

Responsible Business in SEA- Japanese Business and Human Rights in Thailand

Paper prepared for Sasakawa Peace Foundation

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Introduction

In October 2020, the Sasakawa Peace Foundation launched a new project on business and human rights entitled ‘Enhancing Responsible Business Conduct’. The project aims to foster responsible business conduct of Japanese business enterprises including their supply chains in Japan and in Southeast Asia, including Thailand. Due to the importance of the economic relations between Japan and Thailand and to the fact that Japan remains the largest investor of the Kingdom, the Sasakawa Peace Foundation deems necessary to include Thailand as one of the countries in its new project. This study attempts to understand the systemic and structural causes of human rights risks and abuses caused by Japanese industrial sectors and their supply chains in Thailand, focusing on grievance mechanisms. The study also identifies human rights trends and draws a map of important areas where Japanese companies should pay attention in business conduct in Thailand.

The framework used by this paper is the UN Guiding Principles on Business and Human Rights (UNGPs) endorsed unanimously by the UN Human Rights Council (UNHRC) in 2011. The UNGPs provides a set of guidelines for States and companies to prevent and address human rights abuses committed in business operations.³ The UNGPs, therefore, help clarify the roles of governments and companies in addressing the human rights impacts of business enterprises. The UNGPs are found on the following principles:

1. States' existing obligations to respect, protect, and fulfill human rights and fundamental freedoms;

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³ The UN Working Group on Business and Human Rights , The UN Guiding Principles on Business and Human Rights :An Introduction, https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

2. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
3. The need for rights and obligations to be matched with appropriate and effective remedies when breached.⁴

As can be seen, the UNGPs contain three key pillars : the State duty to protect; the corporate responsibility to respect; and access to remedies. The UNGPs, indeed, affirms the duties of business enterprises to prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or contribute to. Businesses must seek to prevent or mitigate any adverse impacts related to their operations, products or services, even if these impacts have been carried out by suppliers or business partners.⁵ The Guiding Principles identify three components of this responsibility:⁶

1. Companies must institute a policy commitment to meet the responsibility to respect human rights;
2. Companies must undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impacts;
3. Companies must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.

The human rights due diligence, according to UNGPs, refers to “the process of identifying and addressing the human rights impacts of a business enterprise across its operations and products, and throughout its supplier and business partner networks. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations”.⁷

As a non-legally binding document, the UNGPs can be implemented through various means, including the introduction of relevant legislations and policies, changing corporate policy and practice, and provision of remedies for victims of business-linked human rights abuses. States

⁴ Golda Benjamin & Bobbie Sta. Maria, National Action Plans on Business and Human Rights in the ASEAN: Observations and Recommendations on the Procedural Aspects of NAP Development, in Asia Centre, Business and Human Right: Holding Governments Accountable in Asia, Conference Proceedings, 3rd International Conference held in Bangkok, 12-13 July 2018.

⁵ The UN Working Group on Business and Human Rights, Ibid.

⁶ Ibid.

⁷ Ibid.

can also develop national action plans on business and human rights (NAP BHR). The said NAP BHR is recommended to address the three pillars of the UNGPs based on the "Protect, Respect, and Remedy" framework.⁸

Due to Covid-19 pandemic, field research is made impossible. This study is based mainly on documentary research using available data from academic papers and official reports issued by the Japanese and Thai agencies. A survey of the websites of different companies, where available, was made. The two frameworks, namely the UNGPs (UN Guiding Principles on Business and Human Rights) as well as the National Action Plan on Business and Human Rights which were adopted by both Japan and Thailand are used for the analysis of data.

This report begins with a brief background of the project and the framework applied followed by an overview of Japan-Thailand economic relationships. Section three attempts to map out the Japanese investment in Thailand. Section four examines commitments and readiness of selected Japanese companies to human rights standards and UNGPs while section five identifies salient human rights risks. Section six analyses key trends. And the last section will conclude and propose some potential recommendations.

A Glance at Japan and Thailand Economic Relations

Japan and Thailand have a long history of economic relationships. The Thai elite has long been interested in Japan's economic success from the historical Meiji period onwards. Interest in Japanese economy and society was enhanced by the rise of Japan as an economic power, its success in coping with the oil price hike emerged in early 1970s (while Europe and the US experienced an economic recession), and the increased importance of Japan to the Thai economy.⁹ In the mid-1980s the Thai economy revived and entered a boom period that lasted until the mid-1990s. A major factor in the boom was the unprecedented inflow of foreign investment from Japan and other East Asian sources and the subsequent rise in the value of the yen. This investment had a new aspect: besides investments from large Japanese firms, there were new inflows from Japanese

⁸ Ibid.

⁹ Pasuk Phongpaichit, *The State of Japanese Studies on Social Science in Thailand*,

small and medium enterprises (SMEs). For quite some years, Japan became the single largest influence on Thailand's economy.¹⁰

The year 2021 marked the 134th anniversary of diplomatic ties between Japan and Thailand. Since 1954, Japan provided unofficial aid in the form of war reparations to Asian countries affected by WWII. In 1989, Japan became the world's largest aid provider.¹¹ Since 1960, Japan has offered official development assistance (ODA) to Thailand and the Kingdom figures among the top 10 beneficiaries of Japanese ODA. In 2018, Thailand ranked 9th among top ten recipients of the Japan's ODA.¹² Although at present, Japan is no longer the largest ODA donor, aid is still a major part of Japan's foreign policy and Thailand remains one of the most important strategic partners in Southeast Asia.

It is worth adding that Japan appears to have an aid program that is committed to promoting human rights in recipient countries. In 1992, the Ministry of Foreign Affairs (MOFA) adopted a new Official Development Assistance (ODA) Charter which made the promotion of human rights and democracy a key priority. The fourth principle of the charter states "Full attention should be paid to efforts for promoting democratization and introduction of a market-orientated economy, and the situation regarding the securing of basic human rights and freedoms in the recipient countries".¹³ A few more revisions were made to the ODA Charter including the latest one in 2015. The fourth principle was not altered. In the 2015 revision, the Charter still states that "Japan would pay attention to "situations regarding the consolidation of democratization, the rule of law and the protection of basic human rights" in recipient countries and aim to promote these three conditions".¹⁴ The continued commitment to human rights conditionality expressed in the ODA charter suggests that promoting human rights is a major component of Japan's aid program. However, Japan provides aid to countries like the Philippines, Thailand, and Vietnam with serious human rights issues. Japan has been criticized that its ODA has been provided in order to secure

¹⁰ Ibid.

¹¹ Tiana Steverson Pugh, *Giving to Get: A Neorealist Explanation of Japan's Foreign Aid Program*, (2019), CMC Senior Theses. 2259, https://scholarship.claremont.edu/cmc_theses/2259.

¹² OECD Library, *Development Cooperation Profiles 2020*, <https://www.oecd-ilibrary.org/sites/b8cf3944-en/index.html?itemId=/content/component/b8cf3944-en>. The 10 countries include India, Bangladesh, Vietnam, Indonesia, the Philippines, Iraq, Myanmar, Egypt, Thailand and Kenya.

¹³ Tiana Steverson Pugh, *Ibid.*

¹⁴ *Ibid.*

its economic and strategic interests. More specifically, Japan's aid program is driven by the pursuit of economic growth through trade and economic ties with Southeast Asian countries, including Thailand. There is a close link between ODA to infrastructure development in recipient countries and private company investments. As part of ODA, Japan introduced yen loans and used them, in conjunction with foreign direct investment, to promote exports from industries.

Japan and Thailand do not have a specific investment agreement. However, in 2007, the two countries signed a bilateral agreement with investment provisions. The Japan-Thailand Economic Partnership Agreement (JTEPA) became effective in November 2007. This agreement is comprehensive as it covers trade in goods and services, investment, intellectual property rights, agriculture, competition policy, etc. The moves against the JTEPA concern the FTA's provisions on patenting life forms, toxic wastes and investment. Japanese and Thai groups share particular concerns over the potential of the deal to increase Japan's exports of toxic waste to Thailand.¹⁵ In addition, the Thai civil society groups also criticized the lack of participation and transparency during the process of negotiations.¹⁶

Mapping Japanese Business in Thailand

Thailand is the second largest economy in the Association of Southeast Asian Nations (ASEAN). The Kingdom is an upper middle-income country with pro-investment policies and well-developed infrastructure.¹⁷ In 2015, Thailand ranked first in Japan's Foreign Direct Investment share (in stock base) within ASEAN.¹⁸ This rank remains unchanged. Japan is the biggest investor in Thailand. "Between 1985 and 2016, Japanese investment in Thailand cumulatively totalled 2.9 trillion baht (US\$85 billion; 2017 rates), more than double the next biggest investor—the USA—which stands at 631 billion baht (\$18 billion). Cumulative investment from all investors into Thailand for this period was 6.8 trillion baht, meaning that investment from

¹⁵ Bilaterals.org, Japan-Thailand, May 2012, <https://www.bilaterals.org/?-Japan-Thailand->.

¹⁶ See detailed analysis in Pasuk Phongpaichit, Impact of JTEPA on the bilateral relationship between Japan and Thailand, Speech delivered at Symposium on Future of Japan-Thailand Economic Partnership on the occasion of 120th anniversary of Japan-Thailand Diplomatic Relations, 1 November 2007, Hotel New Otani, Tokyo.

¹⁷ U.S.Department of State, 2020 Investment Climate Statements: Thailand, <https://www.state.gov/reports/2020-investment-climate-statements/thailand/>

¹⁸ Soji Sakai, President, Japanese Chamber of Commerce, Bangkok (JCC), Slide show : Expectations of Japanese Companies in Thailand for the Thailand 4.0, in [https://www.boi.go.th/upload/content/15.15%20-%2016.30%20\(1\)%20-%20Mr.%20Soji%20Sakai,%20President,%20Japanese%20Chamber%20of%20Commerce%20\(JCC\),%20Bangkok_EN_5ab214ec8c6ff.pdf](https://www.boi.go.th/upload/content/15.15%20-%2016.30%20(1)%20-%20Mr.%20Soji%20Sakai,%20President,%20Japanese%20Chamber%20of%20Commerce%20(JCC),%20Bangkok_EN_5ab214ec8c6ff.pdf).

just Japan represented 43 per cent of all foreign investment into the kingdom”¹⁹. The interest of Japanese investors in Thailand has been consistent with “an annual average of 42 per cent of total FDI with a peak of 69 per cent in 1989”²⁰. The amount of foreign direct investment from Japanese firms has reached US\$2.49 billion out of the total \$6.13 billion in 2019. According to the Japan External Trade organization (JETRO), Thailand’s advantage is its readiness in supply chain solutions which should be able to counter the supply chain disruption that was caused by COVID.²¹ This was confirmed by Makoto Ihara, the representative of the Organization for Small & Medium Enterprises and Regional Innovation (SMRJ) in Thailand, saying “in the past few years several Japanese SMEs have been interested in investing in Thailand, Vietnam and Indonesia, with Thailand being considered a suitable location to establish manufacturing factories and a base to export to foreign markets. ‘Due to the trade war between the US and China, more Japanese companies are moving out of China and heading to Thailand and Vietnam’ as two equally best choices in the Asean region”²². According to the UNCTAD's World Investment Report 2020, Japan and Singapore are by far the largest investors in the country and account for slightly more than half of FDI inflows.²³ The FDI stocks by country compiled by the Bank of Thailand indicates that Japan accounts for 34.3 % of the main investing countries in Thailand in 2019.²⁴

By early 2020, Japanese investors have run more than 6,000 businesses in Thailand and won approval for direct investment projects worth 62 billion baht in the first nine months of 2019 which formed 27% of all foreign investment in the country.²⁵ In terms of Japanese investment trends in Thailand, the ratio by category has been in transition since the year 2000. Prior to that year, Large Scale Enterprise (LSE) investment comprised 51 percent of Japanese shareholders

¹⁹ Ryan Hartley, Contemporary Thailand–Japan Economic Relations: What Falling Japanese Investment Reveals About Thailand's Deep, Global Competition, State in the Context of Shifting Regional Orders, *Asia & the Pacific Policy Studies*, Vol4 issue 3 September 2017, pp.569-585, <https://onlinelibrary.wiley.com/doi/full/10.1002/app5.194>

²⁰ Ibid.

²¹ Erich Parpart, Half of all Japanese firms in Thailand say sales have significantly dropped during the first half of 2020, *Thai Enquirer*, July 1, 2020, <https://www.thaienquirer.com/15139/half-of-all-japanese-firms-in-thailand-say-sales-have-significantly-dropped-during-the-first-half-of-2020/>

²² Thailand inks deal with Japan to promote investment, trade in *The Nation*, 2 Sept.2020 , <https://www.nationthailand.com/news/30393893>

²³ Thailand: Foreign investment <https://santandertrade.com/en/portal/establish-overseas/thailand/foreign-investment#fdi>

²⁴ Ibid.

²⁵ Japanese investors run more than 6,000 businesses in Thailand, *TNA*, January 14, 2020, Pattaya mail, <https://www.pattayamail.com/business/japanese-investors-run-more-than-6000-businesses-in-thailand-284432>

representing 3,697 companies, with Small to Medium Enterprises (SMEs) and Individuals investing 36 and 11 percent respectively. During the period from 2010 to 2014, however, LSE and SME investment comprised 39 and 52 percent respectively, while Individual investment peaked at 19 percent from 2000 to 2004, before falling to 7 percent after 2010.²⁶

The Japanese investment in Thailand covers a wide range of industries, but the more representation of the industry is in metal and mechanical equipment, electrical and electronic, chemical industry, textile industry, service industry and other industries. Between 2004-2014, metal and mechanical equipment accounted for the largest proportion, accounting for 44.5%, followed by the service sector, accounting for 10.5%, 5.8%, 2.1%, 20.5%, and 16.6% respectively.²⁷ During this period, large enterprise investment by Japanese industry in Thailand was significant. Thailand's Board of Investment provided tax incentives for heavy industrial investment in several locations identified for economic infrastructural development. According to the conventional investment picture, the Japanese automotive and consumer electronics industrial cluster grew to represent a significant portion of Thailand's industrial output.²⁸ Apart from the automotive industry, Japanese investors are particularly interested in agro-industrial and processed food businesses. Because of Japanese direct investment, Thailand counts among the top ten exporters of automobiles in the world.²⁹ In September 2020, the Thai-Japanese Industrial Cooperation Institute (TJIC) was established under the umbrella of the Federation of Thai Industries (FTI) to emphasize strategic partnership, strengthening cooperation in trade, investment, technology, innovation, human resource development, and to enhance industrial cooperation and business networks between the two countries. Currently, Japan's industry is spread across many manufacturing sectors. It is the supply chain that plays an important role in domestic production and exports.³⁰

²⁶ Michael Craven, Japanese direct investment trends in Thailand : 2006-2016, a thesis submitted in partial fulfillment of the Master of Arts in International Relations, Faculty of Political Science, Thammasat University, 2016.

²⁷ Xiao, Y. , & Ozawa, Y. (2017). China And Japan In Thailand Investment Analysis: Rayong Industrial Park, 1(1), 4-10. https://e-research.siam.edu/wp-content/uploads/2018/03/IMBA-2017-IS-A-Comparative-Study-of-China-Thailand-Economic-and-Trade-Relations-With-Japan_compressed.pdf

²⁸ Michael Craven, *Ibid.*

²⁹ Pasuk Phongpaichit, Impact of JTEPA on the bilateral relationship between Japan and Thailand, Speech delivered at Symposium on Future of Japan-Thailand Economic Partnership on the occasion of 120th anniversary of Japan-Thailand Diplomatic Relations, 1 November 2007, Hotel New Otani, Tokyo.

³⁰ FTI established the Thai-Japanese Industrial Cooperation Institute appointed Chirapan Oulapathorn as Chairman

The survey conducted in China during 2019 showed that more than 10 per cent of Japanese firms on the mainland wanted to move their production arm to Thailand. For the near future, approximately 60 per cent of the surveyed firms said they will continue to operate and increase their investment in Thailand.³¹ This seems to match well with the desire of the country to improve its competitiveness. In May 2014, a coup by the military led by General Prayuth Chan-o-cha who remains the Thai Prime Minister after the elections in early 2019, the Thai government's planned megaprojects and Industry 4.0 (technology in industry) initiatives are creating new investment-driven business opportunities. Despite some political uncertainty, Thailand continues to encourage foreign direct investment as a means of promoting economic development, employment, and technology transfer. For Japanese investors, the Thai economy is showing promising growth prospects. To expand the potential investment further, efforts have been made to innovate the industries and logistics infrastructures with new airports, seaports, railways, motorways and mass transit systems being built. The Eastern Economic Corridor (EEC) in eastern Thailand, launched in 2017, is designated to be the home of investments in twelve targeted industries: the next-generation automotive sector; intelligent electronics; advanced agriculture and biotechnology; food processing; tourism; advanced robotics and automation; digital technology; integrated aviation; a medical hub and total healthcare services; biofuels/biochemical; defense manufacturing; and human resource development.³² In 2019, Japanese investors pledged Bt375.907 billion to joint venture in the EEC, followed by China Bt67.872 billion, Singapore Bt42.358 billion, US Bt27.908 billion and those from the Cayman Islands at Bt23.169 billion.³³ According to the JETRO survey, as of May 2017, the number of Japanese companies headquartered in the EEC region is 1,016 companies.³⁴

It is impossible to study business conduct of all companies operating in Thailand. The following sections are the results of examination and analysis of commitments to human rights

Latest Update September 18, 2020 , M Report, <https://www.mreport.co.th/en/news/industry-movement/113-Thai-Japanese-Industrial-Cooperation-Institute-established>

³¹ Erich Parpart, Ibid.

³² The Japantimes, Thailand focuses on industry, investment and innovation, 25 Sept 2019, <https://www.japantimes.co.jp/country-report/2019/09/25/thailand-report-2019/thailand-focuses-industry-investment-innovation/> : U.S.Department of State, Ibid.

³³ Fujiko Takahashi, Thailand Business News, Japan takes lion's share in EEC foreign investment, 1 October 2019, <https://www.thailand-business-news.com/news/76136-japan-takes-lions-share-in-eec-foreign-investment.html>

³⁴ JETRO, Japan's investment in EEC, as of June 2018.

standards and the UNGPs of selected companies as well as human rights risks identified among Japanese companies invested in Thailand.

Promoting (Japanese) Responsible Business Conduct in Thailand: Assessing ‘Commitments’ and ‘Readiness’ through the Lens of the Corporate Human Rights Benchmark 2020

This section provides a brief analysis of select Japanese businesses’ “readiness” to meet their responsibility to respect human rights as formulated in Pillar 2 of the United Nations Guiding Principles on Business and Human Rights (UNGPs). This report defines *readiness* as *the corporate ability to proactively manage its potential and actual human rights impact on rightsholders in any operational business context* directly or through its supply chain management. Given that the UNGPs “apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure”³⁵, this report understands *readiness* as a prerequisite for responsible business conduct not only in Japan or Thailand, but globally. Due to the hugely diverse character of the thousands of Japanese businesses operating in Thailand, a representative study on readiness would go beyond the scope of the report. Hence, the desk research focused on an analysis of the twenty-two Japanese businesses, twenty-one of which are operating in Thailand, as assessed by the Corporate Human Rights Benchmark (CHRB) 2020.³⁶ CHRB company scorecards, publicly available data, (such as standalone or integrated self-reporting, policies, codes of conducts, ethic guidelines etc.), built the bulk of the data. While not speaking to the human rights conditions in Thailand specifically, research experience has shown that one can draw parallels to other Japanese ventures in Thailand, as the mainstream business and human rights discourse, as of 2021, commonly agrees upon a theory of change that centers around a trickledown effect of corporate rights-respecting businesses culture from the top (MNEs) to the bottom (SMEs).³⁷

³⁵ Commentary to the UNGPs General Principles.

https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

³⁶ World Benchmarking Alliance. 2021. “Measuring 230 global companies on their human rights performance”. Accessible under: <https://www.worldbenchmarkingalliance.org/publication/chrb/>

³⁷ See for example: Shift Project. 2019. “Evaluating business respect for human rights: A Theory of Change Methodology to Develop Meaningful Indicators”. Accessible under: <https://shiftproject.org/wp-content/uploads/2019/09/3.%20Introduction%20to%20Theory%20of%20Change%20method.pdf>

The desk research took the following five criteria for an assessment of *readiness* into account:

- the existence of a human rights policy (or the lack thereof);
- an acknowledgment of the UNGPs as the global authoritative framework on business and human rights (or the lack thereof);
- the identification of salient human rights risks (or the lack thereof);
- the existence of a (human rights) grievance mechanism (or the lack thereof) and;
- a dedicated commitment to remediation where adverse impacts occurred.

The limited, specific set of criteria was selected considering limitations in applying their full methodological framework on the side of the CHRB due to the Covid-19 pandemic.³⁸ However, such purposeful high-level criteria are believed to be sufficient to assess whether a company has a human rights strategy in place that implies *readiness*. A rationale for each criterion will be provided in each of their respective sections. The assessment of each criterion was binary to allow for simplicity and Table 1 presents a synthesis of the data.

Table 1: Japanese Companies Assessed by Corporate Human Rights Benchmark 2020³⁹

Company Name	Sector	Dedicated human rights policy	UNGPs mentioned	Salient issues identified	Grievance mechanism	Commitment to remedy
Aeon	Agriculture	1	1	1	1 (&) ⁴⁰	0

³⁸ Corporate Human Rights Benchmark. 2021. "Announcement about the 2020 Corporate Human Rights Benchmark". Accessible under: <https://www.corporatebenchmark.org/news>

³⁹ Individual CHRB company scorecards can be accessed under: <https://www.worldbenchmarkingalliance.org/publication/chrb/rankings/>

⁴⁰ "&" indicates neither a dedicated human rights mechanism, nor the mechanism allowing to receiving external communications.

Asahi Group	Agriculture	1	1	1	1 (&)	0
Canon	ICT	1	1	0	1	0
ENEOS	Extractives	1	1	0	1 (&)	1
Fast Retailing	Garment	1	1	1	1	1
Hitachi	ICT	1	1	0	1 (&)	1
Honda Motor Company	Automotive	0	0	0	1 (&)	0
Impex	Extractives	1	0	0	1 (&)	1
Keyence Corporation	ICT	0	0	0	0	0
Kirin Holdings	Agriculture	1	1	1	1 (&)	1
Kyocera Corporation	ICT	1	0	0	1 (&)	0
Mazda Motor Corporation	Automotive	1	0	0	1 (&)	0
Mitsubishi Motors Corporation	Automotive	1	1	0	1 (&)	1
Murata Manufacturing	ICT	1	0	0	1 (&)	0
Nippon Steel Corporation	Extractives	UNCLEAR	0	0	1	0
Nissan Motor Company	Automotive	1	0	0	1 (&)	0
Panasonic Corporation	ICT	1	UNCLEAR	0	1 (&)	0
Sony	ICT	1	0	1	1 (&)	1
Subaru	Automotive	1	0	0	1	0
Suzuki Motor Corporation	Automotive	UNCLEAR	0	0	1 (&)	0
Tokyo Electron	ICT	1	0	0	1	0
Toyota Motor Corporation	Automotive	UNCLEAR	0	1	1 (&)	0

Human Rights Policy

Principle 16, the first operational principle of UNGP Pillar 2 on the corporate responsibility to respect human rights and requires businesses to express their commitment to respect human rights, “as the basis for embedding their responsibility.”⁴¹ The Commentary to Principle 16 further details, “the policy statement should be embedded from the top of the business enterprise through

⁴¹ United Nations. 2011. “Guiding Principles on Business and Human Rights”. Accessible under: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

all its functions, which otherwise may act without awareness or regard for human rights.”⁴² In other words, having a business-wide policy commitment to respect human rights, is considered to be an absolute minimum expectation that every company should follow. However, and while recognizing the impact a strong policy statement may have, the UNGPs also point towards a risk of a human rights policy becoming merely a paper tiger, if not mainstreamed through all business functions – that is to understand the importance of actionable human rights policies setting out business-wide human rights strategies. Regarding the Japanese businesses assessed, this report welcomes the promising fact the vast majority of businesses (17) publicly commit to respect human rights through such a policy statement. However, as the desk-research has shown and mirroring the pitfalls outlined by the Commentary, there are a couple of issues at hand that might turn policy commitments into barriers or even resulting in adverse human rights impacts. The most crucial risks regarding the effectiveness of high-level human rights strategies circle around policy language that offers potential for retraction, as well as non-accessibility of policy and commitments that find themselves spread throughout a variety of documents, rather than having one dedicated policy. Suzuki’s statement of commitment, for example, is part of the businesses Code of Conduct and reads, “(3) Respect of Human Rights. Suzuki Group will be **aware** of international norms pertaining to human rights and respect fundamental human rights with reference to laws in each country or region.”⁴³ Not only is a full commitment to a rights-respecting business culture evaded by committing to domestic legislation, rather than international human rights standards, and, therefore, deflecting responsibility, but also this statement of policy, citing awareness of international norms (read: no commitment to follow), does not indicate a wider human rights strategy being embedded from the top through all business functions. Furthermore, the policies themselves are not always easily accessible to stake- and rights holders via public channels and in general human rights related information is scattered throughout a variety of corporate documents, such as policies, codes of conduct, ethical guidelines etc. Although this makes it hard for stake- and rights holders to assess what to expect from a business, such practices seem to be rather the norm than an exception. Besides Suzuki, there are other examples of such

⁴² Ibid.

⁴³ Suzuki. 2021. “Suzuki Group Code of Conduct”. Accessible under:
<https://www.globalsuzuki.com/corporate/message/conduct/index.html>

practices, with Canon’s basic human rights policy referring to the Code of Conduct⁴⁴ and Panasonic stating that, “Panasonic’s human rights policies are expressly outlined in the Panasonic Code of Conduct and the Global Human Rights and Labor Policies.”⁴⁵ Kyocera takes this even further by stating, “the Kyocera Group established the **Kyocera Group CSR Guidelines** and explicitly prohibits the use of forced labor and child labor as well as discriminatory treatment on the basis of gender, age, beliefs, nationality, physical features, etc.”⁴⁶, the business not only confuses CSR with BHR, but also commits to prohibiting only a few select human rights violations.

It follows that, while having a business-wide human rights policy in place serves as a crucial entry point to set out a business enterprises’ commitment to respect human rights, merely having such policy in paper speaks little to the question of how embedded said commitments are throughout the business, indicating a lack of *readiness* among the assessed companies to fully meet the UNGP requirements.

Acknowledgement of the UNGPs

Based on the Protect, Respect, Remedy framework, the UNGPs marked a turning point for the field of business and human rights (BHR). Although legally non-binding, the UNGPs are widely considered to be the global authoritative standard on BHR, setting out expectations for States and businesses enterprises a like. Their General Principles read “(b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights”⁴⁷ and to this end Foundational Principles 11-15 establish “the benchmarks against which other social actors assess the human rights impacts of business enterprises”. The Operational Principles 16-21⁴⁸ under Pillar 2 detail procedural requirements for business enterprises to embed a rights-respecting business culture, such as policy commitment, human rights impact assessment and human rights due diligence including the

⁴⁴ Canon. 2021. “Human Rights and Labor”. Accessible under: <https://global.canon/en/csr/people-and-society/labor/index.html>

⁴⁵ Panasonic. 2021. “Respect for Human Rights”. Accessible under: <https://www.panasonic.com/global/corporate/sustainability/pdf/sdb2015-09e.pdf>

⁴⁶ Kyocera. 2021. “Diversity Promotion Activities”. Accessible under: https://global.kyocera.com/ecology/human_rights.html

⁴⁷ United Nations. 2011. “Guiding Principles on Business an Human Rights”. Accessible under: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁴⁸ Ibid.

identification of salient human rights risks, as well as reporting and tracking of human rights risks and impacts. The UNGPs ultimately establish a coherent set of expectations to meet and processes to follow for business enterprises. For any business to explicitly commit the UNGPs indicates *readiness* to meet their responsibility to respect human rights.

Unfortunately, the data clearly points to a gap around the uptake of the UNGPs as the global authoritative standard among Japanese businesses as more than half of the businesses do not refer to the UNGPs at all. Rather companies refer to other voluntary frameworks, such as the UN Global Compact. Whereas such reference, in addition to a common commitment towards realizing relevant SDGs deserves credit, it is the UNGPs that act as the global benchmark for an assessment of corporate human rights strategies. *Readiness* can only be assumed, if a company clearly commits to the UNGPs, which many of the Japanese businesses do not.

Identification of Salient Human Rights Risks

UNGPs Principle 18 establishes the requirement for businesses to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”⁴⁹ as part of their human rights due diligence process. The Commentary to Principle 18 further elaborates what best practice in this realm would look like, stating “to enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.”⁵⁰ This does go counter to traditional managerial approaches to managing risks via risk maturity matrixes based on a top-down risk assessment towards the businesses. What is expected of businesses assessing their most salient human rights risks is shifting away the center of attention to risk for the company towards focusing on the individual rights holder and/or communities and the risks a business venture would pose to their lives. What is asked for by the UNGPs is essentially a human rights-based approach to due diligence. In this context, it is more than concerning that 16 companies do not disclose any information on the identification of salient human rights issues in their publicly available self/reporting efforts. Whereas, this may just be a

⁴⁹ United Nations. 2011. “Guiding Principles on Business an Human Rights”. Accessible under: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁵⁰ Ibid.

matter of disclosure, experience has shown that such gaps are real. Knowledge of business specific salient human rights risks is crucial for the corporate responsibility to respect human rights, as potential adverse human rights impacts can only be mitigated and/or remediated once they are accounted for. The binary nature of the assessment speaks little to the question of how serious a business takes its responsibilities around salient issues. However, taking into account previously identified gaps regarding human rights policy statements and an overall commitment to the UNGPs in general, it seems very likely that the selected Japanese companies are far from ready when it comes to paying “special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.”⁵¹

Grievance Mechanisms

While all but one business has a channel to file grievances, none of those have dedicated human rights grievance mechanisms and seem to be designed to mostly handle traditional compliance issues, such as cases of corruption or cases of intellectual property violations. Furthermore, only five out of the twenty-two grievance channels were open to external stake- and rights holders, such as impacted communities. A 2019 International Commission of Jurists (ICJ) report on Effective Operational-level Grievance Mechanisms (OGM)⁵² provides answers to why dedicated human rights grievance mechanisms open to external stake- and/or rights holders are widely considered to provide crucial examples of best practices, stating:

A good OGM will also be designed to be consistent with and/or bearing in mind local culture, including beliefs, social structures of authority and social cohesion and harmony within the community, for instance an indigenous community. At the same time, it will avoid reinforcing existing power structures incompatible with the human rights of individual members of the community, including gender inequality. In order to promote their accessibility OGMs must be well advertised via appropriate channels and their operation must be adapted to local culture and circumstances. As covered in the UNGPs, an OGM can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. For this to be achieved it is crucial for the design of OGMs to have input from local individuals who are familiar with relevant customs and traditions. When local culture or customs diverge from international human rights law, the

⁵¹ Ibid.

⁵² International Commission of Jurists. 2019. “Effective Operational-level Grievance Mechanisms”. Accessible under: <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>

grievance team should ensure international standards are not compromised, although they should be implemented with due regard to local customs. This will require flexibility and adaptation.⁵³

As more than half of the grievance mechanisms currently being used by Japanese businesses seem to be of extremely limited practical use in handling human rights-related claims, the data indicates a lack of *readiness* once more.

Commitment to Remedy

UNGP Principle 22 establishes as much of a straightforward as a crucial requirement, “where business enterprises identify that they have **caused or contributed** to adverse impacts, they should **provide for or cooperate in their remediation through legitimate processes**”⁵⁴ or in laymen’s words: businesses need to be accountable for harm done. Whereas this seems to be an absolute requirement, the Commentary to Principle 22 acknowledges that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”⁵⁵. However, the Commentary also reaffirms that businesses responsibility “to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.”⁵⁶ Given the importance the UNGPs attribute to the issue of remedy it is alarming that 15 businesses do not express a dedicated commitment to remedy. Even in cases where a company supposedly commits to remedy adverse impacts, this often comes in the form of soft commitments, as for example in the case of SONY, stating to apply “**reasonable efforts** to avoid causing or contributing adverse impacts.”⁵⁷ The phrase “reasonable efforts” leaves room for retraction, as it is subject to definition and hence, it is very unlikely for Japanese businesses throughout Thailand to being in a state of *readiness* to tackle the responsibility to respect human rights head on.

In summary, human rights policies within the Japanese businesses studied are yet to show how they mainstream a rights-respecting culture, have an apparent lack of commitment to the UNGPs, and hence, to fully embracing the corporate responsibility to respect human rights. This

⁵³ Ibid.

⁵⁴ United Nations. 2011. “Guiding Principles on Business an Human Rights”. Accessible under: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ SONY. 2021. “Respect for Human Rights”. Accessible under: https://www.sony.com/en/SonyInfo/csr_report/humanrights/

results in knowledge gaps around salient human issues, grievance mechanisms of limited applicability, as well as the lack of commitment to right wrongs where they happened through remedy, suggesting that Japanese businesses are not yet in a state of *readiness*. This is problematic in so far, as it cripples their abilities to face human rights risks and realities of adverse human rights and will likely impact any responsible business conduct efforts in Thailand and globally.

Salient Issues: Understanding the Realities of Potential Adverse Human Rights Impacts

The above analysis of data implied a lack of *readiness* around the corporate responsibility to respect human rights that results in a situation where Japanese business will struggle to identify sector specific human rights risks, which in turn might serve as a barrier for Japanese businesses to fully understand the realities of human rights abuses in Thailand. The twenty-two companies included in the CHRB 2020 operate in five different sectors in Thailand: ICT (8/22), automotive (7/22), agriculture (3/22), extractives (2/22) and the garment sector (1/22). Common human rights risks for each of these sectors include but are not limited to:

- labor rights,
- migrant workers' rights,
- women's rights,
- environmental, land rights & indigenous peoples' rights
- child labor, forced labor and human trafficking,
- human rights defenders (HRDs).

The following will provide clear snapshots of the realities of human rights abuses and the systemic and structural human rights risks in these five key sectors in Thailand.

Labor Rights

Labor rights have been identified as one of four key business-related human rights issues in Thailand's National Action Plan as well as in Japanese business commitments; therefore are relevant to any business operating or investing in Thailand. Common risk around labor rights in the relevant industries include, but are not limited to, freedom of association, fair wages, workplace safety and health. Thailand is a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). ICESCR speaks to labor rights in its articles six to eight, including the

right to work, just and favorable conditions of work, including fair wages, safe and healthy working conditions, equal opportunity (among others) and right to form trade unions. Furthermore, Thailand ratified six out of the eight ILO core conventions. Thailand's main tool to realize the labor rights and to follow its obligations as a duty bearer under international human rights law is its Labor Protection Act⁵⁸, most recently updated in 2019.

Despite, in 2018, about 500 labour representatives protested in the streets of Bangkok against labour rights violations. They pointed out that “despite changes in production processes, labour rights are still being suppressed and this infraction is getting more severe. It added that laws, government policies, and other mechanisms have failed to protect the workers -- both in the formal and informal sectors”.⁵⁹ In 2019, the U.S. Trade Representative (USTR) announced it will withdraw preferential tariffs for many imports from Thailand due to egregious, ongoing worker rights violations in the country.⁶⁰ The announcement cited that numerous reports documented:

“rampant forced labor in the fishing sector, however, extreme worker rights violations are present throughout the Thai economy, with both Thai workers and migrant workers facing repression and abuse. The government severely limits all workers’ ability to form and join unions, does not enforce collective bargaining and prevents workers from striking. The meager protections that do exist are not enforced. The Thai government targets independent labor leaders and activists. Employers are allowed to retaliate against workers who organize with impunity”.⁶¹

In 2019, Human Rights Now reported about the labour rights violations in the Thai poultry industry within the supply chains of Japanese companies. The Business Policy Forum, Japan, identified Japanese companies that have had problems in recent years. The common problems included dangerous labor and unfair wages at supplier plants, overwork in the workplace, long

⁵⁸ CPG. 2019. “Labor Protection Act (No 7)”. Accessible under: http://www.cpg-online.de/wp-content/uploads/2019/04/LABOUR-PROTECTION-ACT_No7_amended.pdf

⁵⁹ Penchan Charoensuthipan, Labour reps march against employee rights violations, Bangkok Post, 25 June 2018, <https://www.bangkokpost.com/thailand/general/1491750/labour-reps-march-against-employee-rights-violations>

⁶⁰ AFL-CIO, Egregious Worker Rights Violations Cause Thailand to Lose Trade Benefits, 28 October 2019, <https://aflcio.org/2019/10/28/egregious-worker-rights-violations-cause-thailand-lose-trade-benefits>

⁶¹ Ibid.

working hours and unpaid wages for technical interns.⁶² Saul Takahashi described more or less the same issue of worker's rights in the case of 'Karoshi' or death from overwork in Japan.⁶³

Although the legal framework around labor rights in Thailand appears to be solid, one must factor in that any legislation only touches on the formal economy, while workers in the informal economy are left unprotected. In general, the corporate responsibility to respect usually applies to the formal economy. A focus on labor laws is of highest importance for Japanese businesses in Thailand. If relying on the domestic legal framework, Japanese businesses would risk violating human rights of rightsholders within their supply chain and hence, not meeting the expectations set out in the UNGPs.

Migrant Workers' Rights

Thailand is a middle-income country that attracts millions of migrants from neighboring countries, especially low skilled labor. They engage in sectors such as fishing, agriculture, hospitality, domestic work and manufacturing.⁶⁴ As of December 2019, there were 2,788,316 registered migrant workers in Thailand mainly from Myanmar, Cambodia, and Lao PDR.⁶⁵ According to one estimate, there are roughly five million migrant workers in Thailand, but only about half of them are legally documented.⁶⁶ If we rely on this estimate, undocumented migrant workers in Thailand account for more than two million. These migrants, regular or irregular, bring considerable benefits to the Thai economy. Unfortunately, many do not receive proper protection of their basic rights and are particularly vulnerable to exploitation and abuse. Thailand's Labor Protection Act (LPA) entitles migrant workers to the same labor rights as Thai nationals; however, this is not always the case in practice. Due to their low socioeconomic status and lack of proper documentation, many irregular migrants face obstacles to decent work opportunities, access to

⁶² CSR Forum, Japan, Ibid.

⁶³ Saul Takahashi, All Carrots and No Stick: Human Rights Regulation of Companies in Japan, in Asia Centre, Business and Human Right: Holding Governments Accountable in Asia, Conference Proceedings, 3 rd International Conference, 12-13 July 2018, Bangkok.

⁶⁴ USAID Thailand Counter Trafficking in Persons, Labor abuse complaint mechanisms in Thailand, Research report, March 2020, <https://winrock.org/wp-content/uploads/2020/05/Thailand-CTIP-Assessment-of-Complaint-Mechanisms.pdf>

⁶⁵ Ministry of Labour cited by ILO, Traiangle in ASEAN Quarterly Briefing Note, (Thailand October-December 2020), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_735108.pdf

⁶⁶ Sebastian Strangio, In Migrant Worker Hub, Thailand Sees a Rare Coronavirus Surge, The Diplomat, 21 December 2020, <https://thediplomat.com/2020/12/in-migrant-worker-hub-thailand-sees-a-rare-coronavirus-surge/>

health care and civil rights.⁶⁷ Common concerns among migrant workers are the rights to freedom of association and collective bargaining, compensation, health insurance and social security, payment of recruitment fees, forced labor, illegal overwork, underpayment, poor health and sanitary conditions, among others. Irregular migrant workers or those working in the informal economy face higher risks of being subject to rights violations, as well as the use of labor subcontracting services by businesses.

“Despite the abundance of channels to lodge labor complaints in Thailand, there are many obstacles that prevent workers from accessing and utilizing them. Migrants are reluctant to file complaints due to lack of awareness of their rights and grievance procedures, language barriers, fear of retaliation from their employers, discriminatory attitudes of government officials, and concerns about their immigration status”.⁶⁸

One of the most reported cases regarding human rights abuses of migrant workers is in the poultry industry. Thailand is the world’s fourth largest producer and third largest exporter of poultry.⁶⁹ In recent years, various cases on allegations of labor rights violations within the Thai poultry industry received media attention. A 2015 investigative report focused on labor rights violations among six poultry factories in Thailand.⁷⁰ These companies have either exported poultry products to Japan, had joint ventures with Japanese companies, or conducted some other business with Japanese companies.⁷¹ Human rights abuses against migrant workers (especially in business operations in border areas) and workers in palm oil producing farms have been also identified.⁷² UN agencies such as the ILO and the UN Human Rights Council issued recommendations to the Thai government to address forced labor practices and the threats against the freedom of expression by retaliatory defamation claims against complaining workers and labor rights activists, and problems with trafficking, forced labor, and exploitation of

⁶⁷ USAID Thailand Counter Trafficking in Persons, Ibid.

⁶⁸ Ibid.

⁶⁹ Human Rights Now Report 2019, Labour rights violations in the Thai Poultry within the supply chains of Japanese companies, <http://hrn.or.jp/wpHN/wp-content/uploads/2019/06/Labour-Rights-Violations-in-the-Thai-Poultry-Industry-within-the-Supply-Chains-of-Japanese-Companies-2019-2nd-Ed.pdf>

⁷⁰ Four of Thailand’s companies involved in the poultry sector include CP Foods Public Company Limited, Centaco Group, Laemthong Poultry Co. Ltd, and Saha Farms Group. Betagro and Thammakase, the Thai food company in the poultry sector, one of the Betagro suppliers. Ibid.

⁷¹ Ibid.

⁷² CAUX Round Table Japan, CRT Japan releases “ Human Rights Issues by Thai and Japanese companies”, 25 August 2016, <https://crt-japan.jp/en/2016/08/25/human-rights-issues-by-thai-and-japanese-companies/>

migrants in agricultural sectors.⁷³ Japanese companies have also been criticized for weak Corporate Social Responsibility and due diligence duties in investigating, monitoring, and addressing human rights impacts identified in their supply chains.⁷⁴

Women's Rights

The Constitution of Japan guarantees gender equality and human rights. Nevertheless, Japanese society is faced with a high level of gender inequality. “In the field of diplomacy, the proportion of Japanese female ambassadors is 3%; in the House of Representatives, the proportion of female politicians is 10.1%.”⁷⁵ According to the survey of the Ministry of Health, Labor and Welfare made in 2018:

“the proportion of women in regular employment in private companies is 24.9%, of which Sogo-syoku (with prospects for promotion) is 18.5%. Even when female managers are present in companies, the ratio of female managers to male managers is unbalanced. Some examples: at companies with more than 5000 employees, the female managerial rate is 6.2%: while it is also 6.2% for companies with 300 to 999 employees”.⁷⁶

Aki Iida's paper used an illustration of the situation at multinational corporations, the percentage of female employees in the Sony Group at the end of fiscal 2016 was 29%, and women in managerial positions 24%. However, the figures significantly vary domestically and internationally – the proportion of female employees at Sony in Japan is 21%, and the share of women in managerial positions 7%. Therefore, the total figures for female employees, including managerial positions, in Sony is affected negatively by the situation in Japan where the headquarters of the group is located.⁷⁷ This observation is confirmed by another study⁷⁸

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Aki Iida, Gender inequality in Japan: The status of women, and their promotion in the workplace, in COJOURN 3:3 (2018), available at doi: 10.14267/cojourn.2018v3n3a5 ; OR https://www.researchgate.net/publication/331287537_Gender_inequality_in_Japan_The_status_of_women_and_their_promotion_in_the_workplace

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Agnieszka Wang and Peraset Chompuming, When Japanese and Thai Cultures Meet in Thailand, What Does Literature Tell Us?, in Japanese Study Journal, file:///C:/Users/Admin/AppData/Local/Temp/51637-%E0%B9%84%E0%B8%9F%E0%B8%A5%E0%B9%8C%E0%B8%9A%E0%B8%97%E0%B8%84%E0%B8%A7%E0%B8%B2%E0%B8%A1-119637-1-10-20160314.pdf

pertaining to Japanese and Thai cultures. According to the survey on cultural dimension index, Japan scores 95 in masculinity, the highest among 13 countries surveyed.⁷⁹ Japanese companies employ more men than women in all posts.⁸⁰ When it comes to management practices in Japanese companies, the study states:

“Generally, Japanese managers retain a Japanese management style in their overseas branches and are often reluctant to adapt to the host country in their foreign bases. Japanese managers are unwilling to adapt the local practices, and in most cases follow their headquarters’ approach because their own culturally endorsed management practices are perceived as more effective”.⁸¹

In addition, despite Thailand’s commitment to women’s rights promotion and protection as a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and recognition of gender equality by the Thai constitution, “women’s access to high levels of decision making is all too limited, as seen by the few women appointed as ministers. Discrimination, in practice, is ever present, such as in regard to unequal pay. Gender-based violence rears its ugly head such as in the domain of domestic violence, sexual exploitation and abuse, forced labour and human trafficking”.⁸² A number of women human rights defenders are harassed and intimidated in the exercise of their rights as seen in the case of spurious complaints and charges brought by a Japanese supply chain chicken company Thammakaset.⁸³ In fact, women human rights defenders (WHRDs) are particularly vulnerable. Since the May 2014 coup, they have increasingly become at risk of violence, discrimination, and other violations of their human rights. When WHRDs have taken the lead in opposing land confiscation, forced evictions, unfair land distribution, the implementation of infrastructure projects, the development of extractive industries, and environmental degradation associated with these actions, many have been met with extreme, and sometimes, deadly violence.⁸⁴

⁷⁹ See details in Agnieszka Wang and Peraset Chompuming, Table 1, page 117, *Ibid*.

⁸⁰ *Ibid*, p.123.

⁸¹ *Ibid*.

⁸² Vitit Muntarbhorn, Challenges to gender equality in Thailand, Bangkok Post, 8 March 2018, <https://www.bangkokpost.com/opinion/opinion/1424306/challenges-to-gender-equality-in-thailand>

⁸³ Fortify Rights, Thailand: End Judicial Harassment of Women Human Rights Defenders, 3 June 2020, <https://www.fortifyrights.org/tha-inv-2020-06-03/>.

⁸⁴ FIDH, In Harm’s Way, Women human rights defenders in Thailand, July 2017/No.594a, https://www.fidh.org/IMG/pdf/thailand_report_-_in_harm_s_way_-_women_human_rights_defenders_in_thailand.pdf

Environmental, Land Rights and Indigenous Peoples' Rights

All business enterprises have a responsibility to prevent and address negative impacts of their actions on the environment. It is widely accepted that the business responsibility to respect human rights and environmental rights includes the responsibility to identify, prevent, mitigate, and account for impacts related to climate change, in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Similarly, States should ensure that their own business activities, including activities conducted in partnership with the private sector, contribute to mitigating climate change while respecting human rights, and ensuring effective remedies for climate and human rights harms.⁸⁵ Environmental and land rights are given highest priority as one of the four key business-related human rights issues identified in Thailand's National Action Plan. However, large-scale development projects, such as new Special Economic Zones (SEZ) bear the risk of producing human rights harms, including environmental and land rights.

SEZ is a "... demarcated geographic area contained within a country's natural boundaries where the rules of business are different from those that prevail in the national territory".⁸⁶ SEZs can take a wide range of forms and the exact nature of any particular example will depend on factors such as state policy, geography and endowment of resources, as well as the State's position along the trajectory of its development.⁸⁷ In Thailand, the current government initiated 10 SEZs at the border areas covering 90 sub-districts in 10 different provinces in the country. In addition, as previously mentioned, the Thai government is also developing the EEC (Eastern Economic Corridor) in the eastern coastal provinces of Rayong, Chonburi, and Chachoengsao with the objective of promoting investment into next-generation industries that use innovation and high technology.⁸⁸

⁸⁵ OECD and OHCHR, The business and human rights dimension of climate change: addressing access to remedy COP 25 Side event, 9 December 2019, Concept note, <https://mneguidelines.oecd.org/Concept-note-COP25-The-business-and-human-rights-dimension-of-climate-change.pdf>

⁸⁶ John wash, Responsible Investment Issues in Special Economic Zone Investment in Mainland Southeast Asia, VNU Journal of Science : Economics and Business, Vol. 35, No. 2 (2019) 63-76, file:///C:/Users/Admin/AppData/Local/Temp/4226-37-8287-3-10-20190813.pdf

⁸⁷ Ibid.

⁸⁸ International Commission of Jurist, The Human Rights Consequences of the Eastern Economic Corridor and Special Economic Zones in Thailand, July 2020.

Protecting the environment in the context of EEC and SEZ development has been a crucial challenge. Development in EEC areas has been affected by environmental problems since the beginning of the Eastern Seaboard Development Program (where a large number of investors are Japanese companies). These have included air pollution from factories affecting nearby communities, drought induced by water scarcity and resulting tensions between communities and industries. There have also been reports of illegal disposal of industrial waste in the region, resulting in both land and water contamination and of waste water flowing from industrial areas into local canals and into areas of residence, mangrove forests and the sea.⁸⁹ Some problems have been positively resolved by collaboration and partnership between the government, private sector and local residents. However, the widespread and well-documented impacts of industrial waste on the environment, continue to cause concern.⁹⁰ As for land right and housing, the ICJ report indicates that the legal frameworks governing SEZs and the EEC raise several human rights concerns relating to the diversion of land, including: (i) inadequacies in the designation of SEZ and EEC development and promotional zones; (ii) overriding of social and environmental checks and balances; and (iii) a lack of redress and accountability mechanisms for the confiscation of land for SEZ use. Cases collected by ICJ in different provinces reveal that several households had been evicted from their lands without appropriate procedural protections. In almost all cases, compensation and adequate alternative housing or land were not offered prior to the evictions.⁹¹ Since Japanese investment in the EEC is significant, it is crucial that they conduct human rights due diligence to ensure investments are responsible and are not complicit in human rights abuses, including to ensure that lands have been lawfully acquired and human rights have been respected in all processes for acquisition, conversion of land use and evictions. They must also establish accessible and effective Operational Level Grievance Mechanisms (OGM) to address concerns affecting individuals and local communities that arise from their operations, in accordance with the UNGPs⁹² and Japan & Thailand's NAP on BHR.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

more often these human rights risks intersect. In 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁹³, creating the most comprehensive international standard to protect individual and collective rights of indigenous peoples to date. However, the Indigenous Media Network (IMN) stated that:

Thailand's indigenous peoples are facing many human rights issues, from land rights, access to basic welfare, and citizenship to the loss of their cultural identity, while the younger generation continues to leave their communities to find work elsewhere. These problems are a result of the way the government's policies and legislation relating to indigenous communities do not take their traditional way of life into consideration, as well as going against the intentions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Thailand is a signatory, along with 143 other countries.⁹⁴

Furthermore, UNDRIP Article 11 (2) requires States to “provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”⁹⁵ The UNGPs mirror the sentiment that indigenous peoples’ are a group or population that requires special attention in cases of actual or potential adverse human rights impacts and it is in this context that then UNGPs reminds businesses that “The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.”⁹⁶ This means for businesses that they can no longer duck away from responsibility and likely accountability for adverse human right impacts on indigenous peoples caused by, for example, flawed Free, Prior and Informed Consent (FPIC) consultations, insufficiently executed environmental impact assessments, etc., all of which are in line with human rights due diligence processes as outlined by the UNGPs operational principles under Pillar 2.⁹⁷

Child Labor, Forced Labor & Human Trafficking

⁹³ UNGA Resolution A/RES/61/295. Accessible under: <https://undocs.org/A/RES/61/295>

⁹⁴ Prachatai. 2021. “Indigenous peoples network to propose new bill to protect indigenous rights.” Accessible under: <https://prachatai.com/english/node/9013>

⁹⁵ UNGA Resolution A/RES/61/295. Accessible under: <https://undocs.org/A/RES/61/295>

⁹⁶ UNGPs Commentary to Principle 12. Accessible under: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹⁷ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

A joint 2019 ILO, OECD, IOM and UNICEF report on “Ending child labor, forced labor and human trafficking in global supply chains”⁹⁸ identifies these human rights violations as a whole-of-supply chain global issue. The ILO mirrors the same sentiment estimating child labor in supply chains to be about 26% in Eastern and Southeast Asia.⁹⁹ Even though Thailand was ranked in the best category in terms of progress against the worst forms of child labor by the report prepared by US State Department, a study conducted in 2019 revealed that over 400,000 Thais under the age of 18 spend at least one hour a week laboring either for wages, other benefits or simply to ease their parent’s workload.¹⁰⁰ Of the working children, 177,000 are considered laborers because of the time they devote to working each week.¹⁰¹ The survey also revealed that 189,000 children worked in the agricultural sector, while 161,000 others served in the trade and service sector. Nearly one in four of the child laborers engage in dangerous work.¹⁰²

Global attention has focused on labor conditions in the fisheries industry in Thailand. The fisheries industry is characterized by high use of migrant workers, many of whom lack legal status and have entered Thailand through informal brokerage arrangements including being smuggled. Reports on incidents of child labor, forced labor, discrimination, trafficking in persons and generally gaps in working conditions regularly surface in the media, indicating a need to address labor protection in the industry.¹⁰³ ILO also uncovered other non-fisheries industry related occurrences of child labor such as in agriculture (rubber plantations, farming), services, child domestic work and assisting in small informal family processing or manufacturing businesses. Both Thai and migrant children were found and both boys and girls are equally affected.¹⁰⁴ As indicated, concerns about child labor, forced labor and human trafficking in Thailand are mostly raised with regards to the Thai fishing sector, risks of rights violations are also present in sectors such as garment and agriculture, among the core sectors for Japanese businesses in Thailand. In order to meet their responsibility to respect human rights, Japanese business hence has to make

⁹⁸ ILO et al, Ending child labour, forced labour and human trafficking in global supply chains :Executive summary, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_728062.pdf

⁹⁹ ILO, Child labour and human trafficking remain important concerns in global supply chains, Newsroom, 12 November 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_728159/lang--en/index.htm

¹⁰⁰ The Nation, Survey finds 400,000 Thai children are at work, 13 June 2019,

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ ILO, Newsroom, Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand, https://www.ilo.org/asia/projects/WCMS_161095/lang--en/index.htm

¹⁰⁴ Ibid.

sure to leverage their influence over its respective supply chains to make sure that their suppliers understand the severity of the issues and require them to follow international standards.

Human Rights Defenders

A Resolution entitled ‘Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development’ was adopted unanimously (without vote) by the UN Human Rights Council on 21 March 2019.¹⁰⁵ Not only does the Resolution recognize the important roles the human rights defenders play in protecting environment and ensuring sustainable development but also condemns increasing violations against environmental defenders, including killings, gender-based violence, judicial harassment, threats and intimidation, to name a few. The Resolution calls on States to adopt laws guaranteeing the protection of human rights defenders, put in place holistic protection measures, and ensure investigation and accountability for threats and attacks against environmental human rights defenders. It also calls on business to carry out human rights due diligence and hold meaningful and inclusive consultations with rights defenders, including potentially affected groups and relevant stakeholders.¹⁰⁶

However, States and business have legal and extralegal tools to silence human rights defenders. Whilst Governments have been using the COVID-19 pandemic as an excuse to further censor free speech, some companies have been taking advantage of current restrictions to file more cases against critics.¹⁰⁷ According to the Business & Human Rights Resource Centre (BHRRC), between 2015 and July 2020, 42% of the 2,400 business-linked attacks against human rights defenders around the world were carried out via the judicial system. They involved civil and criminal lawsuits, arbitrary detention, arrests and unfair trials.¹⁰⁸ Southeast Asia had 167 cases of judicial harassment, or 48 % of the total of 345 business-linked attacks.¹⁰⁹ In Thailand alone, the

¹⁰⁵ UN General Assembly, Resolution adopted by the Human Rights Council on 21 March 2019, Human Rights Council Fortieth session, 25 February–22 March 2019, Agenda item 3, A/HRC/RES/40/11, 2 April 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf?OpenElement>

¹⁰⁶ International Service for Human Rights, HRC40 | Council unanimously recognises vital role of environmental human rights defenders, 21 March 2019, <https://www.ishr.ch/news/hrc40-council-unanimously-recognises-vital-role-environmental-human-rights-defenders>

¹⁰⁷ Pattama Kuentak, Slapped into Silence, in Bangkok Post, 20 July 2020, <https://www.bangkokpost.com/business/1954199/slapped-into-silence>

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

Human Rights Lawyers Association (HRLA), reported that from 1997 to May 2019 there were 212 SLAPP¹¹⁰ cases in Thailand, 196 of which were criminal cases with potentially severe consequences including imprisonment. 41 % of SLAPP's targets are human rights defenders and community/group/ workers and issues prosecuted included 32 % of environmental and development(mining, factories, power plants) and 5 % of labor issues, 2 % of public health, and 2 % of energy.¹¹¹ The threats and attacks are most frequently connected to mining projects, oil and gas developments, agribusiness, logging and deforestation, hydropower, and large-scale infrastructure projects.¹¹² As already seen earlier, some of the Japanese supply chains are implicated in those cases whilst some others take advantage of SLAPP since many of them are investing in industries and agro business.

Responsible Japanese Business in Thailand : Trends

The risks posed by Japanese business companies in Thailand identified in the previous section are quite common in the region. Similar risks were also identified by the Japan's Business Policy Forum.¹¹³ The report entitled 'Investigative Research on How "Business and Human Rights" Should Be for The New Era' published in 2019 provided various types and areas of human rights that Japanese companies have in recent years. These included labour rights, discrimination against women, land right, housing and environment, to name a few¹¹⁴ which correspond with the current study made in Thailand. The examination of the Japanese business conduct in the Kingdom reveals some trends, both positive and negative. The positive trends include more Japanese companies express their commitment to human rights; the adoption of NAP BHR both by Japan and Thailand; stakeholders in both countries are actively trying to hold companies accountable. However, there are also worrying trends such as business responsibility of Small and Medium Enterprises (SME); human rights risks emerged from development of new technologies that Thailand is aiming at; and impacts of EEC where Japanese companies invest heavily. This section attempts to analyse those one by one.

¹¹⁰ SLAPP stands for Strategic Litigation Against Public Participation.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ CSR Forum- Business Policy Forum, Japan, Investigative Research on How "Business and Human Rights" Should Be for The New Era, March 2019.

¹¹⁴ Ibid, p. 8

Increasing Commitments to Respect Human Rights by Japanese Companies

Despite the question of ‘*readiness*’ outlined in previous sections, there seems to be an increasing commitment of companies to human rights. Keidanren (Japanese Business Federation) released the ‘Results of the Second Survey on the Charter of Corporate Behavior’ on 13 October 2020. The results revealed that more than 30 % of the companies responded to the survey ‘have made progress with efforts related to Business & Human Rights in line with the Guiding Principles’.¹¹⁵ The survey noted, however, that still approximately 60% of companies are not taking any action, including those that have understood the Guiding Principles but have not incorporated them into their activities yet.¹¹⁶ Junko Watanabe stated, though, that “compared to the results of the same survey in 2018, there has been progress in the measures taken by companies in Japan that are promoting the initiatives. For example, as a measure marking the increasing focus on the sustainability of supply chains, the number of companies that have been identifying and addressing human rights risks (e.g., forced labor and child labor) at the second tier supplier onward has increased” and that “70% of companies have already formulated or plan to formulate a corporate policy on respect for human rights”.¹¹⁷

For global companies which operate in Thailand, some of them have adopted a policy on business and human rights (although not always explicit). Panasonic puts in its website (both in English and Thai versions) the *Code of Conduct* which states that “we must respect human rights and do our best to understand, acknowledge and respect the diverse cultures, religions, mindsets, laws and regulations of people in the different countries and regions where we conduct business. Panasonic supports the fundamental principles of the United Nations Universal Declaration of Human Rights, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and the OECD Guidelines for Multinational Enterprises” adding

¹¹⁵ Junko Watanabe, Sustainability and Overseas Expansion of Japanese Companies – Overview of Business and Human Rights, Asia Newsletter, November 2020. <https://www.lexology.com/library/detail.aspx?g=3285c487-7191-4d1a-8ad5-5b653d0bb39b>

¹¹⁶ Ibid.

¹¹⁷ Ibid. The reasons given by those companies included “[Business & Human Rights is] becoming mainstream in international business” (79%), “legislation and guideline development in foreign countries” (65%), and “dealing with investors and rating agencies” (63%). See as well UN Global Compact Network Japan, Business and Human Rights: Corporate Japan Rises to the Challenge, https://ungcjin.org/common/frame/plugins/fileUD/download.php?type=contents_files&p=elements_file_2563.pdf&token=625ea8f0a5e047e63bb2fc7ea070d7d926e84268&t=20200918135031

that “Panasonic is also taking an active approach to reflecting ideas concerning global human rights in its management, including by making reference to the Guiding Principles on Business and Human Rights”.¹¹⁸ Moreover, Panasonic endorses the Panasonic Code of Conduct and the Global Human Rights and Labor Policies. These policies cover items concerning issues including working hours; wages; humane treatment; prohibition of discrimination; protection of privacy; concern for the human rights of foreign workers, trainees, and younger laborers; and the freedom of association and labor-management dialogues.¹¹⁹ A Human Rights Support desk was established in the Headquarters and employees’ labor union.

Another example is Ajinomoto Co.Inc.a major Japanese food manufacturer operating in Thailand for decades. The UN Global Compact published in January 2021 the ‘Communication on Progress (COP)’ indicated that the company’s COP is qualified for the ‘Global Compact Advanced Level’.¹²⁰ The self-assessment report included description of actions or relevant policies related to human rights, labour, environment and anti-corruption. Clear commitments are made to comply with “all applicable laws and respect internally recognized human rights, wherever the company operates”.¹²¹ These human rights commitments were approved at the most senior level as well as partners and other relevant parties.¹²² Ajinomoto engages with civil society groups, including NGOs working in Thailand and other developing countries. In Thailand, it worked with NGOs and a local industry group to investigate working conditions of immigrants from Cambodia and Myanmar at a chicken processing plant with which it partners. It discovered that the plant was using an online service provided by an NGO that allowed immigrant workers to seek advice on living in Thailand.¹²³ In addition to Ajinomoto Co.Inc., ANA Group¹²⁴, and Fuji Oil Holdings

¹¹⁸ Panasonic, Respect for Human Rights, https://www.panasonic.com/global/corporate/sustainability/human_rights.html.

¹¹⁹ Ibid.

¹²⁰ The UN Global Compact, Communication on Progress, 25 January 2021, <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/advanced/446775>

¹²¹ Ibid.

¹²² Ibid.

¹²³ 'สิทธิแรงงานอาเซียน' กฎเหล็กบริษัทญี่ปุ่น – กรุงเทพธุรกิจ 7 ตุลาคม 2562 (Labour rights in ASEAN, Bangkokbiznews, 7 October 2019), <https://www.bangkokbiznews.com/news/detail/849914>; Ryo Yamaoka, Human rights in Southeast Asia suppliers become priority in Japan, Nikkei Asia, 6 October 2019, <https://asia.nikkei.com/Business/Business-trends/Human-rights-in-Southeast-Asia-suppliers-become-priority-in-Japan>.

¹²⁴ ANA, Human Rights Report 2020, https://www.ana.co.jp/group/en/csr/effort/pdf/Human_Rights_Report_2020_e.pdf

Inc.¹²⁵ have adopted human rights and sustainable business policies as well. Proper implementation of their policies need to be monitored on regular basis by different actors.

Adoption and Implementation of NAP BHR

Japan is the last country among the G8 to have adopted a National Action Plan on Business and Human Rights. Announced in November 2016 by the Japanese government at the UN Forum on Business and Human Rights, Japan finally endorsed its NAP BHR on 16 October 2020, the second in Asia after Thailand. Japan's NAP covers the period between 2020 and 2025 aiming, among others, to ensure policy coherency and strengthen coordination among government ministries and agencies; to contribute to the protection and promotion of human rights in whole society by promoting responsible business conducts; to help ensure and enhance the international competitiveness and sustainability of Japanese companies; and to achieve the Sustainable Development Goals (SDGs) through the NAP implementation.¹²⁶ According to the Japan's Ministry of Foreign Affairs, "the NAP lists a series of measures related to business and human rights to be implemented by the Government. It also sets out expectations for business enterprises to promote introducing human rights due diligence in the context of their business activities".¹²⁷ Japan is also committed "to ensure the coherence of policy measures taken by the relevant ministries and agencies with regard to business and human rights. The Government also wishes to contribute to promoting and protecting both the human rights of people who would be adversely affected by the activities of business enterprises and human rights for society as a whole, including the international community".¹²⁸

The Thai government shows its commitment to implement the UN Guiding Principles on Business and Human Rights (UNGPs). On 29 October 2019, the Thai cabinet adopted the country's first National Action Plan on Business and Human Rights (NAP on BHR) aiming to prevent

¹²⁵ Fuji Oil Holdings Inc., Fuji Oil Group Human Rights Policy, https://www.fujioilholdings.com/en/about/human_right/; The UN Global Compact, Communication on Progress, 25 January 2020, <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/444771>

¹²⁶ ILO, National Action Plan on Business and Human Rights : Stakeholders of Japan's National Action Plan on Business and Human Rights issued Joint Comments following dialogue facilitated by the ILO, 10 November 2020, https://www.ilo.org/tokyo/information/pr/WCMS_760389/lang--en/index.htm

¹²⁷ Ministry of Foreign Affairs of Japan, Launch of Japan's National Action Plan on Business and Human Rights (2020-2025), Press Release, 16 October 2020, https://www.mofa.go.jp/press/release/press4e_002939.html

¹²⁸ Ibid.

adverse effects of business operations on human rights. The preparation of the NAP on BHR began in 2016 with consultations with stakeholders. The NAP on BHR identified four priority areas: 1) labor; 2) community, land, natural resource and environment; 3) human rights defenders; and 4) cross border investment and multinational enterprises. Interestingly, a memorandum of cooperation to advance implementation of the UNGP was signed among relevant agencies, including the Ministry of Industry has joined the National Human Rights Committee, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Commerce, the Federation of Thai Industries, the Thai Bankers Association, the Thai Chamber of Commerce, and the Global Computing Network of Thailand. Earlier, in May 2019, Thailand's capital market regulator, the Securities and Exchange Commission (SEC) signed an MoU with the National Human Rights Commission of Thailand to uphold UNGP principles. In addition, the Department of Industrial Works, Ministry of Industry also encourages the private sector to implement its Corporate Social Responsibility (CSR-DIW) standards to achieve ISO 26000 standards (an international standard on CSR).

However, Japan's action plan does not explicitly mention future legislation, or its possibility, in connection with Business & Human Rights, and the gap between current Japanese policies and international standards has not been sufficiently analysed whilst Thailand's national action plan specifies a deadline for clearing each target and indicators for measuring its achievement (along with milestones, such as whether the current legislation on worker protection is sufficient) and to analyse the gap between actual conditions and internationally required standards in considering revision of the relevant laws and regulations).¹²⁹ Despite some gaps, the NAP BHR as adopted by Japan and Thailand presents a significant step toward responsible business conduct and can be used as framework for assessing business conducts of Japanese companies in Thailand.

Emerging Human Rights and Business Movements/Networks in Japan and Thailand

Since the adoption of the UNGPs in 2011, civil society groups focusing on business and human rights emerge in both Japan in Thailand. In Japan, Business and Human Rights Lawyers Network Japan; Business & Human Rights Resource Centre (Japanese chapter) with its wide range

¹²⁹ Junko Watanabe, *Ibid.*

of activities, especially monitoring and reporting human rights issues committed by corporates; The UN Global Compact Network Japan (network of companies): Human Rights Now¹³⁰, the Tokyo based international NGO with over 700 individual and organizational members with business and human rights chapter; Business Policy Forum/ CSR Forum-Japan; CAUX Round Table Japan, to name a few. In Thailand, there exists a large number of NGOs and other civil society groups, including academic institutions and think-tanks such as Asia Centre, Forum Asia (which are regional organization operating from Bangkok) working in the field of human rights protection, including business and human rights. Many of them monitor human rights issues committed by business entities. In addition to civil society groups and academic institutions, the governments agencies of the two countries also initiate discussions and cooperation. An example could be seen in Japan-Thailand Joint seminar on Business and Human Rights (online) held on 16 December 2020 co-hosted by the Embassy of Japan in Thailand and the Ministry of Justice of Thailand.

Despite some positive trends outlined above, there are still a few major challenging trends which require attention.

Business Responsibilities of SMEs

As pointed out previously, the UNGPs ‘apply to all States and to all business enterprises, both transnational and others, regardless of **their size**, sector, location, ownership and structure’. Small and Medium Enterprises (SMEs) form “the back bone of national economies and the global supply chains of large companies. They account for about 90% of all businesses and contribute up to 45% of total employment in the world (and 60% in emerging economies)”.¹³¹ However, in the debate on business and human rights, the importance of SMEs has been largely neglected as most attention has focused on the policies and practices of the largest global companies.¹³² Respect for human rights belongs not only to the large companies, but to all businesses, including small and medium-sized ones. Europe is the first region to introduce a guide to human rights for SMEs. In

¹³⁰ In 2019, Human Rights Now published the report on ‘Labour Rights Violations in the Thai Poultry Industry within the Supply Chains of Japanese Companies’, 26 August, https://hrn.or.jp/eng/news/2019/08/26/thai_poultry_report/

¹³¹ IOE, SMEs and the Responsibility to Respect Human Rights : A summary of a workshop with SMEs and IOE members on the UN Guiding Principles on Business and Human Rights , May2019, <https://shiftproject.org/wp-content/uploads/2020/01/index.pdf>

¹³² Ibid.

2012, the European Commission published an introductory guide to human rights for SMEs, in order to provide practical guidance to SMEs in implementation and endorsement of UNGPs within their business activity.¹³³ Such a guide has yet to develop in ASEAN/Asia.

The World Bank report states that the presence and importance of a large SME sector comprises the majority of enterprises in all the Asia-Pacific's economies. Given the region's diversity, enterprises in general, and SMEs in particular, are at different stages of evolution in their respective economies; their relative roles and contributions also differ.¹³⁴ In Southeast Asia, each country has its own definition of SMEs. In Thailand, there is no clear definition as it depends on the business sector and has different criteria based on number of employees and fixed capital size.¹³⁵ A study conducted by Office of Small and Medium Sized Enterprises Promotion (OSMEP), under the Ministry of Industry, showed that there are 2.9 million SMEs around Thailand, 99 percent of the total number of enterprises the nation has. This creates 9.7 million jobs and they produce 37.2 percent of the country's GDP.¹³⁶ In Japan, SMEs account for about 99 per cent of all firms, 70 per cent of total employment and 50 per cent of GDP output.¹³⁷ As mentioned previously, there was a reverse trend of Japanese investments in Thailand in the sense that SMEs comprised more than 50 % of all Japanese ventures in the Kingdom. Unfortunately, SMEs still face a number of challenges in relation to the implementation of human rights. These include the lack of resources, not being sure about their obligations in light of government duties, national law not being enforced in practice and it being difficult to operate in situations where fundamental economic, ecological and social standards are not part of national law. In addition, it is also difficult to

¹³³ European Commission, My business and human rights :A guide to human rights for small and medium-sized enterprises,
https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/human-rights-sme-guide-final_en.pdf

¹³⁴ SMEs in Asia and the Pacific,
<https://www.unescap.org/sites/default/files/7%20-%201.%20SMEs%20IN%20ASIA%20AND%20THE%20PACIFIC.pdf>

¹³⁵ Ibid.

¹³⁶ Sumipol, SMEs The Real Backbone of Thai Economy,
<https://www.sumipol.com/en/knowledge/smes-%E0%B8%AB%E0%B8%B1%E0%B8%A7%E0%B9%83%E0%B8%88%E0%B8%97%E0%B8%B5%E0%B9%88%E0%B9%81%E0%B8%97%E0%B9%89%E0%B8%88%E0%B8%A3%E0%B8%B4%E0%B8%87%E0%B8%82%E0%B8%AD%E0%B8%87%E0%B9%80%E0%B8%A8%E0%B8%A3/>

¹³⁷ SMEs in Asia and the Pacific, Ibid.

translate policy commitments into relevant operational procedures.¹³⁸ There is a real need to address all those challenges both by Japan and Thailand.

Development of New Technologies

As outlined previously, Thailand is moving toward megaprojects and Industry 4.0 (technology in industry). Thailand continues to encourage foreign direct investment as a means of promoting economic development, employment, and technology transfer. The Eastern Economic Corridor (EEC) was designated to be the home of investments in twelve targeted industries, many of them involve next-generation automotive; intelligent electronics; advanced agriculture and biotechnology; advanced robotics and automation; and digital technology. The Business Policy Forum of Japan raised concerns about human rights on issues having to do with privacy and discrimination as effects of new technology development.¹³⁹ Whilst new technological innovations offer significant opportunities to promote and protect human rights, they also pose undeniable risks. The fact that new technologies are often privately controlled raises further questions about accountability and transparency and the role of human rights in regulating these actors.¹⁴⁰ Moreover, new technologies could be used as weapon by state and non-state actors, especially to surveil and track citizens. In a country such as Thailand where the legal response to the challenges caused by the rapid progress of technological change has been slow and not always geared toward the promotion and protection of human rights, great challenges lay ahead.

Human Rights Impacts of EEC

As previously stated, negative impacts of the EEC were already felt especially for communities. The ICJ report not only documents reported human rights violations and abuses of affected communities (as well as the adverse impact on the environment and working conditions for migrant laborers) but also identifies gaps and weaknesses in the current law and policy governing investment in areas that have been designated for economic development in order to

¹³⁸ OIE and ILO, SMEs and Human Rights What is the current state of play, what are the opportunities and challenges, what kind of support is needed?, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/--ifp_seed/documents/publication/wcms_535220.pdf

¹³⁹ CSR Forum Japan, Investigative Research on How “Business and Human Rights” Should Be for The New Era, Ibid.

¹⁴⁰ Molly K.Land and Jay D.Anderson (eds), New Technologies for Human Rights law and Practice, Cambridge University Press, 2018.

attract foreign investment.¹⁴¹ In fact, the current laws and regulations governing SEZs do not contain adequate procedural safeguards and human rights protections, including for the rights to food, health, water, work and adequate housing. “While the law governing development of the EEC does contain a number of provisions that protect communities and the human rights of affected individuals, the report outlines concerns about the regulatory body governing the EEC’s broad discretionary powers and inadequate transparency in its work, as well as a lack of adequate preventive and remedial frameworks to ensure respect of human rights and environmental protections in areas designated for development under the law”.¹⁴² Although the NAP BHR that Thailand adopted in 2019 has committed to reviewing and amending laws and regulations to ensure that they comply with human rights law and standards, it is yet to see in what shape such review and amendment will take as there is a complete lack of participation and transparency in the process. Since Japanese companies are the major investors in EEC and SEZ and the fact that most are still lagging behind their Western counterparts in terms of environmentally and socially conscious behavior,¹⁴³ they tend to rely on unreliable domestic law in Thailand, and this is a worrying trend.

Promoting Responsible Business Conduct in Thailand: Moving Forward

UNGPs: The Benchmark for Responsible Business Conduct in Thailand

Although the UNGPs present themselves as non-legally binding, voluntary principles, they provide clear expectations of what the corporate responsibility to respect entails. One might argue now that such a list of expectations might be dealt with through a tick-box approach, as in the case of many benchmarks and self-reporting initiatives and their lack of capacity to display substantial change. However, the UNGPs set out their very own benchmark for assessing how businesses are meeting expectations:

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with

¹⁴¹ ICJ, *Ibid.*

¹⁴² *Ibid.*

¹⁴³ A study by Nikkei in August that ranked large companies in terms of return on equity and environmental, social and governance scores revealed no Japanese within the top 50 spots. See Ryo Yamaoka, *Ibid.*

regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.¹⁴⁴

Responsible business conduct in Thailand asks for the crafting of holistic human rights strategies including HRDD processes, as well as human rights specific non-judicial grievance mechanisms as an alternative means to effective remediation of business-related adverse human rights impacts. To this end questions that need to be answered evolve around best practice regarding the design of HRDD processes and grievance mechanisms, the protection of human rights defenders, and gender mainstreaming of the UNGPs. Above all, further capacity building around the UNGPs in general and building a solid understanding around Pillar 2 and the business responsibility to respect human rights going beyond traditional corporate risk assessments will be inevitable for Japanese companies seeking to responsibly conduct business in and with Thailand.

Moving Forward: The Corporate Responsibility of Japanese Business to Respect Human Rights in Thailand

As already analyzed in the previous section, on the upside, the past decade has seen many promising developments. On the downside, this report outlined how there is still much work to be done to realize the UNGPs' goal of achieving "tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization."¹⁴⁵ Considering Japanese businesses' current state of *readiness* towards this goal and reflecting on the above outlined human rights risks in Thailand, the following first steps towards mainstreaming a rights-respecting business culture are believed to enable Japanese stakeholders to live up to their responsibility to respect human rights:

- Form strategic partnerships with CSOs, HRDs and external experts (immediate);
- Recognition of business and human rights as a relevant business case (immediate);
- Recognition of existing and evolving norms (immediate);
- Respect international human rights standards, ILO core conventions, UNGPs;
- Update Human Rights Policy commitment (immediate) in accordance with UNGPs, Japan and Thai NAPs;

¹⁴⁴ UNGP General Principles. Accessible under:
https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

¹⁴⁵ Ibid.

- Carry out initial HRIA informed by external experts (immediate) and based on rights holder consultation (following through) to identify most salient human rights risks;
- Design HRDD processes informed by external experts and based on rights holder consultation;
- Design dedicated human rights grievance mechanisms and commitment to effective remedy informed by external experts and based on rights holder consultation;
- For businesses to establish multi-stakeholder working groups to create a robust grievance mechanism based on engagement with communities and affected parties in order to address criticism;
- Specifically for EEC, there needs to be some measures, platforms or mechanisms to force the business sector to include human rights in their business plans. This could cover companies that want to list on the stock market or invest in the Eastern Economic Corridor (EEC);
- Since the NAP BHR was already adopted, the Japanese government should implement legislation for corporate responsibility reporting, mandatory due diligence of human rights impacts in supply chains, and a customs code to provide publicly available tracking information of imported products, and restrict imports of products made through forced labor;
- Refrain from the application of SLAPP : Businesses should recognize the vital role human rights defenders play in Thailand. Acknowledging them as watchdogs, human rights defenders are crucial to informing overall human rights strategies, HRDD processes, and the design of non-state grievance mechanisms;
- All these efforts should be following a human rights-based approach to BHR that starts and ends with the needs of affected individuals and communities.

Concluding Remarks

Since 2011, the field of business and human rights has evolved remarkably. Steps are being taken for regional mandatory HRDD legislation as in the case of the European Union, there are more and more frameworks such as the OECD guidelines being constantly updated and expanded upon, NAPs are slowly becoming the norm, and generally, the BHR discourse is steadily being mainstreamed through governments and businesses alike. Thailand and Japan are trailblazers in

this realm. Through their respective NAPs, the Thai and Japanese governments are taking important steps to following up on states' responsibility to protect human rights under UNGP Pillar 1. Businesses are increasingly adapting to this and more enterprises understand their Pillar 2 responsibility to respect human rights. However, there is still a lot to be done around mostly questions of mainstreaming the Protect, Respect, Remedy Framework, as recent efforts such as the UN Working Group on Business and Human Rights' project "Business and human rights: towards a decade of global implementation"¹⁴⁶ highlight. A rights-respecting culture can only thrive with everyone operating on a level playing in order to know what to expect from the other stakeholders. Notable developments such as Thailand and Japan being the first countries in Asia to adopt NAPs on BHR in Asia, only reinforce the importance for business to take part in discourses and to become ready, if not yet, to live up to their responsibilities.

At the current moment, it is of highest importance for companies investing in Thailand to get ahead with what is to come and become proactive rather than reactive. As the analysis above has shown, there are still some steps to be taken to reach such a state of *readiness*. For Japanese businesses that are ready to walk the talk on rights respecting business conduct in Thailand, stakeholder engagement through, for example, constructive partnerships with Thai CSOs, might be one way to leverage the data and knowledge that such organizations have been able to gather throughout the past decades. Only if companies understand their human rights impacts, be it positive or adverse ones, and having implemented holistic human rights strategies that enable the entity to act swiftly and proactively, and in cases of adverse impacts, with effective remedy, Japanese investment will be able to align with national and international expectations. The good news is that although there is no simple quick fix, if given the opportunity and responsibility, the field of human rights is well-equipped to guide willing business enterprises throughout their change towards respecting the rights of affected individuals and communities.

¹⁴⁶ OHCHR. 2021. "Business and human rights: towards a decade of global implementation". Accessible under: <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRnext10.aspx>