



**Regional Workshop on the
“Interaction between Environmental Sustainability and a Human Rights-
Based Approach”**

Bangkok, 20-21 May 2014

FINAL REPORT

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Introduction

There is broad international recognition that environmental degradation adversely affects a wide range of human rights including rights to life, health, food and water. Similarly, the exercise of human rights as freedom of expression and association, right to information and participation results in better environmental policies and outcomes. In November 2012 ASEAN adopted a declaration of human rights. Article 28 stipulates that every person has the right to an adequate standard of living including “the right to a safe, clean and sustainable environment. Openness, accountability, participation and non-discrimination are important elements of a rights based approach and which can make important contributions to environmental sustainability.

Purpose and focus for the workshop

The Embassy of Sweden in Bangkok, together with Sida, decided to organize a workshop for its partners in the region in order to learn from regional experiences both of how the exercise of human rights can contribute to effective environmental protection and how environmental legislation and policy processes can be used to advance the respect and fulfillment of human rights through applying a human rights-based approach. Focus on the workshop was to reflect on “on the ground” experiences of good practice on how human rights-based approaches have improved governance, livelihoods and management of natural resources/ecosystems and to promote networking and collaboration among its regional partners working on issues related to environment, human rights and development together.

The purpose was to explore synergies, learn and exchange ideas and experiences on how the interaction between environmental sustainability and a rights-based approach can help leverage the respective work of participating organizations.

Planning of the workshop and structure of this report

The workshop was planned jointly by the Development Cooperation Section (Regional Asia team) of the Embassy of Sweden in Bangkok, Karen Edwards who also served as facilitator and staff from Sida’s Helpdesk for Environment and Climate Change. The two day workshop took place in Bangkok on May 20-21st 2014 and was attended by 126 participants.

This report provides examples of the presentations and discussions from the two days. The complete agenda, presentations and additional material from the workshop are posted on the embassy website:

<http://www.swedenabroad.com/Pages/StandardPage.aspx?id=75249&epslanguage=en-GB>.

A Prezi-presentation to be used by participants is available:

http://prezi.com/vx8jr7ydl57v/time-to-act-on-the-environment-and-human-rights-jointly/?utm_campaign=share&utm_medium=copy

Foreword

By AnnaMaria Oltorp, Head of Development Cooperation Section,

Embassy of Sweden, Bangkok

This workshop is as a logical a follow-up to the workshops on Gender in 2012 and Anti-Corruption organized in 2013 by the embassy for its partners in the region.

These workshops aim to deepen and expand the cooperation between partners and the embassy and we find this year's theme very timely as the rapid economic growth in the region is not matched by respect for human rights and the need to manage natural resources sustainably. At the very center of this dichotomy is the persecution of advocates for human rights and environment sustainability like Sombat Somphone and Cha Lee Rakcharoen, "Billy" whose disappearances have left the embassy very concerned. Regretfully they are not alone having experienced this fate in both the region and globally to which the new Global Witness report "Deadly environment"¹ testifies.

A human rights-based approach (HRBA) will always be at the heart of Swedish Development Cooperation but much more needs to be done both by us and everybody else working in this sector. Applying the HRBA transforms development cooperation as it focuses on rights, rather than needs, and development for all. We find this approach especially relevant in the region as the rapid economic growth here is still happening at the expense of environment—a short term strategy which disregards sustainability and will have long term impacts.

Poor and marginalized people are particularly exposed in this situation and their rights not recognized and they are often the last to find out on investments that affect their livelihoods such as land concessions That some companies look to make investments where regulations are weak and that some major infrastructure projects have transboundary impacts also calls for increased regional cooperation on environment and human rights which Sweden will do its utmost to support by relevant development cooperation initiatives.

I do urge the participants to bring home lessons learned from the workshop of best practices on applying the inter-linkages between environmental sustainability and a human rights-based approach" and make the most of the new partnerships formed here!

¹ <http://www.globalwitness.org/deadlyenvironment/>

Regional workshop Summary

On 21-22 May 2014 some 125 experts from non-governmental organizations, governments, academia and multilateral organizations actively participated in a regional workshop in Bangkok under the theme “Interaction between Environmental Sustainability and a Human Rights Based Approach”. The workshop was organized by the Embassy of Sweden in Bangkok with Swedish partners as the main target group. The purpose was to explore synergies, learn and exchange ideas and experiences on how the interaction between environmental sustainability and a rights based approach can help leverage the respective work of participating organizations.

Key issues emerging from presentations and discussions

Economic growth is achieved at a high social and environmental cost. People affected by pollution or reduced access to land or water does not differentiate between environmental sustainability and human rights. Nevertheless the two themes have separate but related regulatory frameworks at both international and national level. States have duties under human rights law to assess environmental impacts on human rights and to make information accessible. Human rights law sets minimum environmental standards but states have discretion to strike a reasonable balance between environmental protection and economic development. Human rights principles like participation, openness and transparency, non-discrimination and accountability are generally included in international conventions on environment and critical for environmental sustainability. There is potential for better linking of human rights principles and environmental sustainability through using a human rights-based approach. Committed and improved collaboration among partners may strengthen results and contribute to more sustainable outcomes for people and the planet.

Key challenges raised in presentations and discussions

Although there have been advances in a number of areas in the rapidly developing region, transparency is often lacking and the democratic space for meaningful participation in decision-making is restricted. This makes it difficult for right holders to hold duty bearers, government, to account. Although there is growing interest in ASEAN for responsible business practices and organic products etc. Asian consumers and investors are currently not seen as a strong driving force for improved business behavior. The fact that the economic and political elite has close ties in many countries in the region is also seen as a constraining factor creating low incentives to challenge the paradigm of “growth first, clean up later” which dominates in the region.

Examples of good practice and opportunities for change raised in presentations and discussions

A number of examples and experiences of good practice were shared among participants while stressing that there is no silver bullet. The increased democratic space and evolution of stronger regulatory frameworks related to both environment and human rights such as national human rights commissions and mandatory environmental impact assessments have

created opportunities to hold governments and business responsible for their actions. Formal channels at regional levels including ASEAN work on economic integration and CSR should also be used. In some settings it has been noted that use of human rights principles such as participation and transparency may be more efficient and meet less resistance than referring to economic, social and cultural rights. Internet and the use of social media create unprecedented opportunities to increase access to information. Strengthening men's and women's capacity to make use of their rights is critical. This often involves connecting communities with national or international civil society organizations. Together with media these organizations often play a central role in taking local violations of rights to national and global attention making use of legal systems and the power of market forces. Involvement of pro-active business and promotion of local and regional exchanges between communities and organizations and government entities can contribute to more sustainable outcomes.

Summary of some presentations and discussions at the workshop

Unpacking the inter-linkages in practice:

THE CASE OF THE CAMBODIAN SUGAR PLANTATIONS² Dr. Nirun Pitakwatchara, National Human Rights Commissioner of Thailand and Mr Eang Vuthy, Executive Director Equitable Cambodia³ shared their experiences and reflections on economic land concessions and the growth of sugar plantations in Cambodia. The NGO Equitable Cambodia has supported the villagers whose lives were affected by the sugar plantations. As Thai companies were involved in the plantations the Thai National Human Rights Commissioner took on to investigate the alleged violations of rights. The villagers made use of a range of approaches for legal redress and protest against the investments and its impacts by influencing national, regional and international actors including the EU and Coca Cola. The National Human Rights Commission in Thailand found that serious breaches in the right to development, life and self-determination were committed.

Suggestions and reflections from group discussions on successful approaches of using HR and environmental regulatory frameworks:

- International banks ought to monitor that HRBA is adhered to, critical of EU turning a blind eye to problems "as long as it isn't arms it's OK"
- Community ownership of development projects is important, could local communities and companies benefit from "joint ventures"?
- FPIC⁴ approach to decision-making processes could be useful
- Affected communities could do a "shadow EIA" to present the true impacts of a project
- Lobby the funders
- Empower local communities
- There is a marked disinterest from Asian consumers on how goods are produced which makes HR violations like those in the case studies possible

² An extensive background on the Cambodian sugar plantations can be found in Equitable Cambodia's report "Bittersweet" http://equitablecambodia.org/newsarchives/docs/Bittersweet_Harvest_Final.pdf

³ <http://equitablecambodia.org>

⁴ 'Free prior and informed consent' (FPIC), is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use

- ASEAN should engage to promote common guidelines for sustainable land concessions

THE CASE OF THE XAYABURI HYDROPOWER PROJECT: *Presentations were conducted by Mr Hans Guttman, CEO at the Mekong River Commission, MRC⁵ and Dr Carl Middleton, Lecturer MAIDS at Chulalongkorn University. Mr Guttman explained the notification and consultation procedures on proposed projects on the Mekong that are intended as opportunities for countries to minimize and mitigate impacts in other Mekong countries. MRC supported the Xayaburi consultation process but no agreement was made by country representatives at a meeting in 2011 on how to proceed. Decision was deferred to the MRC council, who agreed that more studies should be made. A recommendation was made to Laos to redesign the dam (regarding sediment, navigation, fish and safety issues). MRC facilitated information exchange on compliance and improvements. He concluded by stating that MRC has no mandate to engage in rights issues but try to see that concerns from non-state actors reach national decision-makers.*

Dr Middleton pointed out that the uneven governance/access to justice between Mekong countries makes good decision-making complicated on “transboundary projects” like dams. He also said that the decision-making around Xayaburi has been complex, various planning tools have been applied that could provide leverage opportunities but challenges such as lack of evidence-based decision-making, EIA limited in scope/quality and lack of independent on the ground monitoring must all be addressed. Another challenge was that the EIA was not available during consultation process. Dr Middleton referred also to the need for a transboundary EIA procedures which MRC has tried to support but without clear results so far.

GOOD PRACTICES THAT PROVIDE OPPORTUNITIES TO BUILD LEVERAGE BETWEEN HUMAN RIGHTS AND ENVIRONMENTAL SUSTAINABILITY

Presentation by Mr Iain Watson, ADB/Environment Operations Centre⁶: Mr Watson presented on the role of ADB’s safeguards and how they aim to promote sustainable project outcomes and avoid, minimize and compensate for adverse impacts. He noted that safeguards are not static, and are continually evolving and improving. Mr Watson lamented that ADB safeguards are insufficiently reflected in country safeguard regulations and these weaknesses undermine their effectiveness, and require improvements in national environmental governance. For example, only 10% of projects in Cambodia have reportedly been subject to EIA under current requirements. Recent strengthening of safeguard system in Lao PDR was cited as a promising outcome. Other positive developments are the ongoing overhaul of Cambodia’s EIA system and the introduction of entirely new EIA Procedure in Myanmar.

Presentation by Ms Tessa Khan, Asia Pacific Forum on Women, Law and Development (APWLD)⁷: Ms Khan elaborated on why does gender matter and why participation is important to promote sustainable natural resource management. She exemplified by

⁵ <http://www.mrcmekong.org/>

⁶ <http://www.gms-eoc.org/>

⁷ <http://apwld.org/>

referring to studies showing that women are extremely dependent on natural resources (i.e. 80% of India rural women work in agriculture) and are 14 times more likely to die in natural disasters and as a consequence. The Rio principle 20⁸ - also confirmed in Rio + 20 documents – highlights the role of women in sustainable development. She highlighted the FPAR⁹ concept invented by APWLD as a good practice to promote women's rights. It helps to build the capacity of women in rural, indigenous and urban poor communities on human rights principles and environmental sustainability. According to the FPAR it is the women who set the agenda, conduct research & analysis, and participate in decision-making at all levels. It also advocates for and fosters community-led structural change and has been implemented in 6 countries in the region. A successful example of the use of FPAR in the Philippines was highlighted.

Presentation by Ka Hsaw Wa, Earthrights International, ERI¹⁰: Mr Ka Hsaw Wa explained the work of ERI and how they work in the intersection between environment/HR. Their theory of change is to combine power of the law with the power of the people! ERI has successfully trained villagers which will be affected by the new economic zone “Thilawah” in Myanmar. Investments there are to be funded by JICA¹¹ who has declared that the World Bank safeguard policies will be applied there. Accordingly ERI has thoroughly educated villagers on the purpose and content of those as well how to make complaints to the Bank should they be breached. They have also put emphasis on how a successful consultation should be organized in order not to have communities being co-opted and split. In addition, legal training has also been provided to the villagers. It provided very difficult to explain in the training what an economic zone is for villagers, so exchange visits were made to Thailand Economic Zone “Mapdaphut” to share experiences with villagers involved in similar consultations. Also a lobby tour to Japan will be organized later this year to raise the awareness of among the Japanese public.

PANEL DISCUSSION: EFFECTIVENESS OF USING STANDARDS AND FRAMEWORKS FOR IMPROVING ACCOUNTABILITY

Panel members: Dr Sriprapha Petchara Mesree, Mahidol University ; Thomas Thomas, ASEAN CSR Network; John Liu, Forum Asia. Dr Sriprapha showed that there is no shortage of declarations related environmental sustainability within ASEAN. However there is a huge implementation gap related both to environment and human rights. She also cautioned against a “business-as-usual”-approach to environment and human rights concerns in the future integration of ASEAN. The main challenges for ASEAN is to build an environmentally sustainable clean and green community, transforming the “green shoots” of growth in the face of the 2008 financial crisis into an economically resilient ASEAN anchored upon green growth; and to be a people centered organization respecting and living in harmony with nature. She feared that the present development in ASEAN is characterized by a “race to the bottom” – strategy where governments strive to lower environment and HR standards as much as possible in order to protect their companies and attract foreign investment.

⁸ “Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.”

⁹ Feminist Participative Action Research

¹⁰ <http://www.earthrights.org/>

¹¹ The Japan International Cooperation Agency

Mr Thomas emphasized that “CSR is not about how you use your money; it is about how you make the money”. He has seen some progress on CSR in ASEAN companies but dedication among them varies a lot. He stressed the importance of good governance in ASEAN as a way to level the playing field for business. The prevailing dogma among governments is “growth at all costs” where insufficient attention is given to environmental sustainability and human rights. However he was optimistic about the future and concluded that awareness of CSR is getting better in the region. He sees adherence to international standards for responsible business practice as a way to increase awareness and change the norms that need to be followed by improved legislation and the rule of law.

Mr Liu reflected on the many voluntary international standards for the private sector for responsible investment. He identified a stark contradiction between CSR policy on paper and actual practice - due partly that they are generally being voluntary in nature. He called for stronger regulation and an extended application of The UN Guiding Principles on Business and Human Rights (UNGPs)¹². These principles are a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, which he thought where a good framework from a regional CSR perspective. He also stressed the importance of Extra Territorial Obligations where business can be held account for their operations in other countries.

For further summaries of the presentations made at the workshop, see Annex 1.

MOVING FORWARD

The participants were at the closing of the workshop asked to present key lessons from the workshop and specific actions they intended to take in their organizations based on these lessons.

The **main key lessons** were reported to be the importance of helping each other across sectors and field of interests to create a “political space” for improved decision-making processes that take human rights and environmental sustainability into better account.

The **first and foremost specific action** stated by many participants was that the collaboration and information exchange between groups working on either environment issues or human rights should be strengthened.

CLOSING

His Excellency the ambassador of Sweden Mr. Klas Molin closed the workshop with some final words. He emphasized that the focus on economic growth in the region has reduced the political space for an informed debate on the links between environmental sustainability, human rights and equity. Most countries have adequate regulatory frameworks to uphold and strengthen these interlinkages but there is certainly room for improvement. He concluded by stating that the conference’s theme merged very well with

¹² Also informally known as the "Ruggie Principles" <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>

the focus of the Swedish development cooperation strategy in the region and he hoped that the joint efforts with Sweden's partners could help governments to mainstream environment and human rights in policy decisions, improve government accountability and facilitating access to information across the region.

Challenges and opportunities identified during the workshop discussions

The workshop included a series of round table discussions. Some common challenges and opportunities that emerged in the discussions are highlighted below:

Challenges

- * The lack of democratic space for meaningful participation in certain countries
- * The low consumer interest in responsible business practices
- * That national sovereignty held in high esteem
- * The political and economic elite are the same – low incentives for change
- * The "Growth first - clean up later" paradigm is strong

Opportunities

- * More use of social media, legal training, international connections should support advocacy
- * Rights holders need further empowerment
- * Use the formal channels in ASEAN including the economic integration, Human Rights Commission, CSR networks, Environmental declarations etc.
- * Promote research that improves access to information
- * Make use of national systems including EIA/SEA, national constitutions etc.
- * Promote regional exchanges and collaboration
- * There is greater political space in ASEAN then 10 years ago and there is a HR Declaration, use it!
- * Environmental legislation is improving
- * There is a potential in the expanding middle class in the region to educate them to and demand sustainable and fair production of the goods they consume

Other highlights from the group discussions:

- Banks certified as "ASEAN banks" in 2015 must adopt the Equator Principles in order to be allowed to do project financing in order to be allowed apply in ASEAN community
- Media's knowledge of HRBA is very weak, should be included in our media training workshops
- Enforcement of international charters like the Rio principles, tools like IUCN gender and environment framework should be promoted as well as capacity building among local communities
- Difficult to separate environment and HRBA. EIA not a checkbox but should be considered a tool for sound decision, contents need to be more accessible to public
- Better common standards on environment and HR should be introduced in the region
- Monitoring and evaluation by CSOs is important but we need better grievance mechanisms

so wrongdoings can be addressed

- Request more clarity from donors on their standards, they can do better to evaluate the effect of their interventions
- Consumer awareness need to be improved

THE HRBA AND ENVIRONMENTAL FRAMEWORKS- UNPACKING THE KEY CONCEPTS AND INTER-LINKAGES

Key concepts and interlinkages were introduced by Ms. Birgitta Weibar, Sida; Mr. Olof Drakenberg, Sida Helpdesk for Environment and Climate Change and Mr. John Knox, the UN's first Independent Expert on Human Rights and the Environment a Clean, Safe and Healthy Environment

What is the Human rights Based Approach about?

- Empowering people – with assertiveness, knowledge, skills and tools, communication channels, money, legal mechanisms.
- So – they can claim their rights as stipulated in national laws and conventions (rights holders).
- And - putting pressure on and supporting – through capacity building – those in power, i.e. the State/Government, to respect and respond to these legitimate claims (duty bearers).
- What we do and why, but also a working method, HOW we do things.

Four fundamental principles for a HRBA

- *Participation* (Women, men, girls and boys have a right to participate and influence decision making processes)
- *Non-discrimination*, (Excluded, marginalized and discriminated people and groups in focus.)
- *Accountability* (States which have ratified the HR Conventions are responsible for the realization of HR i.e. accountable before the people, and rights holders are to hold the duty bearers accountable)
- *Transparency* (Information is a precondition for participation and for holding Government/State authorities accountable)

Unpacking Frameworks for Environmental Sustainability

Why do we need environmental regulatory frameworks?

- To protect human health (as by regulating air pollution for example)
- To secure livelihoods by ensuring access to natural resources for economic, cultural or ethical reasons

Overview of environmental frameworks

<i>Type:</i>	<i>Example of:</i>	<i>Binding:</i>
Declarations	Rio Principles	No
Conventions/Agreements	UNFCCC, CBD ASEAN Agreement on Transboundary Haze Pollution	Yes
National legislation	on water, air pollution, chemicals management etc.,	Yes

Procedures	Environmental Impact Assessment, Strategic Environmental Assessment, etc	Yes/No
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Conclusions

The environmental framework

- serves to protect people's health, wellbeing and life supporting ecosystems
- often promotes human rights based approaches
- needs to be used to be useful. Make use of it!

Human Rights Obligations Relating to the Enjoyment of a Clean, Safe and Healthy Environment

Presentation by Professor John F. Knox, the UN's first Independent Expert on Human Rights and the Environment a Clean, Safe and Healthy Environment¹³

- Environmental harm interferes with human rights, *directly* as in the case of the exploitation of oil the Niger delta in Nigeria where Shell's bad practices has virtually destroyed the ecosystem and contaminated the groundwater down to depths of 5 meters
- Or *indirectly* when sea level rise caused by climate change threatens to engulf the Maldives forcing the inhabitants to move to other countries in a near future should greenhouse gas emissions not be cut drastically
- Human rights law sets out rules for environmental policy-making and States have duties under human rights law to: assess environmental impacts on human rights, make environmental information public to facilitate participation in environmental decision-making
- Human rights law sets minimum environmental standards but States have discretion to strike a balance between environmental protection and economic development
- But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.
- States should take into account international health and environmental standards should not take retrogressive measures must not discriminate among groups and should comply with environmental standards once adopted
- States must protect against harm from corporations and provide remedies

¹³ For more information on Professor Knox mission at the UN go to <http://news.law.wfu.edu/2014/03/professor-john-knox-to-present-findings-to-u-n-human-rights-council-on-monday-march-10/>

Final Programme 20-21 May 2014

Regional workshop on the

“Interaction between Environmental Sustainability and a Human Rights-Based Approach”

Venue: Hilton Sukhumvit Bangkok (the grand ballroom, 3rd floor)
11 Sukhumvit Soi 24, Khlong Ton, Bangkok, 10110

Day One – May 20, 2014		
Time	Session	Speaker(s)
8.00-8.30	Registration	
8.30-9.00	Opening and welcome	AnnaMaria Oltorp, Head of Development Cooperation Section, The Embassy of Sweden
9.00-9.45	Setting the scene and introductions	Karen Edwards, Facilitator
9.45-10.30	Exploring inter-linkages HRBA and environmental sustainability	Facilitator
10.30-11.00	Coffee Break	
11.00-11.45	Unpacking the key concepts and inter-linkages <ul style="list-style-type: none"> - Principles of a Human Rights-Based Approach - Principles of Environmental Sustainability - Human Rights Obligations Relating to the Enjoyment of a Clean, Safe and Healthy Environment 	Birgitta Weibahr, Sida’s Senior Policy Expert on Democracy and Human Rights Olof Drakenberg, Sida’s Helpdesk for Environment and Climate Change Mr John F. Knox, UN first Independent Expert on Human Rights and the Environment

11.45-12.30	Concepts, Inter-linkages and Assumptions: Round Table Discussion	Facilitator and participation by Mr John F. Knox and Ramin Pejan, Advisor to the UN Independent Expert on human rights and the environment
12.30-13.30	Lunch Break (at the DeeLite at Doubletree by Hilton)	
13.30-14.00	Unpacking the inter-linkages in practice: The Case of Kampong Speu and other Cambodian sugar plantations	Dr. Nirun Pitakwatchara, National Human Rights Commissioner of Thailand Mr Eang Vuthy, Executive Director, Equitable Cambodia
14.00-15.00	Unpacking the inter-linkages in practice: Case Study Discussion	Facilitator
15.00-15.30	Tea Break	
15.30-16.15	Unpacking the inter-linkages in practice: Reflection on case study including speaker commentary	Facilitator
16.15-16.30	Feedback and Wrap Up	Facilitator
16.45	<i>Optional movie screening: Mekong – The film</i>	
18.00-20.00	Cocktail reception	

Day Two – May 21, 2014

Time	Session	Speaker(s)
8.30-9.00	Reflection and Synthesis from Day One	Facilitator
9.00-9.45	Opportunities to build leverage between human rights and environmental sustainability	Iain Watson, ADB/Environment Operations Centre Tessa Khan, Asia Pacific Forum on Women, Law and Development (APWLD) Ka Hsaw Wa, Earthrights Int.
9.45-10.30	What key frameworks, tools, processes count to build leverage between human rights and environmental sustainability?: Round Table Discussion	Facilitator
10.30-11.00	Coffee Break (at the Study room at the Hilton Sukhumvit Bangkok, 2 nd Floor)	
11.00-12.30	Opportunities to build leverage in practice: The Case of the Xayburi Hydropower Project	Hans Guttman, CEO at the Mekong River Commission Carl Middleton, Lecturer MAIDS at Chulalongkorn University
12.30-13.30	Lunch Break	
13.30-14.45	Effectiveness of using standards and frameworks for improving accountability: Panel Discussion	Dr Sriprapha Petchara Mesree, Mahidol University Thomas Thomas, CSR Network John Liu, Forum Asia
14.45-15.15	Tea Break	
15.15-16.45	Self-reflection and moving forward	Facilitator
16.45-17.15	Wrap up	Facilitator
17.15-17.30	Closing and Evaluation	Klas Molin, Ambassador, the Embassy of Sweden in Bangkok

