



CORPORATE ACCOUNTABILITY IN ASEAN: A HUMAN RIGHTS-BASED APPROACH



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Asian Forum for Human Rights and Development (FORUM-ASIA)

ISBN 978-616-7733-04-3

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Photos on the front and back covers are courtesy of Towards Ecological Recovery and Regional Alliance (TERRA) and the Shwe Gas Movement.



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Foreword

It is our pleasure to introduce this publication for the perusal of human rights defenders in the Association for Southeast Asian Nations (ASEAN) sub-region as a reference for their engagement with corporations. As outlined below, this publication is a culmination of a long and extremely enriching process of information sharing, consultation, discussion and mutual learning among civil society groups and communities in ASEAN. It represents the continued efforts of civil society groups, as well as affected communities, in the region to further advocate for the change of values, laws, policies and practices of all actors, especially the financiers and their host governments, to ensure rights protection and accountability in sovereign, multilateral and corporate investments in the region.

This present report has its beginnings in two public hearings on the issue of corporate accountability in 2011, held in response to the ASEAN Intergovernmental Commission on Human Rights (AICHR)'s undertaking of a thematic study on the topic of "corporate social responsibility" in ASEAN. The first public hearing was organised by civil society groups in ASEAN on 2 May 2011 in Jakarta, Indonesia, while the second public hearing was held in Bali, Indonesia on 25 October 2011. During these public hearings, testimonies from representatives of communities affected by economic activities of corporate and governmental bodies were heard, and responses to these testimonies were provided by a panel of experts. These public hearings successfully generated much interest from various community groups, the public, and the media.

The cases, testimonies, and discussions from the two public hearings in 2011 later formed the basis of this report. Following the two public hearings, a workshop attended by some of the groups involved in the previous two events was held on 4-5 October 2012 in Bangkok, Thailand, where the draft of this report was first presented and discussed. Subsequently, the draft was again presented at a two-day workshop, "Demanding Accountability in ASEAN: A Workshop on Rights Protection and Accountability Standards in Sovereign, Multilateral and Corporate Investment in ASEAN", which was held in Phnom Penh, Cambodia on 12-13 November 2012, and attended by more than 80 civil society organizations in Southeast Asia. Comments and feedback to the draft were solicited from these workshops and incorporated into the report.

The publication of this report involved the following civil society organisations at different stages of its preparation: the Solidarity for Asian People's Advocacy (SAPA) Task Force on ASEAN and Burma, SAPA Task Force on ASEAN and Human Rights, SAPA Task Force on ASEAN Migrant Workers, SAPA Task Force on Extractive Industries, SAPA Task Force on Freedom of Information, SAPA Working Group on ASEAN, SAPA Working Group on Environment, Action for Gender, Social and Ecological Justice (AKSI), Alternative ASEAN Network on Burma (Altsean-Burma), ASEAN Watch-Thailand, Asian Indigenous Peoples Pact (AIPP), Burma Partnership, Focus on the Global South, Bank Information Centre (BIC),

The Commission for the Disappeared and Victims of Violence (KontraS), Institute for Essential Services Reform (IESR), Mining Advocacy Network (JATAM), Migrant Forum in Asia (MFA), Southeast Asian Committee for Advocacy (SEACA), Towards Ecological Recovery and Regional Alliance (TERRA), WALHI (Friend of the Earth Indonesia), Village Focus International (VFI), and Yayasan Lembaga Hukum Indonesia (YLBHI).

In line with its original conception, this report will be presented to AICHR, as a substantive input to the Commission's ongoing research on this thematic issue.

This report comes at a timely juncture also as concerted efforts are taking place at the international level to address the issues of human rights abuses by corporations. The newly established annual UN Forum on Business and Human Rights, which was inaugurated on 3-5 December 2012, must provide opportunities for furthering these debates beyond the Guiding Principles on Business and Human Rights and contributing towards a strong consensus on the accountability of corporations. This report seeks also to contribute to that end, with the solidarity of human rights defenders and affected communities from across the globe. In November 2013, the International Network for Economic, Social and Cultural Rights (ESCR-Net) together with FORUM-ASIA will organise a People's Forum on Human Rights and Business, bringing together affected communities and grassroots groups as well as NGOs to draw on experiences from significant cases of human rights abuses by corporations in order to institute improvements to national, regional and international mechanisms, as well as to advocate for the participation of affected communities vis-à-vis ensuring accountability for corporate human rights abuses, including those with government complicity.

We would like to sincerely thank those who contributed to the drafting of this report. In particular, we thank Carl Middleton and Ashley Pritchard for their work on this report. We also thank Premrudee Daoroung, Jelson Garcia, Dorothy Guerrero, John Liu, Bobbie Sta. Maria, Rowan Ryrie, Fabby Tumiwa, and Yap Swee Seng, for reviewing the manuscript and for providing editorial assistance and additional contributions to the report.

We would also like to acknowledge the Swedish International Development Cooperation Agency (SIDA), whose generous support has made this publication possible.

Finally, we hope that this publication will serve as a useful reference for individuals and organisations working on the issue of corporate accountability in ASEAN, as well as a guiding document for our own advocacies on the issue, in line with our broader commitment to strengthening human rights in the ASEAN region.



Giyou Kim
Acting Executive Director
Asian Forum for Human Rights and Development (FORUM-ASIA)



Executive Summary

This report is intended to provide guidance and to encourage a strengthening of laws, policies and practices of government, businesses and the Association of Southeast Asian Nations (ASEAN) for the protection and promotion of human rights. It identifies the need for the ASEAN region to set in place policies and practices for Corporate Accountability that requires business in its conduct to respect human rights – as detailed in the core international human rights instruments. The report offers recommendations to the region’s governments, ASEAN and its regional human rights mechanisms, the national human rights institutions (NHRIs), and business.

Over the past several decades, the ASEAN region has accelerated its integration into the global market economy driven by business interests from within and outside ASEAN, with a strong backing by the region’s governments. This development trajectory has entailed many changes in the region including the construction of large infrastructure, such as roads, hydropower dams, and fossil fuel-fired power stations, a proliferation of the mining industry, the creation of polluting industrial zones, and the expansion of a range of land-intensive agro-business. Whilst gross domestic product (GDP) is rising and indicators of well-being are improving for some, inequality is widening and impoverishment persists for too many. Development-induced displacement is also endemic and many people are losing access to the natural resources upon which they depend. Development based on resource extraction and exploitation not only leads to environmental degradation, but in a number of cases has also triggered violations of human rights by government and business without redress.

The member governments of ASEAN have pursued deepening political and economic integration, including moving towards the creation of an ASEAN Economic Community (AEC) by 2015. Projects proposed under the AEC detailed within the ASEAN Economic Blueprint plan – including transport cooperation, energy cooperation and mining cooperation – have potentially profound environmental, social and human rights implications. In numerous ASEAN documents, the three ASEAN pillars – the AEC, the ASEAN Social-Cultural Community (ASCC), and the ASEAN Political-Security Community (APSC) – are promoted as “*closely intertwined and mutually reinforcing.*” Yet in practice, political emphasis has been placed on the AEC to further liberalize the region’s economy and facilitate trade and investment. Far less emphasis has been placed on addressing the social and environmental consequences of economic growth and safeguarding human rights, which are addressed in the ASCC and APSC and within the mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

This report applies a conceptual framework derived from the core human rights instruments that assesses the impacts to human rights by business according to eight categories of human rights, namely: right to non-discrimination; right to effective remedy

and accountability; economic and social rights; labor rights; the right to healthy and sustainable environment; civil and political rights; right to security of the person; and the rights of communities or groups, especially indigenous peoples. The case studies used in this report are based on testimonies presented at two public hearings organized by civil society groups held on 2 May 2011 in Jakarta and on 25 October 2011 in Bali, and a workshop held in Phnom Penh on 13-14 November 2012. Additional publicly documented case studies beyond these testimonies are also included. Whilst there are examples of reasonable business practices across the region, the case studies reveal that there are also numerous examples of human rights violations by businesses in ASEAN.

Protecting and promoting human rights has often been a difficult and divisive topic for the ASEAN governments. Measures of governance in terms of political rights, civil liberties, corruption and press freedom are uneven across the region. Weak civil and political rights, high levels of corruption, and constrained media all exacerbate the risks of human rights violations by states and business. The creations of AICHR on 23 October 2009 and ACWC on 7 April 2010 were notable steps towards human rights protection and promotion. On the other hand, the "ASEAN Way" which emphasizes non-interference in the domestic affairs of other countries and consensus-based decision making resulting in the lowest common denominator for all agreements has also been a barrier to furthering these gains, as reflected in the shortcomings of the ASEAN Human Rights Declaration (AHRD), adopted on 18 November 2012.

Presently, there are four internationally recognized Paris Principles-compliant National Human Rights Institutions (NHRIs) within ASEAN, namely the National Human Rights Commission of Indonesia (KOMNAS HAM), the Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT). These four NHRIs, together with the Provedor for Human Rights and Justice of Timor Leste and the recently established Myanmar National Human Rights Commission are member to the Southeast Asia National Human Rights Institution Forum (SEANF), which is a sub-regional grouping of NHRIs. The region's NHRIs could play a leading role in promoting Corporate Accountability and ensuring efficient and effective protection against human rights violations in the context of business activities.

In the cases documented in this report, the state failed to protect human rights and business failed to respect human rights. In some cases, local communities, often working with civil society groups, have sought justice and redress, cooperating with NHRIs where they exist. Despite occasional success, in too many cases neither the state nor business acted to meaningfully redress the human rights violations. The case studies demonstrate that the existing systems at the national and regional level for the protection and promotion of human rights requires substantial reinforcement, including addressing legal and institutional deficits and in the accountability of business at the national, regional and international levels.

Whilst the AEC Blueprint outlines ASEAN's strategy for economic integration, promoting CSR is incorporated separately into the ASCC Blueprint. In line with the objectives of

this plan, in October 2010, organizations from five ASEAN Member States – Singapore, Indonesia, Malaysia, Thailand and the Philippines – established the ASEAN CSR Network. Furthermore, AICHR is undertaking a baseline thematic study on Corporate Social Responsibility and Human Rights in ASEAN, although little information on the status of the study is publically available.

Globally, protracted pressure from civil society, consumer groups and the public at large on safeguards and accountability in public and private sector investments has resulted in setting standards for Corporate Social Responsibility (CSR) among national and multi-national corporations. Whilst there are reports of good CSR practices in ASEAN, within the eighteen studies that were presented at the 2011 public hearings, it is clear that there are also some stark contradictions between corporate mission statements and CSR policies on the one hand, and the company's practices on the ground on the other. As existing voluntary standards are all too often ignored, the case studies underscore the need to move beyond unrealistic expectations for voluntary CSR mechanisms and towards legally defined and binding principles of Corporate Accountability.

Poor business practices' impact on human rights have become increasingly exposed globally and there are nowadays hundreds of voluntary international standards for the private sector for 'responsible investment' – which arguably allows companies to pick and choose between more and less rigorous frameworks. Some of the most well-known voluntary standards that address human rights include: the Global Compact; the OECD Guidelines for Multinational Enterprises; International Organization for Standardization Guidelines for Social Responsibility (ISO 26000); and the Voluntary Principles on Security and Human Rights. There are also a large number of sector specific standards. Whilst many of these standards are a step in the right direction, some of the companies documented as having violated human rights in this report are also signatories to some of these standards, underlining again the need for legally defined principles of Corporate Accountability.

Opponents of corporate liability have argued that litigation against companies' human rights conduct is "bad for business" and will drive companies away from investing. However, others argue that businesses do have an incentive to invest in countries with improved human rights conditions, as such conditions foster stability and long-term economic development. Furthermore, given public pressure for companies to meet international human rights standards, many large companies seek to distance themselves from human rights violations. For these types of companies, further litigation towards businesses that violate human rights would be welcomed as it would create a more level playing field. In other words, it is not necessarily the case that corporate liability for human rights violations will harm economic development in ASEAN. Instead, it could attract socially and environmentally responsible investment that respects human rights, protects the environment, and fosters a more sustainable development.

Whilst certainly not all business practices violate human rights and business itself is important to provide employment and economic growth – and can also promote and protect human rights – the report identifies the need for significant improvement throughout the ASEAN region towards addressing human rights violations by business

and reform of business practices. The report concludes that voluntary CSR initiatives promoted by business itself – and by ASEAN state institutions – are insufficient, and a move towards the principles of Corporate Accountability is urgently needed. Corporate Accountability emphasizes the need for legally binding and enforceable requirements upon businesses with regard to the protection of human rights as detailed in the core international human rights instruments, and meaningful redress where human rights violations are found to exist. In this regard, the States have an obligation to ensure a proper legal framework in line with international human rights law to regulate businesses, and to enforce these legislations effectively.

To achieve this shift, the report gives recommendations to governments, business, ASEAN, AICHR and NHRIs, summarized below:

Problem:	I. Weak human rights system: Legal and institutional deficits that fail to protect and promote human rights
Government:	Acknowledge the existing duty to protect and promote human rights and adopt a human rights-based approach within the state's jurisdiction. This must be done in two ways: firstly, by observing, respecting and enforcing national laws that are already consistent with international human rights norms; and secondly, by improving the national legal and political system by incorporating and implementing international human rights norms, obligations or treaties that are not presently part of the system.
Business:	Commit business to Corporate Accountability by requiring and making publicly available environmental and human rights due diligence assessments and safeguard processes both for the company's own direct activity and associated operations, and by committing to relevant industrial sector standards.
ASEAN:	Review the three ASEAN community blueprints and ensure that all regional policies, especially on trade and investment, are in compliance with international human rights law and standards. Collective action as a region on protecting and promoting human rights will also communicate clearly and consistently to businesses the ASEAN governments' expectations.
AICHR:	Actively promote awareness of Corporate Accountability and call for state ratification of international human rights treaties. This ensures a common basis for human rights norms across ASEAN, provides a consistent set of norms for businesses investing across ASEAN, and prevents a race to the bottom by dissuading investors that seek to exploit differentiated weaknesses in legal frameworks.
NHRIs:	Implement the Edinburgh Declaration adopted at the 10 th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in October 2010 on the role of NHRIs in addressing business and human rights, including through promotion, education, research, monitoring, complaints handling, mediation and conciliation on business and human rights.

Problem:	II. State-Business Nexus: Addressing unaccountable decision-making in ASEAN
Government:	Ensure rigorous national level checks and balances of all three branches of government and effective anti-corruption legislations and bodies. These include an effective, accessible and independent judiciary, free media, strong civil society, and an enabling environment for public participation. Checks and balances for this may include requiring businesses to publish their campaign donations and election aid, state regulatory frameworks for business, such as licensing requirements for doing business, and allowing for external cooperation with and relevant guidance from UN bodies and regional organizations.
Business:	Comply with existing laws and international human rights standards and act to reinforce good governance rather than resort to corruption. In instances where the existing national legislation fails to adequately protect human rights due to unaccountable decision-making, businesses should demonstrate good practice by adhering to international standards and work to improve national regulation. Commercial banks, further to the responsibilities of business, should commit to a human rights-based approach to lending.
ASEAN:	Encourage transparency and good governance and institutionalize an independent and effective anti-corruption mechanism at the ASEAN level to address corruption, cronyism and nepotism.
AICHR	Adopt a clear set of regional standards on Corporate Accountability that reflect international standards for accountable decision-making, and establish a grievance mechanism (dispute resolution mechanism; audit system; advisory for corrective action) for when these standards are violated.
NHRIs	Strengthen the role of NHRIs in ensuring Corporate Accountability throughout ASEAN by advising governments on legal reform, investigating cases of human rights violations by business, encouraging businesses to observe human rights and expanding collaboration efforts between NHRIs in the region in this regards.

Problem:	III. Access to information and public participation: Addressing barriers to community, civil society and public participation
Government:	Take measures to ensure that the rights to access information are respected and legalized in national laws; and all actors (including individuals and local communities affected by business projects) have adequate participation and representation within the human rights and business framework. This includes their ability to represent themselves through freely self-chosen representatives or organizations, and their ability to organize freely as cooperatives or unions to improve their access to wages, land rights, capital and benefits. States must work to reinforce the bargaining power of smallholders in order to equalize their relationship with business.
Business:	Promote an inclusive and participatory approach to business and development by informing and consulting local communities in development projects, extractive industries, and other activities where populations are affected. Ensure transparency and free, prior and informed consent (FPIC) of projects and/or investment and support mechanisms to enable the public to more actively participate in decision-making throughout the duration of project planning and operation.
AICHR:	Ensure governments and businesses operate with full transparency, disclosure and public consultation in development projects and regularly engage with civil society and other stakeholders.
NHRIs:	Encourage, support and utilize investigations and reports from civil society. Civil society can assist NHRI's as both a monitor and provider of background investigation on potential violations.

Problem:	IV. Access to justice and redress
Government:	Take appropriate measures, which may include judicial, administrative, or legislative means, to provide information on and access to effective remedy and redress for those whose human rights have been violated.
Business:	Practice a zero-tolerance policy on human rights abuses; proactively remedy human rights violations, ensure access to independent grievance and redress mechanisms, and cooperate fully with complaints and judicial processes.
AICHR:	Receive and investigate complaints on human rights violations from individuals, groups and member states, and engage with the relevant authorities of the state concerned, and where necessary with the business, to ensure that the violation is stopped and justice and reparations are provided to victims.
NHRIs:	Receive complaints on human rights violations by businesses and investigate such cases to ensure justice and effective remedy for the victims. Broadly interpret NHRIs' existing powers with the view of enabling efficient and effective investigations into cases of alleged business human rights violations. NHRIs' powers should be interpreted in a way that does not limit the types of actors involved – whether public or private – or site of violations, including in cases of violations by businesses registered under domestic jurisdiction but operating outside the country.

1. Introduction

This report is intended to provide guidance and to encourage a strengthening of laws, policies and practices of government, businesses and ASEAN for the protection and promotion of human rights. For the ASEAN region to set in place the principles and practice of Corporate Accountability that requires business in its conduct to respect human rights – as detailed in the core international human rights instruments – the region’s governments, ASEAN and its regional human rights mechanisms, the National Human Rights Institutions, business and civil society all have a role to play. The case studies used in this report are based on testimonies presented at two public hearings organized by civil society groups on corporate social responsibility and human rights in the ASEAN region held on 2 May 2011 in Jakarta and on 25 October 2011 in Bali, and a workshop on Corporate Accountability and human rights held in Phnom Penh on 13-14 November 2012.¹

Over the past several decades, the ASEAN region has accelerated its integration into the global market economy, driven by business interests from within and outside ASEAN and with a strong backing by the region’s governments. This development trajectory has entailed many changes including: the construction of large infrastructure, such as roads, hydropower dams, and fossil fuel-fired power stations; a proliferation of the mining industry; the creation of polluting industrial zones; and the expansion of a range of land-intensive agro-business.¹ Whilst Gross Domestic Product (GDP) is rising and indicators of well-being are improving for some, inequality is also widening and impoverishment persists for too many. Development-induced displacement is also endemic while many people are losing access to the natural resources upon which they depend. Development based on resource extraction and exploitation not only leads to environmental degradation, but in a number of cases also triggers violations of human rights by government and business without redress.

Within ASEAN, the member governments have pursued deepening political and economic integration, including the creation of an ASEAN Charter in 2008. In support of business and economic growth, the governments have strongly pushed for the creation of an ASEAN Economic Community (AEC) by 2015 that would facilitate accelerated cross-border trade and investment in the region. With regard to the protection and promotion of

1 Among the participating organizations were: SAPA Task Force on ASEAN and Burma; SAPA Task Force on ASEAN and Human Rights; SAPA Task Force on ASEAN Migrant Worker; SAPA Task Force on Extractive Industry; SAPA Task Force on Freedom of Information; SAPA Working Group on ASEAN; SAPA Working Group on Environment; Action for Gender, Social, and Ecological Justice (AKSI); Alternative ASEAN Network on Burma (Altsean-Burma); Asia Indigenous Peoples Pact (AIPP); Burma Partnership; Focus on the Global South; FORUM-ASIA; Bank Information Center; Institute for Essential Services Reform (IESR); Mining Advocacy Network (JATAM); KontraS; Migrant Forum in Asia; South East Asian Committee for Advocacy (SEACA); Towards Ecological Recovery and Regional Alliance (TERRA); ASEAN Watch-Thailand; WALHI (Friend of the Earth Indonesia); Village Focus International (VFI); Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI).

human rights, the ASEAN member governments created the ASEAN Intergovernmental Commission on Human Rights (AICHR) on 23 October 2009 and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) on 7 April 2010. To date, AICHR has continuously insisted that it cannot consider or address individual complaints of human rights violations despite having the mandate to both promote and protect human rights – resulting in AICHR’s legitimacy and effectiveness being increasingly questioned by civil society. Overall, there exists a wide gap between government commitment to the AEC and its pro-business orientation versus the need to ensure the majority population’s continued access to land and natural resources upon which they depend for their livelihoods, and to protect human rights.

Given the adverse and often long-term impacts on people, natural resources and human rights, civil society in ASEAN has articulated for years the urgency of reforming business investment practices in the region. Whilst by no means are all businesses violating human rights, this report demonstrates that there is sufficient evidence of widespread human rights violations by business that legally binding standards for Corporate Accountability need to be developed and implemented across ASEAN. Corporate Accountability requires that business in its conduct respect human rights as detailed in the core international human rights instruments. Corporate Accountability should not be framed within or limited to the concept of voluntary Corporate Social Responsibility (CSR) that many businesses nowadays subscribe to. Instead, Corporate Accountability standards should be legally binding, setting mandatory requirements for businesses to safeguard human rights, and ensure environmental and social justice.ⁱⁱ

As this report demonstrates, for the ASEAN region to set in place the principles and practice of Corporate Accountability, the region’s governments, ASEAN and its human rights mechanisms, civil society and business itself all have a role to play. These include ensuring impartial complaints procedures, verifiable independent monitoring, compliance with national and international law and other agreed standards, mandatory reporting and access to information, and redress for malpractice.^{iii, iv}

1.1 Background to the Report

As stated above, this report is based on testimonies presented at two public hearings organized by civil society groups on Corporate Social Responsibility and human rights in the ASEAN region held on 2 May 2011 in Jakarta and on 25 October 2011 in Bali, and a workshop on Corporate Accountability and human rights held in Phnom Penh on 13-14 November 2012. These civil society groups included both Solidarity for Asian Peoples’ Advocacy (SAPA)² members and non-SAPA members, and is inclusive both of groups that focus on the defense of human rights, and other groups, for example those working on environmental issues and protection of the natural commons, economic, social and gender justice, and those that focus on the impacts of particular industries. The testimonies detailed the impacts on people, human rights and the environment by businesses engaging in various manufacturing, energy, agricultural and extractive activities, including transnational

² SAPA is a loose network of civil society organizations and peoples’ movements in Asia that seeks to promote regional solidarity for human rights, democracy and social justice and maximize collective advocacy at national and regional level, especially at intergovernmental platforms.

corporations and business from within the region. The public hearings also discussed the common challenges in addressing these violations, the relevant obligations under international instruments and regional commitments, and possible remedies and approaches by which human rights can be promoted and protected. As a result of the testimony process and subsequent drafting and review of the report by a number of the civil society groups involved, this report is a collective effort of a large number of civil society groups within the ASEAN region.

Overall, this report documents a range of cases of human rights violations with ASEAN over the past decade, some of which have seen redress, but many of which have not. Many cases documented are ongoing. The report is not intended to be a systematic review of all violations of human rights by business in ASEAN, but the selected cases – the majority of which have been monitored by civil society groups within the region – reveal the scope and severity of documented human rights violations associated with business practices.

1.2 Structure of the Report

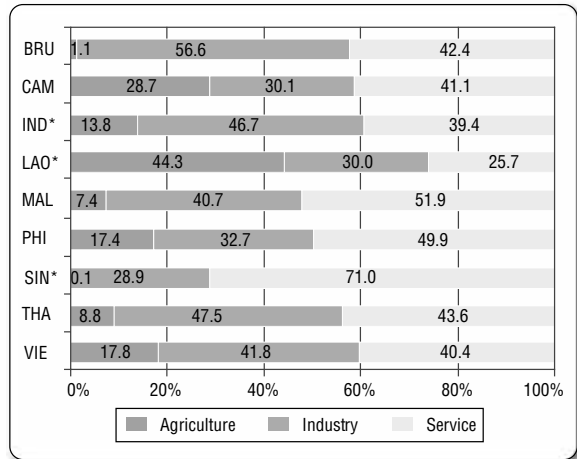
Section 2 of the report provides an overview of the nature of economic development in ASEAN, including a discussion on the role of the ASEAN Economic Community and the role of business. Section 3 assesses the role of ASEAN in protecting and promoting human rights, in particular with regard to business. It takes account of governance and rule of law, and the role of the ASEAN regional human rights mechanisms and national human rights institutions. Section 4 assesses the impacts of businesses on human rights, in particular: the right to non-discrimination; right to effective remedy and accountability; economic and social rights; labor rights; the right to healthy and sustainable environment; civil and political rights; right to security of the person; and the rights of communities or groups, especially indigenous peoples. Section 5 discusses the relationship between business and Corporate Accountability in ASEAN, including contradictions between policy and practice and the role of ASEAN's institutions in promoting Corporate Accountability. Section 6 critically evaluates emerging best practices in business and human rights, including global standards, the responsibilities of state, and the UN's protect, respect and remedy framework. Section 7 offers conclusions on ASEAN, business and human rights, and section 8 provides recommendations for governments, business, ASEAN, AICHR, and the region's national human rights institutions.

2. The Nature of Economic Development in ASEAN

2.1 ASEAN and Uneven Development

There is considerable diversity in the size and form of the economies of the ASEAN countries (Table 1). There is also uneven development both between and within them. The economies of Brunei and Singapore are dominated by the service and industrial sectors. For Indonesia, Malaysia, the Philippines, Thailand and Vietnam, agriculture is important to the economy and employment, it is however secondary to the industrial sector. On the other hand, for Cambodia, Laos and Burma/Myanmar, agriculture is notably more significant to the overall economy (Figure 1').

Reflecting the region's uneven development, in terms of the Human Development Index (HDI), Brunei and Singapore are classified as "very high" human development, Malaysia as "high" human development, and the remainder as "medium" human development (Table 1). The HDI is considered by many to be a better indicator of development within a country, in comparison to measurements of GDP alone.³ Furthermore, for all countries where data on inequality is available, the gini co-efficient reveals high levels of economic inequality within countries (Table 1).^{4v}



Source: ASEANstats (*country data updated by AMS)

- Notes:**
- (i) **Service-based economic activities** = wholesale and retail trade; restaurants and hotels; transport, storage and communications; financing, insurance, real estate and business services; and community, social and personal services
 - (ii) **Industrial-based activities** = mining, quarrying, manufacturing, construction and public utilities (electricity, gas and water)
 - (iii) **Agricultural-based activities** = farming, hunting, forestry, fishing and livestock raising

Figure 1: GDP Share of Major Economic Sectors for Selected AMS, 2007

³ The HDI index measures three aspects: life expectancy at birth; education (mean years of schooling and expected years of schooling); and standard of living (based on Gross National Income (GNI) purchasing power per capita).

⁴ The Gini coefficient measures income distribution and inequality within a country. The number, ranging between zero and one, is based on individuals' net income, and helps define the gap between the rich and the poor, with zero representing perfect equality and one representing total inequality.

Table 1: Economies and Development Indexes of ASEAN Countries (2010)^{vii}

Country	Population ('000)	Total GDP (US\$ million)	Average GDP/capita (US\$)	GDP Growth Rate	Gini co-efficient *	HDI (global rank)
Brunei Darussalam	415	11,952	28,830	0.5%	n.a.	0.838 (33)
Cambodia	15,269	11,168	731	5.0%	44.4	0.523 (139)
Indonesia	234,181	708,032	3,023	6.1%	36.8	0.617 (124)
Laos	6,230	6,508	1,045	7.2%	36.7	0.524 (138)
Malaysia	28,909	238,849	8,262	7.2%	46.2	0.761 (61)
Myanmar	60,163	35,646	592	5.3%	n.a.	0.483 (149)
Philippines	94,013	189,326	2,014	7.3%	44.0	0.644 (122)
Singapore	5,077	223,015	43,929	14.5%	n.a.	0.866 (26)
Thailand	67,312	318,709	4,735	7.8%	53.6	0.682 (103)
Vietnam	86,930	107,650	1,238	6.8%	37.6	0.593 (128)

* from <http://hdr.undp.org/en/statistics/> accessed on 16 July 2012.

UNDP's Human Development Report in 2000 outlined the relationship between human development and human rights, arguing that "*any society committed to improving the lives of its people must also be committed to full and equal rights for all.*"^{viii} This relationship between human rights and human development can be impacted by the quality of governance, poverty and large inequalities, the presence or absence of accountability mechanisms, and level of awareness. Human rights are not a 'reward' of development, but rather, critical to achieving it.⁵

2.2 The ASEAN Economic Community

At the 9th ASEAN Summit in 2003, with the Declaration of ASEAN Concord II (Bali Concord II), the ASEAN leaders resolved to establish an ASEAN Community comprising of three pillars, namely: the ASEAN Political-Security Community (APSC); the ASEAN Economic Community (AEC); and the ASEAN Socio-Cultural Community (ASCC).

5 With political freedoms and participation from all, individuals will be motivated to participate in an economy that can provide for meeting basic needs such as health, education and fair pay in wages. By protecting minorities, separating powers and ensuring public accountability, governments can help promote human rights. Eradication of poverty and large income inequalities can serve not solely as a development goal, but as a central challenge to human rights as the poor remain powerless and vulnerable and cannot participate in development without full realization of their rights. Furthermore, an extension of the state-centered model of accountability to the obligations of non-state actors to include corporations, international financial institutions and multilateral organizations can advance the protection of human rights and further human development.

The ASEAN Economic Blueprint, adopted at the 13th ASEAN Summit in November 2007 in Singapore, is the master plan guiding the establishment of an AEC by 2015.^{6,ix}

ASEAN has stated the goals of the AEC to be: a single market and production base; a highly competitive economic region; a region of equitable economic development; and a region fully integrated into the global economy.^x Under the AEC, the ASEAN governments envision a region of free movement of goods, services, investment, skilled labor, and freer flow of capital.^{xi} With a strong emphasis on the role of business, the AEC is intended to encourage investment into ASEAN countries, both in the form of intra-ASEAN investment and to attract investment from outside the region. With regard to the latter, the ASEAN government negotiations within the ASEAN+3 and ASEAN+8 forums⁷, are largely geared towards maintaining East Asian regional economic stability and to further facilitate the significant volumes of investment and trade between ASEAN and the other forum members.

The arrival of the AEC in 2015 has been subject to much speculation. Whilst there appears to be a consensus that 2015 is a key date, there is also an emerging recognition that ASEAN's economic integration come 2015 will be a gradual transition rather than a momentous change. ASEAN government named milestone achievements of the AEC to date include^{xii}:

- The signing of the ASEAN Trade in Goods Agreement and ASEAN Comprehensive Investment Agreement in 2009;
- The elimination of tariffs in the Inclusion List for ASEAN-6 of Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand and Singapore as of 1 January 2010, and the achievement of tariffs at 0-5% under AFTA for Cambodia, Laos, Burma/Myanmar and Vietnam by 2015;
- Realization of the free trade areas with Australia and New Zealand, China, India, Japan, Republic of Korea as of 1 January 2010

The AEC Blueprint details a range of projects and initiatives for economic integration. As with many 'master plans,' whilst projects may not come fully to fruition, many of the proposed projects have potential environmental, social or human rights implications, some profoundly, including:^{xiii}

- Transportation cooperation to facilitate movement of goods in the region, including via road, railway, air transport and shipping
- Energy cooperation, including plans for a Trans-ASEAN Gas Pipeline (TAGP) and an ASEAN Power Grid (APG)
- Mining cooperation to enhance trade and investment in the geological and mineral sectors

6 The APSC Blueprint and the ASCC Blueprint were adopted in 2009

7 ASEAN+3 incorporates all ASEAN governments plus China, Japan and Korea; ASEAN+8 incorporates all ASEAN governments plus Australia, China, India, Japan, Korea, New Zealand, Russia and the United States.

In numerous ASEAN documents, the three ASEAN pillars – the AEC, the ASCC, and the APSC – are promoted as “*closely intertwined and mutually reinforcing*.”^{xiv} In practice, however, political emphasis has been placed on the economic community pillar to further liberalize the region’s economy and facilitate business. Far less emphasis has been placed on addressing the social and environmental consequences of this rapid economic growth or on safeguarding human rights, which are addressed in the APSC and ASCC pillar and within the mandate of AICHR and the ACWC.

2.3 ASEAN and the Rise of Business

From the early 1950s, as many countries of Southeast Asia emerged from colonization, the state took a strong role in shaping each nation’s economy and direction of development. Whilst some regimes were nominally democratic systems, many were authoritarian, and, with the exception of Malaysia, all countries have experienced periods of military domination. At first, during the post-colonial era, the States themselves played a significant role in enclosing and controlling natural resources, including land, fisheries and mineral deposits, with the benefits channeled towards both state and private sector accumulation, including via exports of these primary commodities. Some States also initiated industrialization, often adopting Import Substitution Industrialization (ISI) policies and establishing state owned enterprises, with varying degrees of success. As this period progressed, many of these State’s industrial policies increasingly welcomed foreign corporations and their foreign direct investment (FDI), whilst at the same time maintaining many of the characteristics of state-led development.^{xv}

Since the late 1970s, as the process of globalization accelerated, Southeast Asia became progressively incorporated into global production networks as governments increasingly adopted neoliberal policies, although not in all countries at the same time. In a period of global stagflation, as Keynesian economics fell out of fashion and many countries of the South faced mounting debts, neoliberal policies targeting furthering economic growth through attracting FDI and promoting exports were heavily promoted by the World Bank and the IMF via Structural Adjustment Loans (SALs). Globally, the raft of neoliberal policies that in the 1980s became known as the Washington Consensus pressured for the roll-back of government, an increased role for the private sector, and the opening up of markets to global free trade, although overall in Southeast Asia the State maintained significant influence.

The Newly Industrialized Countries (NICs) of Southeast Asia witnessed rapid economic growth as the region became a global production platform for garments, manufacture, and high-tech products, alongside primary commodities such as coffee, timber, shrimp and palm oil – many of which have long been associated with the region. The economic transformation first of Singapore, followed by Malaysia and the Philippines, and then Indonesia and Thailand, has been held aloft by economists as the “East Asian Miracle.” Whilst undoubtedly this economic growth has resulted in improved material well-being for many, the region also has become buffeted by the capricious global markets, most catastrophically during the 1997 Asian Financial Crisis, and more generally has experienced significant social and environmental costs and human rights violations as a result of “development.”

At present, as the indebted Western economies remain embroiled in economic crisis, the ASEAN countries have emerged as some of the world's fastest growing, diverse and dynamic economies.^{xvi} Within the so-called "Asian Century," ASEAN itself is increasingly influential in the global economy and contributed 4.1% of global GDP in 2010. Furthermore, with the passing of the ASEAN Charter in 2009, ASEAN's move towards a legally defined regional entity has allowed its representation as a regional bloc in global forums, for example as an invitee to the G20.

Globally and in Southeast Asia, the economic and political power of the business community has swelled over the 20th century. Today, approximately 53% of the world's largest economies are trans-national corporations. Under neoliberal policies, States have increasingly privatized public services, for example water and electricity services, and in some cases even health and education. Many multi-national corporations have turnovers larger than that of the nations within which they invest; in 2006, the total sales of the top 200 transnational corporations were bigger than the combined GDP of 187 countries, amounting to more than 30% of world GDP.^{xvii}

Reflecting the global shift of economic wealth and power from the West to Asia, including to ASEAN countries, according to Forbes, 74 of the top 2000 publically listed companies are from ASEAN (Table 2).⁸ Amongst these businesses, the banking sector is most heavily represented, alongside oil and gas, petrochemicals, and agri-business industries. Many have close links to the States that reflects the historical political economy of the region outlined above.

Country/ total	Companies (rank)
Indonesia (10)	(479) Bank Rakyat Indonesia; (488) Bank Mandiri; (700) Bank Central Asia; (726) Telekom Indonesia; (969) Bank Negara Indonesia; (1351) PGN; (1399) Gudang Garam; (1636) Bank Danamon Indonesia; (1674) Semen Gresik; (1898) Bumi Resources
Malaysia (18)	(366) Maybank; (493) CIMB Group Holdings; (530) Sime Darby; (651) Public Bank; (739) Genting; (896) Axiata Group; (905) Tenaga Nasional; (916) Petronas Chemicals; (1119) IOI Group; (1119) RHB Capital; (1174) AMMB Holdings; (1218) Maxis; (1238) Hong Leong Financial Group; (1245) MISC; (1253) YTL; (1484) Petronas Gas; (1559) Kuala Lumpur Kepong; (1594) Petronas Dagangan
Philippines (8)	(1085) San Miguel; (1165) PLDT; (1343) SM Investments; (1565) Bank Philippine Islands; (1712) Aboitiz Equity Ventures; (1860) Metropolitan Bank & Trust; (1900) Manila Electric; (1966) BDO Unibank

8 The world's three largest companies - Exxon Mobil, JP Morgan Chase and General Electric – remain US listed companies.

Singapore (18)	(246) Wilmar International; (295) SingTel; (316) DBS Group; (399) Oversea-Chinese Banking; (403) United Overseas Bank; (585) Keppel; (632) Singapore Airlines; (885) CapitaLand; (931) Flextronics International; (940) Golden Agri-Resources; (1092) SembCorp Industries; (1171) Fraser & Neave; (1221) Global Logistic Properties; (1267) City Developments; (1286) Olam International; (1454) Avago Technologies; (1535) Singapore Technologies; (1599) Hutchison Port Holdings
Thailand (17)	(167) PTT PCL; (662) Siam Commercial Bank; (665) PTT Global Chemical; (679) Kasikornbank; (683) Siam Cement; (745) Bangkok Bank; (974) Krung Thai Bank; (1167) Advanced Info Service; (1215) Charoen Pokphand Foods; (1288) Thai Oil; (1428) Indorama Ventures; (1443) Bank of Ayudhya; (1707) Banpu; (1714) CP All; (1742) InTouch; (1838) Thai Beverage; (1886) Thanachart Capital
Vietnam (1)	(1989) Vietin Bank

www.forbes.com/global2000/ As of April 2012 [Last accessed 30.10.12]

Investment flowing into ASEAN has grown despite the crisis in the euro-zone, which is a major source of FDI to ASEAN as well as an important export market; in 2010, ASEAN received a record high FDI inflow of US\$75.8 billion, with intra-ASEAN FDI totaling US\$12.1 billion or 16% of total ASEAN FDI inflows (Figure 2).^{xviii} Despite this, as a percentage of regional GDP, the level of FDI inflows into the region is considered to be comparatively small at 4.2% and this proportion has remained largely unchanged over the last fifteen years. Overall, the European Union and the US are the two largest sources of FDI into ASEAN. As OECD member countries, together with Japan, in principle businesses from these countries are subject to the voluntary OECD Guidelines for Multinational Enterprises (see Section 6.1). FDI from other countries, such as China, whilst investing less compared to the EU and US, remain very present in some countries such as Burma/Myanmar, Cambodia and Laos, but is not subject to equivalent mechanisms.

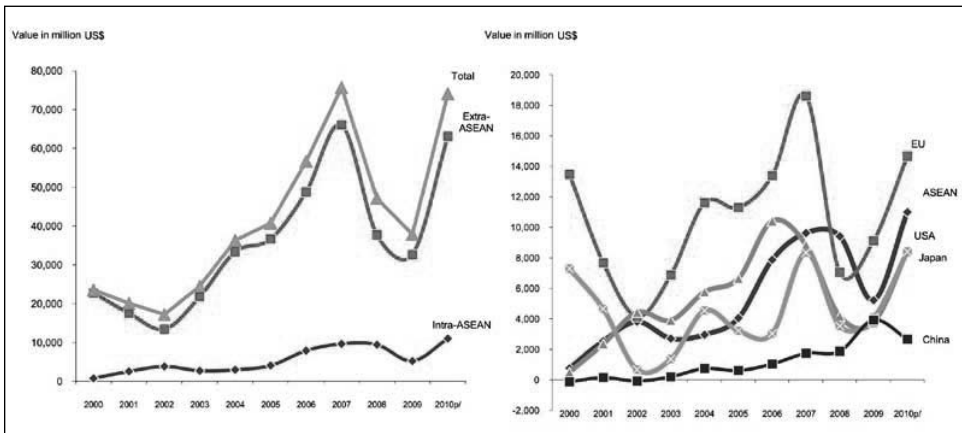


Figure 2: Foreign Direct Investment Net Inflow to ASEAN of Selected Countries by Source Country/ Region^{xix}

3. ASEAN and Human Rights

The Association for Southeast Asian Nations (ASEAN) was founded in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. It presently has a membership of ten Southeast Asian countries that also include Brunei Darussalam, Burma/Myanmar, Cambodia, Laos, and Vietnam, with Timor Leste also seeking membership. ASEAN emphasizes regional policy and soft law formulations over hard law and international agreements. Disagreements are generally resolved through conciliation and consultation, where there is adherence to decision-making by consensus and a principle of non-interference in the domestic affairs of member states. This has become known as “the ASEAN Way.”^{xx}

Whilst the ASEAN Way has facilitated relatively stable political relations in a region that has faced serious conflict in the recent past, it has also limited ASEAN’s ability to address urgent issues or issues around which there is no consensus. Furthermore, there are asymmetrical power relationships between countries and between actors within them, and ASEAN as a regional institution has functioned with limited transparency, accountability and engagement with civil society groups. The creation of an ASEAN Intergovernmental Commission on Human Rights (AICHR), however, was a notable step forward for human rights protection and promotion in ASEAN; on the other hand, the ASEAN Way has acted as a barrier to significant progress, including towards a comprehensive, credible and legitimate ASEAN Human Rights Declaration (AHRD), launched in November 2012, that suffered from a lack of transparency and public participation throughout its drafting process, and has not fully incorporated international human rights laws and standards (see Section 3.3).^{xxi} With regard to business and human rights, whilst a leaked working draft of the AHRD dated 8 January 2012 included a reference to Corporate Social Responsibility (CSR), the final adopted Declaration on 18 November 2012 eventually removed any specific text regarding Corporate Social Responsibility.

3.1 ASEAN International Human Rights Commitments, Governance and Rule of Law

The core human rights instruments detail internationally recognized human rights that are inalienable and guaranteed to all people equally.^{xxii} These international legal instruments emphasize the role of the State as primary duty holder to protect individuals and communities against human rights violations by State and non-state actors, including business. Irrespective of whether States have agreed to international rights law, human rights are inalienable and possessed by all regardless. Today, all United Nations member States have either ratified or acceded to at least one of the nine core international human rights treaties, and 80 percent have ratified or acceded to four or more, giving concrete expression to the universality of the Universal Declaration on Human Rights (UDHR) and international human rights.^{xxiii}

Within ASEAN, there are eight countries that have either ratified or acceded to four or more treaties, whilst Brunei Darussalam and Singapore have only two accessions (Table 3). If ratification and accession are combined, there are only two treaties that all ASEAN members have either fully ratified or acceded to; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). This variance in levels of ratification and accession amongst the ASEAN states reveals the limited extent to which there is consensus amongst ASEAN states on incorporating, implementing and enforcing international human rights law uniformly across the region.

Table 3: International Human Rights Instruments Acceded or Ratified by ASEAN Countries

	ICERD (1966) ⁹	ICCPR (1966)	Optional Protocol on ICCPR (1966)	Optional Protocol on ICCPR (1989)	ICESCR (1966)	Optional Protocol on ICESCR (2008)	CEDAW (1979)	Optional Protocol on CEDAW (1999)
Brunei Darussalam							2006	
Cambodia	1983	1992			1992		1992	2010
Indonesia	1999	2006			2006		1984	
Laos	1974	2009			2007		1981	
Malaysia							1995	
Myanmar							1997	
Philippines	1967	1986	1989	2007	1974		1981	2003
Singapore							1995	
Thailand	2003	1996			1999		1985	2000
Vietnam	1982	1982			1982		1982	
Percentage Ratified	20	20	10	10	20	0	40	30
Percentage Acceded	40	40	0	0	40	0	60	0
Percentage No Action	40	40	90	90	40	100	0	70

Key

Acceded	Ratified	Not acceded or ratified
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1966 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

1966 The International Covenant on Civil and Political Rights (ICCPR)

1966 Optional Protocol to the International Covenant on Civil and Political Rights

1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

1984 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)

1989 Convention on the Rights of the Child (CRC)

9 The UDHR is widely accepted as forming part of customary international law, however, due to the fact that it is a Declaration and not a treaty, it does not contain 'ratifying' or 'acceding' formalities. Nevertheless, it is generally understood that upon becoming a member of the United Nations, member states will comply with and adhere to the UN Charter and the International Bill of Human Rights. The International Bill of Human Rights is comprised of the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

CAT (1984)	Optional Protocol on CAT (2002)	CRC (1989)	Optional Protocol on CRC (2000)	Optional Protocol on CRC (2000)	Optional Protocol on CRC (2011)	CMW (1990)	CPD (2006)	Optional Protocol on CPD (2006)	ICCPED (2006)	UNDRIP (2007) ¹⁰
		1995		2006			(2007)			(2007)
1992	2007	1992	2004	2002		(2004)	(2007)			(2007)
1998		1990	2012	2012		2012	2011		(2010)	(2007)
2012		1991		2006			2009		(2008)	(2007)
		1995	2012	2012			2010			(2007)
		1991		2012			2011			(2007)
1986	2012	1990	2003	2002		1995	2008			(2007)
		1995								(2007)
2007		1992	2006	2006	2012		2008		(2012)	(2007)
		1990	2001	2001			(2007)			(2007)
20	10	30	40	40	10	20	50	0	0	---
30	10	70	20	50	0	20	60	0	0	---
50	80	0	40	10	90	80	40	100	100	0

1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

1990 International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW)

1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2006 Convention on the Rights of Persons with Disabilities (CRPD)

2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED)

2006 Optional Protocol to the Convention on the Rights of Persons with Disabilities

2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

2011 Optional Protocol to the Convention on the Rights of the Child on a communications procedure

¹⁰ While the United Nations Declaration on the Rights of Indigenous Peoples is a Declaration and therefore does not require ratification or accession, all United Nations member states were required to vote on whether or not to pass the Declaration. The results in this column reflect the ASEAN countries and their decision to pass the declaration.

ASEAN contains a broad political, economic and social diversity. Political systems include an absolute monarchy in Brunei, constitutional monarchies in Cambodia, Malaysia, and Thailand, socialist republics in Laos and Vietnam, an electoral military authoritarian system in transition in Burma/Myanmar, and republics in Indonesia, the Philippines, Singapore, and Timor Leste. There are also differing degrees of democratization in Indonesia, Malaysia, the Philippines, Thailand, Singapore and Cambodia, and autocracy in Brunei, Laos, Vietnam and Burma/Myanmar.

Measures of governance in terms of political rights, civil liberties, corruption and press freedoms are uneven across ASEAN (Table 4). High levels of corruption, weak civil and political rights, and constrained media are all measures of weak governance that in turn exacerbate the risks of human rights violations by states and business. They also perpetuate a system where human rights violations often go unpunished, unprosecuted, and under-reported. Businesses alone cannot be blamed for weak governance across the region, which is an issue that must be addressed by all actors at a more fundamental level, but at the same time businesses could act more to address it. The situation is compounded by the low rate of ratification or accession of the international human rights instruments themselves by governments. Violations of human rights in ASEAN are documented and regularly reported on by a number of civil society monitor groups including: Asian Forum for Human Rights and Development (FORUM-ASIA); Human Rights Watch; the Annual Survey of Violations of Trade Union Rights, and others.

Country	Freedom Rating ¹¹	Political Rights	Civil Liberties	Corruption Perception Index (Global Rank) ¹²	Press Freedom (Global Rank) ¹³
Brunei Darussalam	5.5 (Not free)	6	5	5.2 (44)	56.2 (125)
Cambodia	5.5 (Not free)	6	5	2.1 (164)	55 (117)
Indonesia	2.5 (Free)	2	3	3 (100)	68 (146)
Laos	6.5 (Not free)	7	6	2.2 (154)	89 (165)
Malaysia	4.0 (Partly free)	4	4	4.3 (60)	56 (122)
Myanmar	6.5 (Not free)	7	6	1.5 (180)	100 (169)
Philippines	3.0 (Partly free)	3	3	2.6 (129)	64.5 (140)
Singapore	4.0 (Partly free)	4	4	9.2 (5)	61 (135)
Thailand	4.0 (Partly free)	4	4	3.4 (80)	61.5 (137)
Vietnam	6.0 (Not free)	7	5	2.9 (112)	114 (172)

The Access Initiative (TAI) has undertaken an independent assessment of the national environmental governance of Indonesia, the Philippines, Thailand and Vietnam, with a focus on the “Access Rights” of Principle 10 of the Rio Declaration (see Section 4.5).^{xxiv} The study evaluates legislative and judicial frameworks, access to information, public participation, and access to justice. Overall, TAI identifies that environmental governance is increasingly a recognized political agenda as compared to the past, and there is a broad trend towards increasing recognition of “access rights.” All four of these ASEAN countries make reference to the access to information, public participation, and access to justice including remedy and redress in their constitutions, although not necessarily with specific reference to the environment. Furthermore, increasingly comprehensive legislation regarding the environment is promulgated, alongside a tendency towards policies of decentralization of political and administrative responsibility that open the possibility for better community management of natural resources.

The Access Initiative report also identifies many wide gaps between legal frameworks and implementation in practice, incoherent or incomplete legal frameworks, and the limited capacities of the state and of civil society. Specific legislation on public participation is absent in all countries, despite broader commitments under the constitution, resulting in a lack of clarity regarding process and rights to participate. Furthermore, Environmental Impact Assessment law is generally only project-based and often allows for public consultation (in the form of public hearings or consultations) and information disclosure only at the latter stages of project development. Even where legislation exists information disclosure is at the discretionary power of government officials for a range of reasons including an institutional culture of secrecy, a lack of guidelines for state officials, a lack of political will or capacity to collate, prepare and disseminate information. When information is released it is often in a technical language that is difficult for the wider public to understand or the information is not translated into minority languages when necessary thus essentially denying rights of access to marginalized groups. Information dissemination is commonly repressed when there might be political, commercial or professional consequences and ultimately top-down state decision-making dominates.^{xxv}

Across ASEAN, there have been various old and new generations of environmental and social standards where some are limited to specific sectors while others are focused on governance principles and practices (see Section 6). Many of these standards are non-binding and contain vague language, weak implementing and monitoring requirements, and an absence of resources to enforce them. Some standards are also in direct contrast to others when it comes to approaching safeguards and accountability in specific sector

11 Freedom rating, political rights and civil liberties for 2011 scored out of ten by Freedom House, with lower values indicating greater freedoms. Accessed from www.freedomhouse.org/report-types/freedom-world on 16 July 2012

12 Corruption perception index for 2011 scored out of ten by Transparency International, with 10 indicating “very clean” and 0 indicating “highly corrupt.” Accessed from <http://cpi.transparency.org/cpi2011/> on 16 July 2012

13 Press freedom index for 2011 scored by Reporters Without Borders, with lower (or negative) values indicating greater freedoms. Accessed from <http://en.rsf.org/press-freedom-index-2011-2012,1043.html> on 16 July 2012

investments. In addition, the emergence of new and conflicting standards has also led to confusion, if not an opportunity, for governments and companies to subscribe to weaker rules and therefore avoid their accountability. This is the case for companies and governments in ASEAN. Their different commitments to and approaches towards human rights, environmental standards and other measures of governance across the region consequently affect the way they address accountability and safeguard concerns in the country they operate.

There are numerous other indicators that partially cover ASEAN. For example, according to the Revenue Watch Index most recently published in 2010 that is a measurement of government disclosure in the management of oil, gas and minerals, Timor Leste is rated as having "*comprehensive revenue transparency*," whilst Indonesia and Malaysia are rated as having "*partial revenue transparency*."^{xxvi}

Despite some environmental governance improvements, it is a tragic fact that murders of environmental activists are regularly reported throughout the region, often unprosecuted. For example, to name only a few, in Thailand in July 2011 Thongnak Sawekchinda who opposed the coal industry was murdered,^{xxvii} in Cambodia prominent forest activist Chut Wutty was killed in April 2012,^{xxviii} and in the Philippines local anti-mining activists Jimmy Liguyon was slain in March 2012 and anti-dam campaigner Margarito J. Cabal in May 2012 was shot dead.^{xxix}

Reflecting the perspective of business, a governance study by the World Bank, prepared for the World Trade Indicators report, indicates weak governance throughout most of the ASEAN region with the relative exception of Singapore, Brunei Darussalam, and Malaysia (Figure 3). Burma/Myanmar, Cambodia and Laos stand out as the countries with the weakest governance. This interpretation of good governance, however, is devoid of a human rights assessment and emphasizes good governance in terms of the attractiveness to FDI. Some types of businesses, such as banks and financial services, are attracted to the governance regime of Singapore with its low level of domestic corruption and business-friendly rule of law, whilst other types of business, such as garment manufacture and resource extraction are willing investors in countries with poor governance indicators, reflecting the availability of cheap and exploitable labor and the possibility of circumventing existing laws and redress mechanisms.

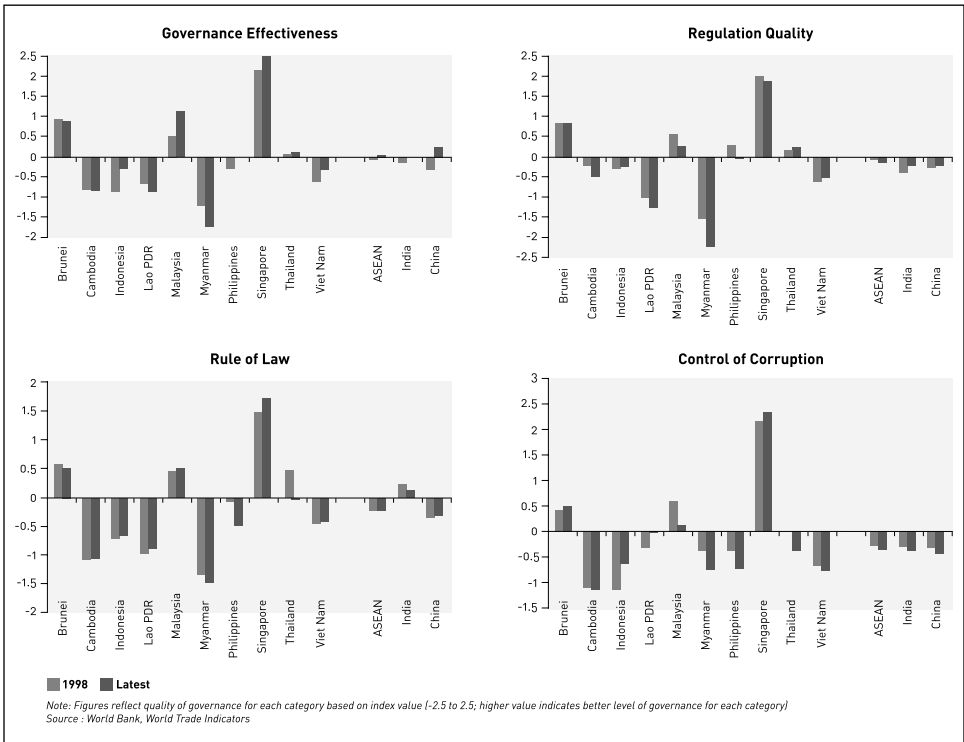


Figure 3: World Bank “World Trade Indicators” for Governance Effectiveness, Regulation Quality, Rule of Law and Control of Corruption for 1998 and 2009/2010^{xxx}

Rule of law and governance, like development, is uneven across ASEAN. The above analysis highlights the challenges of holding businesses that violate human rights to account in ASEAN, especially for those at the margins of society. As ASEAN’s governments aspire towards regional economic integration under the AEC by 2015, it is clear that the concomitant regional mechanisms for the protection and promotion of human rights are not directly coupled to the process, with far greater political will accorded to the former than the latter. The diversity of commitments to, implementation and enforcement of human rights and environmental standards across the region, however, results in different requirements for the behavior of companies investing across ASEAN, whereby companies may abide by different standards according to the country that they are operating in.

3.2 Institutional Foundation of Human Rights in ASEAN

Protecting and promoting human rights has often been a difficult and divisive topic to the ASEAN governments. Recognition of the need for a regional human rights body by the governments emerged since the early 1990s following national political changes in the Philippines, Indonesia and Thailand and a process of regional reform in ASEAN itself, together with progressive changes in the broader international environment.^{xxxi}

The ASEAN Vision 2020, endorsed by ASEAN Heads of State in Kuala Lumpur in 1997, is a key document defining the overarching direction of ASEAN as a “concert” of Southeast Asian nations and was formulated on the organization’s 30th Anniversary.^{xxxii} Whilst this document does not refer specifically to human rights, it does identify the need to “*focus on the welfare and dignity of the human person and the good of the community.*” The subsequent Hanoi Plan of Action (1999-2004) included pledges to enhance the exchange of information amongst ASEAN countries in the field of human rights, and to implement two core UN human rights treaties in the region; namely the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The Vientiane Action Programme (VAP, 2004-2010) committed ASEAN explicitly for the first time to the promotion of human rights in seven areas, namely (a) Completion of a stock-taking of existing human rights mechanisms and equivalent bodies, including sectoral bodies promoting the rights of women and children; (b) Formulation and adoption of a Memorandum of Understanding to establish a network among existing human rights mechanisms; (c) Formulation of work programs of the network; (d) Promote education and public awareness on human rights; (e) Establish a network of cooperation among existing human rights mechanisms; (f) Elaboration of an ASEAN instrument on the protection and promotion of the rights of migrant workers; and (g) Establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

The ASEAN Charter, which details ASEAN’s legal structure, institutional framework, and government stated norms and values, came into force on 15 December 2008 and moved ASEAN towards a rules-based regional organization.²⁹ The Charter states that ASEAN will move towards a “*people-centered ASEAN community*” and “*one caring and sharing community.*” The Charter was a major milestone for the protection of human rights in ASEAN; Articles 1 and 2, defining ASEAN’s purposes and principles respectively, make reference to the need to “*promote and protect human rights and fundamental freedoms,*” and Article 14 committed ASEAN to establish an ASEAN Human Rights Body, which was subsequently established in the form of the AICHR (see Section 3.3). Whilst the creation of a charter was a notable step away from the previous informality that characterized the ASEAN member state’s cooperation, the Charter maintains a commitment to the principles of the ASEAN Way that has challenged the subsequent process of building the ASEAN human rights mechanisms.

3.3 The ASEAN Intergovernmental Commission on Human Rights

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was launched on 23 October 2009 at the 15th ASEAN Summit in Hua Hin, Thailand. The Terms of Reference (ToR) for AICHR was drafted by a High Level Panel, who in the process met with civil society groups and the National Human Rights Commissions of Indonesia, Malaysia, the Philippines and Thailand, and was approved by ASEAN’s Foreign Ministers on 20 July 2009. In launching the AICHR, the Cha-am Hua Hin Declaration on the Intergovernmental Commission on Human Rights declared that the AICHR “*will be the overarching institution responsible for the promotion and protection of Human Rights in ASEAN*” and “*a vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples.*”^{xxxiv}

AICHR reports directly to the annual ASEAN Ministerial Meeting of the Foreign Ministers, which first endorsed the Terms of Reference of the AICHR. The Foreign Ministers also form the ASEAN Coordinating Council, which is charged with ensuring coordination between the three pillars of ASEAN, together with ensuring implementation of the decisions of the ASEAN Summit (see Section 2.2).¹⁴

According to AICHR's ToR, it is mandated to "*To promote and protect human rights and fundamental freedoms of the peoples of ASEAN*" (para 1.1) and "*To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties*" (para 1.6).^{xxxv} However, as shown in Table 3 and discussed in Section 3.1, several member states of ASEAN have yet to ratify or accede to many human rights instruments.

Despite this, the ToR also contains several compromises that reflect the ASEAN Way, with implications for the protection and promotion of human rights. These include that AICHR shall be guided by "*non-interference in the internal affairs of ASEAN Member States*" (para 2.1.a) and AICHR will "*... promote human rights in the regional context bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities*" (para 1.4). This latter point has overtones of the "Asian Values" debate of the 1990s, despite the fact that human rights are universal and inviolable, as reflected in the international human rights instruments. In addition, AICHR is created as a consultative intergovernmental body (ToR, para 3) that may restrict AICHR from playing a human rights protection role, with the absence of explicit protection mandates and functions such as to investigate individual complaints, conduct on-site visits, hold public hearings and establish special rapporteurships in its ToR.^{xxxvi}

AICHR has a clearer mandate, nevertheless, on the promotion of human rights, including "*To enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information*" (para 4.3) and "*To prepare studies on thematic issues of human rights in ASEAN*" (para 4.12).^{xxxvii} With regard to the latter, AICHR has adopted a Terms of Reference for a thematic study on corporate social responsibility and human rights in ASEAN (see Section 5.3).

AICHR has been challenged by the "ASEAN Way" of consultation and consensus amongst governments, and the diversity of political positions towards human rights amongst the governments of ASEAN. Since its first official meeting from 28 March to 1 April 2010 in Jakarta, the AICHR has prepared its annual work plan and commenced drafting of its Rules of Procedure. Whilst civil society was initially optimistic that AICHR would offer a new avenue to address national and regional human rights violations in ASEAN, in practice there has been limited progress on fulfilling its mandated role to protect and promote human rights.^{xxxviii}

¹⁴ The bi-annual ASEAN Summit is the highest decision-making body in ASEAN, formed of the heads of government of each state.

Furthermore, AICHR has operated to date with a lack of transparency and access to information, and with very limited consultation with civil society groups.¹⁵ Key AICHR documents have not been officially released to the public, including the Guidelines of Operations,¹⁶ the annual budget, the names of the Drafting Group of the ASEAN Human Rights Declaration, the first Annual Report, and the AICHR work plan (2013-2015).^{xxxix}

The drafting of the ASEAN Human Rights Declaration (AHRD), which is a founding document – or ‘roadmap’^{xl} – for human rights in ASEAN, has been a key task of AICHR. Whilst leaders signed the AHRD on 18 November 2012, the drafting process was denounced as secretive. The AHRD itself has also been criticized for: its lack of coherence with the international human rights standards and principles by subjecting the enjoyment of rights to national and cultural particularities, the balancing of duty with rights and domestic laws, and broad limitations based on justification of national security and public morality; and for its failure to identify and state explicitly marginalized and vulnerable sectors in need of protection, including indigenous peoples and migrant workers.^{xli,xlij,xliii,xliv} Furthermore, an assessment by sixty-two civil society groups in September 2012 identified numerous shortcomings including deficiencies towards the omission of the right to freedom of association, the right to self-determination, and the right to be free from enforced disappearances.^{xlv}

3.4 Women and Children and Migrant Workers

The ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) was inaugurated on 7 April 2010. All ASEAN Member States have ratified or are party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).^{xlvi} While the terms of reference of the ACWC are similar in general to AICHR’s, there are three main distinctions. The first is that specific international human rights treaties are mentioned, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The ACWC is called upon to assist ASEAN member states in preparing for CEDAW, CRC and reports for other Treaty Bodies, with specific reference to the rights of women and children in ASEAN.^{xlvii} Similarly, the body is to assist member states with the implementation of such treaties with specific regard to women and children. Furthermore, the ACWC is assigned to “*advocate on behalf of women and children, especially the most vulnerable and marginalised, and encourage ASEAN Member States to improve their situation.*”^{xlviii} Within this advocacy work, the ACWC is mandated to engage with civil society to “*support the participation of ASEAN women and children in dialogue and consultation processes in ASEAN related to the promotion and protection of their rights.*”^{xlix} The ACWC addresses human rights violations with stronger language than the AICHR’s ToR, requiring the Commission to “*propose and promote appropriate measures, mechanisms and strategies for the prevention and elimination of all forms of violations of the rights of women and children, including the protection of victims.*”^l

15 In the process of drafting the AHRD, the AICHR only held two regional consultations, with four CSOs from each ASEAN Member State allowed participating. At the national level, only the AICHR representatives from Indonesia, Malaysia, the Philippines, and Thailand held national consultations with CSOs on the AHRD.

16 The Rules of Procedure were renamed as the Guidelines of Operations.

The Vientiane Action Plan (2004-2010) mandated the elaboration of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers, and in January 2007 ASEAN agreed to the *Declaration on the Protection and Promotion of the Rights of Migrant Workers* (ADMW). Later that same year in March, the ILO and ASEAN signed a cooperation agreement in which labor migration was specifically outlined as an area of collaboration and priority. The ADMW was declared to be a means to strengthen all 3 pillars of the ASEAN Community by “*promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries.*”^{li} The Declaration mandated that member states increasingly cooperate on migrant worker issues, noting that, “*nothing in the present Declaration shall be interpreted as implying the regularisation of the situation of migrant workers who are undocumented.*”^{lii} Obligations and commitments in the ADMW are distinct for receiving countries, sending countries, and ASEAN but include promotion of rights, protection, capacity building, access to justice, provision of consular assistance, and regularization of recruitment services. In July 2007, the ASEAN Foreign Ministers called for the establishment of an ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), which would report to the Senior Labour Officials Meeting (SLOM). Four priorities were outlined at the first ACMW meeting in 2008 including: enhancing the protection and promotion of the rights of migrant workers against exploitation and mistreatment; strengthening the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries; engaging in regional cooperation to fight human trafficking in ASEAN; and working on the development of the ASEAN instrument on the protection and promotion of the rights of migrant workers (AIMW).^{liii}

3.5 National Human Rights Institutions in ASEAN and Business Related Human Rights Violations

There are presently four Paris Principles-compliant¹⁷ National Human Rights Institutions (NHRIs) within ASEAN, namely the National Human Rights Commission of Indonesia (KOMNASHAM), the Human Rights Commission of Malaysia (SUHAKAM), the Commission on Human Rights of the Philippines (CHRP), and the National Human Rights Commission of Thailand (NHRCT). Each NHRI is mandated to receive complaints from victims; monitor human rights implementation; investigate situations; carry out fact-finding missions; and offer remedial measures.^{liv} NHRCT also has the power to take cases to court on behalf of the victims.

¹⁷ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) provides accreditation to NHRIs based on their respective compliance with the Principles relating to the status of National Institutions (The Paris Principles), a set of principles adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993. Paris Principles-compliant NHRIs are given “A status” accreditation by the ICC. At present in ASEAN, the NHRIs with “A status” are Indonesia, Malaysia, the Philippines, and Thailand.

These four NHRIs, together with the Provedor for Human Rights and Justice of Timor Leste (PDHJ), have formed the South East Asia National Human Rights Institution Forum (SEANF) as a sub-regional grouping of NHRIs.^{lv, lvi} The Myanmar National Human Rights Commission, which was created in September 2011, was also admitted as a member of SEANF in September 2012.^{lvii} The SEANF seeks to develop regional strategies for the promotion and protection of human rights. The four NHRIs signed a Declaration of Cooperation in June 2007, committing to regular forums to facilitate the process of establishing an ASEAN Human Rights Mechanism.^{18, lviii} The network engages in collective advocacy on issues of regional human rights. The region's respective NHRIs should play a leading role in promoting Corporate Accountability in ASEAN. The Edinburgh Declaration, a document adopted at the 10th International Conference on NHRIs in 2010, outlines NHRIs' role in promoting enhanced protection against corporate-related human rights abuse, greater accountability and respect for human rights by business actors, and access to justice for victims.^{lix}

The NHRIs have investigated human rights violations by business. SUHAKAM, for example, investigated the case of Asahi Kosei (See Case Study 5 in Section 4.4), CHRP investigated the case of the Didipio mining project (see Case Study 1, below) and the NHRCT has investigated the case both of the Xayabouri Dam (see Section 5.1.4) and the Koh Kong sugar concession (Case Study 2, below).

¹⁸ The network aims to respond to human rights issues of common concern or with inter-border implications, including: international terrorism; trafficking in persons (particularly women and children); migrant workers; economic, social and cultural rights and the right to development; and human rights education.

**Case Study 1: Didipio Gold and Copper Project
The Involvement of the Commission of Human Rights of the Philippines
(CHRP)**

The Didipio Gold and Copper Project officially commenced in 1994, 240 km northeast of Manila in the Philippines. Didipio is historically part of the ancestral lands of the Bugkalot peoples, and currently over 2,000 individuals reside within the valley. The project is situated in the head waters of the Rio Grande de Cagayan – one of the country’s major rivers which supplies water for drinking, irrigation, agricultural, domestic and industrial uses for most of the northeast of the country. As OceanaGold Philippines Inc.(OGPI) came into the area, the recognition and protection of indigenous peoples right to residency in Didipio was not awarded or acknowledged, and the company did not receive the Free, Prior and Informed Consent (FPIC) from the indigenous community before it began demolishing properties and sacred areas. This clearing of land was allegedly done despite failing to secure writs or special orders of demolition from the court, unaccompanied by the Sheriff, without payment of just compensation, and without providing alternative options for relocation and resettlement. These demolitions were reported to have been attended by unnecessary violence and destruction: residents who resisted and tried to save their homes had been beaten, including their neighbors who helped them; houses had been bulldozed off cliffs and set on fire. It was further alleged that OGPI fenced off large sections of the roads and pathways, which community residents have relied upon for the past 30 years to transport produce from their farms to the market. It was also reported that OGPI had set up checkpoints around the Barangay, causing the residents difficulty in moving about, resulting in the unjust restriction of their social and economic activities.^{lx} For these alleged violations, the indigenous residents filed complaints with the Commission of Human Rights of the Philippines (CHRP).

After a review of all information and documents gathered, the CHRP declared that OceanaGold had committed a number of violations against Dipidio residents, including the right to residence, the right to adequate housing and property rights, the right to security of person, the right to freedom and movement and the right not to be subjected to arbitrary interference. The CHRP said that the company also violated the residents’ right as members of an indigenous group to manifest their culture and identity.^{lxi} The CHRP further unanimously recommended to the new government administration to “*consider the probable withdrawal of the FTAA granted to the foreign company in view of the gross violations of human rights it has committed.*”^{lxii}

**Case Study 2: Koh Kong Sugarcane Plantation and Factory
The Involvement of the National Human Rights Commission of Thailand
(NHRCT)**

Since 2006, hundreds of farmers from three villages – Trapeang Kandol and Chhouk villages in Chikor Leu commune and Chikor village of Srae Ambel District in the Koh Kong Province of Cambodia – have had thousands of hectares of their land illegally confiscated for the creation of two contiguous 10,000 hectare sugarcane economic land concessions (ELC).^{lxiii} The concessions are 70% owned by the Khon Kaen Sugar Company, via two Cambodia subsidiaries, Koh Kong Sugar Industry Co., Ltd. (KKS) and Koh Kong Sugar Plantation Co., Ltd. (KKP), which therefore exercises effective control over operations in Cambodia.¹⁹ The sugar cane is processed and exported to Thailand, which then exports the sugar to EU market under the “Everything But Arms” initiative to U.K.’s Tate & Lyle Sugars, a subsidiary of Tate & Lyle that was recently acquired by U.S. American Sugar Refinery Company.^{lxiv} The ELC has resulted in forced displacement, illegal confiscation of lands, severe livelihood impacts, and alleged human rights violations, including right to life and self-determination, and failure to uphold the people’s right to development including their right to participate in, contribute to, and enjoy economic, social, cultural and political development.^{lxv} 220 farmers have sought to take the case to the Koh Kong Provincial Court, although to date their case is yet to be heard.

The case was submitted to the National Human Rights Commission of Thailand (NHRCT) on 6 January 2010 and accepted as a case designated to the Subcommittee on Civil and Political Rights (SCPR). The SCPR, in a statement dated 25 July 2012, concludes that it has jurisdiction to investigate the case, despite the project’s location in Cambodia as it has a “*mandate to ensure that the Thai state and private companies comply with human rights principles. The power and duties of the NHRC do not limit the types of stakeholder involved (whether public or private) or site of violations (whether inside or outside of Thailand).*”^{lxvi} The SCPR has completed its investigation and is in the process of preparing its final report for endorsement by the NHRCT. Reflecting an important development in the role of an NHRI to investigate regional human rights cases, the SCPR noted that the Koh Kong case is one of four transborder human rights cases being investigated by the NHRCT, the others being the Hat Gyi dam in Burma/Myanmar, the Hongsa lignite mine and coal fired power station in Laos and the Xayabouri dam also in Laos.

¹⁹ Taiwanese Ve Wong Corporation holds 30% of both subsidiary companies.

4. Impact of Business on Human Rights in ASEAN

This report uses a framework derived from the core international human rights instruments²⁰ that assesses the impacts to human rights by business according to eight categories of human rights.^{lxvii} Assessment of these cases is organized into the following categories: right to non-discrimination; right to effective remedy and accountability; economic and social rights; labor rights; the right to healthy and sustainable environment; civil and political rights; right to security of the person; and the rights of communities or groups, especially indigenous peoples.^{21, lxviii} The framework is not intended to imply divisions or hierarchies of rights, as human rights are interdependent and inter-connected.

As noted in section 1.1, this report documents a range of cases of human rights violations with ASEAN over the past decade, some of which have seen redress, but many of which have not. Whilst this report draws largely upon the cases presented in the public hearings (see table 5), there are many more cases of human rights violation in ASEAN. Therefore, other documented cases are also presented alongside the cases presented as testimonies at the public hearing.

20 Those international human rights instruments include: The Universal Declaration on Human Rights (UDHR); The International Covenant on Civil and Political Rights (ICCPR); The International Covenant on Economic, Social and Cultural Rights (ICESCR); The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW); Convention on the Rights of Persons with Disabilities (CRPD); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

21 In April 2011, the UN Human Rights Council adopted resolution 16/11 on human rights and environment which identified several key components of the interaction between human rights and the environment, including: (a) Sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights; (b) Environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights; (c) While these implications affect individuals and communities around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations; (d) Many forms of environmental damage are transnational in character and that effective international cooperation to address such damage is important in order to support national efforts for the realization of human rights; and (e) Human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection and promoting policy coherence, legitimacy and sustainable outcomes. For more information on the observance that sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights, please see the April 2012 Joint Submission from the Center for International Environmental Law and Earthrights International to the ASEAN Inter-Governmental Commission on Human Rights Regarding Human Rights and Environment.

Table 5: Case Studies by Sector of Businesses Violating Human Rights in ASEAN	
<p><u>Extractives</u></p> <ul style="list-style-type: none"> • Didipio Gold and Copper Project – Philippines • TVIRD Mining Operations, Mt. Canatuan, Siocon, Zamboangadel Norte – Philippines • PT. Meares Soputan Mining in Sulawesi – Indonesia • PT. Newmont Minhasa Raya in Sulawesi – Indonesia • PT Nusa Halmahera Minerals, North Maluku – Indonesia • PT Freeport, Mimika District, Papua • Shwe Gas – Burma/Myanmar • Raub Australian Gold Mining Sdn Bnd (RAGM) – Malaysia • Lynas Corporation, Pahang – Malaysia 	<p><u>Industrial Development and Manufacturing</u></p> <ul style="list-style-type: none"> • Asahi Kosei, Malaysia • Dawei Deepwater Seaport and Special Economic Zone, Burma/Myanmar • Nikomas, subsidiary of Nike, Serang, Banten - Indonesia • Songkhla facility, Phatthana Seafood Co. Ltd., - Thailand • Ricoh International, Rayong Industrial Zone – Thailand • PT Oceanias Timber Products (PT OTP) – Indonesia • Singapore Mass Rapid Transport (SMRT) - Singapore
<p><u>Energy (Hydropower)</u></p> <ul style="list-style-type: none"> • Xayabouri Dam Project – Laos • Nam Mang 3 Dam – Laos 	<p><u>Agriculture</u></p> <ul style="list-style-type: none"> • Koh Kong – Cambodia • Bousra in Mondulkiri – Cambodia • Chetborey in Kratie – Cambodia • Snoul in Kratie – Cambodia • Chrop in Steung Treng – Cambodia • O’Ngeave in Kampong Thom – Cambodia • Lao-Indochina – Laos

* Cases in bold were presented as testimonies at the Jakarta (May 2011) or Bali (October 2011) public hearings.

4.1 Right to Non-discrimination

All human beings are entitled to fair and equal treatment and freedom from discrimination. The prohibition against discrimination applies in respect of all rights and encompasses discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It is specifically mentioned in instances of equality before the law, labor rights, public emergency, and child measures of protection.²² Furthermore, infringements on other rights are mentioned, prohibiting by law any 'national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.'²³ Amongst cases documented across ASEAN:

²² Encompassed in UDHR articles 7 and 23; ICCPR articles 4.1, 20, 24.1 and 26; ICESCR articles 2.2 and 10.3.

²³ ICCPR Article 20.2.

- One employee of eleven years, brought suit against her employer, Malaysian Airlines System, under their terms and conditions of service, which requires all stewardesses to resign upon becoming pregnant. According to company policy, should the individual refuse to resign, the company retains the right to terminate her services. Beatrice Fernandez refused to resign when she became pregnant and was subsequently fired by her employer.^{lxxix}
- In the workplace, one's sexual orientation or gender identity is often used as a basis for dismissal, rejection, or denial of promotion or benefits. In one instance, a gay man from the Philippines filed a court case against his employer, claiming that his employment contract was not renewed because he and his partner exchanged symbolic wedding vows.^{lxx, lxxi}
- The growing numbers of migrant workers in the region face various forms of discrimination. Racial discrimination, xenophobia, and intolerance often accompany low wages, long and exhausting working hours and violence. One example of such discrimination occurred in Thailand when Nang Noom, a Shan migrant worker from Burma/Myanmar was paralyzed from the waist down following an accident at the construction site for the Shangri-la Hotel in Chiang Mai in 2006. The Royal Thai Government denied her work accident compensation and rehabilitation assistance from the Workmen's Compensation Fund (WCF) on the basis of her "illegal" entry into Thailand and despite her registered "legal" work status. The social security system mandates that only migrant workers who have passports can receive compensation from the workers compensation fund, however few Burmese/Myanmar migrant workers hold passports due to the difficulty in obtaining one from the government.^{lxxii, lxxiii}
- Guppy Plastic Industries was taken to Malaysian court by eight female employees based on its guidebook procedures. The company handbook stated that all women employees in the company will be terminated once they reach the age of 50, citing that they are prone to suffering medical problems. These eight women had been forced to retire due to these guidelines and brought suit against the company for age and gender discrimination.^{lxxiv}
- THAI Airways has been accused of discrimination by flight attendants who have failed to meet its new weight and shape standards. Under the new rules introduced, female flight attendants must be under a body mass index (BMI) of 25 points and keep their waistline to 81cm, while men must stay under a BMI of 27.5 and a waistline of 89 cm. The crew had six months to lose the weight. Those who could not have been moved to domestic routes or single-day round trips, losing their international flight allowances. Furthermore, the airline stated that employees who do not lose the weight after a year would be transferred to ground services.^{lxxv}
- The Singapore Mass Rapid Transport (SMRT) has been accused by its migrant workers, namely Chinese nationals, of practicing discrimination on the basis of nationality. On 26-27 November 2012, over 170 Chinese national workers of SMRT participated in a strike deemed illegal by the Singaporean authorities. Chinese strikers stated that

Chinese workers in the company earn significantly lower monthly wages than drivers of other nationalities, have less choice in assignment of bus routes, and are compelled to live in poor and unhygienic living conditions in SMRT-provided quarters, with rent mandatorily deducted from their pay (See also Section 4.4).^{lxxvi}

4.2 Right to an Effective Remedy and Accountability

Victims of human rights violations are entitled to seek effective remedy and redress through judicial, administrative, legislative, or other means. This includes, but is not limited to, the right to equal protection before the law and the courts, the right to a fair and public hearing by a 'competent, independent and impartial tribunal established by law,' and the right to enforceable remedies.

The rights of these victims are often not recognized or awarded against the interests of powerful companies. It is especially difficult for individuals and small community groups to seek redress when their claims or their legal citizenship status are not formally recognized by the government, and subsequently denied access to official complaint mechanisms. On occasion, governments fail to hold business actors accountable, arguing that multinational companies are not within the scope of national law, or that there is simply no legal framework holding businesses accountable for human rights violations (see Section 3.1). Furthermore, some businesses use their political and economic influence to ensure governments do not pursue these violations.

The most common form of blocking access to legal remedies involves the lack of response by companies to formal complaints and initiatives undertaken by employees and local villagers. These complaints include petitions to land grabbing without compensation, extrajudicial killings, and water contamination. The cases reviewed indicate that:

- Access to legal remedies is often denied due to lack of formal mechanisms that employees and affected communities can use to file complaints, seek dispute resolution or call for independent investigation. Companies also avoid legal accountability by conducting transactions within a state that does not have a strong legal framework, or one that does not recognize certain rights to individuals. In the case of Shwe Gas in Burma/Myanmar, full state control of land prevents individuals from seeking remedies or reparations for land grabbing.^{lxxviii}
- The most common explanation for how these businesses are suspected to escape liability is due to their close relationships with local authorities and state officials. In the case of PT Freeport (PTFI), the company supports the employment of over 1,800 government security forces. PTFI provides money directly to police and military officers to protect their assets, which creates a conflict of interest between local police and military who are supposed to serve the national and citizen's interests but whose interests are consequently also tied to those of PTFI.

- In some cases, however, legal frameworks and judicial bodies have been created in order to hear cases involving corporate violations of human rights. In the Didipio mining case, indigenous peoples filed complaints of human rights and environment abuse with the Commission on Human Rights of the Philippines (see Case Study 1 in Section 3.5).^{lxxxix} Villagers in Koh Kong filed complaints against the Koh Kong Sugar Industry company with the National Human Rights Commission of Thailand for violations of forced displacement, illegal confiscation of lands, and severe livelihood impacts, and alleged human rights violations, including the right to life and self-determination, and failure to uphold the people's right to development including their right to participate in, contribute to, and enjoy economic, social, cultural and political development (see Case Study 2 in Section 3.5).^{lxxx} Villagers, however, are yet to receive satisfactory redress.

Case Study 3: Snoul Rubber Plantation Project, CIV Development Company Kratie, Cambodia

In August of 2008, CIV rubber plantation company began clearing land in an indigenous Stieng village – without disclosing the company plan and without allowing the villagers to read the license. These Stieng people have lived in the area for hundreds of years, practicing rice paddy and other plantation farming, and collecting non-timber forest product for livelihood and income generation. The Stieng people also use Trang (a kind of palm tree) for supporting their livelihoods such as building the roofs and walls of their homes, making food and equipment.

CIV plantation operations are affecting the livelihood and culture of approximately 58 families. Forests has been cleared affecting wildlife, shelters, firewood, mushrooms, rattans, vines, and many other kinds of non-timber forest products.^{lxxxix} Houses of the Neakta (spirits), burial forests, and other sacred areas were destroyed with the company clearing of the land.

Because of these actions, the local villagers began to protest the work of CIV. In one instance, they came to stop the tractors, but were accused of robbery and property destruction by the company. Commune authorities supported the company and told the villagers that they had no ownership of the land because they could not provide any written legal document entitling them to such land. The district authority also supported the company and refused the villagers. The villagers went to the court, but they were stopped on the way and forced by the police to return home. The villagers then walked the remainder of the road to the courthouse, only to arrive and see the courthouse shut its doors. In this example, it is evident that a serious lack of remedy is available to these local villagers.^{lxxxii}

4.3 Economic and Social Rights

At the most basic level, economic and social rights relate to the right to meeting basic needs, including but not limited to water, food, clothing, housing, medical care and necessary social treatment. These rights extend to cover the security of an individual in the event of “unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”^{lxxxiii} There have been cases where:

- Business practices have led to serious pollution of water within rivers, lakes and watershed supplies. This pollution has deprived villagers of their access to safe water²⁴ and impacts drinking, irrigation, agricultural, domestic and industrial uses of water supply. In the case of the Buyat Bay mining project in Sulawesi, Indonesia, actions by PT Newmont Minhasa Raya (PT Newmont)²⁵ left villages without a water source due to high levels of metal contamination.^{lxxxiv, lxxxv, lxxxvi}
- Water pollution and chemical soil pollution caused by business operations can lead to serious health risk for local communities. Symptoms of this pollution include headaches, dizziness, nausea, joint pain, miscarriages, birth defects, and skin diseases.²⁶ In the case of Bousra commune in Mondulkiri, Cambodia, water pollution from Khaou Chuly Group (KCD) and Socfinasia’s rubber plantation usage of pesticide reportedly caused many villagers to become ill. In another example, soil pollution from PT Newmont’s mining project in Sulawesi left several areas uninhabitable due to intense levels of toxins.^{lxxxvii, lxxxviii, lxxxix, xc}
- Water pollution from businesses results in a decrease and depletion of aquatic species, upon which local populations are reliant for food and livelihood. In some cases, such as in the Lao-Indochina Group Public Company cassava plant project, in Sangthong District and Pakxan District, villagers noted that fish were being killed in large quantities or were in rapid decline, largely impacting their food supply.²⁷
- In many company operations, forest land is cleared and destroyed. With this demolition, local plants and animals are killed and their habitats destroyed. Many individuals rely on these surrounding plants and wildlife as a source of food, livelihood and healing. In the case of PT Freeport, for example, chemical contamination in Papua, Indonesia from the nearby mining company resulted in the loss of many local plants and wildlife.^{xc}

24 Polluted drinking water has also been reported in the following testimony case studies; Didipio, TVIRD, PT Newmont, PT Nusa, and PT Freeport mining projects, the Nam Mang 3 dam project, and the Laos-Indochina cassava project.

25 PT Newmont Minhasa Raya is a subsidiary of US-owned Newmont Mining Corporation

26 Health symptoms reportedly related to company pollution from the testimony case studies were also noted in PT Newmont and PT Freeport mining projects, the Bousra rubber plantation project, and the Laos-Indochina cassava plantation project.

27 Depletion of aquatic species, resulting in a loss of livelihood for local people, has been recorded or strongly cautioned in the following cases; TVIRD, PT Newmont, PT Nusa, Nam Mang, and Laos-Indochina cassava cases.

In the process of business acquisition of land, many villagers have been resettled. However, replacement land is often not equivalent to villager's previous land, and has resulted in the loss of livelihood. Fishermen on Halmahera island, Indonesia, for example, lost access to their catch due to PT Nusa Halmahera Minerals' (PT Nusa)²⁸ extraction project.^{xcii} This loss in livelihoods for local communities caused further poverty and shortage of food.²⁹

Case Study 4: Dawei Deepsea Port and Special Economic Zone project

The Dawei Deepsea Port and Special Economic Zone project is proposed to be Southeast Asia's largest industrial complex, with an estimated infrastructural investment of over US\$50 billion^{xciii} that would include a deep seaport, industrial estate (including large petrochemical industrial complex, heavy industry zone, oil and gas industry, as well as medium and light industries), and a road/pipeline/rail link that will extend 350 kilometers to Bangkok via Kanchanaburi Province.^{xciv} The proposed project is located within Burma/Myanmar's southernmost region, the Tenasserim Division, which borders Thailand to the East. This highly populated and prosperous region is significant because of its ecologically-diversity and strategic position along the Andaman coast.

Laying the foundation for the project, in May 2008, the Governments of Myanmar and Thailand signed a Memorandum of Understanding (MoU) on the project's development on the sideline of an ASEAN ministerial meeting. Less than a month later, in June, the Myanmar Port Authority (MPA) and the Italian-Thai Development Public Co. Ltd. (ITD), Thailand's largest construction company, signed another MoU that gave the company the right to conduct a ground survey for the feasibility of the deep seaport and the road link to Thailand.^{xcv} More recently, in September 2012, ITD reduced its share in the project to 25% and the governments of Myanmar and Thailand have taken a stronger role in leading the project's development.^{xcvi}

The project developers have suggested the project site to be strategic for its geographical location, which connects to the Greater Mekong Subregion (GMS) Southern Corridor spanning Southeast Asia, and could serve as a western gateway for the ASEAN to shorten their reach to the Indian Ocean. However, as former Thai Prime Minister Abhisit Vejjajiva infamously stated in January 2011, "*some Industries are not suitable to be located in Thailand. This is why they decided to set up there in Dawei.*"^{xcvii} Due to Thailand's increasingly progressive human rights and environmental legal framework, public and private actors have struggled to escape the strengthening development project regulations. In Burma/Myanmar, however, lack of protection and laws could result in serious risks to the environment and human rights should the Dawei project proceed.^{xcviii} Concerns regarding investment standards were flagged in 2011 when the project drafted its own legal framework to ensure the industrial state's attractiveness to potential investors.^{xcix}

28 PT Nusa Halmahera Minerals (NHM) is a joint venture between Newcrest Singapore Holding Pte, Ltd. (Newcrest) 82.5% and PT. Aneka Tambang (Persero) 17.5%.

29 Resettlement to less-than-adequate land resulted in significant losses in livelihoods for villagers in the following cases: PT Nusa and Chrop rubber plantation.

Concerns for human rights abuses and environmental damage are serious as the industrial zone has the potential to produce an enormous amount of toxic emissions polluting the air, fresh water sources, rivers and coastal areas.^c The proposed petrochemical industrial development plant has raised strong apprehensions regarding health, livelihood and environmental consequences, which remain largely unaddressed. Loss of land is a major concern and there is an urgent need to address the issue of land entitlements as thousands face displacement, resettlement and loss of livelihood by the project. ITD officially reports that the project will relocate 32,274 people in the Special Economic Zone (SEZ),^{ci} with another 182 households in the proposed Dam Reserve area,^{cii} and unavailable numbers for the road link. It is speculated that the road link would displace an additional 50,000 individuals.^{ciii} However, it is estimated that up to an additional 500,000 people within the region surrounding Dawei will be directly and indirectly affected by land grabs and the decimation of the current rural economy upon which their existence depends.^{civ}

- In many land resettlement cases, often companies presented no option for villagers except forced mandatory relocation. Villagers were forcibly evicted from their land with substandard resettlement arrangements and were given no alternative option or in some situations, no disclosure of concession plans.³⁰ In the case of Chrop rubber plantation, Cambodia, for example, companies began clearing land before a concession plan was administered.^{cv}
- Similarly, as companies began collecting land and relocating communities, the time and manner in which local individuals were notified (or in some cases, no advanced notice was given) was less than adequate, resulting in further tension between the community and company. These evictions regularly did not provide full detail of the resettlement or have the consent of the villagers. In one protest of the Nam Mang 3 dam, Hmong villagers in Vientiane Province marched to the construction site, demanding to speak with project officials, infuriated that they had received no information about where they would be relocated or how long the process would take.^{cvi}

While there were many violations of social and economic rights, there were also instances where companies supported and reinforced these rights for local communities – even if these are often CSR exercises that are offered alongside other human rights violations. Under various circumstances, some improvements in social and economic rights were noted by community members and contributed towards their improved livelihoods.

³⁰ Forcible evictions without adequate disclosure of plans by companies were documented in Chetborey, Snoul, and Chrop rubber plantations, Dawei seaport, Nam Mang 3 and Xayabouri dam projects, and Shwe Gas extraction.

- In Huay Som Poi village, Chiang Mai province, Thailand, Starbucks Coffee Company initiated the Muan Jai Blend project as a component of its CSR program. Working with Karen coffee farmers, pesticides and chemical fertilizers are not used, limiting the environmental damage from coffee production and promoting health of consumers and growers.^{cvi}
- In Ngwe Saung, Burma/Myanmar, the development of local hotels brought electricity, clean drinking water, and improved infrastructure to local villagers. Hoteliers committed to hiring local, and provided training courses for higher management for their staff. Paved roads provided for improved transportation and communication, and tourism assisted with ample improvements in access to health and education for the local community.^{cvi}

4.4 Labor Rights

Labor rights recognize the right to work as a means of obtaining livelihood. Labor rights include the right to: free choice of employment; just, safe and healthy working conditions; protection from unemployment; protection to demand fair wages and equal pay; elimination of discrimination with respect to employment; and the freedom of association to form and join trade unions. Cases reviewed show that:

- There are numerous instances where companies do not pay their workers full wages, and where workers are required to work extended hours and overtime without additional pay. In January 2012, for example, the sportswear company Nike, agreed its Indonesian subsidiary would pay \$1 million USD compensation to 4,500 workers following a dispute over unpaid overtime of workers in Indonesia at PT Nikomas plant in Serang, Banten. The workers union that brought the case to Nike calculated that 593,468 hours of overtime went unpaid over the last two years.^{cix}
- Companies may use brokers to hire workers, which impose often inflated upfront application fees. This set up usually forces laborers to incur debt that cannot be easily settled by low wages. In April 2012, for example, a strike emerged amongst Burmese and Cambodian migrant workers at Phatthana Seafood Co., Ltd in Thailand. Migrant workers at the Songkhla facility found themselves in conditions where they were required to pay recruiters excessive placement and transport fees in order to obtain work. Managers at the plant took portions of their wages to pay these debts, as well as various “fees” to the company for accommodation, utilities, and other necessities. Some workers were receiving so little pay after deductions that they could not afford sufficient food.^{cx}
- Companies use firing, lay-offs and temporary leave techniques to intimidate and deter workers from participating in unions, violating the right to assembly. In December 2011, Japan-based Ricoh International dismissed 41 workers and union activists at its plant in Rayong industrial zone the day before workers were to register their union with the Thai Ministry of Labour. The workers had decided to form a union to protect themselves against harmful labor rights, unsafe working conditions, low wages and forced overtime.^{cx}

- Workers involved in strikes and collective action deemed “illegal” by governments have also been criminalized and faced punitive actions. In Singapore, five bus drivers, all of whom are Chinese nationals, have been charged under the Criminal Law (Temporary Provisions) Act in relation to a strike participated by over 170 Chinese national workers of the Singapore Mass Rapid Transport (SMRT) company on 26-27 November 2012. In addition, other bus drivers involved in the strike, all of whom are also Chinese nationals, have had their Work Passes revoked and were subsequently repatriated on 2 December 2012. The Chinese national workers at SMRT have alleged that the company practices discrimination on the basis of nationality – that they earn lower wages and smaller pay raises than Singaporean or Malaysian drivers in the same company (See also Section 4.1). Singapore’s Ministry of Manpower deemed the strike “illegal” as Singapore requires 14 days of advance notice for a strike involving an “essential” sector. This categorization of bus service as essential service and its subsequent restriction on the SMRT workers’ right to strike contravenes the principles of the International Labour Organisation, of which Singapore is a member State.^{cxii, 31}
- Similarly, businesses may also use threats, bribes and force to deter employees from engaging in protests, demonstrations or strikes, violating the right to assembly and freedom of speech. When PT Oceanias Timber Products (PT OTP) unilaterally changed the policy on annual, maternity and menstruation leave, its Indonesian employees objected to the change and informed the company that the changes violated labor laws. As tensions heightened, PT OPT informed workers on 15 July 2011 that anyone who engaged in a strike against the company would be considered to have resigned. Although workers called off the strike out of fear, PT OPT further subjected union workers to various forms of discrimination and retaliation for engaging in the strike.^{cxiii}

31 Furthermore, the ILO Committee on Freedom of Association has noted that restrictions on the right to strike in so-called “essential services” can only be justified when the interruption of that service could endanger the life, safety, or health of all or part of the population, or in situations of acute national crisis – all of which were not applicable to the case of the strike by the SMRT workers.

Case Study 5: Manufacturing Aluminum Die-Cast Parts Project, Asahi Kosei Selangor, Malaysia

Asahi Kosei, a manufacturing company that produces die-cast aluminum parts for computers and automotive parts, commenced operations in Selangor, Malaysia in 1995. In 2011, thirty-one Burmese migrant workers alleged that their employer, Asahi Kosei, was paying them far less than their agreed wage and upon seeking appropriate compensation the workers were threatened. According to their recounts, 'gangsters' came to their hostel and threatened them, removing their refrigerators, televisions, fans, rice cookers and other items, and cutting electricity.^{cxiv} Two of the thirty-one workers were threatened with deportation and taken to the international airport but managed to escape.

The workers filed a formal complaint with the Malaysian Human Rights Commission (SUHAKAM) shortly following these events. The following morning, after filing complaints, Asahi Kosei met with the thirty-one workers, proposing various improvements to their working conditions, including a small salary increase, decrease in living expenses costs, and cancellation of allowances. But the employers gave the workers an ultimatum – stating that they must agree to the new conditions immediately, without change, or be terminated on the spot and sent back to Burma/ Myanmar. The workers were not given any time to consider the proposal or discuss the matter further and in the end, all but two workers signed the new contracts. The two workers who refused to sign the contract were handed over to a recruitment agent.

In this case study, not only were workers denied their wages and compensation, but after reporting violations to their rights in an attempt to seek redress, they were pressured into committing to new terms without consultation, or room for revision.

4.5 Right to a Healthy and Sustainable Environment

A healthy, safe and sustainable environment is a pre-requisite for supporting human society and the realization of human rights.^{cxv} This includes the rights of communities to access their natural resources and to conserve the environment, and to participate in decisions that might affect access or conservation. In April 2011, the UN Human Rights Council adopted resolution 16/11 on human rights and environment.^{cxvi} It identified both that sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights; and that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights. Through a submission to AICHR on the draft ASEAN Human Rights Declaration in September 2012, sixty-two civil society organizations expressed their expectation that ASEAN address the right to a healthy and sustainable environment,^{cxvii}

which was subsequently included in the final official text of the Declaration in Article 28f.³²

A foundational document in defining the principles for good environmental governance and sustainable development is the 1992 Rio Declaration.^{cxviii} Many now well-established principles of international environmental law are incorporated into this document, including: common but differentiated responsibility; the precautionary principle; the polluter pays principle; and prior and timely notification on activities that could have transboundary environmental impacts. Specifically with regard to the relationship between environment and human rights, Article 10 of the Rio Declaration identifies how certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters, are central to safeguarding the environment.^{cxix, cxx} These “access rights” are also the basis of the Aarhus Convention (1998) adopted by the UN Economic Commission for Europe.^{cxxi} More recently, the relationship between human rights and climate change have received increased attention.³³

Access to natural resources, such as forest, marine and freshwater fisheries, and land, are central to the livelihoods of the majority rural population in ASEAN and provides for the foundations of local economies and well-being, for example food and economic security. The right to access these natural resources, to participate in decision making towards them, and to protect them from degradation and appropriation are important rights related to others, for example economic and social rights (Section 4.3), civil and political rights (Section 4.6) and the rights of communities or groups, especially indigenous peoples (Section 4.8).

It is clear from the case studies that:

- Due to the lack of strong standards and weak enforcement, company projects often have adverse environmental impacts such as contaminating water that is utilized by local people for drinking, domestic and agricultural use. TVIRD mining operations in Mount Canatuan in the Philippines, for example, have contaminated water to a level which many local villagers can no longer use.^{cxvii}
- Polluting rivers and other water systems not only affects domestic and agricultural uses of water, but also impacts marine life and the livelihood of local people who depend on marine life for sustenance. PT Meares Submarine Tailings Disposal (STD) technology threatens local marine water quality in Sulawesi, Indonesia, with grave anticipated impact on fisheries. These impacts could affect the local economy of thousands of people dependent on fishing and tourism. Potentially affected areas include White Stone village, where approximately 60% of the 3,000 inhabitants depend on fishing and ecotourism. PT Newmont’s contamination of Buyat Bay

32 “28. Every person has the right to an adequate standard of living for himself or herself and his or her family including... f. The right to a safe, clean and sustainable environment”.

33 Resolutions 7/23 and 10/4 of the UN Human Rights Council on human rights and climate change.

with arsenic and mercury reduced the fish biodiversity from 59 to 19 species within the first two years; as mercury is a persistent pollutant that accumulates in the food chain, this pollution will have long-term impacts.^{cxxiii}

- As a result of environmental contamination from company waste and disregard of the need for safe disposal, local people, plants and wildlife experience serious health problems. PT Newmont's introduction of mercury and arsenic into the local Buyat Bay in Sulawesi, Indonesia has been accused of causing health symptoms such as nausea, headache, recurrent miscarriages and children born with disabilities, with measurements of mercury levels ten times the control sample.^{cxxiv}
- Similarly in Bukit Koman, near Raub, Pahang, Malaysia, residents nearby the operation plant of the Raub Gold Mining Sdn Bhd (RAGM) claimed that more than 300 people residing in villages nearby the operation plant reported health symptoms, including skin rashes, red and watery eyes, throat irritation, shortness of breath, nausea, vomiting and dizziness within a month after RAGM started its Carbon In Leach (CIL) operation plant in February 2009 using toxic and hazardous chemicals, including Sodium Cyanide (NaCN) and Hydrogen Chloride (HCl). The residents also claimed that the readings on their air quality monitoring devices showed significantly higher contents of Sulphur Dioxide (SO₂) and Hydrogen Cyanide (HCN) than what had been reported by the Department of Environment.^{cxxv, cxxvi, cxxvii}
- Chemical contamination can also cause an introduction of disease and damage to humans, animals and plants. In the case of Bousra in Cambodia, non-selective herbicides used to kill grass damaged other plant species that the indigenous Bunong relied on for livelihood.^{cxxix}
- When clearing land of existing resources, companies destroy natural habitats and environments conducive to local livelihoods. In the case of the proposed Dawei Deep Sea Port and Economic Zone project, coastal Burma/Myanmar communities rely on marine fisheries, rice production, rubber, palm oil, cashew trees and tropical fruits. The anticipated loss of land or resettlement conducted by Italian-Thai Industrial Company Limited to less productive land will greatly affect local livelihoods and local economies.^{cxxix}
- The Xayabouri Hydropower Project, controversially proceeding with construction in Northern Laos, threatens to be the first of twelve large hydropower dams planned for the Mekong River's mainstream (see Section 5.1.4). Despite the project's transboundary impacts, including on wild capture fisheries, potentially impacted communities in Laos and neighboring Thailand, Cambodia and Vietnam who would be affected by changes to their natural resources have received little information and have not been fully consulted or given their consent to the project. The project developers and the Thai and Lao government have drawn extensive criticism as they have sought approval for the Xayabouri Dam through a regional decision-making process, which requires notification and consultation with neighboring riparian countries, *whilst at the same time* proceeding with preliminary construction work and resettlement activities, including a ground breaking ceremony in October 2012.^{cxxx}

As of May 2013, the project remains contested amongst the countries sharing the Mekong River,^{cxxxii} and civil society has continued to challenge the legality of the Lao government's decision to proceed with the project.^{cxxxiii}

- The Lynas Advanced Material Plant (LAMP), a rare earth refinery plant that is currently being constructed by a wholly owned Malaysian subsidiary of Lynas Corporation, an Australian Securities Exchange (ASX) 100 listed company, about 25 kilometres from the town of Kuantan, Pahang, Malaysia, has raised concerns over the effects of its radioactive waste. Upon the completion of LAMP, the ore produced onsite at Mount Weld in Australia will be shipped to LAMP for refining. Critics have argued that Lynas and Malaysia's Atomic Energy Licensing Board (AELB), which has issued a Temporary Operating License (TOL) to Lynas, have failed to adhere to the precautionary principle given that it is still unclear as to how hazardous the project may turn out to be and that Lynas had no long-term waste management plan. Critics also claim that Lynas has only undertaken a Preliminary Impact Assessment Report, rather than a Detailed EIA report as required by the Department of Environment guidelines in mid-2011, before the application for the TOL was made. A Detailed EIA requires public consultation, a detailed health impact assessment and is approved by the Director General of Environmental Quality based in the Federal capital, rather than just the director based in the state of Pahang. According to critics, safety precautions in Malaysia are less stringent than those required in Australia, thus raising doubts over the safety of the project. While the International Atomic Energy Agency (IAEA), in addition to the AELB, has declared the Lynas plant safe, it also made 11 recommendations to ensure the safety of the Lynas Refinery. Despite these IAEA recommendations, the AELB approved Lynas' Temporary Operating License (TOL) on 2 July 2012 and thus allowed Lynas to start operations even before they present their proposed plan for comprehensive management of the solid waste. Instead, the TOL only requires Lynas to submit the waste management plan within 10 months of starting operations.^{cxxxiii, cxxxiv}

**Case Study 6: Buyat Mining Project,
PT. Newmont Minahasa Raya (NMR) Sulawesi, Indonesia**

PT Newmont Minahasa Raya began operating in Sulawesi, Indonesia in 1996, mining for gold. From 1996-2003 it was estimated that over five million tons of tailings that contained heavy metals such as arsenic and mercury were discarded into Buyat Bay. Since the disposal of those tailings, the 300 people who live on the shores of the bay and depend on fishing for their main protein supply and their livelihoods have experienced serious impacts to their livelihoods.

Investigations and impact assessments, which involved government departments, university scientists and NGO representatives, found extremely high levels of mercury and arsenic in the seabed sediment. Levels of 666 mg/kg were around 100 times higher than those found in control sites. Buyat Bay was found to be polluted with both arsenic and mercury with seabed-dwelling marine creatures such as crabs, mussels and worms found to be accumulating mercury – with levels ten times higher than control samples.^{cxxxv}

As a result of this mercury and arsenic pollution, fish species were killed, affecting local people's food supply. Widespread health problems began to emerge during the later years of the company's operations, with community symptoms including nausea, headache, joint pain, weakness, cramping, trembling, and skin diseases. Some women experienced recurrent miscarriages and other children were born with disabilities.^{cxxxvi} Reports indicated that at least 30 people, including a 5-month old baby are believed to have died as a result of the heavy metal pollution caused by the mine, which dumps tailings on the sea-bed. A report from a local university suggests that more than 100 villagers from Buyat are suffering from the effects of heavy metals contamination – including arsenic and mercury – in the Bay, where local people fish.

For the first time, Indonesia's government took concerted action on pollution charges against a major multinational. As part of the police investigation, five company executives were detained for a month in late 2004, with a criminal indictment listing Newmont Minahasa Raya and its president director, Richard Ness, as the accused. While the Environment Ministry's charges were dismissed by a South Jakarta District Court on the basis that the trial need be taken to international arbitration, it was the first time the government attempted to hold a multinational company responsible for environmental damages.^{cxxxvii}

4.6 Civil and Political Rights

This category addresses the rights surrounding individual and political liberties. They include the right to freedom of opinion and expression, thought, conscience and religion, information, movement and residence, peaceful assembly and association, and privacy.³⁴ It is clear from the case studies that:

- The right to assemble has been suppressed by many businesses. In the case of PT Freeport, mining workers who assembled demanding higher wages were punished and intimidated by being fired or placed on ‘temporary off duty’ where their wages were cancelled or frozen.^{cxxxviii, cxxxix}
- The right to freedom of expression has also been stifled by companies, who threatened, intimidated, abused and harassed workers who spoke out against the business. In the case of Burma/Myanmar’s Shwe Gas project, employees who spoke out about the company suffered imprisonment and abuse.^{cxli}
- Defamation suits have also commonly been filed by companies to silence critics and stifle news coverage of criticisms against them, thus limiting public debates on issues of public interest. In Malaysia, the Raub Australian Gold Mining Sdn Bhd (RAGM), a gold mining company that operates a cyanide gold mining project in Bukit Koman, near Raub, Pahang, has filed defamation suits against two online news portals, *Malaysiakini* and *Free Malaysia Today* for publishing news articles deemed “defamatory”, as well as against two leaders of the Bukit Koman Anti-Cyanide Committee for their alleged “defamatory” statements made against RAGM. Also in Malaysia, the Australian company Lynas Corporation, which is constructing a rare earth refinery plant near Kuantan, Pahang, has also filed defamation suits against pressure group, the Save Malaysia Stop Lynas, as well as *Free Malaysia Today*.^{cxli, cxlii, cxliii}
- Companies have on occasion blocked freedom of movement for communities. In the Didipio Gold and Copper Project, local Didipio Philippine residents were blocked from utilizing the main road by OceanaGold,³⁵ with checkpoints and fenced off areas guarded by soldiers with arms.^{cxliv} Likewise for Snoul project workers in Cambodia, CIV rubber plantation company armed guards blocked local villagers’ access into the forest – an area that previously provided them with food, water and healing powers.
- In business plans and development projects, local villagers were not awarded the right to the freedom of information, and many companies withheld information on projects, failing to disclose to inhabitants information about construction, resettlement and revenues. In the Bousra case in Cambodia,^{cxlv} the Xayabouri dam project in Laos,^{cxlvi}

34 The above civil and political rights are taken directly from the Universal Declaration of Human Rights (UDHR), Articles 13, 18, 19, and 20; the International Covenant on Civil and Political Rights Articles (ICCPR) 12.1, 18.1 and 19; and the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 21.

35 OceanaGold Corporation is an Australian-operated extractive business.

and the Dawei seaport project in Burma/Myanmar,^{cxlvii} information was reportedly withheld from local communities, leaving many affected individuals uninformed about project details. In the case of Bousra, land was cleared before any company plan was even disclosed to the public.

- In the case of the cyanide gold mining project by the Raub Australian Gold Mining Sdn Bhd (RAGM) in Bukit Koman, Raub, Malaysia, the local community's bid to obtain detailed information through a request for a detailed environmental impact assessment (DEIA) was rejected by the Malaysian courts on technical grounds – on the basis that the review was made later than 40 days from the date when the grounds of application first arose or when the decision was first communicated to the applicant – despite being a public interest case. The preliminary environmental impact assessment (PEIA) submitted by RAGM in 1996 and approved by the Malaysian government in 1997, was alleged to have omitted vital information on where and how treatment of gold mining waste should be disposed of, and also contained inadequate information on discharge of effluents – thus prompting the residents to seek for a DEIA.^{cxlviii, cxlix}

***Case Study 7: The Shwe Gas and Burma-China Pipeline (SG&P),
China National Petroleum Company, Burma/Myanmar***

The Shwe Gas and Burma-China Pipeline (SG&P) project is one of Burma/Myanmar's largest extractive industry developments, extracting and exporting natural gas from domestic offshore fields, and transporting crude oil (from the Middle East and Africa) via dual pipelines leading from Burma/Myanmar's Arakan state to southwest China. The project is currently in the construction stage, with project estimates indicating that full operation will commence in 2013.

The Shwe Gas Development Project passes through twenty townships across Burma/Myanmar and will directly affect approximately 15,000 villagers. Already, thousands of families have been forced to relocate due to the clearing of land, forests and homes for the pipeline's path.

While there have been countless human rights violations documented, largely due to the military presence and participation in the pipeline construction³⁶, the usage of intimidation and force to silence those victims of abuse have muted the rights to freedom of expression, opinion and assembly. Residents in the project area are afraid to speak out in opposition for fear of serious repercussions. Farmers who have lost their lands, workers complaining of exploitation, and youth trying to raise awareness about the project have been threatened, beaten and jailed for complaining or simply asking questions about the project. Likewise, workers who are exploited to work overtime with no pay are threatened if they complain about their conditions or attempt to assemble in complaint. In September 2010, twelve construction workers in Kyauk Phyu employed by the project were fired after they publicly complained about not receiving wages owed to them. The workers approached the company and the local Labor Department who refused to meet and take any responsibility. Following these actions of redress, the workers had their homes broken into by company representatives and were publicly shamed on a village notice board. In February 2011 thirty workers in Kyauk Phyu were blacklisted after complaining about not receiving regular wages. The laborers had been promised 5,000 kyat per day but were only given 2,500 kyat and not paid for overtime work. Up to September of 2011, 60 workers have been fired at the Onshore Gas Terminal site.

Overall, the abuses in human rights that have occurred under the Shwe Gas project transition across many categories of human rights violations – including security of the person, labor laws, and remedy and accountability rights. The silencing of individual villagers’ and employees’ civil and political rights through threat, bribery and force stifle assembly and the freedom of expression, has made redress impossible.

4.7 Right to Security of the Person

“Right to Security of the Person” refers to the international understanding that every human being has the inherent right to life, liberty and security of person. This security of person comprises both the physical and mental wellbeing of an individual. Violations of this right include arbitrary deprivation to life, extrajudicial killing, slavery, torture, cruel, inhuman or degrading treatment, sexual violence, and physical or mental threat.³⁷

Numerous abuses of the right to security of the person by businesses are identified, including:

³⁶ These violations include but are not limited to forced labor, forced eviction and land confiscation, arbitrary taxation, repression of freedom of expression, arbitrary arrest and imprisonment, and physical abuse.

³⁷ Paraphrased from Articles 3, 5 and 7 of the Universal Declaration of Human Rights (UDHR) and Articles 6.1, 7, 8 and 9.1 of the International Convention on Civil and Political Rights (ICCPR).

- Murders and extrajudicial killings of company opposition groups and employees have been witnessed in several accounts.³⁸ In the case of the Yadana gas field in Burma/Myanmar, that is operated mainly by Total Société Anonyme (Total) and Chevron Corporation, villagers living in the vicinity of oil and gas projects have repeatedly suffered severe abuse at the hands of the soldiers providing security for the projects, including several extrajudicial killings. In 2007, a boy from Shin Ta Pi village, within the pipeline security corridor, was killed by soldiers from infantry battalion 408.^{clii} That same year, seven villagers from Ya Pu and Law Ther were detained by infantry battalion 273; one of them was killed after questioning at a military camp.^{cliii} In March 2009, a soldier from infantry battalion 406 killed an ethnic Mon villager in Kyauk Sha Gwin village.^{cliv} Most recently, in February 2010, soldiers from infantry battalion 282 killed two ethnic Mon villagers from Ahlersekan village who were suspected of sympathizing with opposition groups.^{clv}
- Physical force and violence has been utilized by many businesses to suppress protests and demonstrations organised by employees and affected villagers. This violence has included the shooting, beating, assault, humiliation and arrest of individuals.³⁹ In the case of TVI Resources Development (Phils.) Inc., (TVIRD)⁴⁰ which operates a major mining project in Zamboanga del Norte, Philippines, one employee demonstration in 2004 that demanded higher wages turned violent when picket soldiers opened fire on protesters.^{clvi, clvii}
- In some cases, villagers work in fear of their security because companies, working closely with local authorities, have threatened to arrest any employee who organizes or leads a demonstration.⁴¹ In the case of a rubber plantation in Chrop village, Steung Treng, Cambodia, authorities and two rubber factory businesses have threatened to arrest any villager who leads a demonstration critical of the company.^{clviii, clix, cx}
- Companies have in some cases employed soldiers with weapons to initiate intimidation and deter local villagers and employees from organizing protest or entering business territories.⁴² Villagers in Kratie Province, Cambodia, for example, experience intimidation from rubber plantation CIV Development that employed guards, who reportedly stood with weapons at the entrance to the forest – preventing locals from entering.^{clxi, clxii}
- Military groups, in an attempt to protect company interests, have fought with local ethnic residents to secure access to resources. These clashes have evolved into ethnic conflict in Burma/Myanmar, where in the case of the Yadana Pipeline, the project's extraction of natural gas has led to over 50,000 individuals' displacement due to an immediate threat on their lives because of increased conflict in the region.^{clxiii, clxiv, clxv, clxvi}

38 Other testimony case studies where murders or extrajudicial killings had been alleged were in PT Freeport, PT Nusa, and Shwe Gas.

39 Physical violence and force were also allegedly utilized in the following testimony case studies to silence demonstrations or dissenters; TVIRD, PT Nusa, Koh Kong, and PT Freeport.

40 TVI Resource Development (Phils.) Inc. is a Philippine subsidiary of Canadian TVI Pacific.

41 Threats of arrest to deter demonstrations have been reportedly utilized in the Snoul, Chrop, and O'Ngeave rubber plantation testimony case studies.

42 Soldiers and company security utilized weapons to intimidate and threaten employees and villagers in Shwe Gas, Snoul, Chrop and O'Ngeave Cambodian rubber plantation testimony case studies.

The usage of a third party (typically local authorities or state military) to initiate violence, instigate threats or inflict fear has been used by businesses to silence discourse of employees and disgruntled villagers.⁴³ In the case of PT Freeport, who operates gold and copper mining in Papua, Indonesia, the company official website states that government security personnel who receive support from the company amasses to approximately 1,860 people, and \$14 million USD in 2011. Between July 2009 and February 2012, there have been a disturbing 15 fatalities and 56 injuries from shooting incidents within the project area, including employees, contractors and community members.^{clxvii}

Case Study 8: Mount Canatuan Mining Project, TVI Resource Development (TVIRD) Zamboanga del Norte, Philippines

TVIRD is a subsidiary of TVI Pacific, Inc., a publicly-traded Canadian mining company based in Calgary of Alberta, Canada. TVIRD currently operates a copper-zinc mine in Canatuan, Zamboanga del Norte in the Philippines. TVIRD was supported under an arrangement between the Philippine government and the company while the local Subanen tribe indigenous to the area was not informed, included or addressed in the negotiations. Special Civilian Armed Forces Geographical Unit Active Auxiliaries (SCAA) are recruited, armed and trained by the Armed Forces of the Philippines and assigned to private mining companies to provide them with additional security. Under these forms of arrangement, mining companies pay for the compensation of the SCAA. TVIRD, with the aid of these third party paramilitaries, is reported to have committed numerous human rights violations against small-scale miners and the local Subanen people in the course of implementing their mining operations. These violations include the demolition of Subanen homes, bulldozing of subsistence plots, destruction of small-scale mining equipment, illegal searches and arrests, setting up of checkpoints, and imposition of a blockade to prevent supplies from reaching the community on Balabag Hill.^{clxviii} These violations against citizens, committed by paramilitaries employed and acting on behalf of TVIRD, were conducted to protect and defend the private interests of the company.^{clxix}

These violations increased tensions between company management and local employees and villagers – and many local demonstrations were held to raise awareness and protest the company actions. In one protest, participant Wilbert Catampungan was fatally wounded by gun fire originating from TVIRD blue guards. Most recently in September 2012, there was an assassination attempt on Timuay Lucenio Manda, a Subanen tribe chieftain who has been active in leading demonstrations and filing petitions against TVIRD. Manda was ambushed while taking his eleven-year old son to school who was fatally shot in the attack. His son, Jordan Manda, was the eldest son and future chieftain of the tribe.^{clxx}

43 Third parties employed to initiate intimidation and violence were also documented in the Asahi Electronics project, the Snoul, Chrop, and O’Ngeave Cambodian rubber plantation projects, PT Nusa and TVIRD mining and Shwe natural gas extraction testimony case studies.

4.8 Rights of Communities or Groups, Especially Indigenous Peoples

This category addresses rights that indigenous peoples and members of certain groups jointly possess, for example minority groups. These rights provide additional protection to groups who are marginalized as a result of their social, economic and cultural status.^{clxxi} For indigenous peoples, these rights are largely detailed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).⁴⁴ Indigenous peoples and other vulnerable groups possess additional collective rights such as the right to enjoy, profess, manifest and practice their own culture and language, not to be subjected to forced assimilation or destruction of culture, not be forcibly removed from their lands or territories, no relocation without free, prior and informed consent (FPIC) and an agreement detailing just and fair compensation, and have the right to redress should any of these rights be violated.

Within Southeast Asia, there are many characteristics that unite groups of peoples as communities that are inadequately addressed in existing national and international legal frameworks, for example the collective management of common pool resources such as fisheries and forests. The right to collective community management and ownership of natural resources – based on customary and traditional law and norms within the region, which are often also linked to cultural and sacred values and practices – requires protection as a community or group right, including full participation for these groups in decision-making based on the principles of FPIC.^{clxxii}

The testimony cases demonstrated that:

- Indigenous peoples' rights are often violated in the context of land acquisitions in their territorial land rights. In the case of Didipio gold and copper project in the Philippines, over 2,000 Bugkalot indigenous peoples had their ancestral land taken without consent. They gave no consent to the project, but from December 2007 to April of 2008, they witnessed the destruction of their homes and sacred territories for the project.^{clxxiii}
- Indigenous groups were denied access to their spiritual land. In the case of TVIRD in the Philippines, the Timuoy's were denied access to Mount Canatuan, which was believed to have special healing powers within the tribe.^{clxxiv}
- In the most extreme cases, indigenous sacred lands, burial sites and relics were destroyed. In the Bousra case, in Cambodia, the Bunong tribe was unable to continue their traditional practice of collecting and cultivating non-timber forest products for their livelihoods. Sacred forests and burial grounds were destroyed by the company, and the group's entire tradition, culture, practices and community solidarity has been devastated.^{45 clxxv}

44 UN Declaration on the Rights of Indigenous Peoples, September 7, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (2007).

45 According to the testimony case studies, indigenous land, sacred forests, burial sites and cultures were also allegedly destroyed for the case of Bunong and Kouy indigenous groups in the Gold Methol Group II rubber plantation plan in Kratie, Cambodia; the Stieng indigenous peoples of Kratie who lost their land to CIV rubber plantation company in Kratie, Cambodia; the Khmer and Broa indigenous groups in Steung Treng, due to Sal Sophea Pheanich and Sopheak Lika rubber plantation clearance of land; and the Khmer and Kuoy indigenous groups of Kampong Thom, whose land was cleared by Vietnamese company CRCK.

Case Study 9: Bousra Rubber Plantation Project, Khaou Chuly Group (KCD) and Socfinasia Mondulkiri Province, Cambodia

Khaou Chuly Group (KCD), a prominent Cambodian construction company entered into a joint venture for rubber plantations with European company Socfinasia in 2007 (Socfin-KCD). The joint venture was granted rights for the Varanasi land concession in Bousra commune and began clearing land in 2007, affecting seven villages and 518 families. Bousra is occupied by a large Bunong indigenous community with many thousands of inhabitants who maintain their ancient culture and livelihood through cultivation and collection of non-timber forest product as subsistence. Socfin-KCD cleared 1,800 hectares of indigenous land, destroying spirit forest, burial forest, non-timber forest, and current farms.^{clxxvi} The community is not able to sustain themselves as their livelihoods have been destroyed, and traditional culture has been replaced with labor jobs for the company. Previous traditions, food supplies, cultures, practices and community solidarity were destroyed. For the first time, the indigenous Bunong were forced to find labor jobs that would provide income in order to purchase food that they previously cultivated from their lands.

Community leaders and villagers gathered in 2008 in demonstration against the company action of clearing indigenous land. The community leaders were arrested for several days and were forced to accept resettlement options, abandoning their land for the use of Socfin-KCD. The company bribed community leaders and threatened to arrest them if they spoke out again against the company. As a result, the community leaders have disappeared, the villagers are destitute, having lost their land, livelihood and culture, and no redress appears to be available given the strong opposition and threat received from the company.

5. Business and Corporate Accountability in ASEAN

5.1 Contradictions of Corporate Social Responsibility in ASEAN: Policy and Practice

The case studies in Section 4 reveal a range of human rights violations by some businesses operating in ASEAN. Globally, protracted pressure from civil society, consumer groups and the public at large on safeguards and accountability in private sector investments has resulted in national and multi-national businesses pursuing Corporate Social Responsibility (CSR) policies and activities. While CSR is typically promoted as a corporate tool to demonstrate corporate conscience, contribute positively to social change and protect the environment and human rights, CSR's objectives, implementation and compliance reporting rest largely on the voluntary discretion of the business. As such, while some CSR strategies appear good on paper, implementation and enforcement is often a challenge and, if CSR is undertaken superficially, businesses' CSR objectives remain either unambitious or unmet.

In ASEAN, there is growing awareness and discussion amongst governments, business, civil society and the public about CSR. Despite CSR's rising profile and the emergence of a number of CSR networks in ASEAN and more widely in Asia,^{clxxvii} there is not yet an agreed upon definition of CSR and an authoritative assessment of the performance of CSR in the ASEAN region has not been undertaken to date. CSR policies have the potential either to commit businesses to high standards of practice in the absence of rigorous legal requirements by the state, or act to hide poor practices behind public relations campaigns. As discussed in Section 3.1, tendencies towards high levels of corruption, weak civil and political rights, and constrained media in ASEAN all increase the risks of poor business practices – although this is certainly not the case for all businesses. Overall, however, within ASEAN, ineffectiveness in the voluntary CSR approach reinforces the need for strong, enforceable and comprehensive Corporate Accountability standards at the national and regional level (see section 8).

Research conducted in 2009 on behalf of the OECD identified a number of initiatives promoting CSR in ASEAN, whilst noting that overall CSR is unevenly implemented:^{clxxviii}

- Political steps and initiatives at the national and regional level include: the Malaysian Government issuing a CSR framework in 2006; Indonesian laws on CSR investment and reporting in 2007; and the inclusion of CSR in the ASEAN Socio-cultural Blue Print in 2009 (see Section 5.2 below).

- State-led financial institutions such as stock exchange regulatory bodies led steps and initiatives, including Bursa Malaysia requiring mandatory CSR reporting in 2006, CSR guidelines issued by Thailand's Securities and Exchange Commission in 2008, and the Indonesia Stock Exchange creating a SRI-Kehati Index in 2009.

The research on behalf of the OECD recommends that ASEAN companies move from "philanthropy CSR" to "strategic CSR," engage further Small and Medium Scale Enterprises (SMEs), develop accountability and corporate governance policies, and engage in existing CSR initiatives such as ISO26,000 (see section 6.1 below).

Whilst there are reports of good CSR practices in ASEAN, within the eighteen cases that were presented at the 2011 Public Hearing on ASEAN and CSR, it is clear that there are stark contradictions between corporate mission statements and CSR policies on the one hand, and the company's practices on the ground, on the other hand. Several examples are provided in the following sections. These particular case studies underscore the need to move beyond voluntary CSR mechanisms and towards a legally-defined and binding corporate accountability as existing voluntary standards appear inadequate alone.

5.1.1 Asahi Kosei

According to Asahi Kosei's corporate social responsibility framework, "*The Asahi Kosei Group opposes and rejects any subversive, antisocial elements and their threats to the quality of life and livelihood of citizens and to the conduct of fair and lawful corporate activities.*"^{clxxxix} Similarly, the organization is bound by Codes of Conduct with their customers, who require recognition and respect for human rights and workers' rights from their suppliers.^{clxxx} Yet in February of 2011, thirty-one Burmese migrant workers lodged a formal complaint with the Human Rights Commission of Malaysia (SUHAKAM) alleging serious violations towards their labor rights, contradicting the Asahi Kosei corporate principles (see case study 5).

5.1.2 TVIRD

TVIRD, a Canadian mining company, states on its website that the company is "*committed to exploration and mining practices that promote transparency, responsible stewardship of the environment, and the inalienable rights to life, dignity, and sustainable development in its host communities.*"^{clxxxi} But allegations against the company include that, in addition to demolishing indigenous homes and sacred areas of worship, TVIRD reportedly fenced off the mountain spring that serves as the main source of water for the community of over 3,000 villagers. Further restrictions on road access by the company rendered the main access route to the town impassable, resulting in a primary school enrolment decrease from 105 to 50 students.^{clxxxii}

The long term effects of environmental damage caused by TVIRD's mining have been witnessed both upstream and downstream from Canantuan. These actions – demolishing indigenous shelters, depriving community members of water and access to education, and creating irreversible damage on the environment contradict the company's human rights policy.

5.1.3 Freeport-McMoRan Copper & Gold Inc

Freeport-McMoRan Copper & Gold Inc. (FCX), the world's largest publicly traded copper producer and largest producer of molybdenum, states that the company *".. does not tolerate human rights transgressions. Our Human Rights Policy requires that we conduct business in a manner consistent with the Universal Declaration of Human Rights, educate and train our employees and protect any workforce member who reports suspected violations."* The company continues to note that it has established site-specific human rights policies and procedures, which reflect in-country laws and regulations and the Freeport-McMoRan Human Rights Policy. Human rights compliance officers oversee compliance, training, grievance mechanisms for reporting, documenting and following up on all human rights allegations that are reported in Freeport's area of operations.^{clxxxiii} Yet between July 2009 and February 2012, there have been a disturbing 15 fatalities and 56 injuries from shooting incidents within the company's project area, with apparently no action taken to try those held accountable. Furthermore, in 2011 there was a three-month strike due to allegations of labor rights violations and *"during the strike a fatality occurred as a result of a confrontation between police and strikers and subsequently another employee injured in the confrontation died from unknown causes. These deaths are currently under investigation by the Government of Indonesia."*^{clxxxiv} While the usage of a specific *human rights policy* is uncommon and more advanced than traditional CSR policies, Freeport's violations of its corporate policy highlight the contradictions between policy and practice for large extractive industry businesses.

5.1.4 Xayabouri Hydropower Dam

Since 2007, plans for twelve hydropower dams on the Mekong River's mainstream have been revived, or which eight are in Laos, two on the Thai-Laos border and two in Cambodia. The 1260 MW Xayabouri Dam in Northern Laos is the mainstream dam at the most advanced stage of development. The lead developer of the predominantly Thai consortium is Ch. Karnchang, Thailand's second largest construction company, with the proposed financiers of the US\$ 3.5 billion project being four Thai commercial banks.⁴⁶ 95 percent of the electricity generated would be exported to Thailand. The Xayabouri Dam would require the resettlement of approximately 2,130 people from ten villages in Lao.^{clxxxv} In addition, more than 200,000 people located near the dam would experience impacts to their livelihoods due to a loss fisheries, agricultural land, and riverbank gardens, and impacts to gold panning activities. The dam would irreversibly change the aquatic habitat and ecosystem of the Mekong River, for example by blocking fish migration between Luang Prabang in Lao PDR and Chiang Saen in Thailand, with potential wider impacts throughout the river basin.^{clxxxvi}

46 Project developers are Ch Karnchang (50%), PTT plc (25%), EGCO (12.5%). BKK Expressway (7.5%), and PT Construction and Irrigation (5%). Financiers are Kasikorn Bank, Bangkok Bank, Siam Commercial Bank, and Krung Thai Bank.

The project has been heavily criticized for proceeding first with preliminary construction work and resettlement activities, and then full construction activities, despite a lack of full and clear consensus with neighboring countries, an absence of consultation and agreement with riverside communities, and numerous shortcomings in the project design identified by civil society groups and academics.^{clxxxvii} Controversially, the Electricity Generating Authority of Thailand (EGAT) signed the project's Power Purchase Agreement (PPA) at the peak of the massive flooding in Bangkok, following an equally controversial letter issued by the Lao Government in July 2011 to Ch. Karnchang stating that it considered the Mekong River Commission (MRC)'s regional process complete. This, in turn, was stipulated by Thailand's National Energy Policy Council as a condition for EGAT to sign the PPA with Ch. Karnchang.^{clxxxviii}

Despite the controversy surrounding the project, the project's four Thai commercial bank financiers have not withdrawn or suspended their support even though each bank has made commitments to CSR such as identifying society and environment as an external stakeholder to be considered and requiring compliance with countries laws.^{clxxxix} Siam Commercial Bank, for example, states that it will *"conduct the bank's business with responsibility towards the society and with sensitivity when dealing with issues which are related to public interest..."* and *"abide by environmental laws and regulations, implement effective safety and environmental management measures to prevent negative impacts on local communities, and promote employees' awareness of and concern for the environment."*^{clxx}

Seeking to ensure cross-border responsibility of Thai investments in the case of the Xayaboury Dam, in August 2012 riparian communities from the North and Northeast of Thailand that would be affected by the dam submitted a case to Thailand's Administrative Court suing EGAT, the Thai Cabinet, and three other state entities – including Krung Thai Bank, which is majority state owned – over their failure to follow the Thai constitution before approving the PPA for the project. The raised concerns, derived from the potential project impacts on Thailand, are over the lack of a transboundary EIA and an incomplete public consultation in Thailand.^{clxxi} The court case was declared as not eligible for submission in early 2013.

As banks are in a very powerful position to influence decisions made by project developers, adherence to corporate social responsibility standards by banks could have a significant positive human rights and environmental impact. The Xayaboury Hydropower Dam illustrates the need for binding standards to be imposed on banks as existing voluntary standards are too easily disregarded.

5.2 The ASEAN Socio-Cultural Community (ASSC) and CSR

Whilst the ASEAN Economic Community (AEC) Blueprint details the main direction of economic integration and growth for ASEAN, promoting CSR is incorporated into the ASEAN Socio-Cultural Community (ASCC) Blueprint. This Blueprint, adopted on 1 March 2009, represents the human dimension of ASEAN cooperation and upholds ASEAN commitment to address the region's aspiration to lift the quality of life of its peoples.

It includes a program on CSR with the stated objective to “*Ensure that Corporate Social Responsibility (CSR) is incorporated in the corporate agenda and to contribute towards sustainable socio-economic development in ASEAN Member States.*” (ASSC Blueprint, section C.3)^{cxcii} The ASSC Blueprint states that the following actions will be taken up until 2015:

- *Develop a model public policy on Corporate Social Responsibility or legal instrument for reference of ASEAN Member States by 2010. Reference may be made to the relevant international standards and guides such as ISO 26000 titled “Guidance on Social Responsibility”;*
- *Engage the private sector to support the activities of sectoral bodies and the ASEAN Foundation, in the field of Corporate Social Responsibility;*
- *Encourage adoption and implementation of international standards on social responsibility; and*
- *Increase awareness of Corporate Social Responsibility in ASEAN towards sustainable relations between commercial activities and communities where they are located, in particular supporting community based development.*

On 6 October 2010, five ASEAN Member States – Singapore, Indonesia, Malaysia, Thailand and the Philippines – established the ASEAN CSR Network at the 2nd International Singapore CSR Summit. The ASEAN CSR Network aims to be “*a network of networks*”, with the objective to realize the ASSC Blueprint, develop a public policy model for ASEAN based on international social responsibility standards, and develop multi stakeholder engagement for holistic sustainable socio-economic development.^{cxci} Subsequently, in 2011, the ASEAN Foundation and ASEAN CSR Network signed an agreement to undertake the project ‘ASEAN CSR Network: Promoting Corporate Social Responsibility in ASEAN’. The ASEAN CSR Network was officially launched on 11 January 2011, with the original founding members, together with a partner organization from Vietnam.⁴⁷

The ASEAN CSR Network, in a policy statement on their website, state that businesses in the participating countries of the ASEAN CSR Network should be committed to:^{cxci}

- *Support and respect the protection of internationally proclaimed human rights;*
- *Make sure that they are not complicit in human rights abuses.*

The network also provides recommendations on the environment, labor and anti-corruption. The network derived its statement from the Global Compact and ISO 26000, and suggest that the Global Reporting Initiative (GRI) provides universal reporting framework and guidelines.

⁴⁷ Indonesia – Indonesia Business Links; Malaysia – International Chamber of Commerce – Malaysia; Philippines – League of Corporate Foundations; Singapore – Singapore Compact for CSR; Thailand - CSR Club of the Thai Listed Companies Association; ASEAN Foundation; Vietnam - Chamber of Commerce and Industry.

At the Seventh ASEAN Senior Officials Meeting on Social Welfare and Development on 22 September 2011 in Bangkok, when the Senior Officials discussed the strategies to implement the ASEAN Socio-Cultural Community (ASCC) Blueprint, the Senior Officials agreed that those recommendations of the Regional Workshop on ASEAN Action Plan on Corporate Social Responsibility (CSR) held on 19 September 2011 in Bangkok will be reported to the ASEAN Socio-Cultural Community (ASCC) Council.^{cxcv} The eleven recommendations included:^{cxcvi}

- *Set up a regional inter-sectoral platform to promote information sharing on CSR involving various ASEAN bodies, private sector and other stakeholders*
- *Promote the implementation of international standards for CSR (e.g. ISO 26000, UN Global Compact, Global Reporting Initiative) through the promotion of national CSR networks and ASEAN CSR Network as platforms for knowledge sharing and capacity building*
- *Encourage a shift on the CSR practices from a charity-based to human rights-based approach*
- *Recommend the ASCC Council to identify CSR focal points from ASEAN Member States who will act as contact persons in the implementation of Strategic Objective C.3. of the ASCC Blueprint and Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan 2 (2009-2015), with Action Plan on CSR acknowledged by the CSR focal points.*

Whilst the above initiatives are important steps in the right direction (as noted in Section 2.1), it is important to emphasize that the regional economic liberalization agenda, which is the main political emphasis in ASEAN, should not undermine mechanisms within ASEAN that pursue Corporate Accountability, rather than weaken legal safeguards with voluntary arrangements.

5.3 AICHR, CSR and Human Rights

In its role to promote human rights in ASEAN, AICHR is undertaking a baseline thematic study on Corporate Social Responsibility and Human Rights in ASEAN. The Terms of Reference for the baseline thematic study was adopted at the 5th meeting of AICHR on 25-29 April 2011 in Jakarta, although this document has not been released to the public.^{cxcvii} There is very little information in the public domain regarding the selection of the research team and the current status of the report. On 27 November 2012, the SAPA Working Group on ASEAN submitted a letter to the Chairperson of AICHR encouraging invitations to be extended to civil society to contribute towards the baseline thematic study and requesting details on the consultation process.^{cxcviii}

Civil society has sought to engage AICHR on this thematic study through several activities. The two public hearings that form the basis of this report, held in Jakarta in May 2011 and Bali in November 2011, provided 18 case studies of business, CSR and human rights (see Section 1.1). Indonesia's representative to the AICHR, Rafendi Djamin, who was the Chairperson of the Commission, attended the Jakarta public meeting. In addition, the Working Group for an ASEAN Human Rights Mechanism and other organizations held a workshop on this thematic area in Singapore on 30 November – 1 December 2012, which was attended by some AICHR representatives.^{cxcix}

6. Business and Human Rights: Emerging Best Practice

6.1 Global CSR Standards and Specific Sector Initiatives

Since the 1990s, the impact on human rights by poor business practices has become increasingly exposed. High profile cases have been extensively documented in the apparel manufacturing and extractive industries. More recently, a wider range of businesses – large and small, domestic and international – have been demonstrated to violate human rights.⁴⁸ There are, nowadays, hundreds of voluntary international standards for the private sector for ‘responsible investment’ – which arguably allows companies to pick and choose between more and less rigorous frameworks. Some of the most well-known voluntary standards that address human rights include: the Global Compact; the ISO 26000; and the Voluntary Principles on Security and Human Rights.⁴⁸ It is of note that some of the companies documented in this report violated human rights are signatories to some of these standards.

The Global Compact

Adoption/Entry into Force: Launched in 2000 by then-UN Secretary General Kofi Annan

Status: Since its official launch on 26 July 2000, the initiative has grown to more than 10,000 participants, including over 7,000 businesses in 145 countries around the world. It is a network-based initiative with the Global Compact Office and seven UN agencies at its core.⁴⁹

Global Compact Participants: Global Compact participants from the eighteen case studies submitted at SAPA’s two Public Hearings on CSR & ASEAN include: Newmont Mining Corp (2004), Daewoo Securities Ltd. (2006), and Korea Gas Corporation (2007).

Summary: *The Global Compact* is a voluntary CSR initiative that aims to gain the support of businesses in achieving the Millennium Development Goals (MDGs). The Global Compact requires that businesses should support and respect the protection of internationally proclaimed human rights, including the ILO Declaration on Fundamental Principles and Rights at Work and the principles of the Rio Declaration on Environment and Development.

⁴⁸ Other relevant standards include: ILO “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy” (1977); the World Bank Safeguard standards and the International Finance Corporation performance standards, which do not address Human Rights; and the Global Reporting Initiative, which focuses specifically reporting on CSR.

Weaknesses: Main weaknesses of the Global Compact are widely reported by organizations such as the Global Compact Critics. Criticisms of the guidelines include:

- Conceived as a forum of learning and dialogue, the Global Compact deliberately abstains from sanctions and other measures of control. Observance of the principles is not directly controlled. The only check on observance is the yearly progress reports, which are not subjected to further regulation and therefore compliance is generally weak.^{cciii}
- The participating businesses are not verifiably committed to the observance of social and ecological minimal standards, but they profit from the good name of the UN.
- For small and middle-sized businesses, the requirement to report annually is prohibitively labor-intensive and costly.^{cciv}

THE OECD Guidelines for Multinational Enterprises

Adoption/Entry into Force: First adopted by the OECD in June 1976, the guidelines have been revised 5 times since, most recently in May 2011.

Status: As of October 2012, 43 countries are party to the voluntary guidelines that cover TNCs operating in or from these countries and have established National Contact Points (NCPs).^{ccv}

OECD Guidelines for Multinational Enterprises: Out of the 34 OECD countries and additional 10 participants, there are seven participating countries with a total of nine companies from the case studies presented at SAPA's CSR & ASEAN Public Hearings. These include: Australia (OceanaGold Ltd), Canada (TVIRD), Italy (Italian-Thai Development Public Co. Ltd.), Luxembourg (Socfin), Japan (Asahi Kosei), United Kingdom (Archipelago Resources PLC), and the United States (Newmont Mining Corporation, Freeport McMoRan, and American Sugar Refinery Company).

Summary: *The OECD Guidelines for Multinational Enterprises*, an annex to the OECD Declaration on International Investment and Multinational Enterprises, include provisions on employment, human rights, environment, information disclosure, and combating bribery. The process establishes a "National Contact Point" (NCPs) responsible for promoting the guidelines, investigating complaints about TNCs, and facilitating a mutually agreed resolution to the conflict. OECD Watch, whilst noting that the guidelines have strengthened over time, highlight that weaknesses include: the guidelines voluntary nature limits effectiveness; a lack of confidence in complaints mechanisms and NCPs; limited follow-up and monitoring of recommendations; and no consequences for serious/repeated breaches.^{ccvi}

Weaknesses: In Ran Goel's publication entitled "*The Guide to Instruments of Corporate Responsibility: An overview of 16 key tools for labour fund trustees*," the major critiques against the OECD Guidelines include the following points:

- Lack of reference to international instruments: The Guidelines' failure to refer to instruments such as the ILO Conventions, the Rio Declaration or to the Universal Declaration of Human Rights. These instruments are only mentioned in the preface and create no obligation for multinational companies to respect their principles.
- Too minimal: Many in the academia and civil society see the Guidelines as representing only a 'floor' of acceptable corporate conduct.
- Too general and pertains only to multinational businesses: Some businesses have criticized the Guidelines as being too general to guide their day-to-day behavior and having the Guidelines only apply to multinational businesses.⁴⁹
- Weak investigatory, monitoring and reporting mechanisms: The OECD Guidelines fail to incorporate many of the operational aspects that civil society organizations perceive as essential for the credibility of CSR initiatives.
- Legitimacy gap: As a grouping of mostly industrialized countries, the OECD lacks the universal legitimacy of the UN.
- Problems with NCPs: Five years after the NCPs were created in 2000, NGOs and labor groups have found them to be unresponsive and unaccountable. This criticism extended to most NCPs, including those of Japan, Korea, US, Ireland and Spain. Moreover, the NCPs did not do enough to promote the Guidelines.^{ccvii}

International Organization for Standardization Guidelines for Social Responsibility (ISO 26000)

Adoption//Entry into Force: The International Organization for Standardization (ISO) first launched its International Standard on Guidelines for Social Responsibility (SR) on 1 November 2010.

Status: There are 111 member bodies of the ISO 26000, that participate and vote in technical and policy meetings. Additionally, there are 49 correspondent members and 4 observers.^{ccviii}

Summary: The ISO 26000 is intended for use by organizations of all types, including non-profit organizations, public and private companies, and governments.^{ccix} Although the standard is not intended to 'alter or in any way change the obligation of the state,' it is an important implication for international human rights that governments can be included as practitioners of social responsibility within this Standard. As a non-certifiable, voluntary guidance document the ISO 26000 provides best-practice examples and possible courses

⁴⁹ The OECD Guidelines do explicitly state that they can be equally applicable to domestic and multinational enterprises, although they are not applied in these guidelines.

of actions on the implementation of responsible management practices of various kinds of organizations. Core subjects of ISO 26000 include organizational governance, human rights, labor practices, the environment, fair operating practices, consumer issues with community involvement and development. These principles and core subjects specifically cover issues of complicity, discrimination, the position of vulnerable groups, labor rights and rights at work, environmental rights and sustainable resource use, resolving grievances, civil and political rights, as well as economic, social and cultural rights.^{ccx}

Weaknesses: Criticism of the ISO 26000 is that it is largely not intended to be interpreted as a 'standard,' 'guideline' or recommendation, and does not provide a basis for legal actions, complaints, defenses, or redress within domestic or international proceedings.^{ccxi} Within its scope, the ISO 26000 defines that it is not a management system standard and is not intended for regulatory or contractual use. As a result, it does not hold any legal purpose, and in its present form, will never be able to hold binding obligations or legal repercussions.

The Voluntary Principles on Security and Human Rights (VPs)

Adoption//Entry into Force: The Voluntary Principles were adopted in 2000.

Status: Seven governments (the United States, the United Kingdom, Norway, the Netherlands, Canada, Colombia, and Switzerland), 12 non-governmental organizations and 20 companies have joined the VPs.

Voluntary Principles on Security and Human Rights: Two out of the twenty companies who have agreed to the VPs are from the eighteen case studies presented at the CSR & ASEAN Public Hearings. They are: Freeport McMoRan Copper and Gold and Newmont Mining Corporation.^{ccxii}

Summary: *The Voluntary Principles on Security and Human Rights (VPs)* were formulated by the United States and United Kingdom governments, extractive and energy sector companies, and non-governmental organizations.^{ccxiii} The Voluntary Principles are nonbinding and offer guidance to companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law. The VPs cover three areas for which direction and guidance is offered: risk assessment, which proposes companies assess security risks and the potential for human rights abuses; public security providers, which advises companies to interact with public security providers in a way that promotes human rights and; private security providers which guides companies to similarly interact with private security providers (i.e. contracted security) in a way that respects human rights.^{ccxiv}

Weaknesses: Critics of the VPs note that because they are voluntary, there are no governance criteria in evaluating the irregular reporting mechanisms, and there is no establishment of a reliable reporting mechanism. Moreover, developing countries were excluded from the development of these principles, there is no third party observation and the ILO treaties have been excluded from these standards.^{ccxv}

International Finance Corporation Performance Standards (IFC Standards)

Adoption//Entry into Force: IFC Performance Standards were originally adopted in 2006, with later revisions entering into force on January 1, 2012.

Status: In addition to constituting the lending criteria for IFC operations, the Performance Standards are in use by over 70 international banks worldwide under the voluntary Equator Principles. In addition, more than 30 Export Credit Agencies of the member countries in the Organization for Economic Co-operation and Development (OECD) refer to the Performance Standards.^{ccxvi}

Summary: *The International Finance Corporation Sustainability Framework* comprises of IFC's Policy and Performance Standards⁵⁰ on Environmental and Social Sustainability, and IFC's Access to Information Policy. Unlike other guidelines mentioned in this report, the IFC Sustainability Framework provides mandatory standards that are binding to multinational corporations receiving support from the IFC.^{ccxvii} The IFC Standards establish a private regulatory framework in respect of labor and working conditions; environmental practices; workplace health & safety; community health, safety and security; land acquisition and involuntary resettlement; relations with indigenous communities; preservation of cultural heritage; transparency; and good governance of operations.^{ccxviii} In addition to the express guidelines of the IFC Standards themselves, adherents must meet the requirements of local and international laws in these areas, regardless of whether such laws are regularly or consistently enforced by local governmental institutions.⁵¹

Weaknesses: Reviewers find the IFC Standards more demanding than most, mainly because they are binding in their nature, and the 2012 addition to include Free Prior and Informed Consent (FPIC) was well received.^{ccxix} However, the recent additions to these revised standards (including FPIC) can only be applied to projects that undergo the initial credit review process after January 1, 2012. Furthermore, civil society is concerned over the lack of usage of human rights language in the standards, falling short of business due diligence requirements.^{ccxxiv}

There are also a large number of sector specific standards. These are not legally binding, although some civil society groups have found them useful points of reference for companies that have committed to them. Other civil society groups, however, are critical of these voluntary instruments claiming them to be ineffective and to legitimize business practices that remain unjust. Some sector specific standards of particular relevance to Southeast Asia are summarized below:

50 These policy and performance standards originated in relation to projects financed by the World Bank, but are now used by all financial institutions around the globe that have signed on to the "Equator Principles," with most recent revisions approved in January 2012.

51 In this way, the IFC Standards require a corporation to go beyond minimum compliance with laws and regulations in the conduct of their operations, where such laws and regulations fall below the IFC Standards.

- The Forest Stewardship Council (FSC) Guidelines for Agroforestry: FSC states that it provides certification for products from forests that meet its criteria for forest stewardship including compliance with laws, recognizing tenure and use rights, and responsibilities towards indigenous peoples and local communities.^{ccxxi} Civil society groups, such as the World Rainforest Movement (WRM), point out that globally large-scale monoculture plantations have had severe impacts on many indigenous and other local communities, are environmentally harmful and result the loss of natural forest, and the FSC guidelines are insufficient to prevent or redress these harms, and often legitimize destructive large-scale monoculture plantations.^{ccxxii}
- Extractives Industry Transparency Initiative (EITI): The EITI is an international standard that seeks to ensure revenue transparency of the extractives industry by requiring that companies disclose payments, governments disclose receipts of payments, and both are reconciled within an EITI report that is independently verified and reconciled.^{ccxxiii} Some civil society groups have been supportive of the EITI, given that under conditions of poor governance any improvement in transparency is welcome. On the other hand, a recent assessment by the NGO Focus on the Global South highlights that *"By limiting the discussion to transparency of government revenue and in-country company payments, EITI overlooks essential issues, from whether resource extraction is worth the human and environmental impacts, to how to distribute resource revenues."*^{ccxxiv}
- Hydropower Sustainability Assessment Protocol (HSAP): The HSAP is a sustainability assessment tool to measure and guide the performance of hydropower dams. It assesses projects at four stages of dam development – Early Stage, Preparation, Implementation and Operation – and provides an assessment of sustainability from the perspective of economic, social, environmental and technical criteria.^{ccxxv} The NGO International Rivers, however, has criticized HSAP for being voluntary, non-binding and without clear mechanisms for meeting with affected communities and civil society groups that could end up green washing destructive dams.^{ccxxvi}
- The Equator Principles (EP): The EPs are a voluntary set of standards for international banks for determining, assessing and managing social and environmental risk in project financing. The standards are based on the IFC Performance Standards (above). There are presently 73 Equator Principles Financial Institutions and 3 Associates,^{ccxxvii} no banks from ASEAN member states have yet committed to adhere to the EPs. Whilst valuing the EPs as a commitment, the BankTrack network that monitors the operations of the private financial sector have called on the EPs to strengthen transparency, accountability, effectiveness and compliance, and to adequately address the issue of climate change and human rights.^{ccxxviii}

In general, whilst the voluntary commitment of business to these standards can be viewed as positive, it is not sufficient to ensure sustainable and just outcomes. There remains a need for: government commitment to a strong legal system, independent judiciary, and rule of law; a strong and credible civil society in a monitoring role; free media to report human rights abuses without fear or favor; and public participation in project planning and, if public support is gained, in implementation. In other words, there needs to be a move from voluntary Corporate Social Responsibility to enforceable Corporate Accountability.

6.2 State Responsibility to Redress Human Rights Violations

International human rights law dictates several clear legal rules regarding the responsibility of States to protect and prosecute violations of individual human rights and freedoms. Through international law, States have a legal duty to ensure the effective protection of human rights through: the duty to prevent human rights violations; the duty to investigate alleged human rights violations; the duty to provide domestic remedies; the duty to prosecute those suspected of having committed them, and to punish those found guilty; and lastly, the duty to provide restitution or compensation to victims of human rights violations.

International law in its most basic form, defines a 'victim' of human rights violations as *"a person whose nationally or internationally recognized human rights and fundamental freedoms have been violated as a consequence of governmental acts or omissions."*⁵² In this definition, the violation of rights caused by individuals, collective groups (such as companies or corporations), or the State and government, are either a consequence of direct government action or a failure to protect rights of individuals from other actors.

The United Nations Human Rights Committee notes that from international law, State parties are obligated not only to *respect* human rights, but have also *"undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the State parties to enable individuals to enjoy their rights."*⁵³ In order to secure the enjoyment of guaranteed rights and freedoms to all persons within their jurisdiction, States are required to effectively investigate, prosecute and punish violations of individual rights and freedoms. In seeking remedies for human rights violations, the Universal Declaration of Human Rights states that individuals have *"the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*^{ccxxx} To be able to provide effective remedies, the authorities concerned must therefore be competent, independent and impartial. It is the responsibility of all judges, prosecutors and lawyers to ensure that claims of human rights violations are addressed effectively and with due diligence.^{ccxxx}

Cooperation between victims, local authorities who investigate, prosecutors and lawyers who present, and judges and juries who determine and punish violators is essential in order to effectively seek remedies. But in some situations, victims are hesitant to approach authoritative figures individually to report a crime, due to the close relationship with the third party or direct involvement of police, military and government in prompting these violations. A sense of trust that should have existed is betrayed, and often victims are too frightened or intimidated to seek redress.

52 Office of the High Commissioner for Human Rights. "Chapter 15: Protection and Redress for Victims of Crime and Human Rights Violations," from Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers. Retrieved 28 November 2012, from <http://www.ohchr.org/Documents/Publications/training9chapter15en.pdf>

53 See General Comment No. 3 (Article 2 – Implementation at the national level), in UN doc. HRI/GEN/1/Rev.5, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* (hereinafter referred to as *United Nations Compilation of General Comments*), p. 112, para. 1; emphasis added.

For States to comply with their obligations under international law, victims of human rights abuses must be able to access justice and obtain appropriate compensation or restitution. This cannot be achieved unless victims are able to seek redress without fear of reprisals.

Case Study 10: Anoma shrimp processing factory in Thailand

One successful example of cooperation between a local NGO, provincial authorities, ministries and departments, regional NGOs, was the November 2009 raid on the Anoma shrimp processing factory in Thailand's Samut Sakhon province, where 73 foreign trafficked workers, including 25 children, were rescued from horrific labor rights violations including eighteen hour work days seven days per week, no medical treatment, and no receipt of wages due to broker and factory fees placing workers in form of bondage and servitude. The local Labor Rights Promotion Network Foundation, who earned the trust of one trafficked worker who escaped the factory and reported what had happened, worked with members of a multidisciplinary team to plan the rescue and further prosecution. The multidisciplinary action team, equipped with expert members from immigration police, provincial authorities, the Department of Labor Protection and Welfare, government shelters and rehabilitation centers, and regional NGOs, devised a plan to raid the shrimp factory in order to save and protect victims of trafficking and prosecute offenders. On 10 March 2008 the raid was successful, and in following the multidisciplinary team's strategy, immediate assistance was provided for victims in shelters, perpetrators were arrested by police, and immigration officers and staff from the Department of Labor Protection and Welfare began fact-finding and interviewing victims, building a case against the offenders. In November 2009 the owner and manager of the Anoma shrimp factory were given prison terms – the first case in the province to punish someone with a prison sentence for a crime of labor abuse.^{ccxxxii}

6.3 Business and Human Rights: The Protect-Respect-Remedy Framework

The Universal Declaration of Human Rights (UDHR) was signed in 1948 at a time when the power of the state relative to corporations was comparatively greater. In an age of globalization, however, when the world's largest transnational corporation revenues surpass the GDP of many smaller countries, the balance of power has shifted. As a result, the expectation on business to demonstrate leadership in protecting human rights has also increased.

On 14th August, 2003, the UN Sub-Commission on the Protection and Promotion of Human Rights approved Resolution 2003/16 and adopted the Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.^{ccxxxiii}

These proposed norms essentially recommended the same range of binding duties and obligations of states under international human rights law directly on companies “to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights.” Whilst many civil society groups strongly supported the Draft Norms, business strongly opposed them. Subsequently, rather than adopt the Norms, in 2005, the UN Commission on Human Rights,⁵⁴ through Resolution 2005/69 mandated Professor John Ruggie as UN Special Representative on human rights and transnational corporations and other business enterprise to study the human rights responsibilities of businesses.

Professor Ruggie announced his “protect, respect, remedy” framework in June 2008, which the UN Human Rights Council adopted in 2008.^{ccxxxiii} Within the framework, the state holds a primary role to protect against human rights abuses by third parties, including business-related human rights abuses, through appropriate policies, regulation, and adjudication that prevent and address human rights violations. Business, meanwhile, has the responsibility⁵⁵ to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur. With regard to remedy, Professor Ruggie emphasizes the need for greater access by victims to both judicial and non-judicial forms of effective remedy.^{ccxxxiv}

In 2008, Professor Ruggie’s mandate was extended to June 2011 to operationalize and promote the framework. A subsequent report titled “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, Remedy’ Framework” was endorsed by the UN Human Rights Council on 16 June 2011.^{ccxxxv} As a follow-up to the work of Professor Ruggie when his mandate ended in 2011, the UN Human Rights Council adopted resolution 17/4 that entails: the formation of a five member working group to promote and disseminate the Guiding Principles; and an annual Forum on Business and Human Rights that will facilitate an annual meeting of Business, Government and Civil Society representatives.

While the Ruggie framework was seen as an admirable overview of the issues surrounding human rights and business, it fell short of the expectations of those who hoped it would address the large questions within the relationship between international law, human rights obligations and companies. Ruggie’s framework essentially identifies what already exists within the scope of the issue, and identifies gaps in protection mechanisms, but falls short of progressing or proscribing many of the large underlying questions including: Does international law impose human rights obligations (as opposed to merely expectations) on business, in addition to state? How far does the state duty to protect and provide remedies extend, and could a state violate its international legal obligations by failing to enact laws or declining to reduce barriers to accessing such remedies? And would international law ever *require*, rather than permit, a state to exercise extraterritorial jurisdiction over its own companies’ actions?^{ccxxxvi} Failure to answer these essential questions again places

54 The Commission on Human Rights was replaced by the UN Human Rights Council in 2006

55 The term “responsibility” rather than “duty” indicates that business does not hold an obligation under international Human Rights Law.

interpretation powers within the hands of the state, and there is no way to predict how policymakers and arbiters interpret the gaps identified within the “protect, respect and remedy” framework. Furthermore, Ruggie’s framework fails to answer the overarching question that given the enormous gaps in jurisdiction and enforcement that silence victims of corporate abuses today, how should the gap of impunity be closed if companies do not take their ‘responsibility to respect’ seriously?

Whilst business have responded favorably to the protect-respect-remedy principles and its accompanying guidelines and follow-up mandate,^{ccxxxvii} some civil society groups such as Human Rights Watch have urged for a stronger stance by calling for mechanisms that will carefully scrutinize how companies and governments apply the principles to oblige respect for human rights.^{ccxxxviii}

6.4 The Business Benefits of Upholding Human Rights

Some businesses seek to argue that an increased emphasis on corporate liability and policing human rights violations is “bad for business.”^{ccxxxix} More specifically, opponents of corporate liability have argued that litigation against corporations’ human rights conduct will drive corporations away from low income countries.^{ccxl} However, others argue that businesses do have an incentive to invest in low income countries with improved human rights conditions, as such conditions foster stability and long-term economic development. Furthermore, given the ever-increasing public pressure for businesses to meet international human rights standards, many large corporations seek to distance themselves from human rights violations, especially publicly listed corporations that are subject to close public scrutiny, to protect their brand’s reputation. For these types of businesses, further litigation towards corporations that violate human rights would be welcomed as it does not circumscribe their behaviour, but instead may benefit them with the creation of a more level playing field on which they can compete against businesses that do not face such scrutiny.^{ccxli}

Furthermore, several economic studies show that environmental protection and respect for civil liberties and human rights are associated with improved economic performance.^{ccxlii} One study conducted by the World Bank concluded that economic returns to projects were systematically higher in countries that had higher scores on indices of human rights and civil liberties.^{ccxliii} Hence, the recognition of corporate liability creates incentives for compliance with customary international law, promoting an environment that fosters economic development in low income countries.

Similarly, the argument that high standards for human rights erode low income countries’ competitiveness in attracting capital and economic activity are contradicted by empirical evidence on human rights and foreign direct investment (FDI). These indicators strongly suggest that foreign capital flows to countries that have respect for human rights. A study extensively examining the impact of human rights legislation on FDI concludes that:^{ccxliv}

Directly, respect for human rights reduces risk to FDI as it signals enhanced political stability and predictability within a host country and reduced corporate vulnerability to outcries by a socially conscious consumer public. Indirectly, human rights facilitate an environment conducive to the development of human capital, with foreign investors increasingly attracted to countries where they can draw upon high skilled labor.

In conclusion, further opening of the door to corporate liability would be bad for *bad* businesses. Yet allowing opportunities for redress functions as a complement to other mechanisms created to deal with human rights violations, such as regulation and taxation, would be of benefit for *good* business and the countries in which they operate. Regulations can prevent only some human rights violations from occurring and, in the absence of an “omniscient and omnipotent regulator,”^{ccxlv} persons and companies can cause harm to others. In such situations, strengthened corporate human rights law provides for victims the ability to seek redress. The awareness that such redress is available provides incentives for corporations not to engage in injurious behavior.^{ccxlv}

The analysis above indicates that recognizing corporate liability will not necessarily harm long term economic development of ASEAN countries. Furthermore, by recognizing corporate liability for environmental damage and human rights abuses in law, support is provided for other mechanisms that deal with human rights violations in an attempt to promote higher standards in human rights.

7. Conclusions: Corporate Accountability in ASEAN

This report has presented tens of human rights violations by large businesses in ASEAN, providing a snapshot of many more cases within the region documented by civil society groups in recent years. In each of these cases, the state failed to protect human rights and business failed to respect human rights. A wide range of human rights have been violated that include: the right to non-discrimination; right to effective remedy and accountability; economic and social rights; labor rights; the right to healthy and sustainable environment; civil and political rights; right to security of the person; and the rights of communities or groups, especially indigenous peoples. Those who are economically or socially marginalized with a comparatively weaker political voice are especially at risk of human rights violations.

In some cases local communities, often working with civil society groups, have sought justice and redress, cooperating with national human rights institutions where they exist. Despite occasional success, in most cases, neither the state nor business acted to meaningfully redress the human rights violations. The case studies demonstrate that the existing human rights system at the national and regional level for the protection and promotion of human rights requires substantial reinforcement, including addressing legal and institutional deficits for greater accountability of business.

The size and political power of business in ASEAN has grown significantly over the past couple of decades, reflecting business' centrality to economic growth in the region. The types of business either directly involved or complicit in human rights violations found in this report include domestic businesses, multi-national corporations originating from OECD and non-OECD countries, and transnational corporations, as well as other actors such as the financiers of these businesses. Companies have violated human rights directly, or via their contractual arrangements or other forms of partnerships with third parties, including state security forces.

Economic growth and human development are uneven both within and between countries in ASEAN, as are other measures of governance including rule of law, political rights, civil liberties, corruption and press freedom. On the whole, the ASEAN governments still privilege the pursuit of economic growth over building credible and effective national and regional human rights systems. This is revealed by the high level of political commitment to pursue the ASEAN Economic Community (AEC) by 2015 to further integrate and liberalize the region's economy, in contrast with the establishment of the ASEAN human rights mechanisms that remains toothless and lacks independence. Underlying these trends, the close relationship between state and business in many instances has resulted in unaccountable decision-making on controversial projects that have violated human rights. There is a need for increased transparency, accountability, and community, civil society and public participation.

Whilst the ASEAN region is one of the most biodiverse on the planet, host to 20% of the world's known plant, animal and marine species, the region's development model is in large part predicated upon exploitation of the environment. Under the increasing prevalence of market forces accentuated by the process of globalization, accelerating enclosure of common property natural resources – via land grabbing and water grabbing by companies and state – and the widening extent of agribusiness land concessions is eroding long-established approaches towards natural resources' ownership, management and use. Fragmented and polluted ecosystems, increasing forest and wetland loss, soil degradation, and fish stock depletion all threaten to undermine the ecological foundations upon which long-term sustainable development is built, in the process violating the right to a healthy and sustainable environment.

For the region to move towards a sustainable future requires a fundamental transformation of the region's business model. As exemplified in this report, respect for environmental rights should be core to this new business model. More broadly, decision-making by business and state should acknowledge and respect ecological limits, and follow the now well established principles of international environmental law (Section 4.5), for example the precautionary principle and the polluter pays principle. In recognition of the climate crisis, business operations must adopt due diligence principles in ensuring that their projects or operations will not contribute to global warming. Businesses must be conscious of their contribution to the production of greenhouse gasses.

Discrimination against indigenous peoples and marginalized groups remains apparent within ASEAN corporations and employment practices. Women remain the largest group facing discrimination in terms of employment opportunities and wage gaps. An increase in employment rates for women over the past decade has not been even throughout the region,^{ccxlvii} and despite the increase in the number of women entering the workforce and policies encouraging women into higher education, there is a lack of opportunities for women in careers traditionally meant for men.^{ccxlviii} New forms of discrimination are emerging in the region such as unfair treatment of both young and older persons, people with disabilities, those living with HIV/AIDS, and on the basis of sexual orientation. Limited access to education, training and resources, such as land or credit, further impairs these marginalized groups from equal opportunities for access in employment and work opportunities. This deprivation, which stems from discrimination in other aspects of their life, leads to higher levels of poverty and escalated tensions.^{ccxlix}

Whilst certainly not all business practices violate human rights and business itself is important to providing employment and economic growth – and can also promote and protect human rights (see Section 6.4) – the report has identified the need for significant improvement throughout the ASEAN region towards addressing human rights violations and environmental degradation by businesses. Many larger businesses have voluntary CSR policies on paper, but in practice these have not been implemented. The report concludes that voluntary CSR initiatives that are promoted by business itself – and by ASEAN state institutions – are insufficient, and a move towards the principles and practice of Corporate Accountability is necessary. Corporate Accountability emphasizes the need for legally binding and enforceable requirements upon businesses with regard to the protection of human rights as detailed in the core international human rights instruments, and meaningful redress where human rights violations are found to exist.

8. Recommendations

Corporate Accountability requires that business in its conduct respect human rights. To achieve this shift, the report offers recommendations to governments, business, ASEAN, and NHRIs. The executive summary provides the reports overarching recommendations. Sections 8.1-8.4 give detailed recommendations according to four thematic areas:

- Weak human rights system: Legal and institutional deficits that fail to protect and promote human rights (Section 8.1)
- State-Business Nexus: Addressing unaccountable decision-making in ASEAN (Section 8.2)
- Access to information and public participation: Addressing barriers to community, civil society and public participation (Section 8.3)
- Access to justice and redress (Section 8.4)

8.1 Weak Human Rights System: Legal and Institutional Deficits that Fail to Protect and Promote Human Rights

As this report has demonstrated, accelerated investment in the absence of good governance in ASEAN – including transparency, accountability, and rule of law and access to justice – is leading to the ill-regulated expansion of business practices that violate human rights and that cause the severe loss of natural resources upon which the majority of people in the region depend for their sustainable livelihoods. This includes, for example, cases of the extractive industries and agribusiness that have not only caused serious violation of human rights but also prompted massive takeovers of indigenous land, provoked conflict, displaced individuals without providing alternative livelihoods, and led to the destruction of the environment. Given this situation, this report strongly encourages and recommends the strengthening of national and regional legal frameworks to promote and protect human rights in the course of encouraging trade, investment and economic development.

Recommendations to Government

- **Ratify and incorporate international human rights norms and the principles of a human rights-based approach into domestic law and practice** to ensure the mainstreaming of international human rights law and standards.
- **Acknowledge the existing duty to promote and protect human rights and adopt a human rights-based approach within the State's jurisdiction.** This must be done in two ways: firstly, by observing and implementing national laws that are already consistent with international human rights law and standards; and secondly, by incorporating those that are not presently part of the national legal and political system, as recommended below:

- ∅ **Reform existing laws and policies.** Where laws or policies are found to be inadequate, incoherent or contradictory for effectively addressing the impact of business on human rights, these must be strengthened and promoted to inform business and relevant state agencies. Gaps in legislation pertaining to the protection of human rights must be identified and examined, both at the national and regional level, the latter safeguarding transnational accountability when human rights are violated across borders.
 - ∅ **Ensure that all laws passed towards business, such as corporate law and securities law, enables addressing the impact of business on human rights.** All national legislation, including corporate legislation, should be consistent with the human rights-based approach and with the State's international obligations to protect human rights. A full review of existing legislation and guidance should be carried out, and where necessary additional legislation and guidance introduced to ensure corporate legislation does not provide perverse incentives that could undermine human rights protection.
 - ∅ **Extend existing legally required assessment tools, such as Environmental Impact Assessment, Social Impact Assessment, Health Impact Assessment and Strategic Environmental Assessment, to incorporate evaluations for human rights violations.**
 - ∅ **Introduce and enforce corporate legislation requiring businesses domiciled in the State's territory to comply with national legislation and international human rights law and standards in all operations *including* operations overseas.** State borders present institutional, political, practical and legal barriers to corporate accountability and redress for victims of business human rights abuses. Currently, businesses are able to operate across State borders with relative ease, in contrast to victims of human rights violations who are subject to complex and inadequate cross-border judicial support. States should not only ensure they have legislation in place that covers businesses operating internationally but should also take steps to ensure victims of human rights abuses overseas are able to access national grievance mechanisms and judicial processes.
- **Introduce legislation requiring all businesses to undertake comprehensive human rights due diligence.** As Professor Ruggie states that "*the responsibility to respect is the baseline expectation for all companies in all situations*"⁵⁶ and "*to discharge the responsibility to respect requires due diligence,*"⁵⁷ it follows that all companies should carry out human rights due diligence particularly where there is a high risk of human rights abuses arising. By legally requiring due diligence, the State is proscribing the necessity of business to undertake due diligence with respect to human rights, furthering the promotion and protection of human rights. Examples of how the State can prompt healthy human rights due diligence by business include:

56 HRC/8/5 para 25.

57 HRC/8/5 para 56.

- ∅ A requirement by the State that businesses practice human rights due diligence before qualifying for finance or public procurement contracts from the State, list on the stock market, or benefit from trade and other incentives the State offers. This would further an immediate and important step towards mandatory due diligence for all companies.
 - ∅ Require mandatory business human rights due diligence in all relevant public-private contracts. Likewise, all potential impacts of such agreements should be thoroughly assessed before they are entered into (making due diligence a prerequisite for any public-private tender), with findings disclosed to the public and potentially affected communities. As the State cannot abdicate or relinquish rights abuses by contracted business, it remains responsible for any violations by businesses acting on behalf of the State; governments can minimize their potential exposure to liability for human rights abuses by solely engaging with businesses that practice human rights due diligence.
 - ∅ Full due diligence and respect for human rights should be demonstrated by the government through the model operation of state owned enterprises.
- **Legislate for and enforce appropriate penalties for business human rights violations.** Criminal or administrative penalties codified in law must be imposed on businesses that have violated human rights – including individual and collective rights on natural resources and the environment – or have been complicit in abuses perpetrated by others, in addition to any further legal measures within the power of the law. Not only does this ensure proper respect for and treatment of human rights, but it deters reoccurrence of such violations by businesses in the future. There are two steps required:
 - ∅ Ensure appropriate penalties are available in national legislation. Penalties may include sanctions, suspension of national stock exchange listing, and withholding access to public subsidies, loans, and procurement contracts.
 - ∅ Enforce the law.
- **Mitigate the consequences of economic development through establishing laws and policies that prioritize the use of natural resources in a way that preserves the rights of the communities to access these natural resources.** These policies should be derived from a participatory and human rights-based approach.
- **Enhance protection of the rights of specific groups, including women, children, migrant workers and their families, the LGBTQI community, and Indigenous Peoples:** Clear and specific rules and subsequent enforcement must be made in order to protect exposed, marginalized and other vulnerable members of specific groups. Action to ensure enhanced protection for the rights of specific groups include:
 - ∅ Incorporate within domestic national law relevant international law on the specific protections for marginalized groups. These laws should draw upon relevant international law, including the CEDAW, CMW, and CRC treaties and the UNDRIP. Both a gender perspective and special attention to persons living in vulnerable situations must be given, and is mandated by the UN Human Rights Council.

- ∅ Protecting the rights of vulnerable groups goes beyond simple protection within legal frameworks. Support must be extended to: improve the representation of specific groups in public and private boards, committees and trainings; fund programs that specifically aim to increase the role of marginalized groups in public and political life; commission and fund assessments on the situation of such vulnerable groups; implement a targeted campaign to improve the reported rates of discrimination in the workplace, for example of sexual harassment; and support legal representation for marginalized groups and increasing their access to courts and truth commissions.
- **Ensure clear communication of human rights law, the human rights-based approach, and the importance of respecting existing local practices and traditions to all levels of government and business.** Where necessary, the government provides guidance and training to businesses to ensure that they are fully informed of their responsibilities, obligations and prohibitions. The government should also ensure that its own staff are fully trained on and resourced to enforce the existing human rights protection laws and policies, and also the importance of recognizing the customary rights and traditional practices of local people in their work. Trainings must include: a full review of pertinent international human rights law and treaties; the working definition and scope of corporate human rights due diligence and expectations of corporate conduct; examples of violations and abuses to human rights; detail on punishment mechanisms for violators of human rights; the existing laws, policies and guideline on the rights of local and indigenous peoples; and appropriate mechanisms to seek redress.
- **Strengthen the independence, mandate, capacity and resources of existing NHRIs in Indonesia, Malaysia, Burma/Myanmar, Thailand and the Philippines:**
 - ∅ *High Quality Staff:* Attention to hiring high-quality appointed members and permanent staff is essential for the success of the NHRI. Individual members should possess requisite expertise, integrity, experience and sensitivity to adequately protect and promote human rights. Widespread representation of civil society is also required when hiring staff.
 - ∅ *Increased Powers:* Increase the powers of NHRIs through ensuring that NHRIs have the authority to: use conciliation, mediation and other alternative dispute resolution mechanisms, when appropriate, to resolve complaints; refer matters for prosecution; seek effective remedies, including when appropriate, through the courts; and the legislation statute of limitations should be ensured not to limit the ability of NHRIs to examine allegations of abuse by multinational corporations or within the state apparatus.
 - ∅ *Communication Channels for Prompting Further Education and Awareness:* NHRIs should have the full capacity to utilize various communication channels in order to disseminate information and educate regarding activities, reports, and other human rights studies. Dissemination techniques include:
 - § Trainings for government and other public officials about human rights norms and standards. Specific trainings for police, military forces, judiciary officials, legal professionals and other members of society that have particular powers and responsibilities relevant to human rights.

- § NHRIs must extend education towards victims and perpetrators of human rights abuses. Care should be taken in identifying vulnerable groups as they are unlikely to be reached through characteristic educational campaign mechanisms.
- § NHRIs should utilize mass media (TV, newspaper, radio, toll-free phone systems, internet, etc) in order to communicate with the public regarding their complaints process, remedies available, and further steps to seek justice for human rights abuses by businesses.

- **Establish NHRIs in ASEAN states where they do not yet exist.**
- **Implementation and enforcement of laws and policies should be regularly reviewed by the State in collaboration with civil society, NHRIs and other relevant stakeholders to ensure effectiveness.**

Recommendations to Business

- **Commit to Corporate Accountability through a publicly available policy:** Produce in-house policies detailing the company's commitment to respect human rights and a human rights-based approach in its business model, as relevant to the particular sector of operation.
 - ∅ Business commitment to rights protection should extend beyond compliance with domestic law alone to uphold international human rights law and standards – especially in ASEAN countries where existing laws and policies do not at present fully protect internationally recognized human rights.⁵⁸ The company's policy document should be publicly available and detail policy with regards to: the right to non-discrimination; right to effective remedy and accountability; economic and social rights; labor rights; the right to healthy and sustainable environment; civil and political rights; right to security of the person; and the rights of communities or groups, especially indigenous peoples.
 - ∅ Affected stakeholders within the business scope should be specified, and includes business upholding the rights of employees, local communities and other stakeholders. Measures for prevention, mitigation, and where necessary redress must be detailed.
 - ∅ The policy must be visibly endorsed by the board and senior management and actively communicated to all staff as well as other relevant external stakeholders, for example potentially affected communities, civil society, business partners, state agencies, and the public at large.
 - ∅ The policy should be further developed into operational procedures that are institutionalized into the business structure and operationalized, with clear responsibility allocated to relevant staff. Performance should be monitored with appropriate indicators and policy review undertaken regularly with revisions made where necessary.

⁵⁸ Internationally recognized rights include those delineated within UDHR, ICCPR, ICESCR, CEDAW, CAT, CRC, CMW, CPD, ICCPED, UNDRIP, and ILO treaties.

- **Undertake human rights due diligence assessments in all planned business operations, and make these assessments publicly available for review and comment.** The due diligence assessment constitutes a rigorous process for identification, prevention, mitigation and monitoring on proposed operations' potential impacts on human rights, and should be participatory, transparent and accountable. Given that circumstances may change over time, human rights due diligence assessment should be an ongoing process of re-assessment of potential and actual impacts to human rights.⁵⁹ A business approach to human rights due diligence must be:
 - Ø *Comprehensive and Inclusive:* Incorporation of all internationally recognized human rights, and acknowledgement of the universality, indivisibility and inter-relatedness of these rights;
 - Ø *Participatory:* Involving all stakeholders upon whom business makes an impact, and acknowledging all members of communities as rights-holders;
 - Ø *Focus on the largest need:* Prioritize business strategies and operations in terms of human rights risk and impact, not economic or other considerations;
 - Ø *Non-discriminatory:* Not excluding, prejudicing or discounting any individual or community and taking proactive measures to be gender-sensitive and fully inclusive of all minority perspectives, and the specific needs of vulnerable and marginalized groups (notably within ASEAN: women, children, migrant workers and indigenous peoples);
 - Ø *Accountable:* Being accessible to rights-holders, NHRIs, and governments, including adequate remedies should grievances arise at any stage;
 - Ø *Transparent:* Ensuring effective access to information for all rights-holders and that evidence of impact, either real, anticipated or possible, is shared with all those affected;
 - Ø *Cumulative in Understanding:* Integrate cumulative knowledge of understanding risk and impact in relation to human rights due diligence into the business enterprise allowing future human rights risk to be better anticipated, avoided or adequately remediated.
- **Require protection of human rights due diligence both in the company's own direct activity, and through associated operations.** Companies should conduct human rights due diligence assessments on supply chain partners, clients and other business and state partners. Businesses should use their leverage over clients to ensure human rights due diligence requirements are complied with. The due diligence principles listed above should be extended to include partnerships with other businesses involved in supply chain, distribution, and subcontracting.
- **Commit to the relevant industry sector standards,** but move beyond those that are not in full compliance with the principles of internationally recognized human rights (see section 6.1).

⁵⁹ See Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, Remedy" Framework, principles 17-21.

- **Respond to inquiries of Corporate Accountability and abuse.** Demonstrably cooperate with the investigation work of NHRIs, ASEAN, and international human rights mechanisms to promote and protect human rights threatened by business practices. Also cooperate with the inquiries of other relevant agencies of the state that address human rights violation, such as ombudsmen and anti-corruption commissions.
- **Train and motivate staff.** Ensure sufficient expertise and awareness within the business to ensure human rights due diligence. This expertise includes awareness of international human rights law, business accountability, and corporate redress mechanisms and procedures. Without training and building knowledge amongst staff on the company's policy on accountability and human rights, the policy will remain only on paper.

Recommendations to Commercial Banks (further to business above)

- **Commit to a human rights-based approach through a publicly available lending policy.** Develop issue policies for lending sectors that the bank specializes in. Draw on best practice standards where relevant and move beyond them where necessary.
- **Revise risk management tools and standard procedures to assess for human rights due diligence of borrowers.** Ensure that all businesses that the bank lends to have adequate capability to "know and show" that their business practices undertake sufficient human rights due diligence.
- **Evaluate the bank's lending portfolio.** Assess businesses for their compliance with international human rights law and standards and procedures for human rights due diligence. For businesses that fail to protect human rights, provide guidance for immediate redress and restitution. Withdraw the bank's support for businesses unwilling or unable to respect the principles of internationally recognized human rights.⁶⁰
- **Establish assessment procedures to validate businesses commitments to human rights protection.** Commit to check that borrowing businesses are implementing due diligence procedures through conducting site assessments of borrowing business practices.

Recommendations to ASEAN

- **ASEAN should adopt a clear set of regional standards for business and human rights that fully complies with international human rights norms and standards.**
- **Conduct an assessment of the ASEAN Economic Community (AEC) Blueprint for risk of human rights violation.** This assessment will ensure that ASEAN's regional economic development strategy reinforces rather than risks undermining the protection of human rights in ASEAN.

60 See Banktrack (2006) The do's and don'ts of Sustainable Banking for further details http://www.banktrack.org/download/the_dos_and_donts_of_sustainable_banking/061129_the_dos_and_donts_of_sustainable_banking_bt_manual.pdf (last accessed 18.1.13).

- **Adopt a Fourth pillar on the Environment in 2015.** ASEAN must adopt a fourth pillar on the environment in order to safeguard the environment and address projects with cross-border environmental and social impacts (such as dam projects, logging, mining and other extractive industries). This fourth pillar would provide a strong foundation for protecting and promoting human rights, including the right to a healthy and sustainable environment.
- **Ensure that all regional policies, especially on trade and investments, are in compliance with international human rights law and standards.** Collective action as a region will also communicate clearly and consistently to business the ASEAN governments' expectations on respect for human rights.
- **Respect and support the independence of the ASEAN human rights mechanisms.** Ensure independence of the AICHR and ACWC member state representatives during their term, and allocate further financial resources to AICHR and ACWC to strengthen its capacity, including the establishment of an independent secretariat. This would provide greater legitimacy to the ASEAN human rights mechanisms within ASEAN and beyond.
- **Move beyond achieving Strategic Objective C3 of the ASCC Blueprint on Corporate Social Responsibility to legally enforced Corporate Accountability.** Create a strong, transparent, accountable and adequately resourced regional platform for all actors including the state, business and civil society that promotes Corporate Accountability and redress mechanisms. Identify accessible national contact points from each ASEAN member state.
- **Facilitate best practice learning between member states.** Through forums, workshops and presentations, ASEAN can facilitate best practice learning on issues of Corporate Accountability, including: improving national human rights law; best practice in business human rights due diligence processes; and strengthening state redress instruments and enforcement mechanisms. ASEAN member states are encouraged to learn from one another in order to provide a more uniform application of regional human rights law.
- **Train and educate ASEAN Secretariat staff in human rights.** As promulgators for change, the ASEAN Secretariat has ample power to encourage leaders, governments and civil society to adapt a more favorable human rights framework. Trainings in international human rights law and standards, Corporate Accountability, and business redress mechanisms and procedures will help equip the secretariat staff to further human rights protection and promotion in ASEAN.

Recommendations to AICHR

- **Revise the ASEAN Human Rights Declaration (AHRD).** The AHRD should be re-drafted drawing upon the full body of human rights international law and standards, and include specific clauses and statements regarding the duty of the state to protect rights, and the responsibility of business to respect and be held accountable for rights violations. Only a strong declaration can provide a clear mandate for the future work of AICHR based on the universally accepted human rights principles, including on the rights of migrants, environmental rights (including right to access and protect

natural resources), and the right to self-determination. The AHRD should also clearly define baseline expectations of businesses' responsibility towards protecting and promoting human rights adopting a Corporate Accountability framework.

- **Push forward the “baseline thematic study on corporate social responsibility and human rights in ASEAN”:** Develop and make public the baseline thematic study on CSR and human rights. The report should assess the impacts of business on human rights in ASEAN countries, and make clear recommendations to ASEAN and its member states both at the regional and national level and undertake to monitor their implementation. The process of preparing the study should be transparent and participatory and consult with national and regional CSOs and human rights experts. Moving beyond voluntary CSR, the study should emphasize legally enforceable Corporate Accountability.
- **Reinforce AICHR’s work through partnership:** Build a close working relationship with the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) in order to reinforce commitments to protecting the rights of vulnerable groups.
- **Actively promote human rights with member states and business:** Build human rights awareness amongst the ASEAN member states, and call for state ratification of core international human rights instruments and incorporation into national legislation. This ensures a common basis for human rights norms across ASEAN, provides a consistent set of norms for businesses investing across ASEAN, and prevents a race to the bottom by dissuading investors that seek to exploit differentiated weaknesses in legal frameworks.

Recommendations to National Human Rights Institutions (NHRIs)

- **NHRIs should implement the Edinburgh Declaration on the Role of NHRI in Addressing Business and Human Rights**, adopted on 10 October 2010 at the 10th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Edinburgh Declaration calls for NHRIs to carry out work on promotion, education and research on business and human rights, monitor and document human rights violations by business, examine conditions of access to justice for all, and, using their quasi-judicial power to receive and investigate human rights abuses by businesses, assist victims of business-related abuse to seek redress and compensation, among others.
- **Identify contradictions in existing legislation relating to business that fails to protect – or undermines – human rights, and recommend to the government for their revision.**

- **Expand collaboration efforts between NHRIs:** The formation of the Southeast Asia National Human Rights Institutions Forum (between Indonesia, Malaysia, Thailand, the Philippines, Timor Leste and Burma/Myanmar) has provided regional cooperation and an advocacy platform for NHRIs. The role of this forum with regard to Corporate Accountability could be strengthened through: sharing of experience in addressing issues and cases of human rights violations by business; joint trainings and transnational workshops addressing adequate access to justice within NHRI states; and providing support in investigating and handling allegations involving neighboring citizen victims of human rights abuse.

8.2 State-Business Nexus: Addressing Unaccountable Decision-making in ASEAN

On the whole in ASEAN, the governments privilege the pursuit of economic growth over building credible and effective national and regional human rights systems. The importance attributed to economic growth places business as a politically influential actor. The close relationship between state and business in many instances has resulted in unaccountable decision-making on controversial projects that warrant attention and rectification, including through increased transparency, accountability, and community, civil society and public participation.

Recommendations to Government

- **Ensure an independent and free media.** Media and freelance journalists can unearth business abuses in cases of human rights violations and aid in investigations. In order to utilize this additional protective and preventative resource, journalists and the media must be protected by the law to conduct independent investigation, and be free to express opinions. Measures to ensure an independent and free media include protection for journalists and their sources, and access to the public – ensuring that articles written or recorded are able to enter the public sphere.
- **Protect and promote civil and political freedoms,** as provided for in international human rights law and standards, particularly the ICCPR, and ensure the protection of those who monitor the state, including civil society, human rights defenders, and whistle blowers.
- **Ensure rigorous national-level checks and balances.** These include an effective, accessible and independent judiciary, effective parliamentary oversight, a strong civil society, and clear space for public participation. Checks and balances may include requiring businesses to publish their campaign donations and election aid, and allowing for external cooperation with and guidance from UN bodies and regional organizations.
- **Implement policy and action to combat corruption.** Governments have the responsibility to ensure effective regulation of markets, protection of citizens, and enforcement of the law. Yet where regulation and independent oversight is weak, the risk of corruption grows. In order to provide effective regulation and combat corruption, governments must:

- ∅ Continue to refine laws so that loopholes cannot be exploited by business and ensure that new markets are adequately regulated. Addressing corruption in an increasingly global environment requires anti-corruption agencies, tax authorities and financial market regulators to cooperate more closely across borders.
 - ∅ Compliment punishment with a focus on sustainable prevention: Deferred and non-prosecution agreements as well as monitors and ethical blacklisting are examples of strategies that help prevent further corruption and enforce anti-corruption policies.
- **Establish or strengthen existing individual and group access rights to natural resources.** There are many undetermined, incomplete or currently unrecognized rights to access, use, and control over important natural resources for indigenous peoples and local communities, including local and global common property resources such as forests, water, fisheries, genetic resources and minerals. Improvements in state mechanisms to clarify the law and award ownership and access rights to natural resources is essential to furthering distinctions between business usage of land and extraction of resources in competition with local individuals and groups. In allocating access rights, communities' traditional rights to access natural resources upon which they depend for their livelihoods should not be undermined by business claims of ownership.
- **"People and environment before profit."** The state should have the responsibility to protect natural resources for the benefit of all citizens rather than for narrowly focused economic growth. In the process of developing development projects, the State must adopt a human rights-based approach and require businesses to inform all affected rights-based holders of the actual and potential impact on their environment and wellbeing. Full compliance with human rights obligations often threatened by development projects must be ensured, including the rights to food and other basic needs, the right to all peoples to freely dispose of their natural wealth and resources, and the right not to be deprived of their means of subsistence.
- **Ensure that Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), and other forms of investment incentive policies are drafted to reinforce – and do not undermine – national laws and policies on human rights protection.** This includes existing policy and law, and also government's potential intentions to revise or enact further human rights protection laws and policies in the future.

Recommendations to Business

- **Respect human rights at all times, including where the State fails to uphold its human rights obligations, and act to reinforce good governance rather than undermine it.**
- **Promote transparent anti-corruption practices.** All anti-corruption commitments should be public, binding and verifiable. The adopted anti-corruption policies that are implemented should be monitored and checked independently and key aspects of compliance reported on in a transparent manner through publicly available reports.

When a company discovers a breach in its regulation within its operations, its response should be proactive in disclosing policies and working with regulators to ensure compliance. Further actions to be undertaken by business to ensure anti-corruption efforts include:

- ∅ Adequately fund, strengthen and assess compliance and reporting efforts, including providing information on compliance systems, public policy engagement and company revenues and taxes.
 - ∅ Ensure due diligence by developing a strong process for selecting reliable partners with an emphasis on establishing anti-corruption safeguards, especially where local institutions are weak.
 - ∅ Set up support and reporting mechanisms for independent monitoring and verification of compliance. The reports prepared should be made available to the public, and would also encourage other businesses to strengthen their commitment to fighting corruption.
 - ∅ Organize broader stakeholder action and collaboration to engage in the development of related standards for transparency, accountability, and integrity to promote common effective approaches to address corruption practices.
- **Commit to ensuring fair representation of under-represented groups in consultation processes, development planning, and stakeholder engagement** (including but not limited to: women, children, indigenous groups, and migrant workers and their families). Identify vulnerable groups in society and where appropriate apply affirmative employment programs that can help ensure fair representation of vulnerable groups.
 - **Regular consultation with stakeholders including local organizations, human rights defenders, local communities, and government officials during the planning and operational phase of a project.** This consultation will monitor and evaluate compliance with human rights standards, providing evidence of good and bad practices that are to be shared with the public. This ensures a proper upholding of human rights, deters violations and potential conflict between the local community and business, and, through transparency, provides good practices and lessons learned for other companies to follow.

Recommendations to ASEAN

- ASEAN should work towards the development of an independent regional body capable of receiving complaints from individuals and groups and investigating human rights abuses by businesses, and imposing sanctions on businesses and States for failures to respect or protect human rights. As a first step towards this long-term goal, ASEAN should support and strengthen the mandate of AICHR. Other initial steps would include adopting regional standards, carrying out scoping studies and public consultations on what form any regional body should take, and developing a complaint mechanism.

8.3 Access to Information and Public Participation: Addressing Barriers to Community, Civil Society and Public Participation

Lack of access to information and public participation are presently serious barriers to the creation of an effective business and human rights framework in ASEAN. Civil society, communities, and the public are important stakeholders that must be included in decision-making processes, especially when business activities impact the lives and livelihoods of individuals. The public, civil society and communities can work to compliment the State and best business practices by applauding those companies that demonstrate sound human rights and environmental policies, and monitor and protest against those businesses that do not adhere to human rights standards.

Recommendations to Government

- **States must take measures to ensure that individuals and local communities affected by business projects have adequate participation and representation within the human rights and business framework.** This includes but is not limited to: their ability to represent themselves through freely self-chosen representatives or organizations; and the ability to organize freely as cooperatives, unions or associations to improve their access to wages, land rights, capital and other benefits. States must work to reinforce the bargaining power of individuals and local communities in order to equalize their relationships with business.
 - Ø Establish consultation forums or working groups that include local and national human rights organizations, local and national authorities, and company representatives. Sharing information on proposed business activities would ensure greater awareness amongst those who might be affected and prevent human rights violations. Responsible business practices on participation foster healthy relationships between companies and the local communities – mitigating conflict.
 - Ø Provide funding directly to civil society organizations working on human rights documentation and protection mechanisms, in order to increase participation from civil society, collect further information, create a transparent and cooperative environment between state and civil society, and raise national awareness regarding human rights issues.
- **States should develop and implement enforceable legislation setting out in detail the requirements for consultation on large scale development projects.** In many ASEAN countries, there is large uncertainty regarding the precise requirements of prior consultation with local communities concerning the execution of economic projects. Creation of clear and enforceable regulations, based on the principles of free, prior and informed consent and applicable to both businesses operating within the State and businesses domiciled in the State operating internationally, not only works to prevent human rights abuses but also promotes human rights. This regulation should be inclusive of existing rights for group rights – including indigenous and tribal peoples – and should at all stages take into account the potential impact of inequalities and access to resources that exist between different stakeholders. Some of these measures may include:

- ∅ State and company must verify that local state authorities have fully and freely informed the local population affected.
 - ∅ The local population should have **access to additional information** if necessary, and there should be **adequate time** for communities to review existing plans and subsequent alterations.
 - ∅ Local communities must be guaranteed the opportunity to verify information and express any reservations they may have.
 - ∅ All written agreements should be credible, transparent, fully implemented and agreed to by all parties involved.
- **Introduce legislation requiring public reporting by companies of all impacts of business operations on local people, livelihood and their environments.** This information should be made available in a comprehensive format not only to employees and consumers, but to government offices and citizens affected by corporate projects. Examples of this transparent accountability in upholding human rights through corporate reporting includes requiring transnational business to make public the same information as required in their home country to those in the countries in which they are operating or investing in (particularly in countries with lower health, safety, labor or environmental standards and workplace requirements).
 - **Increase awareness of Corporate Accountability and redress mechanisms.** Governments should develop public education programs and training workshops to empower citizens and employees with knowledge on Corporate Accountability, human rights, and redress mechanisms which may affect them and their communities. These programs should include the participation of State officials, local and national organizations, community leaders and business representatives, and should teach citizens how to access and interpret Corporate Accountability and human rights information (including how they can identify potential or actual violations on themselves and/or their communities) and provide information on redress procedures. Information should be accessible to all – in particular to the most disadvantaged and vulnerable groups – and available in a form and language that can be understood by everybody. Information campaigns on human rights and the rights-based approaches should be also initiated at all levels within the government in the judicial, law enforcement, social welfare and educational systems.

Recommendations to Business

- **Promote an inclusive and participatory approach to business and development** by informing and including local communities in business activities where populations are affected. Support mechanisms to enable the public to more actively participate in decision-making processes.⁶¹

⁶¹ One well-renowned set of such participatory recommendations is the Aarhus Convention (www.unece.org/env/pp/welcome.html).

- **Strengthen oversight and investigative capacity** of the business so that information can be researched and shared with the general public, in collaboration with governments and civil society. These measures include appointing investigations officers that work with the company's public relations unit in order to accurately report and disseminate information regarding projects, actions and measures undertaken by the business that affect communities, civil society and government.
- **Fortify relationships with and support research by local civil society organizations in order to promote transparency and Corporate Accountability, and disseminate information.** In addition to financial and technical support, businesses can provide invitations to civil society to observe operations and employee benefits and workers' rights, and interview potential victims of human rights abuse. By including civil society, a more transparent, cooperative and inclusive approach towards the protection of human rights can be achieved.

Recommendations to AICHR

- **Operate with full transparency, disclosure and public consultation.** These principles should equally apply to all key documents as identified in section 3.3, and the baseline thematic study on corporate social responsibility and human rights in ASEAN (see section 5.3).
- **Engage with civil society and other stakeholders.** AICHR should actively support the role of civil society as a monitor of human rights violations of business and states, including through providing ready access to AICHR and networking with human rights defenders throughout ASEAN. It should also regularly consult, communicate and cooperate with NHRIs.

Recommendations to NHRI

- **Provide information and guidance to governments and business on current and emerging issues witnessed and investigated by NHRI investigations.** These issues include: land grabbing; due diligence in supply chains; mega-industrial projects; extraction projects; freedom of expression and assembly; and protecting the right to privacy. By providing information and guidance on these current issues and emerging trends within the region, NHRIs can better provide States and business with recommendations and examples in developing domestic legislation and policies to better protect and promote human rights.
- **Encourage, utilize, and support investigation and reports from civil society.** This collaboration and support can take many forms, but includes: open communication between NHRIs and civil society; a reporting or complaint process that is streamlined into standard procedures; and utilization of civil society resources when requested. Civil society can assist NHRIs as both a watchdog and provider of background investigation on potential human rights violations.

8.4 Access to justice and redress

Perhaps the greatest challenge for the victims of human rights abuses by business is access to justice and redress. As presented in this report, there are many cases that illustrate the lack of effective remedies for victims of business-related human rights abuses, particularly when they take place in countries with weak governance. While certain legal avenues to seek reparation may exist in home or host countries, the legal and practical obstacles for victims are often so great that most victims lack access to an effective remedy. Difficulty in seeking justice is particularly acute for victims of abuse caused or contributed to by businesses incorporated overseas when victims cannot find access to a justice system either in the home or host state.

These recommendations are intended to address the issue of access to justice and the massive inequality between victims of business-related abuses and the means at the disposal of large businesses such as close relationships with the State or local authorities, inability of the law to hold businesses accountable, and bullying techniques utilized by the company to discourage victims seeking redress including intimidation and threatening, harassment and monetary suffocation. Appropriate avenues for redress not only provide victims with necessary compensation and remediation, but they further awareness about business-related human rights abuses, and ultimately lead to the prevention of further human rights abuses.

Recommendations to Government

- **Take appropriate measures, which may include judicial, administrative, or legislative means, to provide access to effective remedy and redress for those whose human rights have been violated.** This includes taking measures to investigate, punish and redress human rights abuses by business in accordance with international human rights law and standards, including the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁶² The UN Framework on Protect, Respect, Remedy states that “*Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.*” (Article 25).
- **Educate and inform the public of redress mechanisms.** It should not be presupposed that individuals within the state are educated and aware of the most appropriate avenue(s) to deal with their cases, under given circumstances. Currently, most individuals within ASEAN are not aware of their redress options (if any are provided)

62 See Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” Framework, principles 25-31.

and as a result, the State must take appropriate action to educate individuals within its borders about their rights and redress options. These education techniques include not only trainings and workshops, but paper, electronic and telecommunicated modes of dissemination. Informants and information officers who are available for consultation with the public regarding redress options and processes must be appointed. All forms of information disseminated regarding these redress mechanisms must be clearly explained in an accessible manner. Particular emphasis on redress awareness should be placed on reaching out to marginalized groups such as indigenous groups, migrant workers, women and children.

- **Operate transparently in ensuring justice is not simply done, but is seen to be done in order to build trust and credibility with the public.** Credibility of the system is built on the public's trust within the system. Priority must be given to safeguarding fair and impartial proceedings of alleged abuse. Transparency in open court proceedings in addition to open court records must be exercised in order to provide transparency within the judicial system. These include cases involving alleged state actors such as government officials and military personnel, as well as influential business actors.
- **Reform ineffective State systems of investigating and prosecuting business violations of human rights.** The complexity of corporate structures is often used to evade accountability.⁶³ Often these evasions act alongside the imbalance in power and influence between business actors and victims, with a significant impact on justice.
- **Stop criminalizing the legitimate activities of human rights defenders (in the context of investment projects).** States currently have a tendency, at times with strong support from businesses, to repress human rights defenders and organizations from reporting on and protesting the impacts of projects with significant economic interest. As demonstrated from the case studies presented in this report, repression has taken many forms, including attack, arrest, harassment, intimidation acts, statutory offences, extrajudicial killings, and other judicial proceedings. The legitimate activities of human rights defenders, as enshrined in the 1998 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms must be recognized, and protection must be offered to human rights defenders, including victims and informants who come forward and submit complaints of violations.
- **Cooperate with AICHR research and investigations:** Declare readiness and instruct all state institutions to cooperate fully with any thematic or country-specific studies or fact-finding and requests for information undertaken by the AICHR. Allow and facilitate country visits by the AICHR and its representatives, and ensure that

⁶³ Examples of corporate evasion strategies include: human rights violations committed by business-hired security forces, including those State forces contracted by businesses; foreign-owned companies or companies under contract with foreign-owned businesses who do not fall under jurisdiction of current national law; and the use of complex business structures in which business owners can avoid prosecution through limited liability.

individuals and groups are able to communicate human rights violations and other information to the AICHR freely and without being subjected to reprisal.

Recommendations to Business

- **Ensure access to independent grievance and redress mechanisms.** Independent grievance mechanisms are an important component of monitoring potential human rights violations through company activities. Independent mechanisms may include the appointment of independent human rights officers or sovereign committees trained and designed to effectively process complaints of human rights abuses. Independent monitoring systems must be utilized in order to bring credibility to the business, as well as provide external oversight for improvement in corporate operations, accountability and redress measures. The independent complaint mechanism should contain at minimum the following provisions that guarantee protection for victims seeking redress and grievances by a concerned company:
 - ∅ A statement of principles, standards, and implementing requirements of the company's accountability mechanism based on international human rights law and standards;
 - ∅ A statement of operating procedures, including timeline for responding, the structure of the company's accountability mechanism, and the responsible staff.
 - ∅ Assessment and dispute resolution functions that deals with the complaint elevated by the affected people; such functions must be performed with maximum transparency, clear scope and procedure and conducted in collaboration with the complainants and other concerned parties without force or intimidation. The use of dispute resolution must be provided as optional for the complainants who may decide to directly request an independent investigation of their case.
 - ∅ An independent investigative function that audits compliance with the applicable human rights standards and relevant national policies that inform the company's safeguards and accountability mechanisms.
 - ∅ Recommendatory function that outlines specific, binding and monitorable resolution and/or remedial action plan to the complaint agreed between the company and the complainants.
 - ∅ Monitoring function that inspects the company's compliance with the resolution and/or remedial action plan.
- **Insist that impunity is unacceptable by practicing a zero-tolerance policy on abuse and proactively remedy human rights violations.** When a company, subsidiary, contracted party or employee is found to have violated human rights, the company should immediately act to remedy the violation working with the State and affected people themselves. Furthermore, businesses must cooperate with the investigations of NHRIs, police, the courts and other relevant agencies, and include policy for providing compensation for damages.

- **Where national redress mechanism law falls short of protection and coverage, business practice can uphold higher standards, whilst encouraging governments to improve and apply higher standards.** Within the company, independent investigations can be conducted with appropriate redress mechanisms offered and, in instances of abuse, proper redress and reparation can be administered to victims.

Recommendations to ASEAN

- **Strengthen ASEAN human rights mechanisms towards a direct protection role.** ASEAN member states should enable AICHR, ACWC and ACMW to receive complaints on human rights violations from individuals, groups and member states, and engage with the state concerned (and where necessary with the business) to ensure that the violation is stopped and justice and reparations are provided to victims.
- **Engage with individuals and communities that have experienced corporate abuse.** Country visits and regional meetings should be designed to maximize participation from people who have experienced the effects of human rights abuse by business. This will not only help legitimize and ground ASEAN human rights mechanisms but will also provide a much-needed platform for the voices of victims.
- **Institutionalise support for the AICHR:** Allocate sufficient financial resources for the AICHR to strengthen its capacity, allow it to independently raise funds in addition to the support given by ASEAN, and enable it to establish and independently recruit staff for its own independent secretariat.
- **Allow space for the AICHR to work more independently and transparently:** Support and encourage the AICHR to finalise and publicise its institutional working procedures, enable it to make decisions independently without the need for approval from the ASEAN Ministerial Meeting, and be transparent and inclusive in carrying out its work.

Recommendations to NHRIs

- **Fulfill and strengthen the expected role of NHRIs in providing effective access to justice and remedy.** This can be done in the following ways:
 - Ø *Legitimization:* Demonstrate clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.
 - Ø *Accessibility:* Be known to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, marginalization, or fear of reprisal.
 - Ø *Reliable Procedure:* Provide a clear and known procedure with an indicated time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

- ∅ *Equitable*: Ensure that victims of abuse have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.
 - ∅ *Rights-compatible*: Ensure that outcomes and remedies accord with international human rights law and standards.
- **Broadly interpret NHRIs' existing powers with the view of enabling efficient and effective investigations into cases of alleged business human rights violations.** NHRIs' powers should be interpreted in a way that does not limit the types of actors involved (whether public or private) or site of violations (including in cases of violations by corporations registered under domestic jurisdiction but operating outside the country). The recent investigations of the National Human Rights Commission of Thailand of alleged human rights violations in Burma/Myanmar, Laos and Cambodia by Thai companies provides an important precedent and model for NHRIs in ASEAN (Case Study 2), in the event that the neighboring host country's government fails to protect human rights. By investigating cases of violations in third countries, and exploring transboundary opportunities for collaboration, NHRI's can provide further coverage and protection mechanisms for victims of human rights violation by business.
- **Ensure meaningful participation of alleged victims of human rights abuses and local representative organizations in NHRI work:** This could for instance include: conducting site visits emphasizing consultation with the local people; allowing victims of corporate human rights abuses to participate in NHRI sessions, workshops or trainings; and ensuring close cooperation with and participation of civil society organizations working closely with affected communities. These meetings, discussions and interviews would be of great importance to NHRIs in order to provide guidance on how to diffuse State human rights obligations. These consultations with victims would also serve companies in understanding the scope and meaning of their responsibility to respect human rights due diligence.

Appendix 1: Summary of Testimony Case Studies

<i>Right to Security of Person</i>	<i>Economic and Social Rights</i>	<i>Labor Rights</i>	<i>Civil and Political Rights</i>	<i>Rights of Communities or Groups, especially Indigenous Peoples</i>	<i>Rights to an Effective Remedy</i>	<i>Right to Healthy and Sustainable Environment</i>
Didipio Gold and Copper Project (Philippines) TVIRD Mining Operations (Philippines) PT Nusa Halimuhura Minerals (Indonesia) PT Nusa Halimuhura Minerals (Indonesia) PT Freeport (Indonesia) Shwe Gas (Myanmar) Koh Kong (Cambodia) Koh Kong (Cambodia) Xayaburi Dam Project (Laos) Asahi Kosei (Malaysia) Bousra (Cambodia) Sneoul (Cambodia) Chrop (Cambodia) Ohrop (Cambodia)	Didipio Gold and Copper Project (Philippines) TVIRD Mining Operations (Philippines) PT Nusa Halimuhura Minerals (Indonesia) PT Freeport (Indonesia) Shwe Gas (Myanmar) Koh Kong (Cambodia) Xayaburi Dam Project (Laos) Nam Mang 3 (Laos) Asahi Kosei (Malaysia) Bousra (Cambodia) Chrop (Cambodia) Laos-Indochina (Laos)	Asahi Kosei (Malaysia) [Additional case studies in report drawn from documented cases]	Didipio Gold and Copper Project (Philippines) PT Freeport (Indonesia) Shwe Gas (Myanmar) Koh Kong (Cambodia) Bousra (Cambodia) Sneoul (Cambodia)	Didipio Gold and Copper Project (Philippines) TVIRD Mining Operations (Philippines) Bousra (Cambodia) Sneoul (Cambodia) Chrop (Cambodia)	Didipio Gold and Copper Project (Philippines) TVIRD Mining Operations (Philippines) PT Nusa Halimuhura Minerals (Indonesia) PT Newmont Minahasa Raya (Indonesia) PT Nusa Halimuhura Minerals (Indonesia) PT Freeport (Indonesia) Shwe Gas (Myanmar) Asahi Kosei (Malaysia) Bousra (Cambodia) Sneoul (Cambodia)	Didipio Gold and Copper Project (Philippines) TVIRD Mining Operations (Philippines) PT Nusa Halimuhura Minerals (Indonesia) PT Freeport (Indonesia) Shwe Gas (Myanmar) Koh Kong (Cambodia) Xayaburi Dam Project (Laos) Nam Mang 3 (Laos) Bousra (Cambodia) Sneoul (Cambodia) Chrop (Cambodia) Laos-Indochina (Laos)



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Corporate Accountability in ASEAN: A Human Rights-Based Approach assesses the impacts of business on human rights in the ASEAN sub-region. Originating from cases presented at two public hearings organised by civil society groups in 2011 in response to the ASEAN Intergovernmental Commission on Human Rights (AICHR)'s undertaking of a thematic study on the topic of "corporate social responsibility" (CSR) in ASEAN, this report documents cases of human rights violations in relation to business activities in the sub-region, and demonstrates that voluntary CSR initiatives promoted by businesses – and by ASEAN institutions – are insufficient.

It calls for a move from the CSR approach towards principles of Corporate Accountability, which emphasises, among others, the need for legally binding and enforceable requirements upon businesses with regard to the protection of human rights in accordance with international human rights norms and standards, and for meaningful redress for human rights violations.

This publication has been made possible with the generous support of

