts on the already impoverished and dispossessed populations.

It is evident that ongoing land conflicts, insufficient policy safeguards, the lack of protection for land rights defenders and their criminalization, create a particularly dangerous context for carbon markets in Thailand. With the national reforestation-focused climate strategies and the lack of corporate accountability linked to business operations around the country, be it gold mining or tourism, it can be anticipated that carbon credit projects will gain priority in Thailand's development strategies and just as any "development" project, will involve large-scale human rights abuses.

Similarly to our requirements in the first chapter of the present report, mandatory human rights and environmental due diligence (mHREDD) should be a requirement for carbon credit trading projects. It would have to include meaningful consultations with concerned rights-holders, including their free, prior and informed consent (FPIC) with each project and protection of land and environmental human rights defenders.

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Corporate accountability in the context of human rights and climate change in Thailand



Manushya Foundation, Submission to the United Nations Special Rapporteur on the promotion and protection of human rights in the context of climate change regarding corporate accountability in the context of human rights and climate change in Thailand, 11 December 2023



#JUSTTRANSITION

#CLIMATEJUSTICE



About Manushya Foundation

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



MANUSHYA

#WeAreManushyan ∞ Equal Human Beings

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