

AMICUS CURIAE BRIEF
IN THE CLASS ACTION OF THE PLAINTIFFS: MRS. HOY MAI, MR. SMIN TET, AND
SEVERAL MEMBERS, ALONG WITH AT LEAST 23 FAMILIES FROM THE VILLAGES OF
BOS, O'BAT MOAN, TAMAN, TRAPAIN VENG, KTUM, AND KON KREAL COMMUNE,
SAMRONG DISTRICT, ODDAR MEANCHEY PROVINCE, CAMBODIA
(BLACK CASE NO. POR. 718/2561)

I. Introduction

1. The International Commission of Jurists (ICJ) and Amnesty International submit this Amicus Curiae Brief in the class action lawsuit filed by Mrs. Hoy Mai and Mr. Smin Tet, on behalf of several members, along with at least 23 families from the villages of Bos, O'Bat Moan, Taman, Trapain Veng, Ktum, and Kon Kreal Commune, Samrong District, Oddar Meanchey Province, Cambodia. They represent a larger group in this class action.¹ The lawsuit alleges that these families were forcibly evicted from their homes and/or farmlands and suffered human rights abuses under Thai tort laws and Cambodian law, allegedly committed by Angkor Sugar Co. Ltd., a subsidiary of Mitr Phol Sugar Corporation Ltd. operating in Cambodia.
2. The ICJ, founded in 1952, is an international non-governmental organization composed of 60 eminent jurists representing the world's main legal systems. It works to advance the rule of law, including through promoting the domestic implementation of international human rights law and standards. The ICJ has been working in Thailand for over two decades, including with the Royal Thai Government, the Judiciary, academics, and legal practitioners.
3. Amnesty International is a worldwide movement of 10 million people working for the respect, protection and fulfilment of internationally recognized human rights. The movement has members and supporters in more than 150 countries and territories including in Thailand and is independent of any government, political ideology, economic interest, or religion. Amnesty International bases its work on international human rights instruments adopted by the United Nations and regional bodies. Amnesty International has intervened in many cases that have raised a wide range of human rights issues before national and international courts. Amnesty International released a video in 2011 documenting the land dispute which forms the basis of the substantive claims made by the plaintiffs (Smin Tit, Hoy Mai and Others) against the respondents (Mitr Phol Sugar Corporation Ltd.)

¹ In this case, more than 700 affected families, as reported by Inclusive Development International, are represented by the lead plaintiffs in this class action. For more information, see: Inclusive Development International, 'Cambodia: Challenging Mitr Phol land grab,' available at: <https://www.inclusivedevelopment.net/cases/mitr-phol/>

4. In January 2008, Cambodia's Ministry of Forestry and Fishery granted an Economic Land Concession (ELC) to three sugarcane companies registered in Cambodia, including Angkor Sugar Co. Ltd., which is an apparent subsidiary of the defendant, to operate an industrial sugar plant in Oddar Meanchey Province in the northeast of Cambodia. After the concession was granted, Angkor Sugar Co. Ltd. is alleged to have colluded with local authorities to forcibly seize land held by persons from local communities, in the process destroying their houses, burning villages and crops, and beating some of the villagers.² In 2015, the National Human Rights Commission of Thailand (NHRCT) and its Sub-Committee took the position that Mitr Phol Sugar Corporation Ltd. was directly responsible for human rights abuses committed in conjunction with its business partners in Cambodia. The commission concluded that the company was liable to repair the situation and to provide a remedy for the damages.³ On 2 May 2017, the Thai Cabinet passed a resolution referencing the findings of the NHRCT on this case and the need to set up a procedure to establish a body to oversee Thai investors in foreign countries and their compliance with human rights.⁴
5. On 28 March 2018, the lawsuit was filed in Thailand's South Bangkok Civil Court by Mrs. Hoy Mai and Mr. Smin Tet, on behalf of several members, along with at least 23 families, from the villages of Bos, O'Bat Moan, Taman, Trapain Veng, Ktum, and Kon Kreal Commune, Samrong District, Oddar Meanchey Province, Cambodia.⁵ The Court granted class-action status on 31 July 2020. The case is currently pending before the First Instance Court for consideration.
6. This submission is based on international and comparative laws and standards documented in the ICJ Report: *Thai Companies in Southeast Asia: Access to Justice for Extraterritorial Human Rights Harms*, which should also be useful as a supplementary reference.⁶
7. This submission also builds on Amnesty International's extensive work on forced evictions globally including in Cambodia. In 2011, Amnesty International released a video documenting the land dispute which forms the basis of the substantive claims made by the plaintiffs (Smin Tit, Hoy Mai and Others) against the respondents (Mitr Phol Sugar Corporation Ltd.). Amnesty International also released two reports, one in

² National Human Rights Commission of Thailand (NHRCT), 'Investigation Report No: 1003/2558', 12 October 2015, at 4-5, available at: https://drive.google.com/file/d/0Bx60PIXMazQqMUNNWTNhbDFBaDA/view?resourcekey=0-oJGUV4Jgr4YwLx_9mQtggQ ('NHRCT Report No. 1003/2558'); Complaint No. Por. 718/2561, at 8-9.

³ NHRCT Report No. 1003/2558, at 25-27

⁴ Cabinet, 'Resolution regarding Summary of Findings, Recommendations and Policy on Fundamental Rights of Local Community in Connection with the Operation of Mitr Phol Co., Ltd that Affected the Populations in Samrong and Chongkal District, Oddar Meanchey Province, in Northeastern of Cambodia,' 2 May 2017, available at: <https://etowatch.com/cabinet-resolution/>

⁵ Complaint Submitted to the Bangkok South Civil Court, 'Mrs. Hoy Mai and Mr. Smin Tet v. Mitr Phol Co. Ltd', Black Case No. Por. 718/2561, 28 March 2018. ('Complaint No. Por. 718/2561')

⁶ ICJ, 'Thai Companies in Southeast Asia: Access to Justice for Extraterritorial Human Rights Harms', February 2021, available at: <https://www.icj.org/wp-content/uploads/2021/03/Southeast-Asia-Access-to-Justice-Thai-companies-Publication-ENG.pdf>

2008, titled *Rights Razed – Forced Evictions in Cambodia*, and one in 2011, titled *Eviction and resistance in Cambodia: Five women tell their stories*, both of which focus on forced evictions in Cambodia, with the latter featuring a case study on one of the plaintiffs in this case. Further, Amnesty International has documented land disputes and forced evictions in Cambodia for nearly three decades and continues to monitor these issues in the country today.

8. The ICJ and Amnesty International’s intervention, in this case, seeks to assist the Court by drawing attention to a discrete body of international human rights law, standards, and comparative jurisprudence that the Court may wish to consider in resolving this case.

8.1 First, there is a clear consensus that, irrespective of state obligations, business enterprises must respect all internationally recognized human rights wherever they operate, including the right to adequate housing. Thailand has also taken steps towards incorporating such international standards, as described later in the submission, into domestic laws and regulations.

8.2 Second, Mitr Phol has publicly recognized the application of international human rights standards in carrying out its operations.

8.3 Third, certain normative sources of international law support the plaintiffs’ contention that Thai courts have a responsibility that extends beyond the national borders of Thailand to ensure the right to access justice and effective remedy and reparation to persons from communities who live in the vicinity of the operations of Thai companies and their subsidiaries in other countries when their rights are violated.

8.4 Fourth, Thai companies also owe a duty to exercise reasonable care in monitoring and regulating their subsidiaries in relation to their conduct that is likely to result in an adverse impact on human rights and the environment. It is submitted that international law and standards do not confine the responsibilities of a parent company only to its own conduct but include the activities of subordinate entities. Accordingly, Mitr Phol owes a duty to exercise due diligence through effectively monitoring and regulating its subsidiaries to prevent and redress adverse human rights and environmental impacts, and can in principle be held liable for the acts of the subsidiary.

8.5 Fifth, other courts in domestic contexts adjudicating similar cases have supported the recognition of a duty to exercise due diligence (duty of care) for parent companies.

II. INTERNATIONAL LAW AND STANDARDS

9. Thailand’s international legal obligations regarding the conduct and responsibilities of transnational corporations and other business enterprises, in relation to human rights, including the right to adequate housing, are contained in all principal human rights treaties and other instruments. These obligations also concern Thailand’s

extraterritorial obligations in relation to the conduct of business entities that occurs outside its territory which is discussed below.

10. Under international law, the obligation to ensure that human rights are respected, protected and fulfilled rests with the State as a whole, including the legislative, executive and judicial branches. Indeed, human rights obligations engage all State actors, including the judiciary.⁷
11. Under the principle of *pacta sunt servanda* and general principles governing the law of treaties, Thailand is bound to apply in good faith all international treaties to which it is a party.⁸ Furthermore, Thailand may not rely on provisions of its internal law to justify a failure to meet a treaty obligation.⁹
12. Thailand is a party to seven of the nine principal international treaties on human rights, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁰ Thailand acceded to the ICESCR on 5 September 1999.
13. These human rights treaties also established monitoring bodies composed of independent experts charged with assessing State parties' compliance with their treaty obligations. These treaty bodies issue General Comments that contain authoritative interpretations of the treaties and serve to guide States in their implementation of their obligations. The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts established under the ICESCR. The International Court of Justice has held that it should ascribe "great weight" to the interpretations adopted by these independent expert bodies – including the General Comments – that were established specifically to supervise the application of those treaties,¹¹ and national courts would be well-advised to follow the approach of the International Court of Justice.

⁷ See, e.g., Human Rights Committee, 'General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant', 2004, CCPR/C/21/Rev.1/Add.13, para.1 and 15, available at: <https://www.refworld.org/docid/478b26ae2.html> ('HRC General Comment No. 31').

⁸ United Nations, 'Vienna Convention on the Law of Treaties', 23 May 1969, United Nations, Treaty Series, vol. 1155, at 331, Article 26, available at: <https://www.refworld.org/docid/3ae6b3a10.html>; General Comment No. 31, para.3.

⁹ Articles 26 and 27 of the Vienna Convention on the Law of Treaties; HRC General Comment No. 31, para. 4.

¹⁰ Others include: (i) International Covenant on Civil and Political Rights (ICCPR); (ii) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; (iii) Convention on the Rights of the Child (CRC) and its two Optional Protocols; (iv) International Convention on the Elimination of All Forms of Racial Discrimination (CERD); (v) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and (vi) Convention on the Rights of Persons with Disabilities (CRPD).

¹¹ This principle has been affirmed by the International Court of Justice in Ahmadou Sadio Diallo Case. See International Court of Justice, 'Ahmadou Sadio Diallo Case (Republic of Guinea v. Democratic Republic of the Congo)', Judgment, 30 November 2010, paras. 66-68, available at: <https://www.icj-cij.org/files/case-related/103/103-20101130-JUD01-00-EN.pdf>

State obligation to protect against human rights abuses

14. All UN human rights treaties provide for the obligation to protect persons from interference of human rights by non-State actors, including business enterprises.¹² The jurisprudence of treaties to this effect went on to inform the development of the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed unanimously by the UN Human Rights Council in 2011.¹³ The UNGPs explicitly recognized the State's duty to "protect" against human rights abuse by business enterprises as one of its three principal pillars.
15. With respect to the provision of remedial processes, the UNGPs (Principle 25) acknowledge the obligation of States to "take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that...those affected (from human rights abuses) have access to effective remedy." These include State-based judicial or, for certain transgressions, nonjudicial grievance mechanisms.¹⁴
16. Within the context of remedies for business related human rights, Amnesty International has observed that cross-border cases can increase the risk of inaction and impunity for victims and survivors of corporate harm because systems of accountability tend to operate predominantly within state borders, often failing to track the global nature of corporate operations.¹⁵

¹² For example, CESCR, 'General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities', 10 August 2017, E/C.12/GC/24, para 14, available at: <https://www.refworld.org/docid/5beaecba4.html> ('CESCR General Comment No. 24'); Committee on the Rights of the Child, 'General comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights', 17 April 2013, UN Doc CRC/C/GC/16, para 28, available at: <https://www.refworld.org/docid/51ef9cd24.html> ('CRC General Comment No. 16'); HRC General Comment No. 31, para.8; Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined fourth and fifth periodic reports of India', 24 July 2014, UN Doc CEDAW/C/IND/CO/4-5, paras. 14-15, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5&Lang=En; and Committee on the Elimination of Racial Discrimination, 'Consideration of Reports Submitted by States Parties Under Article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada', 24 May 2007, UN Doc CERD/C/CAN/CO/18, para 17, available at: <https://undocs.org/CERD/C/CAN/CO/18>.

¹³ See also: Human Rights Council, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,' 13 February 2007, UN Doc A/HRC/4/35/Add.1.

¹⁴ Principles 25-30 of the UNGPs. Additionally, businesses should provide operational-level grievance mechanisms and cooperate with industry-level and State-provided grievance mechanisms to ensure access to effective remedies for those affected.

¹⁵ Amnesty International, 'Creating a paradigm shift: Legal solutions to improve access to remedy for corporate human rights abuse,' POL 30/7037/2017, 4 September 2017, at 3, available at <https://www.amnesty.org/en/documents/pol30/7037/2017/en/>

Corporate responsibility to respect the right to adequate housing under international law

17. The interveners submit that there is clear international consensus that companies have a responsibility to respect all human rights. Accordingly, this section of our submission will outline the scope and requirements of this responsibility to respect related to their business activities as conceived under the UNGPs.¹⁶ The UNGPs are internationally recognized standards for both States and corporate actors in the context of business-related human rights abuses and should guide this Court's adjudication of this application for class certification.
18. In addition to the states' duties as set out above, the UNGPs also make clear that business enterprises themselves bear the responsibility to respect all human rights wherever they operate, irrespective of the role of the State.¹⁷ Further, this responsibility to respect human rights requires that business enterprises (i) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and (ii) seek 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.¹⁸
19. The official Commentary to the UNGPs clarifies that "the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."¹⁹
20. Pursuant to the UNGPs, among the "internationally recognized human rights" that business enterprises are bound to respect²⁰ is the right to adequate housing, which is

¹⁶ OHCHR, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework', 2011, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (UNGPs).

¹⁷ UNGPs, Principle 11

¹⁸ UNGPs, Principle 13.

¹⁹ UNGPs, Commentary to Guiding Principle 11

²⁰ According to Principle 12 of the UNGPs, "the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work." The Official Commentary of the UNGPs provides an authoritative list of core internationally recognized human rights, including those in the Universal Declaration of Human Rights and its main codifying instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

contained in seven of the major international human rights treaties, including Article 25 (1) of the Universal Declaration of Human Rights and Article 11(1) of the ICESCR.²¹

21. In its General Comment No. 7, the CESCR recognizes forced evictions as a violation of the right to adequate housing among other human rights.²² The CESCR defines forced eviction as “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”²³
22. In the same General Comment, the CESCR has further highlighted key legal and procedural safeguards that must be put in place for evictions to be considered lawful.²⁴ These safeguards include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts. The Committee has also emphasized that no one should be rendered homeless or vulnerable to other human rights violations as a result of evictions.
23. In addition, the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (UN Basic Principles) summarize the safeguards and principles against forced evictions.²⁵ In line with the obligations to guarantee the right to adequate housing and prevent forced evictions, the UN Basic Principles provide a list of safeguards that states should put in place before, during, and after carrying out any eviction. The UN Basic Principles also indicate that all persons claiming to be victims of forced evictions must have access to an effective remedy.

²¹Article 25, Convention relating to the Status of Refugees (1951); Article 5 [e] [iii], Convention on the Elimination of All Forms of Racial Discrimination (1969); Article 14 (2) Convention on the Elimination of All Forms of Discrimination Against Women (1979); Article 27 (3) Convention on the Rights of the Child (1989); Article 43 (1) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Article 23 (1) Convention on the rights of persons with disabilities (2008).

²² CESCR, ‘General Comment No. 7 The right to adequate housing (Art 11.1): forced evictions,’ 20 May 1997, 20/05/97, para 4. (‘CESCR General Comment No. 7’)

²³ CESCR General Comment No. 7, para 3.

²⁴ CESCR General Comment No. 7, para 15 and 16.

²⁵ Presented in the report of the UN Special Rapporteur on Adequate Housing, A/HRC/4/18, February 2007. Available at: <http://www2.ohchr.org/english/issues/housing/annual.htm> Also available at: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

24. While States bear the principal obligation to guarantee the right to adequate housing, other parties, including transnational corporations and other business enterprises, have a responsibility not to commit forced evictions.²⁶ They must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.²⁷

The extraterritorial dimension of States' duty to remediate corporate harm under international law

25. Under international human rights law, the discharge of human rights obligations is not confined only to conduct occurring within a State's territorial borders. States have obligations for conduct with human rights impact both at home and extraterritorial. This obligation extends to activities of Thai business entities, and is especially important in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.

*The Maastricht Principles*²⁸

26. Extraterritorial obligations have been clarified in the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, and its legal commentary which explains the basis for the Principles.²⁹ These Principles are a synthesis of existing sources and authorities in respect of international human rights law and standards. The Maastricht Principles indicate the basis for jurisdiction in Principle 9,³⁰ while Principle 25 makes clear that, for the enjoyment of economic, social and cultural rights, States need to adopt administrative, legislative, investigative, adjudicatory, and other measures:

"a) where the harm or threat of harm originates or occurs on its territory;

²⁶ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18 (2007), para 11. (' UN Basic Principles')

²⁷ UN Basic Principles, para 73.

²⁸ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (Maastricht Principles), 2011, available at: <https://www.icj.org/protecting-human-rights-beyond-borders/>

²⁹ Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon, and Ian Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', *Human Rights Quarterly* 34, 2012, pp. 1084–1169, available at: <https://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf>

³⁰ Principle 9 of the Maastricht Principles states that "a State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following: (i) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law; (ii) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory; and (iii) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law."

b) where the non-State actor has the nationality of the State concerned;

c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;

d) where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor's activities are carried out in that State's territory;

e) where any conduct impairing economic, social and cultural rights constitutes a violation of a peremptory norm of international law. Where such a violation also constitutes a crime under international law, States must exercise universal jurisdiction over those bearing responsibility or lawfully transfer them to an appropriate jurisdiction."

UN human rights treaties on extraterritorial obligations by non-state actors

27. All UN human rights treaties provide for the obligation to protect persons from interferences of human rights by non-State actors, including business enterprises.³¹ Extraterritorial obligations are expressly or implicitly provided in UN human rights treaties in relation to businesses and are well integrated into the jurisprudence of the UN treaty bodies.³² The CESCR has also addressed the issue of extraterritorial obligations in a number of its General Comments relating to specific economic, social

³¹ For example, CESCR, 'General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities', 10 August 2017, E/C.12/GC/24, para 14, available at: <https://www.refworld.org/docid/5beaecba4.html> ('CESCR General Comment No. 24'); Committee on the Rights of the Child, 'General comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights', 17 April 2013, UN Doc CRC/C/GC/16, para 28, available at: <https://www.refworld.org/docid/51ef9cd24.html> ('CRC General Comment No. 16'); HRC General Comment No. 31, para.8; Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined fourth and fifth periodic reports of India', 24 July 2014, UN Doc CEDAW/C/IND/CO/4-5, paras. 14-15, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5&Lang=En; and Committee on the Elimination of Racial Discrimination, 'Consideration of Reports Submitted by States Parties Under Article 9 of the Convention - Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada', 24 May 2007, UN Doc CERD/C/CAN/CO/18, para 17, available at: <https://undocs.org/CERD/C/CAN/CO/18>.

³² Article 2 paragraph 1 of the ICESCR provides an explicit basis for extraterritorial obligations. It reads "each State Party [...] undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." See also HRC General Comment No. 31, paras. 8 and 10; CESCR General Comment No.24; and CRC General Comment No. 16.

and cultural (ESC) rights.³³ These obligations are also well developed by the Committee on the Rights of the Child, the supervisory body for the Convention on the Rights of the Child, which contains numerous economic, social and cultural rights protections.³⁴

28. The CESCR, in its General Comment No. 24 on State obligations under the International Covenant on Economic, Social, and Cultural Rights in the context of business activities has reaffirmed that States' obligations "(do) not stop at their territorial borders." The Committee stressed that State parties are required to "take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction" whether they are "incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory."³⁵ The obligation to redress harms for extraterritorial violations is especially critical "where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."³⁶

29. In the context of land, in its General Comment No. 26 on land and economic, social and cultural rights, the CESCR made clear that the extraterritorial obligation to protect requires States parties, such as Thailand, to "take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence," and to ensure that investors domiciled in other countries and investing in farmland overseas do not "deprive individuals or communities of access to the land or land-associated resources on which they depend for their livelihoods."³⁷

III. Observations on the significance of such international law and standards

30. The Interveners make six points regarding the significance of international law and standards in relation to business and human rights as they apply to the present case.

³³ For example CESCR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)', 20 January 2003, UN Doc E/C.12/2002/11, paras 33-34, available at: <https://www.refworld.org/pdfid/4538838d11.pdf>; CESCR, 'General Comment No. 19: The Right to Social Security (art. 9)', 4 February 2008, UN Doc E/C.12/GC/19, para 54, available at: <https://www.refworld.org/docid/47b17b5b39c.html> ; and CESCR, 'General Comment No. 22: the right to sexual and reproductive health (article 12)', 2 May 2016, UN Doc E/C.12/GC/22, para 60, available at: <https://bit.ly/33lh0ci>

³⁴ Among others, in its General Comment No. 16, the Committee highlighted that the Convention "does not limit a State's jurisdiction to territory." The Committee stressed the obligation to "protect the rights of children who may be beyond their territorial borders." It reaffirmed the States' obligations to "respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned." See CRC General Comment No. 16, paras 39 and 43.

³⁵ CESCR General Comment No. 24 (2017), para 26.

³⁶ Ibid, para 30.

³⁷ CESCR, 'General comment No. 26 (2022) on land and economic, social and cultural rights', 24 January 2023, E/C.12/GC/26, paras. 42-43, available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and>

A. Thailand recognizes that business enterprises must respect all internationally recognized human rights wherever they operate, including the right to adequate housing.

31. First, as outlined above, there is a clear international consensus that companies should respect all human rights wherever they operate, particularly under the UNGPs, which require companies to take responsibility for respecting and remedying human rights abuses related to their business activities. Consistent with Principle 12 of the UNGPs, the responsibility of business enterprises to respect human rights pertains to “internationally recognized human rights.”³⁸ This includes the extraterritorial dimension of their responsibility to respect and remedy corporate harm, as well as the right to adequate housing and the prevention of forced evictions.
32. Several steps have been taken by the Thai government toward greater regulation of businesses concerning the respect of the above-noted human rights. These steps include the adoption of the National Action Plan on Business and Human Rights (NAP).
33. Thailand’s First National Action Plan on Business and Human Rights (2019-2022), adopted on 29 October 2019,³⁹ was founded primarily upon the UNGPs. It sets out plans to be implemented by public and private stakeholders to ensure that businesses respect human rights and that there is access to an effective remedy and reparation in cases of business-related human rights abuses.
34. The NAP itself explains that its drafting process derives from the attempt to contextualize the UNGPs to the situation of Thailand. The NAP explains the motivation for its adoption as *“the government’s awareness of the importance, necessity and urgency in countering the violations of human rights as a result of businesses. In recent times, a large number of complaints related to human rights violations by businesses have increased. Therefore, Thailand committed to the voluntary pledge and accepted the recommendations from Sweden during the 2nd Cycle of the UPR process, the 25th Session of the Universal Periodic Review (UPR), which took place on 11 May 2016 in Geneva, Switzerland. This symbolic act signifies the commitment from the State on addressing human rights violations through its promotion of multisectoral partner collaboration – including the business sector and state enterprises – to respect human rights and a commitment on the National Action Plan on business and human rights in compliance to the UNGPs.”*⁴⁰
35. ‘Cross border investment and multi-national enterprises’ was identified as one of four key priority issues in Thailand’s NAP. The NAP provides three action points that companies should follow in order to fulfil the corporate responsibility to respect all

³⁸ See also: UNGPs, Commentary to Guiding Principle 12

³⁹ First National Action Plan on Business and Human Rights (2019–2022) (‘First NAP’), available at: <https://www.undp.org/thailand/publications/thailands-1st-national-action-plan-business-and-human-rights>

⁴⁰ First NAP, at 1.

human rights in their cross-border investment.⁴¹ It further contains four action points aimed at fulfilling both the State and corporate responsibilities to provide an effective remedy.⁴² For example, the NAP suggests that Thailand should create concrete laws and mechanisms to detect human rights abuses outside the territory, which will help provide protection, remedy and cross-border responsibility.⁴³ It also requires the provision of “clear guidelines to control businesses and corporations in foreign countries.”⁴⁴

36. The Second National Action Plan on Business and Human Rights (2023-2027) (NAP) was endorsed by the Thai Cabinet on 25 July 2023.⁴⁵ The NAP includes an action point that directs the Ministry of Justice to “study and recommend amendments to the laws or propose measures to ensure access to justice and effective civil, criminal and administrative remedies for local and overseas communities within the areas where companies or Thai state-owned enterprises operate and are affected by such operations.”⁴⁶

37. In relation to the right to adequate housing and the prevention of forced evictions, Thailand's First NAP also asserts that “individuals should not be forced to undergo eviction. In cases where action is necessary, the process should include the use of a Free Prior Informed Consent, and the evicted person must receive appropriate compensation.”⁴⁷

38. The Second NAP expands on these requirements by requiring responsible authorities to “review, improve, amend and propose draft laws, rules, regulations and measures related to eviction, which should be considered as a last resort. When there's a need for action, it must align with universal human rights principles, including consulting the General Comment of the Committee of Economic, Social and Cultural Rights, considering the use of Free Prior Informed Consent, ensuring appropriate compensation, and conducting Eviction Impact Assessments before formulating

⁴¹ These are: (i) Compliance with laws, standards and principles of human rights relating to cross border investment and multinational enterprises; (ii) Promoting awareness of international principles and standards regarding human rights and business conduct; and (iii) Complaint and remedy mechanism.

⁴² These are: (i) Complaint mechanism; (ii) Negotiation and mediation; (iii) Financial assistance and remedies; and (iv) Impact prevention.

⁴³ First NAP, at 123-124, 127.

⁴⁴ First NAP, at 124.

⁴⁵ ICJ, ‘Thailand: Legal and practical barriers frustrate access to effective remedies for human rights abuses involving Thai transnational corporations abroad,’ 16 August 2023, available at: <https://www.icj.org/thailand-legal-and-practical-barriers-frustrate-access-to-effective-remedies-for-human-rights-abuses-involving-thai-transnational-corporations-abroad/>

⁴⁶ Second National Action Plan on Business and Human Rights (2023–2027) (‘Second NAP’), at 124, available at: <https://drive.google.com/file/d/1lyJggaBo-6RoUnxEwFvbxBWvBwLVtdng/view?usp=drivesdk>

⁴⁷ First NAP, at 92.

policy.”⁴⁸ Furthermore, the Second NAP calls on responsible authorities to consider appropriate measures during land expropriation. This includes “reviewing or revoking (evicted) areas where proper consultation was not provided, ensuring fair, transparent, and appropriate compensation for affected individuals in disputed areas, and taking into account the harm caused to livelihoods and the opportunity costs incurred by those evicted, irrespective of their land rights holder status.”⁴⁹

B. Mitr Phol has publicly recognized the application of international human rights standards in carrying out its operations.

39. Second, Mitr Phol and its subsidiaries have expressly recognized and committed to complying with international human rights principles.

40. Mitr Phol Sugar Corporation Ltd.’s Code of Conduct describes its commitment to “complying with local laws and regulations, as well as international human rights principles.” The Code further states that “Mitr Phol People are required to comply with applicable laws, regulations, and rules in any country in which the Company operates its business. This includes...international human rights principles.”⁵⁰ “Mitr Phol People” is defined to include “Directors, Management, Consultant and employees of Mitr Phol Sugar Corporation Ltd. and its subsidiaries.”⁵¹

41. In its written submission made to the NHRCT, Mitr Phol also stressed that “the investment of Mitr Phol Group in the Kingdom of Cambodia...comply with the UNGPs.”⁵²

42. Mitr Phol is also a member of the Global Compact Network Thailand, a local network of the UN Global Compact. The UN Global Compact is a UN initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. Among the Compact’s ten principles are Principle 1: “Businesses should support and respect the protection of internationally proclaimed human rights;” and Principle 2: “make sure that [companies] are not complicit in human rights abuses.”⁵³

43. As stated above, the UNGPs commit Mitr Phol to respect the rule of law and address adverse human rights impacts which it, through its business endeavours, may have

⁴⁸ Second NAP, at 99

⁴⁹ Second NAP, at 124

⁵⁰ Mitr Phol Code of Conduct, September 2021, at 11, available at: <https://www.mitrphol.com/zadmin/ckimage/file/Code-of-Conduct/211026-COC-EN-new.pdf>

⁵¹ Ibid, at Glossary.

⁵² NHRCT Report No. 1003/2558, at 12-13

⁵³ The Ten Principles are set out at <https://www.unglobalcompact.org/what-is-gc/mission/principles>. The participants in the UN Global Compact are listed at <https://unglobalcompact.org/what-is-gc/participants>.

caused.⁵⁴ The principles specifically emphasize the importance of access to remedy for business-related human rights harm.

C. Thai courts should consider this case with the aim of ensuring access to an effective remedy and reparation for those who claim to have suffered harm.

44. The third submission by the interveners is that the claim should be able to proceed in Thailand courts, since, under international human rights law, Thailand has an obligation to prevent and protect against human rights violations and abuses beyond its national borders, including to persons from communities inhabiting the vicinity where Thai companies operate. As noted above, this means that Thailand must ensure access to an effective remedy and reparation to those who claim to have suffered harm due to such business operations.
45. There is a variety of bases for jurisdiction in respect of conduct by companies that have extraterritorial effects. The home State of business operations is one of many possible venues for jurisdiction. As noted above, Principle 25 of the Maastricht Principles and the CESCR in its General Comment 24 makes clear that jurisdiction should be exercised in a State where a corporation or its parent or controlling company has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities.
46. Thailand itself must also ensure the enjoyment of the right to prompt, accessible, and effective remedy and reparation before an independent authority, including, where necessary, recourse to a judicial authority, for violations of all human rights.⁵⁵ Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State whose jurisdiction is engaged must provide access to remedies to the victim.⁵⁶
47. More generally, Thailand has a duty, as stressed by the CESCR in General Comment 24, to take necessary steps to address challenges and barriers in accessing justice to

⁵⁴ Principle 11 and 22

⁵⁵ See Article 2(3) of the ICCPR; Article 14 of the CAT; Article 6 of the CERD; Articles 12, 17(2)(f) and 20 of the ICPPED; Article 6(2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Article 6(2) of the Universal Declaration of Human Rights; Articles 9 and 13 of the Declaration on the Protection of All Persons from Enforced Disappearance; Principles 4 and 16 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions; Principles 4 to 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 27 of the Vienna Declaration and Programme of Action; Articles 13, 160 to 162 and 165 of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Article 9 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

⁵⁶ Principle 37, Maastricht Principles.

“prevent a denial of justice and ensure the right to effective remedy and reparation.”⁵⁷ It must “remove substantive, procedural and practical barriers to remedies, including by establishing parent company or group liability regimes, providing legal aid and other funding schemes to claimants, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings.”⁵⁸

48. Principle 26 of the UNGPs also reinforces the duty of States to “reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

D. The international standards identified above do not confine the responsibilities of a parent company only to its own conduct but include the activities of subordinate entities.

49. The fourth submission is that the responsibilities of a business enterprise must not be limited solely to a responsibility to avoid causing or contributing to adverse human rights impacts through the enterprise’s own activities. The responsibilities of a business enterprise must also include ensuring that the activities of subordinate entities within the same enterprise do not have negative impacts on the enjoyment of human rights.

50. Guiding Principle 14 of the UNGPs emphasizes that “the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.” The “structure” of “business enterprises” encompasses all forms in which a business may be organized, which includes corporations, unincorporated associations, partnerships, subsidiaries and other groups. That the UNGPs treat a parent company as part of a wider “enterprise”, rather than a discrete enterprise in itself, is plain from the Commentary to Guiding Principle 2, which provides that a State may place “requirements on ‘parent’ companies to report on the global operations of the entire enterprise.”

51. Indeed, Guiding Principle 13 of the UNGPs provides that business enterprises are also responsible for “seek[ing] 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.”

E. Mitr Phol owes a duty to exercise due diligence by effectively monitoring and controlling its subsidiaries to prevent and redress adverse human rights and environmental impacts.

52. The fifth submission is that there is a well-established body of international standards that indicate that a responsible parent company should exercise due diligence in monitoring and, where necessary, regulating the activities of its subsidiaries in order to

⁵⁷ CESCR General Comment No. 24, para 44.

⁵⁸ Ibid.

prevent or mitigate the risk of adverse impacts on human rights and the environment.⁵⁹ These include entities whose conduct those companies are in a position to influence, such as business entities in which they have invested, whether registered under the State party's laws or under the laws of another State.

53. As previously stated, the UNGPs stipulate that business enterprises bear the responsibility of avoiding causing or contributing to adverse human rights impacts and mitigating those linked to their operations, products, or services, regardless of whether the enterprise directly contributes to such impacts.⁶⁰ Similarly, the principles of the UN Global Compact assume the responsibility of a parent company for its subsidiaries. According to the Compact's website, "[t]he UN Global Compact applies the leadership principle. If the CEO of a company's global parent (holding, group, etc.) embraces the Ten Principles of the UN Global Compact by sending a letter to the UN Secretary-General, the UN Global Compact will post only the name of the parent company on the global list assuming that all subsidiaries participate as well."⁶¹

54. The duty of due diligence is well established. The CESCR has asserted in relation to State obligations under the ICESCR that:

"In discharging their duty to protect, States Parties should also require corporations to deploy their best efforts to ensure that entities whose conduct those corporations may influence, such as subsidiaries (including all business entities in which they have invested, whether registered under the State party's laws or under the laws of another State) or business partners (including suppliers, franchisees and subcontractors), respect Covenant rights. Corporations domiciled in the territory and/or jurisdiction of States Parties should be required to act with due diligence to identify, prevent and address abuses to Covenant rights by such subsidiaries and business partners, wherever they may be located."⁶²

55. In this regard, the CESCR has acknowledged that as typically organized, "business entities routinely escape liability by hiding behind the so-called corporate veil, as the parent company seeks to avoid liability for the acts of the subsidiary even when it would have been in a position to influence its conduct."⁶³ The CESCR further emphasized that States should take measures in this respect including "establishing parent company or group liability regimes" in their legal systems.⁶⁴

⁵⁹ For example, Guiding Principles 13, 17 and 22 of the UNGPs.

⁶⁰ *Ibid*

⁶¹ Available at: <https://www.unglobalcompact.org/about/faq>

⁶² CESCR General Comment No. 24, para 33.

⁶³ *Ibid*, para 42.

⁶⁴ *Ibid*, para 44.

56. The Commentary on Principle 26 of the UNGPs suggests that States should address “the way in which legal responsibility is attributed among members of a corporate group under domestic...civil laws which facilitate the avoidance of appropriate accountability.”⁶⁵

57. In this respect, Mitr Phol has on several occasions acknowledged its influence on Angkor Sugar Co. Ltd. - its alleged subsidiary registered in Cambodia. For example, in its written submission made to the NHRCT, dated 14 July 2013, Mitr Phol admitted that the Company directly invested in one Cambodian company (Angkor Sugar Co. Ltd.), and jointly invested with other corporations in two other Cambodian companies (Tonelay Sugarcane Co., Ltd. and Cane and Sugar Valley Co., Ltd.).⁶⁶ In their verbal submission made to the NHRCT on 12 May 2015, Mitr Phol announced that the Company’s directors reached a resolution to withdraw their investment (in Cambodia) and return its concession right to the Royal Government of Cambodia, and hired the International Environment Management Group, a Swiss company, to investigate into the damages that occurred as a result of the Company’s concession. Mitr Phol further made clear that the Company would “take responsibility for all the damages that occurred under the International Finance Corporation Framework.”⁶⁷ In their submission to the NHRCT on 9 July 2015, Mirt Phol also stressed that they were in the process of dissolving their subsidiaries in Cambodia.⁶⁸ Additionally, going back to June 2013, in the Prospectus of Mitr Phol’s Debenture No. 2/2556 submitted to the Securities and Exchange Commission of Thailand, Angkor Sugar Co. Ltd. was also recognized as one of the ‘subsidiaries’ of Mitr Phol.⁶⁹

58. Such statements, coupled with the fact that Angkor Sugar Co. Ltd. was fully owned by Mitr Phol⁷⁰ and Mitr Phol’s senior officers were appointed as executives of Angkor Sugar Co. Ltd.,⁷¹ show a high level of influence Mitr Phol has over Angkor Sugar Co. Ltd and that it has previously taken responsibility for conduct by its subsidiary (or an agent as argued by the plaintiffs in this case).

F. Comparative jurisprudence supports the recognition of a duty to exercise due diligence (duty of care)

59. Sixth, there have also been a number of cases before national courts – in both common law and civil law jurisdictions – that have sought to identify the appropriate

⁶⁵ UNGPs, at 29

⁶⁶ NHRCT Report No. 1003/2558, at 13.

⁶⁷ NHRCT Report No. 1003/2558, at 13-14.

⁶⁸ NHRCT Report No. 1003/2558, at 14.

⁶⁹ Securities and Exchange Commission of Thailand, Fact Sheet of Mitr Phol’s Debenture No. 2/2556, 2013, available at: https://www.thaibma.or.th/prospectus_viewer/view.aspx?pid=3fe392a5-9bb8-4104-8b7d-a5d915f97247&bid=31178&ticket=pJvAmoX37Be7Gg7wqF%2FmAPTMQDWccJt5%2FlztaQqB1tulnGSexb0udHxhyz7kYQub

⁷⁰ Complaint No. Por. 718/2561, at 5. See also: NHRCT Report No. 1003/2558, at 13.

⁷¹ NHRCT Report No. 1003/2558, at 4

circumstances in which courts may find the legal responsibility of the parent company in relation to the harm caused directly by their subsidiaries. These cases recognize that, in certain circumstances, parent companies may owe a duty of care concerning the activities of their subsidiaries in relation to human rights and environmental protection.⁷² While the jurisprudence comes from a variety of national jurisdictions not binding on Thailand, the reasoning may be persuasive as justice sector actors consider similar cases, such as the present case where the plaintiff has argued the 'principal' and 'agent' relationship between the parent company and its subsidiary.

60. For example,⁷³ in 2019, in the landmark judgment of *Vedanta Resources Public Limited Company and another (Appellants) v Lungowe and others (Respondents)*,⁷⁴ the Supreme Court of the United Kingdom (UK) allowed a complaint brought by 1,826 Zambian villagers⁷⁵ against UK-based Vedanta PCL and its Zambian subsidiary Konkola Copper Mines (KCM) to proceed to trial. The Supreme Court held that the claimants could bring their case in the UK, despite the fact that the alleged tort and harm caused by the Nchanga Mine operated by KCM had occurred in Zambia.⁷⁶ This was ascertained by examining how the relationship between the two companies operated in practice, irrespective of their formal relationship as distance entities.⁷⁷ The *Vedanta* ruling illustrates how a parent company like Vedanta owes a "duty of care"⁷⁸ to people living

⁷² See also: ICJ, 'Written Submissions of the International Commission of Jurists and the Corporate Responsibility (Core) Coalition Limited', June 2020, paras 27-33, available at: <https://www.icj.org/wp-content/uploads/2020/06/Nigeri-Okpabi-Advocacy-Legal-submission-2020-ENG.pdf>

⁷³ For more cases, please see: ICJ, 'Thai Companies in Southeast Asia: Access to Justice for Extraterritorial Human Rights Harms', February 2021, p. 47-49, available at: <https://www.icj.org/wp-content/uploads/2021/03/Southeast-Asia-Access-to-Justice-Thai-companies-Publication-ENG.pdf>

⁷⁴ UK Supreme Court, 'Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)', Judgement, 10 April 2019, available at: <https://www.icj.org/wp-content/uploads/2019/04/uksc-2017-0185-judgment.pdf>

⁷⁵ The claimant claimed that the discharge of toxic waste from the Nchanga Mine operated by KCM had polluted the local waterways, causing serious harm to health and livelihood of the local communities.

⁷⁶ UK Supreme Court, 'Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)', Judgement, 10 April 2019, p. 2, available at: <https://www.icj.org/wp-content/uploads/2019/04/uksc-2017-0185-judgment.pdf>

⁷⁷ Norton Rose Fulbright, 'UK Supreme Court clarifies issues on parent company liability in Lungowe v Vedanta', April 2019, available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/70fc8211/uk-supreme-court-clarifies-issues-on-parent-company-liability-in-lungowe-v-vedanta>. The Court ruled that Vedanta had exercised sufficient influence of the management of the mine. Vedanta had, for example, published a sustainability report which emphasized how the Board of the parent company had oversight of its subsidiaries; had entered into a management and shareholders agreement under which it was obligated to provide various services to KCM, including employee training, provided health, safety and environmental training across its group companies; had provided financial support to KCM; had released various public statements emphasizing its commitment to address environmental risks and technical shortcomings in KCM's mining infrastructure; and exercised control over KCM, as evidenced by a former employee.

⁷⁸ The principle of duty of care is a common law principle that refers to the circumstances and relationships giving rise to an obligation upon a defendant to take proper care to avoid causing some form of foreseeable harm to the claimant in all the circumstances of the case in question. See <https://www.lexisnexis.co.uk/legal/glossary/duty-of-care>.

in the vicinity of the operations of their subsidiaries by intervening to address the conduct of its subsidiary. Vedanta should have acted to ensure persons under its care such as KCM do not cause harm. Importantly, the Court also asserted jurisdiction over KCM even though the company was based in Zambia on the basis that the claimants were at risk of being denied access to justice in Zambia.⁷⁹

61. In 2021, in the matter of *Okpabi v Royal Dutch Shell*,⁸⁰ the UK Supreme Court also reaffirmed that a British parent company may owe a duty of care towards persons affected by the operations of its foreign subsidiary. The Court found that the Ogale and Bille communities can bring their legal claims for clean-up and compensation against Shell and its Nigerian subsidiary.

62. A similar landmark judgment was the case *FoE the Netherlands (Milieudefensie) et al v Shell Nigeria (SPDC) and the Royal Dutch Shell*. The case was brought by four individual Nigerian claimants and Milieudefensie (FoE the Netherlands) on behalf of all other local victims of oil spills in the Niger Delta caused by the SPDC. The plaintiffs alleged that oil had flowed into their farmland and fishponds, polluting and making them unfit for use. The plaintiffs also alleged that Royal Dutch Shell (the parent company) failed to take due care to prevent and mitigate the oil spill by its subsidiary company. On 29 January 2021, the Hague Court of Appeals held that SPDC was responsible for oil spills in the Niger Delta, and liable to pay compensation. The court held that Royal Dutch Shell owed a duty of care to the villagers affected by the oil spill and ordered them (together with the SPDC) to install leak detection equipment in its pipelines. One of the reasons provided was that the Court believed that Royal Dutch Shell had a factual influence on that situation to make sure that such equipment was installed in the pipeline.⁸¹

IV. Conclusion

63. ICJ and Amnesty International respectfully submit that to ensure good-faith adherence to Thailand's international human rights obligations, Thai law must be interpreted so as to ensure conformity with international human rights law, including the ICESCR and other human rights treaties, which recognize the extraterritorial obligations of Thailand in relation to businesses. The Interveners invite the Court to conclude that the defendant owed the plaintiffs the duty to exercise due diligence in monitoring and controlling its subsidiaries, whose conduct it may influence, and request that the Court hold the defendant liable for the actions of its subsidiary if it fails to fulfill this duty, in order to ensure the right to an effective remedy and reparation for the victims.

⁷⁹ ICJ, 'Vedanta Resources and subsidiary to face justice in the UK over human rights harms in Zambia,' 10 April 2019, available at: <https://www.icj.org/vedanta-resources-and-subsiary-to-face-justice-in-the-uk-over-human-rights-harms-in-zambia/>

⁸⁰ *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3.

⁸¹ De Rechtspraak, 'FoE the Netherlands (Milieudefensie) et al v Shell Nigeria (SPDC) and the Royal Dutch Shell', October 2021, available at: <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHDHA:2021:1825>