THE DANISH INSTITUTE FOR HUMAN RIGHTS

CASE STUDIES: ACCESS TO REMEDY IN THE CONTEXT OF CORPORATE TRANSBOUNDARY HUMAN RIGHTS IMPACTS IN THE ASEAN REGION

SEPTEMBER 2024

These case studies were collated to inform the AICHR-SEANF workshop on 'Sharing Good Practice and Effective Remedy for Migrant Workers in Business and Human Rights in ASEAN', 24 September 2024, Bangkok, Thailand.

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The Danish Institute for Human Rights (DIHR) is Denmark's National Human Rights Institution (NHRI), with a mandate to promote and protect human rights and equal treatment in Denmark and abroad.

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The Danish Institute for Human Rights,
Wilders Plads 8K, DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

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1. INTRODUCTION

These case studies have been collated by the Danish Institute for Human Rights (DIHR) as part of an EU-funded project to support the ASEAN Inter-governmental Commission on Human Rights (AICHR). The project is expected to contribute to the fostering of a culture of respect, protection, and promotion of human rights across Southeast Asia and ASEAN countries in collaboration with the AICHR.

These case studies draw on publicly available material and interviews by conducted by the DIHR.

The objective of these case studies is to share experiences between ASEAN member states, national human rights institutions (NHRIs), businesses and other actors, and inspire action to provide access to remedy in relation to corporate transboundary human rights impacts in Southeast Asia and ASEAN countries.

The case studies highlight challenges that victims face in accessing remedy due to the transboundary nature of the cases, the involvement of more than one government, and in some cases, the lack of regional regulation or cooperation. As such, they highlight the need for increased attention by States and businesses to ensure that victims of corporate transboundary human rights abuses have access to effective remedy mechanisms.

Due to the legal developments on human rights and environmental due diligence in the EU and other jurisdictions (see section 2.5), there is likely to be an increased focus on human rights and environmental due diligence in the coming years in the ASEAN region from other jurisdictions and businesses looking to ensure coherence and consistency, including in the context of access to remedy for corporate transboundary human rights impacts.

2. ACCESS TO REMEDY

International human rights law recognises the victim's right to:

a) "Equal and effective access to justice;
b) Adequate, effective and prompt reparation for harm suffered;
c) Access to relevant information concerning violations and reparation mechanisms."[1]

There is a both a procedural and substantive aspect to remedy. This includes processes and procedures through which allegations can be raised. It also includes the substantive outcomes and forms that remedy can take, which includes:

- "Restitution: measures to restore an affected person or group to their original situation before the harm occurred (e.g. restoration of employment or return of property)
- Compensation: measures to compensate for harm that can be economically assessed (e.g. physical or mental harm, or loss of earnings)
- Rehabilitation: measures to facilitate a person's recovery from harm, which may include medical or psychological care as well as legal and social services
- Satisfaction: measures that may include cessation of a continuing abuse; an apology, including acknowledgement of the facts and acceptance of responsibility; declarations restoring the dignity, reputation and rights of affected stakeholders; judicial and administrative sanctions; and symbolic remedies, such as commemorations
- Guarantees of non-repetition: measures to avoid the recurrence of similar harms in the future (e.g. injunctions or changes to laws, policies or corporate practices)."[2]

The UN Guiding Principles on Business and Human Rights (UNGPs) articulate what remedy entails in the context of business-related human rights abuses.

2.1 THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UNGPs were unanimously endorsed by the UN Human Rights Council in June 2011 and are the first universally accepted international framework on business and human rights.[3] The three-pillar framework of the UNGPs articulates the respective duties and responsibilities of States and businesses vis-à-vis human rights, reiterating the State duty to protect, outlining the business responsibility to respect, and articulating the roles of both States and businesses in ensuring access to effective remedy for business-related human rights harms.

The UNGPs articulate that States can implement them through a smart mix of hard and soft measures. In the ASEAN Region implementation has been achieved through the development and implementation of national action plans on business and human rights, through domestic legislation in relation to business and human rights related matters and sectors such as migrant labour, fisheries and the environment, and awareness raising on the UNGPs and access to remedy for businesses in the region.[4]

The UNGPs state that "[a]s part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy." The UNGPs envisage three types of mechanisms to provide access to effective remedy in business-related human rights abuses:

- State-based judicial mechanisms (e.g. courts);
- State-based non-judicial grievance mechanisms (e.g. NHRIs and National Contact Points for Responsible Business Conduct);
- Non-state-based grievance mechanisms (e.g. company-based operational grievance mechanisms).

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

NATIONAL HUMAN RIGHTS INSTITUTIONS

An NHRI is an autonomous body established by the State, with a constitutional or legislative mandate to promote and protect human rights. The Paris Principles set out how NHRIs should operate, and NHRIs are accredited in how they comply with these.[5] In 2010, NHRIs adopted the Edinburgh Declaration which considers ways that NHRIs can engage with business and human rights issues[6] (supplement by a Statement in 2024).[7] This can include through:

- Monitoring and documenting violations of human rights by businesses;
- Handling complaints by victims of corporate related human rights abuses (where they have a mandate to do so);
- Mediating between different stakeholders and supporting victims seek remedy.

The UN Working Group on Business and Human Rights has highlighted the crucial role of national human rights institutions in facilitating access to remedy for business-related human rights abuses.[8] The NHRIs in the ASEAN region coordinate activities through the Southeast Asia National Human Rights Institution Forum (SEANF).[9] Three of the case studies in Section 3 highlight the work of NHRIs to address corporate transboundary human rights impacts in the ASEAN region.

NATIONAL CONTACT POINTS FOR RESPONSIBLE BUSINESS CONDUCT

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines) are a set of recommendations addressed by states adhering to the OECD Declaration on International Investment and Multinational Enterprises to multinational enterprises operating in or from these States.[10] The OECD Guidelines mandate that adhering governments set up National Contact Points for Responsible Business Conduct (NCPs) to promote awareness and uptake of the Guidelines, including by responding to enquiries and contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.

Specific instances are complaints that can be submitted to an NCP by any individual or organisation with a legitimate interest in reporting that a business, operating

in or from the territory of the country of the NCP, has allegedly not observed the OECD Guidelines. The OECD maintains a central searchable database of all specific instances.[11]

A number of specific instances have been received by NCPs regarding business activities in ASEAN member states. In 2018, the NCP of Germany received a complaint alleging non-compliance with the Guideline by Adidas when it "did not adequately use its leverage, as a buyer in relation to alleged anti-union behaviour, layoffs, and wage matters that took place in January 2012 at a factory that operated as a subcontractor for the respondent's main shoe manufacturing partner in Indonesia." The NCP facilitated mediation and "[w]hile the issues concerning wages were resolved, no agreement could be reached concerning the allegations dealing with the alleged freedom of association violations." The NCP continued with the complaint and in its final statement in 2020 "recommended that the company review its reporting and complaint channels in the context of freedom of association and that the submitter could contribute to the company's recommended review of its due diligence procedures." The NCP published a follow-up statement in 2021 on progress made by the parties, highlighting that the complainant "provided proposals for the company to enhance its reporting and complaint channels. The company developed activities in response to two proposals, including the modification of its reporting channels."[12]

NON-STATE-BASED GRIEVANCE MECHANISMS

THE EXAMPLE OF THE EUROPEAN INVESTMENT BANK (EIB)

EIB is the lending arm of the European Union and directs EU development finance, including in the ASEAN region. The EIB has a complaints mechanism (EIB-CM) which can receive complaints about compliance of EIB Group projects and activities with EIB policies and procedures, including EIB´s Environmental and Social Sustainability Framework, which includes human rights topics.[13] The EIB-CM can propose corrective actions, facilitate alternative and pre-emptive resolution of disputes between complainants and the EIB Group, and monitor implementation of decisions.[14]
Complaints can be received in relation to:

- Environmental degradation
- Threats to community health and safety
- Involuntary resettlement
- Access to information
- Consultation on projects or policies[15]

The complaint mechanism has received three complaints related to investments in the Lao People's Democratic Republic. A complaint in 2016 related to investment in the NAM THEUN 2 Hydroelectric Project.[16] Complainants alleged, inter alia, that the bank failed to:

1. Properly report on the results and impacts of the project to the European Commission, the European Parliament, the Council and the public
2. Comply with transparency requirements
3. Failed to ensure project's compliance with environmental and social standards of the Bank, including respecting human rights[17]

In this case, the EIB-CM found the EIB had complied with its transparency requirements, but that "the delay of the EIB's reply [to a disclosure request] could not be justified."[18] The EIB-CM also concluded in this case that "the EIB has been in broad compliance with its policies and procedures".[19]

THE EXAMPLE OF THE JAPAN CENTER FOR ENGAGEMENT AND REMEDY ON BUSINESS AND HUMAN RIGHTS (JACER)

The Japan Center for Engagement and Remedy on Business and Human Rights (JaCER) is a non-judicial platform for grievance redress. It focuses on promoting responsible business conduct and addressing human rights issues within the context of business activities, including outside of Japan.

JACER provides a platform for dialogue, engagement, and remedy between businesses and stakeholders, including local communities and workers, to ensure that human rights are respected and protected by Japanese companies. JACER is a member-based organisation of Japanese companies to provide grievance redressal in line with the UNGPs. Members have to sign a Code of Conduct.[20]

JaCER does not resolve grievances itself, but through its 'Engagement and Remedy Platform' grievances can be reported in Japanese and English through an online form regarding cases of human rights violations in relation to member companies' own operations and their supply chains.[21] Once complaints have been received, JaCER notifies the concerned company of the grievance and then supports and promotes redressal of grievances by the company.[22]

A list of all grievances received by JaCER is published on its website and updated regularly. The list includes information on the date the grievance is received, the type of claimant, the sector, the type of grievance (what type of rights are concerned), progress on the case and if applicable, how it has been resolved and when the complaint is closed.[23]

JACER's main activities include:

- Mediation and Dispute Resolution: JaCER offers mediation to resolve disputes related to business and human rights.
- Training and capacity building: JaCER provides training programs and resources to businesses on how to integrate human rights considerations into their operations.
- Research and Advocacy: JaCER conducts research on business and human rights issues and advocates for policy changes to improve human rights practices by the private sector.
- Stakeholder Engagement: JaCER facilitates dialogue and engagement between businesses, civil society organizations and other stakeholders to promote collaborative approaches to human rights challenges.

By focusing on these areas, JaCER aims to foster a business environment in Japan that respects human rights and is responsive to the needs and concerns of affected communities and individuals.

In 2017, the UN Working Group on Business and Human Rights unpacked the concept of access to effective remedies under the UNGPs, highlighting that "[a]ffected rights holders should be able to claim what may be termed a "bouquet of remedies" without fear of victimization."[24]

Access to effective remedy is a core component of the UNGPs. Yet, in 2017 the UN Office of the High Commissioner for Human Rights (OHCHR) noted that "[p]eople who have suffered adverse human rights impacts as a result of business activity continue to face multiple and serious barriers to remedy. These include legal, financial and practical barriers to accessing judicial and non-judicial mechanisms." In 2021, the UN Working Group on Business and Human Rights published a Roadmap for the Next Decade of Business and Human Rights, highlighting the continued need to strengthen access to remedy.[25]

OHCHR ACCOUNTABILITY AND REMEDY PROJECT[26]

With a view to overcoming the challenges faced by victims in gaining access to effective remedies, the Office of the United Nations High Commissioner for Human Rights launched the Accountability and Remedy Project. The project has resulted in numerous reports identifying (i) key challenges in relation to each type of remedial mechanism referred to in the UNGPs and (ii) recommendations for improving the effectiveness of such mechanisms. Additionally, the OHCHR has proposed model terms of reference States can use to review the scope, functions and effectiveness of these mechanisms within their jurisdiction. In its 2022 report from the project, OHCHR made a number of recommendations on how to ensure issues of remedy are properly integrated.

The UNGPs note that particular attention should be paid to the needs of people who may be at risk of marginalisation when considering access to remedy. Groups of persons or individuals who may face additional barriers to accessing remedy include, amongst others, children,[27] women, indigenous peoples, persons with disabilities and individuals belonging to ethnic or other minorities in certain contexts, such as migrant workers.

Migrant workers often experience marginalisation in society and therefore may have less trust in judicial mechanisms as a tool to obtain remedy.[28] Factors preventing migrant workers from obtaining effective remedy could be practical, such as cultural and linguistic barriers, as well as fear of reprisals.[29] Therefore, considering the profile of migrant workers in the design of remedy mechanisms is important, considering aspects like language. An example of empowerment of migrant workers in knowing their rights and how to access remedy mechanisms is the JustGoodWork Malaysia app, an application that provides migrant workers with accessible information on their rights and can help them in deciding what advice and support they need and who to approach for help.[30]

The UN Working Group on Business and Human Rights produced a report in 2019 on taking a gender lens to the UNGPs. This report highlighted that women face additional barriers in seeking access to effective remedies. Moreover, because of intersecting and

multiple forms of discrimination, they may be affected differently by business activities when, for example, they are also migrant workers. The report notes that gender-transformative remedies should:[31]

- Offer a range of preventive, redressive and deterrent remedies
- Engage women's organizations and gender-sensitive experts to identify appropriate remedies
- Address both specific and systematic abuses affecting women
- Propose remedies that could change discriminatory power structures and reduce violence against women
- Engage with Governments and other stakeholders to reform discriminatory laws

In addition, the OHCHR has highlighted a number of aspects to consider to ensure a gender-sensitive approach to access to remedy, including for example:

- "Methods of communication between affected stakeholders and the mechanism (For instance, do women have the same access to and proficiency in communications technologies as men?)
- Modes of engagement (Are there contexts for engagement and discussion that women, girls, non-binary persons or LGBTI+ persons may not have full access to, or trust in, perhaps for reasons that derive from gender stereotyping or discriminatory laws or interpretations of cultural norms?)
- The need for personal attendance at hearings, and the hours during which hearings are scheduled (Might requirements to appear in person at certain times of the day exclude women or others who cannot get time off work, or who have caring responsibilities which have been imposed upon them as a result of gender stereotyping?)
- The extent to which women, girls, non-binary persons and LGBTI+ persons using the mechanism may be subject to risks of retaliation and stigma, the particular forms this can take (e.g. sexual or gender-based violence, harassment or threats, victim-blaming narratives or social marginalization) and differences in the social and economic consequences of retaliatory behaviour (which, in the case of women, can be particularly long-lasting and severe)
- The extent to which the outcomes of grievance processes will address the needs of women, girls, non-binary persons and LGBTI+ persons in particular
- The material scope of admissible grievances, the standards of proof and the type of evidence required
- Ensuring that grievance mechanisms and remedies are not based on and do not reinforce gender stereotypes, including in relation to women, men and non-binary persons."[32]

2.2 TRANSBOUNDARY HUMAN RIGHTS IMPACTS

Transboundary impacts refer to environmental, social, or economic effects of a project, activity or event that cross national borders. These impacts can affect neighbouring countries and regions and often require international and/or regional cooperation and coordinate to manage and address the adverse impacts.

Transboundary impacts include environmental pollution that originates in one country but spreads to another, biodiversity loss, and climate change effects, which in turn have human rights impacts. It can also include impacts migrant workers face when they migrate from one country to another to seek employment.

Transboundary human rights impacts can be caused by the activities of States. However, many are caused directly and indirectly by businesses; as employers of migrant workers in their own operations or value chains,[33] or industries that are emitters of air pollution such as the manufacturing and power generation sector.

In the ASEAN region transboundary impacts are prevalent in relation to environmental issues such as water pollution; for example, the Mekong River flows through several countries in the ASEAN region and faces pollution and other impacts from industrial activities, agriculture and dam construction, impacting water quality and fish species. Other examples include air pollution (see case study 2) and climate change effects (see case study 3).

The WHO noted in 2023 that "[c]limate change is directly contributing to humanitarian emergencies from heatwaves, wildfires, floods, tropical storms and hurricanes and they are increasing in scale, frequency and intensity. The WHO further highlighted that "[r]esearch shows that 3.6 billion people already live in areas highly susceptible to climate change. Between 2030 and 2050, climate change is expected to cause approximately 250 000 additional deaths per year, from undernutrition, malaria, diarrhoea and heat stress alone."[34]

The Internal Displacement Monitoring Centre 2024 Global Report on Internal Displacement notes that "[s]torms accounted for 53 per cent of the disaster displacements recorded in East Asia and Pacific in 2023 at 4.8 million. Floods accounted for 39 per cent or 3.5 million. Most movements in the first quarter were triggered by floods in south-east Asia and storms in the Pacific. East Asia's typhoon season by mid-year triggered further displacements."[35]

The climate emergency is leading to more severe typhoons and hurricanes which aggregate the other- climate and pollution related human rights impacts. The 2018 UN Framework Principles on Human Rights and the Environment set out the human rights obligations of States relating to the environment. The UN Framework Principles also state, inter alia, that: "businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute".[36]

In addition, the Covid-19 pandemic has increased the vulnerability of migrant workers and the human rights impacts they face. According to the ILO, "stranded in their destination countries or forced to leave, unemployed and with no access to social protection, migrant workers have suffered the worst of the pandemic". Migrant workers have also been targets of discrimination and xenophobia.[37]

In the fisheries sector, businesses associated with Illegal, Unreported, and Unregulated (IUU) fishing are at risk of being implicated in the global human trafficking trade and transnational organised crime, leading to severe human rights and environmental impacts across multiple States.[38]

2.3 EXTRA-TERRITORIAL JURISDICTION, CROSS-BORDER CASES, AND THE ROLE OF BUSINESS

Modern business activities increasingly cross national borders and jurisdictions. States allow transnational companies to incorporate under their legal frameworks but often do not regulate activities of these companies outside of their jurisdiction (in host States).

It has been highlighted that "in host state countries, a governance gap often arises when a government is unwilling or unable to provide its citizens with access to remedies for human rights violations caused by businesses, including transnational corporations."[39] A lack of extraterritorial jurisdiction, a lack of protections in the host State, combined with a lack of enforceable business and human rights standards at the international level can creates barriers and can severely impede the ability of victims to obtain redress for business-related human rights abuses.

The UNGPs detail the responsibility of businesses to respect human rights by conducting human rights due diligence throughout the activities and value chains. UNGP 13(b), states that businesses should "[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." The Commentary to the UNGP 13 highlights that "business enterprises may be involved with adverse human rights impacts either through their own activities, or as a result of their business relationships with other parties", where business relationships are understood to include also relationships with "entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services". Therefore, companies' responsibility to respect human rights under the UNGPs encompasses adverse impacts across their entire value chain. Business activities in host States can include own operations and investments, as well as relations with suppliers.

The Commentary to UNGP 2 states that "[a]t present, States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction."

The Commentary to the UNGP 2 further states that "[t]here are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages and preserving the State's own reputation."

Several human rights treaty bodies have recommended that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction. For example, in 2017, the UN Committee on Economic, Social and Cultural Rights (CESCR) stated in General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities that "States Parties are required to take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they are incorporated under their laws, or have their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant".[40]

General Comment No. 24 further states that "the extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective".

The 2024 OHCHR Interpretative Guide to Access to Remedy in Cases of Business-Related Human Rights Abuse notes barriers to access to remedy include:

> "The difficulties of accessing information (especially from the business enterprise(s) concerned and/or in cross-border cases) ...
>
> The difficulties of accessing information (especially from the business enterprise(s) concerned and/or in cross-border cases)"[41]

The UN Working Group on Business and Human Rights highlighted how States can improve effectiveness of cross-border cooperation with respect to law enforcement in a 2017 report.[42] In addition, the "OHCHR has called on home States of business enterprises to ensure that regulatory regimes designed to promote business respect for human rights and provide remedies in cases of business-related human rights harms are clear about the geographic scope of the rights and responsibilities enshrined within them. Measures should also be put in place to ensure that enforcement agencies and judicial bodies can readily and rapidly seek legal assistance and respond to requests from their counterparts in other States with respect to the detection, investigation, prosecution and enforcement of cross-border cases concerning business involvement in severe human rights abuses."[43]

2.4 ADDRESSING TRANSBOUNDARY IMPACTS IN THE ASEAN REGION

There are already measures in place to address transboundary impacts in the ASEAN Region, including, inter alia:

- The ASEAN Agreement on Transboundary Haze Pollution is a legally binding environmental agreement signed in 2002, to prevent, monitor, and mitigate land and forest fires to control transboundary haze pollution through concerted national efforts, regional and international cooperation.[44]

- The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, signed in 2018, provides for a framework for closer cooperation among member states on addressing migrant workers issues in the region.[45] This has been supplemented by the 2021 ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers, and the 2022 ASEAN Migration Outlook.
- The ASEAN Declaration on Placement and Protection of Migrant Fishers, adopted in May 2023, which is the first ASEAN instrument to encourage the inclusion of the protection of migrant fishers in the policies and work mechanism of ASEAN.[46]

However, none of the existing measures explicitly address the rights of victims of business-related human rights abuses to access effective remedy. There are range of measures addressing vitims of business-related human rights abuses at the regional level in Europe,[47] Latin America,[48] and in Africa.[49] Despite the lack of focus at the ASEAN level, there is a range of practice at the national level which is explored in the case studies below.

2.5 RELEVANT EU DEVELOPMENTS

In recent years, there have been a number of developments around mandatory human rights and environmental due diligence. At the EU-level, the Corporate Sustainability Due Diligence Directive (CSDDD) entered into force in July 2024, and after 2 years will be transposed in the 27 Member States. This supplements several EU sustainability disclosure and sector-specific instruments mandating elements of human rights due diligence by companies over a certain size operating in Europe.[50] Due diligence requirements will require companies to identify, assess, address or mitigate potential and actual negative impacts on human rights and the environment. Due diligence requirements will cover their own operations and their supply chains including those in the ASEAN region.

The CSDDD provides three main remedy mechanisms in case a company has abused a right. It creates a civil liability regime whereby companies can be held liable for negative human rights impacts. It also requires EU Member States to appoint Supervisory Authorities which will be tasked with monitoring the implementation of the CSDDD by companies in their jurisdiction and will be empowered to order remedial measures and impose administrative sanctions or penalties (including fines). In addition, companies are required to set up grievance mechanisms. Due to the above-mentioned legal developments, in the coming years there is likely to be an increased focus on human rights and environmental due diligence (including remedy) in the ASEAN region from business and other regions and jurisdictions looking to ensure coherence and consistency on the topic.

3. CASE STUDIES ON REMEDY IN THE CONTEXT OF TRANSBOUNDARY CORPORATE HUMAN RIGHTS IMPACTS

This section provides a range of cases studies from the ASEAN region where States, NHRIs, multistakeholder initiatives, civil society organisations, international organisations and other stakeholders have played a key role in remedy for victims of transboundary human rights impacts that have been caused by businesses or that businesses have contributed to or have been linked to through their business relations.

3.1 THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND'S RESPONSE TO TRANSBOUNDARY HUMAN RIGHTS IMPACTS

3.1.1 Background

The National Human Rights Commission of Thailand (NHRCT) is Thailand's NHRI with 'A-status' established under the Constitution of Thailand in 1997. The NHRCT has a legal mandate to:

- To examine and report facts in cases of human rights violations, then provide advice to public or private agencies involved in preventing or correcting human rights violations, including remedial measures for the affected person;
- To promote awareness of human rights importance for all sectors in the society; and
- To provide advice to relevant agencies, the government, and parliament to promote and protect human rights, including amendments to laws, rules, regulations, or orders to comply.

The NHRCT applies its mandate to ensure business respect for human rights and facilitate access to remedy, as explored in the examples below.

3.1.2 A Thai Sugar Company Operations in Cambodia

In 2015, the NHRCT received complaints from local communities in Cambodia alleging that a Thai sugar company had contributed towards human rights violations against them by operating on land granted by the Cambodian government. The NHRCT accepted these complaints for investigation. Key findings include:

Community Rights: The five affected communities had long-standing ties to the land, relying on it for their livelihoods through agriculture and forest resources. Their rights to self-determination, resource management, and maintaining their way of life had been violated.

Human Rights Violations: Although the Thai company had complied with all Cambodian laws and regulations, its operations contributed to forced evictions, destruction of homes and crops, and food insecurity for the villagers. Some resisting villagers were also arrested and prosecuted.

The Thai company stated that it did not support any act causing or contributing towards human rights violations. Thus, the company decided to cease its operations in the disputed area, and close down all subsidiary branches in Cambodia. However, the company acknowledged that human rights violations had occurred and expressed its willingness to compensate the affected communities.

In 2018, representatives of the affected villagers filed a class-action lawsuit with the Thai Civil Court. In July 2020, the Court of Appeal issued an order to accept the case for review as a class action lawsuit. The case is currently in the Court's proceedings.

Following its investigation, the NHRCT made the following recommendations:

Compensation and Remedy: The Thai company should consider revising its policy to comply with human rights principles in all operations. The company should compensate, provide just and fair remedies to the affected villagers, and ensure their participation in the remedial process.

Government Oversight: The Thai government should establish a mechanism to oversee foreign investments and ensure Thai businesses respect human rights in their overseas operations.

In a meeting with the NHRCT on 9 October 2023, representatives from the Thai company affirmed their efforts to integrate human rights into their business operations. They highlighted initiatives such as reducing greenhouse gas emissions, employing people with disabilities, and implementing community development projects. The NHRCT provided guidance on human rights due diligence, as outlined in the UNGPs, including setting up a grievance mechanism at operational level, and encouraged the Thai company to continue its efforts to respect human rights in all its operations.

3.1.3 Thai Investment in Energy Projects in Laos

3.1.3.1 The Pak Beng Dam Hydroelectric Project

In 2020, the NHRCT received a complaint regarding the potential impacts of the Pak Beng Dam Hydroelectric Power Project in Laos on communities in Thailand. The complainants, mainly residing in Ban Huai Luek village, Chiang Rai province in Thailand, raised concerns about flooding, food security, and the lack of an environmental impact assessment and cross-border impact studies. The NHRCT accepted the complaint for investigation. Key findings of the case included:

Transboundary Impacts: The dam's construction and operation are likely to cause significant transboundary impacts on Thailand since the project is close to the Thai border. These impacts include irregular changes in water levels which could affect fisheries and ecosystems and may result in flooding.

Community Concerns: The affected communities expressed concerns about the potential loss of their homes, agricultural land, and livelihoods due to flooding and changes in the river's ecosystem. They also raised issues regarding the lack of transparency and participation in the decision-making process.

Environmental and Social Impact Assessment: The NHRCT found that the environmental impact assessment conducted by the project developer was inadequate and did not fully address the dam's potential transboundary and cumulative impacts.

Although the NHRCT dismissed the complaint as it is proceeding in the Thai Administrative Court, the following recommendations were made to the Cabinet:

Consideration of Human Rights: The Cabinet should instruct agencies involved in purchasing energy from the Pak Beng Dam to consider the concerns of all sectors and adhere to the UNGPs in their decision-making process.

Confidence Building with Laos government: The Thai National Mekong River Committee should work with Lao PDR government to establish a memorandum of understanding or other forms of agreement to ensure that the project will not negatively impact people or ecosystems along the Mekong River.

Mekong River Conservation Plan: Relevant agencies should develop a comprehensive plan to preserve the Mekong River ecosystem, support livelihoods, and promote sustainable use of resources, in alignment with the UN Sustainable Development Goals.

3.1.3.2 The Xe-Pian Xe-Namnoy Dam Collapse

The NHRCT received a complaint regarding the Xe-Pian Xe-Namnoy dam collapse in Attapeu Province, Lao PDR, which occurred in 2018 and resulted in significant loss of life, displacement, and environmental damage. The complainant raised concerns about the responsibility of Thai businesses involved in the project and the need for compensation and remedies for the victims. The NHRCT accepted the complaint for investigation. Key findings of the case included:

Impacts: The dam collapse caused a major disaster with significant negative human rights impacts on communities in Lao PDR, including deaths, displacement, and environmental degradation.

Thai Business Involvement: The project was developed by the Lao Power Company, a joint venture comprising Thai, South Korean, and Laotian companies. Thai commercial banks also financed the project.

Responsibility of Business Enterprises: The NHRCT emphasised the responsibility of business enterprises to respect human rights in all operations, including those conducted abroad, as provided in the UNGPs.

Need for Compensation and Remedy: The NHRCT stressed the importance of providing prompt and adequate compensation and remedies to the victims of the dam collapse, in line with the UNGPs.

Although the NHRCT dismissed the case as the matter falls outside its investigative authority, it proposed the following policy recommendations:

Government Oversight Mechanism: The Cabinet should establish an oversight agency to regulate foreign investments made by Thai businesses to ensure their compliance with human rights principles and the UNGPs.

Sustainable Banking Guidelines: The Bank of Thailand should promote and implement sustainable banking guidelines which incorporate environmental, social, and governance (ESG) factors in lending practices, assessing social and environmental risks before loan approval.

Human Rights Due Diligence: The respondent company (The Thai Power and Electricity Company) should implement human rights due diligence processes, establish grievance mechanisms, and engage in transparent communication with affected communities.

3.2 TRANSBOUNDARY HAZE POLLUTION IN MALAYSIA: A COMPLAINT TO THE HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM) AND RESPONSES TO THE COMPLAINT

3.2.1 Background to the case

Haze pollution is defined as the prevalence of fine particulate matter suspended in the atmosphere in unhealthy concentrations.[51] The particulate matter is small enough to enter the lungs and cause respiratory diseases. Research has estimated that smoke from 2015 Indonesian fires may have caused 100,000 premature deaths across Indonesia, Malaysia, and Singapore.[52] More than 80 percent of complaints received by the Department of Environment in Malaysia in 2019 related to air pollution, which includes haze pollution.

Haze pollution is considered a man-made issue, with domestic as well as transboundary sources, such as state actors, large scale industry as well as small-scale land holders. Causes for transboundary haze pollution include land use change, particularly the use of fires to clear land for agricultural purposes, and non-agricultural sources such as vehicle and industrial emissions and biomass burning. Other factors, such as meteorology and weather patterns such as the El Niño phenomenon, or dry season forest fires, also play a role in aggravating haze pollution.[53]

In the agricultural sector, fire is used to clear land which happens in small scale and large-scale plantations in, among others, palm oil and pulp plantations. Globally, many large companies in the agricultural sector have made pledges against deforestation and use of fire in their palm oil and pulp supply chains. However, in Southeast Asia, despite these commitments and national laws against using fire, burning continues annually.

ASEAN member states, following severe land and forest fires in 1997-1998, signed the ASEAN Agreement on Transboundary Haze Pollution (AATHP) on 10 June 2002 in Kuala Lumpur, Malaysia. The objective of the Agreement was to prevent, monitor, and mitigate land and forest fires to control transboundary haze pollution through national efforts, as well as regional and international cooperation.[54]

Photo: Kencana Studio

In 2015 a group of concerned citizens including academics, civil society leaders, lawyers, scientists etc. was formed, named CERAH, with the objective to identify what haze pollution is, how it is caused, what can be done in terms of solutions to address haze pollution in Malaysia and to raise national-level awareness.[55]

A severe haze episode occurred in 2019, and in 2020 Greenpeace Malaysia commissioned a study to analyse what a civil law case on transboundary haze pollution could look like. This analysis showed that a civil litigation case, while possible, would be complex and take great effort to establish the link between corporate actors' behaviour regarding burning of land and the harms suffered. Therefore, in 2021 CERAH, Greenpeace Malaysia and a coalition of various civil society organisations decided to pursue the problem via a quasi-judicial platform by submitting a complaint to the Human Rights Commission of Malaysia (SUHAKAM) regarding transboundary haze pollution and how this impacts the rights of citizens of Malaysia.[56]

3.2.2 Alleged impacts and rightsholders impacted

The complaint detailed various human rights harms caused by transboundary haze pollution, including the right to a healthy environment, the right to clean air, the right to health, various children's rights as well as economic impacts. The below section describes the different human rights impacts as outlined in the complaint submitted to SUHAKAM.

Public health impacts:
The complaint outlined that exposure to air pollution, including haze, significantly impacts health, particularly for the elderly, children, and individuals with pre-existing respiratory diseases such as asthma. The World Health Organization (WHO) estimates that air pollution causes 7 million deaths annually worldwide. Of these, 4.2 million deaths are attributed to ambient air pollution, leading to increased mortality from

stroke, heart disease, chronic obstructive pulmonary disease, lung cancer, and acute respiratory infections. The complaint also mentioned that the Covid-19 pandemic has impacted the Malaysian government's resources and placed pressure on the country's healthcare system. Researchers identified links between the emissions from forest and peatland fires (particulate matter PM2.5, carbon monoxide and ozone) with increases in Covid-19 infections and deaths.

Children's rights impacts:
The complaint referred to children as a group that is particularly vulnerable to the impacts of air and haze pollution because they breathe more rapidly, taking in a higher proportion of pollutants relative to their body weight. Their developing lungs, brains, immune systems, and physical defences make them more susceptible to the harmful effects of pollution.

Exposure to air pollution can lead to respiratory diseases in children, such as pneumonia, chronic obstructive pulmonary disease, and asthma. Even short-term exposure increases the risk of hospitalization for respiratory diseases, with children aged 5 to 9 being most vulnerable. During haze episodes, 30 percent more children were hospitalised due to haze-related illnesses, and there was over 40 percent excess risk of respiratory deaths in children under the age of 14. Lastly, the complaint mentioned the developmental impacts of air pollution on lung growth, brain development, and learning abilities. Components of air pollutants may reduce sunlight availability, leading to vitamin D insufficiency in children.

Environmental and climate change impacts:
The complaint noted that air and haze pollution has contributed to climate change impacts and environmental degradation. Deforestation, land clearing with slash-and-burn methods, and disturbance of peat forests contribute to climate change, biodiversity loss, and weakening of the ecosystem. Peatlands, which act as significant carbon sinks, can store twice as much carbon as the earth's forests combined. Fires in these areas release large amounts of CO_2 and other greenhouse gases, contributing significantly to global emissions.

Most palm oil and pulp plantations, that practice the slash and burn method, are often located on peatlands, which are highly flammable and can burn for months, releasing significant amounts of CO_2 and causing severe pollution.

Economic impacts:
Haze pollution has had significant economic impacts due the health impacts and costs associated with decreased productivity. It is estimated that the 2015 haze episode cost Indonesia USD 35 billion and Singapore USD 500 million due to loss of productivity and increase in health care expenditure.[57] Malaysia's 2019 haze was estimated to cause RM 400,000 daily in productivity losses, with an estimated total of RM 48.8 million during the course of four months. According to research there was an estimated 20 percent increase in government healthcare expenditure due to haze-related health issues between 1997 and 2013. The 1997 Southeast Asian haze cost the region USD 9 billion and Malaysia USD 320 million, which would be estimated at approximately RM 1.3 billion today, adjusted for inflation.

3.2.3 Gaps in the legal framework

In addition to the impacts, the complaint also outlined a number of gaps in Malaysia's legal framework to address haze pollution and its impacts, namely:

- There is a lack of access to information for citizens and lack of participation in environmental governance and decision making.
- Secondly, there is weak transboundary governance regarding haze pollution. There is weak regional cooperation in the ASEAN region in managing transboundary haze pollution.

The complaint posed recommendations to the Malaysian government, which included:

1. Strengthening national and regional legislation: Improve environmental laws and enforcement.
2. Enhanced regional cooperation and governance regarding transboundary haze pollution.
3. Adopting a rights-based approach to haze pollution through the adoption of principles such as the Polluter Pays Principle, No-Harm Principle, and Precautionary Principle.

3.2.4 Handling of the complaint

In response to this complaint, the Human Rights Commission of Malaysia (SUHAKAM), in collaboration with the CERAH Anti-Haze Action Coalition and Greenpeace Malaysia, organised a two-day National Roundtable Discussion on the Right to Clean Air in 2022. Stakeholders were invited including subject matter experts, government institutions, CSOs, legal advisers, Malaysian palm oil sector and government representatives, among others, with the objective of jointly developing concrete next steps to address the issue of domestic and transboundary haze pollution.[58]

The Roundtable discussion focused on highlighting the root causes of haze pollution from agricultural, land use change, peatlands and meteorological concerns, and its economic, health and environmental impacts and aimed to promote the protection of Malaysia's people's right to a safe, clean and healthy environment free of air pollution. The event focused on:

- Strengthening the recognition of environmental rights in Malaysia
- Strengthening Malaysia's air quality governance
- Strengthening governance of transboundary haze pollution
- Strengthening the topic of Business and Human Rights in Malaysia

3.2.5 Next steps

The National Roundtable Discussion on the Right to Clean Air formed the basis for a report by CERAH and Greenpeace Malaysia identifying gaps in Malaysian and regional legal frameworks that result in a lack of access to justice and information, public participation, and governance around the topic of haze pollution, including recommendations for businesses and ASEAN member states.

Recommendations for the private sector actors that are involved in causing haze pollution include for example a) conducting human rights due diligence, b) increased transparency on ESG data, as well as looking at c) issues related to water use and conflicts related to this and d) meaningful engagement with rightsholders who could be impacted by these companies.

Lastly, the report stressed that the topic of transboundary haze pollution is not only a Malaysian and Indonesian issue; as human rights are universal, ASEAN stakeholders as well as large buyers of palm and pulp also have a responsibility to respect human rights in relation to haze pollution.

With regard to regional action, it is recommended to develop a protocol to the ASEAN Agreement on Transboundary Haze Pollution. The Agreement recommends that members states should have domestic laws in place to hold private sector actors to account for haze pollution. It is recommended that private sector actors should not only be prosecuted, given the difficulty to prosecute a company of the impacts are transboundary in nature. It is therefore recommended that accountability at the national level includes the obligation of companies in each member state to publish data related to haze pollution and be more transparent in order to improve the situation on the ground.

By accepting the complaint, investigating impacts on the rights of citizens of Malaysia, and organising a dialogue where impacted rightsholders could share their experiences and interact with duty bearers, SUHAKAM has contributed to fulfilling the procedural element of the right to remedy (see Section 2 for more information), even though the substantive elements of access to remedy, meaning the outcomes of the complaint lodged at SUHAKAM, have not directly led to remedy for affected Malaysian citizens to date.

3.3 THE COMMISSION ON HUMAN RIGHTS OF THE REPUBLIC OF THE PHILIPPINES AND ITS NATIONAL INQUIRY ON CLIMATE CHANGE AND HUMAN RIGHTS – 'CARBON MAJORS' INQUIRY

3.3.1 Background

In November 2013 the Philippines and other parts of Southeast Asia experienced one of the worst and most powerful tropical cyclones ever recorded, called typhoon Haiyan (locally known as Yolanda). The typhoon caused severe damage in the country, affecting over 16 million people, resulting in at least 6000 deaths in the Philippines alone and the displacement of an estimated 4 million people due to the typhoon.[59] The typhoon highlighted the severe impacts of climate change and extreme weather events, raising awareness and urgency about the need for robust climate action.

In 2015 typhoon Haiyan survivors, environmental groups and human rights organizations petitioned the Commission on Human Rights of the Philippines (CHRP) to initiate a process for a national inquiry into the responsibility carried by fossil fuel companies for the impacts of climate change, and to establish how they could be held to legal account and the CHRP accepted the petition.[60]

In 2016 the Petition was amended reflecting recent developments and the Inquiry Panel sent copies of the amended petition to the respondents by registered mail. In 2027 the CHRP began the multi-disciplinary consultative process of the Inquiry. This included conducting community dialogues, fact-finding missions, key informant interviews, focus group discussions, and roundtable discussions.

In 2018 the CHR conducted six 2-day public inquiry hearings on the impact of climate change on the human rights of the Filipino people focusing on the accountability of major fossil fuel companies. Four hearings were held across the Philippines, as well as in one in London and one in New York; the inquiry had a global nature and reflected the transboundary nature of the climate change impacts.[61]

This inquiry, often referred to as the "Carbon Majors" inquiry, aimed to determine whether 47 investor-owned fossil fuel companies (including ExxonMobil, Shell, BP, Chevron, and others) could be held responsible for their role in climate change and the resulting human rights violations. According to various organizations, when fossil fuels are burned, they release large amounts of carbon dioxide, a greenhouse gas, into the air. Greenhouse gases trap heat in our atmosphere, causing global warming. An increase of the atmosphere's temperature is causing sea level rise, extreme weather, biodiversity loss and species extinction, as well as food scarcity, worsening health and poverty for millions of people.[62]

An inquiry panel was established to conduct the national inquiry on Climate Change. Key members of the panel included CHR commissioners and staff, as well as invited experts and stakeholders from various fields. The panel received amicus curiae briefs and other submissions from advocates, legal and scientific experts, and academics from all parts of globe on various issues relevant to the case.[63]

3.3.2 Human rights impacts and rightsholders impacted

Climate change and environmental degradation pose severe threats to the enjoyment of all human rights, particularly the rights of those who are already disadvantaged and marginalised. Human rights realisation depends on a healthy environment, and environmental protection must take human rights into account.

The realization of the close relationship between human rights and the environment is reflected in the recognition of a universal right to a clean, healthy and sustainable environment by the Human Rights Council in 2021 (resolution 48/13) and the United Nations (UN) General Assembly in 2022.

In 2021, the UN Human Rights Council established the mandate of a Special Rapporteur on the promotion and protection of human rights in the context of climate change (Resolution 48/14) in addition to who joined other "green" mandate holders including on the topics of 'human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', 'the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes'.

Photo: Acrylic

The impacts of environmental challenges on human rights are extensive and well-documented, for example the impacts of pollution to the rights to life, health, just and favourable conditions at work including safe and healthy working conditions; the threat of climate change to the rights to life, health, food, water, housing; and the threats of environmental degradation, desertification and climate change to the right to food.

Against this backdrop, in a first of its kind, the national inquiry by the CHRP aimed to determine the impact of climate change on the infringement of human rights of the Filipino people, such as the right to life, the right to health, the right to food, the right to water, and the right to adequate housing, among others.

The inquiry established a link between climate change and human rights, particularly in relation to typhoon Haiyan. Therefore, as part of the inquiry, survivors of Typhoon Haiyan, whose human rights were most severely impacted, were heard. The impacted rightsholders included in particular those displaced by the typhoon, as well as farmers and indigenous communities. The national inquiry report highlighted the severe and disproportionate adverse impacts of climate change on Indigenous Peoples, namely:[64]

Vulnerability: Indigenous peoples are particularly vulnerable due to their dependence on climate-sensitive resources and deep cultural relationships with the environment

Livelihood disruption: Climate change has disrupted traditional livelihoods like farming and fishing, leading to food insecurity.

Cultural impacts: Traditional livelihoods and ancestral traditions of many indigenous peoples' communities which are dependent on natural resources are threatened or may even be extinguished by climate change. The loss of specific ecosystems endangers indigenous cultural heritage and traditional knowledge.

3.3.3 Hearings

The CHRP heard a wide range of individuals and groups as part of its national inquiry on climate change and human rights. These included representatives from affected communities, experts in various fields, and representatives of the major fossil fuel companies implicated in the inquiry. These included:

- Experts and Academics: Climate Scientists and Environmental Experts: Specialists in climate science provided evidence on the link between greenhouse gas emissions and climate change, detailing how these emissions contribute to global warming and extreme weather events.
- Human Rights Experts: Professionals in the field of human rights discussed the implications of climate change on the enjoyment of fundamental human rights, such as the rights to life, health, food, water, and adequate housing.
- Legal Scholars: Experts in environmental law and human rights law offered insights into the legal responsibilities of corporations and states concerning climate change.
- Representatives of Carbon Major Companies: Fossil Fuel Company Representatives: The inquiry invited representatives from the 47 carbon major companies, including ExxonMobil, Shell, BP, Chevron, and others, to provide their perspectives and responses to the allegations of their contributions to climate change and related human rights impacts.
- Civil Society Organizations: Environmental and Human Rights NGOs: Organizations such as Greenpeace Southeast Asia, Amnesty International, and other advocacy groups provided evidence and testimonies on the broader impacts of climate change on human rights and the environment.
- Government Agencies: Philippines government representatives including officials from various government departments, including those focused on environmental protection, disaster risk reduction, and human rights, were also heard to provide a national perspective on the issue.
- International Perspectives: The inquiry also featured inputs from international experts and stakeholders who could provide comparative insights and highlight the global dimensions of the climate crisis.
- The hearings and testimonies played a crucial role in shaping the inquiry's findings and recommendations.

3.3.4 Key Findings of the inquiry

The inquiry found that climate change has severe impacts on human rights, particularly in vulnerable communities. These impacts include threats to the right to a healthy environment, health, food security, water, and housing.[65]

The inquiry extensively referenced the UN Guiding Principles on Business and Human Rights (UNGPs) and other business and human rights frameworks such as the OECD Guidelines for Multinational Enterprises and the UN Global Compact principles, and

establishing the link between the business responsibility to respect human rights as per the UNGPs and climate change impacts.

The inquiry emphasised the responsibility of fossil fuel companies to respect human rights as outlined in the UNGPs. This includes the obligation to avoid infringing on the human rights of others and to address adverse impacts with which they are involved, including by all entities in their value chain. The findings also highlighted the importance of human rights due diligence by businesses, a core component of the UNGPs.

This includes the responsibility to mitigate the adverse impacts of their operations and that they should undertake efforts to remedies for individuals and communities affected by climate change-related human rights impacts as per Pillar 3 of the UNGPs.[66]

The CHRP also agreed that the carbon majors, directly by themselves or indirectly through others, singly and/or through concerted action, engaged in wilful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, concealing that their products posed significant harms to the environment and the climate system. All these have served to obfuscate scientific findings and delay meaningful environmental and climate action.[67]

According to the report, 'based on the resource persons and pieces of evidence submitted to the Commission, the CHRP agrees that the Carbon Majors had early awareness, notice or knowledge of their products' adverse impacts on the environment and climate system. Scientists, including those under the employ of the carbon majors, already knew about the harms that carbon dioxide from fossil fuels posed on the climate as early as the 1930s, with 1965 being the latest year that the fossil fuel industry can claim ignorance of such knowledge'.[68]

The CHRP determined that carbon majors are liable for causing global warming and should be held accountable for their role in climate change. The inquiry report found that 'at the very least, [their acts] are immoral' and may form the basis for liability depending on national jurisdictions.[69]

3.3.5 CHR Recommendations

The CHR called on the fossil fuel companies mentioned in the inquiry to take proactive steps to reduce their greenhouse gas emissions, to invest in renewable and clean forms of energy, to adhere to human rights principles in their operations and to engage with experts and CSOs to assess and improve corporate climate response. More specifically the inquiry called on carbon majors to publicly disclose due diligence and climate and human rights impact assessment results, and the corresponding measures taken. The inquiry also called on financial institutions and investors to refrain from financing fossil fuel companies and instead direct capital to 'green' projects.[70]

The inquiry also provided recommendations to governments in general, and in particular the Philippines government, namely focusing on the need for stronger national and international laws and policies to regulate emissions, hold companies

accountable, and protect the rights of those affected by climate change. Other stakeholders to whom recommendations were addressed included the United Nations, national human rights institutions, and importantly, to courts, NGOs, CSOs, legal professionals and global citizens.

The CHR emphasised the need for climate justice, advocating for support and compensation for communities disproportionately impacted by climate change, particularly in developing countries.

3.3.6 Global impacts of the inquiry

The CHR inquiry was the first time a national human rights institution (NHRI) attempted to hold companies accountable for the human rights impacts of climate change. Being novel in nature, the inquiry itself, the findings and recommendations garnered international attention, influencing discussions on corporate responsibility and human rights in the context of climate change.

The CHR inquiry represents a pioneering effort to link climate change to human rights and to hold major carbon-emitting companies accountable for their contributions to global warming and its detrimental effects on human rights. The arguments used in the inquiry and the recommendations have since influenced legal arguments in national or EU level climate litigation cases. The inquiry's findings have been cited in amicus briefs and legal documents to support claims against businesses and governments for failing to address climate change adequately.

3.4 FAIR RECRUITMENT: A MULTISTAKEHOLDER INITIATIVE INVOLVING COMPANIES AND CIVIL SOCIETY FOR THE REPAYMENT OF RECRUITMENT FEES OF MIGRANT WORKERS

3.4.1 Background

The payment of recruitment fees by migrant workers is a significant issue that impacts workers' welfare and human rights globally. Many ASEAN member states are sending and receiving countries for migrant workers.

According to a 2020 ILO study on payment of recruitment fees in ASEAN, Thailand is the largest destination country for migrant workers in the ASEAN region, with the majority of its migrant workers coming from Cambodia, the Lao People's Democratic Republic, and Myanmar. As of 2019, there were some 2,877,000 documented migrant workers in Thailand from these three countries, mainly working in agriculture, construction, domestic work, fishing, and manufacturing sectors.[71]

Results from a survey of migrant workers from Cambodia, Lao PDR and Myanmar working in Thailand conducted to inform the ILO study, show that migrant workers incurred significant costs to migrate to Thailand. These costs varied depending on the method of migration and country of origin.

The study highlights that a large percentage of migrant workers paid recruitment fees, which included payments to agencies or brokers , contributing to a high financial burden on the migrants. The fees paid by migrant workers included items such as travel expenses, documentation, and fees paid to intermediaries. In order to pay such fees workers took out loans from different sources. The survey showed that the total cost of recruitment was equivalent to about 1.9 months of earnings.

While some ASEAN countries have regulations in place to limit or prohibit the charging of recruitment fees to workers, legal enforcement of such regulation is often weak. This results in continued exploitation of migrant workers. Efforts to regulate and monitor recruitment agencies vary across the region, leading to inconsistent protection for workers.

In addition to looking at fees, the survey also revealed that migrant workers in Thailand enjoyed limited labour rights. Key rights such as the ability to join a union, severance pay, and paid maternity leave were almost non-existent. Only a minority of workers had access to paid annual leave, paid holidays, and paid sick leave.

The report shows the substantial financial and social challenges faced by migrant workers from Cambodia, Lao PDR, and Myanmar in Thailand. High recruitment costs, borrowing-related financial difficulties, and limited labour rights underscore the need for improved regulatory frameworks at the national level and regionally and support systems to protect migrant workers.[72]

3.4.2. Human rights impacts and rightsholders impacted

Human rights issues that migrant workers in ASEAN face are related to the payment of substantial recruitment fees to secure employment. These high recruitment fees often result in debt bondage, a situation where workers take out loans at high-interest rates or use their limited savings to pay these fees. This financial burden can lead to situations where workers are trapped in exploitative conditions, working long hours for low wages to repay their debts.

The issue of recruitment fees ties into broader human rights concerns. Workers often face poor working conditions, lack of legal protection, and barriers to access justice when their rights have been infringed. The payment of recruitment fees exacerbates these issues, as workers are more vulnerable to exploitation and abuse when they are in debt.

Within the broader category of migrant workers, there are sub groups who are more at risk of rights abuses namely irregular migrant workers (those who migrate without documentation or legal status), female migrant workers, especially in domestic work, who face higher levels of isolation, lack of legal protections, and are more prone to exploitation and abuse and migrant workers in particular sectors, such as construction, agriculture and fisheries. In these sectors a high percentage of workers report paying fees to recruitment agencies, making them more vulnerable to debt and exploitation, including documented cases of forced labour.

Photo: JU.STOCKER

Addressing this issue requires regional cooperation within ASEAN. ASEAN has acknowledged the importance the rights of migrant workers in the region through the adoption of the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers[73] and the 2018 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers.[74]

Various initiatives and dialogues exist aimed at improving migration management systems and protecting the rights of migrant workers. For example, the 2nd ASEAN-EU Dialogue on Safe and Fair Labour Migration, which took place in July 2023, bringing together over seventy policymakers, practitioners, and representatives of civil society and international organisations, explored ways to better protect the rights of over 7 million ASEAN migrants in the region. The dialogue acknowledged that increasing mobility of migrant workers requires a joint response, continuous improvement on the governance of labour migration, and strengthening of regional migration measures.[75]

While individual ASEAN member states are taking action to acknowledge and promote the rights of migrant workers in the ASEAN region, there are also initiatives undertaken with the private sector to promote the rights of migrant workers and remediate their adverse impacts, in particular in relation to the payment of recruitment fees.

3.4.3 AIM-Progress and the Consumer Goods Forum's collaboration on responsible recruitment

Other initiatives to improve the rights of migrant workers have been established through multistakeholder collaboration involving businesses that recruit migrant workers in their value chains. One such example is that of AIM-Progress and the Consumer Goods Forum.

AIM-Progress is a global forum of leading fast-moving consumer goods (FMCG) companies and suppliers collaborating on responsible sourcing. AIM Progress members are united by their drive to respect human rights in their supply chains. It brings together 45+ companies and a number of other partners who share similar objectives to jointly push for human rights in the members' supply chains.[76]

The Consumer Goods Forum (CGF) is a global, industry-driven organization that brings together consumer goods retailers, manufacturers, service providers, and other stakeholders to collaborate on key global challenges including topics related to sustainability, such as human rights.[77]

One of the topics this collaboration focuses on is responsible recruitment[78] and forced labour risks and as part of this broader theme, the issue of payment of recruitment fees and other related costs that migrant workers have to pay.

AIM Progress and The Consumer Goods Forum (CGF) Human Rights Coalition-Working to End Forced Labour (HRC), have collaborated with member companies to take collective action to address risks of forced labour in global supply chains. While AIM Progress and CGF's collaboration is global in nature, some of the initiative's work takes place in the Southeast Asian region.

3.4.4 Guidance on Repayment of Worker-Paid Recruitment Fees and Related Costs

In response to the challenges companies face to understand the issue of recruitment fees, how to assess that such fees have been paid and how to remediate the impacts through repayment of such fees, AIM Progress and CGF have developed a Guidance on the Repayment of Worker-Paid Recruitment Fees and Related Costs. The Guidance aims to provide step-by-step practical guidance to companies, including international buyers, on the repayment of worker-paid recruitment fees and related costs when these become known within operations and supply chains, to ensure that workers do not bear the financial burden of recruitment fees and related costs. Repayment of such fees is a critical remedy for workers and puts into practice the principle that no workers should be paying for a job.[79]

The Guidance provides a set of key recommendations and implementation steps for employers. Recommendations specifically focusing on access to remedy include:

- Developing a clear framework for the repayment of recruitment fees to affected workers.
- Ensuring that repayments are timely, transparent, and fair.
- Implementing robust monitoring systems to ensure compliance with the no-fee policy.

The guidance also includes a number of good practice examples and case studies of companies including international buyers that have repaid recruitment fees upon assessment using the steps in this guidance. The below box provides such an example of the UK supermarket chain Tesco in relation to workers in their supply chain in Malaysia.

HOW CAN YOU REPAY WORKERS EMPLOYED BY A THIRD PARTY? THE CASE OF UK SUPERMARKET TESCO[80]

A workers' rights assessment commissioned in Tesco's stores and distribution centres in Malaysia identified that migrant workers employed by their service/labour providers in replenishment and cleaning roles had paid significant recruitment fees. In line with their policy, Tesco decided to acknowledge these fees and reimburse them.

For replenishment workers, individual payments were based on the average amount reported by workers during assessment, according to their nationality, crosschecked

with credible third-party data such as that from the International Labour Organisation. This is known as the Universal Payment Principle. For cleaners, who also worked across a range of other businesses in addition to Tesco, Tesco reimbursed 50% of the average recruitment fee.

Reimbursing 100 percent of fees is in line with the best practice. This takes into account that workers may have paid additional costs associated with the recruitment process, that they had deductions made from their wages for alleged misconduct and incurred broader mistreatment whilst employed on the Tesco estate.

Although remediating workers who are employed by a third party is unique (as previous examples of remediation in Tesco's supply chains occurred with workers directly employed), it was done on the basis that a company is still responsible for the welfare of all individuals employed on its estate.

Source: AIM Progress and Consumer Goods Forum, Guidance on Repayment of Worker-Paid Recruitment Fees and Related Costs, 2022[81]

3.4.5 Electronics Watch seek remedy for migrant workers[82]

In Thailand, 10,570 Burmese and Cambodian migrant workers producing electronics devices in two Cal-Comp facilities received compensation for excessive recruitment fees.[83] The recruitment fees and expenses amounted to between 500,000 Kyat (€290) to 1,500,000 Kyat (€860), equivalent to 30-90 days of wages, which would put workers at risk of debt bondage. The settlement in November 2019 followed three years of worker-driven monitoring by Electronics Watch and the Migrant Worker Rights Network, and ongoing reporting to, and dialogue with, buyers and Cal-Comp to seek remediation for workers.

In 2018-2019 Electronics Watch conducted an investigation on working conditions at Possehl Electronics in Malaysia, a subsidiary of the Possehl Group, which revealed at least 30 migrant workers at risk of forced labour.[84] Workers reported passport confiscation, delayed wage payments, illegal wage deductions, excessive overtime and violent threats from their employer JS Global Services, an outsourcing agent. In April 2019 Electronics Watch submitted a worker rights complaint to Possehl buyers and the Responsible Business Alliance (RBA) on behalf of a group of 10 Nepali and seven Indonesian JS Global migrant workers after Possehl senior management

provided assurances that there would be no retaliation against any worker who sought remedy. The RBA convened member companies that source from Possehl and also engaged Possehl directly to work towards compliance with the RBA Code of Conduct. Following this joint effort, the JS Global workers received their back-wages in May and June 2019. Possehl also provided each of the workers "ex-gratia" payments of RM 3,420 to RM 6,180 (€800 to €1,400) for JS Global's unlawful wage deductions for the rehiring scheme and other costs. The workers welcomed these steps, but felt that the compensation did not go far enough.

In 2023, Electronics Watch published "Principles for Worker-Driven Remedy", as a guiding framework for public buyers and other stakeholders to address harm to workers in supply chains.[85] The Principles were initially developed at a workshop in Malaysia with a number of stakeholders, and further developed in consultation with trade unions, labour rights organisations, and public buyers. The 10 Principles, which have been applied in Malaysia, Thailand, and Indonesia are:

1. Respect for human rights law
2. Workers at the core
3. Protection and promotion of trade unions, worker representatives and human rights defenders
4. Timely and urgent action
5. Transparency
6. Removal of barriers to worker participation
7. Worker participation in design and implementation
8. Shared responsibility and meaningful engagement of stakeholders
9. Provision of various reparation measures
10. Inclusion of backward- and forward-looking measures

WORKER-DRIVEN SOCIAL RESPONSIBILITY

Worker-driven social responsibility a methodology is where rights-holders play a central role in identifying and addressing human rights abuses by monitoring labour conditions in global supply chains.[86]

As opposed to the snapshot nature of audits, worker-driven monitoring can be ongoing and independent. The approach can enhance transparency: for example, the International Accord For Health And Safety In The Textile And Garment Industry requires that Steering Committee publishes "A single aggregated list of all suppliers in Bangladesh (including sub-contractors) used by signatory companies, based on data which shall be provided to the RSC and to the Secretariat and regularly updated by each of the signatory companies."[87] All factories supplying to Accord company signatories in countries that have Accord programs is published every month.[88] In addition, the Accord states that "[e]ach signatory company shall require that its suppliers in Bangladesh participate fully in the inspection, remediation, health and safety and training activities of the RSC." [89]

Worker-driven social responsibility has led to improvements in the working conditions on the ground. An analysis of the Coalition of Immokalee Workers' Fair Food Program

in Florida (a partnership involving farmers, farm workers, and retail food companies to improve working conditions in agricultural production) revealed that it has significantly improved working conditions and has been highly effective in preventing modern-day slavery, sexual violence, and harassment among participating farms. The approach can result in remedy for victims, exemplified by the Fair Food Program, where 51% of cases are resolved within 13 days.[90]

3.5 COMPLAINT AGAINST AUSTRALIAN ANZ BANK TO THE AUSTRALIAN OECD NATIONAL CONTACT POINT FOR FUNDING PHNOM PENH SUGAR COMPANY THAT DISPLACED COMMUNITIES

3.5.1. Background

During 2011-2014 the Australia New Zealand Banking Group (ANZ Bank) financed the Cambodian Phnom Penh Sugar Company. As part of the company's operations, thousands of communities were forced from their homes and lands in 2010 and 2011 to make way for the company's sugar plantation and refinery in Kampong Speu province. In response, in 2014 a case was filed against ANZ bank at the Australian OECD National Contact Point (NCP) by the NGOs Inclusive Development International and Equitable Cambodia on behalf of the nearly 1100 affected families for the adverse human rights impacts they faced.[91]

3.5.2. Human rights impacts and rightsholders impacted

The complaint detailed alleged widespread violations of human rights on the part of ANZ's former customer Phnom Penh Sugar (PPS) and argued that ANZ had contributed to and profited from those activities through its loan to the company, and as a result had a responsibility to contribute to remedy. Numerous human rights violations at the PPS company were reported, namely[92]:

- The forced displacement of more than 1,500 families from their farms, due to the PPS' holding land concessions beyond the legal limits, failing to adhere to Cambodian regulation regarding land concessions
- The illegal seizure and bulldozing of lands belonging to farmers and families.
- Approximately 115 families were forcibly evicted from their homes, some being relocated to less suitable land.
- The company also illegally cleared and destructed protected forests.
- The company used military and police to intimidate affected families to accept the inadequate compensation offered.
- The project's impacts had such an impact on the family's livelihoods and food security that in some cases children had to work on the company's plantation due to the loss of farmland and other resources.
- It was documented that working conditions on the sugar plantation were in violation of international labour standards, with reported workers' deaths due to poor health and safety practices and children employed in hazardous work.

Photo: Mailsonpignata

Different rightsholder groups were impacted by PPS operations and activities, including farmers and community members, landowners and land users, and sugar plantation workers, including children.

PPS's practices had been widely publicised in the Cambodian English-language press prior to ANZ's loan decision. Despite this publicly available information, ANZ proceeded to provide a large loan to PPS without attaching any human rights, social or environmental safeguard requirements. While ANZ had commissioned a so-called 'Phase 1 Environmental and Socio-Economic Site Assessment' in 2010, this assessment was of poor quality as it failed to mention the ongoing conflict between PPS and local communities displaced by its land concessions.[93]

The NGOs IDI and Equitable Cambodia together with community representatives raised the problems associated with the PPS loan with ANZ on various occasions since becoming aware of ANZ's role, including in meetings, conference calls with senior officials and several email and letter exchanges. However, there was no action taken by ANZ and therefore, in 2014, the organizations submitted an official OECD Complaint against ANZ Bank at the Australian NCP for breaching the OECD Guidelines for Multinational Enterprises.[94]

3.5.3. Outcomes of the complaint

The Australian NCP, tasked to promotes responsible business conduct standards under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and helps resolve complaints against multinational enterprises relating to implementation of the OECD Guidelines, issued a Final Statement regarding a

Specific Instance complaint from Equitable Cambodia (EC) and Inclusive Development International (IDI) on behalf of Cambodian families against Australian and New Zealand Banking Group Limited ANZ in June 2018.

In its statement the NCP was critical of ANZ for violating its own policies and international human rights standards when it provided the loan to PPS. The statement said, among others, that it was difficult to reconcile ANZ's decision to take on PPS as a client with its own internal policies and procedures, saying that 'there arguably should have been substantial questions and concerns in the minds of the ANZ credit decision makers'.[95]

Since the 2018 Final Statement, the parties to the complaint have had ongoing contact and in February 2020, the Australian NCP was asked to facilitate a conciliation meeting between the parties. ANZ acknowledged that its due diligence on the project funded by its loan was inadequate and agreed to provide the displaced families with a financial package equivalent to the profit the bank had earned from its loan. The bank agreed to pay the Cambodian families who were forcibly displaced by the company. The two civil society organizations working with the affected families worked with community representatives to devise and carry out an inclusive process to distribute the settlement funds to affected families, identifying and certifying 1,096 families eligible for the funds and taking steps to ensure that they received an equitable share.[96] The payment has helped to restore affected family's livelihoods and has brought closure to a landmark human rights case.

In follow up to the recommendations by the NCP to develop a grievance mechanism, ANZ Bank launched a new grievance mechanism framework in November 2021 to address human rights-related complaints.[97] The grievance mechanism framework sets out how ANZ will respond to complaints from community groups that consider their rights impacted by the bank's finance, aiming to resolve the complaint with its client, and contributing directly to remediation of harms where appropriate. Various civil society groups that were consulted during an 18-month consultation process during the development of the grievance mechanism welcomed the mechanism as an important step towards accountability in the banking sector, but also pointed out areas for improvement, such as ANZ's limited transparency regarding its clients, leading to lack of awareness of affected communities to access the grievance mechanism.[98]

This case, involving an Australian bank financing a Cambodian company, sets a global precedent for the banking sector, showing that through its financial contribution a bank can be held accountable for human rights violations and that banks have a responsibility to provide remedy, as ANZ bank did.

The outcome of the ANZ case, which the Australian National Contact Point made possible through its responsiveness to the opportunities that arose to secure remedy, demonstrates that NCPs can play an important role in facilitating dialogue and providing justice for communities.

3.6 PROTECTION AND PROMOTION OF MIGRANT FISHERS' RIGHTS IN ASEAN

3.6.1 Background

Countries in Southeast Asia are among the world's top producers and exporters of fish and seafood products. The fishing and seafood processing supply chains rely on several elements including capture fisheries and land-based primary and secondary processing. According to 2020 data, Indonesia, Vietnam, the Philippines, Thailand, Malaysia and Myanmar were among the top 25 countries for marine capture fisheries. The Asian region is home to nearly 80 per cent of the world's fishers, employing over 30 million women and men for work on fishing vessels and millions more in the broader seafood supply chain. Migrant workers contribute significantly to these sectors as fishers and workers in the processing phase.[99]

REGULATORY DEVELOPMENTS ON LABOUR RIGHTS IN THE FISHERIES SECTOR

In response to strong criticism Thailand has enacted regulatory changes designed to register migrant workers and combat forced labour in the fisheries sector (2015). With improved policies in place, the Thai government aims to implement their fisheries management plan and impose criminal and administrative sanctions for those that violate fisheries and labour-related laws.[100]

Indonesia has adopted the Ministerial Regulation 35/2015 regarding the fishing industry, requiring "fisheries entrepreneurs to implement a human rights system that consists of a human rights policy, human rights due diligence and a remediation mechanism for human rights violations. Without the certification of their human rights system, fisheries businesses can lose one or more of their licences to operate (Ministerial Regulation 35/2015, article 12)".[101]

There have been important improvements in recent years with regard to regulations on labour rights in the fisheries sector in for example Thailand and Indonesia (see box below). However, in general, regulations regarding labour rights in the fishing and seafood processing sectors, including related to labour migration are often weak, with migrant workers often recruited through irregular and informal channels. Workers continue to report violations of labour rights, including the lack of written labour contracts, underpayment or withholding of wages and coercion or involuntary work. The Covid-19 pandemic also had a severe impact on the lives and livelihoods on migrant workers and their families, as workers were stranded on sea and in ports, and could not return to their homes.

3.6.2 ASEAN level initiatives

Various initiatives exist in the ASEAN region to support the rights of migrant fishers in the region. Through the Ship to Shore Rights programme led by the International Labour Organization (ILO), International Organization for Migration (IOM) and United Nations Development Programme (UNDP) efforts are undertaken to promote regular and safe labour migration of migrant workers in South-East Asia's fishing and seafood processing sectors, ensuring that workers are recruited through safe channels.[102]

ACCESS TO JUSTICE FOR MIGRANT FISHERS AND FISH WORKERS IN CAMBODIA

In Cambodia, the ILO, through the Ship to Shore Southeast Asia programme, in collaboration with the Ministry of Labour and Vocational Training and Legal Support for Children and Women is delivering training to key stakeholders on resolution of migrant workers' grievances in 3 provinces. Using ILO's Dispute Resolution Guidelines, the training equips Migrant Worker Resource Centres and other key stakeholders with the knowledge and skills to effectively assist migrant workers in cases of abuse.[103]

The UN-led programme focuses on strengthening legal frameworks, protecting labour rights, and empowering workers in the fishing and seafood processing sectors in Cambodia, Indonesia, Laos People's Democratic Republic, Myanmar, the Philippines, Thailand and Vietnam.

The initiative workswith migrant workers in the fishing and seafood processing sectors, their families, and communities in the countries of origin and destination, as well as with duty bearers includingnational government authorities, workers' and employers' organizations, recruitment agencies, vessel owners and their associations. . Workign with civil society organizations, and community-based organizations, the programme also focuses on the ability of migrants to affect change through increased awareness of their labour rights and ability to seek remedies where exploitation or trafficking is identified, which is still considered a gap.[104]

At the 8th ASEAN Labour Inspection Conference in 2019, with the title "Securing Decent Work in the Fisheries Sector through Labour Inspection in ASEAN", the need to enhance coordination among labour inspectorates in countries of origin and destination countries and to take other measures to improve enforcement in the fishing industry were recognised.[105]

Through the ASEAN-Australian Counter Trafficking Initiative (ASEAN-ACT), experiences of trafficked fishers in accessing justice in the offshore fishing sector have been documented.[106] One of the cases documented dealt with human trafficking and forced labor of Burmese fishers in Kantang in Trang Province in Thailand.

LEGAL CASE ANALYSIS: THAILAND 'KANTANG' CASE - PROTECTION & JUSTICE IN HUMAN TRAFFICKING OF MIGRANT FISHERS

In 2015, Burmese fishers were rescued from fishing vessels who had been subjected to forced labor, confinement, debt bondage, and physical abuse. 18 Burmese fishers were rescued and screened as victims of human trafficking. 15 were referred to government shelters in Songkhla. They faced issues such as financial problems, discomfort, and relational difficulties.

Victims received pro-bono legal help from the NGO Human Rights and Development Foundation (HRDF). They had to testify in person without protective barriers, facing their traffickers directly.

The case progressed from the Trang Provincial Court to the Supreme Court of Thailand. Out of 11 defendants, eight were found guilty of human trafficking; four vessel captains were acquitted due to insufficient evidence. Post-trial, victims were repatriated to Myanmar with limited ongoing support and follow-up coordination for their reintegration.

In terms of remedy the NGO HRDF and supporting organisations have been seeking to enforce the payment of compensation from the dedicated government fund to ensure that the 15 victims receive their compensation as awarded by the Court. The amount of compensation awarded to each plaintiff was based on their evidence and testimony. While the awarding of compensation was a key success of the case, payment was made through government officials in Myanmar. However, government officials had difficulty in locating some of the victims to ensure they received compensation.

The case set a legal precedent in Thailand by recognising debt bondage as a form of human trafficking. It also demonstrated that there was a lack of cooperation between the Thai and Myanmar law enforcement during the investigation and prosecution stages.

Source: La Trobe University and ASEAN-ACT, Legal Case Analysis: Thailand' Kantang' Case Protection & Justice In Human Trafficking Of Migrant Fishers, June 2023[107]

In 2023 the ASEAN Declaration on the Placement and Protection of Migrant Fishers was adopted as part of the 42nd ASEAN Summit which took place in Indonesia.[108] Through this Declaration ASEAN member states recognise that fishing is a hard-to-reach sector and could be a hazardous occupation which aggravates the vulnerabilities of migrant fishers to the risk of decent work deficits including unacceptable working and living conditions on board fishing vessels, abusive recruitment practices and inadequate labour inspections. Through the Declaration member states have committed to enhance the wellbeing and protection of the migrant fishers through the below commitments, (with elements related to remedy in bold):

Photo: SantiPhotoSS

- Mainstreaming the protection of migrant fishers in all relevant migration policies, mechanisms and processes of ASEAN and its Member States, including with those of ASEAN's External Partners, international organisations, and other relevant international entities;
- Strengthening measures, in cooperation with the private entities, employers and other partners and dedicating resources to enhance the labour conditions of migrant fishers and ensure their labour rights protection;
- Taking appropriate and gender responsive measures to identify, address and **punish all forms of violence, abuses and exploitation against migrant fishers, including strengthening the institutional capacities and systems of labour inspections and referral systems, occupational safety and health, accident prevention, workplace injury, grievance mechanisms;**
- Improving inter-agency coordination and labour inspection to effectively protect migrant fishers;
- Improving migration processes of migrant fishers through improvement in ethical and fair recruitment and placement; pre-employment, pre-departure and post-arrival orientations; and access to employment contract or proper documentation in the language they understand;
- Improving the protection of migrant fishers and their families left behind by ensuring their access to communications, access to information on migration policies, job risks and their rights, and right to any modes of transfer of wages and employment benefits to their families;

- Encouraging ASEAN Member States to initiate or conclude bilateral agreements among each other and with countries outside the region to facilitate safe and regular migration of migrant fishers especially in recruitment and placement processes, **safe repatriation and reintegration, and access to justice and remedies;**
- Exploring cooperation among ASEAN Member States on data collection and sharing on, but not limited to, case management, recruitment and repatriation of migrant fishers in and outside of ASEAN, and sharing of best practices and lessons learned in the migration process of migrant fishers;
- Promoting collaboration and partnerships between ASEAN Member States and with relevant ASEAN External Partners, international organisations and other regional and national stakeholders for more effective law enforcement and in protecting ASEAN migrant fishers in the entire migration process; and
- Mobilising resources for the implementation of the Declaration.

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