



Armed Conflicts & the Human Rights Situation in the Southern Border Provinces of Thailand

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

During the 2nd UPR cycle, the Thai government received 2 recommendations (made by Canada and Switzerland) directly addressing human rights violations in the Southern Border Provinces (SBPs), and 58 recommendations related to the rights of people living in the SBPs, including related to: the ratification of international instruments, and harmonisation of national legislation with international standards; addressing torture and enforced disappearance; preventing discrimination based on religion and ethnicity; preventing violence against women and children; enhancing protection of human rights defenders; and ensuring sustainable development. Of these, 52 recommendations were supported and 6 were noted. In the five years since the last cycle, our assessment shows that the Thai government has only fully implemented one recommendation (made by South Africa) by withdrawing its interpretative declaration on Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

On the other hand, the Thai government indicated to have undertaken various steps to address the human rights issues concerning the SBPs in its UPR midterm review report, including (1) the drafting of the Prevention and Suppression of Torture and Enforced Disappearance Bill, which was eventually approved by the Cabinet in June 2020 but its adoption is still pending; and (2) the setting-up of the National Committee for Managing Cases Relating to Torture and Enforced Disappearance via the Prime Minister's Office Order No. 131/2017 to address cases of torture and to prevent future cases. However, the Draft Prevention and Suppression of Torture and Enforced Disappearance Bill still fails to fully incorporate international human rights standards into its legal framework, such as the scope and the statute of limitations of torture; and its adoption is still pending. Regarding the National Committee for Managing Cases Relating to Torture and Enforced Disappearance, it is just an administrative body with little authority or political backing to take serious action. The National Committee seems more focus in reducing the number of enforced disappearances cases transmitted to the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID), than in bringing justice to the victims and their families. Furthermore, Thailand has yet to ratify a number of key international human rights instruments in order to follow through with its supported recommendations, including the ICCPED and OPCAT. Under these realities, it has partially implemented only 6 recommendations (made by Djibouti, Netherlands, Canada, Romania, Chile, and Congo), and did not implement the remaining 52.

Consequently, since the last UPR cycle, severe human rights violations continue to persist in the SBPs. Violence is still prevalent, with perpetrators enjoying unchecked power and impunity facilitated by the special security laws that have been imposed on the region for more than 15 years. Many activists, human rights defenders and journalists still face defamation lawsuits for reporting the realities on the ground. Furthermore, the ceasefire to control the spread of COVID-19 declared in April 2020 by the insurgent group Barisan Revolusi Nasional (BRN), failed to bring peace and the human rights situation continued to deteriorate in the region as the government used biometric data as a tool in its counter-insurgency efforts.

National Legal Framework

The Martial Law B.E. 2457 (1914) grants the military sweeping power to search, requisition, destruct or censor any material or assembly, and detain people without warrant up to seven days without judicial oversight. Furthermore, security officers cannot be held responsible for any injuries or damages caused as a result of their operations under martial law, which hinders victims' access to effective remedies and reparations.

The Emergency Decree on Public Administration in the State of Emergency B.E. 2548 (2005) allows warrantless detention of any suspect at unofficial detention centers for 30 days, during which no independent monitoring mechanisms or judicial reviews are put in place to ensure transparency and accountability, facilitating acts of torture or other inhumane treatment, and a culture of impunity. The enforcement of this law has been repeatedly extended, with the latest extension in July 2021.

Under the Internal Security Act B.E. 2551 (2008), the Internal Security Operations Command (ISOC) retains extensive authority to monitor, investigate, and evaluate any situation deemed as a threat to national security; and to direct, coordinate and support the activity of government agencies in their operations, as laid out in Section 7 (1) and (3).

The National Intelligence Act B.E. 2562 (2019) empowers the National Intelligence Agency to obtain data or documents which impact national security. Under this legislation, a National Intelligence Coordination Centre is also established, with the power to monitor, assess, and analyze situations in Thailand and abroad, and take measures whenever required.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: The misuse of special security laws in Thailand’s SBPs to target Malayu Muslims & to guarantee security officials’ impunity

The enforcement of special security laws, which include the 1914 Martial Law, the 2005 Emergency Decree, the 2008 Internal Security Act and the 2019 National Intelligence Act, is intended to help control the conflict in the SBPs. However, these laws disproportionately target the Malayu Muslim population and place barriers between the Buddhist Thais and the Malayu Muslims, further deepening the divisions and violence in the area.

Instead of controlling the conflict, the special security laws have been weaponized to target Malayu Muslims in the SBPs as suspected insurgents, subjecting them to violence, discrimination and racial profiling. For instance, 80% of the 116 killings documented by Deep South Watch in 2020 belonged to the Muslim community. Due to the overreaching powers of the law, its enforcement is often disproportionate and unclear in scope and definition. No oversight mechanisms have been put in place to ensure legal compliance and accountability, allowing arbitrary arrests and detentions to persist in the region. For example, as documented by Duay Jai Hearty Support Group, over 7,000 people, including 24 women and at least 132 children, have been detained on military bases without charge and without any access to legal assistance since 2010.

During community consultations held by the Patani Working Group for Monitoring on International Mechanisms in June-July 2021, communities expressed concerns about the region being overregulated, which has created an atmosphere of constant fears and mistrust. For example, the Muslim community is subject to continued state surveillance and ethnic profiling. They are disproportionately stopped at security checkpoints where authorities take pictures of their ID cards and car plates. This is compounded by further regulations imposed in light of the COVID-19 pandemic. In July 2021, citing the pandemic, the government imposed a curfew on the SBPs, where the freedom of movement had already been severely limited.

Punished for being an “impartial & fair judge”, and for not prosecuting Malayu Muslims

Khanakorn Pianchana, a senior judge in the Yala provincial court of Southern Thailand attempted to commit suicide in October 2019 with a second attempt in March 2020 being successful. His actions were in protest of interference in the justice system, after a senior judge forced him to rewrite a judgment in which he exonerated five Muslim suspects for lack of evidence. Instead of receiving support, after his first suicide attempt, disciplinary proceedings and criminal charges were initiated against the judge as he did not follow the systematic trend of persecution and prosecution of Malayu Muslims, even without sufficient evidence against them.

Harassment and Defamation charges against Malayu Muslims Human rights defenders, activists documenting rights violations in the Deep South, including those involved in the Peace Process

Ismaael Teh, President of the Pattani Human Rights Organization Network (HAP) revealed in a 2018 TV interview that he had been beaten, electrocuted, and forced to confess at gunpoint by security forces during his 9-day detention at Ingkayutthaboriharn military camp in 2008. Not even two weeks later, the Internal Security Operation Command filed civil and criminal charges against him for defamation.

On 24 October 2017, the Pattani Provincial Prosecutor decided to end the prosecution of Pornpen Khongkachonkiet, Somchai Homlaor, and Anchana Heemina for publishing a report where they documented 54 instances of torture and ill-treatment by security officers in Thailand’s Deep South. In this case, ISOC Region 4 had filed a complaint against them on 26 July 2016 for criminal defamation and violation of the Computer Crime Act (CCA).

Impunity of Security Officials for the crimes committed against Malayu Muslims

Section 17 of the Emergency Decree on Public Administration provides amnesty to officials violating human rights, stating that the violations are necessary to fulfil their duties, making it impossible to hold them into account for their crimes

In October 2016, in a case filed by Ismaael Teh before the Supreme Administrative Court, the Court concluded that he was a victim of torture and ordered the army to pay him a compensation of 305,000 THB for physical harm and emotional distress. However, no military personnel was prosecuted for this crime.

During its 2nd UPR cycle, Thailand received 2 recommendations (from Canada and Switzerland) to investigate human rights violations, including torture allegations, in the South of the country. As of today, the Government has failed to provide justice to victims of human rights violations in the SBPs and to hold the responsible security forces officials accountable.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: Racial discrimination against Malayu Muslims: DNA collection and the increasing use of biometric data, digital ID profiling, and AI technologies to surveil the population

The Muslim population in the SBPs has been subjected to biometric data collection and targeted surveillance such as AI facial verification and forced DNA collection. Although military officials claim such methods are helpful to ensure local safety and convict suspected insurgents, they are used disproportionately against the Malayu Muslims in the SBPs, which could amount to discrimination and ethnic profiling.

As stipulated in Section 131 and 131/1 of the Criminal Procedure Code, a person may be subjected to DNA collection if they are suspected or convicted of a crime. Nevertheless, Malayu Muslims' DNA is being collected even without being suspect.

For more information on digital surveillance and right to privacy, please refer to the UPR Factsheet on Digital Rights in Thailand.

Discriminatory DNA Collection: Security officials have randomly collected DNA profiles from Malayu Muslims in the SBPs who are not suspects of any crime, including from innocent children of suspected insurgents. The CrCF documented at least 139 cases of forced DNA collection from January to September 2019.

Malayu Muslims have been subjected to discriminatory and disproportionate biometric data collection through facial verification measures and increased CCTV surveillance in the SBPs of Thailand. The Internal Security Operations Command (ISOC) requires Malayu Muslims to register their SIM cards via a facial recognition system along with their national identification card details. Individuals who did not comply with these rules by April 2020 experienced targeted mobile network shutdowns in early May 2020. Surveillance also increased after a January 2020 announcement that the government would use artificial intelligence (AI) in at least 8,200 surveillance cameras across the region. The CCTVs were installed under the excuse of "ensuring local population's safety." Currently, the use of the collected personal data remains unknown and there are no legal safeguards in place against potential misuse of the data or violation of the right to privacy. Absence of privacy protections and clear legislation pose a great risk specifically to minority groups and vulnerable individuals who are subject to undue surveillance and the massive collection of their data raise serious human rights concerns.

Challenge 3: Living the Struggle Within the Struggle - Malayu Muslim Women and Children are bearing the impact of the conflict

During the 2nd UPR cycle, the Thai government received and accepted 11 recommendations related to the rights of women and children. The Government was, inter alia, prompted to ensure protection against violence against women "regardless of its religion, race, sexual identity or social condition", participation of children in armed forces and non-state armed groups, and guarantee equal access to healthcare to women and children. However, Malayu women and children still struggle in accessing their rights. Children also suffer from long-term mental health problems as a result of the conflict and still become victims of violent incidents

Peace dialogues have been held since 2015 between the government and the MARA Patani, an umbrella organization comprising six political liberation groups in Thailand's SBPs. However, no tangible progress has been made as the process is repeatedly hindered by the government's unwillingness to make concessions to the local voices.

Children bear the impact of the conflict. Children of insurgents are being stigmatized at school. Sometimes older children drop out completely to help financially support their families, especially in cases when the breadwinner of the family is detained. Also, as highlighted by The Association for Children and Youth for Peace in the Deep South, orphaned children are more easily persuaded to join conflict and seek revenge.

In instances, Malayu Women are sexually harassed and raped by soldiers. If women file a complaint about this, they can sue the soldier who harassed or raped them. However, many girls and women refrain from filing a complaint due to reputational harm that may be done to the family, and because punishments of perpetrators are weak: if found guilty the punishment includes relocation or job termination. In other cases, the offenders claimed that mutual consent was involved and the perpetrator was not found guilty.

Failure to meaningfully engage local communities, especially women, in peace talks

Local communities are often blocked and disregarded in the dialogues, and the government continues to restrict the activities of civil societies that represent the voices of the Malayu Muslim population. While women actively participate in peace-making efforts on the ground, their participation in the dialogue is limited, despite them being one of the most affected by the conflicts. Women community members also lack a public space where they could openly discuss issues of their concern, and face difficulties in accessing information on the development of the dialogue that will allow them to develop and make the necessary inputs to the peace process.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 4: Exacerbation of Human Rights Violations during the COVID-19 pandemic, including disregard of Malayu Muslims' rights to health and access to information

Despite the unprecedented global public health emergency, the government continues to impose strict security measures in the SPBs, without taking into account the health vulnerabilities of the local communities

Ceasefire to control the spread of COVID-19 failed to bring peace

Despite a temporary ceasefire announced by the Barisan Revolusi Nasional (BRN) in April 2020 to facilitate the control of the COVID-19 pandemic, the authorities still continue to conduct house raids, with 3 members of BRN armed forces extra-judicially killed on 30 April 2020. In May 2020, Thai security forces conducted a raid of a suspected insurgent hideout resulting in the death of two civilians. Whether this will have a lasting impact on the peace talks, the progress made in the region remains to be seen.

The health of local communities is disregarded in the SPBs during the COVID-19 pandemic

Arbitrary DNA collections continued in the SBPs, making the locals even more vulnerable to contracting the virus as such operations require them to breach social distancing protocol. ISOC also continued to suspend unregistered mobile numbers in the region during the pandemic, a time when quality telecommunication services are needed the most for an immediate access to medical and humanitarian assistance.

During the first outbreak of COVID-19 in Thailand, the Government failed to address the health risks posed to those detained at the overcrowded immigration detention centre located in Sadao district in Songkhla province.

For instance, 42 detainees tested positive for the virus on 25 April 2020, out of the 53 new cases recorded nationwide on that day.

RECOMMENDATIONS

1. On Challenge 1: The misuse of special security laws in Thailand's SBPs to target Malayu Muslims & to guarantee security officials' impunity

- 1.1.** In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **amend the Martial Law and Emergency Decree in the Southern Border Provinces to ensure that they comply with all the provisions of the ICCPR**, especially with regards to Article 9 on the arbitrary deprivation of liberty.
- 1.2.** In line with the 2014 Concluding Observations of the Committee against Torture (CAT Committee) to Thailand, **immediately halt harassment and attacks against human rights defenders, journalists and community leaders in the Southern Border Provinces.**
- 1.3.** In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **ensure that all allegations of torture and ill-treatment are promptly and impartially investigated and that responsible individuals are brought to justice.**
- 1.4.** **Amend Section 17 of the Emergency Decree on Public Administration that provides amnesty to officials violating human rights and bring it in line with international human rights standards to ensure officials' accountability.**

2. On Challenge 2: Racial discrimination against Malayu Muslims: DNA collection and the increasing use of biometric data, digital ID profiling, and AI technologies to surveil the population

- 2.1.** In accordance with the 2012 Concluding Observations of the CERD Committee to Thailand, **the Thai government must terminate the practice of search and arrest, as well as the collection of biometric data based on ethnicity and racial profiling.**
- 2.2.** **Develop effective safeguards against State abuse of surveillance technologies, data collection and violation of online privacy**, including by ensuring effective and independent oversight mechanisms are in place to limit unfettered executive discretion and establish redress mechanisms consistent with the obligation to provide victims of surveillance-related abuses with adequate and effective remedy.



RECOMMENDATIONS

3. On Challenge 3: Living the Struggle Within the Struggle: Malayu Muslim Women and Children are bearing the impact of the conflict

- 3.1. In collaboration with civil society organizations, **launch awareness raising campaigns in schools and in communities to ensure children of insurgents are not discriminated against in school, guarantee their equal access to education and provide them with financial support so they do not drop out of schools to support their families.**
- 3.2. In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **adopt temporary special measures targeting Muslim women in the Southern Border Provinces so as to ensure their substantive equality with men in all areas.**
- 3.3. In line with Article 1 and 2 of the ICCPR, as well as the ICESCR, **facilitate public participation and a suitable environment for local communities to express their views in the peace talks in the Southern Border Provinces, and must ensure Women can effectively participate.**
- 3.4. In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, the Government should **integrate gender-sensitive security measures and peace-building initiatives in the Southern Border Provinces.**

4. On Challenge 4: Exacerbation of Human Rights Violations during the COVID-19 pandemic, including disregard of Malayu Muslims' rights to health and access to information

- 4.1. In accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), **halt any security measures and operations that might put the health of Malayu Muslims at risk during the COVID-19 pandemic.**
- 4.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **take practical measures to improve conditions of detention centers and ensure that the living conditions inside are in compliance with international standards.**



REFERENCES

The Patani Working Group for Monitoring on International Mechanisms, Civil Society Assembly For Peace (CAP), The Federation of Patani Students and Youth (PerMAS) and Manushya Foundation, *Joint UPR Submission: Armed Conflicts & The Human Rights Situation in the Southern Border Provinces in Thailand*, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, (March 2021), available at: <https://www.manushyafoundation.org/joint-upr-submission-armedconflicts>

Manushya Foundation, Access Now, Article 19, and the ASEAN Regional Coalition to #StopDigitalDictatorship, *Joint UPR Submission: Digital Rights in Thailand*, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, (March 2021), available at <https://www.manushyafoundation.org/digital-rights-joint-upr-submission>

AP, *Thailand sets curfew for capital to combat coronavirus surge*, <https://apnews.com/article/business-lifestyle-health-travel-coronavirus-pandemic-4d0bd8ec8000a7cd672eb0cda93b1f6c>

Bangkok Post, *Far South emergency 'must end'*, (20 July 2021), available at: <https://www.bangkokpost.com/thailand/general/2151639/far-south-emergency-must-end>

Committee against Torture, *Concluding observations on the initial report of Thailand*, adopted by the Committee at its fifty-second session (28 April–23 May 2014), CAT/C/THA/CO/1, (June 2014).

Committee on the Discrimination Against Women (CEDAW), *Concluding observations on the combined sixth and seventh periodic reports of Thailand*, adopted by the Committee at its sixty-seventh session (3-21 July 2017), CEDAW/C/THA/CO/6-7 (July 2017).

Committee on the Elimination of Racial Discrimination, *Concluding observations on the first to third periodic reports of Thailand*, adopted by the Committee at its eighty-first session (6–31 August 2012), CERD/C/THA/CO/1-3, (November 2012).

The Government Public Relations Department, *Seven Districts Excluded from Emergency Decree Enforcement in the Deep South*, (4 June 2021), available at: https://thailand.prd.go.th/mobile_detail.php?cid=49&nid=11367

UN Human Rights Committee (HRC), *Concluding observations on the second periodic report of Thailand*, adopted by the Committee at its 119th session (6-29 March 2017), CCPR/C/THA/CO/2, (April 2017).