



ADVERSE IMPACT OF BILATERAL AND REGIONAL FREE TRADE AGREEMENTS

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

Thailand is a member of the World Trade Organization (WTO) and is a party to several bilateral and regional Free Trade Agreements (FTAs). Negotiations are underway for Thailand’s accession to other FTAs. Recently, in November 2020, Thailand signed the Regional Comprehensive Economic Partnership (RCEP). Currently, Thailand is considering becoming a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Both FTAs seek to expand the scope of global governance over various economic issues outside of the UN and the WTO systems. To date, Thailand’s accession to FTAs is largely opposed by civil society and local communities because of their adverse impacts on the rights and livelihoods of local communities, compounded by the lack of government transparency and public participation in the drafting and negotiation process of FTAs. During its 2nd UPR cycle, Thailand did not receive any recommendation directly addressing the adverse impacts of FTAs.

However, the Thai government committed to “implement measures to promote and protect the rights of peasants and other people working in rural areas,” (Bolivia) who are most affected by FTAs. Since local communities continue to face severe challenges because of FTAs, the Thai government failed to implement the recommendation.

REALITIES ON THE GROUND

| Challenges | Cases, Facts, Comments |
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Challenge 1: The drafting and negotiation process of FTAs lack transparency and local communities are not consulted

Section 41 of the 2017 Constitution guarantees local communities with the right to be informed and access to public data or information in possession of a State agency as provided by law.

Under Section 59 of the Constitution, the State is required to disclose public data or information in the possession of a State agency, which is not related to the security of the State or government confidentiality and ensure that the public can conveniently access such data or information.

However, the Constitution did away with the provisions of earlier constitutions (Section 190 of the 2007 Constitution) ensuring government transparency and public participation in the drafting and negotiation process of treaties. Accordingly, despite their constitutional right to information, local communities and the public at large do not have access to information regarding the drafting and negotiation process of FTAs.

FTAs are being negotiated by the central government and the private sector, without any consultation and involvement of local communities. What is negotiated is not disclosed to the public and not open for public consultation, which is problematic because local communities could be severely affected by the agreements. As communities’ concerns are not addressed or taken into consideration, their rights could be severely violated.

The case of the RCEP: For example, the drafting and negotiation process of the RCEP was conducted in a secretive manner, excluding affected groups, such as women, farmers, patients, workers, and indigenous peoples. The text was not made available to the public for consideration.

The case of the CPTPP: Similar concerns have been echoed in respect of the CPTPP. In July 2018, civil society organizations requested the Thai government to cease joining the CPTPP not only because of CPTPP’s impact on Thai people, but also because of the secretive manner of the drafting and negotiation process, coupled with the lack of stakeholders’ meaningful participation. Recently, in June 2021, Greenpeace Thailand presented 400,000 signatures it gathered in opposition to the Thai government’s plan to join the CPTPP.



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Challenge 2: FTAs negatively affect the livelihoods of local communities by promoting the exploitation of resources and biodiversity

Since the CPTPP requires parties to become signatories to the International Union for the Protection of New Varieties of Plants (UPOV) of 1991, Thailand's accession to the CPTPP will allow multinational corporations (MNCs) to claim ownership over Thailand's rich resources and biodiversity and thereby exploit and damage small-scale farmers. The UPOV of 1991 extends intellectual property protection over seeds and plants and prohibits farmers from saving and sharing protected seeds, including seeds that they have been freely using for generations prior to the extension of protection.

Under legislation drafted to comply with UPOV of 1991, farmers will have to pay royalties to save and share seeds, potentially resulting in the rise in seed prices by 200% to 600% and the decrease in the number of seed varieties due to increased monopolization. Farmers found guilty of saving and sharing protected seeds are subject to a fine of up to THB 400,000 and/or imprisonment of up to two years, in addition to having their crops destroyed.

Ultimately, the UPOV of 1991 will severely affect the livelihoods of farmers, rural communities, and indigenous peoples, especially women, who play a central role in ensuring food security by saving, preserving, and diversifying seeds and feeding their families and communities. When farmers' saved seeds will be replaced by corporation seeds, farmers will be forced to buy seeds from the corporations, pushing them further into debt and leading them to commit suicide, while leaving behind women and children.

Challenge 3: FTAs negatively affect local communities' right to healthcare by undermining access to life-saving medicines at affordable prices

TRIPS-plus provisions in FTAs, including the CPTPP, seek to extend pharmaceutical corporations' patent terms beyond the usual 20 years required under TRIPS and require data exclusivity. Problematically, if TRIPS-plus provisions are accepted, Thai people will have limited access to affordable medicines and treatments, as the prices of life-saving medicines, including generic medicines, will drastically increase.

In fact, TRIP-plus provisions threaten Thailand's Universal Health Care (UC) scheme, known as the 30-Baht Scheme, under which poor and low-income citizens can access medical care without accumulating debts or being driven into poverty. In June 2020, Thailand Consumers' Council, opposing Thailand's accession to the CPTPP, reiterated concerns on the impacts of the CPTPP on healthcare, while noting that joining the CPTPP will set back Thailand's efforts to achieve the Sustainable Development Goals.

Challenge 4: FTAs negatively affect local communities' land rights as they face land grabbing and forced evictions

FTAs, including the RCEP and CPTPP, limit the Thai government's ability to impose restrictions on foreign investors.

For example, under the RCEP, parties cannot discriminate against foreign corporations wanting to purchase farmland, which could potentially lead to increased land grabbing. If foreign corporations are allowed to own farmland in Thailand, local communities may face evictions from their land, leading to the destruction of their livelihoods. The communities most affected include farmers, rural communities, and indigenous peoples.

Challenge 5: The Investor-State Dispute Settlement (ISDS) in FTAs limit the use of public policies to promote the protection of human rights and the environment

FTAs, including the RCEP and CPTPP, include an arbitration clause for ISDS, which can be invoked only by private actors against host States for allegedly violating investors' rights even when host States have laws in place to promote and protect health and public interest.

As the ISDS mechanism often bases decisions on international investment law, ignoring environmental and human rights obligations, the mechanism prevents the Thai government from protecting the needs of its people. For example, in March 2018, Kingsgate, an Australian company, brought a claim under the Thailand-Australia Free Trade Agreement (TAFTA) because the Thai government allegedly violated TAFTA through closing a gold mine belonging to its Thai subsidiary (Akara Resources). While the Thai government closed the mine due to its disastrous impacts on the livelihoods of local communities living in the surrounding area, Thailand may potentially lose the case in arbitration, which would put Thai people further into poverty.



RECOMMENDATIONS

1. On Challenge 1: The drafting and negotiation process of FTAs lack transparency and local communities are not consulted

1.1. Incorporate mechanisms stated in Section 190 of the 2007 Constitution into the 2017 Constitution to ensure government transparency and public participation in the drafting and negotiation process of FTAs.

2. On Challenge 2: FTAs negatively affect the livelihoods of local communities by promoting the exploitation of resources and biodiversity

2.1. Sustain and increase funding to protect Thai farmers from foreign imports; and formulate national legislation that protects Thai plant varieties, alongside indigenous peoples' right to practice their cultural traditions, including their traditional ways of farming. Participation of farmers, rural communities, and indigenous peoples should also be guaranteed in the drafting process.

3. Challenge 3: FTAs negatively affect local communities' right to healthcare by undermining access to life-saving medicines at affordable prices

3.1. Ensure trading partners do not seek profit from the production and sale of life-saving medicines.

4. On Challenge 4: FTAs negatively affect local communities' land rights as they face land grabbing and forced evictions

4.1. Formulate national legislation that protects farmers, rural communities, and indigenous peoples against land grabbing and forced evictions at the behest of private actors. Participation of farmers, rural communities, and indigenous peoples should also be guaranteed in the drafting process.

5. On Challenge 5: The Investor-State Dispute Settlement (ISDS) in FTAs limit the use of public policies to promote the protection of human rights and the environment

5.1. Sign, ratify, and enforce the United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration to limit the scope of ISDS, and ensure human rights and environmental obligations of the State are prioritized over profit and investments.

5.2. Negotiate for effective remedies for people and communities, where their rights are harmed by investments under FTAs.

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