

Executive Summary

UN Human Rights Council provides a framework for business and human rights on 3 pillars:

1. Protect – Government has a duty to protect against human rights violation from the third party
2. Respect – Business has a duty to respect human rights
3. Remedy – victim of human rights violation should be able to access a remedy process in the forms of either justice system or non-justice system such as a conciliation process.

Due to the fact that the framework gives two primary duties for the Government to proceed: Pillar 1 (protect) and Pillar 3 (remedy). There is a knowledge gap of current policies on the two pillars that need to be examined.

National Human Rights Commission of Thailand (NHRC) understands the need and has provided the funding for this research on “National Baseline Assessment on Business and Human Rights: Policy, Law and Measure related to investment of Thailand,” in order to achieve full understandings of the gaps of those policy, law and measure with respect to the two pillars of the UNGP (pillar 1, protect; and pillar 3, remedy). The NHRC can use the knowledge obtained by this study to observe current business and human rights-related issues, to monitor present and forthcoming situation of business and human rights, and to provide the support on business and human rights protect and remedy systems.

This research uses a Gap analysis approach to assess the gap between the actual protect and remedy system (policy, law and measure) and the desired protect and remedy system that lead to policy recommendations.

Due to the fact that Thailand has too many rules and regulations involved (for example, the number of current rules and regulations is higher than 100,000, which prevents the gap analysis on every rules and regulations that are in place), this research aims to support the NHRC in evaluating the progress of the implementation of the National Action Plan on Business and Human Rights (NAPs). By focusing on the current important issues through five criteria that narrow down the issue: 1) high frequency issues 2) high impact

issues 3) forthcoming issues 4) issues that easy to accommodate and 5) foundation issues that lead to other problems. The issue will need to have at least one of the above characteristics to be considered as a current important issue.

This research employs quantitative data from various government organization as well as experts'opinions from focus group seminar and interviews to gather the issue. Experts are chosen from representatives of government agency, business sector, NHRC (both the committee and the office), non-government organization, academic, and legal expert.

One of the primary gaps is part of the constitution of the kingdom of Thailand (B.E. 2560), which are:

1. The scope of the constitution does not give enough protection for the migrant worker who works in Thailand, Thai people who are violated abroad, and Thai business invested abroad.
2. The wordings in Article 25 and Article 26 of the constitution can be interpreted in various ways. These wordings are 1) some rights may not be recognized under the constitution if its involve the national security issues, demoralized the people, disrupted the order of the country, or disregarded other people's rights, and 2) Human rights and freedoms cannot be restricted by laws and regulations. Those ambiguous wordings could lead to an inconsistent interpretation of law and jurisdiction.
3. The current constitution protects human rights through negative list approach, which, assume to protect every right if they are not stated otherwise. Because of this, both Thai people and government agency might not recognize the rights that is protected under the constitution. Therefore, some rights may be violated by not recognize it, and some rights may not have government agent to administrate and are at risk of being neglect.
4. The Article 26 also states that all new laws and regulations must provide adequate reason for restriction of human rights. But this part is not adopted in actual practice.

To fill the gaps in the constitution, this research recommends the following 4 measures:

1. Set up or assign an agency to administrate the human rights issues abroad that involve Thai people or Thai business.
2. The constitution should be amended to recognize all the human rights up to international standard.
3. NHRC should be involve in any issues regarding the interpretation of the wordings of the constitution that relates to business and human rights, and
4. NHRC should advocate all government agencies to conform with Article 26 of the constitution stating that all new laws and regulations must provide adequate reason for restriction of human rights.

Apart from the gap in the constitution, this research also studies human rights in sub categories by dividing business and human rights into 9 categories including, 1) shareholder rights, 2) labor rights, 3) supply-chain related rights, 4) community, land, and environmental rights, 5) rights related to outward and inward cross-country investment, 6) consumer rights, 7) rights for the vulnerable groups, 8) human rights defender, and 9) human rights issues for state owned enterprises.

In the broad sense, government officials still focus only on the laws and regulations which limited scope of implementation and neglect practical implementation that lead to effective outcomes. The issue causes a massive gap as the actual problem is more complex and require more flexible approach to solve the core of the issue. For this reason, the implementation of laws and regulations should focus on the final outcomes, that is, their ability to prevent human rights violation.

For the remedy pillar, the penalty by law should be amended to disincentivize undesirable behavior. Duration of justice procedure should be accommodated by providing more supportive mechanisms such as fair negotiation mechanism, remedy fund, as well as, improving more protective mechanisms for witness and human rights defender.

The results of the analysis on each categories can be summarized into a table as follows:

Sub areas	Problem issues	Desired protect and remedy system	Recommendations
Shareholder rights	<ul style="list-style-type: none"> - Information accesibility problem that allows some parties to gain benefits from the better information. - Many of the investors still do not invest through the professional investment service. - The Ponzi investment scheme. - The complexity of modern financial investment. - Lack of definite example of the human rights due diligence. - The remedy procedure needs to be advanced by the violated party and the problem of delayed remedy procedure. 	<ul style="list-style-type: none"> - Penalty and fines that disincentivize undesirable behaviors. - A rewards for business that completed human rights due diligence. - Incentive mechanism that support the use of professional investment service. - An government agency that focuses on protecting rights under the modern financial investment. Also, the Ponzi investment scheme should be top priority to solve. - A remedy fund that provides an instant remedy for the victims. - Government agent that act as representative of group of victims that using class action lawsuit. 	<ul style="list-style-type: none"> - Amend the current penalty and fines to disincentivize undesirable behaviors. - NHRC and the Securities and Exchange Commission should reward private sector that complete human rights due diligence as a good example. - Ministry of finance should create an incentive mechanism to support the use of professional investment service. - The Securities and Exchange Commission should act as the protector for all types of modern financial investment. Office of the Consumer Protect Board should also focus more on the Ponzi investment problem. - A remedy fund should be created. - Government agent should be the representative of group of victims in the class action lawsuit.

<p>Labor rights</p>	<ul style="list-style-type: none"> - Many business sectors still not follow the labor laws. - The gap in rights coverage of the labor laws. - The lack of knowledge on the appropriate balance between labor rights and rights for business. - The labor rights of permanent contract. - The enforcement issue for contribution of labor compensation fund. 	<ul style="list-style-type: none"> - Acceptable numbers of labor monitoring agent. - Labor union with representatives of every labor groups. 	<ul style="list-style-type: none"> - Ministry of labor should provide more labor monitoring agent. - Government should rectify the ILO Declaration on Fundamental Principles and Rights at Work No. 87 and No. 98. - Amend Labor Relations Act (B.E. 1975) to allow more negotiation power for the workers, Labor Protection Act (B.E. 1998) to cover the rights violated by co-workers and add more different types of work. - Collaborate with international agency for overseas protection. - Set up a committee consisting of representatives from government, employer, employee, academia to improve balance between labor rights and rights to do business. And also to anticipate forthcoming issues.
<p>Supply-chain related rights</p>	<ul style="list-style-type: none"> - The conciliation process of the Contact Farming Promotion and Development Act still give not enough protection to the farmer. - The lack of clear knowledge on the proper balance between the competitive law and the benefits 	<ul style="list-style-type: none"> - Thai farmers understand the new Contract Farming law thoroughly. - The conciliation process give enough protection to the farmer. - Mechanism to improve the enforcement of competitive law. - Clear mechanism to give new definition of the new type of business into the 	<ul style="list-style-type: none"> - Amend Trade Competition Law to accommodate more complex violation activity. - Amend penalty, fine and criminal penalty to include all parties that are related to the supply chain. - Ministry of agriculture should provide knowledge on the Contact Farming Promotion and Development Act to the farmers. - Ministry of agriculture should allow the farmers to have an official representative during the reconciliation process.

	<p>for the people.</p> <ul style="list-style-type: none"> - The definitions for the business in the competitive law is still very limited. - The threats of Chinese inbound investment that may control the whole supply chain or violate human rights. - In practice, there are very limited efforts to monitor the government agency and state owned enterprises for respect of the human rights - Media and advertisement sectors not concerned about indirect human rights violation. 	<p>competitive law.</p> <ul style="list-style-type: none"> - Specific agency that focuses on the roles and the threats of Chinese investment. - Penalty and fines that disincentivize the undesirable behavior. - Measures that incentivize and encourage media and advertiser to concerned on human rights. 	<ul style="list-style-type: none"> - Ministry of Commerce should create a knowledge research unit that focuses on a balancing the use of the law and the actual social outcomes. - Ministry of Commerce should create a knowledge research unit that specializes in the short-term and long-term effects of Chinese investment. - NHRC and The Securities and Exchange Commission should promote awareness of the actions from supply-chain to prevent the violation of the human rights. - Add a KPI to the Office of Trade Competition Commission for monitoring public policy and state owned enterprises.
<p>Community, land, and environmental</p>	<ul style="list-style-type: none"> - The lack of clear knowledge on the balance between land rights and development rights. - Violations of community and 	<ul style="list-style-type: none"> - Mechanism to review the appropriate balance between the land rights and the development rights. - Penalty and fines that disincentivize the 	<ul style="list-style-type: none"> - Adjust the penalty and fines to disincentivize the undesirable behavior, especially those that committed repeatedly. - NHRC should review and amend all community, land, and environmental policies, laws, and measures under National Council

<p>rights</p>	<p>environmental rights are still persist.</p> <ul style="list-style-type: none"> - The abstention of some laws and regulations under National Council for Peace and Order (NCPO) government. - Absence of the public participatory process in Ratification of law and regulations under National Council for Peace and Order (NCPO) government. - The new constitution does not include enough human rights equal to the international standard. - EIA process still has some gaps. 	<p>undesirable behavior, especially those who committed violation repeatedly.</p> <ul style="list-style-type: none"> - Clear mechanism to review laws and regulations under National Council for Peace and Order (NCPO) government. - The new constitution need to be improved by recognizing more rights equal to international standard. - The EIA process need to be improved to reduced the gaps. 	<p>for Peace and Order (NCPO) government using the public participatory process, evaluate their impacts and provide remedy for those affected.</p> <ul style="list-style-type: none"> - Ministry of Natural Resources and Environment should amend the EIA law to include a strict monitoring process after the approval of the EIA, especially the remedy process. - Eastern Economic Corridor Office should create a knowledge research unit that focuses on a balance between the land rights and the benefits of the development. Profit-sharing solution may be needed. - NHRC should study all the negligence permitted under National Council for Peace and Order (NCPO) government, evaluate their impacts and provide remedy for those affected. - Government should amend the constitution to include all environmental rights that equal to international standard. - The EIA process must include the important stakeholders and communities that involved, and all EIA information needs to be published and sent to each stakeholders and communities that involved directly. - University and NHRC allow to be a facilitator and a mediator in the reconciliation process.
<p>Rights related</p>	<ul style="list-style-type: none"> - Thai business investing abroad 	<ul style="list-style-type: none"> - Protect and remedy mechanism for 	<ul style="list-style-type: none"> - NHRC should act as a monitoring agent for cross-boundary

<p>to outward and inward cross-country investment</p>	<p>only enforced by the law of that country, which some of them are not equal to Thai's law or international standard.</p> <ul style="list-style-type: none"> - International trade and investment agreements does not need to include human rights aspect in the consideration. - No clear procedure to monitoring Thai business that investing abroad (For example, lack of trans-boundary EIA) - No government agency to observe the effects of international environmental issues. 	<p>cross-border investment.</p> <ul style="list-style-type: none"> - Specific mechanism for human rights monitoring of investment under EEC. - Agreement on trade and investment need to considered human rights aspect. - Clear example of HRDD implementationn for cross-boundary investment. 	<p>investment.</p> <ul style="list-style-type: none"> - The Securities and Exchange Commission should act as a main agent to initiate human rights consideration into investments. For example, the commission may enforce its members to committed to human rights standard for investment. - Eastern Economic Corridor Office should implement human rights aspect as part of the agreement on investments. - Any agreement on trade and investment need to take human rights into consideration. - NHRC and The Securities and Exchange Commission should promote HRDD model for cross-boundary investment.
<p>Consumer rights</p>	<ul style="list-style-type: none"> - Violations of consumer rights are still persist. - The National Consumer Council Act not representing consumers enough. 	<ul style="list-style-type: none"> - The constitution need to recognize more consumer rights. - Penalty and fines that disincentivize the undesirable behavior. - Clear specific agency to address and 	<ul style="list-style-type: none"> - Amend the Thai Constitution to cover enough consumer rights equal to international standard. - Amend the National Consumer Council Act to be a true consumer representative. - Promote the Responsible for the Damages Product Act.

	<ul style="list-style-type: none"> - Some consumer rights are not recognized in the constitution. - Gaps in the Consumer Protection Law that block the protection mechanism from being effective. - Food quality and consumer data protection in the modern electronic products are currently high priority issues. 	<p>tackle the important and repetitive consumer issues.</p> <ul style="list-style-type: none"> - The National Consumer Council Act have to representing consumers more. - Enough protection from Consumer Protection law. 	<ul style="list-style-type: none"> - Adjust the penalty and fines to disincentivize the undesirable behavior. - Office of the Consumer Protection Board should amend laws and measures to covered six categories: <ol style="list-style-type: none"> 1. Condominium and Housing estate that cannot completed the construction on time or have low quality. 2. Apartment and rented real estates that charge extra utility bills and have an issue with returning deposit. 3. Consumer goods that cannot delivering the products as advertised, excess of actual investment, or product that is not meet the quality standard. 4. Goods and services that are purchased online. 5. The quality standard of the foods and beverages 6. Privacy data
Rights for the vulnerable groups	<ul style="list-style-type: none"> - Discriminations based on genders, physical conditions, and aged are still persist. Part of the problem occuring from prejudice and negative mindset towards the vulnerable groups. 	<ul style="list-style-type: none"> - The protect and remedy mechanism to prevent discriminatory issues on genders, physical conditions, and aged. 	<ul style="list-style-type: none"> - Amend the law to allows legal action on discriminatory and legal process for successful remedy.

<p>human right defender</p>	<ul style="list-style-type: none"> - SLAPP cases happen frequently. - Human rights defenders are at risk of life threatening, abusive, inhumane treatment and forced disappearance. 	<ul style="list-style-type: none"> - Define a clear definition of the human rights defender. - Laws and regulations that protect human rights defenders more. - Collaboration with the United Nations and rectify human rights agreements to protect human right defender. 	<ul style="list-style-type: none"> - Improve Witness Protection Act - Prime minister's Office should take an action to protect human right defender. - Inhumane treatment and forced disappearance need to be considered into law. - Revise the laws and regulations that protect government office from being sued. - Amend law that allows the prosecutor to represent group of victims in the class action case. - Improve a remedy process for human rights defenders. - Anti-SLAPP case should not be charged by court fee. - Some Negligent cases should be classified as a civil case only. - NHRC should create a manual for human rights defenders and instruct a training on the issue, and should promotes human rights defenders issue in future NHRC plan.
<p>Human rights issues for state owned enterprises</p>	<ul style="list-style-type: none"> - State owned enterprises still violate human rights in its business practice. Common problems are violation of community, land and environmental rights and the 	<ul style="list-style-type: none"> - Clear mechanism that promotes human rights protection for state owned enterprises, as well as its supply chain. - Clear example of correct HRDD practice for state owned enterprises. 	<ul style="list-style-type: none"> - Government should demand state owned enterprises to protect human rights in their business practice, as well as their supply chain. - Government can establish human rights aspect into an agreement to do business with State owned enterprises, including

	violation of its own employee's rights.	- Clear mechanism to concerned for human rights protection in order to make an agreement to do business with State owned enterprises.	the procurement process. - NHRC should collaborate with state owned enterprises to create an example of successful HRDD implementation.
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