



INDIGENOUS PEOPLES' RIGHTS IN THAILAND

Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

There are approximately five million indigenous peoples in Thailand which accounts for 7.2% of the total population. Even though Thailand voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, it does not recognize indigenous peoples in the 2017 Constitution. Indigenous Peoples are instead referred to as “hill tribes”, “sea gypsies”, or “ethnic minorities”, are not entitled to the rights enshrined in UNDRIP and continue to experience various problems and multiple forms of discrimination. One of the most fundamental challenges faced by indigenous peoples of Thailand, particularly in the northern highlands, lies in the fact that many of them do not have Thai citizenship. Due to the lack of citizenship, language barriers, and the remoteness of their communities, indigenous peoples cannot access basic public services, secure their rights to land, education, and freedom of movement. During its 2nd UPR Cycle, Thailand received one recommendation directly addressing indigenous peoples’ rights from Sierra Leone, calling on Thailand to ‘Ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)’. The recommendation was noted and not implemented. On the other hand, Thailand received 59 recommendations related to indigenous peoples’ rights, of which it supported 55 and noted four. To date, only nine recommendations have been partially implemented by the Thai government, while the other recommendations have not been implemented at all.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Constitutional & domestic legal gaps result in limited protection of indigenous peoples’ rights

The 2017 Constitution does not explicitly recognize indigenous peoples. Even though Section 70 of the 2017 Constitution requires the State “to promote and provide for different ethnic groups to have the right to live in the society according to traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference,” ambiguous restrictions meant to protect ‘public order’ and ‘national security’, are being abused by the State to refrain indigenous peoples from enjoying rights guaranteed to ethnic groups under the Constitution.

New Constitution, Less Protection: It shall be noted that the 2017 Constitution did away with the provisions of earlier constitutions for the rights of persons assembling as a traditional community to conserve or restore their customs, local knowledge, arts, or good culture of their community and of the nation and to participate in the management, maintenance, preservation and exploitation of natural resources and the environment. As these rights are no longer guaranteed, indigenous peoples are not protected against discrimination and marginalization.

Lack of Free, Prior and Informed Consent (FPIC) of Indigenous Peoples

While Section 41 of the 2017 Constitution affirms the rights of communities to be informed and have access to public information and Section 58 affirms the State’s duty to undertake environmental and health impact assessments through public hearings of communities in advance of any undertaking that might affect them and lays down the requirements for permitting such undertaking, the provisions fall short of international standards for indigenous peoples’ rights.

The 2021 Draft Protection and Promotion of the Way of Life of Ethnic Groups Act is not enough

In mid-2021, Princess Maha Chakri Sirindhorn Anthropology Center (“SAC”), a public organization, prepared the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act, which, if passed, would be the first national legislation to specifically address issues particular to ethnic groups/minorities and thereby indigenous peoples in Thailand. However, the Draft Act is problematic as the mechanisms for policy and decision-making are too bureaucratic and the rights granted are subject to broad qualifiers. Since the rights are also only guaranteed for ethnic groups/minorities registered with the SAC, the Draft Act has little to no impact in terms of protection of indigenous peoples’ rights and may even result in further harm to their enjoyment and exercise of rights.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: Indigenous peoples face barriers to citizenship, which restricts their enjoyment and exercise of all other human rights and fundamental freedoms and increases their risks and vulnerabilities of exploitation and discrimination

Citizenship is guided by the Nationality Act of 2008. The system and procedure to apply are complicated and lengthy and not accessible in indigenous languages. Because of the lack of sufficient information, many indigenous peoples are unaware of their right to obtain citizenship.

Please refer to the UPR Factsheet on the Rights of Indigenous Women for additional challenges experienced by indigenous women.

According to Plan International, more than one million people in Thailand could be stateless, most of them belonging to indigenous communities. At least 50% of them have a legitimate claim for citizenship, but many lack relevant paperwork, and proof of their eligibility is thus complicated to obtain.

Indigenous Peoples are living in poverty & in remote areas, making it difficult to access citizenship. While indigenous peoples could prove through DNA tests that they are related to Thai citizens and are eligible for Thai citizenship, these tests are unaffordable for indigenous peoples. Further, indigenous peoples also face challenges registering themselves due to inadequate state services, such as a lack of roads from remote areas to registration offices.

Officials' corruption in accessing citizenship

Access to citizenship is also worsened by corruption among local officers and their discrimination, prejudicial stereotypes, and biases against indigenous peoples. Indigenous peoples have been requested to pay illegal fees in order to start citizenship procedures and have been threatened with arrest.

In Omkoi district, local government officers were found to engage in corruption and wrongful subrogation of IDs where indigenous peoples were asked to pay illegal fees in order to start procedures to obtain citizenship or they have been threatened with arrest. Some of them were outright refused to start the procedures and had their citizenship illegally denied.

Lacking Thai citizenship, indigenous peoples are denied basic rights and services, such as education, healthcare, welfare and experience arbitrary arrests, and discrimination. The COVID-19 outbreak further restricted indigenous peoples' enjoyment and exercise of rights in Thailand. In particular, indigenous peoples experienced limited access to healthcare, including COVID-19 vaccines, masks, and disinfectants, as many of them have not been granted Thai citizenship.

Challenge 3: There is a widespread misconception that indigenous peoples engage in drug trade and threaten national security and the environment, which contributes to their discrimination and rights violations

The Thai government has not made any efforts to tackle hate speech and racial discrimination against indigenous peoples. Instead, it contributes to disseminating negative stereotypes about them. Discrimination taking place at the highest levels of the government ultimately impacts the process of formulation of laws, programs, and policies that affect indigenous peoples.

State-sponsored hate speech and racial discrimination against indigenous peoples further put indigenous peoples at risk of losing their cultural identity and threaten their traditional way of life.

The state-sponsored racial discrimination labeling indigenous peoples as 'drug traffickers'

In June 2021, soldiers subjected members of indigenous communities in Ban Kae Noi, Chiang Mai, to DNA collection under the guise of drug crackdowns, depriving indigenous communities of the right to privacy and non-discrimination.

Killed under the excuse of being in possession of drugs

In 2017, a 17-year-old indigenous human rights defender from the Lahu indigenous community, **Chaiyaphum Pasae**, was extrajudicially killed by two military officers in a shooting, allegedly due to the possession of drugs. Despite several irregularities such as missing CCTV records, in autumn 2020, the Civil Court in Bangkok dismissed the case against the police officers, ruling that the officers acted in self-defense. The court also ignored the case of Nawa Ja-ue who was advocating for justice after Chaiyaphum's murder. She was arrested, wrongly accused of drug possession, and spent a year in prison.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 4: Indigenous human rights defenders are subject to government surveillance and face reprisals and insecurity

Indigenous human rights defenders, and leaders, who have called attention to their human rights issues or challenged the authorities for the rights violations they face are subject to government surveillance and have faced various reprisals ranging from harassment, arrests, imprisonment, and other reprisals to even enforced disappearances and killings. When speaking truth to power to protect their ancestral land, traditional way of living, and culture, indigenous communities are persecuted instead of receiving justice. Thai authorities systematically protect government officials who enjoy impunity for the crimes and rights violations they commit against indigenous human rights defenders.

Indigenous peoples are often casted as “criminals”, wrongly accused of encroaching forest land under the National Park Act (2019), instead of being recognized as “Protectors” of the Forest.

For challenges faced by indigenous peoples in relation to their ancestral lands, please refer to the UPR Factsheet on Thailand's False Climate Solution, Unfair Forest Conservation Laws, and Land-related Rights.

For further information about Billy's case, please refer to the UPR Factsheet on Torture and Enforced Disappearance in Thailand.

Insecurity among indigenous community members has grown, as many reprisals even go unreported and unaccounted for.

For example, in 2021, Min, an indigenous woman human rights defender, experienced harassment at security checkpoints in Chiang Mai, as government authorities photograph her ID card and license plate without legal grounds.

Indigenous human rights defenders arrested as they #SaveBangkloi

In February 2021, Kaeng Krachan National Park authorities forcibly moved around 100 Karen villagers from their homes in the Bang Kloi - Jai Pandin high land unfairly accusing them of forest encroachment within Kaeng Krachan National Park (KKNP in Phetchaburi and Prachuap Khiri Khan Provinces). On 5 March 2021, 22 members of the indigenous Karen community in Bang Kloi - including women and a disabled person - were arrested by Thai national park authorities and were detained in prison for returning to their ancestral land in the Kaeng Krachan Forest. They were released under the condition that they would not return to the area. This has put the whole community in a considerably difficult situation, as villagers are facing malnutrition as a result of having no access to their ancestral subsistence (foraging natural resources and rotational farming). They're also facing health risks and loss of income as Karen villagers were forced to resettle and struggled to farm with infertile land. Young villagers had to work in cities to feed their families, but the spread of COVID-19 limited their income. Returning to their ancestral land within Kaeng Krachan National Park turned out to be the last and only option. However, on 26 July 2021, UNESCO declared the National Park a World Heritage Site, ignoring the pleas of the indigenous Karen who currently cannot enter the area. Furthermore, Phetchaburi provincial prosecutors have prepared an indictment against 27 Bang Kloi villagers on 18 August 2021.

Impunity for the killing of “Billy”

Former national Park officer, Chaiwat Limlikhit-aksorn was arrested, but later acquitted with claims that the evidence against him was insufficient. In January 2020, state prosecutors dropped murder charges against a former national park officer Chaiwat Limlikhit-aksorn and three of his former subordinates accused of murdering Karen rights activist Porlajee "Billy" Rakchongcharoen, citing a lack of evidence. Later, in August 2020, DSI moved to reopen Billy's case. Billy was a young leader advocating for rights of indigenous peoples living within the Kaeng Krachan National Park. He was last seen on 17 April 2014, after he was stopped by Chaiwat at a checkpoint while traveling to meet Karen people who had accused national park officials of destroying their homes three years earlier. The four suspects were arrested after bone fragments with Billy's DNA were found in an oil tank submerged in a reservoir.



RECOMMENDATIONS

1. On challenge 1: Constitutional & domestic legal gaps result in limited protection of indigenous peoples' rights.

1.1. Ratify the International Labour Organization Convention No. 169.

1.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **revise the 2017 Constitution to explicitly recognize indigenous peoples' rights in accordance with international human rights standards for the rights of indigenous peoples.**

1.3. Enact specific domestic legislation recognizing and protecting indigenous peoples' rights in lieu of the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act. The legislation must be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as requested by the CERD Committee in its 2012 Concluding Observations to Thailand.

2. On challenge 2: Indigenous peoples face barriers to citizenship, which restricts their enjoyment and exercise of all other human rights and fundamental freedoms and increases their risks and vulnerabilities of exploitation and discrimination.

2.1. Expedite the process of granting Thai citizenship to indigenous persons with necessary reforms in the laws, policies, and processes for registration of nationality in order to ensure their access to social services, access to justice, and legal protections.

2.2. Ensure the birth of every indigenous child is formally registered in national systems, in line with the 2012 Concluding Observations of the CERD Committee to Thailand and recommendation of the Special Rapporteur on the human right to safe drinking water and sanitation.

2.3. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **to strengthen its efforts to reduce statelessness, the government must conduct an effective nationwide inquiry into citizenship challenges faced by indigenous communities, including corruption and abuse of authority by local officials, and take necessary steps, such as actions against the wrongdoing of the officials, to address the challenges.**

2.4. Improve access to education with interventions targeted towards understanding and overcoming specific barriers faced by indigenous peoples and children and adopt necessary laws and policies to provide adequate resources for the implementation of mother-tongue based/multilingual education (MTB/MLE).

3. On challenge 3: There is a widespread misconception that indigenous peoples engage in drug trade and threaten national security and the environment, which contributes to their discrimination and rights violations.

3.1. Ensure that security forces perform their duties strictly in accordance with the law, bringing security personnel guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations

3.2. Ensure that indigenous peoples do not become targets of discriminatory arrests and searches on drug-related charges and proactively address discriminatory attitudes of Thai authorities and the population.

4. Challenge 4: Indigenous human rights defenders are subject to government surveillance and face reprisals and insecurity.

4.1. Undertake fair and effective investigation into the disappearance, killing, and other reprisals against indigenous leaders, human rights defenders, and community members, and take steps to ensure access to justice for such reprisals in order to guarantee the end of impunity and insecurity in indigenous communities from government authorities, businesses, or other community members.

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