

Experience Sharing from the Region

Human Rights Commission Malaysia on Transboundary Issue

The 8th Regional conference on Human Rights and Business in South
East Asia

7-9 September 2018, Chiang Khong



Case study No 1: Stateless(ness) in Sabah



Background

Stateless persons include those:

- i) not considered as a national by any State under operation of its law
- ii) who do not enjoy the rights attached to their nationality
- iii) who are unable to establish their nationality, or who are of undetermined nationality
- iv) in the context of State succession, are attributed the nationality of a State other than the State of their habitual residence.

Majority of complaints received by SUHAKAM relates to issues of nationality and citizenship. The trend shows that the rate is increasing, year on year.

According to unofficial statistics 800,000 out of Sabah's 3.9 million people are undocumented immigrants.



The situation

The stateless in Sabah include:

- i) those who are Filipino and Indonesian illegal migrants, and have lived in Sabah for many decades
- ii) members of tribes native to the state
- iii) children from illicit affairs, unrecognized marriages, due to undetermined citizenship status of the mother, incomplete document of the parents or because they have been abandoned by their parents

Stateless persons face a myriad of problems including equality before the law, the right to work, the right to education, the right to healthcare, the right to own property and vulnerability to arbitrary treatment and crimes such as trafficking



Seeking solutions

Amongst others

- i) SUHAKAM recommends the Government to accede to the international human rights instruments such as Convention Relation to the Status of Stateless Persons, Convention on the Reduction of Statelessness, Convention Relation to the Status of Refugees
- ii) Collaborating and signing of tripartite agreement with Commission of Human Rights of the Philippines (CHRP) and the National Commission on Human Rights of Indonesia (Komnas HAM).
- iii) ASEAN Member states have made the commitment to the ASEAN Intergovernmental Commission of Human Rights (AICHR) to address the issue of stateless within ASEAN region since 2011



Case study No 2: Southeast Asia Haze



Background

The Association of Southeast Asian Nations (ASEAN) Secretariat defines haze as “sufficient smoke, dust, moisture, and vapour suspended in air to impair visibility.”

Haze pollution is a transboundary issue when “its density and extent is so great at the source that it remains at measurable levels after crossing into another country’s airspace”

Since 2005, Southeast Asia has experienced an annual haze due to a combination of human activities and climate factors that promote both drought and natural fires.

Existing farmland is dried out and burned for the next season's crop and to clear surrounding forests for expansion. The fires are large and hard to control and dry, CO₂-rich peatlands can burn for many weeks.



The problem

The Southeast Asian region had been subjected to a drastic reduction in air quality from the biomass burnings that occurred in 2013 and 2015.

The slash-and-burn techniques is an easy way to clear the land, for the production of pulp, paper and palm oil on the island of Sumatra, in western Indonesia and Borneo.

The smoke from the biomass burnings covered the entire region including Brunei, Indonesia, Malaysia, Singapore and Thailand, with haze particulate matter (PM) reducing the air quality to hazardous levels.

Singaporean and Malaysian investors are involved with the local companies which carry out the clearing of the land



The costs

Economic cost: A persistent, annual problem that disrupts lives, costs the governments of Indonesia, Singapore and Malaysia billions of dollars

Human cost: Millions of people at risk of respiratory and other diseases, and even loss of lives for those with chronic breathing problems.

Environmental cost: The land that burns is extremely carbon rich, raising Indonesia's contribution to climate change

The solution

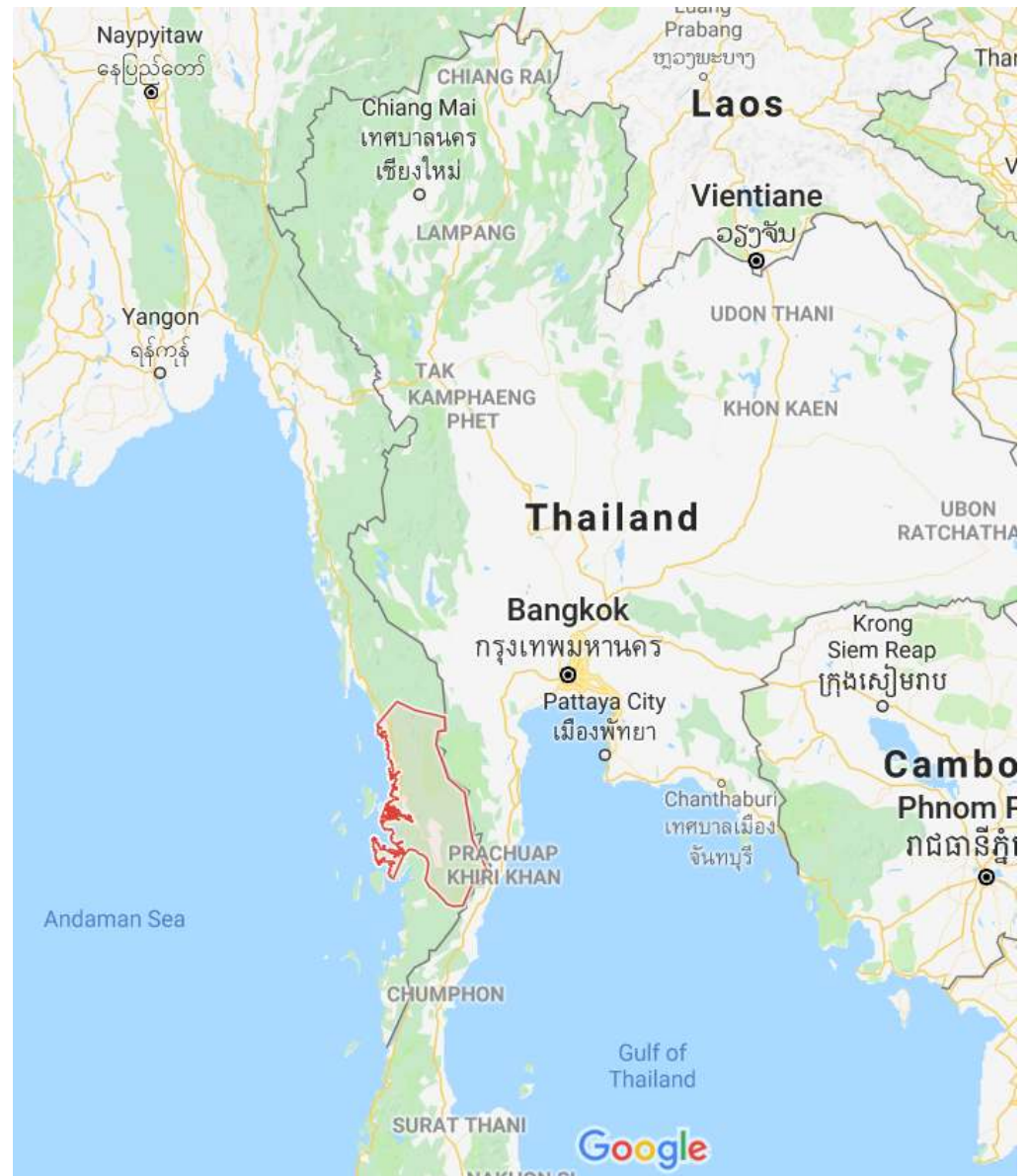
Indonesia has taken positive steps to avoid its re-occurrence, by implementing strict [plantation laws](#) and a companies found guilty of clearing land by burning can be fined up to 10 billion rupiah (US\$700,000), and management faces up to 10 years in jail.

Financial incentives were needed to encourage whistleblowers to come forward so that people flouting the rules can be caught.

Certification system to identify safe producers, so consumers can take direct action themselves.



Case study No 3:
Myanmar Stark
Prestige Palm Oil
Plantation (MSPP)
in Tanintharyi
Township, Myeik
District,
Southeastern
Myanmar (2017)



Stakeholders

On 11 January 2017, SUHAKAM received Memorandum from groups (Tarkapaw Youth Group, Tenasserim River and Indigenous People Networks, Southern Youth Candle Light, Khaing Myae Thitsar, Myeik Lawyer Network, Dawei Development Association)

Malaysian Prestige Platform (95% stake) and Myanmar company Stark Industries (5% stake)

Financed by Maybank, which arranged and guaranteed US124 million in Glenealy Plantation bonds since 2011

38,000 acre oil palm projects, joint venture between the companies named above



Issues raised

- i) Severe negative social and environmental impacts for 4 indigenous Karen villages, approx. 4,480 people
- ii) 6,000 acres cleared, including betel nut and cashew orchards grown by villagers – leading to loss of livelihood, leading to poverty and end up as laborers with low wages
- iii) Families are unable to feed and clothe their families
- iv) Chemical fertilizers and pesticides has polluted water sources and affected villagers' health, as well as livestock die off
- v) Failed to comply with domestic and international human rights principles



Response

Contacted and wrote to Myanmar Human Rights Commission

Who in turn had written to Ministry of Agriculture, Livestock and Irrigation, the Myanmar Investment Commission and Thanintharyi Regional Govt

Outcome

Myanmar Investment Commission responded as below:

Villagers have been compensated, EIA will be conducted, resubmit programme for permission to cultivate the palm oil, companies should re-examine their activities, filed investigation, etc.



Seeking better solutions.....

Working with companies, with businesses outside of the main country, are aware or and work towards fulfilling their human rights obligations in carrying out their business operation

Malaysian Government must implement robust mechanisms to ensure that state and non-state Malaysian companies act in compliance with human rights and environmental standards as they pursue projects and business abroad

Ensuring Malaysia's commitment to the United Nations Guiding Principles on Business and Human Rights (UNGPs) and international human rights treaties

Cooperation at the regional level, through existing mechanisms such as ASEAN, AICHR, bilateral or trilateral cooperation and collaboration





Experience Sharing from the Malaysia:

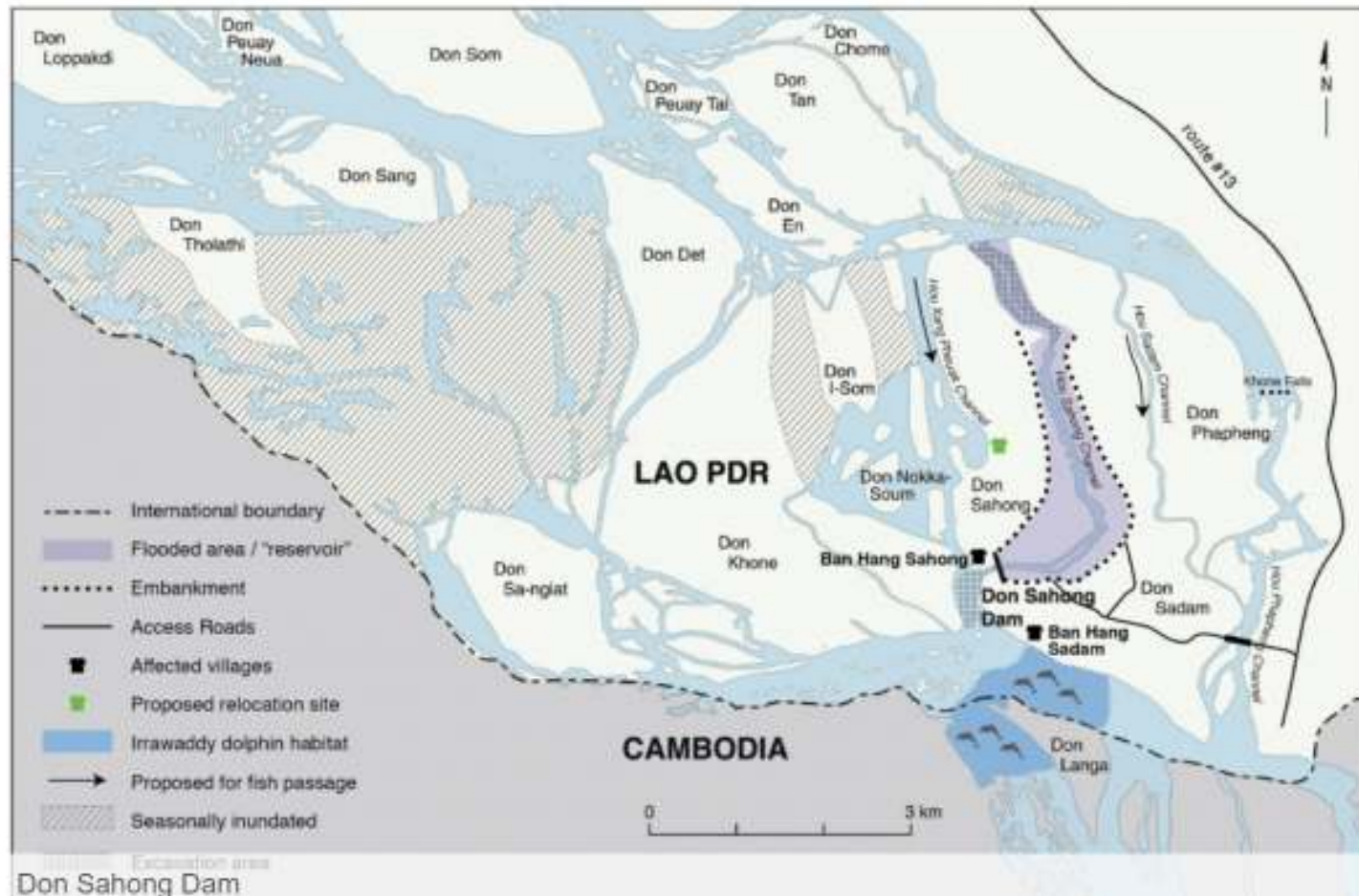
The Construction of Don Sahong Hydropower Dam (DSHP) in Laos (2014-15)

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Stakeholders

Complaint received on 20 October 2014 :

- Memorandum from Community Resource Centre (CRC) (Thailand), EarthRights International (ERI) (United States), International Rivers (IR) (United States), NGO Forum on Cambodia (Cambodia), Northeastern Rural Development (NRD) (Cambodia) and Cambodian Rural Development Team (CRDT) (Cambodia)
- Mega First Corporation Berhad (MFCB), Malaysian company is the owner and operator of the dam



Issues raised

- i) Failure to collect adequate baseline data or perform comprehensive analysis of Don Sahong's likely impacts
- ii) Endanger the migratory fish in Mekong River leading to negative impact on the health, livelihood of the communities in Laos, Cambodia and Thailand
- iii) Jeopardizes the survival of Laos' last remaining permanent population of endangered Irrawaddy Dolphins, whose habitat is located immediately downstream.
- iv) Undermines the increasing popularity of the Siphandone area as a tourist destination
- v) past and continuing violation of Mekong communities' right to participate in the decision-making and approval of projects that affect their interests
- vi) Does not justify the generation of at most 260 MW of electricity for export to Thailand and Cambodia





Fishing gear in the Hou Sahong Channel, upstream of the Don Sahong dam site - 2008



Wing trap fishing gear in dry season, Hou Xang Peuk channel, Siphandone, Laos 2008

Violations of Rights

Violations of Human Rights to Health, Life and Livelihood, Violations of Right to Information, Violation of Right to Participate in the Decision-making and Approval of Projects that Affect Their Interests

Response from SUHAKAM

Conducted an on-site visit to verify allegations

Met with MFCB seeking further information and verify allegations

Report from the meeting with MRCB was extended to Earth Rights International – concerns raised included the lack of baseline information, transboundary impact assessment studies on fisheries, mitigation measures, lack of consultation with communities

Second meeting with MFFCB, with proposition to meet complainants – but was refused



Outcome

Laos does not have a NHRI – difficulty in proceeding further

Wrote to MFCB - recommendations to ensure its business operations and activities should respect human rights of the local communities, as enunciated in Principles 11-29 of UNGP

Will continue to engage with Malaysian Govt to formulate policies or guidelines to monitor Malaysian companies and human rights

Is that adequate? Are there better ways to resolve the issue,
or to seek solutions?

