

BRIEFING: Development for all, or a privileged few?

Business & human rights in Southeast Asia



About Business & Human Rights Resource Centre

[Business & Human Rights Resource Centre](#) is an independent non-profit organization that brings information on companies' human rights impacts, positive and negative, to a global audience. We have researchers based in Brazil, Colombia, Hong Kong, India, Japan, Jordan, Kenya, Mexico, Myanmar, Senegal, South Africa, UK, Ukraine and USA. Our [International Advisory Network](#), comprising 70 experts from all regions, is chaired by Mary Robinson, former United Nations High Commissioner for Human Rights and former President of Ireland. The Resource Centre was named as recipient of the [2013 Dodd Prize in International Justice and Human Rights](#). For further information about the Centre, see the "[About us](#)" section of our website, and a profile of our work by the Financial Times entitled "[A fair approach to human rights](#)".

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We track cases from the region and seek company responses to concerns. Visit the "[Asia](#)" sections of our website, and sign up for our Weekly Updates [here](#).

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Executive summary

The ten ASEAN member states have set a target to integrate their economies by the end of 2015 into an “ASEAN Economic Community”, turning the region of 630 million people into a highly competitive single market. This could provide significant opportunities for decent work and improved livelihoods. As this briefing demonstrates, however, currently workers and local communities are losing out, as rapid integration coincides with intimidation of human rights defenders, forced evictions, and workers’ rights abuses. These three areas are examined in detail in this briefing.

We have produced the briefing as governments and business executives prepare to meet from 19-21 April 2015 in Indonesia for the World Economic Forum on East Asia, with the theme: “Anchoring Trust in East Asia’s New Regionalism.” The briefing draws on an analysis of our data over 10 years of tracking company human rights performance in the region.

Heavy-handed actions by governments are often converging with economic interests, at the expense of workers and affected communities. Of the 278 cases of human rights allegations to which we have invited companies operating in Southeast Asia to respond, 70% involve some form of direct abuse by government forces – for example, in the form of forced eviction of communities from their land, or the use of violence in breaking up workers’ protests. Coupled with this, investor-state dispute settlements are on the rise. These can contribute to the weakening of laws in areas such as reducing pollution, ensuring safe workplaces, and protecting indigenous rights.

High levels of intra-regional investment are reflected in the fact that over half (53%) of our approaches to companies regarding human rights allegations were to companies headquartered in Asia (of these, most frequently they were headquartered in China, followed by South Korea, Thailand and the Philippines). Our response rate from Asian-headquartered companies is 50%, compared with 76% from companies headquartered elsewhere. While a response does not mean that the company is fully addressing the particular issue, it does indicate a willingness to engage publicly with concerns raised by civil society.

The briefing provides insights into areas where encouraging changes are underway, including:

Strong civil society networks: Despite heavy restrictions on freedom of expression and association, remarkable coalitions are able to combine their resources to push for change. This year the ASEAN Civil Society Conference and ASEAN People’s Forum will mark its tenth year, in Kuala Lumpur from 21-24 April, bringing together thousands to address “Development Justice” among other priority themes.

Companies conducting “human rights due diligence”: Our recent Myanmar Foreign Investment Tracking Project features examples of companies that are taking serious steps to avoid human rights abuses and establish grievance mechanisms. However, these examples are still too rare.

Applying the leverage of financial institutions: IFIs and banks are under scrutiny for the projects they are financing, and civil society is applying various means to push them to use their leverage: some are reconsidering investment in projects that undermine human rights.

The briefing recommends that companies consult thoroughly and openly with local communities and workers; establish effective grievance mechanisms; and take steps to avoid complicity in human rights violations by governments, among other recommendations.

It recommends that governments enforce laws that protect workers, indigenous people, small landholders and the environment; foster the development of civil society as a constructive and independent monitor; and adopt and implement a “National Action Plan” on business and human rights (to date, the governments of Malaysia and Myanmar have plans underway to do so).

The latest Asian Development Outlook predicts a GDP expansion across the Southeast Asia region of 4.9% in 2015, and a further 5.3% in 2016. ASEAN governments have adopted principles for “inclusive and sustainable growth”: this will only be achievable if accompanied by significant improvements in human rights protection for the people of ASEAN.

1. International context

Human rights provide a powerful framework to prevent, mitigate and remedy abuses of workers and local communities by corporate activities. At the international level, governments and companies are increasingly taking action on business and human rights. One of Business & Human Rights Resource Centre's indicators for this is the fact that 44 governments have submitted responses to our recent "[Government Action Platform](#)". Many governments have also committed to developing a "[National Action Plan](#)" on business and human rights. Further, 95 companies sent responses for the Resource Centre's "[Company Action Platform](#)." In part, the developments highlighted in their responses have been in response to the [UN Guiding Principles on Business and Human Rights](#). The Principles are framed around three pillars: the Corporate Responsibility to Respect; State Duty to Protect; and Access to Remedy.

Despite this progress however, the pace of implementation of the Guiding Principles is still slow and somewhat piecemeal. Only a handful of companies are taking leadership action to embed respect for human rights throughout their operations, and only a few governments are starting to implement business and human rights measures across their departments. There is an urgent need to raise awareness and strengthen implementation of the Guiding Principles in all regions.

Access to remedy for victims of abuses at a domestic level as well as venues to ensure accountability of companies for their activities overseas, are still sorely lacking. An international movement is calling for an [international binding treaty](#) on business and human rights that aims to fill the gap in terms of accountability and enforceability of companies' human rights responsibilities. At its 26th session in June 2014, the UN Human Rights Council adopted a [resolution](#) drafted by Ecuador and South Africa and supported by [20 countries](#) (including Indonesia, the Philippines and Vietnam) "to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights." Many governments, mostly in the Global North as well as companies and business associations, are, however, cautious about starting the process towards a binding treaty at this time and argue that the effort risks undermining progress and consensus reached by the Guiding Principles.

The calls for a binding treaty are joined by wider appeals to strengthen corporate legal accountability and access to effective remedies for victims of corporate human rights abuses. The Office of the High Commissioner for Human Rights for example, has just launched the "[Accountability and Remedy Project](#)" to deliver recommendations and guidance to governments for a more effective implementation of the Access to Remedy pillar of the Guiding Principles.

In focus: National Action Plans – A “leap-frog” race?

Countries in Southeast Asia have been slow to implement the UN Guiding Principles on Business and Human Rights. As an indicator of this, only [Indonesia](#) and [Myanmar](#) sent us a response about their actions on business and human rights for our "[Government Action Platform](#)". No country in the region has developed a National Action Plan (NAP) on business and human rights yet, but some governments have committed to do so and are taking some positive steps.

In March 2015 the Human Rights Commission of Malaysia (SUHAKAM) launched a [strategic framework](#) for the development of a National Action Plan, which was prepared after several consultations with business groups, government agencies and civil society organizations. Just a few weeks before, Aung Tun Thet, economic advisor to the president of Myanmar, had announced during an ASEAN international conference that the government is [committed to develop a National Action Plan](#) on business and human rights as the country is "trying to leap-frog and catch up with the...global community." At the same conference, Indonesia and the Philippines [expressed that](#) they might embark on developing an NAP.

In addition, the ASEAN Intergovernmental Commission on Human Rights (AICHR) released a [baseline thematic study](#) on CSR and human rights, which reviews national measures with reference to the Guiding Principles. The Resource Centre called on the AICHR to ensure that this study was made public – and, after it was, [continued to call](#) for the individual country reports to be publicized.

2. Regional context

The ASEAN region is an increasingly powerful economic force. The ten ASEAN member states have set a target to integrate their economies by the end of 2015 into an “[ASEAN Economic Community](#),” turning the region of 630 million people into a highly competitive “single market and a single production base,” fully integrated into the global economy. Reflecting this development, the latest Asian Development Outlook has predicted a combined GDP expansion across the region of 4.9% in 2015, and a further 5.3% in 2016.

With all of the attention on economic growth and competitiveness, an important inquiry is how these effect the dignity and human rights of those who live in the region. Governments have articulated economic integration in terms of ensuring “[inclusive, sustainable development for all](#)”. What this means however is less clear. The evidence to date suggests that, from a rights-perspective, this potential is far from being met. There is an alarming pattern of human rights abuses being caused by business activities on workers and local communities throughout Southeast Asia. Of the 278 cases for which we have invited companies operating in Southeast Asia to respond to human rights allegations, 70% involve some form of direct abuse by government forces – for example, in the form of forced eviction of communities from their land, or the use of violence in breaking up workers’ protests – demonstrating an alignment between powerful economic interests with heavy-handed government tactics, at the expense of the human rights of local communities.

The ASEAN Civil Society Conference and ASEAN People’s Forum, in their [statement](#) prior to this year’s forum in Kuala Lumpur from 21-24 April, have “Development Justice” as one of the four priorities. They raise concerns about the rise in investment-friendly protection measures and investor-state dispute settlement processes in the region, that in some cases enable corporations to sue governments over local laws that are counterproductive to their interests.

As Phil Robertson of Human Rights Watch [has said](#): “What’s potentially at risk in such an arrangement are national regulations protecting rights of local communities, extending protection to workers, and stopping industrial pollution that make people near factories or mines sick...This is a recipe for serious conflict between governments, companies and grassroots communities all over the region.”

In focus: Corruption as a human rights issue

Corruption in business activities is deeply entrenched in many parts of Asia. According to Transparency International’s [Corruption Perceptions Index of 2014](#), among countries in Southeast Asia only Singapore scored above 50 points, where ‘0’ equates with ‘highly corrupt’ and ‘100’, with ‘very clean’. Sumi Dhanarajan, Research Associate at the Centre for Asian Legal Studies and trustee of Business & Human Rights Resource Centre [has written](#) that corruption’s “ugly head rears in some of the most egregious abuses that occur whether with regard to land-grabs, supply-chain labour abuses or in connection with threats to the safety and physical integrity of human rights defenders. In this context, it is important that th[e] idea of treating corruption as a human rights violation *per se* is nurtured so that effective responses to business and human rights problems can be engaged.”

This remains challenging, partly because from a government perspective, the business and human rights agenda in Southeast Asia is largely considered through a voluntary “corporate social responsibility” lens – a perception that is reinforced by legislation in some countries that couches CSR in terms of philanthropic social contributions, thus skirting the need to directly address direct human rights abuses and their root causes.

Companies and governments should devote as much attention to preventing human rights abuses that result from business operations as they do to encouraging investment and improving the economy, to ensure that economic development really does improve the lives of all in the region. There are encouraging signs of openness to doing this.

These include: commitments by some governments in the region such as Malaysia and Myanmar to develop a “National Action Plan” on business and human rights; instances where National Human Rights Institutions are examining complaints brought by victims of alleged human rights abuses by

companies; steps by financial institutions to re-consider loans to companies involved in abuses; and efforts by some companies to conduct thorough “human rights due diligence” for their operations. These efforts need to be replicated and built on. Each of these issues is addressed in an “In Focus” box throughout this briefing.

The theme of the upcoming [World Economic Forum East Asia](#) meeting in Jakarta, Indonesia from 19-21 April 2015 is “Anchoring Trust in East Asia’s New Regionalism”. An effective way to build this trust will be to ensure that economic development is underpinned by respect for human rights.

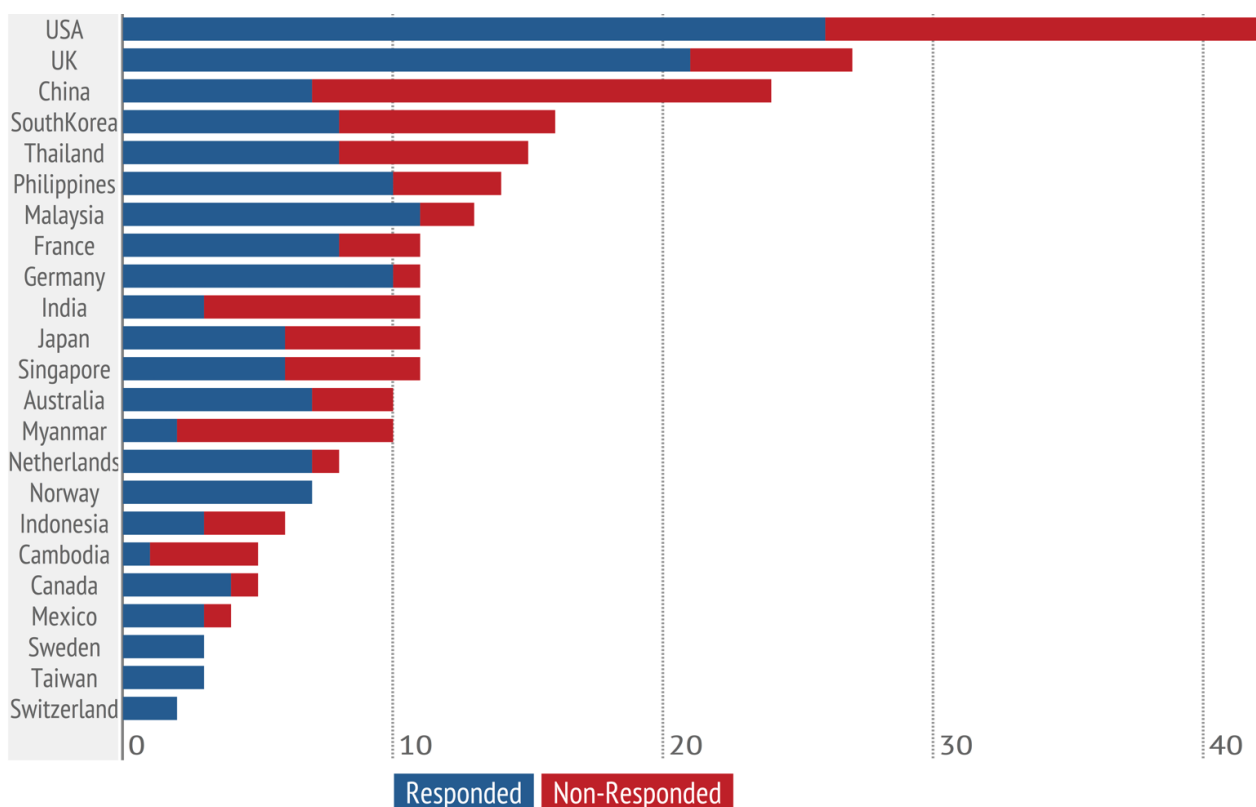
Further reading: “[Corporate accountability in ASEAN: A Human Rights-Based Approach](#)”, FORUM-ASIA, 2013 and “[Human Rights and Businesses](#)” paper for ASEM Seminar by Sumithra Dhanarajan and Claire Methven O’ Brien, particularly pages 16-24 on Asian context, Nov 2014

3. How are companies responding to human rights allegations?

Business & Human Rights Resource Centre invites companies involved in alleged human rights abuses to provide a public response that can be included alongside the allegations. This ensures that the company is aware of the allegations, and encourages it to go on the public record with its response. Sometimes the company denies the allegations, or contests some of the points and provides supplementary information. Other times, it might acknowledge the concerns, or offer to meet with the relevant parties, or make specific commitments to change practices. While a response does not necessarily reflect progressive conduct on human rights, it does reflect a willingness to engage publicly with human rights concerns raised by civil society.

From 2005 to date we have contacted companies 278 times regarding alleged abuses in Southeast Asia. Of those approaches, over half (53%) were to companies headquartered in Asia, reflecting the high levels of intra-regional investment. Asian firms are under increasing scrutiny for their human rights impacts: our approaches to companies headquartered in Asia more than doubled between the four year periods 2007-10 (43 approaches) and 2011-14 (100 approaches). The response rate overall for Asia-headquartered companies is 50%, and for companies headquartered in the sub-region of ASEAN it is 56%. This is lower than that for companies headquartered elsewhere - 76% - but it is still at least encouraging to see that half of our approaches to Asian companies have led to a public response.

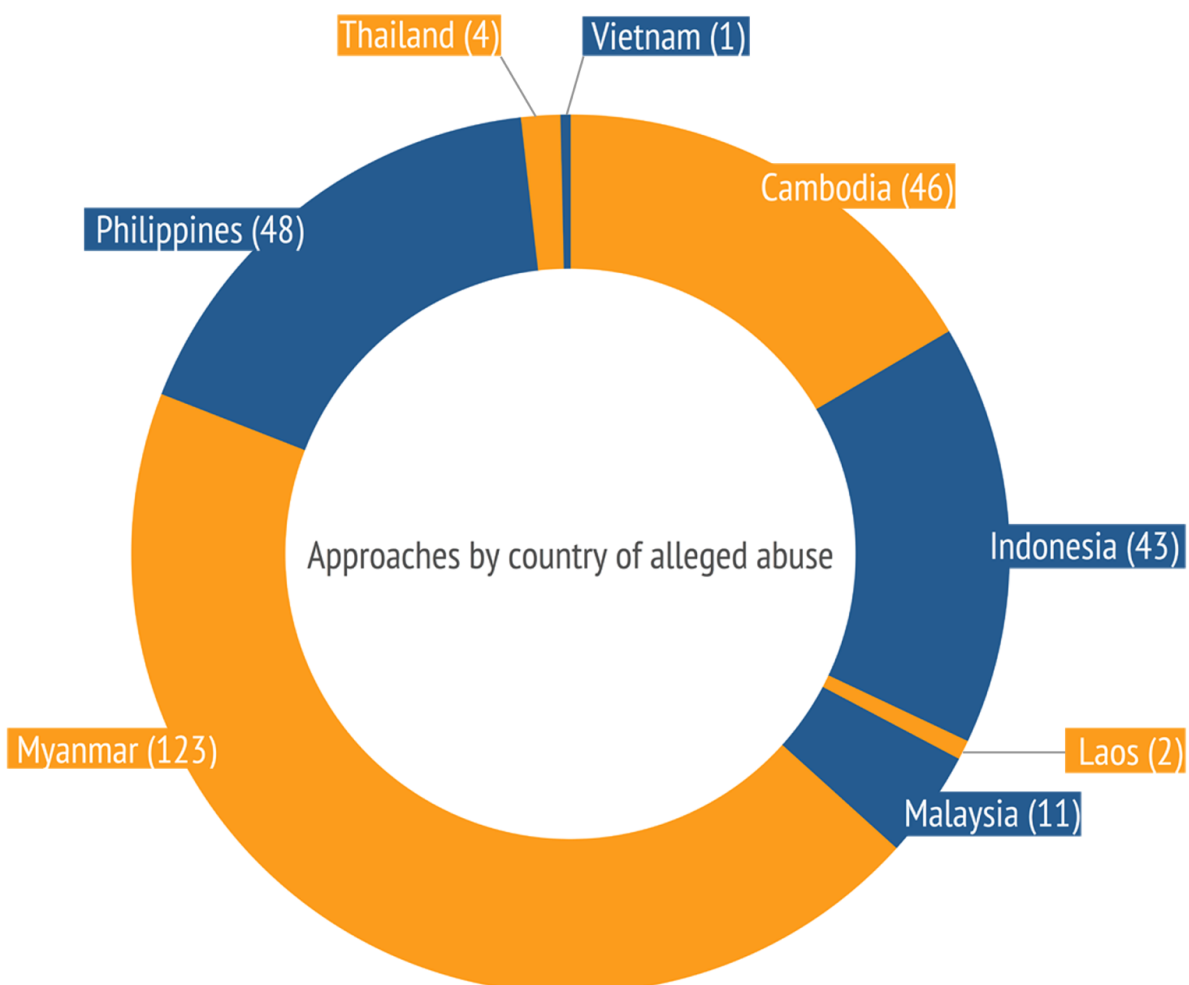
Number of approaches to companies by country of headquarters (for all headquarter countries that have had more than one approach)



The most frequent number of approaches were to companies headquartered in the USA (42 approaches, with a 62% response rate), United Kingdom (27 – 78%), China (24 – 30%), South Korea (16 – 50%), Thailand (15 – 50%) and the Philippines (14 – 72%).

There were striking differences in the number of cases of alleged abuses in different countries in the ASEAN region. By far the highest number of approaches to companies was regarding alleged abuses in Myanmar (123 approaches), followed by Philippines (48), Cambodia (46), Indonesia (43), and Malaysia (11). This reflects the relatively high levels of engagement by civil society in those countries on the human rights impacts of companies (albeit frequently in the face of threats and restrictions as described in the following section), as well as international advocacy focused on those countries, as opposed to the other countries of the region such as Laos (2) and Vietnam (1), where civil society is more restricted. We approached a relatively small number of companies in relation to abuses taking place in Thailand (4), but it is interesting to note that we have made 15 approaches to companies headquartered in Thailand regarding alleged abuses elsewhere in Southeast Asia (for example regarding forced displacement for sugar plantations in Cambodia, and rights abuses associated with dam-building and energy projects in Myanmar).

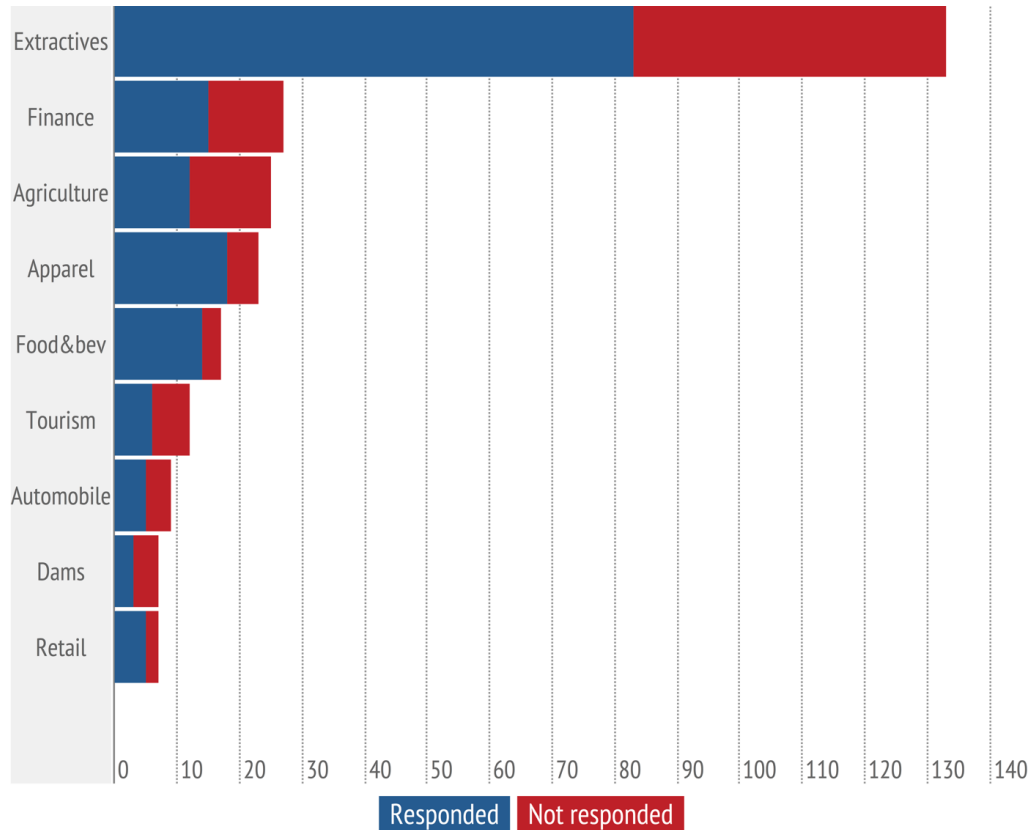
Of the cases in Myanmar, 47% were from before democratic reforms got underway in 2011. These were primarily allegations of complicity in perpetrating the human rights abuses between extractive companies and the military government, as well as appeals for business outside the country to stop doing business with Myanmar, for example by providing insurance or sourcing minerals. The 53% that were invitations to companies to respond to abuses following the start of the democratic reforms include many more specific instances of alleged misconduct within the country in the areas of workers' rights, displacement and environmental contamination, as investment has opened up, civil society has become more active, and information has circulated more freely.



The issues on which we sought company responses most frequently were land-related (including forced evictions, displacement, compensation, and loss of related livelihoods) – 52% of the cases. This is followed by workers’ rights abuses (27%), including poor health & safety conditions, forced labour and child labour.

Almost half the cases (48%) relate to the extractive sector (including oil, gas and coal, and mining). Additional sectors that feature frequently are finance, banking & insurance, agriculture & forestry, apparel, food & beverage, and tourism.

Number of approaches by sector (featuring sectors that we approached 5 or more times)



In focus: Myanmar Foreign Investment Tracking Project: Examples of corporate human rights due diligence

In 2014, we conducted a “[Myanmar Foreign Investment Tracking](#)” project. We invited 120 foreign companies investing or planning to invest in Myanmar to respond to questions about their human rights policies and due diligence efforts.

Of the companies we contacted, 57% sent us a response, but only about 30 actually provided relevant information on their human rights policies and due diligence efforts in Myanmar. Considering that Asian companies represent the majority of foreign investors in Myanmar, we are particularly concerned that only about one-third of companies headquartered in Asia responded. These figures are not included in this briefing’s assessment of company responses to allegations of human rights abuses, but are an indicator of companies’ transparency and human rights commitments.

Some of the stronger responses came from oil and gas company **BG Group**, which explained its cross-functional approach to implementing its human rights policy; adidas and **Coca-Cola**, which detailed not only their due diligence process prior to engagement, but also their on-going efforts; and **Telenor**, which cited a local system of reporting grievances related to sustainability issues.

In parallel, the Myanmar Centre for Responsible Business has a project called the “[Pwint Thit Sa Project](#)”, encouraging transparency by Myanmar-headquartered companies in the areas of anti-corruption, organizational transparency, and human rights, health, safety and the environment. Its [first report](#) found that the most transparent companies were **KBZ**, **Parami** and **Max Myanmar**.

4. Key Issues

4.1. Human rights defenders at risk

Increasingly, human rights defenders throughout the ASEAN region working to expose human rights abuses in business are more vulnerable to threats from both governments and companies. This repression is manifested through arbitrary detention, harassment lawsuits, and violence and intimidation. The pace of economic integration means that in many instances governments are rolling back protections and repressing dissent to encourage inward investment and rapid infrastructure development.

In the **Philippines** Defend Job Philippines, a network of labour groups, has raised the alarm about [serious threats against Ed Cubelo](#), President of Toyota Motor Philippines Corporation Workers' Association (TMPCWA), including the appearance of armed men showing up at his home to ask his whereabouts. Cubelo believes that the harassment is linked to his involvement in a campaign to expose workers' rights violations in **Toyota Motor Philippines**. A [letter from the International Network for Economic, Social & Cultural Rights \(ESCR-Net\)](#) addressed to Philippine President Benigno Aquino noted that this incident is consistent with a trend of on-going criminalisation and persecution of people who have mobilised to promote and defend human rights in the Philippines. The Resource Centre invited the Japanese headquarters of Toyota Motor to respond to a [report](#) by Defend Job Philippines on the case, but [to date, Toyota has not responded](#).

Some cases have become iconic. In 2013, the Thai pineapple processing company **Natural Fruit** brought a total of six [defamation and related lawsuits](#) against British researcher and activist Andy Hall in **Thailand**. The complaints were based on a report co-authored by Hall for Finnish NGO Finnwatch, which alleged workers' rights violations at a canning factory run by Natural Fruit, where the workers are mostly migrants from Myanmar.

Five UN Special Procedures mandates sent [a communication](#) to the Thai Government, expressing concern that the charges may have a chilling effect on other human rights defenders. In the lead-up to the start of Andy's Hall's first trial in September 2014, [over 100 organizations](#) appealed to members of the Thai Pineapple Industry Association (TPIA) to urge its fellow member Natural Fruit to drop the cases filed against Andy Hall. The first charge, regarding defamation, has been [dismissed](#) due to unlawful interrogation process, but Hall still faces other civil and criminal legal proceedings.

While this case has received extensive international attention, many local human rights defenders do not have access to wide solidarity networks and endure harassment and lawsuits largely out of sight of the international community. In Thailand, leaders of a local group who were marching for removal of coal from the country's energy strategy and accelerated efforts towards renewable energy were [arrested and detained](#) for alleged violation of martial law rules. The mining company **Tungkum** has brought [defamation lawsuits](#) against community leaders and human rights defenders. The NGO Asian Human Rights Commission has raised concerns over intensified [threats of violence and forced eviction against the Klong Sai Pattana community](#) by Thai state forces and private actors in the agribusiness sector.

In **Indonesia**, the February 2015 killing of [Indra Pelani](#), a farmer who advocated for the rights of other tenant farmers against land grabs, has become a flashpoint for land rights abuses in the country. After he was allegedly beaten to death by the security guards of an **Asia Pulp and Paper (APP)** supplier, human rights and environmental groups reacted swiftly – 25 NGOs signed a [joint letter](#) demanding that APP cooperate with the police investigation and review its policies around resource exploitation. Greenpeace [cut its cooperation](#) with the company on its foresting practices. [APP reacted](#) by meeting with the farmer's family, appointing a new security company and cooperating with the investigation by the Indonesia National Human Rights Commission.

In **Myanmar**, International Service for Human Rights published [a briefing](#) in February 2015 calling on the government to ensure protection of rights defenders. It said: "Civil society is gravely concerned about laws which unreasonably restrict the right to freedom of expression and assembly and which appear to be increasingly used to criminalise human rights defenders and censor journalists, as well as the use of reprisals and force against those who promote corporate respect for human rights or

protest major development projects. This represents a significant backslide to the minimal progress made in transitioning to democracy.”

Many of the stakeholders' [submissions to the UN Universal Periodic Review session for Myanmar](#), scheduled for November 2015 highlight the risks for human rights defenders in the country. Human Rights Watch had also [said that Myanmar's assembly law "fails to end repression"](#). It called on the government to amend the law and cease the arrests of peaceful protesters.

In December 2014, violence erupted at the Letpadaung copper mine in Myanmar, operated by Chinese company **Wanbao** in a joint-venture with a military-owned company, as villagers opposed to the expansion of the mine clashed with police and Chinese workers. The clashes [left a woman dead and dozens injured](#). Similarly violent clashes have occurred in the past, among them the [November 2012 crackdown](#) on peaceful protesters, where police were found to have used white phosphorous, which burned and injured dozens of protesters, including monks. An Amnesty International [report](#) said that in Myanmar foreign mining companies are colluding in serious abuses in the Monywa mine complex, which includes Leptadaung. For its part, Wanbao has [described the steps it has taken](#) to obtain community support for the project, and has also indicated it believes some protests were “set up”.

Abuses against trade unions are also common. In May 2014, **NXP Semiconductors**, a supplier of **Apple** in the **Philippines**, [was accused](#) of sacking 24 union workers for union activity. Following a [global solidarity campaign](#), half the workers were re-instated and the other half received separation packages and became full-time trade union representatives, and the union was allowed to continue to operate. While NXP commented to the Resource Centre and others throughout the case, Apple did not respond.

In **Cambodia**, the government carried out a violent [crackdown of garment worker protesters](#) who were calling for an increase in the minimum wage, in January 2014. At least four workers died in the clashes but to date no investigation has been carried out into the killings. Twenty-three people – including garment workers and union leaders – were arrested, detained, and charged with a range of offenses including incitement and damage to property. The 23 were convicted, and then later the charges were suspended and they were released.

"You know, it is not justice at all for them to get convicted because those people did nothing wrong - just only demand wage for their stomach"

Moeun Tola, Community Legal Education Center

As this case was underway, a delegation of representatives from international brands including **H&M**, **Puma** and **Gap** reportedly told government officials that unless conditions for the sector's 600,000 workers improved, they would look to source elsewhere. They said they would increase what they pay factories they source from to allow for the increased wages, but said the government must also act, calling on it to: stop using violence and the courts against workers and unionists; implement a proper wage-setting program; and ensure that, should the court lock up the defendants in the current case, the evidence meets international standards.

Later in the year, **Manhattan Textile and Garment** - a factory supplying American chemical company **DuPont** – terminated over 100 union leaders and members. After the Arbitration Council ruled that Manhattan Textile had engaged in union discrimination, the company reinstated many of the terminated union members to their positions, but refused to reinstate three union leaders. Since December, workers at Manhattan Textile and Garment factory have been striking. The Community Legal Education released a [statement](#) expressing its disappointment with the conduct of DuPont and its failure to regulate its supply chain in Cambodia and sent a letter to the Garment Manufacturers Association of Cambodia (GMAC) asking for the reinstatement and payment of the union leaders. We invited DuPont and Manhattan Textile to respond, but the companies have not yet done so.

In focus: civil society coalitions: Strong networks in the face of major challenges

ASEAN-level civil society meetings, events and workshops on business and human rights issues are also becoming the norm, confirming increasing intra-regional advocacy on business and human rights. The ASEAN People's Forum and ASEAN Civil Society Conference is an important annual gathering of thousands of people from civil society from across the region. In its tenth year this year, the 2015 meeting in Kuala Lumpur from 21-24 April has "Development Justice" as one of its focus areas, set out in the Forum statement: "[Reclaiming the ASEAN Community for the People.](#)"

In October 2014, the Southeast Asia Human Rights Studies Network (SEAHRN) organised an [international conference](#) on human rights in Kuala Lumpur where academics and civil society representatives discussed issues of business accountability, environment and migration.

In November 2014, 65 representatives drawn from the [Southeast Asian National Human Rights Institutions Forum \(SEANF\)](#) met in Myanmar and adopted the [Yangon Statement on Human Rights and Agribusiness in Southeast Asia](#) to ensure both government and private actors respect, protect and remedy human rights in the agribusiness sector. And in February 2015, the ASEAN CSR network and other supporters organised a five-day [international forum](#) in Bali, Indonesia, where over 200 representatives of governments, business and civil society looked at the role of business in relation to corruption, sustainable agriculture and natural resource management.

4.2. Forced evictions and conflicts over land

"Development-induced displacement is...endemic and many people are losing access to the natural resources upon which they depend. Development based on resource extraction and exploitation not only leads to environmental degradation, but in a number of cases has also triggered violations of human rights by government and business without redress"

Atnike Nova Sigiro of FORUM-ASIA

Over half – 52% - of the cases of alleged abuses in Southeast Asia to which we have invited companies to respond, involve issues relating to land, including forced evictions, loss of livelihoods, and disregard of indigenous rights such as the right to free, prior and informed consent. These cases are usually linked with agribusiness, hydropower, extractives, and the development of special economic zones. With the increasing investment and economic integration in the region, pressures on land and natural resources are likely to intensify.

Unfortunately, new government regulations in many ASEAN countries are moving in the direction of undermining land rights. For example Myanmar is developing a new foreign investment law that [NGOs say risks undermining human rights](#) for not including land rights protection, as well as adequate environmental protection. Similarly, in Thailand, civil society groups [say](#) that the military government's mining bill is "designed to give businesses easy access to more land without the need for mitigation of impacts."

In October 2014, Richard J Rogers of law firm Global Diligence LLP [filed a claim](#) before the International Criminal Court on behalf of Cambodian victims of land-grabbing (and backed by FIDH), alleging that widespread and systematic land seizures by the government and government-linked businesses amount to a crime against humanity.

In focus: Financial institutions: Investments in the spotlight

Multilateral development banks, such as the World Bank, the Asian Development Bank (ADB), and private banks have often been criticized for funding projects in Southeast Asia, and elsewhere, that have harmful impacts on human rights. Oxfam Australia focused on an aspect of this in a [June 2014 report](#) on the ADB and food security in the Mekong.

Victims of corporate human rights abuses are increasingly turning to financial institutions to demand reviews of their loans to the companies involved. The Asian Development Bank's reported decision to review a potential new loan to Sarawak Energy Berhad is an example of this trend (see page 14).

At the end of March 2015, several NGOs [urged](#) the World Bank, the ADB and the European Investment Bank to acknowledge the failed investment in the Nam Theun 2 dam project in Laos, which they say has so far displaced 6,300 indigenous people and failed to bring intended development benefits. They point to the findings of the ADB and World Bank-financed Panel of Experts that has already warned that the Government of Laos failed to comply with the project's Concession Agreement.

NGOs also access mechanisms developed by the banks to ensure procedures are respected and safeguards are in place in the design and execution of projects they finance. In November 2014 the watchdog of the ADB, the Complaints Review Panel, released its [investigation report](#) on the Cambodia Railway Rehabilitation project. The panel found that families affected by the project "suffered loss of property, livelihoods, and incomes." The panel made recommendations to the bank on how to fix some of the issues, which ADB accepted, although NGOs [alleged the recommendations were "watered down"](#) before it did so; the bank responded about each of its modifications.

Private banks have also been implicated. In December 2014, BankTrack released a [report](#) assessing 32 large global banks against the UN Guiding Principles. One of these case studies concerned [APRIL's operations in Indonesia](#) and its involvement in land conflicts – the company is a large pulp and paper producer and its operations are financed by several European and Asian banks. In its [response](#) to the report, APRIL set out its approaches to relationships with local communities. In February 2015, the Spanish bank Santander decided to stop financing APRIL, saying: "Any future loans will be conditional on APRIL implementing new sustainability measures which address its involvement with deforestation".

In October, Cambodian villagers filed a [complaint](#) before the Australian National Contact Point (NCP) under the OECD Guidelines against the Australian bank ANZ for allegedly financing a project linked to forced land confiscation. ANZ sent us a [response](#) saying that it will cooperate and assist the NCP inquires. Previously, human rights groups had [expressed disappointment](#) over news about [ANZ's cutting of ties with Phnom Penh Sugar Cambodia](#) given that company's involvement in land grabs. The NGOs said that the end of commercial relations between ANZ and Phnom Penh Sugar, "[did not absolve the bank of responsibility](#)" and it should still compensate victims. But in its response to us, ANZ said it is "[not considering compensation measures](#)" since it no longer finances Phnom Penh Sugar.

Agriculture

As Oxfam has [pointed out](#): "Recent statistics on hunger and access to land and productive resources are alarming and ironic considering that Asia is home to two-thirds of the world's food producers, on which the economies of Asean member-countries Thailand, Burma (Myanmar), Vietnam and the Philippines depend. The Food and Agriculture Organization says that at least 572 million people in Asia are chronically hungry and a huge percentage undernourished."

In Cambodia, NGOs Equitable Cambodia and Inclusive Development International, in conjunction with the Hands Off the Land Alliance, released [a report](#) assessing the human rights impacts of the "Everything but Arms" (EBA) trade scheme on Cambodia, focusing on the sugar industry in Koh Kong province. EBA is a trade initiative of the European Union adopted in 2001 to give least developed countries full duty-free and quota-free access to the EU for exports other than arms and armaments. The report found that, in the absence of effective safeguards, this policy carries the risk of harmful human rights impacts, which materialised in forced evictions and land seizures in Cambodia. Perspectives from the various companies involved, including **Khon Kaen Sugar Industry**,

Mitr Phol Sugar, Phnom Penh Sugar, T&L Sugars/American Sugar Refining and **Ve Wong** are available [on the Resource Centre's website](#). Following the report and related campaigns, the EU and Cambodia launched [a joint process](#) to assess displacement claims pertaining to sugarcane plantations in Cambodia.

Oxfam featured the land-grabs in Koh Kong province in its report "[Nothing Sweet About It: How Sugar Fuels Landgrabs](#)". It referred to shipments from Khon Kaen Sugars to the UK-based company Tate & Lyle Sugars (owned by American Sugar Holdings), and said that sugar sold by Tate & Lyle Sugars is purchased by Coca-Cola and PepsiCo bottlers, to be used in their products. Oxfam stated: "The case highlights the significant risks Coca-Cola and PepsiCo face without stronger policies in place to ensure their suppliers and their bottlers' suppliers are respecting land rights."

In November 2013, following a large campaign led by Oxfam, Coca-Cola [publicly declared](#) "zero tolerance" for land grabs in the supply chain, with five commitments in areas of free, prior and informed consent, disclosure of the top three countries and suppliers of its cane sugar, conducting third-party impact assessments, engaging with governments, and engaging with suppliers regarding the specific cases in Oxfam's report. [PepsiCo followed suit](#), making the same commitments in March 2014.

A February 2015 report in [Cambodia Daily](#) featuring interviews with people who had been evicted from the plantations in Cambodia, however, reported that so far, little has changed in their situation. Meanwhile, [lawsuits](#) brought by the displaced villagers are still underway against Koh Kong Plantation and Koh Kong Sugar Industry and against Tate & Lyle and T&L Sugars Limited.

Elsewhere in the region, in September 2014, Global Witness [filed a complaint](#) with the Forest Stewardship Council against **Vietnam Rubber Group**, over its alleged involvement in land grabs. For its part, VRG says its projects have been approved by the governments of Cambodia and Laos and that it has avoided farmland and significant forest areas in its operations. Global Witness has also highlighted government collusion with rubber companies and land grabs in Shan State, Myanmar, in its report "[Guns, Cronies and Crops](#)." And in Indonesia, the Roundtable on Sustainable Palm Oil recently [upheld a complaint](#) filed by Forest Peoples Programme against the Singapore-headquartered company **Golden Agri Resources**, which documented how the company's plans to expand its plantations in eighteen of its subsidiaries in Indonesian Borneo had violated the RSPO's standards on obtaining free, prior and informed consent from indigenous peoples.

The Vietnam Rubber Group and Golden Agri Resources examples above illustrate how companies are adopting industry-wide standards to manage their social and environmental impacts, and how NGOs are actively holding them accountable when they fall short of those standards.

Special Economic Zones and other industrial projects

The [Thilawa Special Economic Zone](#) is an industrial complex being developed 23 km southeast of Yangon city centre in Myanmar. It is the flagship project of the Japan International Co-operation Agency (JICA) in cooperation with the Myanmar Government and Japanese and Myanmar companies. Residents displaced to give way to the 400-hectare initial phase of the project [say that the relocation agreements were unfair](#), and that the resettlement site is flood-prone, with substandard housing and basic infrastructure. [Relocated residents say](#) they have lost access to farmland and other livelihood opportunities, as well as access to clean water and educational opportunities for their children. According to a [report](#) by Physicians for Human Rights, the displacement has also affected families' food security and health. [Villagers also claim](#) that JICA has not properly and sufficiently responded to them for their grievances.

These impacts are likely to be felt by residents of the 2000 hectares of land to be covered in subsequent phases and may set the tone for future economic zone projects in the country. [We invited](#) companies **Marubeni**, **Mitsubishi** and **Sumitomo** (which hold a 39% stake in the project through the special purpose company **MMS Thilawa Development**), as well as **Toyota** and **Suzuki** (which are reported to have bid for manufacturing facilities in the SEZ) to respond – all did except for Suzuki, with Toyota saying that as of that time (May 2014) it has no plans to start operating in the Thilawa SEZ.

Marubeni, Mitsubishi and Sumitomo said in their responses: "Marubeni, MMSTD [MMS Thilawa Development Co. Ltd] and MJTD [Myanmar Japan Thilawa Development Limited] recognize the importance of the fair and thorough consideration of the terms of resettlement consistent with international standards including elements such as monetary compensation, availability of land for resettlement, and training for alternative livelihoods for the inhabitants of the Class A Area. With

the cooperation and understanding of the Government of Japan, we have continuously voiced this position to the Government of Myanmar through the Thilawa Public Private Coordinating Committee.”

On 19 March 2015, a group of NGOs and other civil society organizations, on behalf of the Ringinrejo people of East Java, filed a [complaint to the Swiss OECD National Contact Point against Holcim Indonesia](#) (part of **Holcim Group**, a Swiss building materials and aggregates company). The complaint alleges that Holcim Indonesia is violating the OECD Guidelines and causing adverse human rights impacts to local communities, including by violating Indonesian laws on compensation for land's acquisition. As the NGOs state: “The land that has been cultivated by the people was bought by PT. Holcim Indonesia as a compensation land (that would be transformed into forest area) as an exchange for the forest areas used in Tuban for mining and a cement factory, without the people knowing.”

Business & Human Rights Resource Centre [invited Holcim Group to respond](#) to the allegations and the company did so, including in its response that: “From our perspective and after analyzing the respective documents and data, the land transaction process was handled diligently and in an effort to find a satisfactory solution for all the parties involved, as exemplified by the following elements [which the company then described]”, adding that the company is “open for further dialogue on this process”.

A prominent case in Cambodia is the [Boeung Kak project](#), a property development project outside Phnom Penh that involved the forced eviction of around 3000 families. Two Chinese companies involved eventually pulled out of the project.

Dams

On 3 March 2015, activists gathered in front of the Asian Development Bank (ADB) in Manila to raise concerns about a US\$45 million loan proposed for **Sarawak Energy Berhad** (SEB) to build the [Malaysia](#) section of the Trans-Borneo high voltage transmission line from its hydropower project. A coalition of NGOs including Jaringan Orang Asal SeMalaysia, SAVE Rivers, Bruno Manser Fund, Asia Indigenous Peoples Pact and International Rivers alleged that SEB failed to consult meaningfully with communities affected by the transmission line and that the company has not paid fair compensation. They asked ADB to withdraw as a potential financier. On 16 March 2015, the NGOs reported that ADB officials said the bank [would review the proposed loan](#). Business & Human Rights Resource Centre invited SEB to respond to the allegations. The company said: “we emphatically reject the latest allegations, which are merely the latest example of a long running campaign of vilification being waged against us” and provided details of the compensation process that it had undertaken.

The NGOs’ letter to the ADB also raised concerns with the promotion of hydropower as a low-carbon alternative to energy production from coal. They [said](#): “Shifting reliance towards energy generated through large scale hydropower developments does not automatically equate to a low carbon footprint or to being a cheaper source of power. The suggestion that investing in a shift towards generating power via large-scale hydropower projects that require flooding vast expanses of forested areas in Sarawak would lead to a reduced carbon footprint in Borneo appears to be based on an outdated mode of carbon equations. An increasing body of scientific evidence has revealed that greenhouse gas discharges from hydropower dam reservoirs in tropical climates are substantial and do have a corresponding impact on global climate change...”

In [Laos](#), Several dam projects in the Mekong and other rivers in the region have led to land grabs and concerns about major impacts on local populations, who are deploying a range of strategies to push for accountability. Twenty villagers affected by the construction of the Xayaburi hydroelectric dam on the Lower Mekong River have brought a lawsuit against Electricity Generating Authority of Thailand, calling for thorough social and environmental impact assessments. In November 2014, Sor Rattanamanee Polkla, a lawyer from Community Resources Centre (CRC) who is representing the plaintiffs, described how military and police officers [interrupted](#) a private meeting that she was holding with them in northeastern Udon Thani Province.

In focus: National human rights institutions: Are the 'Paper Tigers' Coming to Life?

National human rights institutions in Southeast Asia have often been described as “paper tigers” or “toothless agencies” — accused of sitting idle in the face of serious human rights concerns. Yet their potential to protect people from business-related human rights abuses may well be realised as, for example, communities turn to NHRIs outside of their home country to submit complaints about companies’ operations.

The National Human Rights Commission of Thailand (NHRCT) set a new regional standard by accepting cases related to the [Koh Kong sugar plantation](#), the [Xayaburi Dam project](#) and the Dawei Special Economic Zone project, lodged respectively by villagers from Cambodia, Laos and Myanmar – all projects operated by Thai companies. In relation to the Koh Kong case, the Commission released a [preliminary finding](#) that “*human rights principles and instruments were breached... and that the Thai parent company [Khon Kaen Sugar Industry Public Company Limited] is involved in the operations... where the breaches took place*”. The UN Special Rapporteur on Cambodia [welcomed the decision](#): “*Representing a success in transboundary human rights promotion and protection...[t]his is a landmark case for international advocacy in Cambodia, and the use of NHRIs could be explored further for land concession cases.*”

After 600 families in Oddar Meanchey province of Thailand [filed a complaint](#), the NHRCT [corroborated claims](#) that **Mitr Phol Sugar**, a Thai sugar company that supplied **Coca-Cola**, had illegally confiscated land and violated communities’ rights. In the [response](#) that Mitr Phol sent to us, it said that it did not support encroachment on private land or destruction of private property. Based on these precedents, in November, Thai and Myanmar people petitioned the NHRCT again, over increased militarisation, forced labour, and other abuses linked to the [Salween river basin dam projects](#).

In October 2014, Cambodian and Thai villagers [filed a complaint](#) to SUHAKAM, Malaysia’s Human Rights Commission, against the Malaysian company **Mega First**. The villagers claim that the company’s work on the Don Sahong dam project in Laos is likely to have irreversible impacts on their and other communities along the Mekong River. After the Laos Government had agreed to submit the project to a [mandatory prior consultation process](#), it was discovered that the process had begun with no official announcement or public information. Mega First failed to respond to requests for information and comment by civil society groups: we also approached the company twice but it remained silent.

Indonesia’s human rights commission, Komnas HAM, is conducting a similar [issue-based inquiry](#) as part of its ongoing national effort to gather information from indigenous communities, government agencies and companies in order to develop solutions for land disputes. Preliminary findings include that [indigenous people suffer discrimination and land rights abuses](#).

Dam-building in **Myanmar** has often been associated with intensified conflict dynamics. In March 2015, communities in Shan State [held a press conference](#) in the state capital Taunggyi, urging the Myanmar government and foreign investors to immediately stop plans to build large dams on rivers in Shan state, where conflict is escalating. Of 43 large dams planned in Myanmar, over half will be built on rivers in Shan State. Kunlong dam is on the Salween in the Kokang region, where heavy fighting since early February has displaced up to 100,000 residents.

In 2011, as democratic reforms got underway, the government suspended the controversial Myitsone dam project of China Power Investment. At the source of the Irrawaddy, regarded as sacred by the local population, the dam had completely failed to gain consent of the local population. As Dr. Jiang Heng of the Chinese Ministry of Commerce [has pointed out](#): “One basic reason for the challenges that China has faced in Myanmar is the inadequacy of studies and lack of comprehensive understanding of the country’s complex dynamics.” She links this both to the fact that for decades Myanmar’s rulers held tight control over the media and information, but also to a tendency among Chinese companies to conduct dialogue overseas in the same way as they do domestically – with high-level policy makers only, while overlooking dialogue on the ground.

A perceptible shift is underway, however. Dr Liang Xiaohui of the China National Textile and Apparel Council & Peking University [has said](#): "...Since late 2011, the policy focus of the regulation of overseas Chinese investment has shifted from protecting Chinese investment and personnel to guaranteeing social license based on due diligence and localization." He cites examples including that of China Power Investment, which reflected on the Myitsone dam experience as follows: "In the early phase of the project...the company should also have needed to conduct assessments or due diligence on Myanmar's implementation of human rights and the political risks involved...in addition to legal and political permits, the securing of society's permission is something that an enterprise must take seriously", and mentions that the company is working to set up "effective mechanisms for the remedy of rights": the company has issued a [case study](#) on the project.¹

4.3. Forced labour and harmful working conditions

Over a quarter – 27% – of the cases of alleged abuses in Southeast Asia to which we have invited companies to respond involve workers' rights.

The 2014 [Global Rights Index by the International Trade Union Confederation \(ITUC\)](#) ranked countries on a scale of 1 (best) to 5 (worst) for working conditions, using a range of indicators. Among the 139 countries surveyed, Southeast Asian countries came near the bottom of the index, with Cambodia, Malaysia, Laos and the Philippines scoring 5. ITUC said workers in those countries have "no guarantee of rights." Indonesia, Thailand and Myanmar were rated 4, an indication of "systematic violations," with governments or companies engaged "in serious efforts to crush the collective voice of workers, putting fundamental rights under continuous threat".

Forced labour is common among migrant workers, particularly in the fishing, construction and agricultural sectors in Thailand and Indonesia. In Malaysia, a [report](#) by Verité found that one in three foreign workers in the electronic industry was in a condition of forced labour – this was based on interviews with over 500 workers.

Exploitation in the garment sector

The intensity of work in many of Cambodia's garment factories is brutal. Reports of workers fainting due to exhaustion and being hospitalised as a result of unsafe working conditions continue. In a case in February 2015, more [than 100 workers](#) were hospitalised due to toxic fumes. These conditions and low wages have spurred massive industrial action by garment workers in recent years.

The protests over living wage mentioned in "Human rights defenders at risk" above, were repeated in September 2014, when garment workers again took action, to demand an increase in the minimum wage to US\$177 a month. [Clean Clothes Campaign called on H&M to show leadership](#) on the issue, given that it is a major buyer from Cambodia, and the previous year had announced a pilot project in Cambodia as part of its Road Map to a Living Wage initiative. According to the NGO, H&M had "failed to announce any benchmarks or figures around what a living wage would mean in the country."

We invited H&M to respond – in [its response](#) it said: "Through our pioneering wage strategy launched in 2013, we strongly support wage increases that are set by a tripartite negotiation between workers, employers and governments, a view that is supported by the global trade unions and the ILO. Our motivation isn't quick wins, but rather laying the groundwork for lasting change." Then, in early October, **Next, New Look, C&A, H&M, Inditex & Primark** pledged that their purchasing practices [would enable a living wage](#). The [Cambodian government set new minimum wage of \\$128](#) in 2015, which unions and activists said was still well below a living wage. Human Rights Watch reported in detail on ongoing abuses in the Cambodia garment sector in its March 2015 report "[Work Faster or Get Out](#)".

The issue of minimum wage is recurrent across the region. In Myanmar, new labour laws allow for the first time the formation of trade unions in Myanmar, but rights abuses are still commonplace. [Garment](#)

¹ For more on Chinese investment overseas see our portal on the topic: <http://business-humanrights.org/en/chinese-firms-impacts-abroad>

[factories workers at Shwepyithar industrial zone were on strike for months in 2015 calling for a living wage](#): at least 20 striking workers were arrested and charged with rioting.

Human trafficking in fishing

In June 2014, a Guardian investigation uncovered abuses and [slavery in the Thai fishing industry](#), “with men often beaten, tortured and sometimes killed”. The report identified several major UK, US and European retailers and supermarkets, which were purchasing prawns from Thai suppliers that were involved in the abuses.

“I don’t care if the men are trafficked or not, I just buy the fish. I need to make money.”

Boat captain in Thailand

Responses have occurred at many levels. The UK government ordered the British Retail Consortium to produce new transparency guidance. Carrefour suspended orders from Thailand, and UK and US supermarkets created a taskforce to tackle trafficking and forced labour in the shrimp feed industry.

The Thai Fishery Producers Coalition claimed that the industry had made efforts to eliminate forced and child labour. The [Thai government outlined its new efforts to address forced labour and trafficking in fisheries](#), including deploying GPS on fishing boats, adopting steep fines, and a budget to hire 700 anti-corruption staff in an effort to combat human trafficking. Yet migrant workers’ rights advocates say that the measures do not go far enough and have raised doubts about their implementation.

In January 2015, the Resource Centre joined 44 labour and human rights organizations in expressing concern to the Thai Government about the [proposal by the Ministry of Labour to recruit prisoners to work on Thai fishing vessels](#). Following the letter to the Prime Minister, the Thai government denied plans to use prison labour in fisheries.

In March 2015 an Associated Press [investigation](#) uncovered slavery-like practices in Indonesia’s fisheries, where migrant workers, mostly from Myanmar – were kept in cages, forced to work and often beaten and tortured. The fish and seafood they catch is then transported to Thailand and via Thai companies is supplied to US businesses, including restaurants, major supermarkets and retailers, and pet shops. After the release of the report, **Thai Union Frozen** immediately [cut ties](#) with its supplier and the US governments and business leaders [renewed their call](#) for a crackdown on the labour abuses in the Thai fishing industry. The Thai government [promised legal actions](#) against companies using forced labour. A few days after the release of the investigation, the [Indonesian government rescued over 300 fishermen](#).

5. Conclusion and recommendations

As this briefing has shown, rapid economic integration in Southeast Asia – despite its huge potential to lift people out of poverty and create decent work – is currently accompanied by widespread human rights abuses: involving companies headquartered within the region and beyond. Many governments in the region are taking steps that make it harder to prevent harmful social and environmental impacts of business activities, for example through investment laws that roll back protections of indigenous people and the environment, or by restricting the ability of human rights defenders to do their work.

In this context, governments need to strengthen the protection of human rights, and companies need to ensure that they do not become involved in abuses, either through their direct operations and supply chains, or in the form of complicity with government abuses.

In that light we provide some broad recommendations below. These should be considered in parallel to the [extensive guidance available on business and human rights](#), on topics ranging from human rights policy, to impact assessment, to grievance procedures – as well as guidance for specific sectors.

Companies should:

1. Fulfil their responsibility to respect human rights as set out in the UN Guiding Principles on Business and Human Rights: including in the areas of resettlement and labour rights
2. Conduct thorough consultation processes with workers and local communities, and engage with civil society; take their inputs into consideration when making policy and operational decisions both when embarking on a project and throughout its duration;
3. Establish effective grievance mechanisms for workers and local communities impacted by the company's projects;
4. Apply rigorous human rights due diligence throughout supply chains and in business relationships;
5. Oppose the use of force and restrictive laws against human rights defenders; engage governments as appropriate in individual cases.

Governments in Southeast Asia should:

1. Improve enforcement of laws that protect workers, indigenous people, the environment, and small landholders;
2. Ensure that relevant laws support freedom of expression and association, and foster the development of civil society as a constructive and independent monitor;
3. Adopt a National Action Plan to implement the UN Guiding Principles; and ensure state-owned companies meet the standards set out in the UN Guiding Principles;
4. Ensure the independence of the judiciary and access to effective judicial remedies;
5. Promote the independence and expand the mandate of National Human Rights Institutions.

Home governments should:

1. Take steps to strengthen extraterritorial access to remedies for victims of abuse involving companies based in their territory;
2. Establish non-financial social and environmental reporting requirements for companies;
3. Proactively express human rights expectations of companies domiciled in their territory that do business in Southeast Asia, ensure accessible guidance;
4. Ensure trade agreements are coherent with the country's human rights obligations;
5. Support governments in Southeast Asia in their implementation of the UN Guiding Principles on Business and Human Rights.