

Extractive Sector, Just Transition and Human rights

Introduction

The Government of Thailand has reacted to the unfolding climate crisis with several policy measures, from plans to increase the proportion of renewable energy in its energy mix, employment of new technologies, to focus on reforestation and forest sinks. However, not only the Government's actions have not been ambitious enough to lead to the Paris Agreement compliance and ultimate goal to keep the global temperature rise at 1.5°C, but its measures have also gravely affected the human rights of communities on the ground. While there are attempts at energy transition, as of now, it is certainly not a Just Energy Transition.

The present submission to the United Nations (UN) Working Group on Business and Human Rights elaborates specifically on the extractive sector in the context of Just Energy Transition in Thailand, with a special focus on the production of electric vehicles and renewable energy technologies, exerting increased pressure on the extraction of transition minerals (TMs) such as lithium, cobalt or nickel and testing their supply chains' sustainability. [Manushya Foundation](#) illustrates how mining and import of such minerals could contribute to new human rights violations both domestically and abroad, considering the current environment of corporate impunity in Thailand, and puts forward community-based recommendations and conditions necessary for a Just, Feminist, Green, and Inclusive Transition that puts People and the Planet over Profit.

I. Just Transition in Thailand

Thailand's climate action and commitments

In the last two decades, Thailand has made its way to a top-10 list of countries most vulnerable to the devastating effects of climate change.¹ As a tropical country in Southeast Asia, it is projected to soon face extreme weather events, including flooding, rising sea levels, coastal erosion, negative impacts on human health, settlements, and others.² In rhetoric, the Thai government has supported the global climate governance processes, emphasizing its participation in early climate framework negotiations in the 1990s, ratification of the Kyoto Protocol in 2002, and development of its first National Strategic Plan on Climate Change 2008-2013 that was followed by the Climate Change Master Plan 2015-2050.³ Climate change has since then featured in all major high-level strategy documents, including its 20-Year National Strategy 2018-2037,⁴ Power Development Plan, the Alternative Energy Development Plan, and Energy Efficiency Plan, together constituting the National Energy Plan framework, and others.⁵

¹ Manushya Foundation, *The People's Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>; Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>, Germanwatch, *Global Climate Risk Index 2021*, (25 January 2021), available at: <https://www.germanwatch.org/en/19777>

² The Office of Natural Resources and Environmental Policy and Planning, *Climate Change Master Plan 2015-2050*, (July 2015), p. 34-47, available at: https://climate.onep.go.th/wp-content/uploads/2019/07/CCMP_english.pdf

³ Climate Change Management and Coordination, *Thailand's Climate Change Master Plan 2015 - 2050*, available at: https://climate.onep.go.th/en_US/topic/policy-and-strategy/thailand-climate-change-master-plan-แผนแม่บทของรัฐบาล/

⁴ Office of Small and Medium Enterprises Promotion, *National Strategy 2018 – 2037*, (2018), available at: https://www.sme.go.th/upload/mod_download/download-20201012111719.pdf

⁵ Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, p. 1, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>

Similarly active has Thailand been on the international stage. As a party to the Paris Agreement, signed on 22 April 2016 and ratified the same year,⁶ Thailand complies with its reporting obligations under the Agreement. Its current climate ambitions were reported under the 2nd Updated Nationally Determined Contributions (NDCs) in November 2022, though announced a year earlier, at the Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in 2021 (COP26). According to the new targets, Thailand strives to achieve a 30% reduction in greenhouse gas emissions by 2030 compared to business-as-usual projected levels. The Government claimed that it might be able to increase this number to 40%, if it receives appropriate support from the international community.⁷ Thailand also pledged to reach carbon neutrality by 2050 and net-zero greenhouse gas emissions by 2065, a goal announced by the Thai Prime Minister Prayut Chan-o-cha at COP26.⁸

Is Thailand really walking the walk?

The increase from the originally envisioned 30% to the possible 40% reduction of greenhouse gasses by 2030 was commented on by the Thai Minister of Natural Resources and Environment, Varawut Silpa-archa: “*In Thailand we do not just talk. We walk the walk*”.⁹ However, under closer scrutiny, the new targets do not represent any meaningful effort to curb climate change.¹⁰

As analyzed by the Climate Action Tracker (CAT), an independent scientific body, Thailand's actions to comply with targets set forward by the Paris Agreement (to keep the global temperature rise well below 2°C and strive to hold it at 1.5°C), are *critically insufficient*. CAT estimates that if all countries were to follow Thailand's example, we could expect global warming of more than catastrophic 4°C.¹¹ Thailand's policy and legal framework is lacking behind its COP26 commitments that have not yet been integrated. Furthermore, Thailand's greenhouse gas emissions reductions are measured against “business-as-usual” (BAU) levels that are disproportionately high and therefore make the climate targets seem more ambitious than they actually are.¹² Thailand has also not signaled any real effort to phase out fossil fuels, planning to even increase the use of natural gas, and has not accessed any COP26 sectoral pledges committing it to the fossil fuel phase-out.¹³

Renewable energy vs. fossil fuels

The Thai government is currently working on new strategies that would be in line with the targets set at COP26. For example, its new National Energy Plan 2022 (NEP 2022) should be finalized and published in 2023. However, some of its details have already been disclosed in the Long-term Low

⁶ United Nations Treaty Collection, *Paris Agreement (Status)*, (28 May 2023), available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XXVII-7-d&chapter=27&clang=en

⁷ United Nations Climate Change, *Thailand 2nd Updated NDC*, (2 November 2022), available at: <https://unfccc.int/documents/620602>

⁸ Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, p. 2, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>; Manushya Foundation, *Is the Thai Government 'Greenwashing' us?*, (24 April 2022), available at: <https://www.manushyafoundation.org/post/is-the-thai-government-greenwashing-us>

⁹ Royal Thai Embassy, Washington D.C., *Thailand will raise its 2030 net-zero target*, (2022), available at:

<https://thaiembdc.org/2022/09/08/thailand-will-raise-its-2030-net-zero-target/>

¹⁰ Manushya Foundation, *The People's Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), p. 1, available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>

¹¹ Climate Action Tracker, *Thailand Country Summary*, (2022), available at: <https://climateactiontracker.org/countries/thailand/>

¹² Climate Action Tracker, *Thailand Country Summary*, (2022), available at: <https://climateactiontracker.org/countries/thailand/>

¹³ Climate Action Tracker, *Thailand Policies & Action*, (2022), available at: <https://climateactiontracker.org/countries/thailand/policies-action/>

Emissions Development Strategy (LT-LEDS) submitted by Thailand under the Paris Agreement in 2022.¹⁴ It is apparent that gaps will remain significant. For example, the Government plans the minimum of 50% of *new* power generation capacity installed by 2050 to be renewable. It means that up to half of all new power plants will use fossil fuels for energy generation, instead of phasing them out as soon as possible. The plan also foresees 69% of new vehicles in the market to be electric vehicles (EVs) by 2035.¹⁵

Identifying the energy sector as the major contributor to Thailand's overall greenhouse gas emissions, the country plans to focus on increasing the ratio of renewables in its energy mix to 68% in 2040 and 74% in 2050. The plan also relies on new technologies such as carbon capture, use and storage (CCUS), installed on biomass and fossil fuel-powered plants where they would reduce carbon emissions.

Dangerously, the use of such technologies contributes to postponing the ultimate phase-out of coal-fired plants to as late as 2050,¹⁶ while research suggests that all existing coal-fired plants should be retired as soon as possible and no new plants should be built.¹⁷ At the same time, researchers from Thammasat University emphasize the need to phase out all fossil fuels by 2040 at the very latest.¹⁸

Energy transition or greenwashing?

In the meantime, Thailand promotes the generation of energy from waste-to-energy and biomass-burning plants, embedded in its Alternative Energy Development Plan.¹⁹ While portrayed as renewable energy solutions, this is not necessarily the case. Biomass burning can produce even more greenhouse gas emissions than fossil fuels and might lead to deforestation.²⁰ Besides the unconvincing record in tackling greenhouse gas emissions, biomass and waste-to-energy projects deal with the same human rights issues typical for any large-scale development in Thailand. For example, in July 2022, the Southern community of Nabon had to stage a week-long protest in Bangkok to demand a Strategic Environmental Assessment of a new biomass-burning plant planned in their neighborhood.²¹

Similarly, the idea of “clean coal” is used to justify the continued use of fossil fuels and even the opening of new coal-fired plants. For example, the Power Development Plan of 2015 proposed three

¹⁴ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 13, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf

¹⁵ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 13, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf

¹⁶ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 20, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf

¹⁷ New Climate Institute, *Towards a collective vision of Thai energy transition: National long-term scenarios and socioeconomic implications*, (November 2022), p. 9, available at: https://newclimate.org/sites/default/files/2022-11/2022-11-08_th_Ites_-_full_report.pdf

¹⁸ Friedrich-Ebert-Stiftung, *The gaps in Thailand's plans for carbon neutrality, and its regional role*, (26 July 2022), available at: <https://asia.fes.de/news/thailand-power-development-plan>

¹⁹ Energy Policy and Planning Office, *Thailand Power Development Plan 2015-2036 (PDP2015)*, (30 June 2015), p. 3-5, available at: <https://www.eppo.go.th/index.php/en/policy-and-plan/en-tieb/tieb-pdp>

²⁰ Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, p. 2-3, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaviillagers-from-forced-evictions>

²¹ Manushya Foundation, *The People's Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>; Manushya Foundation, *#JustTransition: Why we need to Save Nabon community?*, (16 August 2022), available at: <https://www.manushyafoundation.org/post/why-we-need-to-savenabon>

new “clean” coal-fired plants in the South of Thailand, including the highly problematic Thepa plant.²² Its planning was marked by the lack of “meaningful public participation, transparency, and proper access to information; failed to seek communities’ consent to be evicted from their land; and failed to provide full and accurate baseline data regarding the environment and impacts on the ecosystem and local people’s livelihoods.”²³

Another one of the Government's schemes to present itself as the climate action champion is the Bio-Circular-Green Economy Model (BCG), propagated by Thailand at last year's convening of the Asia-Pacific Economic Cooperation (APEC) in Bangkok in November 2022.²⁴ According to the People's Declaration of grassroots communities united as the #WeAreJustTransition Movement,²⁵ the BCG model: “gives even more power to corporations to pursue carbon market projects, monopolize natural resources such as seeds, and opens the door to genetic engineering. The model represents yet another scheme promoted by the government that excludes community voices and community-led solutions.”²⁶

False climate solutions: energy sector vs. forest sinks

Despite the lack of ambition in phasing out fossil fuels, according to the LT-LEDS 2022, Thailand is on track to reach carbon neutrality by 2050. However, the large amounts of carbon dioxide that would still be emitted by Thailand's energy sector are planned to be compensated by carbon removal provided by forest sinks,²⁷ rendering the country carbon 'neutral'.

The projected carbon neutrality pathway is indicated in the graph below. Pink values show the total carbon dioxide removed from the atmosphere through forest sinks (LULUCF = land use, land use change and forestry). It is apparent that only thanks to the functioning of such sinks, Thailand can continue to emit carbon dioxide emissions, largely from its energy sector, while still achieving carbon neutrality in 2050.

²² Energy Policy and Planning Office, *Thailand Power Development Plan 2015-2036 (PDP2015)*, (30 June 2015), 2-5, available at: <https://www.eppo.go.th/index.php/en/policy-and-plan/en-tieb/tieb-pdp>

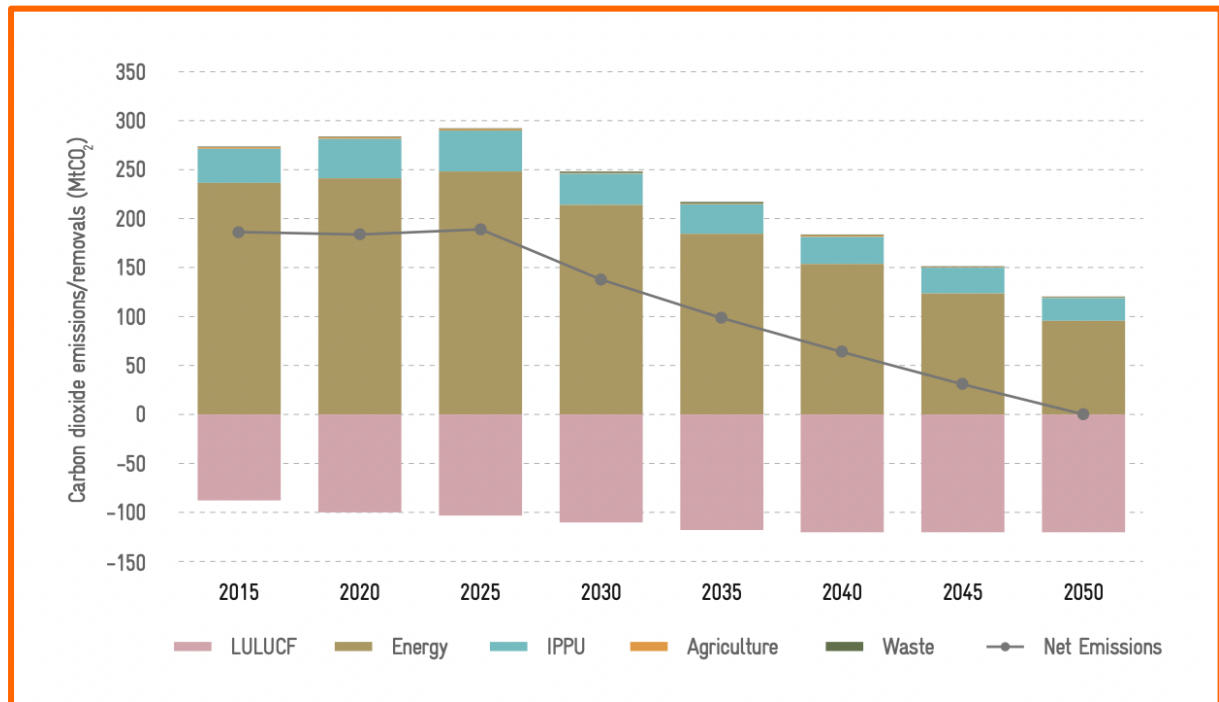
²³ Manushya Foundation, Sai Thong Rak Pah Network, Indigenous Women's Network of Thailand, Thai Business & Human Rights Network and the Thai CSOs Coalition for the UPR, *Joint UPR Submission on Land-Related Rights, Forest Conservation Laws & Climate Change Policies: Thailand's Third Universal Periodic Review Cycle*, (25 March 2021), p. 5, available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>

²⁴ Bangkok Post, *A showcase for the BCG model*, (21 November 2022), available at: <https://www.bangkokpost.com/business/2442445/a-showcase-for-the-bcg-model>

²⁵ Manushya Foundation, *All You Need to Know About the #WeAreJustTransition Movement!*, (28 November 2022), available at: <https://www.manushyafoundation.org/post/all-you-need-to-know-about-the-wearejusttransition-movement>

²⁶ Manushya Foundation, *The People's Declaration for a Just, Feminist, Green, and Inclusive Transition on Energy, Environment, Natural Resources, and Forests*, (18 November 2022), available at: <https://www.manushyafoundation.org/peoples-declaration-wearejusttransition-movement>

²⁷ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 13, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf



Source: Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version) 2022²⁸

As portrayed in the graph, the amount of CO2 captured and stored by forests is projected to rise between 2015-2040 which corresponds with the Government pledge to increase the total forested area in the country to 55% by 2037.²⁹ This poses a great threat to indigenous peoples, rural population and forest-dwelling communities all over Thailand, given the country's problematic record of criminalization and forced evictions under unfair forest conservation laws and policies.³⁰

Unfair forest conservation laws and policies

In the name of “Forest Reclamation Policy” and consequent orders 64/2014 and 66/2014 of the National Council for Peace and Order (NCPO), later substituted with newly amended laws such as the

²⁸ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 13, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf

²⁹ Manushya Foundation, *#SaveSabWaiVillagers from Forced Evictions & Extreme Poverty! The Unfair Criminalization of 14 Villagers under Thailand's "Forest Reclamation Policy"*, *Legal Analysis of the Case, Section 7*, available at: <https://www.manushyafoundation.org/campaign-savesabwaivillagers-our-analysis-of-the-case>; iLaw, *Supplementary document to the 20 Year National Strategy 2017-2036*, (18 May 2018), available at: <https://ilaw.or.th/sites/default/files/20%E0%B8%9B%E0%B8%B5.pdf>

³⁰ Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>; Manushya Foundation and the Working Group in support of the 14 Sab Wai Villagers in the Sai Thong National Park Case, *Joint Submission to the UN Special Rapporteur on the Situation of Human Rights Defenders and Relevant Special Procedure Mandates Re: Human rights violations of woman human rights defender Ms. Nittaya Muangklang and thirteen other villagers in Sai Thong National Park, Chaiyaphum Province, Thailand, calling for urgent actions for their protection*, (23 June 2019), available at: <https://www.manushyafoundation.org/campaign-savesabwaivillagers-submission-of-urgent-action-to-7-un-special-rapporteurs>; Manushya Foundation, *How do false climate solutions violate human rights in Thailand?*, (17 April 2023), available at: <https://www.manushyafoundation.org/post/how-do-false-climate-solutions-violate-human-rights-in-thailand>; Manushya Foundation, *Thailand's false climate solutions violate human rights!*, (18 January 2022), available at: <https://www.manushyafoundation.org/post/thailand-s-false-climate-solutions-violate-human-rights>; Manushya Foundation, Sai Thong Rak Pah Network, Indigenous Women's Network of Thailand, Thai Business & Human Rights Network and the Thai CSOs Coalition for the UPR, *Joint UPR Submission on Land-Related Rights, Forest Conservation Laws & Climate Change Policies: Thailand's Third Universal Periodic Review Cycle*, (25 March 2021), available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>; and Manushya Foundation, *UPR Factsheet: Thailand's False Climate Solutions with Bad Forest Conservation Laws: Thailand's Third Universal Periodic Review Cycle*, (13 September 2021), available at: <https://www.manushyafoundation.org/thailand-third-upr-cycle-factsheet-false-climate-solutions-with-bad-forest-conservation-laws>

National Park Act 2019, there have been 28,664 recorded cases of forest encroachment between October 2014 and July 2022.³¹ In most cases, people affected by the Policy were small-scale farmers or indigenous peoples living off environmentally-friendly traditional rotational farming, and the government actions violated a whole range of their human rights, including their right to food or adequate standard of living.³² Two of the most prominent cases are the Sab Wai and Bangkloi villagers who have been fighting for their homes and lands, despite the adversity of Thailand's forest conservation framework.

14 Sab Wai villagers, a small farming community living off their land within the Sai Thong National Park since the 1970s, prior to the declaration of the area as a national park, were first accused of forest encroachment in 2016 and subsequently jailed in 2019. Manushya Foundation submitted an urgent complaint to the UN Special Procedures for the villagers' protection and they were released on bail. In 2021, the Supreme Court sentenced 11 villagers to suspended jail terms and 3 villagers to prison terms. Most recently, in 2022, Manushya Foundation supported the villagers with a Complaint for Urgent Action to the UN Special Procedures, as the villagers faced the imminent threat of forced evictions from their homes and lands, as well as reprisals.³³ The villagers still live on their land, though the uncertainty of the land tenure, imprisonment, the legal and administrative battle and reprisals against them have taken a toll on their mental health.

Indigenous Karen from Bangkloi village have been charged with forest encroachment and jailed in early 2021, after they had tried to return to their ancestral lands situated within the Kaeng Krachan National Park. While they were released on bail shortly after, the area has since been declared a UNESCO Heritage Site, raising the profile of the national park without resolving the land rights claims of the indigenous Karen.³⁴ The land dispute is also linked to the murder of the Karen indigenous rights defender "Billy" Porlajee Rakchongcharoen.³⁵

Both cases, as well as Thailand's false climate solutions and unfair forest conservation laws, caught the attention of the Committee on the Elimination of Racial Discrimination (CERD) during its review of Thailand in November 2021.³⁶ The CERD Committee also expressed concerns in its Concluding

³¹ Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, p. 7, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>

³² For detailed analysis of Thailand's false climate solutions and unfair forest conservation laws, see Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), Annex 5, available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>

³³ For detailed chronology and human rights analysis of the case, see Manushya Foundation, *Complaint for Urgent Action for Protection of the 14 Sab Wai Villagers, facing human rights violations due to Thailand's False Climate Solutions*, (4 August 2022), available at: <https://www.manushyafoundation.org/complaint-for-urgent-action-savesabwaivillagers-from-forced-evictions>

³⁴ Manushya Foundation, *Why We Need to #SaveBangkloi*, (11 March 2021), available at: <https://www.manushyafoundation.org/post/why-we-need-to-savebangkloi>; Manushya Foundation, *No to the UNESCO "World Heritage Site"! We Need to #SaveBangkloi!*, (6 September 2021), available at: <https://www.manushyafoundation.org/post/what-s-wrong-with-world-heritage-savebangkloi>; Manushya Foundation, *Joint Statement: Thai authorities must release 22 Bang Kloi Karen and drop all forest encroachment charges*, (6 March 2021), available at: <https://www.manushyafoundation.org/joint-statement-save-bangkloi>

³⁵ Manushya Foundation, *Thailand's Climate Action Tainted with Blood!*, (21 April 2022), available at: <https://www.youtube.com/watch?v=9q6WDT81cv0>; Manushya Foundation, Sai Thong Rak Pah Network, Indigenous Women's Network of Thailand, Thai Business & Human Rights Network and the Thai CSOs Coalition for the UPR, *Joint UPR Submission on Land-Related Rights, Forest Conservation Laws & Climate Change Policies: Thailand's Third Universal Periodic Review Cycle*, (25 March 2021), p. 8, available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>

³⁶ Manushya Foundation, *CERD Committee addresses discriminatory effects of false climate solutions in Thailand*, (21 June 2022), available at: <https://www.youtube.com/watch?v=ivKHPPQT3Lw>

Observations about the forest and environmental legislation and recommended Thailand to ensure that free, prior and informed consent is sought with regards to adoption and implementation of such legislation.³⁷

However, neither the CERD Concluding Observations nor Thailand's own commitment under its 3rd cycle of Universal Periodic Review (UPR), where it supported 5 UPR recommendations (from Cyprus, Maldives, Fiji, Indonesia, and Costa Rica) calling for wider participation and a rights-based approach to climate action, have led to a more inclusive and participatory approach to policy and legislative processes on climate. Strategic plans focused on energy transition and climate change mitigation and adaptation still do not include the voices of concerned rights-holders, who will bear the impacts of climate change the most.

The case in point is the currently drafted Climate Change Act, drafting of which has avoided wide public consultations with concerned communities, especially groups such as indigenous peoples, forest-dwelling communities, women, or rural populations. The draft Act itself, however, does not provide adequate human rights guarantees. The rights of communities are limited to the right to access information on climate change and express opinions on its solutions,³⁸ but no meaningful consultations are granted for future climate change-related policymaking, such as the creation of the Climate Change Master Plan, a high-level strategy document envisioned under the draft Climate Change Act.³⁹

Just transition in Thailand: Too little transition, none of the justice

Despite its efforts to appear as the climate action champion on the international stage, Thailand faces serious gaps in its climate action. Even unambitious targets are not matched with adequate policies and legislature. The situation in Thailand resembles that of many Asian nations that currently undergo energy “addition”, instead of transition, adding renewable energy to its existing energy mix, rather than fully transitioning out from fossil fuel dependency.⁴⁰

Meaningful steps in decarbonizing the Thai economy are tainted by greenwashing and false climate solutions aiming to protect the current status quo of the fossil fuel industry. Other times, “renewable” energy projects build on decades of corporate impunity and ignore the voices of communities negatively affected in the process. The widespread human rights violations in the name of forest conservation and the creation of carbon sinks have been criticized by international human rights mechanisms such as the UN Special Procedures or the CERD Committee.

To illustrate how the extractive sector interacts with the just energy transition in Thailand, the next chapter elaborates on the legal and policy framework regulating mining activities and the human

³⁷ United Nations Office of the High Commissioner for Human Rights, *Concluding observations of the Committee on the Elimination of Racial Discrimination on the combined fourth to eighth reports of Thailand*, (10 February 2022), CERD/C/THA/CO/4-8, para 28(e), available at: <https://www.ohchr.org/en/documents/concluding-observations/cerdcthaco4-8-concluding-observations-committee-elimination>

³⁸ Baker McKenzie, *Spotlight: climate change law, regulation and policy in Thailand*, (30 January 2023), available at: <https://www.lexology.com/library/detail.aspx?g=adc8fe60-c506-4e80-823a-01deeda16838>

³⁹ Chandler MHM, *Thailand's First Climate Change Bill to be Submitted for Approval*, (1 August 2022), available at: <https://www.lexology.com/library/detail.aspx?g=07c23552-5798-47d4-b986-0dbc96690c9f>

⁴⁰ Fair Finance Asia, *Press Release: Asia Needs Just Energy Transition, Not 'Energy Addition,' says Fair Finance Asia Study*, (8 December 2022), available at: <https://fairfinanceasia.org/blog/2022/12/08/asia-needs-just-energy-transition-not-energy-addition-says-fair-finance-asia-study/>

rights issues of the extractive industry, including a case study of Phichit villagers, standing up for corporate accountability for over 20 years.

II. Extractive sector in Thailand

Mining in Thailand has a tradition that dates back to the extraction of tin and limestone⁴¹ or more recently, gold.⁴² With the government plans to increase the ratio of renewables in its energy mix and shift the focus of the automotive industry to electric vehicles,⁴³ we can expect a more aggressive drive of the Government to procure critical metals needed to produce batteries for these new technologies: transition minerals (TMs) such as lithium, cobalt, nickel, graphite or manganese. The ongoing exploration of lithium in the South of Thailand⁴⁴ shows that it is highly likely that mining activities for these minerals will be undertaken in the country, and therefore will be subjected to a flawed legal and policy framework regulating the extractive sector.

Legal and policy framework of extractive industry

Minerals Act 2017

The main governmental body regulating the extractive sector in Thailand is the Ministry of Industry (Mol), with two specialized agencies, the Department of Mineral Resources and the Department of Primary Industries and Mines.⁴⁵ Mol is also mandated to issue ministerial notifications that deal with issues related to the core law dealing with mining in Thailand: the Minerals Act 2017.⁴⁶ Unlike its predecessors which it repealed, the Act has been portrayed as a piece of legislation providing “stricter environmental controls” and “more protection to those living in mining areas.”⁴⁷

In reality, the Minerals Act consolidates the central Government's power in managing the mineral resources of the country,⁴⁸ with limited space for meaningful public participation in exploration, extraction, or restoration plans and implementation. The consultation process (Section 82) is one of the conditions for conferring a concession certificate for underground mining (Section 84) and it can only be held after the Environmental Impact Assessment is finalized and approved, meaning that the public should be able to access all relevant information on the project's potential environmental risks, their prevention, and mitigation.

In the meantime, the public hearing process for all other types of mining (including open-pit mining of gold) has fewer requirements and is only prescribed after an application for a mining concession is filed (Section 56). As such, according to the Minerals Act 2017, the mining company or state

⁴¹ Adis Israngkura, *The Mining Sector and Its Sustainability*, (December 2008), available at: <http://tdri.or.th/wp-content/uploads/2012/09/t5d2008002.pdf>

⁴² Manushya Foundation, *#JusticeForPhichit: Fighting for Corporate Accountability*, (2022), available at: <https://www.manushyafoundation.org/justice-for-phichit>

⁴³ Climate Change Management and Coordination, *Thailand's Climate Change Master Plan 2015 - 2050*, p. 82, available at: https://climate.onep.go.th/en_US/topic/policy-and-strategy/thailand-climate-change-master-plan-แผนแม่บทการจรั้บการร/

⁴⁴ Matt Birney, *Pan Asia chases big lithium targets in Thailand drilling campaign*, (28 February 2023), available at: <https://thewest.com.au/business/public-companies/pan-asia-chases-big-lithium-targets-in-thailand-drilling-campaign-c-9897646>

⁴⁵ Chandler MHM Limited, *Mining - Thailand Getting the Deal Through 2022*, (2022), available at: https://www.chandlermhm.com/newsletters_and_publications/2022/35.html

⁴⁶ Minerals Act, B.E. 2560 (2017), available at: <https://policy.asiapacificenergy.org/node/3397>

⁴⁷ Chandler MHM Limited, *Mining - Thailand Getting the Deal Through 2022*, (2022), available at: https://www.chandlermhm.com/newsletters_and_publications/2022/35.html

⁴⁸ Minerals Act, B.E. 2560 (2017), Section 7, available at: <https://policy.asiapacificenergy.org/node/3397>

administration does not have the obligation to conduct ongoing consultations based on a thorough assessment of environmental and human rights risks to the concerned communities. Also, there are no guarantees to ensure that the consultation process truly allows people to voice out their concerns, receive full information, and therefore be able to make informed decisions. The lack of public participation mechanism has been also noted by the National Human Rights Commission of Thailand during the Act's drafting process.⁴⁹ Similarly to the consultation process, underground mining is also better regulated with regards to a restoration plan of the mining site than other types of mining, such as open-pit.

National Action Plan on Business and Human Rights (NAP-BHR)

In 2019, the Thai government introduced its first National Action Plan on Business and Human Rights (NAP-BHR). Communities from all around Thailand, united under Manushya Foundation-led Thai BHR Network, including communities negatively impacted by mining operations, identified core issues that should be included in the NAP-BHR, based on their own experience. However, the Government eventually decided not to include such concerns, resulting in a toothless policy document without provisions that would protect Human Rights Defenders opposing mining projects and facing reprisals, or protection and recognition of indigenous peoples who defend natural resources and the environment. The NAP-BHR also has not led to the development of legally binding measures that would protect communities in Thailand against the negative impacts of business operations.⁵⁰

The gaps in the protection of Human Rights Defenders, corporate impunity, and devastating impacts of unabated mining operations are illustrated in the case of Phichit villagers who have been opposing gold mining operations for over 20 years.

#JusticeForPhichit: Fighting for justice in the face of corporate impunity

At the border of Central Thailand's Phichit, Phetchabun, and Phitsanulok provinces, over 6,000 villagers have been severely affected by the operations of a gold mining company since 2001. Due to industrial pollution caused by the mine, the villagers' health worsened, and the environment they live in and the natural resources they are dependent on became heavily polluted. As a farming community, contamination of arable land seriously compromised their food security, and pollution of groundwater made drinking local water a health risk.⁵¹

For years, villagers fought to protect their rights and the environment, and have undertaken numerous efforts to seek an effective remedy and solutions for the negative impacts they had experienced. While the government closed the mine in 2017, no remedy or compensation was provided, despite the class-action lawsuit filed by 362 villagers in May 2016. The court hearings have been repeatedly postponed for years and the case is currently in legal limbo. Instead, the community has faced reprisals from the

⁴⁹ National Human Rights Commission, *Opinions and Recommendations for the Draft of Minerals Act B.E. And the Prescription of other related laws*, (2016), available at: <https://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/ความเห็นและข้อเสนอแนะต่อร่างพระราชบัญญัติแร่-พ-ศ.-๖๐.aspx>

⁵⁰ For detailed chronology of Manushya Foundation's work on NAP-BHR and analysis of its features, see Manushya Foundation, *Communities let down by Thailand's NAP-BHR fight back: It's time to #StopNAPPING!*, (2 November 2022), available at: <https://www.manushyafoundation.org/post/communities-let-down-by-thailand-s-nap-bhr-fight-back-it-s-time-to-stopnapping>

⁵¹ Manushya Foundation, *#JusticeForPhichit: Fighting for Corporate Accountability*, (2022), available at: <https://www.manushyafoundation.org/justice-for-phichit>

company and local authorities, in the form of Strategic Lawsuits Against Public Participation (SLAPP), harassment, and intimidation.⁵²

As a result of the Investor-State Dispute Settlement (ISDS), a mechanism embedded in the Thailand-Australia Free Trade Agreement, invoked by the mining company, the Thai government found itself in a lengthy international arbitration.⁵³ While the mine was closed because of its devastating impacts on the health, livelihoods and the environment of the villagers, after six years of the ongoing ISDS that would likely result in the Thai government's loss, the mine was allowed to reopen in January 2022⁵⁴ and restarted its operations in March 2023.⁵⁵

In dealing with the situation of Phichit villagers and its policy and legal framework, Thailand's actions as well as omissions show violations of a wide range of International Human Rights. The Government's actions are not in line with standards stipulated in documents such as the International Covenant on Civil and Political Rights,⁵⁶ International Covenant on Economic, Social and Cultural Rights,⁵⁷ the UN Declaration on Human Rights Defenders,⁵⁸ the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas,⁵⁹ the UN Declaration on the Rights of Indigenous Peoples⁶⁰ or the UN Guiding Principles on Business and Human Rights.⁶¹

III. Extractive sector in Thailand in the context of just energy transition

Electric vehicles to drive Thailand's energy transition

As touched upon in the previous sections, Thailand plans to increase the use of renewable energy solutions as well as electric vehicles (EVs) as a part of its energy transition and the Government has made obvious its plan to become a regional hub for their production. Being one of the largest car producers in the world,⁶² it has integrated the manufacturing of EVs into the strategy documents such

⁵² Manushya Foundation, *SLAPPed: Phichit Villagers Push Back Against Corporate Harassment & Intimidation!*, (6 September 2022), available at: <https://www.manushyafoundation.org/post/slapped-phichit-villagers-push-back-against-corporate-harassment-intimidation>

⁵³ Manushya Foundation, *Free trade agreements: Corporate greed makes the right to water of Phichit villagers distant reality*, (29 April 2022), available at: <https://www.manushyafoundation.org/post/free-trade-agreements-corporate-greed-makes-the-right-to-water-of-phichit-villagers-distant-reality>

⁵⁴ Manushya Foundation, *#JusticeForPhichit: Return of Kingsgate: Has the Thai government sold out its people?*, (7 February 2022), available at: <https://www.manushyafoundation.org/post/justiceforphichit-return-of-kingsgate-has-the-thai-government-sold-out-its-people>

⁵⁵ Manushya Foundation, *BREAKING: Chatree Gold Mine restarted, threatening villagers' health and livelihoods again.*, (4 April 2023), available at: <https://www.manushyafoundation.org/post/breaking-chatree-gold-mine-restarted-threatening-villagers-health-and-livelihoods-again>

⁵⁶ International Covenant on Civil and Political Rights, (ratified 29 October 1996), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁵⁷ International Covenant on Economic, Social and Cultural Rights, (ratified 5 September 1999), available at: <https://www.ohchr.org/documents/professionalinterest/cescr.pdf>

⁵⁸ General Assembly, Resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, (9 December 2008), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibilityindividuals-groups-and>

⁵⁹ Human Rights Council, *UN Declaration on the Rights of Peasants and Other People Working in Rural Areas*, (28 September 2018), A/HRC/RES/39/12, available at: <https://digitallibrary.un.org/record/1650694>

⁶⁰ United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, (2007), available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁶¹ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁶² Thailand Board of Investment, *Inside Thailand's EV Revolution: From luxury cars to tuk-tuks, an electric era dawns*, (2022), available at: <https://www.boi.go.th/index.php?page=advertorial12&language=en>

as the Climate Change Master Plan 2015-2050⁶³ and the Power Development Plan 2015-2036.⁶⁴ “Next-generation automotive” is one of the ten strategic industries of Thailand 4.0, a government policy to become a “value-based and innovation-driven economy”⁶⁵ and the 30@30 Policy Plan of the Electric Vehicle Board aims at 30% of the car production in Thailand to constitute EVs by 2030.⁶⁶

Meeting these goals would be enabled by a wide range of incentives ranging from subsidies on charging stations, breaks on corporate income tax for up to 13 years or import duty exemptions on raw materials destined for battery cells production. As of 2022, 31 EV projects were promoted by Thailand's Board of Investment and these incentives.⁶⁷ On its quest to become the “undisputed EV leader” of Southeast Asia,⁶⁸ Thailand is taking advantage of its extensive industrial zones such as the Eastern Economic Corridor, tainted by human rights and environmental violations,⁶⁹ for at least two of its EV manufacturers.⁷⁰

The EV industry has also been integrated into a transnational carbon trading programme between Thailand and Switzerland under Article 6 of the Paris Agreement.⁷¹ The Swiss Klik Foundation supports the electrification of Bangkok's privately run bus fleet, in exchange for “International Transferred Mitigation Outcomes”.⁷² In other words, financial support from Switzerland will lead to a reduction of greenhouse gas emissions in Bangkok that will, however, count for Switzerland's emission reduction targets, rather than Thailand's. The project might mark the arrival of large-scale carbon credit trading programs in Thailand. As commented by a co-founder of South Pole, the consultancy firm involved, the EV bus project in Bangkok paves the way “for what is already shaping up to be a very active carbon market in Thailand !”⁷³

Transition minerals (TMs) at the core of Thailand's energy transition

While necessary for meeting the targets of the Paris Agreement, renewable technologies have higher requirements for minerals than traditional fossil fuels solutions. Metals such as nickel, lithium, cobalt, manganese and graphite are crucial for production of batteries, “rare earths” for permanent magnets for wind turbines and EV motors, copper and aluminum for electricity networks. At the same time, we

⁶³ Climate Change Management and Coordination, *Thailand's Climate Change Master Plan 2015 – 2050*, p. 82, available at: https://climate.onep.go.th/en_US/topic/policy-and-strategy/thailand-climate-change-master-plan-แผนแม่บทการปรับตัว/

⁶⁴ Energy Policy and Planning Office, *Thailand Power Development Plan 2015-2036 (PDP2015)*, (30 June 2015), available at: <https://www.eppo.go.th/index.php/en/policy-and-plan/en-tieb/tieb-pdp>

⁶⁵ Thailand Board of Investment, *Thailand 4.0 Means Opportunity Thailand*, (2 January 2017), available at: https://www.boei.go.th/upload/content/TIR_Jan_32824.pdf

⁶⁶ United Nations Climate Change, *Thailand's Long-term Low Greenhouse Gas Emission Development Strategy (Revised Version)*, (November 2022), p. 27, available at: https://unfccc.int/sites/default/files/resource/Thailand%20LT-LEDS%20%28Revised%20Version%29_08Nov2022.pdf

⁶⁷ Thailand Board of Investment, *BOI Investment Policy on EVs*, available at: <https://www.boei.go.th/upload/content/05.18.2022%20-%20BOI%20EV%20ppt.pdf>

⁶⁸ Abhilash Gupta, *Thailand Leads Southeast Asia EV Market With 60% Share*, (21 December 2022), available at: <https://www.counterpointresearch.com/sea-ev-sales-q3-2022/>

⁶⁹ Manushya Foundation, *Study on the Socio-ecological Crises in Thailand's Eastern Economic Corridor (EEC)*, (December 2019), available at: <https://www.manushyafoundation.org/eec-desk-study>

⁷⁰ Thailand Board of Investment, *Inside Thailand's EV Revolution: From luxury cars to tuk-tuks, an electric era dawns*, (2022), available at: <https://www.boei.go.th/index.php?page=advertorial12&language=en>; Francesca Regalado, *Thailand nabs \$285m Changan EV plant as Chinese investment booms*, (20 April 2023), available at: <https://asia.nikkei.com/Business/Automobiles/Thailand-nabs-285m-Changan-EV-plant-as-Chinese-investment-booms>

⁷¹ Paris Agreement, (12 December 2015, entered into force 4 November 2016), available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280458f37&clang=en>

⁷² Klik Foundation, (28 February 2023), *Press release: “Bangkok E-Bus Programme” authorised by Switzerland and Thailand under Article 6 of the Paris Agreement*, available at: <https://thailand.klik.ch/news/climate-protection-programme-approved-by-switzerland-thailand>

⁷³ Ingo Puhl LinkedIn Page, *Public post concerning the South Pole's EV bus project in Bangkok*, (2023, accessed on 29 May 2023), available at: https://www.linkedin.com/posts/ipuhl_this-is-possibly-an-ideal-demonstration-of-activity-7036609287426641920-HfHy?utm_source=share&utm_medium=member_desktop

will need four times more TMs by 2040 to produce renewable technologies necessary for reaching the Paris Agreement targets.⁷⁴ Known reserves of TMs are found in several countries around the world, with lithium reserves being dominated by Chile, Australia, the USA and China while Russia, Canada, Australia, Indonesia or Philippines hold significant reserves of nickel.⁷⁵

The mining of TMs has already been proven as a potentially harmful activity. For example, the Business and Human Rights Resource Centre recorded human rights allegations against top 5 lithium mining companies, in South America featuring alleged corruption, tax avoidance, violation of environmental regulations and excessive use of water, impacting especially the indigenous peoples living in the area. Cobalt, on the other hand, has been linked to child labour in the Democratic Republic of the Congo, which holds over the half of the world's reserves of this mineral.⁷⁶ Closer to Thailand, nickel mining has caused environmental damages and health problems in Indonesia⁷⁷ and the Philippines.⁷⁸

To feed its demand for renewable technologies and EVs production, and considering the generous import duty exemptions on raw minerals for such technologies, Thailand will need to import large quantities of TMs. Given the current legal and policy framework that does not require companies to conduct the mandatory human rights and environmental due diligence (MHREDD) or disclose information about its supply chain, TMs mined in problematic contexts around the world could be eventually used in Thailand and branded as “green”. As per the UN Guiding Principles on Business and Human Rights (UNGPs), such operations would then be linked to human rights abuses occurring in third countries through a “business relationship”.⁷⁹ There is already a precedent. Several Thai companies, including state-owned companies, are complicit in human rights violations happening in Laos in relation to harmful hydroelectric dams which produce energy exported to Thailand or partially owned by Thai companies.⁸⁰

Lithium mining in Thailand

Thailand does not place high in the global ranking of TMs reserves which suggests that large amounts of TMs would have to be imported to feed its new EV and renewables production. However, identified reserves of lithium are found in the South of Thailand.⁸¹ To use this opportunity as well as to lower

⁷⁴ International Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions*, (May 2021), p. 5-8, available at: <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions>

⁷⁵ International Energy Agency, *Global Supply Chains of EV Batteries*, (July 2022), p. 21, available at: <https://www.iea.org/reports/global-supply-chains-of-ev-batteries>

⁷⁶ Business and Human Rights Resource Centre, *Human Rights in the Mineral Supply Chains of Electric Vehicles*, (2019), available at: <https://www.business-humanrights.org/en/from-us/briefings/transition-minerals-sector-case-studies/human-rights-in-the-mineral-supply-chains-of-electric-vehicles/>

⁷⁷ Business and Human Rights Resource Centre, *Indonesia: How the race for battery metals is poisoning coastal waters*, (23 February 2023), available at: <https://www.business-humanrights.org/en/latest-news/indonesia-how-the-race-for-battery-metals-is-poisoning-coastal-waters/>

⁷⁸ Electronics Watch, *Human Rights and Environmental Impact of Nickel Mining at Rio Tuba*, (May 2022), available at: https://electronicswatch.org/human-rights-and-environmental-impact-of-nickel-mining-in-the-philippines-may-2022_2610464.pdf

⁷⁹ E.g. UNGP 13 and 17 in Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁸⁰ For more information about human rights and environmental abuses caused by hydroelectric dams in Laos and the complicity of Thai companies and the Government, see Manushya Foundation, *As Laos is building dams, local communities are sacrificed in the process!*, (18 April 2023), available at: <https://www.manushyafoundation.org/post/as-laos-is-building-dams-local-communities-are-sacrificed-in-the-process>; Manushya Foundation, *NEWS RELEASE: Responsible governments and implicated companies must ensure safety and effective access to information of communities living near the Nam Theun 1 dam in Laos*, (23 August 2022), available at: <https://www.manushyafoundation.org/23-aug-news-release-on-nam-theun-dam-1>; Manushya Foundation, *Follow-Up UN Complaint to seek Justice for the Survivors of the Xe-Pian Xe-Namnoy Dam collapse in Attapeu Province, Laos*, (28 February 2022), available at: <https://www.manushyafoundation.org/followup-un-complaint-on-attapeu-xpxn-dam-collapse>

⁸¹ U.S. Geological Survey, *Mineral Commodity Summaries, Lithium*, (January 2023), available at: <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-lithium.pdf>

Thailand's dependence on mineral imports, threatening the stability of the booming EV industry, the Cabinet declared its support for domestic TMs extraction in its 2022 Policy on Mining and Downstream Industry. The Policy identifies strategic minerals such as TMs or gold, whose exploration, mining and smelting/metallurgy are to be incentivized through future policies prepared by the Board of Investment, Ministry of Industry, and other governmental agencies.⁸²

Attracted by the Government's incentives and tax breaks, as well as the country's EV manufacturing industry,⁸³ the first company has already started exploration for lithium in Thai territory. Pan Asia Metals Ltd., listed at Australian Stock Exchange and domiciled and incorporated in Singapore,⁸⁴ currently works on two projects in the southern province of Phang Nga, holding four prospecting licenses and waiting for five more to be approved, totaling to around 85 km².⁸⁵

In March 2023, the company reported that it now holds legal rights to apply for a mining license as its exploration area had been zoned and exploration had yielded positive results.⁸⁶ It is therefore very likely that new lithium mining will commence in Thailand in the foreseeable future. Manushya Foundation is strongly concerned in this respect, given Thailand's bad record of human rights and environmental protection in the context of mining. As illustrated in the first section of the present submission, renewable technologies and climate action are not immune to corporate capture and the Thai government putting profit over People and the Planet. The principal concerns with regards to lithium mining in the South of Thailand are as follows:

1. Lack of IHRL-compliant policy & legal framework

As illustrated in the previous section through legal and policy analysis and the case study of Phichit villagers fighting against corporate impunity, Thailand lacks an effective framework that would ensure compliance of extractive sector activities with the International Human Rights framework, including the UN Guiding Principles on Business and Human Rights and international human rights treaties signed and ratified by Thailand.

The country's first National Action Plan on Business and Human Rights has not brought any legally binding measures that would ensure corporate respect for human rights of communities affected by business operations or their access to remedy. Also, in the absence of the MHREDD, meaningful public consultations throughout the business operation's life cycle or community-led human rights impact assessment remain voluntary for companies.

The arrival of lithium mining, with its potentially negative impacts⁸⁷ combined with a weak regulatory framework, represents a threat to communities and the environment surrounding

⁸² Prime Minister's Office, *Policy on Mining and Downstream Industry*, (4 August 2022), available at: <https://www.asx.com.au/asxpdf/20220804/pdf/45cjr1094vtdmg.pdf>

⁸³ Pan Asia Metals, *Pan Asia Metals: Exploring a Better Future*, (25 October 2022), available at: <https://www.asx.com.au/asxpdf/20221025/pdf/45gr1fh2cvxnhm.pdf>

⁸⁴ Pan Asia Metals, *2022 Annual Report*, (31 March 2023), p. 38, available at: <https://www.asx.com.au/asxpdf/20230331/pdf/45n81sbgn6f0l3.pdf>

⁸⁵ Pan Asia Metals, *March 2023 Quarterly Activities Report*, (28 April 2023), available at: <https://announcements.asx.com.au/asxpdf/20230428/pdf/45p54v6wy12k80.pdf>

⁸⁶ Pan Asia Metals, *March 2023 Quarterly Activities Report*, (28 April 2023), available at: <https://announcements.asx.com.au/asxpdf/20230428/pdf/45p54v6wy12k80.pdf>

⁸⁷ Rennie B Kaunda, *Potential environmental impacts of lithium mining*, (19 May 2020), available at: <https://www.tandfonline.com/doi/abs/10.1080/02646811.2020.1754596>

any future mining project. Communities potentially negatively impacted have feeble prospects of having their human rights prioritized, protected and respected. Access to remedy for potential harms is also likely to be problematic, due to corporate capture and limited resources of many communities to enter and sustain legal proceedings.

2. TMs as a strategic industry for the Government

The analysis contained in this submission showcases the strategic value of TMs for the Thai government. EVs and renewable energies are highlighted in the country's policy documents at the highest level and investments in their supply chains are encouraged and incentivized through various instruments to ensure their ongoing production. The supply of TMs, globally limited, is crucial for the Government's plan viability and their domestic extraction would therefore be a high priority.

There is currently a strong concern that if lithium mining follows the path of other polluting and harmful mining projects, and negatively impacts human rights and the environment, economic interests of powerful corporate actors with investments in EVs and battery production would eventually push over the Government's resolution to comply with its International Human Rights obligations. Preference for development projects over human rights, as seen in the cases of Phichit, Thepa, Chana or Nabon communities show the bleak reality and the determination of the Government to implement such projects at all costs, due to their strategic and economic value.

3. Attacks against HRDs, including SLAPP

Strategic Lawsuit Against Public Participation, or SLAPP, is a common form of reprisal against human rights defenders (HRDs) in Thailand. At times, HRDs opposing mining deal with several SLAPP charges against them throughout the years.⁸⁸

Again, there is no effective legal or policy framework protecting HRDs from such reprisals. The made-up charges against them, usually for alleged defamation, largely lack substance to convict the defendant. However, finding resources to afford legal proceedings, time spent on the case rather than making a living or imposing self-censorship takes an emotional and physical health toll on people facing SLAPPs and discourages them from continuing their vital work of Human Rights Defenders.⁸⁹

With the concentration of SLAPP charges linked to abusive business operations and Thai framework conducive to such reprisals, there is a justified concern about the potential approach of lithium-mining companies to this situation.

4. Existing gaps in the Pan Asia Metals' compliance with the UN Guiding Principles on Business and Human Rights

⁸⁸ Manushya Foundation, *Women Human Rights Defenders push back against SLAPP charges!*, (29 September 2022), available at: <https://www.manushyafoundation.org/post/women-human-rights-defenders-push-back-against-slapp-charges>

⁸⁹ For a detailed analysis of SLAPP in Thailand, see Manushya Foundation, *UN Complaint for Urgent Action to the United Nations on the Judicial Harassment faced by Nada Chaivajit, Thai Human Rights Defender*, (7 October 2022), <https://www.manushyafoundation.org/un-complaint-for-urgent-action-to-the-un-on-the-judicial-harassment-faced-by-nada-chaivajit>

While Pan Asia Metals is yet to start mining operations, it is already possible to examine its policy commitments against the universally recognized standards of business conduct such as the UN Guiding Principles on Business and Human Rights (UNGPs). For example, the UNGPs 15 and 16 prescribe to business enterprises to have policy commitments in place expressing their resolution to respect human rights. UNGP 15 also recommends to have in place a human rights due diligence process to “identify, prevent, mitigate and account for how they address their impacts on human rights(.)” The concrete requirements for such a due diligence process are further elaborated on in UNGPs 17-21.

Pan Asia Metals, however, does not feature any such policy commitment or human rights due diligence process on its website or in its corporate documentation. Instead, its “Sustainability Strategy” is based on Corporate Social Responsibility, the UN Sustainable Development Goals and the World Economic Forum's Stakeholder Capitalism Metrics,⁹⁰ rather than the UNGPs or internationally recognized human rights treaties referred to therein (UNGP 12).⁹¹

While the absence of a policy commitment does not automatically mean future human rights violations and environmental damage by the company, such a statement would signal a strong dedication to responsibly conducted business in line with the International Human Rights Law.

5. Investor-State Dispute Settlement (ISDS) mechanism

The ISDS mechanism has gained visibility in Thailand due to the aforementioned case of Phichit villagers. Their advocacy against the polluting gold mine run by an Australian company resulted in an international arbitration based on TAFTA, between the said company and the Thai government that had closed the mine in 2017. The case of Chatree mine in Phichit is a dangerous precedent for all communities impacted by mining operations and illustrates the Thai government's willingness to trade off human rights for economic profit.

The threat of a potential ISDS arbitration, if Pan Asia Metals' operations were to follow the path of human rights and environmental abuses, remains real. The company itself is domiciled outside of TAFTA's jurisdiction, in Singapore, however, it is listed on Australian Securities Exchange and some of its shareholders⁹² such as Thai Goldfields NL, are incorporated in Australia.⁹³

IV. Conditions of human rights-based just energy transition in the context of extractive sector in Thailand

The current situation surrounding the extractive sector in Thailand is problematic. From insufficient legal and policy framework protecting communities' human rights, to the culture of reprisals against Human Rights Defenders, corporate capture and bilateral treaties' provisions winning over human

⁹⁰ Pan Asia Metals, *2022 Annual Report*, (31 March 2023), p. 14-15, available at: <https://www.asx.com.au/asxpdf/20230331/pdf/45n81sbgn6f0l3.pdf>

⁹¹ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹² Pan Asia Metals, *2022 Annual Report*, (31 March 2023), p. 68, available at: <https://www.asx.com.au/asxpdf/20230331/pdf/45n81sbgn6f0l3.pdf>

⁹³ Thai Goldfields NL, *Company Profile*, (2010), available at: http://www.thaigoldfields.com/?page_id=4; Open Corporates, *Thai Goldfields NL*, (23 July 2018), available at: <https://opencorporates.com/companies/au/099731272>

rights. At the same time, it is clear that to achieve the Paris Agreement targets, the transition to a low-carbon society is of greatest importance. However, the new system has to be built on strong foundations respecting human rights and the environment in its most imminent surroundings, not only on the planetary scale. Only then we can achieve a truly *Just Energy Transition*.

Building on its expertise in corporate accountability, climate justice and just transition issues, as well as ongoing engagement with Human Rights Defenders and grassroots communities, Manushya Foundation puts forward the following enabling conditions and recommendations for Just Energy Transition in the context of the extractive sector.

1. Mandatory human rights and environmental due diligence (MHREDD)

The Thai experience shows that voluntary measures are not enough to prevent human rights violations by companies and that there is no reason to assume the situation would be different for mining of transition minerals such as lithium.

Building on the UNGPs⁹⁴ and best practices stipulated in the 2018 report of the UN Working Group on Business and Human Rights⁹⁵ as well as Manushya's experience of working alongside Human Rights Defenders on the ground, legislation for mandatory human rights and environmental due diligence of companies should contain the following components:

1. **Impact Assessment of actual and potential human rights and environmental impacts and paths for their mitigation and remediation** in line with the UNGPs. The assessment should be led by communities, be **intersectional** and examine the differentiated impacts of business enterprises on various members of the community. Due diligence obligations should apply to both, the **company's own operations** and its **business relationships**, e.g. through its supply chains.
2. **Meaningful and ongoing consultations** with concerned **rights-holders**, following the requirements for the **free, prior and informed consent** especially for groups such as indigenous peoples, rather than tick-the-box exercises. Respect for **local decision-making** and ownership of the process must be ensured.
3. National **administrative body overseeing the implementation** of the MHREDD.
4. Comprehensive **access to remedy** guarantees and **civil and criminal responsibility** of companies.
5. **All business enterprises**, regardless of their size, should conduct HREDD, although its complexity might vary. **State-owned enterprises** must not be excluded from the application of MHREDD legislation.
6. Protection of **Human Rights Defenders** and **whistleblowers**.⁹⁶

⁹⁴ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, (2011), available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹⁵ General Assembly, *The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, (16 July 2018), A/73/163, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2F73%2F163&Language=E&DeviceType=Desktop&LangRequested=False>

⁹⁶ See Manushya Foundation, *#RBHRForum2022 National Action Plans: Stocktaking and Charting the Way Forward*, 21 September 2022, (25 October 2022), 29:20, available at: <https://www.youtube.com/watch?v=r8VgigmROCs>

Such MHREDD legislation and its diligent enforcement alone would allow for voices of communities on the ground to be heard and their solutions integrated. In the case of TMs, due diligence of supply chains could also prevent import of raw minerals from problematic contexts.

2. Standalone anti-SLAPP legislation and effective protection of HRDs

Reprisals against HRDs, including SLAPP charges, are a recurring issue in Thailand that needs to be tackled. Legal recognition of the status of HRDs and a standalone legislation dealing with SLAPP charges would significantly encourage legitimate work of HRDs. Such legislation should be underpinned by the right to freedom of expression, assembly and the right to petition and follow the basic principles:

1. Defendants facing SLAPP charges should be able to submit a motion to the court to request a dismissal of their case. Courts should dismiss SLAPP lawsuits to protect fundamental rights to participate in public life as a citizen (e.g. denouncing corruption, corporate abuses and impunity);
2. The motion does not allow plaintiffs/companies to provide evidence to justify their actions;
3. Defendants (HRDs) should not have the burden of proof to show the lawsuit is in bad faith or lacks merit.⁹⁷

Protection of HRDs, including against SLAPP lawsuits, will be crucial if Thailand's Just Energy Transition shall truly be *just*.

3. Technical regulation of batteries

Except for measures related to human rights protection, the Thai government can also put in place technical regulations that could mitigate the risks of human rights and environmental impacts of TMs mining. For example, Thailand is not yet among the countries that have adopted a standard for battery durability, while higher standards could lead to longer battery life and lower the demand for mining more TMs.⁹⁸

Thailand could also follow the lead of the European Union that is currently drafting its new EU Batteries Regulation. The proposal of the European Commission contains components such as due diligence obligations to reduce risks linked to sourcing of critical minerals such as nickel, lithium or cobalt, declaration of each battery's carbon footprint, required percentage of recycled materials used in batteries and “battery passport”, an electronic record of battery technical parameters and traceability information.⁹⁹ More transparency in the value chain of batteries could contribute to more informed decisions of final consumers and consequent pressure on companies that still maintain business relationships linked to human rights and environmental risks.

⁹⁷ Manushya Foundation, *Emilie Pradichit denounces corporate capture & calls for anti-SLAPP legislation at #UNForumBHR 2022*, (20 December 2022), available at: <https://www.manushyafoundation.org/post/emilie-pradichit-denounces-corporate-capture-calls-for-anti-slapp-legislation-at-unforumbhr-2022>

⁹⁸ International Energy Agency, *Global Supply Chains of EV Batteries*, (July 2022), p. 40, available at: <https://www.iea.org/reports/global-supply-chains-of-ev-batteries>

⁹⁹ Latham & Watkins LLP, *EU Seeks to Supercharge Sustainable Battery Investment*, (15 May 2023), available at: <https://shorturl.at/fDRT3>

4. Bottom-up design of just energy transition

The Thai government is taking baby steps to implement policies and legislation allowing it to meet the targets of the Paris Agreement. However, the concept of *Just Energy Transition* still needs to be completely built up from the bottom. In line with the UPR recommendations to Thailand and the CERD Committee's Concluding Observations, rights-holders need to be able to participate in the design of climate action policies, and especially marginalized groups such as indigenous peoples, women, forest-dependent communities and rural populations need to have their voices heard.

In Thailand, Manushya Foundation, together with Thai Climate Justice for All, the Green South Foundation, the Thai CSOs Coalition for the UPR and Thai BHR Network founded the #WeAreJustTransition Movement.¹⁰⁰ During the initial workshop in November 2022, communities from all around Thailand, including indigenous peoples, labor rights activists, forest-dependent communities, LGBTIQ+ rights defenders, sex workers rights activists, Malayu Muslim environmental HRDs and many others, shared their wealth of expertise and called for a Just, Feminist, Green and Inclusive Transition in their People's Declaration.¹⁰¹ The interest of various groups, many of them directly affected by Thailand's false climate solutions and unjust energy transition, shows the importance of participation of all concerned rights-holders in defining the Just Energy Transition agency in Thailand.

While such exchange within the #WeAreJustTransition Movement will be ongoing, it will be necessary for the Thai government to open its communication channels, listen to the grassroots voices and truly integrate their concerns into the policy and legal framework. Only then will the new legislation such as the Climate Change Act or policies such as the Power Development Plan be able to react to the real situation on the ground and effectively tackle climate change.

5. Just Energy Transition as a path to stronger communities

Building the low-carbon society and economy must not be limited to new technologies. Tackling climate change effects and adapting to them will require new dynamics where communities on the ground own their agendas and can access knowledge and resources to design and implement their own solutions.

Such projects already exist. For example, in the South of Thailand, in the area originally targeted by the government plans to build coal-fired power plants, Manushya Foundation's subgrantee and a member of the #WeAreJustTransition Movement - **Green World Network** – has recently opened its *Green World Renewable Energy Learning Center*, a community-driven solar cell project that aims to provide clean energy to dozens of families and thanks to its educative function will be replicable to other neighboring communities.¹⁰²

Manushya Foundation believes in the power of People and supports the transition to a real **energy democracy**, where local communities not only generate their own sustainable energy, but can also

¹⁰⁰ Manushya Foundation, *All You Need to Know About the #WeAreJustTransition Movement!*, (28 November 2022), available at: <https://www.manushyafoundation.org/post/all-you-need-to-know-about-the-wearejusttransition-movement>

¹⁰¹ Manushya Foundation, *All you need to know about the main demands of our People's Declaration!*, (1 December 2022), available at: <https://www.manushyafoundation.org/post/all-you-need-to-know-about-the-main-demands-of-our-people-s-declaration>

¹⁰² Green World Network Facebook page, (28 May 2023), *Launch of the Green World Renewable Energy Learning Center*, available at: <https://www.facebook.com/100087889741564/posts/pfbid0veLSStoEQPdBU6QDe88w1MisG7mjEnxB32RdN5fyVnpvd21AARlp7v2WGbtfu4qol/?mibextid=afzh1R&rdc=2&rd>

curtail energy expenses and take charge of their own energy consumption. Above all, it is imperative that these communities assume the pivotal role of selling renewable energy harnessed through solar cells, breaking the confines of exclusivity traditionally reserved for big energy corporations. This transition signifies more than just energy; it heralds the dawn of a transformative economy that demands immediate establishment—a paradigm that embraces and uplifts those marginalized and neglected within the confines of the present economic landscape. And this audacious pursuit can only be realized when local communities, exemplified by the indomitable spirit of the Green World Network, lead the vanguard of this just energy transition!



Source: *Green World Network*