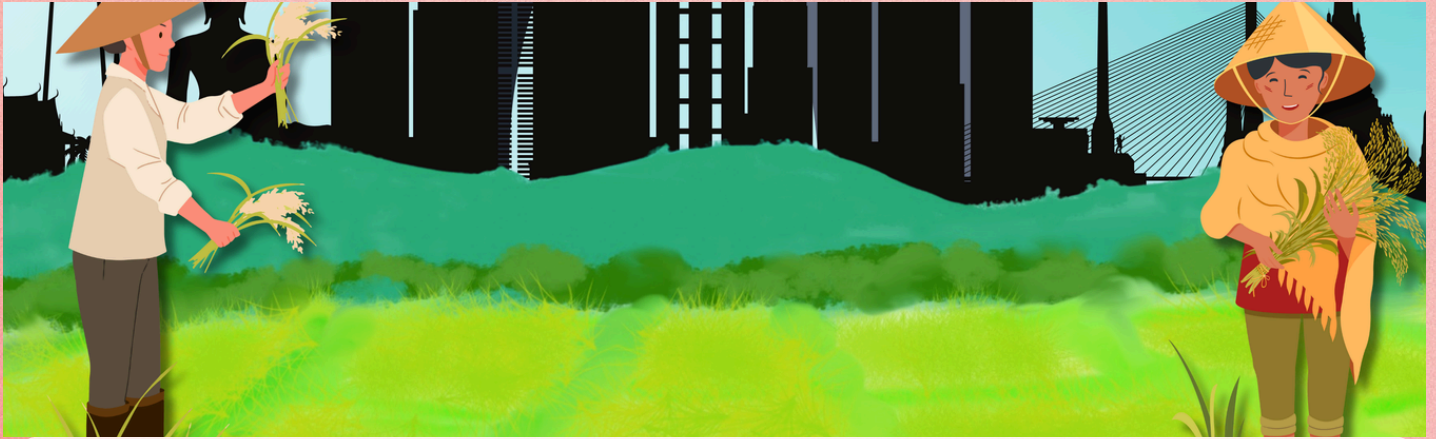


SUSTAINING THAILAND'S SMILE: RESPONSIBLE BUSINESS, THE ONLY KEY TO OECD MEMBERSHIP

Policy Brief on Thailand's Application to the OECD

August 2024





Sustaining Thailand's Smile: Responsible Business, the Only Key to OECD Membership, Policy Brief on Thailand's Application to the OECD

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1. Introduction

On April 16 2024, Thailand's Deputy Prime Minister and Minister of Foreign Affairs submitted their letter of intent to apply for membership of the Organisation for Economic Cooperation and Development (OECD) at the organisation's headquarters in Paris.¹ On 17 June 2024, the OECD Council opened accession discussions with Thailand.²

The OECD is an international organisation which establishes international standards on a range of economic and social issues including corporate governance, corruption and integrity, employment, environment and investment. Among those standards, the OECD adopted the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), a set of recommendations addressed to companies for responsible business conduct, with at their core, risk-based due diligence.

OECD's 38 member countries are located in Europe, North and South America and Asia-Pacific. If Thailand successfully accedes to the organisation, it would become the first OECD member country from Southeast Asia. Throughout the several year-long accession process, the OECD will assess Thailand's willingness and ability to implement relevant OECD legal instruments, policies and practices.³

2. Thailand's Collaboration with the OECD

Thailand has been collaborating with the OECD over the past decade and on 17 March 2023, Thailand Country Programme was renewed for Phase 2 (2023-25). This programme which is made of 19 projects under four key pillars aims to support Thailand's domestic reforms to bring the country closer to OECD standards. One area of work consists of 'Deepening Collaboration to Promote Responsible Business Conduct', notably through the implementation of Thailand's National Action Plan on Business and Human Rights (NAP-BHR). Outputs will consist of awareness raising with businesses; training, capacity building and policy reviews on mainstreaming Responsible Business Conduct (RBC); promoting and integrating RBC among the financial sector; experience sharing and peer learning on RBC policies; and expanding technical collaboration in policy.⁴

3. Thailand's Responsible Business Conduct Record

Thailand adopted the first NAP-BHR in 2019 and the second version in September 2023.⁵ While Thailand, as the first Asian country to adopt a NAP-BHR, could have been a leader in RBC, it has missed the opportunity to ensure adequate change and corporate accountability,⁶ by failing to provide a 'smart mix' of voluntary and mandatory measures in accordance with the UN Working Group on Business and Human Rights' guidance on NAP-BHR.⁷ The first version failed to include concerns brought up by civil society during the drafting process. Through our #StopNAPping campaign, Manushya has expressed disappointment with the implementation of the first NAP-BHR and disengaged with the development of Thailand's updated NAP-BHR. We note that the second version still takes an overall weak stance by only encouraging ('should') companies to: conduct human rights due diligence, environmental impact

assessment and environmental and health impact assessment, avoid prosecuting human rights defenders, provide information and establish operation grievance mechanisms. Further, participation of relevant stakeholders in the drafting process was limited.⁸ Therefore, it is unfortunate that the promotion of RBC under Thailand Country Programme mainly relies on the implementation of the NAP-BHR.

Further, while Thailand has already adhered to eleven OECD legal instruments, none of them relate to RBC.⁹ As a comparison, all countries candidates for acceding to the OECD (with the exception of Indonesia)¹⁰ have adhered to the Declaration on International Investment and Multinational Enterprises which contains the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.¹¹

While Thailand is portrayed by the international community as a leader of RBC, local communities in Thailand and in neighboring countries have been adversely impacted by Thai companies' activities and investments and have been struggling to get justice and reparation.

For instance, communities in the provinces of Phichit and Phetchabun in Central Thailand have been severely impacted by the activities of the Chatree gold mine owned and operated by Akara Resources Public Company Limited, a Thai company.¹² Since the opening of the mine, villagers living in the vicinity of the mine have experienced multiple abuses of their human rights, namely their right to information, consultation and public participation, right to clean, healthy and sustainable environment, right to water, right to land, right to adequate standard of living, right to health, and right to effective remedy. Further, human rights defenders faced intimidation and threats from both the company and authorities. Eight years after filing a class action lawsuit, proceedings are still at the early stage.¹³

Another example are survivors of the 2018 Xe-Pian Xe-Namnoy dam collapse in Attapeu province in Laos. The flood damage displaced over 7000 people and left at least 71 people dead or missing.¹⁴ The dam was developed by a consortium of companies including the Thai company Ratchaburi Electricity Generating Holding Public Company (with 25% equity) and was financed by four Thai banks, namely Krung Thai Bank, Ayudhya Bank, Thanachart Bank, and the Export-Import Bank of Thailand.¹⁵

Further, a recent report by the UN Special Rapporteur on the situation in Myanmar revealed how Thai banks are enabling the military junta to sustain and continue its attacks against civilians by providing banking service to state-owned banks under the control of the junta and continuing processing transactions related to military procurement. In 2023, Thai banks came to account for roughly half of the junta's total military procurement, with Siam Commercial Bank itself processing over US\$100 million.¹⁶

Finally, any person raising their voices about corporate abuses is particularly at risk in Thailand as human rights and environmental defenders face intimidation, threats, Strategic Lawsuit Against Public Participation cases (SLAPP) and killing. Between 1991 and 2021, 37% of human rights defenders facing harassment in the context of business were killed.¹⁷

SLAPP are court proceedings initiated against individuals who engage in public participation on matters of public interest to deter them by intimidating them and draining their resources. They constitute an abuse of the legal system and are typically disguised as civil or criminal

claims such as defamation. In Thailand, defamation is a criminal offence. Sections 326 and 328 of the Criminal Code include penalties of imprisonment of up to two years and a fine of up to 200,000 THB (US\$5,700). Criminalisation of defamation falls short of international human rights law standards. Defamation is also a civil offence under Thai law. Section 423 of the Civil and Commercial Code includes compensation.

Between 1997 and 2022, approximately 109 SLAPPs were initiated by companies, including state-owned companies. The majority of cases were filed by mining companies (34%), followed by livestock companies (21%) and energy companies (13.8%). Those cases were brought against villagers whose rights had been violated (78%), activists and NGOs (10%), trade unionists (6%) and journalists (3%).¹⁸ Women human rights defenders are particularly at risk. Between 2014 and 2022, at least 450 of them were SLAPPED.¹⁹ Urban poor women facing eviction and women defending land and natural resources in their communities have been particularly targeted.²⁰ In 2022, the UN Working Group on Business and Human Rights urged the Thai government to take action to stop companies from using the legal system to silence human rights defenders.²¹ Few months later, in March 2023, the National Human Rights Commission of Thailand released its 2022 Human Rights Report in which it identified that 147 human rights defenders had been threatened, intimidated, injured, murdered or sued. The Commission recommended the government to clearly define in law 'human rights defender', to enact a law to prevent SLAPP cases, and ensure human rights defenders receive adequate support and protection.²²

4. What will OECD membership mean for Thailand in terms of Responsible Business Conduct?

The Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises, as any decision from the Council, is binding on members.²³ While the Guidelines are recommendations addressed by governments to multinational companies on how to act responsibly on various topics including human rights, labour rights, the environment and disclosure, members must further their effectiveness. Additionally, members have the obligation to set up a National Contact Point (NCP) responsible for promoting the guidelines and handling cases of alleged non-compliance by companies.

Focus on the National Contact Point

The National Contact Point:

1. Promotes awareness and uptake the OECD Guidelines for Multinational Enterprises;
2. Contributes to the resolution of issues that arise in the implementation of the OECD Guidelines for Multinational Enterprises.

The National Contact Point may also provide support to efforts by their government to develop, implement, and foster coherence of policies to promote responsible business conduct.

The National Contact Point must operate in a way that is:

- Visible,
- Accessible,

- Transparent,
- Accountable,
- Impartial and equitable,
- Predictable,
- Compatible with the OECD Guidelines for Multinational Enterprises

Hence, by joining the OECD Thailand will have to strengthen its legal framework to ensure the effectiveness of the Guidelines notably to ensure that companies undertake risk-based due diligence to identify, prevent, mitigate and account for how they address actual and potential adverse impacts on matters covered by the Guidelines. This would require Thailand to adopt mandatory human rights and environment due diligence legislation.

Regarding the establishment of a NCP, Thailand will have to ensure among others that its NCP has the necessary human and financial resources, access to relevant expertise, and is composed of diverse stakeholders' representatives to avoid becoming a weak and useless mechanism for affected individuals and communities.²⁴

In addition to the Guidelines, the OECD has over the years adopted a series of recommendations related to RBC covering various issues and sectors such as the Recommendation of the Council on the role of Government in Promoting Responsible Business Conduct and the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises. Despite not being legally binding, recommendations are expected to be implemented by members.²⁵

This would require for instance Thailand to ensure that:

- 1) where the state acts as an economic actor it complies with RBC standards. This should include procurement and activities of state-owned companies.
- 2) the financial sector is included in the scope of RBC related legislation such as mandatory human rights and environmental due diligence.
- 3) special economic zones are not exempted from complying with RBC standards.

5. Conclusion

Since the adoption of the NAP-BHR 1 and 2, international actors and donors have presented Thailand as a leader of responsible conduct despite realities on the ground, notably for communities. The international community's role must be to ensure Thailand's effective compliance with international standards and to challenge its record to avoid contributing to official whitewashing.

With this application, Thailand has expressed its will to reach and comply with leading international standards. This can only be welcome. However, Thailand's efforts and commitments should not be limited to purely economic aspects. If the main goal of joining the OECD is, as Mr Prommin Lertsuridej, Secretary-General to the Prime Minister said, "to improve the quality of life for our people"²⁶ ; now more than ever Thailand should take a stronger stance on responsible business conduct to ensure that companies respect human rights and the environment when operating and are held accountable.

Endnotes

- ¹ Prachachat, *ไทยสมัครสมาชิก OECD อย่างเป็นทางการแล้ว หวังยกระดับประเทศ-ช่วยเศรษฐกิจโต 1.6%*, (16 April 2024), available at: <https://www.prachachat.net/world-news/news-1544639>
- ² OECD, *Roadmap for the OECD accession process of Thailand*, (10 July 2024), available at: [https://one.oecd.org/document/C\(2024\)118/FINAL/en/pdf](https://one.oecd.org/document/C(2024)118/FINAL/en/pdf)
- ³ OECD, *Our global reach*, available at: <https://www.oecd.org/about/members-and-partners/>
- ⁴ OECD, *OECD-Thailand Country Programme Phase 2 2023-2025*, (17 March 2023), available at: <https://www.oecd.org/southeast-asia/countries/thailand/>
- ⁵ National Action Plans on Business and Human Rights, *Thailand*, (22 February 2024), available at: <https://globalnaps.org/country/thailand/>
- ⁶ Manushya Foundation, *Communities let down by Thailand's NAP-BHR fight back: It's time to #StopNAPping!*, (2 November 2022), available at: <https://www.manushyafoundation.org/post/communities-let-down-by-thailand-s-nap-bhr-fight-back-it-s-time-to-stopnapping>
- ⁷ UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, (November 2016), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf
- ⁸ ICJ, *Thailand: Government and companies must effectively implement commitments under the National Action Plan on Business and Human Rights*, (20 September 2022), available at: <https://www.icj.org/thailand-commitments-on-business-and-human-rights/>
- ⁹ OECD, *OECD-Thailand Country Programme Phase 2 2023-2025*, (17 March 2023), available at: <https://www.oecd.org/southeast-asia/countries/thailand/>
- ¹⁰ OECD, *Our global reach*, available at: <https://www.oecd.org/about/members-and-partners/>
- ¹¹ OECD, *OECD Declaration and Decisions on International Investment and Multinational Enterprises*, available at: <https://www.oecd.org/investment/mne/oecddeclarationanddecisions.htm>
- ¹² Akara Resources Public Company Limited is the subsidiary of Kingsgate Consolidated Limited, an Australian company.
- ¹³ Manushya Foundation, *#JusticeForPhichit Fighting for Corporate Accountability*, available at: <https://www.manushyafoundation.org/justice-for-phichit> ; see also 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), available at: <https://www.manushyafoundation.org/corporateaccountabilitythailand>
- ¹⁴ Manushya Foundation, *Follow-Up UN Complaint to seek Justice for the Survivors of the Xe-Pian Xe-Namnoy Dam collapse in Attapeu Province, Laos*, (28 February 2022), available at: <https://www.manushyafoundation.org/followup-un-complaint-on-attapeu-xpxn-dam-collapse> ; Manushya Foundation, *News Release: Responsible governments and implicated companies must ensure safety and effective access to information of communities living near the Nam Theun 1 dam in Laos*, (23 August 2022), available at: <https://www.manushyafoundation.org/23-aug-news-release-on-nam-theun-dam-1>
- ¹⁵ OHCHR, *Untitled communication: United Nations Human Rights Council to Xe-Pian Xe-Namnoy Power Company*, (17 April 2020), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25088>
- ¹⁶ UN Special Rapporteur on the situation in Myanmar, *Banking on the Death trade: How Banks and Governments Enable the Military Junta in Myanmar*, (26 June 2024), available at: <https://www.ohchr.org/en/press-releases/2024/06/myanmar-report-un-expert-spotlights-role-foreign-banks-facilitating-probable>
- ¹⁷ UNDP, *Protection of Human Rights Defenders in Thailand*, (27 September 2023), available at: <https://www.undp.org/thailand/publications/protection-human-rights-defenders-context-business-and-human-rights>
- ¹⁸ UNDP, *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, (27 June 2023), available at: <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>

¹⁹ Manushya Foundation, *Emilie Pradichit: #StopSLAPP: “The NAP is not bringing any change!”*, (17 October 2022), available at: <https://www.manushyafoundation.org/post/emilie-pradichit-stopslapp-the-nap-is-not-bringing-any-change>

²⁰ Protection International, *Silencing Justice: Battling Systematic SLAPP Attacks on Women and Human Rights Defenders in Thailand*, (30 August 2023), available at: <https://www.protectioninternational.org/news/slapp-attacks-in-thailand/>

²¹ OHCHR, *UN experts concerned by systematic use of SLAPP cases against human rights defenders by businesses*, (16 December 2022), available at: <https://www.ohchr.org/en/press-releases/2022/12/un-experts-concerned-systematic-use-slapp-cases-against-human-rights>

²² National Human Rights Commission of Thailand, *2022 Human Rights Assessment Report of Thailand*, (March 2023), available at: <https://www.fortifyrights.org/downloads/NHRCT%20report%202022.pdf>

²³ OECD, *OECD Legal Instruments*, available at: <https://www.oecd.org/legal/legal-instruments.htm>

²⁴ OECD Watch, *NCP Evaluations*, available at: <https://www.oecdwatch.org/indicator/>

²⁵ OECD, *OECD Legal Instruments*, available at: <https://www.oecd.org/legal/legal-instruments.htm>

²⁶ Bangkok Post, *Thailand begins OECD membership process*, (18 April 2024), available at: <https://www.bangkokpost.com/business/general/2777899/thailand-begins-oecd-membership-process>

