

Joint Open Letter to organizers and stakeholders of 4th United Nations Responsible Business and Human Rights Forum “Harnessing Levers of Change” Asia Pacific to be held in Bangkok 20 -22 September 2022.

19 September 2022

To *United Nations Responsible Business and Human Rights, International Labor Organization (ILO), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), United Nations Environment Program, Special Procedures of the Human Rights Council, United Nations Children’s Fund (UNICEF), United Nations Development Program (UNDP) Office of the High Commission on Human Rights (OHCHR) SE Asia Region, and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), United Nations International Organization for Migration (IOM)*

We, the undersigned organizations and individuals, wish to request that all organizations and stakeholders working on Business and Human Rights intervene and highlight the failure of the *Thai National Action Plan on Business and Human Rights* and associated legislation to effectively address the ongoing situation of judicial harassment of women and men Human Rights Defenders (HRDs) in Thailand.

In March 2019 a new Section 161/1 of the Thai Criminal Procedure Code took effect. It aimed to strengthen the court's power to dismiss any criminal case at the filing stage of the lawsuit if it appears to the court that the cause of action stems from ill intention (1) to harass (2) to take advantage over a person (3) to gain any unlawful benefits or (4) to achieve any corrupt underlying objectives. It was hoped it would be used to protect the rights of HRDs facing judicial harassment via Strategic Litigation against Public Participation (SLAPP). Later in the year on the 29 October 2019, the Thai Cabinet approved and adopted the First NAP (2019-2022).

On June 7, 2020, an Open Letter signed by 53 organizations and 23 individuals was submitted to the organizers of the *United Nations Virtual Forum on Business and Human Rights: New Challenges. New Approaches, Asia and the Pacific* ahead of forum held on June 9 -11, 2020

That letter raised concerns that the NAP and new legislation was not providing protection or support for women and men Human Rights Defenders (HRDs) against judicial harassment that breaches the UN Guiding Principles on Business and Human Rights. The letter highlighted that the ongoing judicial harassment and SLAAP cases were violating all three pillars of United Nations Guiding Principles on Business and Human Rights.

Now, two years later, we again raise serious concerns about the lack of progress and ongoing failure of compliance by the Thai government to address judicial harassment that is seemingly designed to silence HRDs who identify serious human rights abuses of workers, communities or the environment.

The most common complaint lodged against HRDs is defamation. Unlike many other countries, defamation is a criminal offense under Thailand’s Penal Code (Offence Against Liberty

and Reputation Section: 0326 – 0333) and 90% of cases are tried under this criminal code. The lawsuits are aimed to undermine the work of protecting rights to livelihood, land, housing, the environment, and local natural resources. Judicial harassment and SLAAPs are creating a climate of fear and silence amongst HRDs and communities whose rights are being (or at risk of being) violated.

More than 450 WHRDs have been subject to intimidation and harassment through SLAPPs in the past eight years since the military coup. Over ten of these incidents have occurred since the passing of legislation and during the period of the First NAP.

A current example in point is the defamation charges levelled against three prominent women HRDs (WHRDs):

In October 2019, four days before Thailand's NAP came into effect, and seven months after increased anti-SLAAP legislation was enacted, Angkhana Neelapaijit, former National Human Rights Commissioner, human rights expert and a member of the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), had a charge of criminal defamation lodged against her by Thammakaset Co.Ltd. In June 2020 further charges were made including those against two other WHRDs, Puttanee Kangkun, Director of The Fort, a space for exchange of agents for change in Southeast Asia, and Thanaporn Saleephol, former staff member of Fortify Rights. The defamation charges they face carry penalties ranging between prison sentences of 8 – 42 years, and fines ranging \$US25,000 – US\$133,000.

In 2016 Thammakaset Co. Ltd filed cases against 14 migrant workers from Myanmar. The company alleged the workers had given false information to the National Human Rights Commission (NHRC) and that the workers had also made false reports in the lawsuit filed with the Labor Court concerning labor rights abuses and breaches of labor law. The company also lodged defamation cases against defenders who shared news or information regarding human rights abuses allegedly committed by the company. This included charges made against Suchanee Cloitre, former journalist who retweeted news about the worker's labor case, Sutharee Wannasiri of Fortify Rights, and Ngamsuk Ruttanasatain, a WHRD and an academic from the Institute of Human Rights and Peace Studies of Mahidol University. The court dismissed the defamation case against the 14 workers citing that the information they had given to the NHRC was true and they had exercised their rights in good faith to lodge their complaints with concerned authorities. The Supreme Court ruled that the workers had to be awarded compensation from their employer for the amount of 1.7 million baht. The cases against the women HRDS supporting the workers were also eventually dropped or dismissed. Most recently on 9 August 2022, the Supreme Court dismissed the defamation case against journalist Suchanee Cloitre.

However defamation suits against WHRDs, Angkahna , Puttanee and Thanaporn, continued with preliminary hearings drawn out for nearly three years. The charges against the three WHRDs are primarily based on their expressions of support and solidarity with the WHRDs being sued by Thammasek Co Ltd at the time. For example, one of the charges concerns a tweet by Angkhana that reads “Stand by Women Human Rights Defenders, Stop SLAPP Cases”.

On 12 September 2022, just days before the 4th United Nations Responsible Business and Human Rights Forum takes place, the South Bangkok Criminal Court ruled that the defamation case against the WHRDs will go to trial. The proceedings are scheduled for 14 November 2022 and the WHRDs released on their own recognizance. Thammasek Co Ltd has to date lodged at least 39 complaints against 22 Human Rights Defenders, yet the Criminal Procedure Code's Section 161/1 (that the plaintiff had exercised their right in bad faith to harass the defendant) was not allowed. Since its enactment, applications by HRDs to invoke Article 161/1 to date have been denied. Terms such as "bad faith" are not defined in the law, and its interpretation is left to the Court's discretion.

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

The impact of judicial harassment by businesses against Human Rights Defenders cannot be underestimated. It wastes time and consumes resources that HRDs could otherwise use to further defend and protect human rights and improve society. Prominent WHRDs are forced to spend precious time and resources defending themselves in court, often taking years to resolve. Less well-known WHRDs such as community-based WHRDs often have even fewer resources and are very time-poor; therefore, the judicial harassment has a devastating impact to them and their families.

Facing legal charges is not just time consuming and costly but has a tremendous negative effect on one's emotional well-being and quality of life. HRDs are embedded in long term struggles against human rights violations and defending communities on many fronts. The work of defending rights is often unrecognized, unwaged, and always unrelenting. In this context being hit with a defamation or SLAPP charge can be crushing.

If such judicial harassment is allowed to exist unchecked by the government, the important work of defending human rights will become more dangerous and untenable. Such ongoing judicial harassment is preventing *Responsible Business and Human Rights* from becoming a reality in Thailand.

The draft of the 2nd Thai NAP concludes its online public consultation on 19th September 2022. There was no suitable evaluation of the 1st NAP. Evaluation of the first NAP was concerned only with quantitative indicators. For example, how many meetings were held, how many people participated etc. rather than who participated and what was the level of participation in decision making. The draft of the 2nd NAP has still not outlined a thorough evaluation method. As with the previous NAP, there is still no clear procedure or provision for fining or otherwise penalizing businesses who have been found guilty of trying to resort to judicial harassment of HRDs. There

must be political, financial, and judicial consequences for those responsible for attacks on HRDs or those who neglect their duty of care to prevent such attacks, including judicial harassment.

We the signatories urge the **UN Forum on Responsible Business and Human Rights** to use this opportunity to take a firm stand on the issue of the Thai government's compliance with the protection of HRDs from judicial harassment and other SLAAP actions. The Thai government must act in accordance with their own The Action Plan for Human Rights Defenders, NAP, the recommendations of the UNWG, and within the spirit of the Guiding Principles that state "When human rights are violated by companies, governments must provide a robust and appropriate remedy for those affected." The Thai government must adhere to the Guiding Principles on Business and Human Rights: by implementing the United Nations "Protect, Respect and Remedy" Framework.

In particular, we ask the UN Responsible Business and Human Rights and organizers of the Forum to raise the following points with the Thai Government:

1. We call on the Thai government to report on their compliance with the Guiding Principles on Business and Human Rights and the recommendations made by the United Nations Working Group on Business and Human Rights in 2018.
2. Urgently review Section 161/1 of the Thai Criminal Procedure Code to provide clearer direction do it can be used such as defining "bad faith".
3. Defamation, even when proven, is not an offense that is harmful to one's life, body, or property. It should not be considered or treated as a criminal offense which carries a sentence of imprisonment and/or large fines. Such are sentences usually reserved for serious crimes. We urge the UNRBHR and other agencies to strongly encourage the Thai Government decriminalize defamation.
4. We call on all stakeholders who work on business and human rights to spend their resources and power to ensure that the Thai Government and all relevant business enterprises immediately end judicial harassment of HRDs, with a special strategy to address the differentiated impact of SLAPP on women HRDs, and to take concrete steps to promote good business with a genuine commitment to human rights.
5. In 2019 Thailand NAP was heralded as the first in Asia. We urge the UNRBHR to independently evaluate the outcomes, strengths and weaknesses of the first NAP and review the draft 2nd NAP, for the benefit of the Thai government and other governments in Asia Pacific who may be considering drafting a NAP.

Signatory:

1. Korphue Dismentle Dictator, Thailand
2. Life and community of Mun river, Thailand
3. Empower Foundation, Thailand
4. Community Women Human Rights Defenders collective in Thailand
5. The Four Regions Slum Network, Thailand
6. The Southern Peasant Federation of Thailand (SPFT), Thailand
7. DuayJairak Group, Thailand
8. Enlaw Foundation, Thailand
9. Campaign for Public Policy on Mineral Resources (PPM), Thailand
10. Ecological and Cultural Study Group, Thailand
11. Thai Network of People Who Own Mineral Resources, Thailand
12. KhonRakBamnetNarong , The Anti- Potash mining group, Chaiyaphume, Thailand
13. KhonRakBanKerd in 6 villages, The Anti gold mining group, Loei, Thailand
14. RakWanonNiwat , The Anti Mining group ,Sakon Nakhon , Thailand
15. RakKhamPaLai , The Anti Mining group , Mukdahan, Thailand
16. The Community of Khao Lao Yai-Pha Jun Dai Forest Conservation Group, NongBualamphu, Thailand
17. RakBanHeang,The anti-mining group, Lampang, Thailand
18. KhonLaoHaiNgam Anti mining group, Kalasin, Thailand
19. Community Rights Association of KhoaKuha (The anti-quarry mining in Songkha),Thailand
20. KhonRakBanKerd Dan Khun Thot (The Anti- Potash mining group, Dan Khun Thot District, Nakhon Ratchasima), Thailand
21. Union for Civil Liberty(UCL), Thailand
22. Women's Studies Center, Chiang Mai University, Thailand
23. Labor network for people rights, Thailand
24. People's Democracy Movement of Thailand (PDMT), Thailand
25. Assembly of the Poor, Thailand
26. Just Economy and Labor Institute; JELI, Thailand
27. People's Empowerment Foundation, Thailand
28. MAP Foundation, Thailand
29. Community Resource Centre Foundation (CRC), Thailand
30. Friends Without Borders Foundation, Thailand
31. Manushya Foundation (Manushya), Thailand
32. Project SEAVANA
33. NGO coordinating committee on Development (NGO-COD), North East Chapter, Thailand
34. Global Women's Strike (Canada, India, Ireland, Peru, Thailand, UK, USA)
35. Selma James, International Wages for Housework Campaign
36. International Prostitutes Collective network
37. Legal Action for Women, UK
38. WinVisible (women with visible and invisible disabilities), UK
39. Queer Strike, UK

40. Payday men's network (UK)
41. Payday men's network(USA)
42. Lawyers' Rights Watch, Canada
43. Radical Grandma Collective, USA
44. Black Women for Wages for Housework, USA
45. Women of Color/Global Women's Strike, USA
46. Women of Color/Global Women's Strike, UK
47. Future Light Center from Myanmar
48. Protection International (PI)
49. Asociación de Trabajadoras del Hogar a Domicilio y de Maquila. ATRAHDOM ,GUATEMALA
50. Local 631 of the National Farmers Union, Unity Saskatchewan, Canada
51. Women in Action on Mining in Asia
52. Migrant care, Indonesia
53. Pacific Focal Point Migration
54. North South Initiative, Malaysia
55. Malaysians Against Death Penalty and Torture (MADPET), Malaysia
56. Worker Hub for Change (WH4C), Malaysia
57. Network of Action for Migrants in Malaysia, Malaysia
58. National Union of Transport Equipment & Allied Industries Workers, Malaysia
59. Sarawak Dayak Iban Association. (SADIA.hq.), East Malaysia
60. LILAK (Purple Action for Indigenous Women's Rights), Philippines
61. We Women Lanka Network, Sri Lanka
62. National Fisheries Solidarity movement, Sri Lanka
63. Jagaran, Nepal
64. Worec (women's rehabilitation Center) ,Nepal
65. Tarangini Foundation, Nepal
66. National alliance of Women Human rights Defender, Nepal
67. The Asian Forum for Human Rights and Development (Forum-Asia)
68. Asia Pacific Forum on Women, Law and Development (APWLD)
69. the Federation of Indonesian Trade Unions (FSBPI), Indonesia
70. Women's Centre ,Sri Lanka
71. All African Women's Group, UK

Individual Signatory

1. Roshni Tariqyati Tanzeem (Pakistan)
2. The William Gomes Podcast, UK
3. Margaret Prescod (USA)
4. Phoebe Jones (USA)
5. Dean Kendall (USA)
6. Chutima Chuenhuajai
7. Somrudee Pimolnartketsara
8. Nithi Rungtanapirom
9. Suchanan Nonthasoot
10. Kamphon Yalai
11. Pobporn Khumtong

12. Rapasphog Phukasma
13. Jarik Krobtong
14. Rattana Khongsuphol
15. Phatchara Khongsuphol