

Human Rights and Environment: The Case of Maptaphut Industrial Estate and the People

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INTRODUCTION

Part I of this paper is a report prepared by the National Human Rights Commission of Thailand (NHRCT) in response to the complaints filed by a civil society group on the impact of Maptaphut Industrial Estate on the health of the people and communities surrounding the industrial estate. The role of NHRCT in investigating the impacts of human rights violations on the people and the communities help support and empower the people in fighting for policy change as well as establishing additional rules and regulations to protect the environment and the people. This section ends with lessons-learned from adverse impacts caused by multinational firms on the local people and recommendations to governments.

Part II, deals with the synthesis of lessons learned and identification of next-steps of NHRCT in the ASEAN cross-border context. Two cases are discussed: (1) The impact of Thai investors on sugar cane plantation in Cambodia, and (2) The role of Thai industrialists on the development of DawEi Industrial Estate in Myanmar.

PART I: THE MAPTAPHUT INDUSTRIAL ESTATE

In 1981, the Eastern Seaboard Development Plan was announced after the discovery of natural gas in the Gulf of Thailand. The master plan designates Laem Chabang Seaboard in Chonburi to support light industry and Maptaphut Seaboard in Rayong to support heavy industry. In addition, the Master Plan of the Petrochemical Industry Phase III (2003-2018) identified Maptaphut and its neighboring districts (Muang, Banchang, and Pluakdaeng) as industrial estates zone. There has been no mechanism to monitor the implementation of the master plan.

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A research report of the Cancer Research Institute of Mahidol University indicates higher incidence of cancer cases in Maptaphut area during 1997-2001, both in terms of number of cases and severity of incidents (Dejrat *et al.*, 2007).

1.1 Government Regulations on Human Rights Protection

The 2007 Constitution and the 2007 National Health Act are the two instruments which empower the people to demand for their right to safe health conditions.

Part 12 of the 2007 Constitution titled “Community Rights” has two sections:

Section 66: Right to Community

Persons assembling as a community, local community or traditional local community shall have the right to preserve or restore their customs, local wisdom, arts and goods culture of their community and of the nation; and participate in the management, maintenance and exploitation of natural resources, the environment including the biological diversity in a balanced and sustainable fashion.

Section 67: Right of participation in managing natural resources and environment

The right of a person to participate with the State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to the sanitary health condition, welfare or quality of life, shall be appropriately protected.

Any project or activity which may seriously affect communities with respect to the quality of the environment, natural resources and biological diversity shall not be undertaken, unless, its impacts on the quality of the environment and health for the people in the communities have been studied and evaluated in consultation with the public and interested parties through organized public hearing, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, prior to the operation of such project or activity.

The right of a community to take legal action against a government agency, state agency, state enterprise, local government organization or other state authority which is a juristic person to enforce the performance of duties under these provisions shall be protected.

At the same time, the 2007 National Health Act, requires that Health Impact Assessment be carried out before public policy projects can be implemented. The 2007 National Health Act states:

Part I: Rights and Responsibility Related to Health

Section 11: Persons or group of persons have the right to request for health impact assessment and have the right to participate in health impact assessment of projects concerned with public policy.

Persons or group of persons have the right to request for information, explanation, and reasons from government agencies prior to the implementation of projects or activities which may have health impact on the persons or communities and may express opinion on the issues concerned.

During June 2009, the President of the Anti-Global Warming Association and 43 other persons living in the Maptaput Industrial Estate filed a suit against the National Environment Commission, Secretary General of the Natural Resource and Environmental Planning Board, Minister of Natural Resources, Minister of Industry, Minister of Energy, Minister of Transport, Minister of Health, and Thailand Industrial Estate Office, asking the Administrative Court to revoke EIA reports of projects or activities of 76 projects in the Maptaput area and to order termination of all activities of the 76 projects.

1.2 The Role of the Administrative Court

In September 2009, the Prime Minister on behalf of the Public-Private Coordinating Committee approved EIA reports of 55 projects to be granted permission for construction and operation without fulfilling Section 67, clause 2 of the 2007 Constitution. The argument was because the organic law indicated in the clause has not been promulgated.

Sutthi Atchaisai, Coordinator of the Eastern People Network, led the protest and requested the Administrative Court to issue temporary rescue order. The administrative Court issued the temporary rescue order for the 76 projects

to stop all activities on September 29, 2009. Approximately, two weeks later, the Cabinet approved the decision to appeal the court order.

In order to follow Section 67, clause 2 of the 2007 Constitution, the Cabinet endorsed revision of the 1982 Environmental Act. But, according to the 2007 Constitution, an independent organization to evaluate EIA and HIA needs to be established. The people protested against the Cabinet decision while operations of the 76 projects still continued. But, the Minister of Industry claimed that the ministry had no authority to stop operation of the plants if the operation did not revoke the 1992 Industrial Act.

1.3 The Role of the Four-Party Panel (November 2009)

A Four-Party Panel was established with Anand Punyarachun, a former Prime Minister, as chair. Activities include:

1. Classification of 8 groups of industries from most hazardous to least.
2. Drafting of organic law according to Section 67 of the 2007 Constitution.
3. Proposing a structure and composition of independent organization to evaluate HIA and EIA. Suggestion to set up temporary organization before final promulgation of the law was made.
4. Investigating health conditions of people living in industrial estate zones. Statistics indicate much higher incidents of pollution-related diseases and cancer.

The Cabinet approved 405 million baht for emergency recovery and rehabilitation plan for Maptaphut and approved to set up an interim independent organization to evaluate EIA and HIA reports.

The Supreme Administrative Court ordered temporary termination of all plants except 11 projects, 7 non-hazardous and 4 transportation projects. Another 19 projects were submitted for appeal.

The Four-Party Panel members agreed to speed up the process to solve the dead-lock quickly. They met 3 times a week and negotiated with stakeholders to reach solutions. The panel decided that 18 project categories must be classified as dangerous and health hazardous and need to follow regulations required by the Constitution, Clause 67(2).

EIA studies of 65 projects has been implemented with new HIA reports to be completed within 6 months.

1.4 Complaints submitted to NHRCT

In October 2009, Sutthi Atchasai submitted a complaint to the National Human Rights Commission of Thailand (NHRCT) detailing health conditions of the people affected by poor environmental conditions due to emissions of chemicals from petrochemical plants and other heavy industries in the areas. NHRCT and the Eastern People Network agreed to make three demands:

1. The need for a health impact assessment (HIA)
2. An independent organization to approve EIA and HIA
3. Public hearing of all stakeholders.

Later, based on the Cabinet decision, on 6th September 2010, Sutthi Atchasai, submitted additional complaints to NHRCT:

1. To investigate government categories of the hazardous projects impacting on the environment and the people according to the Constitution section 67.
2. To monitor mitigation plans of HIA and EIA of industrial development projects in Rayong Province.
3. To monitor that obligation to respect and protect rights to health safety of all stakeholders be fulfilled.

1.5 NHRCT adopted the UN “Protect, Respect and Remedy” Framework in Assessing the Human Rights Impact of the Industrial Estate on the People and the Community

It must be recognized that the *Guiding Principles on Business and Human Rights: the United Nations “Protect, Respect, and Remedy Framework* was not adopted by the UN until June 2011. Before that, the Ruggie framework was submitted to the Secretary General as the first phase of the project in 2008. Nevertheless, the NHRCT feels that the UN Framework should be used as the guidelines in assessing the impact of the industrial estate on the people. Lessons learned from this assessment will further encourage investors to realize that the UN Framework required that both states and investors have obligations to protect, respect and remedy.

The findings indicate that the government and industrialists failed in all 3 aspects of the guideline.

Business sectors have the obligation to respect and not violate the rights of the people and the communities. Business sector lack knowledge on the framework and did not realize that in addition to EIA and HIA, the framework included “Human Rights Impact Assessment, and “Human Rights Due Diligence Standards” in the guideline. Investors did not know that they have the Obligation to Respect and failed to respect the right of the people and the communities surrounding the industrial estate.

In this respect, people’s access to information needs to be adequately disseminate for transparency and to prepare the public of the potential negative impact which may infringe on them.

The government have the obligation to protect the people from human rights violations. The government did not have adequate precautionary measures to prevent and protect the right of the people. Even the existing rules and regulations regarding environmental rights of the people are neither implemented nor monitored adequately. In addition, the Industrial Estate must have established a well-defined protection process for various categories of hazardous impacts.

As precautionary measures, the government need to establish an independent organization to evaluate the impact assessment reports, covering all dimension of environmental impacts and require that “human rights due diligence’ and ‘Human rights impact assessment” be included in the investment plan. Periodic monitoring reports are also required to protect the people from unexpected harmful incidents.

The government obligation to fulfill and the investors’ obligation to remedy in case of human rights violations. In cases of undesirable hazardous impacts of the people and the community, the community has the right to take legal action against government agencies. Local people are now realizing that they have their rights. People have learned to organize themselves to protect their rights. Health security is being demanded through the application of Health Impact Assessment regulation. Environmental protection plans and activities are expected to be derived from the Environmental Impact Assessment requirement.

Multi-national corporations must realize that their corporate social responsibility is being tested. It is not acceptable for the firms to make threat that the firms will be moved to other countries which do not have strict requirements for environmental and health protection for the people.

The people are faced with a dilemma, they have to sacrifice health and environmental security for economic development which benefitted investors more than the workers. They must make a choice between relying on employment in the industrial estate and face health hazard or to demand for their rights and be unemployed.

1.6 Conclusion and Recommendations

1. The UN Guideline on the “Protect, Respect, Remedy” Framework must be practiced by all corporate firms.
2. On the government obligation to protect, the issue of community rights needs to be highlighted. Appropriate land-use planning and proper EIA, HIA, HRIA, HR Due Diligence, and Strategic Environmental Assessments are required.
3. On the private investors’ obligation to respect, proper EIA, HIA, HRIA, HRDD, and SEA are also required.
4. On the government obligation to fulfill and the private sector obligation to remedy, it is recommended that the following instruments/agencies are established:
 - an independent environmental body to monitor all activities
 - an environmental financial act/fund to establish guidelines and facilitate remedy cases.

PART II: NEXT STEPS OF NHRCT IN ASEAN CROSS-BORDER CONTEXT

2.1 Lessons Learned from Maptaphut: Implications and Dilemma

1. Impacts on the people and communities.

Thirty years after the establishment and construction of the Maptaphut Industrial Estate, the people in the surrounding areas of the estate are faced with great dilemma. They learn that they have to sacrifice health and environmental security for economic development. At first they were optimistic and thought that the estate would create a great number of job opportunities. They did not realize until too late that with job opportunities come health hazards and environmental pollution. They also learn that the workers and general public may gain benefits in

the form of wages and salaries or small enterprises in the service sector of the communities. But the real benefits go to the multi-national investors most of whom are not concern with the well-being of the people and the communities.

2. The contribution of multi-national corporations. It is recognized that many of the corporations adopt Corporate Social Responsibility (CSR) policy as their public relations strategy. However, corporations must realize that CSR policy and activities are not sufficient to respond to the adverse impact created and affecting the environment and the people. Human rights Due Diligence (HRDD) and Human Rights Impact Assessment (HRIA) will have to be required in addition to the EIA/HIA of the present.

Furthermore, the workers are faced with another dilemma when corporations make threat that they are prepared to move to other countries where investment requirements are less stringent. The people fear unemployment conditions. They have to choose between health protection or employment.

2.2 The role of NHRCT in investigation of multi-national corporations in the ASEAN context

1. The establishment of ASEAN communities in 2015 Discussion on the issue of the role of national commissions in dealing with human rights complaints which are cross-border cases are not new. The Thai Commission has received a few complaints on investments by Thai nationals in neighboring countries impacting on people. From the lessons learned from Maptaphut Industrial Estate, it is recognized that investors must have the obligations to respect, protect and remedy human rights abuses cases. The Thai Commission has deliberated on the issue and come up with a clear understanding that the NHRCT mandates are:

- Investigate Thai nationals (state and private companies) to ensure that they comply with the Human Rights principles regardless whether the incidents take place within Thai territory or sovereignty or beyond.
- Investigate Human Rights violations on Thai soil, regardless of the nationality of the victims and/or the perpetrators.
- Do not investigate non-Thai nationals outside of Thai soil.
- To prevent misunderstandings, investigations on human rights abuse by Thai nationals on foreign soil need to be carried out in collaboration with local civil society groups.

2. The Case of Koh Kong Sugar Plantation in Cambodia

On January 6, 2010, the NHRCT received a complaint from CLEC (Community Legal Education Center) represented local community members who had been occupying land for cultivation. The investor is Thai Khon Kaen Sugar Industry Public Co. Ltd. (KSL). CLEC, on behalf of local villagers accused KSL of Human rights violations and KSL denies the accusation.

The Sub-Committee on Civil and Political Rights of the NHRCT took responsibility to investigate the case. In the investigation process, the sub-committee adopted the UN Protect, Respect, and Remedy Framework. The preliminary field study was carried out by CLEC to support CLEC complaint documents. The Sub-committee met with the people on the ground in Koh Kong and invited KSL representatives to give statement to the sub-committee in Bangkok. They reported to the sub-committee that the people being impacted have been remedied. But CLEC claimed that there are some who have not been compensated. The negotiation process is still going on.

NHRCT Sub-commission on Civil and Political Rights preliminary statements are:

- The investigation process involve the examination and monitoring of activities of Thai nationals (KSL through Cambodian subsidiaries). The UN Framework states that obligations to respect and to remedy are directly the responsibility of the investors. But the Thai state also has the responsibility to protect human rights of the people by ensuring that Thai nationals follow their obligations to respect and remedy. The Sub-committee did not include the activities of the Cambodian State in the investigation.
- This means that KSL has a responsibility under the UN Guiding Principles to respect Human Rights obligations on their business enterprise operations through subsidiaries in Cambodia independent of the Cambodian government obligation to protect Human Rights.
- Human Rights Due Diligence require that investors cannot be complicit and deny knowledge of the human rights violations carried out by either upstream or downstream partners.

3. The Dawei Economic Development Zone in Myanmar

In 2013, NHRCT received complaints from Thai (Sem Sikalai Ashram) and Myanmar (DDD) civil society. Both are members of the civil society network organizations who had organized anti-gas pipeline construction impacting on Thai people in Kanjanaburi and Karen communities on both sides of the Thai-Myanmar border. The network has been working on issues of development projects impacting on minorities groups.

Even though the 2008 MoU between the Myanmar and Thai consultants has been terminated, civil society organizations still question the implementation of the Master Plan in terms of governance, feasibility, impact on minority groups, and impact on local communities. In June 2013, the NHRCT Sub-committee on Civil and Political Rights visited and met with local civil society organizations who conducted preliminary comprehensive survey. The survey found that there are three groups of people who have been affected, i.e., those in Kalonta village affected by the construction of the big reservoir and need to be relocated, the Karen community affected by the construction of the transport route connecting Dawei and Kanjanaburi in Thailand, and those living in the area of the construction of the Dawei Deep Sea Port and the Dawei Economic Zone in Nabule District. The survey results are being examined and distributed to the concerned authorities for consideration. The report is also being submitted the Chair of the Advisory Group to be transmitted to President Thein Sein.

CONCLUSION: Future Activities of NHRCT in Collaboration with SEANF and AICHR

The issue of Business and Human Rights and the role of multi-national corporations have been included in the strategic plan of the Southeast Asia NHRIs Forum (SEANF) as well as the ASEAN Inter-government Commission on Human Rights (AICHR). The International Coordinating Committee of NHRIs (ICC) has established a Working Group on Business and Human Rights where guidelines, manuals and training sessions are being planned to empower NHRIs to perform active roles in protecting the rights of the poor and disadvantaged groups impacted by the multi-national corporations.

