



## **TERMS OF REFERENCE** **FOR INDIVIDUAL CONTRACT**

<b>POST TITLE:</b>	National Consultant – Study on Anti-Strategic Litigation Against Public Participation (SLAPP) Laws and Measures
<b>AGENCY/PROJECT NAME:</b>	Business and Human Rights
<b>COUNTRY OF ASSIGNMENT:</b>	Thailand - Home based with some travel within Thailand
<b>Expected start date:</b>	15 November 2020
<b>Duration of the Consultancy:</b>	60 working days
<b>Duty Station:</b>	Home based, with some travels within Thailand.

### **1) GENERAL BACKGROUND**

The United Nations Development Programme (UNDP) in Thailand works with the Royal Thai Government, civil society, private sector, and public to find solutions to persistent development challenges in Thailand. UNDP is implementing various projects to advance the 2030 agenda for Sustainable Development in Thailand.

The Business and Human Rights (B+HR) project in Thailand is part of a regional program which aimed at promoting the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup> through advocacy, policy development, technical advisory support, capacity building, awareness raising, innovation platforms, and South-South cooperation. To achieve these, the program required a collaboration between governments, civil society, businesses, and other stakeholders to ensure that human rights are protected and respected in business operations and their supply chains and therefore contributing to inclusive economic growth and environmental sustainability. The program is supported by the European Union.

In the context of Thailand, UNDP through the B+HR project, will be supporting the Thai government in the implementation of the National Action Plan on Business and Human Rights (NAP) as well as promoting understanding and enhancing the capacity of governmental agencies and the business sectors on the UNGPs and the NAP. In 2019, Thailand was the first country in Asia with a standalone NAP. The document serves as an important guidance for the government and businesses to implement their duties and responsibilities to protect and respect human rights and provide remediations to victims of human rights abuses. However, despite the country's strong commitment and continuous effort on this matter, human rights abuses continue to occur in some areas, including those related to HRDs.

HRDs protection is guaranteed by the UN Declaration on Human Rights Defenders.<sup>2</sup> This is also in line with the UNGDs which reiterates the essential role of civil society and HRDs and underlines the protective obligation of the State and its duty to ensure access to remedy of HRDs.

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<sup>1</sup> Principle 18 and Principle 26 of the UN Guiding Principles on Business and Human Rights

<sup>2</sup> Article 1 and Article 2 of the UN Declaration on Human Rights Defenders, stating that the right of HRDs to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms

However, HRDs currently face numerous challenges in carrying out their legitimate activities in Thailand. Physical, verbal, and judicial harassment cases against HRDs have been reported. Such cases involve the act of threat, intimidation, arbitrary arrests, sexual harassment, torture and/or enforced disappearance. These violations have reportedly also extended to their family members and other witnesses to create a climate of fear to silence the victims. Violation and intimidation against HRDs do not only affect them physically but also socially, economically, and psychologically. Such negative impacts might affect some groups of HRDs such as women, migrant workers and indigenous people disproportionately.

One strategy that has been used increasingly to silence HRDs is judicial harassment, particularly, in a form of Strategic Lawsuits Against Public Participation (SLAPP). This happens when entities misuse the judicial process through filing lawsuits against HRDs as a way of silencing them from exercising their fundamental freedoms and rights, including freedom of expression. This fundamental freedom is guaranteed by the International Covenant on Civil and Political Rights (ICCPR) to which Thailand is a State party. SLAPPs have a 'chilling effect' against public criticisms and protests, and the legitimate and peaceful activities of human rights defenders, journalists and civil society organizations.

A growing number of cases against HRDs, including the practice of SLAPP has brought about international concern. For example, during the Universal Periodic Review (UPR) in May 2016, eight recommendations were made on the topic of HRDs, some including judicial harassment, of which two were noted and six supported. These recommendations were echoed by the UN Working Group on Business and Human Rights during its official visit to Thailand in 2018. The Thai government was urged to take steps to address the misuse of the judicial system through SLAPP practices and to strengthen protection of HRDs.

The Working Group made specific references to the need to protect the most vulnerable individuals and groups, such as migrant workers and women HRDs (WHRDs). WHRDs face specific challenges due to their gender. This is in part due to them challenging traditional gender roles that might cause hostility from a wide range of actors and WHRDs are often exposed to specific forms of threats, violence and harassment due to their gender.

To address these challenges, protection of HRDs has been identified as one of the four key priority areas in the National Action Plan on Business and Human Rights adopted by Thailand in December 2019. Some key actions have been taken in recent years such as the amendment on Section 161/1 of the Criminal Procedure Code in order to allow the court to exercise discretion to dismiss prosecution that has the intention to dishonestly or distort the facts or to bully or take advantage of the defendant, including HRDs. Section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act has also been amended to allow complaints, including those brought to harass, intimidate, or retaliate against human rights defenders or others to be dismissed. Nevertheless, irrespective of these recent changes, the issue remains a serious one in Thailand and urgently needs to be addressed.

Therefore, at the request of the Ministry of Justice and in the framework of its project on Business and Human Rights, UNDP is commissioning an important study on Anti-SLAPP laws and measures that will be submitted to the NAP National Committee for consideration and further action, highlighting possible legal amendments and appropriate measures to revise or enact the anti-SLAPP law and mechanisms to protect HRDs.

## 2) OBJECTIVES OF THE ASSIGNMENT

The objective of this assignment is to develop a study that will provide recommendations to help strengthen Thailand's human rights commitments and thereby progress towards the 2030 agenda for sustainable development.

By collecting data and carrying out this study the aim is to gain a better understanding of the situation of HRDs targeted by judicial harassment in Thailand, to promote awareness around the issue of SLAPP in the country, to enhance good practices on protection measures for HRDs among private sectors and other actors in Thailand, and to propose recommendations on the best model of anti-SLAPP laws and measures and protection of human rights defenders for the Royal Thai Government (RTG) and other stakeholders.

## 3) SCOPE OF WORK

The consultant is expected to:

- 1- Prepare a research plan, including a detailed timeline
- 2- Gather information and provide analysis on the following, but not limited to:
  - The situation of SLAPPs in a global context: focusing on key trends, definitions, challenges facing other countries, and good practices on SLAPP prevention;
  - Past and current SLAPP cases in all regions of Thailand, collecting quantitative and qualitative data, identifying key trends, challenges and common issues and propose a definition and criteria for SLAPP cases in Thailand;
  - Legal practices and frameworks in the country on the issue, as well as anti-SLAPP and protection mechanisms/ legal assistance (i.e. Justice Fund); providing an outline of the legal process and suggestions on how to further improve the implementation of these mechanisms;
  - Implementation of amendments of Criminal Code Section 161/1, Section 165/2 and amendments of 2010 Public Prosecutor Organ and Public Prosecutors Act, Section 21 and analyze the limitations when it comes to enforcement;
  - SLAPP cases against HRDs amongst different state actors and how collaboration, or lack thereof, between different state agencies can be effective or pose challenges on implementation of the existing protection measures;
  - Awareness on the issue amongst public and private sector, relevant incentives or drivers for government and businesses regarding accountability and efforts on the improvement of their current practices related to SLAPP;
  - Data and/or information from businesses who have carried out SLAPPs against HRDs in Thailand and/or abroad (i.e. economic impact, risk to business operation and social license to operate and the economic costs of being exposed as a violator of human rights) and the roles of other stakeholders in the businesses' value chain, such as buyers and investors, and analyze their reaction and approach on managing human rights risks;
  - The role of the media, especially the agencies and journalists that have been targets of intimidation through judicial harassment and SLAPP cases by different actors, and how this has affected their work;
  - The social, psychological, and economic impacts of judicial intimidation on the victims of SLAPPs in different regions of the country, with a special focus on how Women HRDs who have been affected, and;
  - The implications of the Covid-19 pandemic, if any, on SLAPP cases in Thailand;

3-Based on the findings of the research the consultant shall propose recommendations on the best model of anti-SLAPP laws and measures.

*The Anti-SLAPP Laws and Mechanisms Reference Group*, comprising of representatives of government agencies, UN agencies, private sector, and civil society organizations, will be established to provide overall guidance and technical assistance throughout the process of the study.

The consultant is expected to engage with the Reference Group as well as government agencies, businesses, human rights defenders, labour organizations, members of civil society organizations, businesses, and resource persons in this field through Reference Group meetings and a series of consultative processes, including sub-national and national consultations, in order to ensure the inclusiveness during the planning, implementation, and finalization of the study.

**Expected outputs and deliverables:**

Outputs	Target Due Date	Review and Approvals Required
Submission of the research workplan	One week after contract signature	UNDP Thailand Business and Human Rights team
Submission of 1 <sup>st</sup> draft for review by the SLAPP reference group	First week of February 2020	UNDP Thailand Business and Human Rights team
Revise draft paper and present the updated draft paper at a national consultation	Second week of March 2021	UNDP Thailand Business and Human Rights team
Revise and complete the draft paper after national consultation	Last week of April 2021	UNDP Thailand Business and Human Rights team
Submission of the final report	Last week of May 2021	UNDP Thailand Business and Human Rights team

The consultant will be home based and will work in close collaboration with the UNDP Thailand Business and Human Rights team and the Anti-SLAPP Study Reference Group who will provide inputs and guidance on a regular basis. The incumbent is expected to exercise full compliance with UNDP programming, financial, procurement and administrative rules, regulations, policies and strategies, as well as implementation of the effective internal control systems.

**Intellectual Property**

All information collected for the advocacy report pertaining to the assignments as well as outputs produced under this contract shall remain the property of the UNDP who shall have exclusive rights over their use. The products shall not be disclosed to the public nor used in whatever format without written permission of UNDP in line with the national and International Copyright Laws applicable.

**4) INSTITUTIONAL ARRANGEMENTS**

Under the overall guidance of the UNDP Resident Representative, the consultant will report directly to and work closely with the Project Manager of Business and Human Rights. Review/approval time required to review/approve outputs prior to authorizing payments is 7 – 10 days.

The consultant will utilize his/her/their own equipment to complete the assignment.

**5) DURATION OF ASSIGNMENT, DUTY STATION AND EXPECTED PLACES OF TRAVEL**

**Duration:** 15 November 2020– 30 June 2021 with a maximum of 60 working days.

**Duty Station:** Home based, with some travels within Thailand.

## 6) FINAL PRODUCTS

The key product of this TOR is:

1. A study on Anti-Strategic Litigation Against Public Participation (SLAPP) laws and measures to be by February 2021.

## 7) DEGREE OF EXPERTISE AND QUALIFICATIONS

1. Academic Qualifications:
  - Minimum Masters degree in Law, Human Rights, Social Sciences or other related fields.
2. Experience:
  - At least 5 years of experience working on Human Rights issues related to SLAPP in Thailand;
  - Previous publications on SLAPP in Thailand, and/or the region is desirable;
  - Experience working with major international organizations or the United Nations is desirable.
3. Language:
  - High proficiency in written and spoken Thai and English is required.
4. Competencies:
  - Demonstrable research skills;
  - Excellent writing, editing, and proofreading skills both in English and Thai;
  - Ability to design and conduct interviews;
  - Experience on engaging with and/or interviewing informants ensuring data protection and right to privacy of beneficiaries by applying a do-no-harm approach;
  - Demonstrated accuracy and attention to details;
  - Ability to meet deadlines and work under pressure;
  - Ability to be flexible and respond to changes as part of the review and feedback process;
  - Excellent organizational skills;
  - Excellent interpersonal and communication skills;
  - Demonstrates integrity and fairness, by modeling the UN/UNDP's values and ethical standards;
  - Displays cultural, gender, religion, race, nationality and age sensitivity and adaptability; and
  - Willingness to travel within Thailand.

## 8) REQUIRED DOCUMENTS to be submitted

Interested candidates must submit the following documents/information to demonstrate their qualifications. Please group them into one (1) single PDF document:

- **Personal CV or P11**, indicating all experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
- **Letter of Confirmation of Interest and Availability and Financial Proposal** that indicates the daily rate/fee of the Candidate, in Thai Baht, using the template provided in Annex III;
- **At least 2 samples of published work on SLAPP in Thailand, and/or the region.**

**\*\*Failure to submit the above-mentioned documents or Incomplete proposals shall result in disqualification**

**\*\*Please group them into one (1) single PDF document as the application system only allows to upload maximum one document:**

#### 9) CONSULTANT PRESENCE REQUIRED ON DUTY STATION/UNDP PREMISES

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NONE

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INTERMITTENT

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FULL TIME

#### 10) PAYMENT TERMS

Consultant must send a financial proposal based on Daily Fee. Consultant shall quote an all-inclusive Daily Fee for the contract period. The term “all-inclusive” implies that all costs (professional fees, communications, consumables, etc.) that could be incurred by the IC in completing the assignment are already factored into the daily fee submitted in the proposal.

##### Payment Schedule:

Deliverables/Outputs	Payment
First payment shall be made upon satisfactory receipt of the research workplan	30% of the total contract amount
Second payment shall be made upon satisfactory receipt of a draft preliminary report.	30% of the total contract amount
Third payment shall be made upon satisfactory receipt of a draft final report.	20% of the total contract amount
Final payment shall be made upon a successful delivery of a final report.	20% of the total contract amount

#### 11) CRITERIA FOR SELECTION OF THE BEST OFFER

Individual consultants will be evaluated based on the following methodology:

Cumulative Analysis: The candidates will be evaluated through Cumulative Analysis method. When using the weighted scoring method, the award of the contract will be made to the individual consultant whose offer has been evaluated and determined as:

- Responsive/compliant/acceptable; and
- Having received the highest score out of set of weighted combine technical evaluation of desk review and interview (70%), and financial criteria (30%). Financial score shall be computed as a ratio of the proposal being evaluated and the lowest priced proposal received by UNDP for the assignment.

**\*\*Only candidates obtaining a minimum of 70% marks in the Technical evaluation would be considered for Financial evaluation.**

##### Technical Evaluation Criteria:

Criteria	Weight	Max. Point
	70%	100
<b>Criteria 1:</b> Educational relevance: close fit to post: MA degree holder in Law, Human Rights, Social Sciences or other related fields.		10
<b>Criteria 2:</b> Relevance of experience in the area of specialization: understanding in the area of SLAPP with at least 5 years of proven experience in working on human rights, preferably issues related to		50

SLAPP in Thailand; previous publication on SLAPP in Thailand, and/or the region		
<b>Criteria 3:</b> Individual competencies (experience in similar assignments): experience on designing research methodology, including engaging with and/or interviewing informants, editing, writing, and proofreading skills in English and Thai		30
<b>Criteria 4:</b> Good command of written and spoken in Thai and English: previous publications in Thai and English		10

#### **Financial Evaluation (30%)**

Financial proposals from all technically qualified candidates will be scored out 30 marks based on the formula provided below. The maximum marks (30) will be assigned to the lowest financial proposal.

All other proposals will receive points according to the following formula:

- $p = y (\mu/z)$ .

Where:

- $p$  = points for the financial proposal being evaluated;
- $y$  = maximum number of points for the financial proposal;
- $\mu$  = price of the lowest priced proposal;
- $z$  = price of the proposal being evaluated.