

Everything You Need to Know about

#WhatsHappeningInThailand



Third Universal Periodic Review Cycle

Thailand UPR III 2021

Overview of the Human Rights Situation in Thailand:
Legal Framework, Challenges, Case Studies & Community-led UPR Recommendations

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The UPR Advocacy Factsheets provide an overview of the human rights situation on the ground in Thailand and tell the truth behind **#WhatsHappeningInThailand**. The factsheets provide credible information and include Community-led UPR recommendations to inform Recommending States and ensure they can make SMART UPR recommendations to the Thai government in order to respond to local communities' needs and improve the human rights situation on the ground.

The following organizations took part in the development of the UPR Advocacy factsheets and/or UPR submissions which form the basis of most of the factsheets:

- Amnat Charoen Friend of Women Center
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Table of Contents

1. Civic & Political Rights

- 1.1. Civic Space
- 1.2. Digital Rights
- 1.3. Torture & Enforced Disappearances
- 1.4. Prison Conditions
- 1.5. Death Penalty
- 1.6. Armed Conflicts & the Human Rights Situation in the Southern Border Provinces

2. Economic, Social, Cultural & Environmental Rights

- 2.1. Labour Rights
- 2.2. Migrant Workers Rights
- 2.3. Rights of Sex Workers
- 2.4. Human Trafficking
- 2.5. People & Planet Over Profit
- 2.6. Thailand's False Climate Solution & Unfair Forest Conservation Laws
- 2.7. Adverse Impact of Bilateral & Regional Trade Agreements (FTAs)
- 2.8. Rights of Indigenous Peoples
- 2.9. Safe Abortion in Thailand

3. Marginalized Communities

- 3.1. Khon Isaan
- 3.2. Women subjected to Male Violence in Intimate Relationships
- 3.3. Indigenous Women
- 3.4. LGBTIQ+ Persons, including LGBTIQ+ Youth & Children
- 3.5. People Living with HIV & Drug Users
- 3.6. Persons with Disabilities
- 3.7. Elderly Rights
- 3.8. Asylum Seekers & Refugees
- 3.9. Rights of the Child

CIVIC SPACE IN THAILAND

#WhatsHappeningInThailand

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

During its 2nd UPR in 2016, Thailand received 69 recommendations calling for the improvement of the situation related to civic space, including 27 recommendations on freedom of expression, 13 recommendations on freedom of association and peaceful assembly, 17 recommendations on enforced disappearances, 8 recommendations on human rights defenders, 4 recommendations on arbitrary arrests and detention. Out of 27 recommendations on freedom of expression, 11 were supported and 16 were noted. The supported recommendations include improving rights on freedom of expression (made by Colombia, Czechia, Japan, Lebanon, Republic of Korea, Chile, France, Austria and Costa Rica) and alignment with international instruments (made by Guatemala and Albania), which were not followed through in the past 5 years. Out of 13 recommendations on freedom of association and peaceful assembly, 3 were supported and 10 were noted. All 17 recommendations on enforced disappearances were supported, which involve the ratification of relevant international instruments, the adoption of a national legal framework addressing the issue, and ensuring accountability and justice for victims. However, none of them were implemented either in law or in practice. As for the protection of human rights defenders (HRDs), two were noted and the other six were supported, which include ensuring that HRDs are protected from attacks, harassment or rights abuses; and that all cases are properly investigated, and perpetrators brought to justice. None of the accepted recommendations were followed through either, with the violent crackdown on activists, HRDs and protesters since the youth-led pro-democracy movement started in 2020 as a clear example. On arbitrary arrests and detentions, all recommendations calling for an end to the use of unlawful detention and ensuring access to justice and fair trial were noted.

In the last five years since the 2nd UPR Cycle, the human rights situation in Thailand has alarmingly worsened. After the 2014 military Coup d'État, Prayut Chan-o-cha has transitioned from a junta leader to undemocratically-elected Prime Minister due to the 2017 military-drafted constitution. The government has since continued to abuse its power with countless accounts of human rights violations, including arbitrary arrests, use of extreme violence against peaceful youth-led protests, and restriction of press and media freedom.

COVID-19 State of Emergency: In March 2020, under the guise of containing the spread of COVID-19, the government invoked the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) (Emergency Decree) to declare a State of Emergency and ban public gatherings, which was originally scheduled to last a month but repeatedly renewed. In July 2021, the COVID-19 State of Emergency was extended for the 13th time to last until 30 September 2021.

Youth-led Pro-democracy Movement: On 18 July 2020, the largest protest movement since the May 2014 Coup, led by Free Youth, began and gained momentum throughout the country, having three clear demands: (1) the dissolution of the Parliament, (2) a new Constitution, and (3) the end to the authorities' harassment of government critics. As pro-democracy protests grew continually for several months all over Thailand, demands later included the Students' 10-point Manifesto to reform the Monarchy, and the resignation of Prime Minister Prayut Chan-o-cha **#PrayutGetOut**. By September 2021, the pro-democracy demands and protests are ongoing and anti-government sentiment has grown, with more and more Thai citizen calling for the resignation of Prayut Chan-o-cha and his cabinet due to their poor management of the COVID-19 pandemic and the mass vaccination plan, relying solely on 'Royal Vaccine' deals, putting profit over people.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Restrictions on Freedom of Expression and Freedom of Association and Peaceful Assembly

Of the 27 recommendations received on freedom of expression, 11 were accepted and 16 were noted. Of the 13 recommendations received on freedom of association and peaceful assembly, 3 were accepted and 10 were noted. None of these recommendations have been implemented. The Thai government has instead weaponized a series of legislations and regulations to limit the fundamental rights of its citizens, such as banning political gatherings, harassing human rights defenders through abusive uses of laws, imposing censorship on media, citizen journalists, and anyone telling the truth behind **#WhatsHappeningInThailand**.

The abusive use of repressive laws under the name of 'National Security' to restrict freedom of expression

The right to freedom of expression and media freedom are guaranteed under Sections 34 to 36 of the 2017 Constitution of Thailand, and can be conditionally limited by the government for the purpose of maintaining the State's security, protecting the rights or liberties of other persons, maintaining public order or good morals or protecting people's health. However, the government has imposed disproportionate and unnecessary restrictions on these rights through a number of repressive laws, such as Article 116 of the Criminal Code, which is a sedition-like offence enforcing a penalty of up to 7 years of imprisonment; and Articles 326 to 333 on slander and libel. These vague and broadly formulated crimes are repeatedly used by the State to arrest and prosecute political opponents, activists and protesters. For instance, from late May 2020 when the youth-led pro-democracy fist emerged until July 2021, more than 107 individuals were charged with Section 116 in 31 different cases, according to the Thai Lawyers for Human Rights (TLHR).



REALITIES ON THE GROUND

Challenges

For more information and cases on the government's crackdown on online freedom of expression, please refer to the UPR Factsheet on Digital Rights in Thailand.

Cases, Facts, Comments

Article 112 (lèse majesté) of the Criminal Code, in particular, entails that anyone whose acts are deemed to defame, insult or threaten the King, the Queen, the Heir-apparent, or the Regent, shall be sentenced to jail from 3 to 15 years on each account. During the 2nd UPR cycle, Thailand noted all 8 recommendations addressing this particular law, clearly indicating that it has no intention in bringing Article 112 in line with article 19 of the ICCPR and related-international human rights standards (recommendations specific to lèse majesté were made by Belgium, Canada, Germany, Iceland, Latvia, Norway, Spain and the United States). With its high penalty rate and ambiguous wording that allows for a subjective interpretation, the law was revived in November 2020 and is being used as a legal weapon to crack down on political opponents and pro-democracy protesters with the aim to judicially harass them and put an end to the pro-democracy movement (it shall be noted that the Thai government suspended the use of Article 112 from 2018 until late last year, and invoked other laws, such as the Computer Crime Act (CCA) and sedition law to prosecute anyone 'insulting' the monarchy).

For instance, the number of student activists who have been charged with lèse majesté since the democracy protest started in 2020 surpassed 100 in June 2021. According to the data compiled by TLHR, updated on 2 September 2021, the number of protesters charged with Article 112 stands at 124, with at least 8 of them under the age of 18, the youngest of which is only 14 years old. Among the latest cases are Maynu Supitcha, an 18-year-old Chiang Mai student who was charged with lèse-majesté for a speech criticizing the Monarchy made in November 2020, and Siripat Deesawat, for removing the portrait of the King from the entrance of a community in Prachacheun.

Thai authorities also continue denying the right to fair trial, especially in cases involving "national security", including lèse-majesté cases. In many cases, hearings and trials are held without public participation. Excessive punishment and harsh sentencing have raised concerns over the rights to a fair trial. On 19 January 2021, Anchan Preelert was sentenced to 87 years' imprisonment by the Bangkok Criminal Court under the lèse-majesté provision for uploading 29 videos concerning the monarchy, with the jail term reduced to 43-and-a-half years after she pleaded guilty. Her request for bail pending appeal was denied.

Media Censorship

The Thai government has also used a series of laws to curtail media freedom and access to information. For instance, the Broadcasting and Television Business Act empowers the National Broadcasting and Telecommunications Commission (NBTC) to suspend or revoke the licenses of radio or television operators broadcasting content deemed false, defamatory to the monarchy, harmful to national security, or critical of the government. NBTC has temporarily suspended a TV channel, Voice TV, in 2014, 2017, and most recently in February 2019 for reporting critical information about the government. Due to the strict control over traditional media, news outlets are often inclined to self-censor, opting out certain content when reporting the news, such as anti-monarchy speeches during the 2020 pro-democracy movement. Thai people and journalists are now resorting to online platforms to exercise their rights to free expression and information, which has led to an expansion of the government's crackdown to the internet. In October 2020, an order was enacted under the Emergency Decree to silence four independent media agencies (VoiceTV, The Standard, Prachatai and The Reporters) and the youth-led pro-democracy group Free Youth. Consequently, the online media outlet Voice TV was ordered to close down for violating the Computer Crime Act and the Emergency Decree for covering the pro-democracy protests, though later the order was lifted.

The misuse of COVID-19 and 'Fake News' to crack down on anyone speaking truth to power behind #WhatsHappeningInThailand

Recently, the government has used COVID-19 as a weapon to roll out restrictive regulations under the 2005 Emergency Decree to control media reports and social media posts about the realities of the COVID-19 pandemic, and the government's poor management of the vaccination program. For instance, on 27 July 2021, a Facebook post by PM Prayut Chan-o-cha ordered government agencies and departments to prosecute individuals, including journalists, celebrities and social media administrators, for spreading "fake news" about the COVID-19 pandemic. This threat came after 25 celebrities, influencers and public figures were investigated for voicing their discontent about the government's poor vaccination plan based solely on its 'Royal Vaccin' deal. In the same month, 18-year-old rapper Danupa "Milli" Khanatheerakul was fined 2,000 baht after criticizing the government's response to the pandemic on social media. To make it worse, Prayut Chan o-cha issued Regulation No. 29 on 29 July 2021, issued under Section 9 of the Emergency Decree, which came into effect the following day. It banned reporting, distribution or dissemination of "any book, publication, or any other media containing text" that "may create fear" or "that are intended to spread inaccurate news/information to generate misunderstanding about the emergency situation with adverse impact on national security, public order, or public morality". Under Regulation No. 29, telling the truth became a crime. The order also empowered the Office of the National Broadcasting and Telecommunications Commission (NBTC) to instruct Internet Service Providers to track IP addresses from which prohibited information has been posted. On 2 August 2021, representatives from major Thai news agencies filed a civil lawsuit against the Prime Minister over the legality, necessity and proportionality of Regulation No. 29. On 6 August 2021, the Civil Court ordered the suspension of Regulation No. 29 as it contravenes the rights guaranteed under the Thai Constitution. Consequently, on 9 August 2021, PM Prayut Chan-o-cha revoked Regulation No. 29.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

The misuse of the 2015 Public Assembly Act and COVID-19 State of Emergency to crackdown on pro-democracy protests

While Article 12 of Head of the NCPO Order no. 3/2558, which banned political assemblies of more than five persons, was eventually repealed in December 2018, the authorities continue to use different legislations to restrict freedom of association and peaceful assembly, including the 2015 Public Assembly Act and the COVID-19 State of Emergency Decree. The Act requires anyone seeking to hold a public assembly to notify the authorities at least 24 hours in advance of the time, place, and objective of the assembly. Moreover, the Act also contains vague provisions in relation to applicable restrictions, such as in case actions may cause "disruption and public disorder" and grants authorities sweeping powers to prohibit the assembly if it is deemed to breach the Act. Additionally, the Act provides for liability of organizers and participants, including punishment with a fine of up to 10,000 baht or imprisonment for the breach of vaguely worded "duties", such as a duty to not cause "unreasonable inconvenience" to any person. For pandemic-related restrictions, the government invoked the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) (Emergency Decree) in March 2020 to ban public gatherings under the guise of containing the spread of COVID-19. It was originally scheduled to last a month but repeatedly renewed until now. Then, in response to a wave of youth-led pro-democracy protests in July 2020, the government declared on 15 October 2020 a more stringent "severe state of emergency" which banned the gathering of more than five people in Bangkok. The 'Bangkok severe state of emergency' was revoked on 22 October 2020 after calls from the international community pressuring the Thai government to comply with its international human rights obligations.

From July 2020 to July 2021, more than 100 people were charged for breaching the Public Assembly Act, and 501 others for violating the COVID-19 Emergency Decree and Severe State of Emergency decrees, according to TLHR. This number has alarmingly increased in August 2021, with 260 persons arrested for participating in the anti-government car rallies which took place throughout August 2021 in several provinces nationwide, as recorded by TLHR.

Challenge 2: Violence against Human Rights Defenders, Judicial Harassment, Arbitrary Arrests and Detention, and Enforced Disappearance

Despite accepting six recommendations on the protection of human rights defenders, Thai authorities not only continue to judicial harass human rights defenders, especially youth, including unlawful arrests and detention, but also subject them to excessive and unlawful physical violence.

Excessive and unlawful use of force by police against unarmed pro-democracy protesters

Chemical-laced water cannons, tear gas, rubber bullets, taser guns and live rounds have been used by police to disperse unarmed demonstrators, most of whom were minors and some were as young as 12 years old. According to information provided by SHero Youth Network and recorded by Manushya Foundation during pro-democracy protests, some members of the press and medical volunteers were also targeted. Riot police also shot rubber bullets indiscriminately to the crowd, sometimes at point blank range, and beat a protester until he was unconscious, which is a blatant violation of the international standards of crowd suppression and control. Amnesty International's Crisis Evidence Lab has also verified 87 videos depicting police violence against youth protesters. Among the latest cases was Tanat "Nat" Thanakittamnuay, who permanently lost sight in his right eye after being shot in the face with a tear gas canister by crowd control police during an anti-government protest on 13 August 2021. In another instance on the night of 16 August 2021, unknown assailants shot live bullets and struck a 15-year-old protester in the head during a protest near Din Deang police station in central Bangkok. As of 24 August 2021, he is still in coma as the bullet remains lodged in his skull. Although the police have denied using live ammunition against protesters, the investigation into the case is still ongoing as there are videos showing a group of men shooting unknown weapons at the protesters from the police station that night.

Arbitrary Arrests and Detentions, and Denial of Bail

According to TLHR, at least 757 people were charged between July 2020 and July 2021 for violating the Public Assembly Act, the Emergency Decree, lèse-majesté (Article 112), sedition (Article 116), and the Computer Crimes Act (CCA), 44 of which were under the age of 18. Within the past month of August 2021 alone, during which Thailand saw an anti-government car rally movement in several provinces nationwide, more than 260 people have been arrested during the rallies, at least 57 of whom are between 15 and 18 years old, and 13 others are less than 15 years old. The youngest among the minors arrested is only 13 years old, according to TLHR.

A large number of pro-democracy protesters and youth activists have been subject to unlawful detentions, with many of them held at police stations that have no jurisdiction over their cases. TLHR has confirmed at least 228 cases of protesters being unlawfully detained and transferred to the Region 1 Border Police Bureau or the Narcotics Suppression Bureau for questioning between 13 October 2020 and 3 August 2021.

Many pro-democracy movement leaders also faced similar fate, with their right to a fair trial and their presumption of innocence denied. For instance, on 9 February 2021, four prominent democracy activists ("Penguin" Parit Chiwarak, Anon Nampa, Somyot Pruksakasemsuk and Patiwat Saraiyae) were denied bail in relation to their arrests and detention for violating Article 112 (lèse majesté) and for their involvement in pro-democracy protests in September and November 2020. Their right to a fair trial was violated by the Court, which stated that "judging from the gravity of the charges and the nature of the cases, given the high penalty rate and the aggravated nature of the cases, and given the repeated commission of the same offence at several times and several places, the court is convinced that by granting them temporary release, the four defendants may again recommit the same alleged offences. Therefore, their bail request is denied. The bail applications are dismissed."

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

During Thailand's 2nd UPR, the government supported all four recommendations on prison conditions. However, over the past five years, prison conditions remained below international standards, and have worsen with the spread of COVID-19 among inmates, and the lack of proper health measures taken by the Department of Corrections.

For more information and cases, please refer to the UPR Factsheet on Prison Conditions in Thailand.

Thailand has accepted all 17 recommendations addressing enforced disappearances in the previous UPR cycle. However, such commitment has not been fulfilled, either in law or in practice. Thailand has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, nor has it successfully achieved an effective national legal framework on the issue.

For more information, please refer to the UPR Factsheet on Torture and Enforced Disappearance.

Challenge 3: Draft NPO Law (2021) is an Imminent Threat Against Civil Society Organizations

In February 2021, the Thai Cabinet approved the **Bill on the Operations of Not-For-Profit Organizations (NPO Law 2021)** which requires that all Non-Profit Organizations (NPOs) register with the Ministry of Interior, and comply with the rules prescribed by the law. The Bill, as written in Section 1, aims to "regulate the operation of not-for-profit organizations in the Kingdom to ensure propriety, morality, openness, transparency, and the genuine serving of public and national interest without any hidden and fraudulent agenda in order to uphold public interest, and the peaceful public order, and the good morals of the people." If the draft passes into law, it will be detrimental to the development of all non-profits organizations operating in the country. Whether it is international or local NGOs, grassroots communities, or small local civil society organizations, this bill will stigmatize their operations, subject them to criminal sanctions for non-compliance, and most importantly, put undue interference on their rights to freedom of association and peaceful assembly.

More recently, on 18 August 2021, human rights lawyer Arnon Nampa, who just faced fresh lèse majesté and other charges for a speech made last during the #HarryPotterRally 2 protest held on 3 August 2021, was denied bail for the second time by a court, which cited that his detention is necessary as the investigation into his case is ongoing, although Nampa voluntarily turned himself in, thus posing no flight risks. On the same day, eight other democracy activists were denied bail by the Thanyaburi Provincial Court, for their involvement in the protest of 2 August 2021. The court violated their right to a fair trial by refusing to acknowledge their presumption of innocence, citing no reasonable cause to change the order. The eight activists include Sam Samat, "Penguin" Parit Chiwarak, "New" Sirichai Natueng, "Fah" Promsorn Viradhammajari, Nutchanon Pairoj, "Mike" Panupong Jadnok, "Boy" Chatchai Kaedam, and Panudda Sirimassakul or "Tong Thalufah"; two of them contracted COVID-19 in detention ("Penguin" and "Boy").

Poor Prison Conditions during Detention:

The substandard and overcrowded conditions of prisons and detention facilities pose great risks to the health of inmates, especially in times of the COVID-19 pandemic. Seven out of 9 activists who surrendered themselves to the police in August 2021 have tested positive for COVID-19 while being detained. One of them is pro-democracy Youth activist, Parit 'Penguin' Chiwarak, arrested for his involvement in the protest of 2 August 2021. He was initially detained in an overcrowded cell with 43 other jail mates, despite having contracted the coronavirus. Compounded with his pre-existing health issue like asthma, his health conditions were alarming, with reports of white spots appearing inside his lung and being prescribed with wrong asthma medication. He was later sent to a prison hospital for treatment. TLHR conducted visits to these activists on 26 August 2021, and reported their complaints about the sub-standard living conditions inside the detention facilities which fail to meet social distancing and sanitary requirements for COVID-19. For example, only 7 soap bars were provided for 60 inmates, leaving them with no choice but sharing the soap. In late August 2021, it was reported that activist "Boy" Chatchai Kaedam, who recently tested positive for COVID-19, experienced worsen health conditions in jail. However, Tawatchai Chaiwat, Deputy Director-General and spokesperson of the Department of Corrections denied the allegations, confirming that the Department of Corrections seemed to conceal information on political prisoners' condition from their families.

The lack of legal protection and prosecutions against enforced disappearances

Since 1980, 91 cases of Enforced Disappearances in Thailand were transmitted to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID). As of August 2020, 75 cases remain outstanding. The victims whose bodies were eventually found were often brutally murdered, with mutilated body parts in similar patterns. The fate of the majority of the victims remains unknown to this day, despite their families' efforts to bring justice to their loved ones. The investigations of the state-enforced disappearances have not been credible or effective, nor have those suspected been brought to justice before ordinary civilian courts.

On 4 June 2020, Wanchalearn Satsaksit, a Thai pro-democracy human rights defender and vocal critic of the Thai state, who lived in exile in Cambodia, was kidnapped. One year later, no credible investigation by Thai authorities has been conducted so far. Wanchalearn is the 9th Thai dissident to go missing since the 2014 coup.

The lack of proper public consultation on the Draft Bill

The public consultation process was held by the Office of the Council of State from 12 March to 31 March 2021, or only two weeks, via an online platform. Many organizations were not made aware of the process, while local or grassroots communities could not participate due to their lack of access to internet. The bill was then quickly resubmitted to the Cabinet and presented to the Parliament. The Bill is now being revised per the recommendations received.

A blanket law to crack down on freedom of association

In the draft law, the definition of 'non-profit organization' is broadly defined to include "a group of individuals which are not established by any specific law, but implement activities that do not have the purpose of seeking income or profits to be shared". This means that any group could fall under this vague definition, even just a group of students getting together to advocate for a common goal, or to hold sports activities and cultural exchanges. The impact could therefore be far-reaching as according to the UN Special Rapporteurs in their March 26 communication to the Thai government, the law would "impinge on the rights to freedom of expression and association of millions of individuals".

According to the Bill, all non-profit organizations must register with the Department of Provincial Administration of the Ministry of Interior. To be registered, the aims and activities of the organization must be approved by the Ministry of Interior, in accordance with the criteria and conditions prescribed by the Minister. Those who fail to comply could be sentenced up to 5 years in prison, fined up to 100,000 THB (approx. \$3,200), or both. These are severe punishment, highly unnecessary and disproportionate for the so-called crime of non-registration. Failure to register should never result in the criminalization of its members. The criteria and conditions for registration should not be left at the absolute discretion of the Minister either, as it could arbitrarily deny the registration of certain groups, which contradicts with international human rights standards related to equality and freedom of association. With harsh punishment and the lack of clarity in the registration criteria, the law could be weaponized to crack down on the organizations whose works are deemed critical or hostile to the government.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Targeting foreign-funded organizations and INGOs

Section 6 Paragraph 2 of the Bill provides that: “Not-for-profit organizations can accept money or materials from natural persons, legal entities or groups of individuals who are non-Thai, or which have not been registered in the Thai Kingdom (...) to fund only activities in the Kingdom as permitted by the Minister.” Giving sole and excessive discretion to the Minister to determine which activity may be carried out using funds from foreign or international sources leaves an ample room for potential abuses and arbitrary decisions to impinge on their freedom of association. The Bill will also place undue hardship in the works of human rights defenders who engage with international stakeholders to promote cooperation on human rights issues in Thailand.

Furthermore, authorities also retain overbroad power to enter foreign-funded CSO offices and make copies of their communication traffic for further investigation without prior notice or court warrant. However, the decisions on whether such search operations are needed and whether the material found is unlawful should be left at the discretion of an independent and impartial judicial court rather than the Ministry. Appeal mechanisms and effective remedies against such decisions should also be available and clearly laid out in the Bill. Granting unfettered authority to monitor the communication of organization staff not only impinges on their rights to privacy, but also raises concerns on the potential breach of confidentiality between the organizations and its beneficiaries, who in certain cases, risk facing life-threatening reprisals.

Although the government claimed this Bill would help combat money laundering and corruption in line with the inter-governmental Financial Action Task Force (FATF), such one-size-fits-all approach fails to meet the test of proportionality and necessity, and threatens to overregulate the CSO sector with a mindset of inherent mistrust. The measures to combat financial crimes among NPOs should be implemented in a risk-based approach, not in a blanket manner, in order to avoid violating simultaneously the right to free association.

RECOMMENDATIONS

1. On Challenge 1: Restrictions to Freedom of Expression and Right to Peaceful Assembly

- 1.1. In line with the 2017 Concluding Observations of the Human Rights Committee made to Thailand, take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the Covenant.
- 1.2. In line with the 2017 Concluding Observations of the Human Rights Committee made to Thailand, review laws and regulations that restrict freedom of expression, independent media, and access to information, including Criminal Code Articles 112, 116, the Broadcasting and Television Business Act, the draft Bill on the Promotion of Media Ethics and Professional Standards, the Computer Crimes Act – particularly Articles 14, 15, 16, 20 and 26 – and the Emergency Decrees, to bring them in line with article 19 of the ICCPR and international human rights law. The repeal or amendment process should include effective public consultation.
- 1.3. In line with the 2017 Concluding Observations of the Human Rights Committee made to Thailand, guarantee and protect the freedom of peaceful assembly, and refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety.
- 1.4. Repeal or amend the 2005 Emergency Decree and the 2015 Public Assembly Act to bring their provisions in line with the ICCPR and international human rights law, and refrain from invoking the COVID-19 State of Emergency as a guise to block protests and crack down on dissenting voices.

2. On Challenge 2: Judicial Harassment and Violence against Youth Human Rights Defenders

- 2.1. Decriminalize defamation by repealing sections 326 to 333 of the Criminal Code and enact a stand-alone anti-SLAPP law to ensure legal protections against Strategic Lawsuits against Public Participation (SLAPP) aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations. In the meantime, enforce Sections 161/1 and 165/2 of the Criminal Procedure Code and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.
- 2.2. In line with the 2014 Concluding Observations of the Committee Against Torture made to Thailand, take all the necessary measures to put an immediate halt to harassment and attacks against human rights defenders, journalists and community leaders; and systematically investigate all reported instances of intimidation.
- 2.3. In line with Articles 13 and 15 of the UN Convention on the Rights of the Child, rigorously implement policies and measures to ensure that the rights of youth and children are protected and respected and strengthen mechanisms to promote the rights of youth and children as human rights defenders.
- 2.4. In line with the Human Rights Committee General Comment No. 37 on the right to peaceful assembly, refrain from using an excessive or unlawful use of forces against protesters. Protect protesters, including those who are children, from violence and interference by State actors and refrain from dispersing assemblies by using weapons, including less-lethal weapons, in accordance with the Convention on the Rights of the Child (article 15(1) and article 37 (b)), the Human Rights Committee's General Comment No. 37 on the Right of Peaceful Assembly, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and UN and other guidance on less-lethal weapons.
- 2.5. Release unconditionally and immediately HRDs detained for their leadership in the protest movement and end all legal proceedings or investigations against them; Provide effective remedy, including compensation, for unlawful violation of their rights to expression, association, peaceful assembly, liberty and security.

RECOMMENDATIONS

2.6. Repeal or amend legislation and decrees which unwarrantedly restrict the legitimate work of HRDs and ensure that HRDs, journalists, civil society members, lawyers and academics are able to carry out their legitimate activities to bring to light human rights violations without fear or undue hindrance, obstruction or legal and administrative harassment, in line with Thailand's obligations under the ICCPR and with respect to the UN Declaration on Human Rights Defenders supported by Thailand.

2.7. In line with the 2014 Concluding Observations of the Committee against Torture made to Thailand, take legal measures to ensure that enforced disappearance is a specific crime in Thai domestic law, with penalties that take into account the grave nature of such disappearances.

3. On Challenge 3: Draft NPO Law (2021) is an Imminent Threat Against Civil Society Organizations

3.1. Revise the Draft Bill on the Operations of Not-For-Profit Organizations to bring it to line of article 22 of the ICCPR and the Human Rights Council Resolution 27/31 on Civil Society Space (2014). The revised draft should be made available well prior to the public consultation period.



REFERENCES

Amnesty International Thailand, Thailand: Urgent investigation needed after live rounds fired at child protesters, (18 August 2021), available at: <https://www.amnesty.org/en/latest/news/2021/08/thailand-urgent-investigation-needed-after-live-rounds-fired-at-child-protesters/>

Amnesty International, Thailand: Police violence and harmful chemical irritants routinely unleashed on young protesters – exclusive research, (2 July 2021), available at: <https://www.amnesty.org/en/latest/press-release/2021/07/thailand-police-violence-and-harmful-chemical-irritants-routinely-unleashed-on-young-protesters/>

Human Rights Council, Resolution 27/31 on Civil Society Space, A/HRC/RES/27/31, (3 October 2014), available at: <https://undocs.org/A/HRC/RES/27/31>

Prachatai, The 4 "Ratsadon" leading figures bail denial is a breach of the presumption of innocence, (12 February 2021), available at: <https://prachatai.com/english/node/9067>

International Center for Not-for-profit Law, Legal Analysis: Law on the Operation of Not-for-profit Organizations, (24 March 2021), available at: <https://www.icnl.org/post/analysis/5-things-to-know-about-thailands-proposed-npo-bill>

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders, Communication Reference: OL THA 2/2021, (26 March 2021), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gld=26320>

Manushya Foundation, Access Now, ALTSEAN-Burma, Cambodian Center for Human Rights (CCHR), the Institute of Policy Research and Advocacy (ELSAM), PEN International, and Southeast Asia Freedom of Expression Network (SAFENet), Thailand: Stop Weaponizing 'COVID-19' to Censor Information "Causing Fear" and Crack Down on Media and Internet Service Providers, (4 August 2021), <https://www.manushyafoundation.org/copy-of-joint-statement-thailand-cov>

Manushya Foundation, Penguin Is Now under Critical Condition in Jail! #SavePenguin, (20 August 2021), <https://www.manushyafoundation.org/post/penguin-is-now-under-critical-condition-in-jail-savepenguin>

Manushya Foundation, Stop Police Brutality in the name of Protecting Prayut & the Network Monarchy!, (18 August 2021), available at: <https://www.manushyafoundation.org/post/stop-police-brutality-in-the-name-of-protecting-prayut-the-network-monarchy>

Manushya Foundation, Why is the Draft NGO Law a Danger to Democracy in Thailand?, (1 June 2021), available at: <https://www.manushyafoundation.org/post/why-is-the-draft-ngo-law-a-danger-to-democracy-in-thailand>

Manushya Foundation, Thai CSOs Coalition for the UPR and Access Now, Joint Submission to the UN Universal Periodic Review, 39th Session of the Working Group, Civic Space in Thailand, (March 2021), available at: <https://www.manushyafoundation.org/advocacy-documents>

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>

Shero Youth Network, United Front of Thammasat and Demonstration (UFTD), Student Union of Thailand (SUT), Bad Students, The Ratsadon, UNME of Anarchy, Nisit Chula Party, ROOT, Joint Submission to the UN Universal Periodic Review, 39th Session of the Working Group, Freedom of expression and assembly of youth activists and the protection of youth human rights defenders, (March 2021), available at: <https://www.sherothailand.org/>

Thai Lawyers for Human Rights, Overview of cases against youth political activists: At least 43 persons prosecuted, (6 June 2021), available at: <https://tlhr2014.com/en/archives/30569>

Thai Lawyers for Human Rights, Voices from detained activists with Covid-19: "The Department of Corrections Hospital has no capacity to handle Covid-19 patients.", (1 September 2021), available at: <https://tlhr2014.com/en/archives/34342>

Thai Lawyers for Human Rights, กรณีคดี 64: 1 ปี เยาวชนปลดแอก ผู้ถูกดำเนินคดีการเมืองถึง 757 คน คดี 112-ว.ส.ก.อุกເຈີນ ຂ້າງເພີ່ມຕົ້ນເອົ້າ, (5 August 2021), available at: <https://tlhr2014.com/archives/33030>

Thai Lawyers for Human Rights, ពັນຍະການຈັບຄຸນຜູ້ຊັບບຸນເດືອນສັງຫາຄົມ ກະຊ 260 ຮາຍ ເປັນເຕີກ-ເຢວັນ 70 ບາດເຈັບອ່າງນ້ອຍ 53, (27 August 2021), available at: <https://tlhr2014.com/archives/34093>

Thai Lawyers for Human Rights, Bail denied for 2nd time!, (18 August 2021), available at: <https://tlhr2014.com/en/archives/33825>

Thai Lawyers for Human Rights, ເປົດສັດຜູ້ອຸກຄວບຄຸມຕັ້ງໄປ ບກ.ຕົດ. ການ 1 - ບໍ.ປ.ສ. ຈຳກັດຊັບບຸນກາງການເມືອງ (3 August 2021), available at: <https://tlhr2014.com/archives/25919>

Thai Lawyers for Human Rights, ສັດຜູ້ອຸກດໍາເນີນຄົມຕາຮ່າ 112 ຕົ້ນແຕ່ວັນທີ 24 ພ.ຍ. 63 - 2 ກ.ຍ. 64, (2 September 2021), available at: <https://tlhr2014.com/archives/2398>

ThaiRath, ຂ້າຍອັງປິບບັນ ສປ.ດັບແດງ ເປັນຕ້າວຈົງຈົງ ພບສ.ບ.ຂັ້ນໃຫ້ແກ່ "ກະສຸນຍາງ", (17 August 2021), available at: <https://www.thairath.co.th/news/crime/2168731>

Prachatai, Detained activist's family member denied access to medical information, (2 September 2021), available at: <https://prachatai.com/english/node/9433>

The Committee against Torture, Concluding observations on the initial report of Thailand, CAT/C/SR.1239, (16 May 2014), available at: <https://docstore.ohchr.org/SelfServices/FileHandler.ashx?enc=6QkG1d%2FPPRICAqhKb7yhsk2oy72JlefPnica9mLxtq%2B9%2F5hbXwg%2B5JWNDr0RdTusMRgzu6yegqVTu8QgbwPcc9dlir1Tfe5g9kMOTJykFvZmYIG7TVsYdYCm2OgOMRJK>

UN Human Rights Committee (HRC), Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, (25 April 2017), available at: <https://www.refworld.org/docid/591e9d914.html>

For more information, evidence and data, please refer to the References and/or contact

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THAILAND UPR III 2021 – UPR FACTSHEET

DIGITAL RIGHTS IN THAILAND

#StopDigitalDictatorship

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

During the 2nd UPR cycle, Thailand received 42 recommendations related to digital rights, including 27 recommendations on freedom of expression, of which 5 recommendations are specific to the Computer Crime Act (CCA) and were made by Canada, Iceland, Norway, Spain and Sweden. Other recommendations which can be applied to Thailand's digital space include 7 recommendations on press freedom and access to information; and 8 recommendations on the protection of human rights defenders. Of these 42 recommendations, 22 were supported and 20 were noted. The government also pledged to "bring national legislation on freedom of expression in compliance with international law" and "ensure that the right to freedom of expression is fully respected and its exercise facilitated, including with respect to the drafting and adopting of the new Constitution." However, our assessment of the situations over the past five years suggests that none of the recommendations have been implemented in reality and the Thai government has not followed through with its pledge. Since the last UPR cycle, netizens are experiencing Thailand's growing digital dictatorship. The government has rolled out a number of repressive laws and policies over the digital space and abused the laws to curtail the fundamental online rights of its citizens. Online users, including pro-democracy activists and dissidents, face charges and criminal penalties under the Criminal Code and laws broadly criminalizing "cybercrimes" and threats to "national security", including the 2017 amended Computer Crimes Act (CCA), the State of Emergency to Combat COVID-19 and the 2005 Emergency Decree on Public Administration in Emergency Situation. Tech companies and service providers have been pressured by the government to enforce censorship on their platforms. The country also lacks an adequate data protection law, further putting the right to privacy of the online citizens at risk of abuses and state surveillance.

National Legal Framework related to Thailand's Digital Space

The 2017 Constitution protects the right to freedom of expression under Sections 34 and 36, with limitations relating to national security, public interest, and public health and order. The Constitution also guarantees media freedom without any censorship under Section 35 and only authorizes restrictions if the country is at war. Further, access to information is recognized as a fundamental right under both Sections 41 and 59 of the Constitution. However, the government continues to impose disproportionate and unnecessary restrictions on these rights in the digital space by using a number of repressive provisions and laws, such as Articles 112, 116, 328 to 333 of the Criminal Code. Article 112 of the Criminal Code (*lèse majesté*) forbids any criticism of the monarchy and the royal family's members and imposes harsh penalties of imprisonment of up to 15 years for each charge. Article 116 is a sedition-like offense enforcing a penalty of up to 7 years' imprisonment, while Articles 326 to 333 of the Criminal Code area criminal defamation offenses. Article 328, in particular, prohibits defamation by means of a document, video, drawing, or "any other means" with up to two years imprisonment and a fine.

Computer Crimes Act, CCA (2017): Section 14 (1) states that a person is liable for their involvement and storage of any "*false information*" on another person; Section 14 (3) strictly bans sharing of any information that "*could threaten national security*" and Section 14 (5) applies penalties to the "*forwarding and sharing of (prohibited) content*." However, the term 'national security' is left undefined, opening doors to the subjective and blanket application of the law. The CCA also applies to the private sector, which clearly indicates the government's intention to insert an authoritarian control over the digital space. Section 15 sanctions any internet service provider (ISPs) that "*cooperates, consents or acquiesces*" to the perpetration of an offense under Section 14, while Section 26 of the CCA obliges ISPs to retain computer traffic data for at least ninety days from the date on which the data is entered into a computer system. If necessary, a competent official may instruct a service provider to retain such computer traffic data for up to two years.

Cybersecurity Act, CSA (2019): This CSA fortifies the State's online monitoring and mass surveillance powers. Brought into force to combat "cyber threats", the Act provides for overbroad powers to executive authorities to monitor online information and search and seize electronic data and equipment that pose threat to the country's "*national security*", with the term left undefined. When a threat is deemed a "crisis" level, any search or seizure can be undertaken without a court warrant and without access to appeal before the courts. The Act also imposes reporting obligations on Internet Service Providers and a heavy penalty for non-compliance, encouraging extensive monitoring of users by information technology and telecommunications companies (Sections 73 and 74).

Personal Data Protection Act, PDPA (2019): Drafted with reference to the EU's General Data Protection Regulation (GDPR), the PDPA shall safeguard personal data via restricting the collection, use, disclosure, or tampering of data without the owner's specific prior consent. It also outlines third-party responsibilities in data protection and how businesses shall collect, use or disclose personal data. However, these protections are not definite as Section 4 of the PDPA excludes data collected to protect '*national security*' under the 2019 Cybersecurity Act. The PDPA does not specifically address the use of Artificial Intelligence (AI) and automation in legal and institutional frameworks. The PDPA shall enter into force in June 2022.

Emergency Decree on Public Administration in Emergency Situation (2005): On 25 March 2020, a State of Emergency was announced to combat the COVID-19 pandemic. Section 9(3) of the decree prohibits the press release, distribution, or dissemination of letters, publications, or any means of communication containing texts which may "*instigate fear amongst the people*" or is intended to distort information that misleads understanding of the emergency situation to the extent of affecting the security of the state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Crackdown on online freedom of expression under the guise of protecting 'National Security' and combating COVID-19-related 'Fake News'

During the 2nd UPR cycle, Thailand received 27 recommendations on the right to freedom of expression, including 5 recommendations specific to the CCA. Only 11 recommendations were accepted and 16 were noted, including the 5 recommendations to amend the CCA.

So far, the government has failed to implement any of these recommendations as it continues to target and silence dissenting voices online and pressure digital tech companies to facilitate their censorship campaigns through the misuse of laws, such as the CCA, the CSA, and the 2005 Emergency Decree.

For more cases and information, please refer to the UPR Factsheet on Civic Space in Thailand.

A series of laws, such as the CCA and the 2005 Emergency Decree, is used under the guise of "protecting national security" to prosecute people allegedly sharing "false information" about the government's actions. However, the lack of clarity as to what constitutes information affecting "national security", provoking "fear" or the so-called "fake news" as laid out in these laws opens the door to subjective interpretation, allowing authorities to arbitrarily enforce the provisions and target free expression online, even information that is factually accurate.

The Weaponization of the Computer Crime Act (CCA) & the Creation of the Anti-Fake News Center

Currently, the CCA is being abused to target dissenting online voices under "national security", a term that is interpreted broadly by the government. For instance, most of the complaints investigated by the Ministry of Digital Economy and Society (MDES) are related to national security and politics, as shared by its former Minister in December 2020 during an interview. Among 16,048 cases received from 31 July to 17 December 2020, 6,855 complaints are related to national security and 4,241 complaints are related to politics. **Among the MDES investigations was the case of the former leader of the dissolved Future Forward Party, Thanathorn Juangroongruangkit.** Following his live Facebook broadcast questioning the government's 'royal COVID-19 vaccine deals' in January 2021, the Ministry filed a complaint against him under Article 112 (lèse majesté) and the CCA, and requested the court to order the recorded broadcast be taken down. The order was later lifted by the court on 8 February 2021, citing that "although Thanathorn discussed that the Siam Bioscience was owned by the King, there existed no statements that obviously defamed or criticized His Majesty. Therefore, there is no obvious or objective indication that his statements might affect the national security as laid out in Article 112 of the Criminal Code". Despite this ruling, he still received a formal police summons on 19 August 2021 on charges of lèse majesté and Section 14(3) of the CCA. In another case, Danai Usama was arrested and charged under the CCA's Section 14 (2) on 24 March 2020 for his online post criticizing the lack of screening measures for COVID-19 symptoms at the Suvarnabhumi Airport. His case is still ongoing, with the first hearing held in May 2021.

Additionally, the government established an "anti-fake news" center in November 2019 under the MDES to strictly implement provisions of the CCA, which include monitoring and issuing corrections for "fake news" that directly affects the general public; creates disharmony in society; creates hoax or false myths; or destroys the country's image. The definition of "fake news" and the scope of the center's mandate is, however, overbroad and appears to target critical dissent.

Censorship of Online Media Freedom

The Thai government also attacks media freedom and the journalists' ability to report without undue interference. For instance, the National Broadcasting and Telecommunications Commission (NBTC), under the Broadcasting and Television Business Act, can suspend or revoke the licenses of radio or television operators broadcasting content deemed false, defamatory to the monarchy, harmful to national security, or critical of the government. Due to this strict control over traditional media, news outlets and journalists are now resorting to online platforms, which has led to an expansion of the government's crackdown on the internet. In October 2020, an order was enacted under the Emergency Decree to silence four independent media agencies (VoiceTV, The Standard, Prachatai, and The Reporters) and the youth-led pro-democracy group Free Youth. Consequently, the online media outlet Voice TV was ordered to close down for violating the CCA and the Emergency Decree for covering the pro-democracy protests. The order was later lifted.

The Misuse of the 2005 Emergency Decree during the COVID-19 Pandemic to stop anyone from telling the truth behind #WhatsHappeningInThailand

On 10 July 2021, the government announced Regulation No. 27, issued under Section 9 of the Royal Decree on Public Administration in Emergency Situations B.E. 2548 (2005), effective 12 July onwards. The regulation prohibits any distorted information or news by books, publications or on any other media that "incite fear among the public, or intentionally distort information to cause misunderstanding in emergency situations which affects the security of the state or the public's good morals across Thailand". Violations of this regulation result in imprisonment not exceeding two years, or a fine of up to 40,000 THB (approx. \$1240).

Challenges

Cases, Facts, Comments

This regulation was followed by a stricter one on 29 July 2021. The new Regulation No. 29, which came in effect the following day, empowered the NBTC to instruct ISPs to track IP addresses from which prohibited information has been posted. The service providers were then required to report findings to the NBTC and to immediately suspend the internet service of end users. Relevant information would be forwarded by the NBTC to the police for further legal action, and online users violating the regulation could be prosecuted under Section 18 of the Emergency Decree, which provides for imprisonment of up to two years and/or a fine of up to 40,000 baht. This regulation came amid a number of recent government actions to combat COVID-19-related “fake news”. On 2 August 2021, representatives from major Thai news agencies filed a civil lawsuit against the Prime Minister over the legality, necessity and proportionality of the new Regulation. On 6 August 2021, the Civil Court ordered the suspension of Regulation No. 29 as it contravenes the rights guaranteed under the Constitution. Consequently, on 9 August 2021, PM Prayut Chan-o-cha revoked Regulation No. 29. However, Regulation No. 27 still remains in place.

Challenge 2: The Rise of Digital Dictatorship over Tech Companies

The government's instrumentalization of the laws not only limits online freedom of expression of the netizens, but also pressures tech companies to do the same. Tech companies have been on the receiving end of many problematic censorship and data retention demands under the CCA that are in no way in line with the freedom of expressing, access to information, and rights to privacy under international human rights standards.

Tech companies have been subject to repeated State pressure to limit the freedom of expression on its platforms. Failures to comply could result in severe penalties, such as the suspension of their businesses. For example, under the now-revoked Regulation No. 29, ISPs also risked losing their operating licenses and could face legal action if they failed to comply with the NBTC. **In another contentious case, a court ordered Facebook and ISPs to block or remove eight Facebook accounts for allegedly spreading ‘fake news’ on 2 June 2021.** These include the accounts of political commentator in exile Pavin Chachavalpongpun and journalist Andrew MacGregor, both of which are known for their critical comments on government officials and the Thai monarchy. The access to a Facebook group founded by Pavin - the Royalist Marketplace, where Thai netizens gather to freely discuss Monarchy-related issues - was also restricted earlier last year in August under the Computer Crimes Act. It is now the subject of the landmark non-compliance complaint filed by the Thai government against Facebook. The CCA's Section 15 imposes criminal liability on any ISP for content violating Section 14 of the CCA without requiring the need to establish criminal intent on the part of the ISP, which creates a strong incentive to censor. This is the first time CCA was applied to prosecute an online service provider. Facebook then announced that they would legally challenge the government's requests in court. This case is ongoing.

The recent Ministerial Regulations of the Ministry of Digital Economy and Society regarding criteria for the retention of computer traffic data by service providers, enacted under Section 26 of the CCA, is another clear example of the rising digital dictatorship over tech companies. The order was published on the Royal Gazette on 13 August 2021, replacing the previous one issued in 2007. It requires telecommunication and broadcast carriers - including access service providers, host service providers, internet shops, computer software, AI applications, online application stores, social media service providers, content and application service providers, cloud computing service provider, digital service providers - to preserve internet traffic logs for 90 days in general cases or up to 6 months but not longer than 2 years, if required by relevant law enforcement agencies. Internet shops are also required to install CCTV cameras to keep records of their customers. This means that any exchange or publication of information made on Clubhouse, Telegram, Line, Whatsapp, Facebook, Youtube, Instagram or Google Drive are subject to state surveillance. These are among the main platforms used by pro-democracy activists and protesters to communicate and discuss the issues deemed hostile to the government. The service providers are obliged to keep numerous kinds of computer traffic data, including ID of users, users' activities in the system, log-on and log-off, records of attempts to access the system as well as successful and unsuccessful data records, accessed files, etc.

Challenge 3: Harassment, Intimidation and Attacks against HRDs, Civil Society Activists (CSA) and Journalists for their Online Activities

In the previous UPR cycle, Thailand received 9 recommendations on the protection of HRDs, CSOs and journalists. The government supported 6 recommendations and noted 3. The government has thus far failed to effectively implement any of the recommendations as online and judicial attacks against HRDs and journalists have intensified.

The State-sponsored IOs to Promote Disinformation: The Government is sponsoring disinformation, online harassment and smear campaigns against activists. As part of the so-called Information Operations (IO) of the Internal Security Operations Command (ISOC), a coordinated network of military-linked social media accounts have been registered to post messages that echo the pro-government narratives, and discredit the legitimacy and reputation of the HRDs and civil society organizations.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Thailand's Growing Cyber Army

On 6 September 2020, the Technology Crime Investigation Police Bureau (TCIPB) or "Cyber Police Bureau" was formed, with responsibilities to enforce the CCA and CSA, and to investigate cybersecurity crime, giving more power to the State to crack down on dissenting voices.

In July 2019, Facebook removed 12 accounts and 10 groups over coordinated inauthentic behavior, and in February 2021, it removed an additional 77 ISOC-related IO accounts: 72 Facebook pages, 18 Facebook groups and 18 Instagram accounts. In October 2020, Twitter banned 926 military-related accounts, most of which were created in January 2020, with a noticeable spike of activities concentrated around the dissolution of the Future Forward Party and the subsequent national pro-democracy movement.

In its February 2021 Coordinated Inauthentic Behavior Report, Facebook said it had detected and removed 185 social media accounts, including: 77 accounts, 72 pages, 18 groups on Facebook and 18 Instagram accounts originating in Thailand, which were found to bear links with the ISOC to target audiences in the country's Deep South. The report identifies Coordinated Inauthentic Behaviour as "*coordinated efforts to manipulate public debate for a strategic goal where fake accounts are central to the operation*". The accounts removed often posted messages in favor of the military and asserted a narrative manipulating the public opinions by discrediting the civil societies and political opponents. One of the examples is a Facebook page named Comprehending the operation (ສຳຄັນຫວຽກ), which published a post criticizing the NGOs, labeling them as uncaring of local people unless they can benefit from them financially.

Such patterns of 'cyber army' instigating online disinformation are constantly growing. During a censure debate on August 31, 2021, Move Forward Party MP Nattacha Boonchaiinsawat confirmed the existence of the Thai army's secret IO network by exposing an authentic footage of an army unit inside an office room dedicated to manipulating pro-government sentiments and targeting political opposition figures online. According to an anonymous officer inside the army who sent the clips, this information unit was under the supervision of the Royal Thai Army's Information Operations Center, where the tasks are divided to support the "mission of Prime Minister Prayut Chan-o-cha".

The Corporate Judicial Harassment against HRDs

Due to the absence of proper protective measures, crime reporting and strategic lawsuits against public participation (SLAPP) are repeatedly used by private companies as a weapon to suppress the online activities of HRDs and journalists, when denouncing corporate abuses. Since 2016, Thammakaset, a Thai poultry company has brought at least 39 complaints against 22 HRDs for sharing allegations of labour rights violations. In 2019, Thammakaset filed a series of criminal defamation lawsuits against HRDs Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephon who expressed support for other HRDs targeted by the company in defamation cases on Facebook and Twitter.

Challenge 4: The Lack of Data Protection in Legal and Institutional Framework

During the 2nd UPR cycle, Thailand did not receive specific recommendations on data protection. The government's recent adoption of the Personal Data Protection Act (PDPA) is therefore a promising and commendable step towards the protection of digital rights to privacy in Thailand. However, the legislation still lacks a comprehensive protection framework and policies against the government's potential abuses.

The protections laid out in the PDPA provisions are not definite as Section 4 of the PDPA excludes data collected to protect the undefined "national security" under the 2019 Cyber Security Act, and empowers authorities appointed by the government to collect and use data "*to maintain state security, financial security or public safety*". However, these provisions remain open to subjective interpretations, without sufficient accountability mechanisms in place to conduct an independent oversight of the authorities' implementation of the law, allowing for a blanket and unfettered application of the law.

The Use of Artificial Intelligence in Thailand's Digital Governance

In recent years, the government has placed AI at the center of their plans to expand digital governance and economy, including through the Thailand 4.0 initiative, and the Thailand Digital Government Development Plan. Yet, these efforts have failed to provide sufficient legal safeguards for personal data protection. The PDPA does not specifically address the use of AI and automation, and neither does it distinguish or identify automated and non-automated means of processing consumer data. It also fails to specify consumers' rights to be informed about the existence of automated decision-making and profiling or to know what and how their personal data is being collected and used, which is in violation of their right to privacy.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 5: State Mass Surveillance and Infringement of Online Privacy

During the 2nd UPR cycle, Thailand did not receive specific recommendations concerning online privacy, but noted two recommendations on amending the CCA, which includes provisions that invade user privacy. Despite a new CCA was adopted, the situation remains the same over the past five years, with the new CCA and a series of other new laws that permit surveillance and data collection without court order or independent oversight, coupled with the lack of comprehensive protection framework under the PDPA.

The CCA and CSA invest overboard powers to executive authorities to conduct online monitoring and surveillance, as well as to search and seize personal electronic data that is deemed to be compromising the national security, with its definition left undefined and no independent accountability mechanisms in place. Sections 18 (1) to 18 (3) of the CCA, for instance, grant vast powers to the monitoring bodies, which include the ability to access user-related or traffic data data without court order as well as compelling ISPs to decode programmed data. Furthermore, the nine-person "Computer Data Screening Committee" – of which six members are government-appointed – can authorize executive authorities, including ministers and "competent officials" to block or delete information deemed "contrary to public order or good morals". The CSA, for its part, fortifies the State's online monitoring and mass surveillance power by providing overbroad powers to executive authorities to monitor online information, and search and seize electronic data and equipment where "national security" and the country's "Critical Information Infrastructure" (CII) are compromised. However, both terms are again left undefined. If a threat is deemed to reach the "crisis" level, any search or seizure can be carried out in absence of a court warrant and appeals. The Act also leaves out remedy or accountability provisions for rights violations. With these vaguely-defined provisions, the military and members appointed by the military-led Cabinet can freely interpret "national security" or "threat", allowing for abuses and rights violations to perpetuate without effective oversight and safeguard mechanisms.

The COVID-19 Fake News Center under the Department of Special Investigation

In June 2021, another "Fake News Center" was set up under the Department of Special Investigation (DSI, under the Ministry of Justice) to investigate attempts to spread false news online to mislead the public about the Covid-19 situation, which authorities claims could hamper the government's efforts in containing the coronavirus; and surveil on the citizens by collecting data obtained from the investigation. The new Fake News Center therefore risks not only silencing citizens or journalists who report on the realities of the pandemic, but also compromising their rights to privacy in the digital sphere.

Arbitrary Data Collection during the Coronavirus Pandemic

During the COVID-19 pandemic, unprecedented levels of surveillance and data tracing in Thailand blurred the line between disease surveillance and population surveillance. The two government-approved contact tracing apps Mor Chana and Thai Chana store users' personal data while lacking transparent terms and conditions, and without informing how personal data is being used. There has also been increased online data sharing between government agencies. In June 2020, it was revealed via a leaked document that the COVID-19 response center had shared mobile tracking data of individuals with the Ministry of Defense. Concerns raised over the fact that such personal data shared with government agencies not working in the health sector can lead not only to privacy infringement, but can also be misused for unsubstantiated 'national security'-related investigations.

RECOMMENDATIONS

1. Challenge 1: Crackdown on online freedom of expression under the guise of protecting 'National Security' and combating COVID-19-related 'Fake News'

In line with the 2017 Human Rights Committee Concluding Observations regarding the protection of freedom of expression in Thailand, **repeal or otherwise amend laws and regulations that restrict freedom of expression, independent media, and access to information**, including but not limited to the Computer Crimes Act, the Computer Cyber Security Act, and the Emergency Decrees, to bring them in line with international human rights law.

2. Challenge 2: The Rise of Digital Dictatorship over Tech Companies

In line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the Global Network Initiative Principles (GNI), **refrain from pressuring tech companies, internet service providers or other telecommunications companies to moderate and remove content online** in contravention of the rights to free expression and information and ensure their compliance with their responsibilities to respect human rights.

RECOMMENDATIONS

- 2.2.** In line with the 2017 Human Rights Committee Concluding Observations regarding the protection of freedom of expression in Thailand, **repeal or amend ministerial regulations under CCA in accordance with international human rights standards**. Tech companies should not be forced to preserve traffic logs that might be used to restrict freedom of expression.
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3. Challenge 3: Harassment, Intimidation and Attacks against HRDs, Civil Society Activists (CSA) and Journalists for their Online Activities

- In line with Thailand's obligations under the ICCPR and with respect to the UN Declaration on Human Rights Defenders, **ensure that HRDs, journalists, civil society members, lawyers and academics are able to carry out their legitimate online activities to shed light on human rights violations without fear or undue hindrance, obstruction and judicial or online harassment**.
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4. Challenge 4: The Lack of Data Protection in Legal and Institutional Framework

- 4.1.** **Review and amend the Personal Data Protection Act (PDPA) to bring it in line with Thailand's international human rights obligations**, including to remove the exception clause for data collected under the overbroad justification of "national security" (section 4)

- 4.2.** In accordance with the Human Rights Council Resolution 34/7 on the Rights to Privacy in the Digital Age (2017), **amend the PDPA to address AI and automation by developing legal procedures and evidentiary standards for biometrics with care to protect human rights and due process**.
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5. Challenge 5: State Mass Surveillance and Infringement of Online Privacy

- 5.1.** **Repeal or otherwise amend laws which provide for overbroad executive powers to infringe on the right to privacy** – including but not limited to the Computer Crimes Act, the Cybersecurity Act and the National Intelligence Act – to bring them in line with Thailand's international human rights obligations.

- 5.2.** In line with the Human Rights Council Resolution 34/7 on the Rights to Privacy in the Digital Age (2017), **ensure the individual's right to privacy is protected in domestic law in line with international human rights law guaranteed under Article 12 of UDHR and Article 17 of ICCPR**, where any interference with privacy must be strictly necessary and proportionate to accomplish a legitimate objective in accordance with international human rights standards

- 5.3.** In line with the Human Rights Council Resolution 34/7 on the Rights to Privacy in the Digital Age (2017), **develop effective safeguards and independent oversight against State abuses of surveillance technologies, data collection and violation of online privacy**, 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.
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REFERENCES

- Article 19, Thailand: Proposed initiatives to combat 'fake news' undermine freedom of expression, (11 June 2021), available at: <https://www.article19.org/resources/thailand-fake-news-undermine-freedom-of-expression/>
- BBC Thai, ວັນເຊີນເຄີດ: ຄາມພິກຂອ້າຍລໍ່າໆໃຫ້ໄປວາດີເປົ້າຈະນຳເຄີດ, (8 February 2021), available at: <https://www.bbc.com/thai/thailand-55975966>
 Department of Special Investigation, DSI assigned to investigate fake news, (2 May 2021), available at: <https://www.dsi.go.th/en/Detail/e4b6841de816696224c7e6cd056f3735>
- Goldstein, Josh A. et al. "Cheerleading Without Fans: A Low-Impact Domestic Information Operation by the Royal Thai Army," Stanford Internet Observatory Online (Report), (8 October 2020), https://stanford.app.box.com/v/202009-sio-thailand?fbclid=IwAR0jVH2iAL_7e5YAZyhGbPyDJu5dNosQJD0Hp1_jfwNDDg2n4HBHxUzav8
- 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.article19.org/wp-content/uploads/2021/04/Joint-UPR-Submission-Digital-Rights-in-Thailand.pdf>
- Manushya Foundation, Thai Civil Court forced Prayut to Repeal his Regulation No. 29 censoring the Truth online!, (10 August 2021), available at: <https://www.manushyafoundation.org/post/thai-civil-court-forced-prayut-to-repeal-his-regulation-no-29-censoring-the-truth-online>
- Matichon, 'ຮາສສ' ໄດ້ບັນທາງເຢັກຂ້ອາ 112 ກຣມໄຟລ່ອວັດນຳກາງຈົດໜ້າຄູ້, (19 August 2021), available at: https://www.matichon.co.th/politics/news_2894166
- Prachatai English, 185 accounts related to Thai military information operation removed by Facebook, (5 March 2021), available at: <https://prachatai.com/english/node/9101>
- Thai Enquirer, New hashtag trends on Twitter after more details emerge of government's IO network mission, (1 September 2021), available at: <https://www.thaienquirer.com/32101/new-hashtag-trends-on-twitter-after-more-details-emerge-of-governments-io-network-mission/>
- The Royal Thai Government Gazette, Notification of the Ministry of Digital Economy and Society on Criteria for the Retention of Computer Traffic Data by Service Providers B.E. 2561, (13 August 2021), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/188/T_0009.PDF
- The Royal Thai Government Gazette, Regulation No. 27 issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), (10 July 2021), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/154/T_0001.PDF
- The Royal Thai Government Gazette, Regulation No. 29 issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), (29 July 2021), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/170/T_0001.PDF
- 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), available at: <https://www.refworld.org/docid/591e9d914.html>
- UN Human Rights Council, Resolution 34/7: The right to privacy in the digital age, adopted by the Council in its Thirty-fourth session (27 February - 24 March 2021), A/HRC/RES/34/7, (7 April 2017), available at: <https://digitallibrary.un.org/record/1307661>

For more information, evidence and data, please refer to the references and/or contact:

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THAILAND UPR III 2021 – UPR FACTSHEET

TORTURE & ENFORCED DISAPPEARANCE IN THAILAND



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

During the 2nd UPR cycle, Thailand received 17 recommendations on enforced disappearance and 30 related to torture, including recommendations on (1) ratifying the pertinent international human rights treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and the Optional Protocol to the Convention against Torture (OP-CAT); (2) harmonizing the national legislation with international human rights standards (3) ensuring accountability for the crimes of enforced disappearance and torture as well as recognizing the rights of victims. Thailand accepted all 17 recommendations on enforced disappearance, while on issues regarding torture, it accepted 29 and noted 1 from Czech Republic calling Thailand to '*End the practice of forced detention of dissenters in the so-called "reeducation camps" and investigate all allegations of torture and ill-treatment therein*'. However, none of the supported recommendations has been implemented in reality. In its midterm report, the Thai government said to have made substantive progress on the matters, including the setting-up of the National Committee for Managing Cases Relating to Torture and Enforced Disappearance and the drafting of the Prevention and Suppression of Torture and Enforced Disappearance Bill, which had been in the drafting process for over ten years since 2010 (although the draft was finally approved by the Cabinet in June 2020 and was expected to come into effect by the end of the year following its final review). The Draft is expected to be debated by Thai MPs at the Parliamentary session which would end on 15 September 2021. If the Bill is not discussed by then, its debate will be postponed to the Parliamentary winter session, at the end of 2021. This should not be taken as a confirmed step towards eradicating torture and enforced disappearance in the country, given the Bill's past history of being repeatedly delayed and sent back for further reviews. Besides, the current draft also fails to integrate certain provisions that are key to fully upholding the international human rights standards.

Consequently, torture and enforced disappearance are still a regular practice in Thailand, with the numbers of torture allegations and cases of inhumane treatment staggering in recent years, widespread in the context of the Deep South and recently among pro-democracy activists during their detention. New reports of cross-border enforced disappearance have also surfaced since the last UPR review, with various Thai political exiles abducted in neighbouring Laos and Cambodia.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: The legal vacuum surrounding torture and enforced disappearance in Thailand

Thailand is not a party to ICPPED and OP-CAT, nor has it achieved a comprehensive national legal framework to protect persons from enforced disappearance and torture. This has created a legal vacuum at the national level, facilitating the climate of impunity for severe human rights violations while also denying effective judicial and non-judicial remedies to the victims and their families.

Thailand has yet to ratify all the international treaties relevant to torture and enforced disappearance. Despite having accepted the recommendations on the ratification of ICPPED and the OP-CAT and having publicly expressed its intention to follow through with the promise, no mention of its progress on the ratification was made, nor its clear timeframe provided in its midterm report.

The Prevention and Suppression of Torture and Enforced Disappearance Bill have been in drafting process for ten years since 2010, with over four drafts repeatedly rejected and sent back for further review. The latest draft was eventually approved by the cabinet in June 2020. However, it still fails to integrate many key international standards into its provisions. For instance, it does not define torture and inhumane treatment in a way that is fully in line with international law, nor prohibit refoulement of individuals to countries where they are at risk of such crimes. It also fails to incorporate effective safeguards against enforced disappearance and establishes it as a continuous offense. Although the Bill presents a promising step towards the right direction, a full commitment to international human rights laws and comprehensive national legislation are needed for a definite end to Thailand's long history of torture and enforced disappearances. With regards to the latest update of the Bill, House majority whip Wirach Ratanasate confirmed in late August 2021 that the Bill would be enacted by the end of 2021, after the parliament finished its final reading by the current session in mid-September and an ad-hoc committee of the Bill finished its final review by November.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

However, given the history over the past ten years of four rejected draft, the international community and the public at large should pay a close attention to the final stretch of this Bill in order to make sure there is no more unreasonable delay.

Challenge 2: The increasing number of torture and enforced disappearance cases in recent years

For more information and cases, please refer to the UPR Factsheet on Armed Conflicts & the Human Rights Situation in the Southern Border Provinces of Thailand, and the UPR Factsheet on Civic Space.

The cases of torture are rampant in Thailand, with the Southern Borders Provinces (SBPs) being the usual ground zero for such practice. According to Duay Jai Hearty Support group alone, more than 140 former detainees in the Southern Border Provinces have alleged being tortured at the hands of Thai security forces since 2010. The group consistently documented new cases every year, meaning that this practice has not been eradicated since the last UPR cycle, despite the many recommendations on physical integrity rights accepted by the Thai government. The National Human Rights Commission has received 306 complaints since 2004.

The case of student activist Parit 'Penguin' Chiwarat

Reports of torture and ill-treatment have also resurfaced among political activists since the pro-democracy movement began in 2020. The arrest of pro-democracy activist Parit 'Penguin' Chiwarat for his involvement in a protest on 2 August 2021 is one of the examples. After his arrest, Penguin's Facebook account released a statement saying that he had been beaten by police officers and suffered injuries to his legs, arms, and face. He is now being held at a medical center of the Correction Department, reportedly along with other 43 inmates in the same room, after having tested positive for coronavirus.

With regards to enforced disappearance, 91 cases have been transmitted to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) since 1980, with community leaders and political dissidents being the usual targets. Many of them were victims of cross-border enforced disappearance, making it harder for the victims' families to seek the truth. As of today, 75 cases remain outstanding.

The case of Thai pro-democracy activist in exile Wanchalearn Satsakit

Wanchalearn disappeared a day after he posted a video online criticizing Prime Minister Prayut Chan-o-cha. He was abducted near his home in Cambodia on 4 June 2020, with authorities from both countries neglecting their responsibility to effectively investigate his disappearance. His whereabouts remain unknown to this day. Wanchalearn Satsakit is the 9th Thai dissident to go missing since the 2014 coup.

Challenge 3: Ineffectiveness of the National Human Rights Commission and the National Committee for Managing Cases Related to Torture and Enforced Disappearance

The National Human Rights Commission of Thailand has been known for its lack of competencies in investigating cases of torture and enforced disappearance.

Regarding the National Committee for Managing Cases Related to Torture and Enforced Disappearance, founded in 2017, it is an empty step towards accountability. It is just an administrative body, with little political and legal power to effectively investigate the allegations and make a meaningful difference for victims. Even if the Committee were to take action against perpetrators, it is believed that either the charges will be dropped or the perpetrators are convicted just for minor offenses. For many CSOs, the National Committee seems to be more focused on reducing the number of cases transmitted to the UN Working Group on Enforced & Involuntary Disappearances, 'lobbying' families of victims to agree to withdraw their cases from the UNWGEID's list in order to stop further investigations.

Out of the 306 torture complaints submitted to the National Human Rights Commission, the Commission did not find any perpetrators for 298 reports. The incompetence of the NHRCT led to the termination of the investigations and left victims and their families without any possible remedy.

Impunity for the disappearance of Karen human rights defender "Billy"

No accountability processes have been successful in shedding light on his fate. The Court of First Instance, the Appeal Court, and Supreme Court on the Habeas Corpus all dismissed the case against a former National Park official, Chaiwat Limlkhitaksorn, one of the accused, for lack of evidence with the Courts concluding that it could not be proved that Billy was still detained by the National Park officers when he disappeared. In November 2019, when the Department of Special Investigations (DSI) issued an arrest warrant for four suspects; and they were charged with six offences, including premeditated murder, unlawful detention, and the concealing of the Billy's body.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

However, in January 2020, the prosecutor dropped the murder charges, leaving the suspects with only minor offenses, such as failing to hand over Billy to the police after his arrest by the national park officials. The prosecutor contended that there was no clear evidence that the victim was dead because his body was never found, even after the DSI concluded the discovered skull fragments matched Billy's DNA. Impunity for the brutal murder and disappearance of Billy continues to this day. Regarding the National Committee, it lobbied Billy's wife to withdraw his case from the UNWGEID's list to stop further investigation.

Challenge 4: Failure to conduct prompt, effective and independent/impartial investigations into reports of torture and enforced disappearance

Despite having accepted the recommendation made by New Zealand and Switzerland calling for a prompt, independent and transparent investigation in allegations of torture, Thailand has yet to follow through with its promises. The climate of immunity surrounding cases of torture and ill-treatment still persists to this day, partly because of authorities' failure to investigate.

In a discussion with the CrCF, a community member expressed concerns about the lack of effective investigation procedures into reports of torture and enforced disappearance, especially with regards to medical and forensic evaluations. Effective medical procedures and personnel documenting evidences of such practice are highly needed, especially now that authorities have resorted to using inflicting methods that leave no visible signs trauma. Examples include being forced to stand in a fixed position for three days and two nights in a row, sleep deprivation, staying naked, being soaked in dirty water, or water boarding.

#JusticeForJirapong - The case of a death in custody at Nakhon Sawan Police Station

Independent and effective investigations into the allegations are needed to ensure accountability and justice for the victims and their families. For example, on 24 August 2021, a shocking video was leaked, showing at least seven officers of the Nakhon Sawan municipal police station restraining an already handcuffed and seated male suspect, while a senior officer was smothering him with a plastic bag in an apparent attempt to extort a two-million-baht bribe. The suspect "Jirapong" then shouted in agony and eventually died at the spot. In another leaked document, the drug suspect's cause of death was mysteriously listed as drug overdose. Thailand's national police chief later confirmed the veracity of the leaked video and ordered a temporary suspension of the involved officers. However, after the complaint was filed, the first response of the regional commander overseeing Nakhon Sawan province was a transfer of the senior officer who carried out the murder. His whereabouts remain unknown as of 25 August 2021.

RECOMMENDATIONS

1. On Challenge 1: The legal vacuum surrounding torture and enforced disappearance in Thailand

1.1. In accordance with the 2014 Concluding Observations of the Committee Against Torture to Thailand, **ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** and accelerate the process to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

1.2. In line with the 2014 Concluding Observations of the Committee Against Torture to Thailand and the 2017 Concluding Observations of the Human Rights Committee to Thailand, **enact the Prevention and Suppression of Torture and Enforced Disappearance Act in full compliance with international standards.**

2. On Challenge 2: The increase number of torture and enforced disappearance cases

2.1. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **reinforce the training of law enforcement officials and military personnel with full respect for human rights, including on the appropriate use of force and on the eradication of torture and ill-treatment.**



RECOMMENDATIONS

2.2. In accordance with the 2019 Report of the Working Group on Enforced or Involuntary Disappearances, **refrain from the use of extraterritorial abduction carried out with the cooperation of other states.**

3. **On Challenge 3: Ineffectiveness of the National Human Rights Commission and the National Committee for Managing Cases Related to Torture and Enforced Disappearance**

3.1. In line with The Paris Principles related to the Status of National Human Rights Institutions, **ensure that the National Human Rights Commission and the National Committee for Managing Cases related to Torture and Enforced Disappearance are vested with competence to promote and protect human rights.**

3.2. In line with the 2014 Concluding Observations of the Committee Against Torture to Thailand, **strengthen witness protection and the protection of victims of torture and human rights defenders who complain, advocate and report on torture and enforced disappearances. Ensure the prohibition of counter lawsuits and judicial harassment.**

4. **On Challenge 4: Failure to conduct prompt, effective and independent/impartial investigations into reports of torture and enforced disappearance**

4.1. In accordance with the 2014 Concluding Observations of the Committee against Torture to Thailand, **provide specific training to all relevant personnel, including medical personnel, on how to identify signs of torture and ill-treatment, including on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

4.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **ensure that cases of torture are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military; and guarantee that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.**



REFERENCES

AP, Thai Cabinet approves draft laws against torture, abductions, (23 June 2020), available at:
<https://apnews.com/article/8f208b5b06d2128387da74f6badad712>

Bangkok Post, Custody death clip sparks storm, (25 August 2021), available at:
<https://www.bangkokpost.com/thailand/general/2170519/custody-death-clip-sparks-storm>

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)

Cross Cultural Foundation, Statement: Thai police must conduct a fair, full and transparent probe into the killing of alleged drug suspect in police custody, (25 August 2021), available at: <https://crcfthailand.org/2021/08/25/statement-thai-police-must-conduct-a-fair-full-and-transparent-probe-into-the-killing-of-alleged-drug-suspect-in-police-custody/>

Input a community member from Cross Cultural Foundation to inform the UPR Factsheet on the investigation into cases of torture and arbitrary killing in the Southern Border Provinces

Khaosod Online, 'รัฐ' แจ้งข่าว 'เพบกิ๊บ' อาการน่าเป็นห่วง ปอดมีฝ้า หนอนจัดยาผิด ใช้ชุดเดินมา3วัน, (19 August 2021), available at:
https://www.khaosod.co.th/breaking-news/news_6573547

Prachachart, พบกิ๊บเผย ต่อรองก้าร้าย ข้าก็ตัว ฝากถูกคนสู้ต่อ ไม่ต้องห่วง, (11 August 2021), available at: <https://www.prachachat.net/politics/news-736191>.

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>

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), available at: <https://www.refworld.org/docid/591e9d914.html>

UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), (2004), HR/P/PT/8/Rev.1, available at: <https://www.refworld.org/docid/4638aca62.html>

United Nations General Assembly, Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 (20 December 1993), available at: <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

Human Rights Council, Working Group on Enforced or Involuntary Disappearances: 'Report of the Working Group on Enforced or Involuntary Disappearances', (7 August 2020), at page 32, available at <https://undocs.org/A/HRC/45/13>

Bangkokbiznews.com, 'วรร' คาดบังคับใช้ร.s.p.ป้องกันรมนาภิ เดือนกันยายนนี้, (26 August 2021), available at:
<https://www.bangkokbiznews.com/news/detail/956779>



THAILAND UPR III 2021 – UPR FACTSHEET

PRISON CONDITIONS
IN THAILANDBrief Assessment of the Implementation
of the 2nd Cycle UPR Recommendations

During Thailand's second UPR, the government accepted all four recommendations related to prison conditions, including one that called for the establishment of a policy to decrease the high levels of overcrowding. Despite these commitments, prison conditions remained below international standards during Thailand's second UPR cycle. The ongoing failure by successive governments to enact comprehensive prison reforms created conditions for human rights violations to be rife in the prison system in breach of Thailand's obligations under international instruments to which it is a state party.

Overcrowding remained the most pressing issue in prisons, with an increase in the number of prisoners during the country's second UPR cycle. In June 2016, Thailand had a prison population of 321,372 inmates, according to official figures from the Department of Corrections. In May 2019, the number reached an all-time high of 386,902 inmates. As of 1 September 2021, the prison population stood at 289,332 inmates (255,986 men and 33,346 women) – a 10% decrease from June 2016. The vast majority of prisoners (237,763 inmates or 82%) remained jailed for drug-related crimes.

In a concerning statement on 22 July 2019, Justice Minister Somsak Thepsuthin said he aimed at limiting the total number of inmates nationwide to around 370,000 – a level at which Thailand's prisons were already severely overcrowded. Given the Thai prison system's official capacity for 123,000 inmates, jails have been regularly operating well over their capacity.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Failure to address overcrowding in prisons

In an attempt to downplay the issue of overcrowding, the authorities progressively lowered capacity measurement standards by reducing the space per person to less than one square meter.

An official from Samut Prakan Central prison, on the eastern outskirts of Bangkok, confirmed that an "area of one square meter must be allocated for a pair of inmates," and that prisoners had to "sleep diagonally." This situation prompted Justice Minister Somsak Thepsuthin to say that such capacity measurements provided "less room for a body than the inside of a coffin."

In late December 2019, the surveillance cameras at Lang Suan prison in Chumphon Province were hacked and footage showing inmates living in overcrowded conditions was posted online on YouTube. In a puzzling response, Justice Minister Somsak Thepsuthin said the leaked footage damaged the reputation of Thai prisons and may have violated the rights of inmates.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: Failure to adopt effective policy measures to decongest prisons

Aside from the granting of royal amnesties, the government failed to adopt any effective policy measures to decongest prisons and instead pursued a piecemeal approach in an attempt to address overcrowding in correctional facilities. In February 2020, it was reported that the government had approved a plan to expand the size of sleeping quarters in 93 of the country's 143 prisons.

Timid attempts to implement non-custodial measures failed to reduce prison congestion

In April 2020, the Department of Corrections said that between October 2019 and March 2020, 7,890 prisoners were released as a result of a government's plan to suspend the sentences of certain categories of inmates. However, during the same period of time, Thailand's prison population increased by more than 15,000 inmates. In July 2021, about 35,000 prisoners were released on parole as a result of a royal amnesty on the occasion of King Rama X's birthday.

Challenge 3: Deaths of prisoners

Ongoing reports of deaths of prisoners raised concerns over the seriously inadequate detention conditions, as well as the neglect of prisoners by prison authorities.

With regards to their deaths: In early January 2020, Thai authorities initially attributed their death to toxic goiter caused by the consumption of contaminated food. However, a subsequent statement by Department of Corrections' Director-General that reported that "the environment and food sanitation at the prison were up to safety standards" was in stark contrast to the Justice Minister's decision a few days later to transfer the Phitsanulok prison chief to the Department of Corrections for "negligence and bad management" in connection with the death of the four inmates. The results of an investigation into the cause of death of the four were pending as of late January 2020.

Challenge 4: Prisons conditions below international standards

Between April and August 2018, a team from FIDH and UCL conducted visits to nine of the 12 correctional facilities that, as of December 2018, Thailand's Department of Corrections designated as "model" prisons for women. The designation stemmed from the Department of Corrections' claim that these facilities had successfully implemented the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the "Bangkok Rules").

The result of observations conducted by FIDH and UCL during their visits revealed that conditions in these facilities were below international standards.

At the time of the start of the FIDH/UCL visits (April 2018), the main issue of concern remained overcrowding. According to Department of Corrections statistics, eight of the nine "model prisons" visited by FIDH and UCL had occupancy levels above 100%, with a maximum of 652% in Thanyaburi Women's Penitentiary.

Other important areas where deficiencies and challenges were observed in the nine prisons were: the quality of food; healthcare services, including with regard to mental health; prison labor conditions; contact with the outside world; and access to information from the outside world and punishment and disciplinary measures. With respect to punishment and discipline, the measures used on prisoners were often inconsistent with international minimum standards, and, in some cases, may have amounted to torture or ill-treatment. In many of the prisons, the special arrangements for pregnant prisoners and women prisoners with babies were also a challenge, including the shortage of sanitary napkins and other toiletries.



RECOMMENDATIONS

1. On Challenge 1: Failure to address overcrowding in prisons

- 1.1.** Address and resolve the issue of overcrowding in prisons by finding sustainable and effective measures to reduce the prison population.

2. On Challenge 2: Failure to adopt effective policy measures to decongest prisons

- 2.1.** In line with the United Nations Standard Minimum Rules for Non-custodial Measures (also known as the “Tokyo Rules”), **increase the use of alternatives to prison sentences, by developing non-custodial measures within the legal system, including measures aimed at: the avoidance of pre-trial or remand detention and alternatives to prison terms during sentencing.**
- 2.2.** Impose mandatory rehabilitation, as a preferred method of treatment to prison terms, for drug users and drug addicts, and for those convicted of drug use or drug consumption.

3. On Challenge 3: Deaths of prisoners

- 3.1.** Improve living conditions in prisons to be in line with the United Nations Standard Minimum Rules for the treatment of Prisoners (also known as the “Nelson Mandela Rules”), particularly with regard to the amount of space allocated per prisoner, sanitation facilities, and the availability of adequate healthcare.

4. On Challenge 4: Prisons conditions below international standards

- 4.1.** Improve conditions for women in prison in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the “Bangkok Rules”), by acknowledging the specific needs of women in prison and ensuring they have adequate medical care and facilities, especially in the case of pregnant women and women with young children.
- 4.2.** Allow non-governmental organizations with a relevant mandate to conduct visits to places of detention, interview inmates, and assess conditions without undue hindrance.
- 4.3.** Arrange a country visit for the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



REFERENCES

This information was prepared by the FIDH (International Federation for Human Rights), on the basis of their Joint NGO Submission with the Union for Civil Liberty (UCL), available at: https://www.fidh.org/IMG/pdf/20150921_thailand_upr_dp_en.pdf

For more information, evidence and data, please refer to the References and/or contact Mr. Andrea Giorgetta, Director of Asia Desk, Southeast Asia, FIDH (International Federation for Human Rights). Email contact: ag@fidh.org



THAILAND UPR III 2021 – UPR FACTSHEET

DEATH PENALTY IN THAILAND

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

During Thailand's second UPR, the Thai government pledged to commute death sentences and review the imposition of the death penalty for drug-related offenses, but did not accept 12 recommendations that either called for the abolition of capital punishment or encompassed measures aimed at making progress towards that goal. The recommendations included: the establishment of a moratorium on all executions; the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR); and the removal of economic crimes from the list of offenses punishable by death. The government said it would consider these recommendations "in subsequent UPR cycles."

During its second UPR, Thailand resumed executions. On 18 June 2018, Theerasak Longji, 26, was executed by lethal injection at an unspecified location. Mr. Theerasak was found guilty of a premeditated murder he had committed in Trang on 17 July 2012. Theerasak always maintained he had not committed the crime.

Thailand would have achieved the status of de facto abolitionist, had it not carried out any executions before 24 August 2019. Prior to Mr. Theerasak's execution, Thailand's last execution was carried out on 24 August 2009, when two men, Bundit Jaroenwanit, 45, and Jirawat Poompreuk, 52, were put to death by lethal injection at Bang Khwang Prison in Nonthaburi Province.

On 19 December 2016, 17 December 2018, and 16 December 2020, Thailand abstained from voting on the biennial United Nations General Assembly (UNGA) resolution calling for a moratorium on the use of the death penalty.

On a positive note, official figures from Thailand's Department of Corrections showed a steady decline in the number of prisoners under death sentence during the second UPR cycle of Thailand. On 11 May 2016, there were 426 prisoners (368 men and 58 women) under death sentence. By 23 June 2021, the number had progressively decreased to 253 (224 men and 29 women). This 40% decrease is attributed to the number of commutations of death sentences under royal amnesties. During Thailand's second UPR cycle, there were commutations of sentences on special occasions, such as: King Rama X's coronation in May 2019; King Rama X's birthday in July 2020; King Rama IX's birthday in December 2020; and King Rama X's birthday in July 2021.

Despite a reduction of the number of prisoners facing capital punishment, courts across Thailand continued to impose death sentences. Between January 2016 and December 2019, at least 340 people were sentenced to death. Although official figures are not publicly available, at least 216 death sentences were recorded in 2016, 75 in 2017, at least 33 in 2018, and at least 16 in 2019, according to information collected by Amnesty International.



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REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Number of capital crimes increases

Since Thailand's second UPR, there has been no effort to reduce the number of crimes subject to the death penalty. In fact, the number of capital crimes increased from 55 in 2014 to 63 in 2018.

Crimes that are punishable by death include drug-related offenses and economic offenses.

Challenge 2: Death penalty for drug-related offenses

The existence of legislation that makes drug-related offenses punishable by death is inconsistent with Thailand's legal obligations under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which states that in countries that have not abolished the death penalty, death sentences "may be imposed only for the most serious crimes." The United Nations Human Rights Committee has repeatedly stressed that capital punishment for drug-related offenses does not comply with Article 6 of the ICCPR.

Drug-related offenses represent a disproportionate share of the crimes for which a death sentence is imposed. According to Thailand's Department of Corrections, 58% of the men (131 out of 224) and 89% of the women (26 out of 29) who were under death sentences as of 23 June 2021 had been found guilty of drug-related offenses.

Challenge 3: Lack of political will blocks progress towards abolition

The government's previous commitments to make progress towards the abolition of the death penalty entirely disappeared during Thailand's second UPR cycle.

Government officials occasionally made public statements in support of the death penalty. For example, on 6 June 2016, Prime Minister Prayuth Chan-ocha ordered the legal community and the judiciary to ensure that convicted rapists would be sentenced to death. Prayuth backtracked the following month, when he said he disagreed with calls for capital punishment for individuals convicted of rape and murder, following the rape and murder of a female teacher in Saraburi Province, which sparked a public uproar and netizens' calls for the imposition of the death penalty for rapists. Other officials publicly recognized the ineffectiveness of capital punishment to act as a deterrent against violent crimes and acknowledged that many convicts sentenced to death were the poor and underprivileged who could not afford a proper legal defense. However, they claimed the lack of progress towards abolition was justified by the public opinion's support for capital punishment.

In June 2017, Deputy Prime Minister Wissanu Krea-ngam, was quoted as saying that while Thailand would retain the death penalty "for the sake of effective crime deterrence," but that it was seeking to gradually convert capital punishment to life imprisonment or a prison sentence of up to 20 years.

Challenge 4: Failure to adequately inform the public on issues surrounding the death penalty

The position of successive Thai governments that public opinion is in favor retaining the death penalty has been consistently based on non-scientific opinion polls and surveys, in which respondents and the general public were not provided with relevant information to have an informed opinion on the issues related to the death penalty.

In June 2018, following the execution of Theerasak Longji, four different opinion polls were conducted concerning the issue of the death penalty. In one online poll on the Kom Chad Luek's website, 92% of the approximately 2,300 respondents said they were in favor of capital punishment. In another poll conducted by Nation TV, 95% of the more than 20,000 votes were in favor of the death penalty. A third poll, conducted among 1,123 people, found that 93.4% of the respondents supported imposing the death penalty for "cruel murderers." A fourth poll, conducted by the National Institute for Development Administration among 1,251 people, found that 92% of the respondents were in favor of retaining the death penalty. Seventy-nine percent believed the death penalty was a deterrent to crime, and 80% said they preferred the death penalty over life imprisonment for those convicted of serious crimes. However, only 2% of the respondents supported the imposition of the death penalty for drug offenses.



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UPR FACTSHEET

RECOMMENDATIONS

1. On Challenge 1: Number of capital crimes increases

- 1.1.** Abolish the death penalty for all crimes during the third UPR cycle.
 - 1.2.** Immediately establish an official moratorium on executions.
 - 1.3.** Immediately commute all death sentences to prison terms.
-

2. On Challenge 2: Death penalty for drug-related offenses

- 2.1.** Remove the provision of capital punishment for all drug-related offenses.
-

3. On Challenge 3: Lack of political will blocks progress towards abolition

- 3.1.** Vote in favor of the next UNGA resolutions on a moratorium on the use of the death penalty.
 - 3.2.** Significantly reduce the number of criminal offenses that can be punished by death.
 - 3.3.** Ratify the Second Optional Protocol to the ICCPR during the third UPR cycle.
-



REFERENCES

This information was prepared by the FIDH (International Federation for Human Rights) on the basis of their Joint NGO Submission with the Union for Civil Liberty (UCL), available at: https://www.fidh.org/IMG/pdf/20150921_thailand_upr_dp_en.pdf

NOTES



THAILAND UPR III 2021 – UPR FACTSHEET



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

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 Mulsims' 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).



LABOUR RIGHTS IN THAILAND

Decent Working Conditions for
Formal & Informal Workers

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

In Thailand, there are approximately 17.5 million workers employed in the formal sector, accounting for 46.2% of the workforce, and 20.4 million workers employed in the informal sector, accounting for 53.8% of the workforce. Despite labour protections enshrined in law, violations are common, particularly for workers in the informal sector, which is currently unregulated under Thai law. Examples of violations faced include exploitation, forced labour, child labour, unsafe working conditions, and discrimination at the workplace. During its 2nd UPR cycle, Thailand received 58 recommendations related to labour rights, of which it supported 50 and noted 8. Among others, the government committed to review its labour laws to accommodate the demands for cheap, low or semi-skilled labour. To date, the government has taken insufficient measures to enhance labour rights. Despite Thailand's adoption of a National Action Plan on Business and Human Rights (NAP-BHR) on October 29, 2019, in line with Sweden's recommendation during the 2nd UPR cycle, the NAP-BHR fails to address gaps in the adoption and implementation of national laws and policies concerning labour rights and standards, particularly for workers belonging to marginalized groups, thereby leaving a large part of Thailand's workforce unprotected. Given that no measures have been proposed or implemented to ensure that labour rights and standards are extended to workers in the informal sector, indigenous peoples, sex workers, and migrant workers, the government has implemented only 2 recommendations, partially implemented 9 recommendations, and did not implement 47 of the recommendations received related to labour rights.

National Legal Framework

The Labour Protection Act B.E. 2541 (1998, amended 2017) guarantees universal protection to all employees and regulates working conditions, setting out standards on areas such as working hours, overtime, holidays, leave, and maternity leave.

The Home-based Worker Protection Act B.E. 2553 (2010) provides protections for workers who perform their work at home.

The Social Security Act B.E. 2533 (1990, amended in 2015) guarantees social security entitlements for workers in Thailand.

The Workmen's Compensation Act B.E. 2537 (1994) sets out the responsibility of employers to provide compensation and pay medical expenses to their employees.

The State Enterprise Labour Relation Act B.E. 2543 (2000) sets out the right of employees of State enterprises to form labour unions and prohibits employers' lockouts and employees' strikes

The Labour Relation Act B.E. 2518 (1975) established the Labour Relations Committee (LRC) consisting of representatives of both employers and employees, with the authority to make decisions on employment conflicts.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Inadequate laws and policies on workers' rights inconsistent with international standards

The Thai government claims that a special committee has been established to review existing labour laws and policies to be in line with ILO 87 and 98, which cover the right to association, the right to organize, and the right to engage in collective bargaining. However, to date, the Thai government has refused to ratify ILO Conventions 87 and 98, as well as ILO Conventions 131, 183 and 189.

Existing labour laws are underdeveloped and inconsistent with the social and economic crisis brought about by the COVID-19 outbreak, which resulted in the closure of factories and workplaces. During the COVID-19 outbreak, workers were unfairly treated, as they experienced sudden unemployment and lack of reimbursement from their employers. Under the Labour Protection Act of 1998, an employee welfare fund must be created: other than receiving funds from the government, employers are required to remit funds to compensate their employees in the case of termination of employment. However, in reality, the process is time-consuming, causing workers to not be compensated in a timely manner.

The Thai government claims that a special committee has been established to review existing labour laws and policies to be in line with ILO 87 and 98, which cover the right to association, the right to organize, and the right to engage in collective bargaining. To date, Thailand has yet to ratify ILO Conventions 87 and 98, , as well as ILO Conventions 131, 183 and 189. Since workers are unable to form unions or hold collective bargaining with their employers legitimately under the law, workers are left vulnerable to being taken advantage of by employers. Although formal workers are able to bargain with their employers, other types of workers, such as informal workers, civil servants, and government officials are not guaranteed the right to do so.

Challenge 2: Inequality in accessing welfare and lack of effective remedies for informal workers

Although the Home-Based Worker Protection Act of 2010 has been enacted for more than 10 years, subsidiary laws for the Act are still incomplete and the Act itself still does not ensure protection for home workers, particularly in the areas of occupational hygiene and workplace safety. Furthermore, the Ministry of Labour's Regulation No. 14 of 2012 does not ensure protection for home workers in terms of maternity leave, working hours, over-time working, and minimum wage rate.

In Thailand, workers are entitled to different benefits and remedies based on their type of work. Formal workers employed in the private sector are fully entitled to all seven benefits. Formal workers who have already resigned are entitled to six benefits. Informal workers who are freelance workers are entitled to three or four benefits. Inequality in the treatment of workers can also be seen in the government's financial remedial policy: while former workers are able to receive THB 5,000 as compensation, informal workers are required to wait for a period of 6 months for the government to approve and enact the law.

The unfair treatment of subcontractors in Thailand in terms of social welfare, wages, and working conditions, conflicts with the ILO Conventions. Subcontracting provides opportunities for employers or contractors to take advantage of their workers by paying them at a lower rate, providing them with little to no support for social welfare, and employing them in inhumane working hours and conditions. When a crisis occurs, employers are not legally obligated to compensate subcontractors when they stop hiring them without any notice or payment, although, it was stated in the Supreme Court Decision No. 22326-22404/2555 that employers must be responsible for any unfair dismissal.

The Draft Act on Promotion and Development of the Quality of Life of Informal Workers has yet to be enacted by the Thai government. The government's delay in the enactment process is neglectful of the existing crisis informal workers face because of the COVID-19 crisis outbreak.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 3: Adverse impacts of the COVID-19 outbreak on formal and informal workers

Formal and informal workers have been severely affected by the COVID-19 outbreak. Both formal and informal workers experience higher rates of poverty due to unemployment and lack of income, which, in turn, causes workers to take loans, resulting in more household debt.

Impact of COVID-19 on the formal sector

Formal workers have been laid off due to the closure of multiple factories during the COVID-19 outbreak. Approximately 6.6 to 7.5 million workers are estimated to face negative impacts from the aforementioned situation. The Eastern Labour Union Group, which was an automotive manufacturing company, was one of the first groups to have been impacted by the pandemic. Complaints about the company were made by the workers: as the company issued severance pay papers for the workers but did not actually pay them, the workers were not compensated for their work and were left with nothing but a piece of paper as the factories closed down. Furthermore, the workers had to file legal complaints against the company themselves without any financial remedies or legal assistance.

Impact of COVID-19 on the informal sector

Due to their vulnerable legal status, combined with the nature of their work, informal workers, such as street vendors, owners of food stalls, and motorcycle taxi drivers and drivers of other vehicles responsible for food delivery and transportation, are one of the groups first affected by the COVID-19 outbreak. During the lockdown in February 2020, informal workers had lost more than 70% of their usual profit in April 2020. However, after the lockdown ended in July 2020, only 43% to 64% of the informal workers' profits in February of the same year returned.

In February 2021, WIEGO, Federation of Informal Workers Thailand, and HomeNet Thailand conducted research and found that 83% of informal workers are dependent on loans, savings, and financial assistance from friends, families, and neighbors. Furthermore, they are likely to sell or mortgage their properties, ask family members to move out, and struggle to pay rent/deposits, pay for utilities, or even pay for their children's educational fees. Moreover, informal workers are more likely to pay off their debts in installments due to the fact the government's remedial services does not allocate financial remunerations based on those who were affected by the COVID-19 outbreak. The government was unable to create a complete database for informal workers, which, in turn, became a blind spot for enacting proper protective measures for a substantial number of informal workers. Data also shows that, while 90% of informal workers registered for financial remedies, only 44% of them received financial remedies.



RECOMMENDATIONS

1. On Challenge 1: Inadequate laws and policies on workers' rights inconsistent with international standards

1.1. **Amend the Labour Protection Act of 1971 by 2022, to ensure that workers are compensated in a timely manner in the case of termination of employment.** In particular, the revision must include measures forbidding employers from continuously hiring short-term subcontractors to avoid complying with labour rights standards related to dismissal of formal workers and employees, in line with the Supreme Court Decision No. 22326-22404/2555.

1.2. **Ratify ILO Conventions 87 and 98 immediately** in order to secure the rights for formal workers to legitimately form a labour union and gain collective bargaining rights in a fair manner. ILO Conventions 131, 183 and 189 should also be ratified.

2. On Challenge 2: Inequality in accessing welfare and lack of effective remedies for informal workers

2.1. In line with 2017 CEDAW Committee's Concluding Observations to Thailand, **effectively protect the rights of informal workers, including by ensuring adequate coverage of labour and social security protections.** To this end, the Draft Act on Promotion and Development of the Quality of Life of Informal Workers should be enacted.

3. On Challenge 3: Adverse impacts of the COVID-19 outbreak on formal and informal workers

- 3.1.** **Provide funds in the form of subsidies and low interest loans to support informal workers in terms of their living expenses and other expenses.** Training programs should also be implemented to support informal workers.
- 3.2.** **Allocate a budget to support formal workers who have been unfairly dismissed during the COVID-19 outbreak.**



REFERENCES

- Manushya Foundation and BHR Network, Summary of Joint Comments on the Final Draft National Action Plan on Business and Human Rights in Thailand (NAP-BHR), March 2019, accessible at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_0a0709e4800e4691abc8eed264bb61af.pdf
- Manushya Foundation and BHR Network, Summary of Joint Comments on the Final Draft National Action Plan on Business and Human Rights in Thailand (NAP-BHR), March 2019, accessible at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_0a0709e4800e4691abc8eed264bb61af.pdf
- Manushya Foundation and BHR Network, Summary of Joint Comments on the Final Draft National Action Plan on Business and Human Rights in Thailand (NAP-BHR), March 2019, accessible at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_0a0709e4800e4691abc8eed264bb61af.pdf
- Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment (NBA) on Business and Human Rights: The Promotion of Decent Working Conditions for Formal and Informal Workers, March 2019, available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_d7d1639348b3475684ccb702f06c7907.pdf
- Ministerial Regulations No.14, B.E. 2555 (2012), available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96394/113900/F-1314852862/THA96394%20Tha.pdf>
- Ministry of Foreign Affairs, ແພນກາບຢູ່ຕ້ານອະເນດແບບກໍາໄລຕ່ວຍມີຄວາມສັບໃຈ ກາຍໃຕ້ໂຄງການ UPR ສອນທີ 2 (ວ.ສ. 2559 – 2563), available at: <http://humanrights.mfa.go.th/upload/pdf/UPR%20POA2%20cabinet.pdf?fbclid=IwAR3T5LxcpOJy7hXH0HgsYKEbazi23znKVTiSdc92hROVUrEB6WI7lxQJM0o>
- Ministry of Foreign Affairs, ແພນກາບຢູ່ຕ້ານອະເນດແບບກໍາໄລຕ່ວຍມີຄວາມສັບໃຈ ກາຍໃຕ້ໂຄງການ UPR ສອນທີ 2 (ວ.ສ. 2559 – 2563), available at: <http://humanrights.mfa.go.th/upload/pdf/UPR%20POA2%20cabinet.pdf?fbclid=IwAR3T5LxcpOJy7hXH0HgsYKEbazi23znKVTiSdc92hROVUrEB6WI7lxQJM0o>
- Ministry of Labour, Employee Welfare Fund, available at: https://www.mol.go.th/employee/employee_fund
- Ministry of Labour, Labour Statistics as of June 2021, June 2021, available at: <https://www.mol.go.th/wp-content/uploads/sites/2/2021/08/pdf-2021-07-30-1627633691.pdf>
- This information has been obtained from Manushya Foundation's discussions with Puttinee Gopatta, a HomeNet Thailand representative and the Informal Labour Focal Point of Thai BHR Network and Thai CSO Coalition for the UPR, in August 2021.
- This information has been obtained from Manushya Foundation's discussions with Wattana Sansa, the Formal Labour Focal Point of Thai BHR Network and Thai CSO Coalition for the UPR, in August 2021.
- UNICEF and UNDP, Socio-Economic Impact Assessment of COVID-19 in Thailand, available at: <https://www.unicef.org/thailand/media/5666/file/Socio-Economic%20Impact%20Assessment%20of%20COVID-19%20in%20Thailand.pdf>
- Wichaya Komin, Rungnapa Thepparp, Borvorn Subsing & David Engstrom, Covid-19 and its impact on informal sector workers: a case study of Thailand, October 2020, available at: <http://www.cusri.chula.ac.th/wp-content/uploads/2020/11/Covid-19-and-its-impact-on-informal-sector-workers-a-case-study-of-Thailand.pdf>
- WIEGO, Federation of Informal Workers Thailand, HomeNet Thailand, "ວິກຖານຄົວ-19 ແລະ ເຮັດວຽກຂອງຮະບະ: ແຮງທະບຽນອະນຸມາໃຫຍງພວກເຮົາ ດັບຕົກໄດ້", available at: <http://www.homenetthailand.org/Covid-19 Crisis Informal Workers Bangkok>



THAILAND UPR III 2021 – UPR FACTSHEET

MIGRANT WORKERS RIGHTS

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

There are approximately over 4 million migrant workers in Thailand from Cambodia, the Laos People's Democratic Republic, and Myanmar. However, as of February 2021, out of 4 million, only 1,931,650 migrant workers are legally permitted to work in Thailand. Together, they make up more than 10% of the country's workforce. While Thailand is home to many migrant workers, its policies have been ineffective in managing the growing number of migrant workers. The Thai government has neither ratified the International Convention on the Protection of the Rights of Migrant Workers and their Families nor ILO Conventions 87 and 98, all of which set out international standards for workers' rights. Moreover, no legislation upholding migrants' rights has been implemented. Since policies are often ineffective and ever-changing, migrant workers, particularly undocumented migrants, live with a precarious legal status and are thus vulnerable to human rights violations.

During its 2nd UPR cycle, Thailand received three recommendations regarding the necessity to ratify the International Convention on the Protection of the Rights of Migrant Workers and their Families, of which it supported two and noted one. Furthermore, the government received five recommendations directly addressing the protection of migrant workers' rights, all of which it supported, and therefore committed to "put in place legislations to protect migrant workers from abuse and exploitation." In addition, the Thai government received 25 recommendations addressing the protection of vulnerable people, 23 of which it supported and two of which it noted. While the Government has approved all the recommendations, it has failed to implement all of them.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Migrant workers and their families have been disproportionately affected by the COVID-19 outbreak yet continue to experience discrimination in receiving government assistance

Migrant workers were among the first to lose their jobs in Thailand, leaving them without income to support themselves and their dependents. While some have returned to their home countries, others are unable to do so because of border closure.

The Thai government's response to the COVID-19 outbreak is not inclusive of migrant workers and their families. Financial assistance is not provided to migrant workers, despite estimates that as many as 700,000 migrant workers have lost their jobs during the COVID-19 outbreak. Since the outbreak, laid-off migrant workers have been unable to access financial assistance from the government either because of their foreign nationality or because of their former employer's failure to notify the Social Security Office of their employment termination. On top of the lack of financial assistance from their employer and the government, Thai labour law remains unnecessarily harsh on migrant workers. Under Thai labour law, they are required to find a new job within 15 days of the termination of employment, otherwise their legal status will automatically expire. As a result of business closures and suspension of operations, many migrant workers have been unable to find new jobs within the required time frame, rendering them illegal immigrants subject to arrest and deportation.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Despite the government's extension of the timeframe to 60 days from July 2021 onwards, the extension by a mere 45 days provides little to no relief for migrant workers during the COVID-19 outbreak.

Despite their overcrowded, hazardous, unsanitary work and living conditions, which expose them to a higher risk of infection, COVID-19 vaccines remain unavailable to most, if not all, migrant workers and their families, either due to language barriers or their illegal status. When COVID-19 outbreaks emerged among migrant workers, the government responded with drastic measures adversely affecting the physical and mental health of the workers and their families, i.e., sealing worker camps and deploying soldiers and security personnel to prevent anyone from leaving. In June 2021, the government locked down worker camps in Bangkok and surrounding provinces, as well as four southern provinces of Pattani, Yala, Songkhla, and Narathiwat, restricting movement for the duration of the lockdown. The government stated that it will supply food and drinking water to the workers for the duration of the lockdown. However, there are multiple reports indicating that worker camps have yet to receive any food or drinking water from the government, even though the workers are unable to leave the camps and, in any event, do not have income to purchase food and drinking water on their own. A month later, in July 2021, the government ceased proactive COVID-19 testing and healthcare assistance for migrant workers in Bangkok and surrounding provinces, citing scarce resources and medical personnel. The decision has been described as a "license to kill migrant workers facing the COVID-19 crisis in Thailand."

As for migrant workers' children, school closures during the COVID-19 outbreak deprived them of enjoying their right to education due to a lack of access to online lessons, combined with language barriers and limited personalized learning support. Many families have had to take out loans to purchase mobile phones for their children to attend online lessons, causing them further financial strain, while others have forced their children to drop out of school to help them earn income. The Migrant Working Group estimates that 300,000 migrant workers' children in Thailand are in need of education.

Ultimately, migrant workers and their families have become increasingly isolated from assistance, and are at greater risk of rights violations as a result of the government's stigmatization labeling them as COVID-19 carriers. Prime Minister Prayut Chan-o-cha himself blamed the COVID-19 outbreak on migrant workers, stating: "This latest flare-up of infections in Samut Sakhon is primarily due to such illegal immigrants and they have brought much grief to the country."

Challenge 2: Migrant workers are vulnerable to labour rights violations, as they face barriers to registering themselves and obtaining legal status

Migrant workers face obstacles to access administrative procedures, and Thailand's migrant registration process fails to tackle debt bondage.

Complex procedures and hurdles make it difficult for migrant workers in Thailand to register and obtain legal status. Due to language barriers, migrant workers are unable to undertake the procedures themselves and have to rely on the assistance of agents or employers. Moreover, due to financial barriers, migrant workers are unable to bear registration costs, rendering many of them vulnerable to debt bondage, a form of modern slavery affecting approximately 610,000 people in Thailand.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Even though employers requesting excessive funds from migrant workers may face imprisonment and fines, employers, middlemen, and brokers regularly inflate costs, leaving migrant workers with large debts, which leads to rights violations, such as harsh working conditions, wage deductions, and confiscation of personal documents. For example, while the Myanmar government estimates that registration costs amount to THB 3,550, migrant workers from Myanmar have to pay a much higher price, ranging between THB 8,000 and THB 16,000 or more.

Ultimately, given the complex procedures, as well as linguistic and financial barriers, migrant workers prefer using irregular channels to enter Thailand, which render them illegal immigrants and thereby subject to arrest and deportation. For example, in 2018, while 90% of Cambodian overseas workers worked in Thailand, only 30% of them used the official system. On top of barriers to registration, migrant workers are subject to restrictions preventing them from changing employers without authorization, rendering them vulnerable to labour rights violations and subjecting them to arrest and deportation.

Challenge 3: Migrant workers cannot freely choose their employment

The Royal Thai Government enforced an exhaustive list of 28 job types prescribing occupations and professions prohibited for foreign workers, which are exclusively reserved for Thai nationals.

The Government of Thailand still enforces the Royal Decree 2522 B.E, stipulating the occupations and professions that foreigners are prohibited from performing. In consequence, migrant workers or their family members who have obtained a professional certificate or degree are unable to apply for or work in these positions. Ms. Sugarna Sookpaita, Thai BHR Migrant Worker Focal Point of the Thai BHR Network, received complaints that some companies advertised labor skill development programs for migrant employees, but that when they completed the course, they were unable to obtain a certificate and reclaim their skill fee. For those who are successful in obtaining the certificate, they have to pay a registration fee, with the conditions that one person can only register for one specific skill.

RECOMMENDATIONS

- 1. On challenge 1: Migrant workers and their families have been disproportionately affected by the COVID-19 outbreak**
 - 1.1.** In line with the UN experts call on Governments to adopt urgent measures to protect migrants in their response to COVID-19, **adopt inclusive measures aimed at protecting migrants, and take steps towards the regularisation of undocumented migrants whenever necessary, in view of facilitating their access to health services during the fight against the pandemic.**
 - 1.2.** In line with the CRC Concluding Observations to Thailand (2012), **take necessary legislative and policy measures to protect children in various migration situations from exploitation and forced labour.**
 - 1.3.** In line with the CESCR Concluding observations to Thailand (2015), **step up efforts to ensure that all children under its jurisdiction effectively have access to free basic primary education; address the causes for school dropout; and improve the overall quality of education.**
 - 1.4.** In line with the CRC Concluding observations to Thailand (2012), **adopt effective policies and other measures to ensure that every child from birth to school going age has access to holistic early childhood development (ECD) with effective support of essential health, nutrition, education and protection services to ensure his or her total development.**



RECOMMENDATIONS

2. On challenge 2: Migrant workers are vulnerable to labour rights violations, as they face barriers to registering themselves and obtaining legal status

2.1. In line with the CESCR Concluding observations to Thailand (2015), explore the need for additional measures to ensure that all migrant workers, regardless of legal status, are entitled to labour and social protection and can access justice for violations of their rights.

3. On challenge 3: Migrant workers cannot freely choose their employment

3.1. Amend the Royal Decree 2522 B.E. to allow migrant workers to pursue occupations that match their abilities and qualifications, and amend regulations restricting skilled labour registration.

3.2. In line with Principle 1 and 2 of the United Nations Guiding Principles on Business and Human Rights (UNGPs), protect against human rights abuse within its territory and/or jurisdiction, and take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

3.3. Intensify measures to ensure migrants do not suffer from discrimination and, in line with the CERD Concluding observations to Thailand (2012), explore the need for specific protections for migrant workers in addition to those provided for by the Labour Protection Act.

REFERENCES

- Bangkok Post, 'Close the vaccine gap': illegal migrants need help, June 27, 2021, available at: <https://www.bangkokpost.com/thailand/special-reports/2139103/close-the-vaccine-gap-illegal-migrants-need-help>
- Bangkok Post, Migrant children facing added risk, August 24, 2021, available at: <https://www.bangkokpost.com/thailand/general/2170243/migrant-children-facing-added-risk>
- Bangkok Post, Migrant children need education, July 1, 2020, available at: <https://www.bangkokpost.com/opinion/opinion/1943776/migrant-children-need-education>
- Bangkok Post, Migrants see lives upended by downturn, May 4, 2020, available at: <https://www.bangkokpost.com/thailand/general/1912084/migrants-see-lives-upended-by-downturn>
- Bangkok Post, Slavery fears rise for migrant workers, August 30, 2019, available at: <https://www.bangkokpost.com/thailand/general/1739551/new-rules-new-debts-slavery-fears-rise-for-migrant-workers-in-thailand>
- Bangkok Post, Troops, cops seal 600 worker camps, June 27, 2021, available at: <https://www.bangkokpost.com/thailand/general/2138967/troops-cops-seal-600-worker-camps>
- Committee on Economic, Social and Cultural Rights, Concluding observations on the combined initial and second periodic reports of Thailand, (19 June 2015), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/THA/CO/1-2&Lang=En
- Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Thailand, (2012), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/THA/CO/3-4&Lang=En
- Department of Employment, Statistics on Foreigners with Work Permits in Thailand, February 2021, available at: https://www.doe.go.th/prd/assets/upload/files/alien_th/02f9cb42bea104c2c8e39fd9e5406717.pdf
- Khaosod English, Activists slam Labor Ministry cancelling Covid tests for 30,000 migrant workers, July 14, 2021, available at: <https://www.khaosodenglish.com/news/crimecourtscalamity/2021/07/14/activists-slam-labor-ministry-cancelling-covid-tests-for-30000-migrant-workers/>
- Manushya Foundation, Thai BHR Network, Women Workers for Justice Group, Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR, Joint UPR Submission: BHR in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.
- Mekong Migration Network, Resilience & Uncertainty: Mekong Migrant Workers amid the Pandemic Downturn, December 2020, available at: http://www.mekongmigration.org/wp-content/uploads/2020/12/EN_Booklet_Resilience-and-Uncertainty.pdf
- National News Bureau of Thailand, Thai Cabinet Approves Work Permit Extensions for Migrant Workers until July 27, 2022, July 15, 2021, available at: <https://thaianews.prd.go.th/en/news/detail/TCATG210715133639325>
- Thailand Board of Investment, Legal Issues for investors, available at: https://www.boi.go.th/index.php?page=legal_issues_for_investors_02_work_permits&language=ko
- The Nation, Thai virus restrictions leave 700,000 migrants out of work, in limbo: MWG, December 17, 2020, available at: <https://www.nationthailand.com/in-focus/30399720>
- UN Human Rights Committee (HRC), Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, (25 April 2017), available at: <https://www.refworld.org/docid/591e9d914.html>
- พระราชบัญญัติกำหนดงานในอาชีวและวิชาชีพที่ห้ามคนต่างด้าวทำ พ.ศ. ๒๕๖๒ available at: <http://web.krisdika.go.th/data/law/law2/%A149/%A149-2a-9999-update.htm>

NOTES

THE RIGHTS OF SEX WORKERS IN THAILAND

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

In Thailand, about 300,000 individuals earn a living from sex work, contributing to 10% to 12% of the GDP. Even though sex workers are not recognized as 'workers', sex work is criminalized under the Criminal Code of 1956 (the "Criminal Code") and the Prevention and Suppression of Prostitution Act of 1996 (the "Act"). The Act is applied in a discriminatory manner, targeting and punishing sex workers and not their clients. To enforce the Act, the police resort to violent means, including the use of entrapment and raids of entertainment establishments employing sex workers. Sex workers belonging to marginalized groups, i.e., women, LGBTIQ+ migrant workers, ethnic minorities, and indigenous peoples, face multiple and intersecting forms of discrimination and structural violence, falling prey to entrapment and violence during police raids, while also being denied access to labor protections, health services and fair trials.

During its 2nd UPR cycle, Thailand received one recommendation by Finland directly addressing rights of sex workers, which it supported. The government committed to *"increase its efforts to ensure the right to the highest attainable standards of health also to sex workers by ensuring them access to healthcare and services and comprehensive sexuality education."* The government also received 30 recommendations related to prevention of discrimination and protection of marginalized groups, of which it supported 28 and noted two. However, as sex workers continue to be criminalized and are subject to stigma, violence, exploitation, discrimination, and marginalization in their daily lives and at the workplace, the government failed to implement all of the recommendations. Furthermore, despite Thailand's adoption of a National Action Plan on Business and Human Rights (NAP-BHR) on October 29, 2019, in line with Sweden's recommendation during the 2nd UPR cycle, the NAP-BHR fails to recognize sex work as work, thereby dismissing the rights of sex workers.

REALITIES ON THE GROUND

Challenges	Cases, Facts, Comments
Challenge 1: Criminalization of sex work Sex work is criminalized in Thailand under the Criminal Code and the Prevention and Suppression of Prostitution Act of 1996 (the Act). Under the Act, sex workers face a fine of up to THB 40,000 or imprisonment of up to 2 years, or both.	Following its country visit to Thailand in April 2018, the UN Working Group on Business and Human Rights recognized that the main obstacle to the protection of sex workers in Thailand against human rights abuses is the criminalization of sex work. Criminalization prevents sex workers from access to their basic rights, including social security benefits and healthcare.
The Prevention and Suppression of Prostitution Act of 1996 criminalizes sex work by also linking it with human trafficking, confusing sex work with trafficking. Ultimately, the police use trafficking to justify raids on entertainment establishments to arrest and detain sex workers, either as criminals under the Criminal Code and the Prevention and Suppression of Prostitution Act, or as victims of trafficking under the Prevention and Suppression of Human Trafficking Act of 2008.	Due to the criminalization of sex work, sex workers cannot formally access legal protection and, as a result, have little to no access to state-based judicial remedies when their rights are violated. Fearing being charged, sex workers are often reluctant to report crimes or rights violations. When charged, sex workers acquire criminal records and are treated as criminals by potential employers, making it difficult for them to pursue alternative employment with better working conditions if they desire. Unable to report crimes and rights violations or turn to new types of work, sex workers are forced to continue to work under exploitative conditions. In 2019, more than 24,000 people were arrested, prosecuted, and fined for offenses related to sex work.
In 2021, the Thai government renewed its efforts to modernize and reform laws on sex work in response to calls from sex workers to decriminalize sex work. The Department of Women's Affairs and Family Development (DWF) under the Ministry of Social Development and Human Security opened a public consultation on the direction of the regulation of sex work from August 6, 2021, to October 5, 2021. The Director-General of the DWF expects that the direction of the regulation of sex work will be determined in December 2021.	



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Due to their criminalization and the no recognition of sex work as work, sex workers have largely been excluded from the government's response to COVID-19. Most Thai sex workers are ineligible for assistance under the stimulus packages introduced by the government. Non-Thai sex workers face a more precarious situation because of their illegal status, which makes them not only ineligible for any forms of government assistance, but also subject to the risk of being arrested and deported to their country of origin.

During the outbreak of COVID-19, criminalization takes on a heightened impact on sex workers' rights. Sex workers were the first affected and one of the worst affected groups owing to the physical contact that sex work involves as well as its dependence on the tourism sector. With the shutdown of entertainment establishments by the government, sex workers have struggled to survive with no income to support themselves and their dependents. Some sex workers go for days without any food and shelter, while others are forced to borrow from loan sharks. Ultimately, many sex workers end up working on the streets, where the risk of contracting COVID-19 is increased. On top of putting their lives at risk, street-based sex workers face the risk of arrest and prosecution. To date, the government has charged several street-based sex workers with violating the COVID-19 Emergency Decree, which is punishable by a fine of up to THB 40,000 or imprisonment of up to 2 years, or both.

Challenge 2: Sex workers are denied labor protection under Thai law, which subjects them to exploitative working conditions and unfair employment practices

Although Section 74 of the 2017 Constitution sets out the duty of the State to provide labor protection and social security benefits, the government fails to extend these protections to sex workers, while the same protections are guaranteed to workers in all other sectors. The government often cites the criminalization of sex work to justify withholding labor protection.

A study conducted by EMPOWER Foundation found that 87% of women employed in the entertainment industry work in conditions failing to meet national legal standards for labor protection or the ILO criteria for decent work. In particular, sex workers experience poor working and living conditions, including a lack of adequate toilets, dirty workplaces, loud noises, a lack of privacy in shared sleeping quarters, the absence of ventilation, fire exits, and fire escapes, and iron bars or fixtures on doors and windows in some workplaces. Sex workers also experience excessive working hours with insufficient rest days, ranging from zero to two per month, and a lack of paid leave. They also face unfair wage deductions, ranging from 100 THB to 2,000 THB, imposed by employers and managers for taking sick leave, and failing to undergo mandatory health checks or take a client to a place designated by the establishment. Moreover, sex workers face challenges because they often lack formal employment contracts. Often, no agreements are made between the worker and employer, and services and targets are unilaterally decided by the employer. In addition to facing numerous rights violations, sex workers also face barriers to collective bargaining for better working conditions.

During the outbreak of COVID-19, aside from being rendered ineligible for government assistance, sex workers have not received any compensation from entertainment establishments employing them, despite being employed there for a substantial period. Many sex workers have had their employment terminated during the outbreak, further preventing them from accessing government assistance.

Challenge 3: Sex workers face abuse, violence, and harassment at the hands of the police and clients

Sex workers experience various forms of abuse, violence, and harassment from clients. Compounding these experiences are violence at the hands of police and other law enforcement officials, ranging from frequent violent raids and random drug tests, to arbitrary arrests, extortion, and demands for bribes or protection money.

Police Violence & Corruption

Because sex work is criminalized, sex workers are often forced to pay bribes to the police to be able to continue their work. Police officers utilize the Prevention and Suppression of Prostitution Act to demand bribes from sex workers on multiple occasions, threatening them with legal action if they refuse to pay. Consequently, in some places in Thailand, 10% to 17% of sex workers' earnings go towards paying bribes to the police. Migrant sex workers even pay 26% of their monthly earnings in bribes to the police.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Sex workers continue to suffer high rates of violence by the police because of the use of entrapment, both offline and online, and raids of entertainment establishments employing sex workers. As a result, sex workers do not report their experience of violence or theft from clients.

RECOMMENDATIONS

1. On Challenge 1: Criminalization of sex work

- 1.1.** In line with 2017 CEDAW Committee's Concluding Observations to Thailand and the 2019 Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, **decriminalize sex work through the repeal of the Prevention and Suppression of Prostitution Act of 1996 and other relevant laws.**
- 1.2.** **Adopt laws against the arbitrary arrest and detention of sex workers.** Sex workers' criminal charges for offenses related to sex work should also be expunged from their criminal records.

2. On Challenge 2: Sex workers are denied labor protection under Thai law, which subjects them to exploitative working conditions and unfair employment practices

- 2.1.** **Consult sex workers on how to address and measure exploitation within the entertainment industry.** The following forms of exploitation, as recognized by sex workers, should be urgently addressed: salary cuts; compulsory alcohol consumption; interference with their freedom to choose or refuse customer; and receipt of any less than 50% share of the earnings. For migrant sex workers, the additional elements of passport retention and/or movement restriction should be recognized as indicators of exploitation.
- 2.2.** In line with the 2017 CEDAW Committee's Concluding Observations to Thailand and the 2019 Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, **focus on better regulation of the entertainment industry by ensuring the full application of labor laws and social benefits within the industry.** Legal reforms should include labor rights for sex workers; labor inspections, led by a team composed of sex worker organizations and law enforcement; the introduction of good labor practices for decent sex work, and improvement of occupational safety and health.
- 2.3.** **Ensure that sex workers can effectively challenge employment practices that violate their human rights through employment tribunals and other grievance mechanisms** offered by the 2015 Gender Equality Act, the National Human Rights Commission (NHRCT) and the national justice system.

3. On Challenge 3: Sex workers face abuse, violence, and harassment at the hands of the police and clients

- 3.1.** According to the 2017 CEDAW Committee's Concluding Observations to Thailand, **investigate and punish individuals who exploit women in sex work, including government officials; and immediately end the practice of violent raids of entertainment venues, entrapment operations and extortion and hold individual police officers accountable for their involvement in such activities and in corruption practices, such as briberies.**
- 3.2.** According to the 2017 CEDAW Committee's Concluding Observations to Thailand, **provide assistance, rehabilitation, and reintegration programs for women and girls exploited in sex work, in addition to exit programs for women wishing to leave the profession.**

REFERENCES

Bangkok Post, Scared but desperate, Thai sex workers forced to the street, April 5, 2020, available at:
<https://www.bangkokpost.com/thailand/general/1893510/scared-but-desperate-thai-sex-workers-forced-to-the-street>

Channel News Asia, 'We don't know if we'll survive': Thailand sex workers left struggling as COVID-19 lockdown drags on, August 14, 2021, available at:
<https://www.channelnewsasia.com/asia/thailand-covid-19-sex-workers-jobless-starving-2108501>

Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined sixth and seventh periodic reports of Thailand, CEDAW/C/THA/CO/6-7, July 24, 2017, accessible at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/THA/CO/6-7&Lang=En

Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005), effective July 16, 2005, Section 18, accessible at:
http://web.krisdika.go.th/data/document/ext810/810259_0001.pdf

EMPOWER Foundation, Submission: Sex Workers and the Thai Entertainment Industry, for the 67th Session of the Committee on the Elimination of Discrimination Against Women.

Human Rights Council, Visit to Thailand: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/41/43/Add.1, May 21, 2019, available at: <https://undocs.org/A/HRC/41/43/Add.1>

Manushya Foundation and BHR Network, Summary of Joint Comments on the Final Draft National Action Plan on Business and Human Rights in Thailand (NAP-BHR), March 2019, accessible at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_0a0709e4800e4691abc8eed264bb61af.pdf

Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment: Gender-Based Discrimination and Sexual Harassment in the Workplace, March 2019, available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_28e0280277cd4047ab3050385a7fb248.pdf

Manushya Foundation, Applying a Gender Lens to the UNGPs in the Context of Thailand, March 2019, available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_a35a586811f243f8ba679d9270f21dd2.pdf

Manushya Foundation, Thai BHR Network, Women Workers for Justice Group, Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR, Joint UPR Submission: Business and Human Rights (BHR) in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.

Matichon Online, Public Consultation: What direction should regulation of sex work move towards? (in Thai), August 13, 2021, available at:
https://www.matichon.co.th/publicize/news_2936456

Matichon Online, The Director-General of the Department of Women's Affairs and Family Development invites the public to submit comments on the direction of the regulation of sex work (in Thai), August 24, 2021, available at: https://www.matichon.co.th/lifestyle/social-women/news_2956030

Prevention and Suppression of Prostitution Act B.E. 2539 (1996), effective October 14, 1996, Section 7, accessible at:
[http://web.krisdika.go.th/data/outsitedata/outsite21/file/Prevention_and_Suppression_of_Prostitution_Act_BE_2539_\(1996\).pdf](http://web.krisdika.go.th/data/outsitedata/outsite21/file/Prevention_and_Suppression_of_Prostitution_Act_BE_2539_(1996).pdf)
 Reuters, Thailand's sex workers petition to decriminalize prostitution, September 22, 2020, accessible at: <https://www.reuters.com/article/thailand-law-sexworkers-idUSL5N2GJ2N2>

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HUMAN TRAFFICKING IN THAILAND

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

Thailand has long been the country of origin, transit, and destination for human trafficking. Despite its increased efforts at both the national and international level in addressing human trafficking and related issues, Thailand still lacks effective implementation of legislation and policies to tackle human trafficking and to assist victims of human trafficking. In 2018, Thailand was promoted from Tier 2 Watchlist to Tier 2 in the US Department of State's Trafficking in Persons Report and was delisted from the "yellow-card countries list" of the European's Commission for its progress in tackling illegal, unreported, and unregulated fishing in 2019. As Thailand has had little to no progress in fighting human trafficking since, as demonstrated by the fact that victims of human trafficking are often unable to receive compensation or seek other remedies, Thailand has been downgraded from Tier 2 to Tier 2 Watchlist by the US Department of State for the first time in four years in 2021. In response, Thailand expressed its disappointment, stating that the ranking "does not reflect fairly the significant efforts and concrete progress Thailand has made in combating human trafficking."

During its 2nd UPR cycle, Thailand received 15 recommendations concerning human trafficking, which it supported. Out of 14 recommendations, only two recommendations have been fully implemented, with the 13 other recommendations only partially implemented. Amongst others, Thailand accepted a recommendation from Uganda to "ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons," as well as a recommendation from Norway to "give priority to the implementation of the Palermo Protocol and the prosecution of persons benefiting from human trafficking." Since the last UPR cycle, Thailand ratified several international instruments concerning human trafficking. In 2013, Thailand ratified the Protocol to Prevent, Suppress, and punish Trafficking in Persons, also known as the Palermo Protocol. In 2016, Thailand ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which is the region's first legally binding instrument to combat human trafficking. In 2019, Thailand ratified the ILO Convention on Work in Fishing in line with Romania's recommendation. Moreover, Thailand accepted a recommendation from Norway to "ensure that Section 4 and Section 6 of the [Anti-Trafficking in Persons Act of 2008], specifically defining the term "wrongful exploitation", comply with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and increase the role of labour inspectors in identifying victims of human trafficking and prevent abusive working conditions, in line with the recommendations made by the 2012 report of the Special Rapporteur on trafficking in persons, especially women and children." While Thailand amended the Anti-Trafficking in Persons Act of 2008 to specifically address "forced labour or services" in 2019, the amendment not only prescribed significantly lower penalties for labour trafficking offenses compared to existing penalties, but also, created confusion among government officials because of the absence of implementing guidelines. Overall, there has been a significant decrease in investigations, prosecutions, and convictions owing to decreased government efforts. For labour trafficking, even though Thailand reported investigating 77 potential cases of labour trafficking in 2019, Thailand only reported investigating 14 potential cases of labour trafficking in 2020, which is primarily attributable to a lack of understanding of forced labour among government officials. The role of labour inspectors remains limited, as there is no standard procedure in place for labour inspectors to refer potential cases to law enforcement. In many cases, labour inspectors and law enforcement officials investigate the same cases separately, jeopardizing the success of criminal prosecutions.

Concurrently, Thailand received 4 recommendations concerning the elimination of child sexual exploitation, which it supported, but partially implemented. For example, Thailand accepted a recommendation from Panama to "adopt concrete measures to eradicate child labour, abuse and sexual exploitation of children, including its involvement in sexual tourism." In September 2020, the Thai Internet Crimes Against Children Task Force (TICAC) became a permanent subdivision within the Royal Thai Police. As of June 2020, TICAC rescued more than 100 children, the highest annual figure since its founding in 2016. While Thailand has increased its efforts to combat child sexual exploitation in recent years, its efforts remain insufficient in the fight against child sexual exploitation, as online sexual exploitation has been on the rise during the COVID-19 outbreak.

NATIONAL LEGAL FRAMEWORK

The Anti-Trafficking in Persons Act, B.E. 2551 (2008), as amended criminalizes all forms of trafficking, such as sex trafficking and labour trafficking. Recent amendments to the Act in 2016 and 2019 have expanded the definition of exploitation to address practices similar to slavery, as well as forced labour or services, including debt bondage. Under the Act, offenses involving an adult victim are subject to penalties in the form of four to 12 years' imprisonment and a fine of THB 400,000 to 1.2 million, while offenses involving a child victim are subject to six to 20 years' imprisonment and a fine of THB 600,000 to 2 million.

The Human Trafficking Criminal Procedures Act, B.E. 2559 (2016) introduces an inquisitorial system in human trafficking cases, requiring courts to take a more proactive role in the fact-finding process of human trafficking cases. The Act also introduces key procedural measures designed to make the adjudication process less burdensome for the trafficking victims, such as allowing the use of videos for witness cross-examination and testimony.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Widespread corruption and official complicity continue to hinder efforts in the fight against trafficking

Government corruption and complicity allow trafficking to continue unabated in Thailand. Collusion with traffickers remains rampant, as government officials directly profit from trafficking operations, even directly partnering with traffickers or leading trafficking operations. Police officials accept bribes in exchange for protection from raids, inspections, and prosecutions. In many cases, police officials purposely compromise investigations and withhold evidence from prosecutors.

Recently, the Thai government refocused its attention on the problem of corruption and official complicity in the fight against trafficking. In December 2020, Prime Minister Prayut Chan-o-cha set up a special committee to investigate government officials abetting trafficking. In the same month, a local government official was arrested on trafficking charges for allegedly trafficking migrants from Myanmar to work in Thailand's seafood industry.

Nevertheless, suspected government officials typically do not face harsh punishment, as administrative punishments are typically utilized instead of criminal investigations and prosecutions. So far, since 2012, Thailand has investigated 73 officials for official complicity. In 2020, Thailand convicted and sentenced five officials to imprisonment. In the same year, the Anti-Money Laundering Office ordered the seizure of assets in the amount of THB 1.2 million from two complicit government officials. When suspected government officials are investigated and prosecuted, threats are made against witnesses, translators, and police investigators during the investigation and trial. Premature termination of investigations is also a common occurrence in Thailand.

Challenge 2: The difficult process of accessing judicial remedy in trafficking cases, including systematic disincentives, dissuades trafficking victims from seeking prosecution

Systematic disincentives, such as an excessively long duration of court cases and processes, as well as stays in shelters, combined with a lengthy repatriation process result in many trafficking victims returning to their country of origin instead of seeking prosecution in Thailand.

Throughout the judicial process, trafficking victims face intimidation and threats from traffickers, resulting in victims either being reluctant to testify or accepting financial incentives instead of undergoing lengthy legal proceedings. For example, Khin Zaw Win, a former Myanmar fishing crew man in Thailand, stated, *"On the day before we went to the court, two men came to see us [at the police station]. One was Burmese and the other one was Thai. The Burmese person was the one who we had refused as a translator before. A Thai man was with him. They told us that we were due to attend court the next day and asked us not to mention the boat owner's name before the court. They also asked us not to mention any information about the boat owner, such as a boat's serial number and the name of the fish processing facility. Even we had not been informed yet at that time that we were going to be taken to the court that day, but they already knew beforehand. We were told that the boat owner was prepared to give us 'hush money' on our return [to Myanmar]."*

For trafficking victims who are migrants, language barriers bar them from avenues to access remedies and escape their situations. Many migrant workers lack the necessary Thai language skills to find out about or have access to grievance redressal mechanisms, to contact authorities and use other services designed to assist them. According to Patima Tungpuchayakul, co-founder of the Labour Rights Promotion Network (LPN), there is also a lack of interpreters, causing government officials to seek help from other migrant workers in the area. Since interpretations are typically incomplete, the information necessary to proceed with prosecution is lost in translation.

Challenge 3: Human trafficking is closely associated with people smuggling and illegal migration, making it difficult to clearly identify trafficking victims

The lack of understanding of the nature of trafficking and thereby the inability to distinguish between "trafficking victims" and "illegal immigrants" results in trafficking victims being wary of speaking up out of fear of being stigmatized as illegal immigrants and facing criminal prosecution or deportation. Concurrently, illegal immigrants are often believed to be trafficking victims and face misguided rescue operations.

Sex work is generally conflated with trafficking in Thailand, resulting in wrongly conducted raids of entertainment establishments to 'rescue migrant sex workers', who are believed to be trafficking victims. Consequently, these 'rescued' sex workers are left without work or means to provide for themselves and their families. These misguided 'rescue operations' led to reduced access to remedies, confinement in immigration detention centers, protracted lawsuits, and deportation.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 4: The absence and denial of citizenship rights to indigenous women make them particularly vulnerable to human trafficking

Trafficking remains a persistent issue afflicting indigenous women. Even though the Thai government enhanced its awareness-raising efforts, they have not reached indigenous peoples in remote areas who remain unaware of trafficking and how to prevent it from happening. Overall, there is an overwhelming perception that government communication around trafficking and the associated policies to combat it are not adequately shared at the community level.

Indigenous women are disproportionately victims of human trafficking. Being denied citizenship, facing land evictions, having limited access to education, and lacking access to justice and effective remedies, indigenous women often fall victim to trafficking. UNESCO has also confirmed that lacking citizenship is one of the main risk factors for falling victim to trafficking.

Indigenous women are regularly trafficked to work in spas and massage parlors abroad. Indigenous women who migrate informally across Thailand's borders and enter into sex work are subject to discrimination on the basis of their ethnic status and denied basic rights, including access to healthcare and education. The lack of citizenship of indigenous women exacerbates their vulnerability and their gender makes them prone to sexual violence. Due to their lack of legal status, indigenous women are less likely to report trafficking cases.

Survivors of sex trafficking often face stigma upon return from being trafficked. Those who reintegrate often have "reduced" chances of finding work and the victimization affects the entire family, further impeding the empowerment of indigenous women in their communities.

RECOMMENDATIONS

1. On Challenge 1: Widespread corruption and official complicity continue to hinder efforts in the fight against trafficking.

1.1. In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **commit firmly to a policy of zero tolerance of trafficking-related corruption and complicity by government officials. Offenders should be prosecuted and adequately punished with a view to dissuade such practices.**

2. On Challenge 2: The difficult process of accessing judicial remedy in trafficking cases, including systematic disincentives, dissuades trafficking victims from seeking prosecution.

2.1. In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that trafficked victims are provided with the necessary support and assistance to seek remedies, such as legal aid and interpretation assistance.**

3. On Challenge 3: Human trafficking is closely associated with people smuggling and illegal migration, making it difficult to clearly identify trafficking victims.

3.1. In line with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **intensify efforts to raise awareness about the nature of trafficking. Mandatory training should be carried out to ensure that government officials are cognizant of the difference between "trafficking victims" and "illegal immigrants."**

3.2. In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that raids and rescue operations are victim-centered and do not cause any discriminatory impact on victims and those who are not victims of trafficking. Victims should also not be criminalized or penalized for status-related offences, such as violations of immigration laws.**

4. On Challenge 4: The absence and denial of citizenship rights to indigenous women make them particularly vulnerable to human trafficking

4.1. In line with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that awareness-raising activities appropriately target specific groups at higher risk of being trafficked, such as migrant workers and indigenous peoples.**

4.2. **Take concrete steps and comprehensive measures to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.**



REFERENCES

Bangkok Post, Thailand downgraded in US human trafficking report, July 2, 2021, available at:
<https://www.bangkokpost.com/thailand/general/2142431/thailand-downgraded-in-us-human-trafficking-report>

Bangkok Post, Govt told to crack down on human trafficking after US report demotion, July 4, 2021, available at:
<https://www.bangkokpost.com/thailand/general/2142891/govt-told-to-crack-down-on-human-trafficking-after-us-report-demotion>

EMPOWER Foundation, Submission:Sex Workers and the Thai Entertainment Industry, for the 67th Session of the Committee on the Elimination of Discrimination Against Women, May 19, 2017, available at:
https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_NGO_THA_27511_E.pdf

Ministry of Foreign Affairs, Thailand Ratifies UN Convention against Transnational Organized Crime (UNTOC) and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, October 20, 2013, available at: <https://www.mfa.go.th/en/content/5d5bcd2515e39c306000f543?cate=5d5bcb4e15e39c3060006834>

Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment (NBA) on Business & Human Rights: Exploitative Labour Practices: Modern Slavery, Forced Labour, Human Trafficking & Child Labour, March 2019, available at: https://a9e7bfcc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_4207c738c414420baf136b17e8725ed4.pdf

Manushya Foundation, Thai BHR Network, Women Workers for Justice Group, Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR, Joint UPR Submission: BHR in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.

Manushya Foundation and Indigenous Women's Network of Thailand, Joint UPR Submission: The Rights of Indigenous Women in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.
Ministry of Foreign Affairs, Thailand Ratifies ILO's Work in Fishing Convention No. 188, 2007 (C188), February 13, 2019, available at:
<https://www.mfa.go.th/en/content/5d5bd21415e39c3060027cef?page=5d5bd3da15e39c306002aa&menu=5d5bd3da15e39c306002aa>

Reuters, Online child sex abuse in Thailand nears record high with coronavirus, June 19, 2020, available at:
<https://www.reuters.com/article/us-thailand-sexcrimes-internet-trfn-idUSKBN23P33K>

The Diplomat, Thailand Ratifies ASEAN Trafficking Convention, July 26, 2017, available at: <https://thediplomat.com/2016/07/thailand-ratifies-asean-trafficking-convention/>

U.S. Department of State, 2021 Trafficking in Persons Report: Thailand, 2021, available at: <https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>

UN Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children: Mission to Thailand, A/HRC/20/18/Add.2, May 2, 2012, available at: <https://www.refworld.org/docid/501648522.html>

VOA News, Thailand's Prime Minister Orders Crackdown on Officials Abetting Human Traffickers, December 29, 2020, available at:
<https://www.voanews.com/east-asia-pacific/thailands-prime-minister-orders-crackdown-officials-abetting-human-traffickers>



PEOPLE & PLANET OVER PROFIT

Development Projects & the Protection of Human Rights Defenders



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

In Thailand, the military-backed government has accelerated the push for economic growth, since it has become a priority in the country's 20-year national strategy (2018-2037), Thailand 4.0 Policy and the 12th National Economic and Social Development Plan (2017–2021). Industrial expansion, the construction of big infrastructure projects, and the establishment of special economic zones (SEZs) and corridors are all envisaged as means of achieving this goal. Nevertheless, while these investments can contribute to economic development opportunities, the combination of weak land governance, corruption, and lack of transparency, has created an unrestricted setting for projects and business practices where local communities' rights are overlooked, being excluded from projects' consultations, silenced by companies and evicted from their land. As a result, their distinct dependence and connection to their land, as part of their identity and culture, are often not prioritized over profit-making development projects, leading to the infringement of numerous human rights, including their economic, social and cultural rights (e.g. right to a healthy environment, right to health, right to food security, right to housing, right to work, right to sustain their livelihood) and civil and political rights (e.g. right to access information, right to be consulted, right to life).

During the 2nd UPR Cycle, Thailand received one recommendation specifically addressing the necessity to “monitor enforcement of environmental legislation to protect the rights of local communities and prevent environmental degradation,” made by the Maldives, which it supported. Moreover, the importance of addressing “the issue of human rights in the pursuit of economic growth in local areas” was addressed in the recommendation made by Nigeria, which the government also supported. The most prominent recommendation supported by the government and to which it paid careful attention over the past five years is the one made by Sweden related to “**Develop, enact and implement a national action plan on business and human rights in order to implement the guiding Principles on Business and Human Rights**”. In addition, the Thai government accepted all 14 recommendations on the protection of rights of vulnerable populations. Besides, the Thai government received eight recommendations on the protection of human rights defenders (HRDs), of which six were supported and two were noted. Nevertheless, it failed to implement all of the recommendations related to the protection of HRDs.

Despite Thailand's adoption of a National Action Plan on Business and Human Rights (Thai NAP-BHR) on October 29, 2019, in line with Sweden's recommendation during the 2nd UPR cycle, the Thai NAP-BHR does not provide for implementation through legally binding mandatory provisions, in order to hold the business sector and state-owned enterprises accountable for their abusive business conducts. The Thai NAP-BHR neither addresses violations of the rights of communities to land, natural resources, and the environment, nor provides protection from physical threats and judicial harassment against land, community, and environment human rights defenders. The Thai NAP-BHR only contains voluntary measures and promotes responsible business practices; thus not following the guidelines set by the UNWG on Business and Human Rights, encouraging NAP-BHRS to include a smart mix of mandatory and voluntary measures. Yet, over the past five years we have observed an increasing number of SLAPP cases, judicial harassment by companies against HRDs speaking truth to power, and standing up to protect their lands and livelihoods. Thailand must enact a legislation that would hold corporations into account and would effectively provide remedy to victims. With the third UPR cycle, the need for a mandatory human rights due diligence legislation that would guarantee corporate accountability and access to effective remedy has never been greater.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Free, Prior, and Informed Consent (FPIC) of local communities and indigenous peoples in relation to development projects is not sought

Section 78 of the 2017 Constitution guarantees the participation of people and communities in various aspects of the development of the country, in the provision of public services at both national and local levels, in the scrutiny of the exercise of State power, in combating against dishonest acts and wrongful conducts, as well as in decision making in politics and in all other matters that may affect them. Despite the explicit provision, lack of participation in decision-making and consultations of local communities and indigenous peoples affected by policies remain.

Although the Thai NAP-BHR discusses the right to "Free, Prior and Informed consent (FPIC)" and its use in the management of land, forests, and natural resources, it does not mention how it shall be implemented and it totally leaves out indigenous peoples who exercise this right.

Local communities and indigenous peoples are not informed of development projects which would impact their lives and the environment. Information about the potential negative impacts of development projects is usually withheld from local communities and indigenous peoples, resulting in the violation of their right to access information and to be informed about the project. Ultimately, their Free, Prior & Informed Consent (FPIC) is not sought, resulting in unfair land evictions and violation to their community rights. Their livelihoods are often impacted by policies and decisions they did not consent to or were not aware of.

In Southern Thailand, the Southern Development Plan has initiated 20 large-scale development projects, such as the Bara deep-sea port in Satul province in 2017, a coal-fired power plant in Chumphon province in 2018, and 150,000-Rai (240 square kilometres) industrial estate in Satun province. Although these projects have numerous negative environmental and health impacts on the local communities, they were neither informed about them nor engaged in the processes of decision-making.

#SaveThepa

Community members opposing development projects are oftentimes barred from entering public hearings, and most of them are not conducted in a language that local communities can understand, or are held at far locations. For example, in relation to the Thepa coal-fired power plant in Songkla Province, a project owned by the Electricity Generating Authority of Thailand (EGAT), a state-owned enterprise, the Thepa community reported that, in the first public hearing, they received very little explanation regarding the project and no information on its negative impacts. The community also reported that the second hearing was held in secret, without informing the opponents to the project nor the communities from Pattani Province, eight kilometers away from the project. Opponents were further banned from participating in the third public hearing held in July 2015. This case demonstrates the ineffective and detrimental impact of business conducts on human rights, as foreseen adverse impacts of the coal-fired power plant are loss of biodiversity and ecosystems, pollution, diseases and health issues, and loss of cultivation of land and traditional fishing as a way of living.

Similarly, in the case of Thai investments abroad, the communities affected by the Dawei Special Economic Zone (SEZ) developed by the Italian-Thai Development PCL (ITD) in Myanmar, were given only limited information about the project when the concession was granted to ITD in 2015, and many communities were displaced. Two-thirds of the 1,583 households surveyed were not provided with any information from government agencies or companies. 60% of those households who did receive information were only provided with a listing of benefits of the project.

Challenge 2: Adequate environmental impact assessments (EIAs) or Environmental and Health Impact Assessments (EHIAs) are not conducted in relation to development projects

Section 58 of the 2017 Constitution requires an impact assessment for activities that may severely affect natural resources, environmental quality, health, sanitation, quality of life, or any other essential interest of the people or the environment. Despite the explicit provision, the Thai government often exercises its power to allow development projects to proceed without having conducted adequate environmental impact assessments (EIAs) or Environmental and Health Impact Assessments (EHIAs). In particular, the Thai government relaxed the process of EIAs or EHIAs in certain cases and even during the COVID-19 pandemic.

The Thai government relaxed the process of EIAs or EHIAs in certain cases. In 2016, the National Council for Peace and Order issued NCPO Order 9/2016 to speed up the review process for certain projects by allowing project approval to be sought from the Cabinet prior to EIA completion. Under the Eastern Special Development Zone Act of 2018, EIA reports are to be approved within 120 days of the completion of the report, which may be too short a period to carefully review the report.

As no proper EIAs or EHIAs are conducted before development projects are pursued, these projects adversely affect the environment, natural resources, and livelihoods, health, and well-being of communities. Examples of negative impacts include pollution, threats to water supplies, and transformation of fertile farmlands into industrial areas.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

The Thai NAP-BHR provides for impartial, independent, and transparent Environmental Impact Assessment (EIA), Environmental Health Impact Assessment (EHIA), and Strategic Environmental Assessment (SEA) process. However, without making it mandatory, companies rely on the weak constitutional provision, with government officials allowed to relax EIAs processes in the benefit of businesses.

The Thai NAP-BHR also does not include legally binding mandatory provisions to oblige companies to conduct a human rights impact assessment (HRIA), applying a gender lens, and hold the business sector and state-owned enterprises accountable. In many instances, community members opposing development projects have been excluded from the public hearings, resulting in EIAs completely flawed and only taking into account the voices of communities supportive of the projects, who often represent the minority voices among the overall community members to be impacted by the development projects.

#SaveChana

Chana Industrial Estate project is a governmental large-scale industrial development program in Southern Thailand, steered by the Southern Border Provinces Administration Centre (SBPAC), seeking to transform Chana into “an advanced industrial city for the future”. The affected area is home to more than 30,000 residents, many of whom have voiced grave concerns about the massive development project's effects on the environment and the livelihoods of the citizens. A document from SBPAC reveals that 60% of the Chana industrial city would be used for power generation, heavy industry and other industries related to the sea ports. Many residents of Chana and its surrounding region only found out about the plans concerning their homelands after the project had been approved by the national Cabinet in May 2020, and the SBPAC has also blatantly stopped them from participating in the public hearing arranged in July 2020. **The government further took advantage of the COVID-19 pandemic to restrict CHANA communities' access to the decision-making processes**, and obstructed them from attending public hearings on the construction of the Chana Industrial Zone. In July 2020, the government held the public hearing during Ramadan while COVID-19 travel restrictions remained in place, preventing communities from being informed and consulted. Therefore, despite protests from members of the Chana Rak Tin Network, the government moved forward with the implementation of its Southern Economic Corridor. Furthermore, based on a feasibility study report distributed by SBPAC, there is a significant risk of ecological damage, which would affect livelihoods and health of people in a vast area, such as by causing respiratory problems. However, in March 2021 it was announced by Deputy Prime Minister Wissanu Krea-ngam, that SBPAC would be allowed to continue with the project with the requirement of conducting an EIA, EHIA and public hearings. Due to weak EIA/EHIA legislations and the lack of actualisation of FPIC, the project continues to pose a threat to the environment, health and livelihoods of the local communities.

Activist Kaireya Ramanyah, known as **"Daughter of the Sea"**, invited Prime Minister Prayut Chan-o-cha to her home where she can see dolphins swimming in the ocean; “You may realise that real development should be in line with safeguarding natural resources,” she said. **"Your plan might generate huge profits, but it is not for locals."**

#SaveOmkoi

Coal use has expanded in Thailand's industrial sector during the previous three decades, prompting mining corporations to look for new exploitation areas. Omkoi, Chiangmai, a district with no land rights for indigenous and ethnic minorities, has become a target of exploitation. In 1987, a private company bought a large plot of land in the Kaboebin Village, Omkoi District, and some locals sold their land under the threat of uncompensated land grabbing. In 2000, 99 Thuvanon Company Limited requested a coal mining concession certificate, and the Environmental Impact Assessment (EIA) began the same year, ending in 2011. However, its transparency is questionable due to a series of reasons: fake consents (illiterate Thais' names on the EIA's list of people consenting the project); company's lies about the participants attending the hearing, disinformation; and lack of Free, Prior and Informed Consent (FPIC) sought. The coal mine poses serious environmental risks, such as contamination of natural water resources, loss of biodiversity, greenhouse gas emissions, and highly impacts local communities' livelihoods, causing displacement and loss of food security, among others.

Challenge 3: Lands belonging to local communities and indigenous peoples are confiscated or 'grabbed' for economic development, such as the establishment of Special Economic Zones (SEZs) or Tourism resorts

Special Economic Zones (SEZs) are perfect examples of how the **Thai Government favors Profit over People and the Planet**. Land grabbing, land confiscations, and forced evictions in the name of economic development is a pervasive phenomenon in Thailand.

Land grabs in support of the Eastern Economic Corridor (EEC)

The EEC is supporting industrial sectors in three provinces: Rayong, Chon Buri, and Chachoengsao. The most essential watershed of Eastern Thailand, the low riverplain of the Bangpakong River, is located in the western part of Chachoengsao.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

One government policy that has gained much public attention is the creation of Special Economic Zones (SEZs). The government under PM Prayut Chan-o-cha has given this policy a strong push by offering generous incentives for investors in the hope it will enhance the linkages between Thailand and other ASEAN countries and increase Thailand's competitiveness. In the case of large-scale development projects, including SEZs and in particular, for the Eastern Economic Corridor (EEC), businesses have been involved in illegal land grabs in provinces that are part of the EEC initiative. Local people living in the area also do not want this creation to take place due to the fact that 11,200,000 square meters of the green area must be sacrificed.

The EEC will pose risks to the Bangpakong River basin's water and food security by 2030, which will lead to further consequences across the region. Local communities suffer from unfair allocation of water resources, as the Thai government prioritises providing water to the industrial sector over communities. **In January 2020, the Thai government already reclaimed over 200,000 rai of land in Chanthaburi Province to build four reservoirs to supply the EEC project with 300 million cubic meters of water.** The large water supply required is particularly problematic for communities, as Thailand is experiencing the worst drought in 40 years.

Furthermore, on occasions, land grabbing is a result of state action directly or indirectly through land brokers: farmers have received letters asking them to vacate their lands by the State and others have been threatened with eviction because they have no legal land titles over the land they have farmed for generations. For example, in **Chachoengsao Province**, which is part of the EEC, in 2018, **635 people were threatened with eviction from land** totalling at least 1,580 acres that they have farmed for three generations, but have no legal title to, not realising that it has passed from one private owner to another, and eventually ending up in hands of the State.

In the case of the Mae Sot SEZ in Tak Province, lands belonging to local communities which were utilised for residential and farming purposes were expropriated for the development of the SEZ without consultation. In 2015, 93 villagers had their land confiscated by the government without prior warning. Though the government eventually provided them with compensation for the expropriated land, the amounts were found to be unfair and concluded without negotiation.

Threat of Land Grabbing for the development of Tourism Resort faced by Urak Lawoi Indigenous Women in Koh Sireh

The indigenous Urak Lawoi peoples of Koh Sireh Island, despite having lived on their ancestral grounds for almost a century, have experienced increasing issues as a result of the island's rapid business expansion and building, which is primarily tied to tourism and real estate projects. Due to a lack of proper land titles, the Urak Lawoi's lands were sold to investors in 2012, and the community was served with an eviction notice. The Urak Lawoi have been fighting a long legal battle to keep their ancestral lands, with the Court of First Instance first ruling in their favour, in March 2013, but the Appeal Court ruling against them in September 2017. Despite the Supreme Court's decision in their favour, in August 2019, the Urak Lawoi are still waiting for a practical solution to secure their land rights. The Urak Lawoi Women sought to participate actively in the preparation of their Appeal Court lawsuit, being the major voices raising concerns about malpractices of the legal proceedings. However, they were excluded from the consultative process as well as court proceedings in the case involving their fundamental rights, ancestral lands, and livelihoods. The Urak Lawoi case covers a complex set of issues, ranging from the lack of effective access to justice to the denial of their involvement and consultation, as indigenous women. To this, the pressure and stigmatisation they faced throughout the whole process have to be emphasised.

Challenge 4: The State fails to hold companies accountable for their adverse business conducts and to provide effective remedy and adequate compensation to victims

Thailand does not have any laws that require business enterprises to respect human rights, and it also fails to oversee business enterprises' activities to meet their international human rights obligations, including those related to the respect of health, environment, and livelihood. Moreover, it fails to ensure effective access to remedy and to uphold the right to adequate compensation.

While the State is unsuccessful in protecting human rights in business contexts, the corporate responsibility of business enterprises to respect human rights is also unmet. Individual and community rights are frequently impacted when enterprises meddle with property ownership, partly because such impacts are not deemed human rights infractions and abuses, especially in the case of marginalised groups. This aspect is particularly relevant to land rights, because land issues are linked to the enjoyment of specific substantive human rights, such as the rights to adequate housing, food, water, health, work, and self-determination. Furthermore, most often, the affected communities are denied the access to effective remedy, having no meaning to receive any compensation.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

On access to an effective remedy, the *Thai NAP-BHR* encourages businesses to organize consultations with HRDs, to collaborate to prevent, tackle, and provide a remedy against the negative impact of business activities on human rights. However, it does not adequately include state-based non-judicial grievance redress mechanisms; customary laws and practices of affected communities; and barriers to accessing remedy.

#JusticeforPhichit

In 2001, Akara Resources Public Company Limited, a gold mining company, started commercial operations in Phichit and Phetchabun provinces, affecting the livelihood of over 6,000 villagers. Since then, the villagers' living conditions have deteriorated significantly in terms of both physical and mental health, as the area in which they live and the natural resources on which they rely have been extensively polluted. Moreover, the mining operations resulted in a water deficit as well as contamination of available water sources and their land, making it impossible for them to cultivate their land and sustain their livelihoods. The villagers have also suffered from severe rashes and itchiness as well as respiratory difficulties, nausea, and excessive levels of heavy metals have been found in the blood of some of them. For over a decade, the villagers have fought back against the gold mine, conducting peaceful protests, sending complaints to relevant governmental agencies, and raising awareness on social media. However, the local police of the Tab Klor District filed charges against 27 out of 100 of the villagers who participated in the protests in 2016, on the grounds of having violated the Public Assembly Act B.E. 2558 (2015).

Justice delayed is justice denied: Villagers have undertaken numerous attempts over the years to find an effective solution for the harmful effects they are experiencing, and to hold the company accountable for the damage it has caused. While the government closed the mine in 2017, no remedy or compensation were provided to them. In October 2019, the Ratchada Civil Court accepted a class-action lawsuit brought by 362 villagers in May 2016, and the case is still underway. Due to COVID-19, the first scheduled date has been postponed to 18 November 2021, and villagers are worried it would further be delayed.

In the case of the construction of the Pak Mun Dam, in the Isaan Northeastern region of Thailand, which caused severe ecological damage destroying villagers' livelihoods, families, and ties to their culture and land, the affected communities were neither informed nor included in the decision-making process. The Electricity Generating Authority of Thailand (EGAT) started construction of Pak Mun dam in June 1990, and has been operating Pak Mun as a run-of-the-river hydropower project since 1994. Because the authorities claimed they did not understand the Lao Isaan dialect, communities were denied adequate compensation for their loss and did not receive full restoration of their livelihoods, for more than 26 years now.

Challenge 5: Intimidation tactics, Judicial Harassment against Human Rights Defenders (HRDs)

Thailand neither recognizes Human Rights Defenders (HRDs) in its 2017 Constitution and national legislation nor has specific legislation comprehensively protecting whistleblowers and strengthening their rights. This aspect is partially covered by two relevant Acts: Organic Act on Counter Corruption of 1999 amended in 2011, and the Witness Protection Act of 2003 prescribing measures for protecting the person giving testimony or for whistleblowers, although they do not define the term "whistleblower". Moreover, many provisions under the Witness Protection Act are vague and discretionary.

The *Thai NAP-BHR* promotes the rights of HRDs by exchanging good practices to promote freedom of expression, building the capacity of communities, HRDs, and law enforcement officials on their rights; by providing knowledge to HRDs on government services available to assist them; and by creating a list of lawyers and legal advisors with expertise on addressing human rights violations. To remedy violations against HRDs, it promotes mediation at all levels and alternative dispute resolution mechanisms; as well as physical, mental, social, and professional assistance.

As a result of weak legal protections, HRDs and whistleblowers are frequently subjected to judicial harassment, which prohibits them from carrying out their legitimate actions. As Strategic Lawsuit Against Public Participation (SLAPP) is often employed to deter potential dissidents and opponents of the government from speaking out, it results in the creation of an environment that lacks a democratic space for environmental human rights defenders to voice the concerns of the local communities in cases of adverse business conducts inside Thailand and for the rights violations caused by Thai outbound investments.

Environmental Human Rights Defenders are the most at risk of threats, physical attacks and extra-judicial killings

In 2016, the Special Rapporteur on the Situation of Human Rights Defenders considered Thailand as one of the most dangerous countries for environmental rights defenders, a finding of which is continuously reiterated by the UN Environment Programme and Global Witness. In 2020, Global Witness found that at least 2 environmental defenders were killed in Thailand. Recently, the danger faced by many environmental rights defenders is both growing and spreading, who more often face violent threats, as well as the criminalization of their activities in order to be silenced. Further, the report indicates that environmental defenders have been targeted for safeguarding particular ecosystems, with 71% trying to protect the world's forests from deforestation and industrial development.



REALITIES ON THE GROUND

Challenges

However, in practice, these voluntary measures promoted in the *Thai NAP-BHR* are unknown by businesses who don't follow them. Worse, judicial harassment cases have increased over the past five years. **Therefore, despite the Thai NAP-BHR identifying the protection of HRDs as a key priority area, it fails to effectively protect HRDs and does not put an end to the abusive use of Strategic Lawsuits Against Public Participation (SLAPPs) to silence HRDs.**

Cases, Facts, Comments

Others were killed as a result of their efforts to safeguard rivers, coastlines, and oceans, while nearly a third of the attacks were allegedly linked to resource exploitation, such as logging, mining, and large-scale farming, as well as hydroelectric dams and other infrastructure. Also, indigenous peoples, the agents of climate conservation, paid a heavy price, being the target of 5 of the 7 mass killings recorded in 2020. The growing tide of force and violence is influenced by an intensifying focus on disputes over land and natural resources. For instance, in October 2020, **Dam Onmuang**, a land rights defender was nearly killed by shots fired at him by Somphon Chimrueng, a former employee of a private oil company in dispute with the Santi Pattani community. In August 2021, Somphon Chimrueng has been found guilty of the attempted murder and sentenced to 13 years and 16 months of imprisonment.

Increasing SLAPP Cases: despite the adoption of the *Thai NAP-BHR*, corporations have increasingly judicially harassed HRDs, community members, human rights researchers and activists denouncing rights violations.

Natural Fruit vs. Andy Hall: judicial harassment vs. migrant rights activist denouncing labour rights violations

In January 2013, British HRD Andy Hall released a report related to the violation of international labour standards in the food production industry for export in Thailand, which contained details regarding Natural Fruit Company's abuse of migrant workers. The Bangkok South Criminal Court subsequently received a complaint from the Natural Fruit Company, who filed a lawsuit against Andy Hall for publicising false information. Natural Fruit Company filed altogether four criminal and civil cases against Andy Hall. In September 2016, Andy was found guilty of criminal defamation and computer crime charges and was to be sentenced to four years in prison and fined THB 200,000. However, Andy's testimony reduced his sentence to three years, and a fine of THB 150,000. After a three-and-a-half-year legal battle and in the face of additional criminal charges, Andy Hall decided to flee Thailand in November 2016. In the same month, the Supreme Court dismissed criminal defamation charges against Andy Hall in respect of the interview he gave to Aljazeera. It was only in May 2018 that the Appeals Court overturned the guilty verdict by the Bangkok South Criminal Court, ruling that Andy Hall had not acted unlawfully. In June 2020, the Supreme Court upheld the Appeals Court's acquittal of Andy Hall on criminal defamation and computer crime charges. In October 2020, Natural Fruit Company withdrew the civil defamation case against Andy Hall in respect of the Supreme Court's decision on related charges. In May 2021, the Supreme Court upheld the Appeals Court's acquittal of Andy Hall on civil defamation charges in respect of the interview he gave to Aljazeera. Throughout all these years, Andy Hall had to experience tiring SLAPP cases and fled Thailand for his safety and freedoms.

Thammakaset Farm and the abusive use of SLAPPs against at least 22 individuals for alleged defamation of the company

Since 2016, Thammakaset Farm has filed at least 37 criminal and civil cases against human rights defenders, journalists and workers to silence criticism of their abusive labour practices.

- In 2016, 14 migrant workers from Myanmar complained to the National Human Rights Commission of Thailand (NHRCT) that Thammakaset Farm violated the Labour Protection Act by paying workers less than minimum wage, failing to pay overtime wages, and confiscating their passports. In response, Thammakaset Farm filed a criminal defamation case against these migrant workers in October 2016, claiming that their allegations were false. In July 2018, the migrant workers were acquitted of criminal defamation charges.
- In 2017, the journalist **Suchanee Cloitre** reported about the alleged labour rights violations at a chicken farm operated by Thammakaset in Lopburi Province, and, in March 2019, Thammakaset filed a criminal complaint against her. Lopburi Provincial Court convicted and sentenced her to a non-probationary sentence of two years in prison.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

On October 27, 2020, the Lopburi Court of Appeal overturned the conviction, ruling that Ms. Suchanee's statement was made in good faith and constituted "fair comment" on issues that were subject of public criticism.

- In October 2018, two criminal defamation charges were filed by Thammakaset Farm against **Nan Win**, a former Thammakaset employee, and **Sutharee Wannasiri**, a human rights defender. On one hand, Nan Win was accused of reporting alleged labour abuses against the 14 former employees in a film produced by Fortify Rights, during a Facebook-live press conference organised by the same organisation. On the other hand, the case against Sutharee Wannasiri was initiated for sharing on Twitter the video containing the comments made by Nan Win during the press conference. In June 2020, both Nan Win and Sutharee Wannasiri were acquitted of criminal defamation charges.
- **Ngamsuk Ruttanasatian**, lecturer at Mahidol University and HRD, was accused of defaming Thammakaset by sharing a Fortify Rights news release on IHRP's Facebook page on March 12, 2019. In 2019, preliminary hearings took place, and the case was dismissed owing to a lack of evidence. The complaint was further dismissed by the Bangkok Criminal Court and the Court of Appeals. Thammakaset, on the other hand, has filed a new appeal with the Supreme Court, with a hearing set for September 22, 2021.
- To date, the criminal defamation cases Thammakaset Farm filed in October 2019 and March 2020 against three women human rights defenders, namely **Angkhana Neelapajit**, human rights defender and former Commissioner of the NHRCT, **Puttanee Kangkun**, Fortify Rights Senior Human Rights Specialist, and **Thanaporn Saleephon**, former Fortify Rights Communications Associate, for having allegedly defamed Thammakaset by expressing support on social media for other HRDs facing lawsuits brought by the company, remain pending. A preliminary hearing for the combined case is scheduled for Bangkok South Criminal Court on December 27, 2021. Besides, **Angkana Neelapajit** also faces a separate complaint filed by Thammakaset for two other social media engagements. On August 16, 2021, the Bangkok South Criminal Court ruled to proceed with a trial in this case, granting her bail and setting October 26, 2021, for the first hearing.

RECOMMENDATIONS

1. On Challenge 1: Free, Prior, and Informed Consent (FPIC) of local communities and indigenous peoples in relation to development projects is not sought

- 1.1. In line with the 2015 CESCR's Concluding Observations to Thailand, **adopt a human rights-based approach in its development projects and establish participatory mechanisms in order to seek the free, prior and informed consent (FPIC) of affected communities**.
- 1.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **revise the 2017 Constitution to explicitly recognise indigenous peoples to be in line with international human rights standards for the rights of indigenous peoples**.

2. On Challenge 2: Adequate environmental impact assessments (EIAs) or Environmental and Health Impact Assessments (EHIAs) are not conducted in relation to development projects

- 2.1. In accordance with the 2015 CESCR's Concluding Observations to Thailand, **take steps to comprehensively regulate environmental protection and ensure strict enforcement of its environmental legislation, so as to prevent harmful effects on the health of communities**.
- 2.2. **Expand the NAP-BHR to enact mandatory corporate human rights due diligence (HRDD) legislation regulating business activities to ensure companies are held into account for their adverse business conducts, and respect human rights and the environment inside Thailand, and for Thai companies to respect human rights and the environment abroad. Companies must exercise HRDD along their entire corporate structure and supply chains, and the HRDD must include assessment of the negative impact of business activities on human rights through Human Rights Impact Assessments (HRIAs), and Community Human Rights Impact Assessments (CHRIAs), Social Impact Assessment; and on specific groups on individuals through Gender Impact Assessments (GIAs)**.



RECOMMENDATIONS

3. On Challenge 3: Lands belonging to local communities and indigenous peoples are confiscated or 'grabbed' for economic development, such as the establishment of Special Economic Zones (SEZs) or Tourism resorts

- 3.1.** In line with the 2015 CESCR's Concluding Observations to Thailand, legally prevent forced and arbitrary land grabbing and eviction of local communities, including cases for the purpose of development projects, whether public or private.
- 3.2.** In line with the 2015 Concluding Observations of CESCR to Thailand, ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation.
- 3.3.** Enact a constitutional provision or an Act recognising and providing indigenous peoples' rights to ownership of their ancestral land, in order to prevent invasion of corporate exploitation and protect indigenous minorities from eviction.
- 3.4.** Revise Forest Conservation Laws, including the National Park Act 2019, to ensure Indigenous Peoples and Forest Dependent Communities are considered Guardians of the Forest and are not criminalised as Capitalist Investors, and refrain from using the Forest Reclamation Policy as Thailand's Climate Solution to evict them from Forest area.
- 3.5.** Amend the NAP-BHR to address violations of the rights of communities to land, natural resources, and the environment.

4. On Challenge 4: The State fails to hold companies accountable for their adverse business conducts and to provide effective remedy and adequate compensation to victims

- 4.1.** In line with the 2015 CESCR's Concluding Observations to Thailand, establish a clear regulatory framework to ensure companies are legally accountable regarding violations of economic, social and cultural rights in their projects, including in cross-border development projects. The corporate human rights due diligence law must establish the company's civil liability for the harm caused by companies under their direct or indirect control when these have infringed human rights or environmental standards. The Law must also ensure disclosure of evidence rules establishing a fair distribution of the burden of proof, making sure that it is the company that would have to, at least, clarify its relationship with the entities involved in the harm, and whether it acted with due care and took all reasonable due diligence measures.
- 4.2.** Remove barriers to access effective judicial remedies for communities that experience violations of their rights by companies, and ensure effective and adequate compensation is provided for the adverse business impacts on community rights, their health, livelihood and the environment.

5. On Challenge 5: Intimidation tactics, Judicial Harassment against Human Rights Defenders (HRDs)

- 5.1.** In accordance with the 2015 CESCR's Concluding Observations to Thailand, adopt all measures necessary to protect human rights defenders, from any and all acts of intimidation, harassment and killings and ensure that perpetrators of such acts are brought to justice. Effectively protect and define 'human rights defenders' under the Constitution, in line with the UN Declaration on HRDs.
- 5.2.** Decriminalise defamation by repealing sections 326 to 333 of the Criminal Code and enact a standalone anti-SLAPP law to ensure legal protections against Strategic Lawsuits against Public Participation (SLAPP) aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations. In the meantime, enforce Sections 161/1 and 165/2 of the Criminal Procedure Code and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.

REFERENCES

- Article 19, Thailand: Act to prevent spurious lawsuits against human rights defenders, (12 June 2020), available at: <https://www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders/>
- Business & Human Rights Resource Centre, Thammakaset lawsuits against former workers (re defamation on labour conditions, Thailand), (4 June 2020), available at: <https://www.business-humanrights.org/en/latest-news/thammakaset-lawsuits-against-former-workers-re-defamation-on-labour-conditions-thailand/>
- Committee on Economic, Social and Cultural Rights, Concluding observations on the combined initial and second periodic reports of Thailand, E/C.12/THA/CO/1-2, June 19, 2015, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol=E/C.12/THA/CO/1-2&Lang=En
- FIDH, Thailand: Thammakaset Watch, (13 February 2020), available at: <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>
- Fortify Rights, Thailand: Drop Lawsuit by Chicken Company Against Three Women Human Rights Defenders, (23 November 2020), available at: <https://www.fortifyrights.org/tha-inv-2020-11-23>
- Fortify Rights, Thailand: End harassment of Suchaneey Cloitre, human rights defenders, (26 October 2020), available at: <https://www.fortifyrights.org/tha-inv-stm-2020-10-26/>
- Global Witness, Last line of defense, (13 September 2021), available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>
- International Commission of Jurists, Submission of the International Commission of Jurists, ENLAWTHAI Foundation and Land Watch Thai to the Universal Periodic Review of Thailand, (25 March 2021), available at: <https://www.icj.org/wp-content/uploads/2021/04/Thailand-UPR-Submission-1-ENG-2021.pdf>
- Fortify Rights, Thailand: Criminal Defamation Cases against Angkhana Neelapajit and Other Human Rights Defenders, (12 August 2021), available at: <https://www.fortifyrights.org/tha-inv-2021-08-12/>
- Land Watch Thai, Special Economic Zones and Land Dispossession in the Mekong Region, (October 2020), available at: <https://fb.hoell.org/sites/default/files/2021-05/SEZs%20in%20Land%20Dispossession%20in%20the%20Mekong%20Region-Update.pdf>
- Manushya Foundation and BHR Network, Summary of Joint Comments on the Final Draft National Action Plan on Business and Human Rights in Thailand (NAP-BHR), (March 2019), accessible at: <https://www.manushyafoundation.org/comments-on-the-nap-on-bhr>
- Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment on Business & Human Rights: Land-Related Rights in the Context of Business and Human Rights, (March 2019), available at: <https://www.manushyafoundation.org/nba-bhr-land-related-rights>
- Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment on Business & Human Rights: The Protection of Human Rights Defenders, (March 2019), available at: <https://www.manushyafoundation.org/nba-bhr-protection-hrds>
- Manushya Foundation, Community-Led & Participatory Research Report - 'Raising Our Voices To Save Our Future', Overview Of The Human Rights Challenges Faced By Indigenous Women In Thailand & Their Practical Solutions For A Sustainable Future, (September 2019), available at: <https://www.manushyafoundation.org/wmrt-report>
- Manushya Foundation, Sa Thong Rak Pak Network, Indigenous Women's Network of Thailand, Thai BHR Network and the Thai CSOs Coalition for the UPR, Joint UPR Submission: Land-Related Rights, Forest Conservation Laws and Climate Change Policies 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-landrights>
- Manushya Foundation, Thai BHR Network, Women Workers for Justice Group, Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR, Joint UPR Submission: Business and Human Rights in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, (March 2021).
- Special Rapporteur on the Situation of Human Rights Defenders, Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, August 3, 2016, available at: <https://undocs.org/A/71/281>
- Prachatai English, Court finds gunman guilty of attempted assassination of land rights defenders, (26 August 2021), available at: <https://prachatai.com/english/node/9417>
- Protection International, Thailand: Community-Based Human Rights Defenders in Court, (30 October 2014), available at: <https://www.protectioninternational.org/en/node/249>
- The Working Group on the Issues of Human Rights and Transnational Corporations and Other Business Enterprises, Report of the Working Group on the Issues of Human Rights and Transnational Corporations and Other Business Enterprises on its Visit to the Kingdom of Thailand, A/HRC/41/43/Add.1, (21 May 2019), available at: <https://undocs.org/en/A/HRC/41/43/Add.1>
- Witness Protection Act (2003), available at: <http://un-act.org/publication/thailands-witness-protection-act-2003/>



THAILAND'S FALSE CLIMATE SOLUTIONS WITH BAD FOREST CONSERVATION LAWS



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

During the 2nd UPR cycle, the Thai government received three recommendations directly related to land rights, forest conservation laws, and climate change policies made by Vietnam, Bolivia, and the Maldives. All three of them were accepted, nevertheless, our assessment shows that none of them has been fully implemented. State agents misappropriate land under the guise of climate change mitigation and protection of the environment, and while large corporate actors are generally unaffected, small subsistence farmers and indigenous peoples who protect their forests through their traditional ways of living, including traditional farming techniques, bear the brunt of such policies. Human rights defenders and community leaders who defy such actions are harassed, often without access to appropriate remedies. Women are especially excluded from public participation and find themselves at the margins of the community and society as a whole. Although the efforts to mitigate the effects of climate change and protect the national environment are commendable, they cannot come at the concerned communities' cost. The situation was further exacerbated by the revision of the National Parks Act in 2019. The amendment criminalizes villagers living within national parks and enables their eviction, making them vulnerable to poverty and further rights violations. The Act builds on the 2014 Forest Reclamation Policy which authorizes state officials to evict forest dwellers from their homes if they are found to encroach forest.

The unfair forest conservation laws are in line with the Thai government's ongoing efforts to ostracize indigenous peoples and forest-dependent communities. Instead of recognizing them as protectors of the forest whose traditional ways of living can help conserve the environment, the Government casts them as criminals and destroyers of the forest. This happens despite existing evidence that traditional farming of indigenous peoples is more resilient than industrial agriculture and is an effective climate change mitigation solution. For example, the 2012 Asia Indigenous Peoples Pact report showed how traditional cyclical cultivation strengthens food security, supports biodiversity, and can even contribute to the effective storage of carbon (carbon sequestration). More recently, a 2021 United Nations report evidenced that indigenous peoples are by far the best guardians of the forest, with deforestation being lower among indigenous communities. It is crucial that the Thai government recognizes these contributions and stops prosecuting indigenous peoples.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Thailand's false climate solution: Unfair forest conservation laws and the Forest Reclamation Policy.

Through the Forest Reclamation Policy of 2014, the Government has tried to ensure stricter enforcement of flawed forest conservation laws such as the Forest Act of 1941, the National Reserved Forests Act of 1964, and the National Park Act of 1961 which was amended in 2019. The policy as well as the older forest conservation laws were not developed with the interests of indigenous peoples and concerned communities at the centre, even though they are protectors of the forest. Instead of addressing their concerns, they criminalise them. In particular, the National Park Act of 2019 focuses on providing authority to officers rather than creating a collaborative process between communities and the authorities to sustain and maintain natural forest resources.

In Chaiyaphum province, 14 Sab Wai villagers have been unfairly convicted of trespassing, encroaching, and clearing land belonging to Sai Thong National Park under the Forestry Act, National Park Act, and National Reserved Forests Act enforced through the Forest Reclamation Policy of 2014. The criminalization of the villagers happened even though they have been living in the area since the 1970s, prior to its declaration as a national park. The villagers have been intimidated by national park officers and were forced to sign papers stating that they would vacate their land. In spring 2021, the Supreme Court confirmed lower instance courts' judgements that all 14 villagers were guilty, putting 11 of them on probation and sentencing 3 of them to jail. In May 2021, one of the villagers, Mr. Suwit Rattanachaisri received a writ of execution with a call for him to pay a civil penalty of 60,000 THB plus an interest rate of 7.5% per year, and to vacate his land.

REALITIES ON THE GROUND

Challenges

Under the National Park Act 2019, villagers residing in areas designated as national parks are automatically deemed to be in violation of the Act regardless of them having protected the forests and lived there for generations, which was not the case under the previous Act. Under the transitory provisions, villagers who wish to continue to reside in such areas must request permission from the government on a case-by-case basis. If the government grants permission, the villager is allowed to continue to reside in her/his respective area for a period of 20 years. However, the government has not yet indicated what will happen after the lapse of 20 years, so there is a substantial degree of uncertainty in respect of villagers' rights. If the government does not grant permission, the villager must immediately vacate her/his respective area.

Cases, Facts, Comments

Forest-dwelling communities in Mae Hong Son province have been recently facing a surge in land seizure cases. The situation is exacerbated by the Covid-19 pandemic which makes travelling of rights groups into the area very difficult. Local communities are then left to their own means without any external support. In June 2021, the Khao Pu - Khao Ya National Park issued an order to Mr. Decha to vacate land he had inherited under Section 64 of the National Parks Act 2019. This was in spite of the fact that his family had lived in the area prior to its declaration as a national park.

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 highland 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. Villagers are facing malnutrition as a result of having no access to their ancestral subsistence (foraging natural resources and rotational farming). They are also facing health risks and loss of income as Karen villagers were forced to resettle and struggled to farm 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.

Challenge 2: Legal vacuum to recognize indigenous peoples' ancestral lands leads to rights violations and land evictions

The system of community land titles was introduced in 2010 through the "The Regulation of the Prime Minister Office on the Issuance of Community Land Title Deeds" but it does not guarantee secure land tenure to indigenous and local communities. As the community only manages the land for a certain period of time after which it needs to apply for an extension, the community land title system does not honour the collective right of indigenous peoples to their ancestral lands as recognized under international human rights law.

The same year, in 2010, a Cabinet Resolution on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies of 2010 was promulgated and has been perceived as a positive step in recognising indigenous peoples' cultural rights. However, its implementation has been poor and it does not resolve any land-related concerns of indigenous peoples.

The community title deeds as per the 2010 regulation do not provide sufficient protection to the community land tenure. While it provides grassroots communities a certain level of protection from land grabs by private investors, it only guarantees use of land for a certain period of time. After this period, the community needs to request extension again. As such, communities do not own the land but only manage state-owned land. This also violates indigenous peoples' rights as they cannot exercise control over their lands as under international human rights standards. However, at times, the community land titles also negatively affect individual rights to property, for example in cases where community members inherit the land from their ancestors.

Ineffective implementation of 2010 regulations. Sapum village in Phuket province has been waiting for a community title deed since 2016 when it was proposed to the Government. In 2018, the Sapum community was issued an eviction order from the Marine Department which had plans to build a port in the area. This happened despite the fact that the community has lived in the area since 1952 – 20 years before the Marine Department declared ownership of the land. Furthermore, as a recognised Urak Lawoi community, Sapum villagers had a right to be protected under the Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand of 2010 – which was not respected, however. Establishing a community title deed is crucial for land tenure security of this community but ineffective implementation of the 2010 regulation keeps the villagers' future in jeopardy.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

The Draft Protection and Promotion of the Way of Life of Ethnic Groups Act fails to provide protection guarantees to indigenous peoples as it does not recognize indigenous peoples' inalienable right to their ancestral lands as stipulated in the UN Declaration on the Rights of Indigenous Peoples and confirmed many times over by various human rights mechanisms.

Laem Tukkae community on Sireh island has been prosecuted as the villagers refused to leave the lands they had occupied at least since 1935. Expanding business and construction activities infringe on the community's rights to their ancestral lands and even as Urak Lawoi peoples, they did not find sufficient protection under the Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand of 2010 which guarantees them right to manage their natural resources. The Supreme Court ruled in favour of the villagers in 2019, however, the process had been marked by efforts to manipulate the community.

Protection areas not providing rights safeguards under the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act (2021). Protection areas established under Section 35 of the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act would be designated at the discretion of the National Committee (created under Section 7 of the draft Act) and each area would have its own management plan. Indigenous peoples living within such protected areas would have rights to utilise their natural resources through farming, animal husbandry etc. While the efforts to protect cultural traditions of Thailand's "ethnic groups" are commendable, new legislation needs to recognise indigenous peoples' right to their traditional lands, including their right to free, prior and informed consent in all decisions concerning their land. In line with the draft Act's own principle to move from "charity" to "empowering" communities, recognition of indigenous peoples as rights holders and not mere beneficiaries of Government policies needs to be the first building block of any new legislation. Furthermore, the new bill needs to contain sufficient guarantees against forced evictions of indigenous peoples from their lands in line with international standards.

Challenge 3: Criminalization and harassment of land rights defenders

Thai legislation does not provide sufficient protection to land rights defenders who become victims of strategic lawsuits against public participation (SLAPP), judicial harassment, and violence by using ineffective laws such as Sections 161/1 and 165/2 of the Criminal Procedure Code and Section 21 of the Public Prosecution Organ and the Public Prosecutors Act.

While the National Action Plan on Business and Human Rights deals with the situation of human rights defenders, it fails to acknowledge gaps in Thai legislation and its lagging behind international human rights standards.

Please refer to the **Torture and Enforced Disappearance in Thailand** factsheet as well as **Civic Space: #WhatsHappeningInThailand** factsheet for further information.

The legitimate human rights work of land rights defenders to protect their lands is criminalized as they are subjected to the violation of their freedom of expression and right to assembly. According to an analysis of Environmental Human Rights Defenders (EHRDs) by the UN conducted in 2016, Thailand is amongst the ten most dangerous countries for environmental defenders, and as specified by Protection International, more than 50 environmental rights defenders have lost their lives in Thailand in the last 20 years. In 2020, Global Witness found that at least 2 environmental defenders were killed in Thailand. Further, the report indicates that environmental defenders have been targeted for safeguarding particular ecosystems, with 71% trying to protect the world's forests from deforestation and industrial development.

Enforced disappearance of a land right defender. In Thung Lui Lai Subdistrict, Khon San district in Chaiyaphum Province, Mr. Den Kham Lae refused to follow eviction orders his community received and gathered with the community to submit a complaint on the case to government agencies. On 16 April 2016, he disappeared near the bamboo forest in Khok Yao Forest. In 2017, human remains found were 90 percent confirmed to belong to Den.

Environmental rights defenders judicially harassed for their peaceful protests. In July 2016, in Phichit province, 100 villagers affected by a gold mining company, held a peaceful protest to prevent trucks of a mining company from transporting ore out of the mining area, as this would cause additional air and noise pollution to the communities. After the protest, the Thab Khlo district police filed charges against 27 out of 100 villagers who participated in the protest for allegedly violating Section 309 of the Penal Code and Article 16 of the Public Assembly Act of 2015. Additionally, the police charged Ms. Premsinee under Article 10 of the Public Assembly Act of 2015 for her alleged role in organizing the protest. The same day, the 27 accused villagers were jailed for half a day at the Phichit Provincial Court and had to be bailed out accordingly.



RECOMMENDATIONS

1. On challenge 1: Thailand's false climate solution: Unfair forest conservation laws and the Forest Reclamation Policy.

- 1.1. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR) to Thailand, **ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation.**
- 1.2. Undertake immediate **legal reforms to land and forest-related laws, including the Forest Act, National Park Act, and National Reserved Forests Act, to recognize and safeguard the rights of local communities and rights of indigenous peoples over their traditional lands and resources**, including their land tenure and resource management systems. Ensure Indigenous Peoples and Forest-Dependent Communities are considered **Guardians of the Forest and are not criminalized as Capitalist Investors**, and **refrain from using the Forest Reclamation Policy** as Thailand's Climate Solution.
- 1.3. Stop, without further delay, **the abuse of forest conservation laws and policies**, to evict local communities and individuals who are living in poverty from lands they have been living on for generations and refrain from enforcing the Supreme Court verdicts against the 14 Sab Wai villagers to guarantee they can continue living on their land and are not put in a situation of extreme poverty.

2. On challenge 2: Legal vacuum to recognize indigenous peoples' ancestral lands leads to rights violations and land evictions

- 2.1. Review the relevant forestry and conservation laws and programs in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them, while protecting the environment, in line with the 2012 Concluding Observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
- 2.2. Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands, territories, and resources, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.
- 2.3. Ratify the International Labour Organization Convention No. 169, and draft and adopt separate legislation for the promotion and protection of the rights of indigenous peoples, in line with the 2012 Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD) to Thailand. Ensure that such legislation is in full compliance with international human rights standards, in particular with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and that it is drafted with full and effective participation of indigenous peoples, including indigenous women and youth.
- 2.4. Drop all criminal and civil charges against the 28 Bangkloi Indigenous activists who legitimately exercise their rights to protest and protect their ancestral land in the Kaeng Krachan National Park.

3. On challenge 3: Criminalization and harassment of land rights defenders

- 3.1. In line with the 2017 Concluding Observations of the Human Rights Committee, ensure that **Thai legislation fully complies with the ICCPR, in particular by prohibiting torture and enforced disappearance. The State party should expeditiously enact a law on the prevention and suppression of torture and enforced disappearances.**
- 3.2. Decriminalize defamation by **repealing sections 326 to 333 of the Criminal Code** and enact a **standalone anti-SLAPP law to ensure legal protection against Strategic Lawsuits against Public Participation (SLAPP)** aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations. In the meantime, **enforce Sections 161/1 and 165/2 of the Criminal Procedure Code** and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.
- 3.3. In accordance with the 2015 CESCR's Concluding Observations to Thailand, **adopt all measures necessary to protect human rights defenders, from any and all acts of intimidation, harassment, and killings and to ensure that perpetrators of such acts are brought to justice.** Effectively protect and define "human rights defenders" under the Constitution, in line with the UN Declaration on human rights defenders.



REFERENCES

- Way Magazine, อ็องฟ์ฟอง 27 ชาวบังคลอเจ็บประคับเป้าก่อ 2.7 ล้านบาท, 19 August 2021, available at: <https://waymagazine.org/27-bangkloi-villagers-will-be-prosecuted/>
Information obtained from Manushya Foundation's discussions with Nittaya Muangklang, an Isaan Land Reform Network representative, in August 2021.
Information obtained from Manushya Foundation's discussions with Somphu Jaika, a Banthat Mountain Range Land Reform Network representative, in August 2021.
Information obtained from Manushya Foundation's discussions with Katima Leeja, an IMPECT representative, in July 2021.
Manushya Foundation, Cruel Injustice in Thailand: When the Supreme Court Forces Poor Villagers into Extreme Poverty!, 25 May 2021, available at: <https://www.manushyafoundation.org/post/cruel-injustice-in-thailand-when-the-supreme-court-forces-poor-villagers-into-extreme-poverty>
The Guardian, Indigenous peoples by far the best guardians of the forests - UN report, 25 May 2021, available at: <https://www.theguardian.com/environment/2021/mar/25/indigenous-peoples-by-far-the-best-guardians-of-forests-un-report>
FAO and FILAC, Forest Governance by Indigenous and Tribal People: An Opportunity for Climate Action in Latin America and the Caribbean, 2021, available at: <http://www.fao.org/documents/card/en/c/cb2953en>
Sai Thong Rak Pah Network, the Indigenous Women's Network of Thailand (IWNT), the Thai BHR Network and the Thai CSOs Coalition for the UPR, Land-related Rights, Forest Conservation Laws and Climate Change Policies: Joint Submission to the Universal Periodic Review (UPR) for Thailand's Third UPR Cycle, 39th Session of the UPR Working Group, 25 March 2021, available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>
Manushya Foundation, Why We Need to #SaveBangKloi, 11 March 2021, available at: <https://www.manushyafoundation.org/post/why-we-need-to-savebangkloi>
Global Witness, Last line of defense, 13 September 2021, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>
Manushya Foundation and Indigenous Women Network of Thailand, Raising Our Voices to Save Our Future: Overview of the Human Rights Challenges Faced by Indigenous Women in Thailand & Their Practical Solutions for a Sustainable Future, September 2019, available at: <https://www.manushyafoundation.org/iwnt-report>
Asian Indigenous Peoples Pact and International Work Group for Indigenous Affairs, Drivers of Deforestation? Facts to be considered regarding the impact of shifting cultivation in Asia, 2012, available at: <https://www.iwgia.org/da/3075-drivers-of-deforestation-facts-to-be-considered-regarding-the-impact-of-shifting-cultivation-in-asia.html>

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

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.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

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.



REFERENCES

Bangkok Post, State told to assess UPOV impact ahead of CPTPP pact, March 19, 2019, available at:
<https://www.bangkokpost.com/business/1647208/state-told-to-assess-upov-impact-ahead-of-cptpp-pact>

Focus on the Global South, Statement of Civil Society in Thailand on RCEP Negotiation and the Thai Government's Effort in Joining CPTPP, July 25, 2018, available at: <https://focusweb.org/statement-of-civil-society-in-thailand-on-rcep-negotiation-and-the-thai-governments-effort-in-joining-cptpp/>

Manushya Foundation and Thai BHR Network, Thematic Assessment Chapter of the Independent CSO National Baseline Assessment on Business & Human Rights: The Impact of Investments and Free Trade Agreements on the Rights and Livelihoods of Communities in Thailand, March 2019, available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_e60de1109ecf4f5fab3e08d4aa1336d5.pdf

Manushya Foundation, Thai BHR Network, Women Workers for Justice Group, Manushya Foundation, EMPOWER Foundation, and the Thai CSOs Coalition for the UPR, Joint UPR Submission: BHR in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.

Thai Civil Rights and Investigative Journalism, Thailand Consumers' Council opposes Thailand's accession to the CPTPP (in Thai), July 1, 2020, available at: tcijthai.com/news/2021/7/current/11755

Thai PBS World, 400,000 join Greenpeace's campaign to stop Thailand joining CPTPP, June 22, 2021 available at: <https://www.thaipbsworld.com/400000-join-greenpeaces-campaign-to-stop-thailand-joining-cptpp/>

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THAILAND UPR III 2021 – UPR FACTSHEET

INDIGENOUS PEOPLES' RIGHTS
IN THAILANDBrief 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.

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.

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

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.**

REFERENCES

- Way Magazine, ວ່າລັງພົວ 27 ກາວບາກຄອຍ ເປັນປະຕິປີໄປເຖິງກວ່າ 2.7 ລ້ານບາກ, 19 August 2021, available at: <https://waymagazine.org/27-bangkloi-villagers-will-be-prosecuted/>
- Sai Thong Rak Pah Network, the Indigenous Women's Network of Thailand (IWNT), the Thai BHR Network and the Thai CSOs Coalition for the UPR, Land-related Rights, Forest Conservation Laws and Climate Change Policies: Joint Submission to the Universal Periodic Review (UPR) for Thailand's Third UPR Cycle, 39th Session of the UPR Working Group, 25 March 2021, available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>
- Protection International, [Thailand] Impunity remains as court dismisses the extrajudicial killing of Chaiaphum Pasae, young indigenous HRD, 29 October 2020, available at: <https://protectioninternational.org/en/news/thailand-impunity-remains-court-dismisses-extrajudicial-killing-chaiaphum-pasae-young>
- International Work Group for Indigenous Affairs, Indigenous World 2020: Thailand, 11 May 2020, available at: <https://www.iwgia.org/en/thailand/3610-iw-2020-thailand.html>
- Indigenous Women's Network of Thailand and Manushya Foundation, Raising Our Voices to Save Our Future, September 2019, available at: <https://www.manushyafoundation.org/iwnt-report>
- Bangkok Post, DSi moves to reopen 'Billy' case, 12 August 2020, available at: <https://www.bangkokpost.com/thailand/general/1966671/dsi-moves-to-reopen-billy-case>
- Manushya Foundation and Thai BHR Network, Rights of Indigenous Peoples in Business Contexts, Thailand, March 2019, available at: <https://www.manushyafoundation.org/nba-bhr-rights-indigenous-peoples>
- Thai B&HR Network & Manushya Foundation, The Protection of Human Rights Defenders: Thematic Assessment
- Chapter of the Independent CSO National Baseline Assessment (NBA) on Business and Human Rights, March 2019, available at: <https://www.manushyafoundation.org/nba-bhr-protection-hrds>
- UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 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), 15 November 2012, CERD/C/THA/CO/1-3, available at: <https://www.ohchr.org/en/countries/asiaregion/pages/thindex.aspx>



SAFE ABORTION IN THAILAND

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

In its 2nd UPR cycle, no recommendations were made in direct relation to access to safe abortion in Thailand. However, it received five recommendations addressing the right to the highest attainable standard of health and women's rights to healthcare service, including sexual and reproductive health, all of which were supported by Thailand. The recommendations include: progressively developing the health system for all segments of the society (Iraq); facilitating access to health services for all the population in the Thai territory (Madagascar); further strengthening measures to ensure equal access to health services for all, while giving special attention to the needs of children, women and the elderly (Sri Lanka); accelerating efforts to achieve the targets on reducing infant mortality rate and achieving universal healthcare scheme, including improvement of the maternal health in remote areas (Bhutan); reducing infant mortality rate and improve maternal health care in remote areas (Nigeria); continue the reduction of maternal and infant mortality rates and continue with the national plan for the development of children and youth (Bahrain).

However, based on our assessment, Thailand has not followed through with any of the supported recommendations since the last UPR, therefore failing to ensure access to safe abortion services for people with an unwanted pregnancy. In February 2020, Sections 301 and 305 of the Criminal Code criminalizing abortion in all cases were ruled unconstitutional by the Constitutional Court. Section 301 sanctioned “any woman causing her own abortion or allowing another person to cause it” for an imprisonment of no more than three years or a fine not exceeding 60,000 Thai Baht, or both; while Section 305 permitted abortion in two exceptional cases: pregnancy arising from rape or risk to the mother’s health. In January 2021, the Parliament eventually passed an amendment to both Sections, and the Amendment entered into effect on 7 February 2021, allowing abortion on request until the 12th week of pregnancy. This is indeed an important legal milestone for Thailand, but the amendment is, however, not fully in line with international human rights standards; **as beyond 12 weeks of pregnancy, undergoing abortion remains a crime.** Under international human rights law, everyone, including people with an unwanted pregnancy, has a right to life, a right to health, and a right to be free from violence, discrimination, and torture or cruel, inhuman and degrading treatment. Denying people with an unwanted pregnancy their right to access safe abortion amounts to violating their fundamental human rights aforementioned. **More recently, on 28 September 2021, International Safe Abortion Day, a group of UN Experts reminded the world that abortion is essential healthcare and a human right.**

The voices of the people and civil society groups were ignored, despite the fact that more than 38,990 people signed [Tamtang's petition](#) to fully decriminalize abortion in Thailand. It was them who had initiated the amendment process by submitting a complaint to the Constitutional Court on the constitutionality of the provisions in the criminal code, after a medical staff from the Referral System for Safe Abortion Network (RSA), which was under the cooperation with the Ministry of Public Health, was charged with violating Sections 301-305.

Abortion remains a ‘taboo’ subject in Thailand due to strong social and religious stigma, coupled with the lack of availability, accessibility and affordability of abortion facilities. People with an unwanted pregnancy who are unable to easily access safe abortion services resort to unsafe black-alley options, which put their lives and health in danger. According to a report by the Thailand’s Women and Reproductive Rights Foundation, **the estimated number of women seeking underground abortion is about 200,000 per year, 40% of which resulted in health complications.** A fatality rate is estimated at 300 deaths per 100,000 abortions, a deeply troubling statistic when compared to less than one death in 100,000 abortions in developed countries. Official statistics also show that over the past decade, more than 300,000 women have sought medical treatment from Thai state hospitals for incomplete operations of pregnancy termination that were performed underground. Nearly 100,000 of them suffered severe health complications and infections afterwards. **In 2019 alone, 673 women received treatment of health complications resulting from unsafe abortion, costing the National Health Security Office (NHSO) over 6 million baht.**



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Lack of Access to Information on Safe Abortion Services

Access to legal abortion services is not made readily, immediately and easily available for those who need them due to the lack of public information about the services. The lack of information not only hinders the immediate access to abortion, which simultaneously narrow down the remaining pregnancy period permitted for abortion, but also subjects pregnant women to more unnecessary health risks and increased service fee. The government's failure to make the information publicly and easily accessible for all can also result in the clients being rejected, stigmatized and looked down upon by health facilities that still do not agree with abortion rights.

According to Tamtang Group, women who consulted them about their unwanted pregnancies and those who shared their experiences undergoing abortion, all agreed to have spent a tremendous amount of time searching for information related to abortion services. Most of the information they were able to access was provided by dealers of illegal self-induced abortion pills, not by medical professionals from authorized abortion services.

In addition, more than 99% of the women who reached out to Tamtang Group and those who had attended safe abortion training organized by the group said they were unaware of the 3,000 THB financial support provided by the National Health Security Office (NHSO) to any women seeking abortion, despite the fact that this policy has been adopted by the NHSO since 2016.

Furthermore, as per the data collected from approx. 11,800 women who called the national hotline counseling service 1663 for unwanted pregnancies, between 1 March 2021 to 20 June 2021, 61 of them were denied abortion services at public hospitals on the ground that the hospitals had never been informed of the amended criminal code allowing abortion under 12 weeks of pregnancy. The public hospitals also affirmed that abortion was still an illegal operation. Some of the women who were denied access to abortion services confirmed they did not receive any information on the referrals of their cases and ended up having to search for information on their own until they found the number of the hotline service 1663.

Between April and June 2021, Tamtang Group surveyed women who consulted them about their unwanted pregnancies; ten of them confirmed having been denied abortion services, with one of them recalling that she was treated badly and looked down upon by a nurse. A doctor even threatened to expose her request for abortion to a professor at her university.

Challenge 2: Lack of Availability of Safe Abortion Services across Thailand

Safe abortion services are not available in sufficient numbers in every province across Thailand, making it difficult and time-consuming for women who need the services to access the facilities, especially during the COVID-19 pandemic when travel options were limited.

Currently, Thailand has 80 authorized abortion services facilities, covering only 40 of the total 77 provinces of the country; 161 doctors who are members of the Referral System for Safe Abortion Network (RSA); and 619 multidisciplinary volunteers. Of the total 80 abortion service providers nationwide, only four facilities can perform late termination of pregnancy beyond 20 weeks.

In addition to the insufficient number of abortion services throughout the country, each facility providing abortion services also has different conditions and terms of services. Some facilities only provide access to abortion for early pregnancies, while others would only serve adolescent teens. Some also reserve their abortion services for the population of their own district or province only, or limit their services to few cases per week. These ununiformed policies and practices make it more difficult for women to access safe abortion services.

Due to the travel restrictions during the COVID-19 pandemic, some RSA volunteer doctors have used up a remote online system to deliver abortion pills and provide advices for self-management and medication. Although the results of this new system come out satisfactory, the Department of Health has yet to adopt clear guidelines or official policies to support this form of online abortion services.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 3: Abortion beyond 12 weeks still criminalized under the Criminal Code

Although the amendment to Sections 301 and 305 of the Criminal Code, which criminalized abortion in all circumstances, is a step in the right direction for the women's full enjoyment of sexual and reproductive rights in Thailand, the Amendment still criminalizes abortion beyond 12 weeks, a relatively small period of gestational limit for women to make a well-informed decision over their bodies.

Furthermore, most young persons with an unwanted pregnancy may not realize they are pregnant within the 12 first weeks of pregnancy, but would realize it within the first 24 weeks. Therefore, the amendments to the Criminal Code do not respond to the needs and realities of persons with an unwanted pregnancy, as beyond 12 weeks of pregnancy, they would still be casted as criminals and could undergo unsafe abortions, which can be detrimental to their lives and health.

For Thailand to fully decriminalize abortion, the access to safe abortion services shall not be regulated under the Criminal Code but shall be regulated under a Health Code or via the enactment of a specific abortion law, ensuring persons with an unwanted pregnancy can exercise their sexual and reproductive health and rights and can make informed-decision over their body. #MyBodyMyRights

In February 2020, Sections 301 and 305 of the Criminal Code criminalizing abortion in all cases were ruled unconstitutional by the Constitutional Court. Section 301 sanctioned “any woman causing her own abortion or allowing another person to cause it” for an imprisonment of no more than three years or a fine not exceeding 60,000 Thai Baht, or both; while Section 305 permitted abortion in two exceptional cases: pregnancy arising from rape or posing risks to the mother’s health. In January 2021, the Parliament eventually passed an amendment to both Sections, and the Amendment came into effect on 7 February 2021, allowing abortion on request until the 12th week of pregnancy.

After this period, women can undergo authorized abortion procedures only if they fulfill one of the criteria set by the Medical Council of Thailand and Ministry of Public Health. Any person who has their pregnancies beyond 12 weeks terminated without fulfilling any of the criteria is still criminalized by Section 301 of the Criminal Code, with six months of imprisonment and/or a fine up to 10,000 Thai Baht as punishment.

Although this is indeed an important legal milestone for Thailand, the amendment is still not fully in line with the international human rights standards guaranteeing that the right to health of a person with an unwanted pregnancy is prioritized. On the contrary, the Constitutional Court’s ruling acknowledged the right of the fetus, suggesting that despite the ruling, the court still adopts a pro-life stance. Therefore, the revised provisions in the Criminal Code do not comply with international human rights standards recognizing abortion as an essential healthcare and a human right. Abortion shall be fully decriminalized.

RECOMMENDATIONS

1. On Challenge 1: Lack of Access to Information on Safe Abortion Services

- 1.1.** In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights, **make readily available and easily accessible evidence-based information and education in different languages about sexual and reproductive health of women and girls, including the location and information on safe abortion services by 2022.**
- 1.2.** **Inform personnel under the Ministry of Public Health of the amendments to the Criminal Code allowing for safe abortion within 12 weeks of pregnancy and provide the necessary training to healthcare professionals so that those seeking abortion will have immediate, unhindered and informed access to safe abortion services by 2022,** in line with the CESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health.

2. On Challenge 2: Lack of Availability of Safe Abortion Services across the Country

- 2.1.** In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights and the 2017 CEDAW Committee’s Concluding Observations to Thailand, **increase the number of healthcare facilities that provide safe abortion services, make them available and accessible in sufficient numbers across the country within three years**, especially the facilities that are capable of performing abortion for late pregnancies, such as those beyond 12 weeks.
- 2.2.** In line with the 2016 General Comment No. 22 on the right to sexual and reproductive health of the Committee on Economic, Social and Cultural Rights, **allocate proper budgets for safe abortion facilities to ensure the quality and accessibility of the services by 2022**, so that the amendments to the criminal code allowing for abortion within 12 weeks of pregnancy are effectively implemented - especially during the COVID-19 pandemic with regards to remote counseling services.



RECOMMENDATIONS

3. On Challenge 3: Abortion beyond 12 weeks still criminalized by the Criminal Code

3.1.

In line with the 2018 General Comment No.36 of the Human Rights Committee on the right to life and international human rights standards recognizing access to safe abortion services as essential healthcare and a human right, **fully decriminalize abortion by repealing Sections 301-305 of the Criminal Code; and enact a specific abortion law by 2023, recognizing the right to safe abortion and regulating access to safe abortion services within 24 weeks of pregnancy for persons with an unwanted pregnancy, guaranteeing the exercise of their right to sexual and reproductive health and rights, and their right to decide over their body.**



REFERENCES

Tamtang and Manushya Foundation, *Joint UPR Submission: Safe Abortion 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-safeabortion>

Committee on Economic, Social and Cultural Rights, *General Comment No. 22 on the right to sexual and reproductive health*, E/C.12/GC/22, (2 May 2016), available at: <https://undocs.org/E/C.12/GC/22>

Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, CCPR/C/GC/36, (30 October 2018), available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

Human Rights Committee, *General Comment No. 36 on the Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, (12 August 2000), available at: <https://www.refworld.org/docid/4538838d0.html>

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), available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgWC9Lj7ub%2fHrJVf1GxZMHFkBXPNzoIE%2f88d66KvAtlejwv1fDz8FIRZ1nRqqSsxk66INB9N9I3LxBWLI1wzUJ8WYkvIJ7491mOZKSgR4M6Av2Tag2R8wh5RP8HwuyHcnA%3d%3d>



THAILAND UPR III 2021 – UPR FACTSHEET

KHON ISAAN

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

During the 2nd UPR cycle, Thailand did not receive any recommendation specifically addressing the rights of people from the Isaan region, demonstrating a lack of understanding of the issues faced by Khon Isaan in Thailand. Nevertheless, it received a total of 40 recommendations in relation to the protection of vulnerable persons and ethnic minorities; the right to an adequate standard of living; the access to healthcare and education; and land-related rights. Besides, four additional recommendations specifically addressed discrimination against women, who face further hardship in Thai society. The government supported all of them, but failed to effectively implement them.

Being 'Khon Isaan' in one of the most unequal countries in the world

In 2018, Thailand was considered the most unequal country in the world by the Credit Swiss Global Wealth Databook, with 1% of the population owning 66.9% of the nation's wealth. In 2020, according to TDRI, Thailand continues to be among the top ten most unequal countries on this planet for wealth distribution. Thailand's wealth inequality is marked by the fact that rich are getting richer and poor are getting poorer, with Isaan people being at the bottom of Thailand's wealth inequality pyramid. However, Isaan, Thailand's Northeast region is the largest and most populous region of the country, counting 22.24 million people (or 33% of the total population); yet, it is also the poorest region. Despite being Thailand's largest ethnic community, Isaan people are overlooked in the Thai society. The Isaan people refer to themselves as 'Khon Isaan' rather than as Thai. They are of Lao descent, and are also referred to as 'Lao Isaan.' Thailand's failure to implement a comprehensive strategy to strengthen the protection of their rights and guarantee their equal participation and access to opportunities in all spheres of society has resulted in Khon Isaan being discriminated against and marginalized. Instead of promoting equality and embracing diversity, the Thai government forces a culture of 'Thainess', resulting in ultra-nationalism and racism against ethnic minorities, creating a casted society grounded in inequalities and injustice. It is no surprise that some prominent leaders of the Youth-led pro-democracy movement which emerged in 2020 are Youth from Isaan. They had enough of 'Thainess', inequalities and injustice towards their own ethnic community, enough of the country being economically and politically controlled by 1% of the population and demand constitutional and structural changes.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1. Isaan people are discriminated against in all sectors of life

The Isaan region of Thailand is both the most populated and the poorest. Based on their cultural and linguistic differences, Isaan people refer to themselves as 'Khon Isaan', and they have been historically classified as 'an inferior sort of Thai'. Although Section 4 of the 2017 Constitution guarantees equality for all before the law, ethnic minorities are not guaranteed adequate constitutional protection against discrimination under the same Constitution.

Racial discrimination is not an offense under Thai law, which allows for blatant discrimination against indigenous peoples, ethnic minorities and people of colour in the country.

Rejections, hostile school and work environments, limited freedom of gender expression, limited career advancement opportunities, pay gaps, lower job security, and limited access to social benefits are the most common ways through which discrimination is perpetrated in Thailand against Isaan people in the educational system and the labour market.

As evidenced by the Asia Foundation, Thailand's wealthiest people, mainly Thai elite and Bangkokians, have benefited of Thailand's economic growth, controlling the financial resources and most of the land of the country. On the opposite, discrimination against Isaan people is pervasive, and they confront severe obstacles to enjoying their human rights, particularly in terms of access to healthcare, quality education, employment opportunities, fair justice, as well as their right to land. They are also excluded from political participation, making it difficult to have their voices heard and taken into consideration in legislation and policies that concern them.

Isaan people are excluded from political life. There was no meaningful engagement of Isaan people in the Constitution-writing process in 2017, and, following the 2015 "Talk for Constitutional Freedom with the Isaan People" event, 11 people were charged for breaching the NCPO Order No. 3/2015. Accordingly, the 2017 Constitution is marked by the exclusion of Isaan people and does not take into account their realities.

Because of the unequal distribution of Thailand's fiscal budget, and state-sponsored discrimination against Isaan people, access to healthcare and social services is challenging for the majority of Isaan people.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

For instance, Mukdahan province has seven hospitals, the same as Ang Thong province, but Mukdahan is four times larger. Patients in Mukdahan province have to travel further to get treatment, putting them at significant disadvantage.

Due to unequal distribution of resources and wealth, Isaan people are forced to move to big cities, such as Bangkok, in search of work.

However, owing to racial prejudice, they are frequently employed in low-paying positions, such as taxi drivers or construction workers, and many women end up in the sex and entertainment industry. Many Isaan people join the informal sector and bear the burden of low-paid care and domestic work. They become the housemaid, cleaning personals, personal drivers, and babysitters for the Thai elite and Bangkokians, who in return are the ones perpetuating the social exclusion and discrimination against Isaan people. By maintaining this unequal societal pyramid, Isaan people are not treated as equal human beings enjoying the same rights and opportunities.

Isaan children face barriers in accessing quality education

Although the Thai government enacted specific laws to protect and promote local and ethnic languages, Thai national school system demands teaching to be performed only in Thai, even in cases of students from various ethnic groups with their own mother tongues. Since the early twentieth century, Isaan children have been denied access to fundamental instruction in their mother tongue as a result of the 'Thaification' programme. Speaking the Lao Isaan dialect has been forbidden in Thai schools, in the name of 'Thainess', destroying the Isaan's culture. As a result, Isaan children may face barriers in accessing education and are often left behind by Thailand's educational system. Furthermore, ethnic groups and their diverse histories, cultures, and lifestyles are seldom mentioned in the curriculum.

Challenge 2. Isaan people are negatively portrayed

Based on their cultural and linguistic differences, Isaan people distinguish themselves from Thai people. They speak the 'Lao Isaan' language, inherited from their Lao ancestors. Language is one of their defining characteristics, considering that their mother tongue is Lao. The color of one's skin has also long been associated with certain stereotypes and class. It is so influential that it can determine one's success or failure. Thailand is no exception. Lighter skin is associated with wealthy Chinese descent typically residing in Bangkok while darker skin is tied to the lower class, outdoor labor, people from the Isaan countryside and indigenous peoples. Because of their defining characteristics, discrimination against Isaan people is a perpetuated phenomenon in Thai society, with the elite and Bangkokian people viewing them as 'stupid', 'dark-skin', 'poor lower-class people'. These stereotypes are also being exacerbated by Thai media.

'Lao Isaan', the Language of the "Stupid" & the "Poor"

Isaan people have been the target of widespread prejudice for decades, typically being portrayed as docile and illiterate "unsophisticated peasants" who are easily misled and who cannot speak proper Thai. On account of this, many Isaan people choose not to speak their original dialect 'Lao Isaan' out of fear of being discriminated against; the Lao Isaan language often being assimilated as the language of the poor, and lower class people. Often, the Thai elite and Bangkokians pretend not to understand the Lao Isaan ethnic dialect, although very close to the Thai language.

The Ugly "Dark Skin" Isaan people

There are countless Thai dramas and movies that portray darker skin as undesirable. Isaan countryside people are called 'Baan Nok', especially those with darker skin, are often represented in the media as uneducated, backwards, helpless, as opposed to the "civilised" and "whiter skin" city people. The actors that portray the Isaan people characters do not share these features or identity in real life. They are able to remove the blackface after the job is done and easily have a successful career. There is no actual representation from the people in these communities and it further reinforces the idea that Isaan people must transform themselves to fit in.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

It is not a surprise that Thai commercials are littered with skin whitening and skin correcting products, raking in large amounts of money from people's insecurities. One of the most controversial being Snowz, an advertisement for whitening pills, with the notorious tagline "Just be white, and you will win".

The stereotype of the "Mia Farang"

Although hate speech and stereotypes about ethnic groups is charged with sedition or defamation charges, it is the government itself that contributes to the spread of negative stereotypes. Isaan people are referred to as 'stupid', and women as 'mia farang' (white foreigners' wife). In August 2018, the Ministry of Social Development and Human Security (MSDHS) opened an education centre for Isaan 'mia farang' in Khon Kaen, which 'especially targets Isaan women and girls who do not value studying but like to work in bars and massage parlours instead'. Instead of making the wrong assumption that Isaan Women and Girls prefer working in bars, the Thai government shall self-reflect on its own 'Thainess' culture, discriminatory policies and practices against ethnic minorities, and unequal distribution of wealth. The root cause of the problem lies in the 1% of the population deciding for others to remain at the top of Thailand's wealth pyramid.

Challenge 3. Isaan People face challenges in enjoying their right to property and ownership over their land

As farmers account for 85% of the population in the Isaan region, they rely on their land to make a living. However, various pieces of legislation and regulations, such as the National Parks Act of 2019 and Thailand's false climate solution, the controversial 2014 Forest Reclamation Policy have repeatedly endangered their access to land and put them in situation of injustice and extreme poverty. Isaan farmers are casted as criminals, accused of encroaching forest land, instead of being considered as forest-dependent communities, Protectors of the forest, living in harmony and peace in the forest.

For more information about this case, please refer to the UPR Factsheet on Thailand's False Climate Solution, Unfair Forest Conservation Laws and Land related Rights in Thailand.

Hundreds of villagers and community members have been evicted from their lands, where they have lived for generations. Isaan farmers are victims of Thailand's false climate solution, the controversial 2014 Forest Reclamation Policy, which severely implement Forest Conservation Laws not favorable to poor villagers. These legislation and policies were developed without consulting forest-dependent communities and indigenous peoples, and do not recognize them as 'guardians' of the forest and the environment. Instead, they are being considered as 'capitalist investors' destroying the forest. According to data from the Royal Forest Department and the Department of National Park, there were 25,057 encroachment cases between 2015 and 2019. However, the government agencies do not provide transparent and clear information on how many encroachment cases are cases of poor villagers or capitalist investors, and whether they are currently being charged and prosecuted (please note that 2020 data has not been published).

#SaveSabWaiVillagers. In 2015, 14 Sab Wai villagers living in the Sai Thong National Park in Chaiyaphum Province were unfairly charged under Thailand's forest reclamation policy and Thailand's unfair conservation laws, including the National Park Act 1961. They were accused of trespassing and encroaching the national park area and were sentenced to jail in 2019 by the Appeal Court which found them guilty, imposed high fines and ordered them to vacate their land. The 14 villagers had to endure difficult jail term until they were bailed out and fought back at the Supreme Court level. From March to May 2021, the Supreme Court ruled that all villagers were guilty and put 11 of them on probation with suspended jail terms, while 3 others were sent to jail. All of them are facing land evictions and are put in a situation of extreme poverty.

Challenge 4. Isaan people lack access to justice and effective remedy

In the wake of discrimination, Isaan people are unable to enjoy their right to seek justice and remedies, as the Thai government has persistently failed to protect their right to effective remedy.

The Pak Mun Dam case. Mun river is a vital source of water for fishing settlements in the Isaan provinces. Due to the construction of the Pak Mun Dam, which altered the river's environment, the number and kind of fish species have significantly decreased, and hence jeopardised communities' food security. Because the authorities claimed they did not understand the Lao Isaan dialect, communities were denied compensation for their loss and full restoration of their livelihoods, for more than 26 years now.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 5. Impact of COVID-19 on Khon Isaan

The COVID-19 pandemic in Thailand has exacerbated and escalated the pre-existing issues faced by Isaan people. In addition to lack of food security and difficulty to afford adequate housing, they have received no positive response from the government, because of their ethnicity.

Although the government uses the COVID-19 State of Emergency to halt operations all over the country, it has continued to enable mining activities to proceed; activities that cause significant harm to rural populations living and working near proposed and active mines in the provinces of Loei, Nong Bua Lamphu, Mukdahan, Sakon Nakhon, and Chaiyaphum. Furthermore, after making a video statement criticising the government's backing for the mining industry, police detained and threatened a community rights advocate with charges under the Public Assembly Act, the Emergency Decree, and the Communicable Diseases Act.

RECOMMENDATIONS

- 1. On Challenge 1. Isaan people are marginalized and racially discriminated against in all sectors of life**
 - 1.1.** In line with the 2012 Concluding Observations of the CERD Committee to Thailand, **introduce a definition of racial discrimination into the legislation, and make it an offence punishable by law.**
 - 1.2.** In line with the 2015 Concluding Observations of the CESCR to Thailand, **address the remaining obstacles in access to the universal health care scheme, in particular for disadvantaged and marginalised individuals and groups, including Isaan People, and ensure good quality health care.**
 - 1.3.** **Distribute the country's wealth equally among regions and allocate additional financial support to Isaan people to improve their lives conditions and ensure the enjoyment of their economic and social rights, and access to equal opportunities in all spheres of life.**
 - 1.4.** In line with the 2012 Concluding Observations of the CERD Committee to Thailand, **strengthen efforts to protect and conserve ethnic languages, and promote the teaching of ethnic languages in schools, including the Isaan dialect.**
- 2. On Challenge 2: Isaan people are negatively portrayed**
 - 2.1.** In line with the 2012 Concluding Observations of the CERD Committee to Thailand, **take measures to eliminate negative stereotypes about ethnic groups and avoid giving accounts of incidents involving ethnic groups in ways that stigmatise the group as a whole, including Isaan people.**
 - 2.2.** In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, **eliminate any limitation on the protection against gender-based discrimination.**
- 3. On Challenge 3: Isaan People face challenges in enjoying their right to property and ownership over their land**
 - 3.1.** In line with the 2012 Concluding Observations of the CERD Committee to Thailand, **ensure respect for ethnic groups' way of living, livelihood and culture, while protecting the environment, and guarantee Isaan farmers are considered as forest-dependent communities protecting the forest and not as capitalist investors.**
- 4. On Challenge 4: Failure to conduct investigations into reports of torture and enforced disappearance**
 - 4.1.** In line with the 2012 Concluding Observations of the CERD Committee to Thailand, ensure that members of ethnic groups, **including Isaan people, can avail themselves of legal remedies without any language barriers and stereotypes against them.**



REFERENCES

The Human Rights Violations in Isaan Monitoring Group, Sai Thong Rak Pah Network, Amnat Charoen Friend of Women Center, Isaan Gender Diversity Network (IGDN), Manushya Foundation and the Thai CSOs Coalition for the UPR, *Joint UPR Submission: The Rights of Khon Isaan (Isaan people) 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/advocacy-documents>

Royal Forest Department, Forestry Statistics, available at: <http://forestinfo.forest.go.th/Content.aspx?id=9>; Department of National Parks, Wildlife and Plant Conservation, Summary of Statistics on Forestry Cases, available at: <http://portal.dnp.go.th/Content?contentId=2134>



WOMEN WHO ARE SUBJECTED TO MALE VIOLENCE IN INTIMATE RELATIONSHIPS

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

In the five years since Thailand's 2nd UPR cycle, domestic violence and gender-based violence against women has remained an unsolved issue in Thailand, even though Thailand accepted four recommendations from Bangladesh, Chile, Mexico, and Djibouti to combat discrimination against women. Moreover, Thailand promised to "continue its efforts to eliminate discrimination against women" and "continue to strengthen measures to reduce discrimination and all forms of violence against women effectively." During its 2nd UPR cycle, Thailand supported recommendations from Italy to "establish an effective policy and legal framework to prevent all forms of discrimination and violence against women, including domestic violence, and ensure that women victims of violence receive adequate support and offenders are brought to justice," as well as from Kyrgyzstan to "further address all forms of gender-based violence and abuses by revising the relevant provisions of the Penal Code, Criminal Procedure Code, and Domestic Violence Victim Protection Act." Since the ruling of Prayuth Chan-o-cha's military government in 2014, Thailand prioritized its national funds, governmental programs, and task forces on national security and protecting the military regime and monarchy. The Coalition of Women and LBTI Women in Thailand on CEDAW reported that "since the military coup in May 2014, our struggle for justice and equality for women in Thailand has become even more difficult due to increasing restrictions of fundamental freedoms and ongoing discrimination." Drastic funding cuts in the government's women protection programs and prevailing victim-blaming attitudes deeply rooted in patriarchal institutions resulted in insensitive and inactive responses to domestic violence and gender-based violence cases. Consequently, domestic violence and gender-based violence against women continues to be unaddressed, and women are often manipulated to go through illegitimate mediation procedures, mostly without legal remedies or compensation fees.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Discrimination against women survivors of gender-based violence

During its 2nd UPR cycle, Thailand accepted four recommendations from Bangladesh, Chile, Mexico, and Djibouti to combat discrimination against women. While Thailand has promised to "continue its efforts to eliminate discrimination against women" and "continue to strengthen measures to reduce discrimination and all forms of violence against women effectively," Thai law enforcement institutions continue to discriminate against women, resulting in more obstacles for women entering the justice system. In 2018, the Royal Police Cadet Academy (RPCA) announced the ban against women enrolling into the RPCA, i.e., the RCPA will accept only men from 2019 onwards. This exclusion of women shows the structural and institutional violence against women in two foremost issues, gender discrimination and the obstacles to access to justice.

Regarding the right to social security of vulnerable groups, Thailand supported the recommendation from Japan to "improve access to health, education, and social welfare for vulnerable groups, including for those in rural areas, ethnic minorities, women, migrants, and refugees." However, women survivors of domestic violence still face alarmingly limited access to protection orders, shelters, as well as legal remedies.

Women survivors of gender-based violence in Thailand often face stigmatization and victim-blaming when speaking out and entering the justice system. Even though Section 133 of the Criminal Procedure Code of Thailand guarantees the right to request a female inquiry officer, stating "In the case of an offense relating to sexuality, inquiring the female injured person shall be made by a female inquiry officer," there is a limited number of female officers, which makes women who are subjected to gender-based violence feel unsafe. Whereas 87% of rape cases go unreported to Thai police, no concrete steps to ensure women's safe and fair trials have been taken. Furthermore, the Thai police does not record all of the complaints on gender-based violence against women. Even worse, the police encourage survivors to have unofficial mediations with perpetrators. The prevalence of gender-based violence cases shown in the justice system is, as such, only the tip of the iceberg.

Since its establishment in 2016, SHero received a number of complaints regarding the struggles of women when trying to obtain protection orders and their ineffectiveness due to officers' negligence in response to the breach of such orders.

Consequently, women survivors have to live in fear and insecurity, isolated from communities and legal protection. This structural violence causes negative impacts on survivors' mental and physical well-being.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

At the same time, the Thai government fails to provide adequate and accessible funding and facilities for the health and social welfare of women affected by domestic violence. Instead, the government focuses on treating perpetrators, as reported in the 2017 CEDAW Committee's Concluding Observations to Thailand. As such, effective protection measures for women must be the government's priority rather than mediation and reconciliation.

Challenge 2: Violence against women reinforced by laws and legal institutions

During its 2nd UPR cycle, Thailand supported recommendations from Italy to "establish an effective policy and legal framework to prevent all forms of discrimination and violence against women, including domestic violence, and ensure that women victims of violence receive adequate support and offenders are brought to justice," as well as from Kyrgyzstan to "further address all forms of gender-based violence and abuses by revising the relevant provisions of the Penal Code, Criminal Procedure Code, and Domestic Violence Victim Protection Act."

Women tend to be discouraged by the Thai police, family, friends, and community members from pursuing legal action. As a result, not many women have achieved access to justice and legal remedies. A report from the Ministry of the Health of Thailand shows the number of domestic violence survivors who have received care from 440 hospitals around Thailand. Out of 14,237 domestic violence patients, 13,248 are women survivors, 972 are men, and the rest are LGBTIQA+.

Since the 2nd UPR cycle, the Thai women's rights network opposed the Protection of Welfare of Family Members Act (later developed into the Promotion of Development and Protection of Family Institution Act of 2019) as the law prioritizes family institutions over the rights of survivors of domestic violence. In short, it focuses on mediation and reconciliation procedures without prioritizing the best interests of survivors. Since most survivors are women, women's best interests are not considered in this legislation.

Thailand has been promoting family-centric reconciliation, acting in opposition with the human rights standards that ensure women's legal protection rights and freedom from torture. As shown in Thailand's attempt to replace the Domestic Violence Victim Protection Act of 2007 with the Promotion of Development and Protection of Family Institution Act of 2019, women's rights to be free from torture and to receive legal protection and remedies are not treated as priorities.

Mediation or reconciliation measures have been the main practice of domestic violence resolution in Thailand and accordingly endorsed by Thai law since 2007. The Domestic Violence Victim Protection Act aims "to save family relationships," which results in convincing survivors to opt for mediation conducted by law enforcement officials. The official handbook for competent officials concerning domestic violence survivors addressed the purpose of the law as "to keep the relationship of family"; it indicates that a mediator or anyone that the court appoints may assist the parties in reconciliation. The handbook does not provide any cautions regarding the potential unequal balance of power between abusers and survivors.

Compared with the database of legal cases, only 461 cases were reported to the police, and 146 cases remained in mediation without further trial. This statistic, however, does not reflect the reality of many women who have turned away from the justice system. Based on the complaints SHero Thailand received, women survivors are often subject to victim-blaming and told they cannot do anything, even, at the very least, mediation, at police stations.

The matricide case at Bang Phrom, which took place in January 2021, demonstrates the inaction of the police to protect women. In the murder case in Bang Phrom, a man murdered his mother and was later shot to death by the police. Even though the man has been abusing his mother for years and people in the neighborhood have reported him so many times, the police never arrested him as they considered it a family matter.

Challenge 3: Increase of domestic violence and gender-based violence during the COVID-19 outbreak

The COVID-19 outbreak resulted in the increase of domestic violence and gender-based violence against women in Thailand, which is attributable to, amongst others, financial pressures and alcohol intake during lockdowns. Since Thailand's handling of the outbreak is relatively poor, women's advocates in Thailand expect that violence against women will continue to escalate.

According to a nationwide survey carried out by the Thai Health Promotion Foundation, there has been a 66% increase in domestic violence cases since the introduction of COVID-19 control measures in March 2020. While cases increased by 48% in the South, cases increased by 26% in Bangkok.

The COVID-19 outbreak has also resulted in poor access to services for survivors of domestic violence and gender-based violence, causing difficulties in visiting hospitals for physical and psychological treatment, as well as collection of evidence with respect to the abuse. Government and private shelters have limited the number of survivors that can be taken in or shut down their services entirely. Lockdowns have not only prevented survivors from seeking help, but also from attending peer support groups.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

The adverse impact of the COVID-19 outbreak on survivors of domestic violence and gender-based violence is particularly felt by women survivors belonging to marginalized groups. According to Watcharapon Kukaewkasem, a domestic violence survivor from the Akha ethnic community in Thailand, violence is normalized in migrant communities, and migrant women have nowhere to go as a result of border closures during the outbreak. Given that the One Stop Crisis Centre's hotline is only available online in Thai, coupled with the fact that there is an insufficient number of shelters near migrant communities, migrant women seeking support are left behind.

RECOMMENDATIONS

1. On challenge 1: Discrimination against women survivors of gender-based violence

- 1.1.** In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **improve the social security of women survivors by increasing the availability, accessibility and quality of essential services, including legal assistance and appropriate healthcare services, emergency assistance and psychosocial support from properly trained professionals.**
- 1.2.** In accordance with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **disseminate information, in particular in rural and remote areas, about the legal remedies available to women regarding violations of their rights.**

2. On challenge 2: Violence against women reinforced by laws and legal institutions

- 2.1.** **Revise the Domestic Violence Victim Protection Act of 2007 by integrating a survivor-centered approach to domestic violence law and eliminating family-centric policies.**
- 2.2.** In accordance with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **take concrete measures to ensure the safety and protection of women survivors subjected to all forms of domestic violence and gender-based violence by increasing the effectiveness of restraining orders as well as criminal offenses against perpetrators. Ensure that survivors of domestic violence have adequate access to shelters, crisis centres, protection orders, as well as legal remedies, instead of reconciliation and mediation.**
- 2.3.** In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **strengthen the gender responsiveness and gender sensitivity of the justice system, including by prosecuting and punishing corrupt law enforcement and judicial officials who obstruct justice, in order to restore women's trust in the justice system.**
- 2.4.** In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, **ensure women's access to justice and legal remedies by providing legal assistance, shelters, and justice funds, while considering systemic oppression towards women, as well as factors particular to women belonging to marginalized groups. Simplify the procedure for accessing the Justice Fund and ensure that it is available and accessible to all women, including rural women, indigenous women, women belonging to ethnic and religious minority groups, and women with disabilities.**

3. On challenge 3: Increase of domestic violence and gender-based violence during the COVID-19 outbreak

- 3.1.** **Allocate additional resources and include evidence-based measures to address violence against women in COVID-19 national response plans.**
- 3.2.** **Strengthen services through expanding the capacity of shelters, including re-purposing other spaces, to accommodate women's needs, and through safety planning and case management, adapted to the COVID-19 crisis context, to ensure survivors' access to support.**
- 3.3.** **Ensure support for grassroots women's rights organisations, especially those that provide essential services to hard-to-reach, remote and vulnerable populations, during the COVID-19 crisis.**



REFERENCES

- Bangkok Post, Virus driving up domestic abuse, (19 November 2020), available at: <https://www.bangkokpost.com/thailand/general/2021987/virus-driving-up-domestic-abuse>
 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Thailand, CEDAW/C/THA/CO/6-7, (24 July 2017), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/THA/CO/6-7&Lang=En
 Heinrich Böll Stiftung, Thailand's Silent Pandemic: Domestic Violence during COVID-19, (1 July 2020), available at: <https://th.boell.org/en/2020/07/01/covid-19-domestic-violence>
 Manushya Foundation, EMPOWER Foundation, the Women's Workers for Justice Group (WWG), the Thai Positive Women Foundation (TPWF), the Indigenous Women's Network of Thailand (IWNT), the Health & Opportunity Network (HON), and the Anmat Charoen Friend of Women Center, Joint UPR Submission: The Rights of Marginalized Women in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, (March 2021).
 UN Women, Prevention Violence against women and girls and COVID-19, (2020), available at: <https://www.unwomen.org/en/digital-library/publications/2020/05/brief-prevention-violence-against-women-and-girls-and-covid-19>

INDIGENOUS WOMEN IN THAILAND

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

Indigenous women face greater and multiple layers of discrimination based on gender equalities, within and outside their communities, as well as indigenous identity. Such layers further multiply when accompanied by discrimination based on social or economic status, and their patriarchal culture, resulting in severe inequalities for indigenous women in access to education, healthcare, and other services. Indigenous women also face specific difficulties different from men, particularly in relation to their traditional roles and responsibilities and needs for sexual and reproductive health services (Please refer to the Indigenous Peoples Factsheet for the challenges experienced by indigenous peoples generally in Thailand).

During the 2nd UPR cycle, Thailand did not receive any recommendation directly addressing the rights of indigenous women. As gender-based discrimination and violence against indigenous women remain common and indigenous women continue to be denied access to basic rights and services, the Thai government persistently failed to protect the rights of indigenous women in Thailand.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Indigenous women are continuously excluded from participation in the public sphere

The roles indigenous women are expected to play provide them with little, if any, space for autonomy, decision-making, or participation in the public sphere, resulting in severe inequalities for indigenous women in access to basic rights and services, such as education and healthcare. In 2017, the CEDAW Committee in its review of Thailand in 2017, expressed its concerns about the lack of representation of indigenous women in decision-making positions.

There is a lack of participation and representation of indigenous women in matters affecting them. In particular, indigenous women have been continuously excluded from participation in national development plans, including climate change adaptation and mitigation strategies, despite their unique experiences and invaluable contributions. In recent years, the Thai government imposed policies that have negative impacts on the well-being of indigenous communities, including the zoning of national parks and world heritage sites over indigenous territories, failing to acknowledge the intersectional discrimination that indigenous women experience. Given their gender and specific roles in the use and management of land and resources in the communities, indigenous women face greater impacts than men. Particularly in cases of relocation, indigenous women are usually denied financial compensation provided per household. They frequently face higher levels of violence, including gendered and systematic abuse, in the course of land dispossession and forced evictions.

Lack of meaningful involvement of indigenous women in the consultation process to develop the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act. 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 minorities and indigenous peoples in Thailand (please refer to the Indigenous Peoples Factsheet for the specific issues with the contents of the Draft Act). While the SAC has solicited comments from ethnic minorities, indigenous peoples, and the general public on the Draft Act, the Indigenous Women’s Network of Thailand (IWNT) reported that the consultation process is not inclusive of indigenous women and that their concerns are not incorporated in amendments to the Draft Act.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: Indigenous women do not enjoy equal rights as men because of patriarchal traditions and customs within their communities

The patriarchal traditions and customs reinforce gender-based discrimination against indigenous women and render them vulnerable to gender-based violence.

In 2017, the CEDAW Committee expressed its concerns about the persistence of multiple barriers impeding indigenous women from obtaining access to justice and effective remedies for violations of their rights. Such barriers include (1) social and cultural stigma, which deter women and girls from registering their complaints, in particular with regard to sexual and gender-based violence; (2) limited legal literacy and access to information on remedies that are available; (3) lack of gender sensitivity in the justice system, including negative attitudes of law enforcement officials towards women denouncing violations of their rights, leading to frequent failures to register and investigate complaints; and (4) widespread and pervasive corruption, which continues to impede women's access to justice.

Please refer to the Survivors of Domestic Violence and Gender-Based Violence Factsheet for the challenges experienced by survivors of domestic violence and gender-based violence generally in Thailand.

Within indigenous communities, men are primarily considered as the head of the households and are thereby granted the roles of community leaders and/or representatives. Indigenous women are thus restricted from making decisions that affect their lives, including decisions regarding education, work, marriage, and sexual and reproductive health. Concurrently, indigenous women are restricted from participating in dispute resolution mechanisms, even when the dispute concerns them.

The case of land grabbing in Sireh Island in Phuket province demonstrates the lack of equal and effective participation of indigenous women within their communities. The women were excluded from the preparation and proceedings of the lawsuit and their concerns were not taken into consideration.

Men are also expected to be the main, and, in some cases, the only source of household income within indigenous communities. Since men hold access and control to private and collective property and resources, indigenous women are often left without any income or property to support themselves and their children in the event of a divorce. Ultimately, as indigenous women are economically dependent on their male counterparts, indigenous women are vulnerable to domestic violence.

Since the discussion of personal matters, such as sexual life and domestic violence, is still considered taboo within indigenous communities, indigenous women remain unable to access justice and effective remedies. Indigenous women survivors of domestic violence typically do not seek redress through the justice system, as they face social stigma while registering their complaints. Moreover, the justice system lacks gender sensitivity, and law enforcement officials often have negative and discriminatory attitudes and stereotypes towards indigenous women, leading to a failure to register and investigate complaints of domestic violence.

Challenge 3: The COVID outbreak has adversely affected the quality of life of indigenous women

During the COVID-19 outbreak, indigenous women have experienced increased obstacles to accessing basic rights and services, which put their health and lives at risk.

Please refer to the Indigenous Peoples Factsheet for the impacts of the COVID-19 outbreak on indigenous peoples generally.

The Thai government's response to the COVID-19 outbreak is neither gender-responsive nor gender-sensitive, harming indigenous women in the process. In particular, the fact that information provided by the government on COVID-19 preventative measures, as well as treatment options, is only available in Thai, is neglectful of the circumstances of indigenous women. Since the average level of education is better for men than women and men have attained higher education than women within indigenous communities, men alone have access to information key in the fight against COVID-19, leaving the women to turn to fake news disseminated within their communities, which ultimately endanger their health and lives. Examples of fake claims within indigenous communities include the claim that the consumption of chicken feces can cure COVID-19.

During the COVID-19 outbreak, indigenous women have also been deprived of access to sexual and reproductive healthcare services such as contraception and safe abortion. Even though some organizations provide assistance to women during the outbreak, these organizations disclose that they are hindered by not having any access to indigenous women.



RECOMMENDATIONS

1. On Challenge 1: Indigenous women are continuously excluded from participation in the public sphere

- 1.1.** In line with the 2017 CEDAW Committee's Concluding Observations to Thailand, **guarantee representation and participation of indigenous women in the decision-making process for matters concerning them; and support proportional inclusion of indigenous women in all levels of State mechanisms, including through special temporary measures and affirmative actions.**

2. On Challenge 2: Indigenous women do not enjoy equal rights as men because of patriarchal traditions and customs within their communities

- 2.1.** **Take concrete measures to ensure indigenous women's access to basic rights and services, including access to justice and legal remedies** in accordance with the 2017 CEDAW Committee's Concluding Observations to Thailand.

3. On Challenge 3: The COVID-19 outbreak has adversely affected the quality of life of indigenous women

- 3.1.** **Strengthen the gender responsiveness and gender sensitivity of the Thai government's response to the COVID-19 outbreak, while considering the circumstances of indigenous women.**



REFERENCES

Manushya Foundation and Indigenous Women's Network of Thailand, Joint UPR Submission: The Rights of Indigenous Women in Thailand, for the UN Universal Periodic Review of Thailand (3rd UPR Cycle), 39th Session of the UPR Working Group, March 2021.

Information has been obtained from Manushya Foundation's discussions with Noraeri Thungmueangthong and Kanlaya Chularattakorn, representatives from Indigenous Women's Network of Thailand in August 2021.

Indigenous Women's Network of Thailand and Asia Indigenous Peoples Pact, NGO CEDAW Shadow Report on Behalf of Indigenous Women in Thailand, submitted for the 67th session of the Committee on the Elimination of Discrimination Against Women, July 2017, available at:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/THA/INT_CEDAW_NGO_THA_27695_E.pdf

This information has been obtained from Manushya Foundation's discussions with Noraeri Thungmueangthong and Kanlaya Chularattakorn, representatives from Indigenous Women's Network of Thailand in August 2021.

This information has been obtained from Manushya Foundation's discussions with Noraeri Thungmueangthong and Kanlaya Chularattakorn, representatives from Indigenous Women's Network of Thailand in August 2021.

Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined sixth and seventh periodic reports of Thailand, CEDAW/C/THA/CO/6-7, July 24, 2017, accessible at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/THA/CO/6-7&Lang=En



SITUATION OF LGBTIQ+ PERSONS, INCLUDING LGBTIQ+ YOUTH & CHILDREN IN THAILAND



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

During the 2nd UPR Cycle, Thailand did not receive any specific recommendations on SOGIESC rights but did receive one recommendation from Mexico to tackle gender-based violence against women, including women with diverse sexuality, which it accepted. As none of the UPR recommendations explicitly addressed the LGBTIQ+ community's human rights and equality, it shows a lack of understanding of the challenges faced by LGBTIQ+ individuals in Thailand. Even though Thailand hosts one of the larger LGBTIQ+ community in Asia and is seen as a 'LGBTIQ+ Paradise', it has way to go in terms of embracing this community, both on a societal and normative level. Until now, the Thai government has failed to put in place a comprehensive approach to recognize non-standardized and non-binary sexual relations, gender identities and expressions, as well as to protect the rights of the LGBTIQ+ community, including LGBTIQ+ Youth and Children. Although Thailand made the voluntary pledge to pass a civil partnership legislation, it is inconsistent with the principle of equality before the law and the current draft is still pending. The 2015 Gender Equality Act and its committees have assisted marginalized individuals' access to justice, but the Act is currently underutilized, and does not explicitly protect from discrimination based on sexual orientation and gender identity. As a result, weak legal framework, stigma, and prejudices are key obstacles for LGBTIQ+ inclusion, hindering the individuals from reaching their full legal and social recognition.

National Legal Framework

Child Protection Act (2003)
Constitution of the Kingdom of Thailand (2017)
Gender Equality Act B.E. 2558 (2015)

The rights most commonly violated

Right to Access to Education for LGBTIQ+ Youth
Right to Equal Protection
Right to Freedom from Discrimination
Right to Family Rights
Right to Access to Public spaces

Right to Standard of Mental & Physical Health
Right to Freedom from Arbitrary Arrest
Right to Freedom of Peaceful Assembly & Association
Rights to Liberty & Security
Right to Access to Justice

REALITIES ON THE GROUND

Challenges

Challenge 1: The absence of legislation recognizing the rights to family establishment of LGBTIQ+ people cause significant social exclusion and human rights violations

Section 1448 of The Civil and Commercial Code stipulates that a marriage is between a man and a woman, implicitly outlawing same-sex-marriage and directly infringing upon people's right to equality and non-discrimination.

The Draft Civil Partnership Bill developed since 2014 and approved by the Cabinet in July 2008 is still pending and only allows same-sex couples to register a civil partnership, which does not equal marriage. Therefore, if this Bill is passed, same-sex couples registered will not enjoy the same rights and protection as heterosexual married couples. Instead, the Draft Bill focuses on aspects such as adoption, acting on behalf of their partner in legal proceedings if the partner is injured or passed away, inheritance matters, alimony, and property. As this Draft Bill does not provide marriage equality, it is highly criticized by LGBTIQ+ rights activists, who note that through this Draft Bill, LGBTIQ+ couples are treated as second-class citizens.

The absence of legislation recognizing same-sex marriage critically undermines same-sex couples from enjoying equal rights regarding family rights, adoption of children, property rights among others.

LGBTIQ+ couples demand EQUAL RIGHTS, not less.

Challenging the Constitutionality of Section 1448 of the Civil & Commercial Code to recognize same-sex marriage

The Foundation for SOGI Rights and Justice (For-SOGI) in collaboration with a lesbian couple filed a complaint to the Constitutional Court, questioning the constitutionality of Section 1448, as it breaches the equal protection provisions (Sections 4 and 27) of the 2017 Constitution. Since its initial schedule in December 2020, the Constitutional Court has repeatedly postponed its ruling, due to COVID-19. On September 28, 2021, the Court postponed its ruling for the third time to December 14, 2021, for no apparent reason.

The unequal treatment of same-sex couples

In November 2020, Dolayawat Chaichompoo, a transgender government employee, who had been married for five years, was unable to receive the same health benefits as other legal spouses in order to rescue her husband from cancer. As a civil servant, her overall income was insufficient to cover the cost of a specialized cancer treatment exceeding 120,000 THB, that a general governmental health care scheme covers for heterosexual spouses.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: The lack of legal framework protecting the rights of LGBTIQ+ persons, and the lack of legal gender recognition fuel widespread discrimination against the LGBTIQ+ community

The 2015 Gender Equality Act defines unfair gender discrimination and creates protection for people who identify themselves as male, female or of a different appearance from sex assigned at birth, in line with sections 4 and 27 of the 2017 Constitution of Thailand, stipulating that all persons are equal before the law and shall enjoy equal protection under the law. However, the 2015 Gender Equality Act does not explicitly protect from discrimination based on sexual orientation and gender identity, resulting in numerous cases of discrimination faced by the LGBTIQ+ community, including LGBTIQ+ Youth and Children.

The 2015 Gender Equality Act also fails to protect LGBTIQ+ persons from gender-harassment, gender-based hate speech and hate crimes, arbitrary arrests, and judicial harassment.

LGBTIQ+ Youth who are also Pro-democracy Student Leaders face judicial harassment for fighting for true democracy. Mass pro-democracy protests have taken place since July 2020 in Thailand, led by student activists demanding true democracy and an end to dictatorship. The largest Pro-democracy Youth-led movement 'Free Youth' is led by Secretary-General Tattep Ruangprapaikseree or 'Ford', an openly gay youth pro-democracy activist and his partner. Free Youth has created space for LGBTIQ+ Youth to join the fight for democracy for their present and future. The movement has been calling for a new Constitution, a new Parliament, and the end of intimidation, judicial harassment, killings and enforced disappearances of activists perpetrated by the authoritarian government. The movement also aims to curb the monarchy's power to ensure Thailand is governed by the people and for the people. However, LGBTIQ+ Youth activists are facing judicial harassment as Thai authorities try to silence them and stop their fight for democracy.

In Thailand, transgender identity is not legally recognized. The Person Name Act (1962), prohibits making changes to one's legal title, sex, and gender in official documents for transgender people; and allows it for intersex people under strict conditions (upon showing of medical proof of intersexuality at birth and after a gender confirmation surgery). The law is therefore inherently discriminatory as it denies transgender persons their right to identity and self-determination.

LGBTQI+ Youth face widespread discrimination in schools

Although the Thai government ratified the UN Convention on the Rights of the Child (CRC) in 1992 and enacted the Child Protection Act in 2003 to ensure domestic implementation of the CRC, LGBTIQ+ Youth are still subject to high levels of discrimination and violence in schools, and within their families. As a result, LGBTIQ+ Youth fall under emotional and physical abuses.

LGBTIQ+ individuals endure discrimination and threats, including death threats and hate speech, both online and offline, due to their gender identity and sexual orientation. Such threats pose a serious risk to their right to life, as outlined in Article 6 of the ICCPR. In January and February 2021, 21-years-old transgender woman Phetcharin, from Loei province, faced gender-based hate crimes. The hate crime against her occurred in the form of threatening messages and phone calls from a man who claimed to be a journalist from Thairath TV. Nada Chaiyajit, a transgender woman and leading transgender rights activist, who assisted Petcharin seeking justice also received threats, including death threats, through messages and phone calls in which he warned her to 'stay out of his business'. The threats severely affected the mental health of both transgender women, who have sought justice against the perpetrator.

In 2020, Chanya Rattanathada "Panen", a Thai transgender woman, LGBTIQ+ rights defender, also faced transphobic hate speech while fighting for true democracy. When joining pro-democracy protests, Panen proudly and bravely held a banner which wrote, "I will become the first transgender prime minister of Thailand". Her demonstration became the headline of news throughout social media and online platforms. However, she was faced with transphobic harassment and cyber-bullying against her vision. Internet trolls tried to discourage her by claiming that "transgender people cannot govern a country because they are psychotic freaks".

Due to his leadership, calls for true democracy and monarchy reforms, Tattep Ruangprapaikseree "Ford" was arrested and charged under sedition (section 116 of the criminal code) and royal defamation – 'lèse majesté' (section 112 of the criminal code) charges, in late 2020. His cases are still pending.

Chanya Rattanathada "Panen", Thai transgender woman and LGBTIQ+ rights defender, was also charged for joining pro-democracy protests. Panen is the co-founder of Young Pride Club, a Youth Club fighting for gender equality, gender and sexuality diversity and inclusion. On 29 July 2020, she joined the youth-led pro-democracy protest in Chiang Mai to call for equality, justice, and true democracy. As a result, she was charged for violating the COVID-19 Emergency Decree, weaponized by the military-backed government to crackdown on protesters. On 16 February 2021, Panen along with another LGBTIQ+ Activist, Sirisak Chaited "Ton", and 32 people who were also charged for joining the protest acknowledged their charges at the Chiang Mai police station. Their cases are still pending.

A 2018 UNDP study on Legal Gender Recognition in Thailand indicates the absence of a law allowing transgender people to change their title, sex, or gender on official documentation creates substantial barriers to social inclusion, health and social services, and enjoyment of human rights.

In January 2021, an investigating officer at the general consulate of the Ministry of Foreign Affairs accused a transgender person of being a criminal during her passport renewal procedure, because her gender identity and expression did not match her given sex at birth. As a consequence, instead of getting her passport within 30 minutes, she was forced to wait approximatively six months.

LGBTIQ+ youth are discriminated at school, particularly when dress codes are enforced based on their gender at birth. If transgender students cross-dress, they risk being banned from entering specific programmes or taking exams.

In January 2016, Woraniththa Chiewchan, a transgender man law student at Chiang Mai University, requested to dress as male during the graduation ceremony, but the administration refuted his claim. Besides, **many schools lack gender-sensitive amenities** like third-gender restrooms, and consequently transwomen students are hesitant to use male washrooms.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

School health education textbooks label LGBTIQ+ individuals as deviants, and advise that they keep their abnormality a secret. These stigmas harm the development and self-esteem of LGBTIQ+ students, notably leading to a lack of self-acceptance.

The situation of LGBTIQ+ Youth and Children is extremely challenging in conservative schools. According to a queer Thai anthropologist's interview, Samuk Korsem, a number of religious schools in Southern Thailand, as known as Po-Nor, have divided students into two groups regarding their biological sex. Among male students, transgender women students are always sexually exploited. In secret, they are being taken advantage of. In public, they are being shamed.

Challenge 3: While seeking healthcare services, many LGBTIQ+ individuals face discrimination in the form of unequal standards of healthcare given to them

LGBTIQ+ patients are being mistreated, often because of their appearance or in relation to their positive HIV status. As reported by the 2019 UNDP survey, one in five LGBTIQ+ respondents faced difficulties accessing mental health services, hormone therapy and gender-affirming surgery. On top of that, they have limited access to mental health support, and proper sexual education programs. Additional challenges are faced by transgender youth, who may need to undergo surgeries.

LGBTIQ+ Youth face discrimination by health practitioners when they visit healthcare facilities, as they are not youth-friendly. For instance, most HIV clinics in Thailand focus on adult clients, while overlooking the specific needs of Youth. LGBTIQ+ Youth may be hesitant to test for HIV, as they fear that their test result may be disclosed to their parents.

Transgender and non-binary persons also face barriers in accessing health care. The absence of adequate social welfare leads transgender and non-binary persons being denied access to essential health benefits. This includes gender-affirming therapies, such as putting transgender persons in prison, and requiring transgender patients to be admitted to field hospitals based on their sex given at birth during COVID-19.

Transgender inmates are unable to access certain basic medical services in jail. Sirisak Chaitied, a Thai independent SOGIESC & Sex Worker Rights activist, has filed a complaint with the National Human Rights Commission of Thailand (NHRCT) to investigate the status of transgender individuals in prisons. While incarcerated, they do not have access to medical services, such as hormone replacement therapy, having a substantial impact on their health.

Challenge 4: Degrading and humiliating treatment in private settings due to the lack of family acceptance

LGBTIQ+ youth experience varying degrees of acceptance from their families. Generally, due to social and cultural beliefs that family members hold, they remain unaccepted. This results in LGBTIQ+ youth facing severe human rights violations, with families exposing them to procedures aiming to 'converse them'. These inhumane, degrading, and cruel practices are similar to torture and have profound consequences on their psychological and mental well-being.

According to a 2014 PRIDE project report, **some families believe that gay-ness and male-to-female transgender-ness can be treated through various methods, such as using psychiatric services**, sending children to monkhood, or engaging them in "manly" activities. Besides, conservative religious interpretations, such as the belief that being LGBTIQ+ is a 'karmic punishment' for past sins, are used to justify the resort to conversion therapies or forced monkhood.

There is also a failure to understand LGBTIQ+ Youth and in particular, Young Trans people, living in marginalized communities in Thailand. Among marginalized communities, some people strongly believe that being an LGBTIQ+ is a test from God. There is this belief that Young LGBTI must turn themselves into heterosexuals to pass the test.

Challenge 5: Economic exclusion of LGBTIQ+ population in the area of Business and Human Rights: gender discrimination in workplace and against LGBTIQ+ customers by companies

LGBTIQ+ community face severe exclusion in the workplace. While gay and lesbian face unfair treatment toward job promotion and equal welfare, transgender people are the most vulnerable in terms of recruitment. Also, the Thai government uses public funds to promote the ineffective National Action Plan on Business & Human Rights (NAP-BHR), without mandating human rights due diligence across all business sectors.

Gender discrimination in the workplace is a widely spread phenomenon. In 2020, Pairie, a transgender intern at Central Plaza Westgate, was denied access to gender-specific restrooms. In 2020, June, a transgender woman, was rejected a job at Cute Press exclusively because of her gender identity, as the position was only open for cisgender women.

Workplace sexual harassment continues to be experienced by transgender women. In 2021, Mimi, a transgender employee at Gaysorn Village Department Store, was subjected to sexual harassment by the company's owner. Gaysorn Village does not have a specific code of conduct in place that abides suppliers and business partners to comply with its anti-sexual harassment policy.



REALITIES ON THE GROUND

Challenges

Section 15 of the Labour Protection Act fails to include discrimination on grounds of sex against persons with non-binary gender identities. This results in LGBTIQ+ employees experiencing sexual harassment and violence, as well as limited professional growth prospects, being regularly and unfairly denied promotions, or being fired. LGBTIQ+ youth reported being discriminated against by companies while seeking internships and being declined jobs in their communities, such as Village Health Volunteer.

Further, although Thailand enacted a National Action Plan on Business & Human Rights (NAP-BHR) in October 2019, its implementation remains very weak, with most businesses not aware of their responsibility to respect human rights. This results in LGBTIQ+ clients facing gender discrimination when accessing services as customers.

Challenge 6: The impacts of COVID-19 on the lives of LGBTIQ+ individuals

The COVID-19 has exacerbated the challenges faced by the LGBTIQ+ community, as they have been particularly hit by the economic impact of the pandemic, since many of them worked in entertainment industries, tourism or sex work, which were most affected by the restrictions imposed.

Furthermore, LGBTIQ+ youth have been severely impacted by the COVID-19 related lockdown and regulations, as many of them were working in tourism and entertainment business sector in order to financially support themselves during their academic years.

Cases, Facts, Comments

Gender discrimination against LGBTIQ+ customers by companies. Ms. Mint, a transgender person, was compelled to reveal her gender identity when she went to visit her friend at a hotel in Pattaya. The hotel supervisor at the reception desk claimed that it was one of the hotel's regulations to prevent and protect the hotel's guests from any misunderstanding or deception from transgender people. Moreover, the hotel staff emphasized that trans women are not real women. After Ms. Mint reported her case with Manushya Foundation and RSAT, the hotel manager admitted their mistake and confessed having no knowledge on the 2015 Gender Equality Act and NAP-BHR regarding the protection of transgender people.

RECOMMENDATIONS

- 1. On challenge 1: The absence of legislation recognizing the rights to family establishment of LGBTIQ+ people cause significant social exclusion and human rights violations**
 - 1.1. Amend the Civil and Commercial Code, Book 4, Section 1448 to recognize same-sex marriage, by the end of 2022.**
- 2. On challenge 2: The lack of legal framework protecting the rights of LGBTIQ+ persons, and the lack of legal gender recognition fuel widespread discrimination against the LGBTIQ+ community**
 - 2.1. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, adopt a comprehensive anti-discrimination law that prohibits discrimination on all grounds, including sexual orientation and gender identity, by the end of 2022.**
 - 2.2. In line with the 2017 Concluding Observations of the Human Rights Committee to Thailand, amend the 2015 Gender Equality Act by the end of 2022 to eliminate any limitation on the protection against gender-based discrimination, including gender-harassment and gender-based hate speech and hate crimes and intensify measures to ensure LGBTIQ+ persons do not suffer from discrimination and violence, can fully exercise their rights to freedom of expression, freedom of peaceful assembly and association and freedom from arbitrary arrests; and guarantee LGBTIQ+ persons have access to effective remedy while perpetrators are held into account.**
 - 2.3. In line with Article 28 of the CRC, Article 26 of the UDHR, and with Section 10 of the National Education Act, amend the 2003 Child Protection Act by 2023 to clearly include protection of LGBTIQ+ Children and Youth from discrimination, violence and acts of prejudice in all spheres of society: schools, within families, communities, workplaces.**
- 3. On challenge 3: While seeking healthcare services, many LGBTIQ+ individuals face discrimination in the form of unequal standards of healthcare given to them**
 - 3.1. In line with Article 24 of the CRC, and Sections 47 and 55 of the 2017 Constitution, ensure that LGBTIQ+ Youth and Children have access to adequate, available and good quality health services, including mental, sexual and reproductive health services, and HIV services.**

RECOMMENDATIONS

4. On challenge 4: Degrading and humiliating treatment in private settings due to the lack of family acceptance

- 4.1.** Enact a Gender Identity, Gender Expression and Sex Characteristics Act in consultation with LGBTIQ+ groups in Thailand, by 2023, to ensure all persons in Thailand have the right to the recognition of their gender identity; the free development of their person according to their gender identity; be treated according to their gender identity and; to be identified in that way in the documents providing their identity; and bodily integrity and physical autonomy; and to ensure their right to physical and mental health in all circumstances, without any prejudice and without being forced to undergo a sex-reassignment surgery.

5. On challenge 5: Economic exclusion of LGBTIQ+ population in the area of Business and Human Rights: gender discrimination in workplace and against LGBTIQ+ customers by companies

- 5.1.** Reform the National Action Plan on Business & Human Rights (NAP-BHR) and existing labour laws to comply with international human rights standards, including related ILO conventions, by 2022, to ensure businesses respect the human rights of LGBTIQ+ persons, including LGBTIQ+ seeking employment. LGBTIQ+ employees and LGBTIQ+ customers.

6 On challenge 6: The impacts of COVID-19 on the lives of LGBTQ+ individuals

- 6.1.** Adopt gender-responsive approaches to COVID-19, that account for marginalized and vulnerable communities, including LGBTIQ+ Youth and Children, notably by reinforcing and extending access to health services, social protection schemes and relief plans.



REFERENCES

THAILAND UPR III 2021 – UPR FACTSHEET

THE RIGHTS OF PEOPLE LIVING WITH HIV & DRUG USERS IN THAILAND



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

During the 2nd UPR cycle, Thailand received only one recommendation specifically addressing drug use and HIV, to “reinforce the harm reduction of measures targeting drug users in order to avoid adverse health effects, including increased HIV infections and hepatitis”, made by Colombia, which it supported. It also received a total of 54 recommendations related to the rights of people living with HIV (PLHIV) and Drug Users, of which it supported 47 and noted seven. These recommendations are mainly focusing on the right to health and access to social services for vulnerable groups.

While HIV and drug use are prevalent in Thailand, the government claimed to made progress by launching the ‘2017-2030 National Aids Strategy’, adopting the ASEAN Declaration of Commitment on HIV and AIDS. It also made amendments to legislation regulating drug use, possession, and dispose; and provided positive prospects for the promotion and protection of drug users’ human rights. However, our assessment demonstrates that the Thai government has partially implemented five recommendations, and persistently failed to implement 49 recommendations since its last UPR. As a consequence, PLHIV and drug users continue to face severe human rights violations, and to experience stigma and discrimination in all aspects of their lives. Drug users face even harsher conditions due to Thailand’s highly punitive approach to drug use: individuals caught using or selling drugs face detention and even death penalty, and are denied access to essential healthcare.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Lack of legal framework to protect the Rights of PLHIV and Drug Users

Section 4 of the 2017 Constitution stipulates Thai people enjoy equal protection under the Constitution and Section 27 guarantees that all people are equal before the law. It also ensures that unjust discrimination on the ground of health condition is prohibited. Further, under Sections 47 and 55, people's right to healthcare is guaranteed. However, in reality, PLHIV and Drug Users do not receive formal protection and they face severe discrimination.

Even though Thailand counted 470,000 PLHIV in 2019, **the country does not have any legislation in place specifically protecting PLHIV and Drug Users from discrimination, nor does it have any comprehensive and all-inclusive anti-discrimination law.**

Instead of being protected under Thailand's legal framework, Drug Users face severe stigmatisation due to Thailand's punitive approach towards drugs and legislation regulating drugs, defining Drug Users as criminals rather than as patients. Such legislation includes the Psychotropic Substances Act, 1975, the Narcotics Control Act, 1976, and the Narcotics Act, 1979.

PLHIV and Drug Users face severe human rights violations, are stigmatized and discriminated against due to a lack of legal framework protecting their rights.

In 2017, the 5th Thai National Health Examination Survey, measuring people's perception towards PLHIV, concluded that 76.9 percent of the respondents was hesitant to take an HIV test, fearing people's reaction in case of a positive result. Due to stigma and discrimination, PLHIV are often rejected by Thai society, and they experience social isolation and depression. For instance, the Cremation Association refuses to admit HIV-positive people, denying them the access to the organisation's benefits.

Transwomen Who Use Drugs (TWUD) are especially vulnerable and marginalized as they faced an intersectional layer of stigma and discrimination. Due to their gender identity and the misconception of drug users, they are discriminated against in daily life and viewed as criminals. With a sense of insecurity and unworthiness, TWUD are often unwilling to speak out their concerns or seek help from others in face of human rights violations, such as harassment and violence from law enforcement.



REALITIES ON THE GROUND

Challenges

Under these Acts, consumption, possession, disposal, and possession for the purposes of disposal, production, import and export of drugs are punishable by imprisonment and/or fines, while death penalty may also be imposed in some cases.

Please see our UPR Factsheet on Prison Conditions in Thailand for more information.

Cases, Facts, Comments

Drug users are casted as criminals and not patients. The “war on drugs” launched in 2003 worsened Drug Users’ situation, by punishing the consumption, possession, or disposal of drugs with imprisonment, fines, or death penalty. As of December 2020, 62% of the people on death row were related to drug offences. Meanwhile, since September 2021, the criminal responsibility age is 12 years old, meaning that children can face harsh punishment for drug offences.

Moreover, due to disproportionate penalties and sentencing under the 1979 Narcotics Act, over-incarceration becomes a serious issue in Thailand. Thailand’s prisons are amongst the world’s most overcrowded, with about three people in prison for each available space. The statistics show that over 80% of people in prison are incarcerated for drug offences.

Drug Users do not benefit from legal groundings for harm reduction or treatment. In contrast to the WHO Addiction Severity Index, substance dependency is frequently determined only by a urine test. Many cases of people compelled to take urine sample for drug testing have been registered in Thailand. Similarly, warrants were issued in the Collective Arrest Case to search for unlawfully opened bars, but officers abused their authority and coerced people to do drug tests.

Challenge 2: PLHIV face employment discrimination

PLHIV continue to face persistent discrimination in all aspects of employment: during the recruitment process, as well as at the workplace, notably due to the lack of anti-discrimination provisions in national legislation.

Section 15 of the Labour Protection Act provides that employers shall provide equal treatment to men and women workers, however, it does not mention any other population groups, such as PLHIV or Drug Users. Only in Article 5.6.1 of the Thai Labour Standards on Corporate Social Responsibility in Thai businesses, developed by the Ministry of Labour, it is provided that *“discrimination in respect of employment, payment of wage and remuneration, providing welfare and opportunity for training and development, promotion, termination of employment or retirement, and so on, due to HIV/AIDS (among others) is prohibited”*. However, as these are voluntary guidelines for businesses, they do not guarantee the protection of PLHIV.

Businesses fear that PLHIV will incur greater operational costs, and due to a lack of knowledge regarding HIV, they are also concerned about the safety of their customers and employees. Interviews conducted with human resources professionals of companies listed on the Stock Exchange of Thailand showed that 48.3% would not hire PLHIV based on their HIV-positive status. As PLHIV are not included in Section 15 of the Labour Protection Act, and they are subject to unconsented HIV screenings during the recruitment process and throughout their employment. If their HIV-positive status is disclosed, their employment is terminated.

A representative case is that of a 29-year-old technical engineering graduate who was forced to resign after undergoing a mandatory blood test revealing that he was HIV positive. People whose parents are HIV-positive are often scared to get blood tests, considering that they might miss out on employment opportunities. Another concrete example is the case of the Bank for Agriculture and Agricultural Cooperatives which conducts blood tests for HIV, without informing people about it, and rejects them if they test positive.

Challenge 3: HIV-positive students face barriers in accessing education and sex education in schools

In spite of Thailand’s ratification of the Convention on the Rights of the Child (CRC) and its General Comment No. 3, HIV-positive children experience barriers while accessing education. Also, sex education is considered a taboo, encouraging unsafe sexual practices and contributing to an increase in the HIV rate among youth.

On 28 August 2012, three students living with HIV from the Nursing Sciences, Christian University, filed complaints with the National Human Rights Commission of Thailand (NHRCT) after the university rejected them claiming that the school had to protect its patients from HIV infection.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 4: PLHIV and Drug Users face barriers in accessing healthcare services

Although HIV services and treatments can be accessed for free, PLHIV lack access to information and fear discrimination, preventing them from accessing healthcare services. Thailand made efforts to improve its response to AIDS by integrating HIV services into its Universal Health Coverage Scheme, including antiretroviral therapy which can now be accessed for free and is offered to PLHIV immediately after they are diagnosed with HIV. However, PLHIV and Drug Users experience strong and persistent stigma and discrimination when accessing healthcare services. Facing stigma and discrimination, key populations at high risk of transmitting HIV, including Men who have Sex with Men (MSM), Drug Users, sex workers, and transgender people, have avoided using healthcare services, and have been refused healthcare due to their HIV status.

Even though treatment for HIV is offered free of charge, Drug Users are not eligible. However, some doctors provide treatment to people who promise to stop using drugs immediately. Among Drug Users, it was found that those who were refused medical care were more likely to avoid healthcare services. Factors preventing Drug Users from accessing services include misconceptions, such as that the distribution of needles would promote drug addiction, as well as stigma and discrimination by public health service providers and law enforcement officials. Criminalization of drug use is also an issue, as Drug Users fear arrest or detention if they would access healthcare services and HIV treatment.

Due to social stigma, many people start antiretroviral therapy late, and, although HIV treatment is free of charge, Drug Users are not eligible. In 2017, 8% of sex workers, 5% of MSM, and 6% of transgender persons claimed to avoid healthcare services, and reported to have faced discrimination by healthcare workers in all healthcare settings.

As part of Thailand's national Prevention of mother-to-child transmission of HIV program, routine HIV counselling and testing for pregnant women and their partners takes place. **However, women are unaware of their right to reject the testing. In instances, Women Living with HIV are forced to sign a sterilisation agreement form in exchange of receiving medical services**, a practice that violates fundamental human rights and is considered an act of torture, as per the UN Special Rapporteur on Torture Report (2013).

Among Drug Users, the fear of arrest or detention, if they access healthcare services and HIV treatment, make them resist seeking medical assistance. As a result, harm reduction services are extremely important. However, the Government's punitive approach undermines Drug Users' access to it. For instance, due to insufficient financing, the number of Needle and Syringe Programs (NSPs), which aim to reduce the risk of HIV transmission, has decreased, and Drug Users received just ten clean needles and syringes on average in 2018.

Challenge 5: The impact of COVID-19 on PLHIV and Drug Users

The outbreak of COVID-19 led to new challenges for PLHIV and Drug Users. Freedom of movement restrictions hampered outreach activities, limiting community-led HIV testing and reducing access to HIV medication and assistance.

In the case of Drug Users who had been detained and were about to be released, they were freed in a vulnerable state, since they were homeless, and lacked access to any preventive measures or care, being therefore highly exposed to COVID-19.

In some cases, hospitals directly delivered antiretroviral drugs to patients. However, many PLHIV preferred not to receive medication packages, fearing that others might find out about their HIV status. Also, persons who needed Methadone Maintenance Treatment on a regular basis had difficulty obtaining it, either owing to lockdown limitations or a lack of methadone clinics in their communities.

No access to information of COVID-19 vaccines for people living with HIV and drug users have been released.

RECOMMENDATIONS

1. On Challenge 1: Lack of Legal Framework to protect the rights of PLHIV and Drug Users

- 1.1. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, **adopt a comprehensive anti-discrimination law that prohibits discrimination on all grounds, including against PLHIV and drugs users.**

RECOMMENDATIONS

1.2. Implement effectively the 2017-2030 National Strategy on AIDS by collaborating with civil society and international partners to ensure that the general population and especially key populations are well-informed about their rights and the HIV services they have access to, notably by raising awareness and organising educational campaigns in the view of reducing HIV-related stigma and discrimination.

1.3. In accordance with the 2017 Human Rights Committee's Concluding Observations to Thailand, and in accordance with the principles of proportionality and the rule of law, **abolish the death penalty for all-drug related offence and review the criminalization of drug offences, to lower sentences by amending the Psychotropic Substances Act, the Narcotics Control Act and the Narcotics Act.**

2. On Challenge 2: PLHIV face employment discrimination

2.1. In line with the UN Guiding Principles on Business & Human Rights, Thailand's National Action Plan on Business & Human Rights and the ILO Recommendation 200, **the Thai government must regulate Thai companies, both in the public and private sectors, to adopt HIV/AIDS friendly policies ensuring zero discrimination and stigmatization of workers living with HIV, to protect the rights of PLHIV at the workplace, and to forbid the mandatory HIV testing by companies at all stages of recruitment and after recruitment.**

3. On Challenge 3: HIV-positive students face barriers in accessing education and sex education in schools

3.1. In accordance with Section 54 of the 2017 Constitution and the General Comment No.3 of the UN Committee on the Rights of the Child, **guarantee that children affected by HIV can stay in school and receive quality education.**

3.2. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, **strengthen the sexual and reproductive health education programmes, and ensure the accessibility, availability and affordability of sexual and reproductive health services.**

4. On Challenge 4: PLHIV and Drug Users face barriers in accessing healthcare services

4.1. In line with Sections 47 and 55 of the 2017 Constitution, **urgently train healthcare workers to provide effective services to PLHIV and drug users so that they can freely access healthcare services, without fear of stigma and discrimination.**

4.2. In accordance with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights to Thailand, **protect and don't punish drug users. Instead, apply a human rights-based and evidence-informed approach to drug abuse, which should include preventive measures, harm-reduction programmes and provision of appropriate health care, psychological support and rehabilitation.**

5. On Challenge 5: The impact of COVID-19 on PLHIV and Drug Users

5.1. Adopt a gender-sensitive approach to COVID-19, that account for marginalised and vulnerable communities, including PLHIV and Drug Users, notably by reinforcing and extending access to health services and social protection schemes.



REFERENCES

Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined initial and second periodic reports of Thailand*, (19 June 2015), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/THA/CO/1-2&Lang=En

Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2020*, (7 April 2021), available at: https://www.hri.global/files/2021/04/07/HRI_Death_Penalty_Report_2020_FINAL.pdf

Manushya Foundation, *Joint UPR Submission: The Rights of People living with HIV (PLHIV) & People who Inject Drugs (DRUG USERS) in Thailand*, UN Universal Periodic Review of Thailand - 3rd UPR Cycle, 39th Session of the UPR Working Group.

UN Human Rights Committee (HRC), *Concluding observations on the second periodic report of Thailand*, CCPR/C/THA/CO/2, (25 April 2017), available at: <https://www.refworld.org/docid/591e9d914.html>

US National Library of Medicine, National Institutes of Health, *Stigmatizing attitudes toward people living with HIV among general adult Thai population: Results from the 5th Thai National Health Examination Survey (NHES)*, (2017), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5690635/>

RIGHTS OF PERSONS WITH DISABILITIES



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

During the 2nd UPR Cycle, Thailand received and accepted nine recommendations on the rights of Persons with Disabilities. The recommendations received concerned the necessity to address the promotion and protection of the rights of Persons with Disabilities, by reducing stigma and discrimination; the reformation of legislation; the necessity to take effective steps in addressing their educational needs; as well as the development of health institutions to tackle the **specific needs** of Persons with Disabilities.

The number of Persons with Disabilities has increased in recent years. However, their rights have not been mainstreamed across all sectors to ensure equal access to social justice, health care, education, and government services. The charitable approach to disability continues to be preferred over the legalised rights-based approach, resulting in discrimination and preventing Persons with Disabilities from living in dignity and fully exercising their political, economic, social, and cultural rights.

NATIONAL LEGAL FRAMEWORK

First Strategic Plan for the Empowerment of Women with Disabilities (2013-2016)

Five-Year Plan on the Development of Education for Persons with Disabilities (2012-2016)

Fourth National Plan of Empowerment of Persons with Disabilities (2012-2016)

Persons with Disabilities Empowerment Act B.E. 2550 (2007) and its amendment B.E. 2556 (2013)

The Education Act for Persons with Disabilities B.E. 2551 (2008)

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Persons with Disabilities are discriminated against in employment and education

The national legislative and policy frameworks concerning discrimination and offering protection to persons with disabilities are riddled with flaws, both in content and practice. Discrimination on the ground of disability is prohibited by the Constitution of 2017, as well as Sections 15, 16, and 17 of the Persons with Disabilities Empowerment Act of 2007. Nevertheless, it remains a serious concern in Thai society, as there are persisting negative attitudes, stereotypes and prejudices toward Persons with Disabilities.

Persons with Disabilities have almost no employment opportunities in an open labour market, besides stereotypical, unskilful and low-paying jobs that lack security. Despite the adoption of policies meant to remedy employment discrimination, most of them have been denied employment in an open labour market due to their disabilities. This is due to a myriad of factors, including low educational attainment levels, lack of accessible or disability-friendly facilities in workplaces, discriminatory attitudes, and stereotyping. Also, Persons with Disabilities are often exploited by employers who seek to appear to be complying with the Persons with Disabilities Empowerment Act to benefit from tax deductions. In addition to this, the option of paying a levy results in many employers opting to pay instead of employing Persons with Disabilities.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Students with disabilities employed to avoid paying to the Fund for Empowerment of Persons with Disabilities

In 2012, ABC Donuts Thailand hired students with disabilities on a part-time basis with a salary of 600 THB per month. A study revealed that all students with disabilities were listed as full-time workers, remunerated with 9,000 THB/month. ABC Donuts admitted that the students were used to avoid paying to the Fund for Empowerment of Persons with Disabilities while benefiting from full tax deductions. A claim was submitted to the Sub-Committee on the Elimination of Discrimination against Persons with Disabilities chaired by the Permanent Secretary of the Ministry of Social Development and Human Security (MSDHS), and ABC Donuts Thailand was fined. Despite this, the underpaid salary of the employed students was not compensated.

For many Persons with Disabilities, the right to inclusive education remains unfulfilled

Legally, all persons are entitled to 12 years of free, basic education. However, statistics show that 89,437 Persons with Disabilities, whose ages fall within the range for whom education should be offered, do not obtain it. For many Persons with Disabilities, the right to inclusive education remains unfulfilled, since some schools refuse to admit students with disabilities. In addition to infrastructural impediments, Persons with Disabilities' access to education is hampered by a dearth of human resources specifically qualified to teach people with disabilities.

Challenge 2: Women with Disabilities face multiple and intersectional discrimination

For women with disabilities, the intersection between gender and disability leads to extreme oppression and abuse of rights. As of the 2018 Annual Report, there are 47.67% women and 52.33% men, showing a higher proportion of women with disabilities than men. However, no data on women and girls with disabilities participating in mainstream development programs and services, such as health and sexual and reproductive health, is available. Furthermore, neither PDEA B.E. 2550 (2007) nor Gender Equality Act B.E. 2558 (2015) mentions women with disabilities. Besides, women and girls with disabilities are absent in the National Council of Women.

Women with Disabilities are subject to physical and mental violence and abuse at both individual and structural levels. Particularly, women with intellectual disabilities are vulnerable to rape by men in their community or family. Despite the fact that sexual abuse is a pervasive issue, many offenders go unpunished, and no official records of sexual abuse and rape offenses are recorded, since community leaders and victims' families are often reluctant to report incidents. Victims' lack of protection and access to justice is exacerbated by inaccessibility, a lack of culturally relevant and accessible help, and considerable discrimination against women with disabilities. In 2020, a woman with intellectual disabilities was raped and murdered, in Chonburi Province.

Challenge 3: Persons with Disabilities face barriers in accessing healthcare services and public environment

When it comes to obtaining social services, there are policy, physical, and mental hurdles for Persons with Disabilities. Intersectionality further multiplies barriers when seeking access.

Access to healthcare and public health information is challenging for Persons with Disabilities. Both infrastructural and attitudinal barriers, including the scarce preparation of healthcare staff with regards to disability rights, constitute serious challenges. Also, the limited availability of sign language interpreters poses difficulties for sign language users to have their health care needs met. In addition, Persons with Disabilities continue to be subjected to involuntary medical treatment, including forced sterilisation and abortion.

Lack of accessibility to public environment

The majority of public transport is not usually equipped with accessible features. For instance, the BTS Skytrain remains inaccessible to commuters with disabilities, as some stations lack functioning lifts, and the majority of those with elevators connecting to ground level are only available on one side of the street.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 4: Lack of accessibility to the justice system

The lack of accessibility to the justice system, including legal aid, sign language interpreters in the courtroom, and procedural accommodations, are all obstacles to obtaining justice. Furthermore, sign language interpreters are in short supply at public offices, particularly in remote areas.

When cases of discrimination occur, Persons with Disabilities have limited access to legal recourse. Not believing in its effectiveness, 90% of them do not file claims before government agencies. Furthermore, as illustrated by the **Case of "Ying"** (alias), who was sexually harassed by her employer, the whole procedure is costly and time-consuming. She decided to file a lawsuit against him, but due to the legal system's inaccessibility, she ran into a number of roadblocks, one of which being the lengthy procedures. Furthermore, she was not provided with a language interpreter, and despite her desire to present the facts to the court, she felt defenseless because she was unable to interact directly with the court. In addition, during the court trials, she had to listen to rape scenarios over and over again. Ying's story exemplifies the impact of an inaccessible legal system for Persons with Disabilities, as well as how it leads to human rights breaches.

Challenge 5: The impact of COVID-19 on Persons with Disabilities

The COVID-19 pandemic has elevated hazards, exacerbated unmet health requirements, and impacted disproportionately the socio-economic life of Persons with Disabilities. Because of the lack of human rights approach, COVID-19 revealed the incapacity to deal with Persons with Disabilities, including intersectional disabilities, that were not included in any of the Government responses to the COVID-19 pandemic.

COVID-19 has had a disproportionate impact on Persons with Disabilities due to an increased risk of poor disease outcomes, limited access to public health care, and the negative social consequences of efforts to mitigate the pandemic. They have been affected by the lack of accessible public information on the pandemic's evolution, and, most importantly, **general COVID-19 responsive measures have excluded Persons with Disabilities**.

RECOMMENDATIONS

1. On challenge 1: Persons with Disabilities are discriminated against in employment and education

- 1.1.** In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **take all the measures necessary, including upgrading the Sub-Committee on Elimination of Discrimination against Persons with Disabilities to a Committee, to ensure that it can effectively and independently address cases of discrimination on the grounds of disability, including intersectional and multiple discrimination.**
- 1.2.** In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **pay attention to the links between article 27 of the Convention and Sustainable Development Goal 8, target 8.5, to ensure the achievement of full and productive employment and decent work for all including persons with disabilities and equal pay for work of equal value.**
- 1.3.** In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **adopt all measures necessary to ensure the provision, as a legally enforceable right, of inclusive quality education to persons with disabilities, especially children with disabilities, in mainstream schools within their communities.**

2. On challenge 2: Women with Disabilities face multiple and intersectional discrimination

- 2.1.** In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **adopt a strategy for guaranteeing full protection against discrimination, and enjoyment of the rights of women and girls with disabilities.**



RECOMMENDATIONS

3. On Challenge 3: Persons with Disabilities face barriers in accessing healthcare services and public environment

- 3.1. In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **strengthen the efforts to ensure that all health services for the general public are fully accessible and incorporate a gender perspective.**
- 3.2. In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **take measures to provide mandatory training to all health professionals on the rights of persons with disabilities, including the right of all persons with disabilities to give their free and informed consent.**
- 3.3. In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **ensure the effective cooperation of cross-cutting ministries and the adoption of a comprehensive accessibility plan covering all facets in line with general comment No. 2 (2014) on accessibility.**

4. On challenge 4: Lack of accessibility to the justice system

- 4.1. In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **implement physical, informational and communicational accessibility, including through the provision of professional sign language interpreters; ensure the training of court personnel, judges, police officers and prison staff so as to uphold the rights of persons with disabilities, including the right to a fair trial.**

5. On challenge 5: The impact of COVID-19 on Persons with Disabilities

- 5.1. In line with the Committee on the Rights of Persons with Disabilities Concluding observations to Thailand (2016), **develop and use accessible communication formats, such as Braille, tactile formats, sign language, easy-read and others, for mass media and public information ensure the accessibility of government websites.**
- 5.2. **Engage Persons with Disabilities and their representatives in planning for the COVID-19 response, to address the needs of all persons, including in peripheral and remote areas.**

REFERENCES

Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Thailand (CRPD/C/THA/1), (12 May 2016), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/THA/CO/1&Lang=En

Persons with Disabilities Empowerment Act B.E. 2556 (2013), available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=96440&p_lang=en
Education Act for Persons with Disabilities B.E. 2551 (2008), available at: <http://nep.go.th/sites/default/files/files/law/38.pdf>

Khaosod English, Three Years of Excuses Later, BTS Still Not Accessible, (20 January 2018), available at: <https://www.khaosodenglish.com/news/transpo/2018/01/20/three-years-excuses-later-bangkok-bts-still-not-accessible/>

Manushya Foundation, Thematic Assessment Chapter of the Independent CSO NBA on Business & Human Rights, Discrimination Against Marginalised Communities: LGBTI Individuals, Women, People living with HIV, Persons with Disabilities, Elderly persons, Other minorities, (March 2019), available at: <https://www.manushyafoundation.org/nba-bhr-discrimination-communities>

Ministry of Social Development and Human Security, Report of Situations Concerning People with Disability in Thailand by Promotion and Development of Life Quality of People with Disability Department, (2018), available at: www.dep.go.th

NADT, Report on Disability Situation in Thailand 2561, (2018), available at: <https://nadt.or.th/en/stat61.html>

Persons with Disabilities Empowerment Act B.E. 2550 (2007), available at: <http://nep.go.th/sites/default/files/files/law/197.pdf>

Thailand CRPD Alternative Report For the UN Committee on the Rights of Persons with Disabilities, Submitted By Disabilities Thailand and Network of Disability Rights Advocates (DTN), (March 2016).

The Pattaya News, Suspect arrested over alleged murder and rape of mentally disabled woman found in garbage pile in Chonburi, (13 August 2020), available at: <https://thepattayanews.com/2020/08/13/suspect-arrested-over-alleged-murder-and-rape-of-mentally-disabled-woman-found-in-garbage-pile-in-chonburi/>

UNICEF, Policy Implementation Analysis on Disability Grant of Thailand, (2019), available at: <https://www.unicef.org/thailand/media/5511/file/Policy%20Implementation%20Analysis%20on%20Disability%20Grant%20of%20Thailand%20EN.pdf>



ELDERLY RIGHTS

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

During its 2nd UPR cycle, Thailand received one specific UPR recommendation addressing the rights of the elderly, made by Sri Lanka and which it accepted, calling on the Government to “*further strengthen measures to ensure equal access to health services for all, while giving special attention to the needs of children, women and the elderly.*” Thailand also received 11 other recommendations related to the rights of elderly people, which were all accepted by the Thai government. While Thailand is undergoing a significant and relatively fast-paced demographic transition, with a population share of the elderly projected to increase to around 30% by 2035, the government faces extreme challenges in mitigating against impacts this may have on the elderly’s human rights. Although the Thai government has taken some positive steps to recognize the rights of the elderly, through the adoption of an Elderly Person Operational Plan (2020-2022) focusing on preparation for old age, promotion of elderly person’s careers, and the development of professional careers, their rights have not been enhanced and they continue to face severe challenges.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: The Thai government lacks effective legislation to uphold elderly's rights, including their right to extensive and fair provision of monthly old-age pension

Despite the fact that employees have the legal right to retire at the age of 60, they are frequently unable to do so due to a lack of adequate savings, access to retirement plans and pension schemes, forcing them to continue working. In 2018, the Labour Force Survey found that 37% of elderly Thais are still employed, accounting for 4.4 million people out of the total elderly population of 12 million.

The elderly receive insufficient allowances and pension schemes

Whereas Section 11(11) of the 2003 Elderly Person Act states that the elderly have the right to a comprehensive and equitable monthly old-age pension, Thailand's welfare system is inadequate, and the elderly receive insufficient allowances and pensions to make ends meet. According to statistics, nearly half of the population does not have a retirement pension, and just 35.8% of the elderly have savings.

Depending on ages, the old-age pension is paid at a progressive rate from 600 to 1,000 THB, which is clearly an insufficient amount of money. However, not having sufficient financial resources to meet their living expenses and basic needs, one out of three elder people live in poverty.

In February 2021, the Prime Minister rejected five legislation proposals to increase the retirement pension payout to the poverty line level in Thailand, amounting to about 3,000 baht per month.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 2: Elderly do not have access to adequate senior care, and they face barriers in accessing public environment

Traditionally, family members have cared for the elderly at home. Nonetheless, this care system is no longer viable, and elderly people require proper public care. However, in many cases, inaccessible and expensive public transportation is a barrier to access adequate care services.

According to a study, 40 percent of elderly care is provided by the family, and only a few receive fee-based care in facilities specialised in senior care. The Department of Social Welfare oversees a total of 20 elderly residential institutions, with more than 50 hospitals providing private elderly care. However, the vast majority of amenities are expensive and only available in urban areas, making them inaccessible to elderly people living in rural areas.

The inaccessibility of public transportation limits elderly's access to public services

Particularly in rural areas, elderly's access to public services, such as healthcare facilities, is hampered by the lack of accessible public transportation. Besides, notably in Bangkok, sidewalks are uneven and generally narrow, with congested pavements, and roads are often too narrow to be crossed by cross-overs which only have stairs. As well, Bangkok's public transport system is not wholly accessible for elderly or those committing with wheelchairs: only some parts of BTS stations have lifts, ramps, and escalators.

Challenge 3: Elderly people face physical and mental abuse

Problematically, Thailand does not have a legislation that prevents abuse and violence against elderly from occurring. Notwithstanding Section 71 of the 2017 Constitution asserting the state's obligation to provide assistance to the elderly, they face violence and abuses.

Elderly in Thailand are most at risk of abuse from family members or people close to them. The most common form of abuse of elderly persons is abandonment, which is followed by physical assault. A study found an alarming increase in cases of rape and sexual harassment of elderly women. Such acts were generally committed by family members under the influence of alcohol.

Elderly are also subject to financial theft, including physical robberies, online theft, and phishing, in which scammers steal personal and bank account information. According to the Royal Thai Police, the number of cases in which the elderly have been defrauded increased over the past five years. When elderly people are abused, they face severe challenges accessing justice and effective remedies. Due to lack of confidence, distrust of the legal system, and fearing social stigma and discrimination, they are often reluctant to complain about issues affecting them.

Challenge 4: Elderly are discriminated against in employment, and senior women are disproportionately affected

Elderly face severe discrimination in employment. While Thailand has laws in place to protect the rights of workers, such as the Labour Protection Act, this Act is not inclusive of elderly workers. Since many of them lack a formal education and have limited career prospects, they are compelled to work in menial jobs that are inadequate for their age and physical abilities.

Only 9.9 percent of working elderly are employed in jobs that offer legal protections. The rest of elderly are mostly employed in agriculture or work as assistants in smaller shops. Also, when people enter older age in Thailand, they face challenges finding employment due to age discrimination of employers. For instance, factories are unlikely to hire personnel over 50 years of age.

While there is a socioeconomic disparity between elderly men and women, Thailand's government policies do not target issues specifically faced by women. Since women outlive their husbands, they are more likely to be left alone, lacking the support and resources they need. Approximately 31% of senior Thais, particularly women, lack a formal education, making it difficult for them to find means to sustain themselves financially.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Furthermore, studies have shown that women are expected to retire from the labour market earlier than men, around the age of 45, owing to their care-giver role in the society. As a result, elderly women bear a disproportionate share of the burden of an aging society, making them more vulnerable than men.

Challenge 5: During COVID-19 pandemic, elderly people have been the most affected group

COVID-19's pandemic highlighted inequalities in elderly people's access to social protection and government solutions. Besides, the health preventive measures to mitigate the negative impact of COVID-19 have significantly affected the elderly. Despite of being a high-risk category for COVID-19 infections, over 80% of elderly engaged in the informal labour sector have been forced to work in order to sustain their livelihoods. Also, as the UN stressed, the COVID-19 has the seeds of a major mental health crisis, especially for vulnerable groups, including the elderly.

Approximately 40% of old persons relied on old-age pension prior to COVID-19. However, due to unemployment and lower-income during the COVID-19 outbreak, reliance on assistance rose to 56%.

According to FOPDEV, the elderly, particularly those employed in the service industry, were among the first groups to be discharged from their jobs, and the last group to be hired back. In addition, the government's complex compensation procedures had imposed hardships upon the elderly communities, unfamiliar with new technology systems, and unable to purchase electronic devices and internet services. As a result, a great number of elderly had given up on the compensations they were entitled to.

As Thailand continues to grapple with the COVID-19 crisis, ensuring the economic security of elder people necessitates a multi-pronged policy approach, one that takes into account the elderly's necessity to work.

RECOMMENDATIONS

- 1. On challenge 1: The Thai government lacks effective legislation to uphold elderly's rights, including their right to extensive and fair provision of monthly old-age pension**
 - 1.1. Take all necessary measures to further reduce poverty, paying special attention to disadvantaged and marginalised individuals and groups, including older persons, as recommended by the CESCR Concluding Observations (2015) to Thailand.**
 - 1.2. Take all necessary measures to uphold the rights of the elderly, including setting elderly pensions to 3,000 baht per person per month. If this is not feasible at the moment, a minimum of 1,000 baht per month should be provided until the government can meet the 3,000-baht minimum standard by 2023.**
- 2. On challenge 2: Elderly do not have access to adequate senior care, and they face barriers in accessing public environment**
 - 2.1. Intensify efforts to address the obstacles in access to the universal health care scheme, in particular for disadvantaged and marginalized individuals and groups, and ensure good quality health care, in line with the CESCR Concluding Observations (2015) to Thailand.**
 - 2.2. Promote and invest in age-friendly and universal design in urban and rural planning, infrastructure and public transport scheme to ensure that the transportation needs of older persons are met in line with recommendation 22 of the Vienna International Plan of Action on Ageing and with the 1991 General Assembly's Principles for Older Persons.**
- 3. On challenge 3: Elderly people face physical and mental abuse**
 - 3.1. Amend existing national legislation concerning physical, mental and financial abuse, so as to specifically refer to "older persons" and to address abusive relationships between individuals.**



RECOMMENDATIONS

- 3.2.** Empower older persons to be able to access information and justice in line with Article 8 of the UDHR, Article 2 and Article 14 of the ICCPR.

- 4.** Elderly are discriminated against in employment, and senior women are disproportionately affected

- 4.1.** Abolish discriminatory practices, strengthen and amend existing labour protection laws, and establish new regulations to ensure that elderly people's rights in the workplace are protected in line with CESCR General Comment No. 6 and Article 7 of the ICESCR.
- 4.2.** Ensure the equal right of women to social security, including in old age, their participation in development policy design to ensure their unique needs are met.

- 5.** On challenge 5: During COVID-19 pandemic, elderly people have been the most affected group

- 5.1.** Provide alternative channels for those who do not have access to internet or devices required; disclose knowledge on digital payment methods and financial technologies in order that older persons are able to navigate the system to access their welfare allowances and pensions with ease.
- 5.2.** Ensure appropriate administration of kits for older persons that contain essential drugs, equipment, and essential hygiene and sanitation items.

REFERENCES

- Committee on Economic, Social and Cultural Rights, Concluding observations on the combined initial and second periodic reports of Thailand, (19 June 2015), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/THA/CO/1-2&Lang=En
- Department of Older Persons (DOP), Situation of the Thai Elderly, (2017), available at: http://www.dop.go.th/download/knowledge/th1552463947-147_1.pdf
- Foundation for Older Persons' Development and Manushya Foundation, Joint UPR Submission: Elderly 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/elderly-rights-joint-upr-submission>
- Foundation of Thai Gerontology Research and Development Institute (TGRI), Situation of the Thai elderly 2020, (30 July 2021), available at: [https://openknowledge.worldbank.org/handle/10986/35693](https://thaitgri.org/?p=39772#Glinskaya, E., T. Walker, and T. Wanniarachchi, Caring for Thailand's Aging Population, Washington, D.C.: World Bank, (2021), available at: https://openknowledge.worldbank.org/handle/10986/35693)
- http://www.dop.go.th/download/knowledge/th1586350958-261_0.pdf
- Khasod English, Charity hires homeless of Bangkok to keep city clean, (13 July 2020), available at: <https://www.khaosodenglish.com/news/2020/07/13/charity-hires-homeless-of-bangkok-to-keep-city-clean/>
- Kwanchit Sasiwongsaroj and Youngyut Burasit, Managing Thailand's Ageing Population, ISEAS (2019 No. 32), (23 April 2019), available at: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_32.pdf
- ThaiPBS. രှယ်ရောက်ပျော်ဖော်: အောင်ဆုံး. (11 မြေး။ 63), available at: <https://www.facebook.com/watch/?v=1734322320043518>
- The Nation Thailand, More jobs for elderly will ease labour shortage: employment agency, (1 October 2017), available at: <https://www.nationthailand.com/news/30328163>
- The Nation Thailand, Respect urged for the elderly as report shows evidence of increase in abuse, abandonment, (21 February 2018), available at: <https://www.nationthailand.com/national/30339404>
- The National Committee for the Elderly (NCE), Situation of the Thai Elderly, (2018), available at:
- The National Committee for the Elderly (NCE), Situation of the Thai Elderly, (2018), available at: http://www.dop.go.th/download/knowledge/th1586350958-261_0.pdf
- United Nations (UN), Policy brief: COVID-19 and the need for action on mental health, (2020), available at: <https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf>
- United Nations (UN), Policy brief: COVID-19 and the need for action on mental health, (2020), available at: <https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf>
- ธนาคารแห่งประเทศไทย, สังคมสูงวัยกับความท้าทายของตลาดแรงงานไทย, (2561), available at: <https://www.bot.or.th/Thai/MonetaryPolicy/EconomicConditions/AAA/AgePeriodCohort.pdf>
- สำนักงานสภาพน้ำการเศรษฐกิจและสังคมแห่งชาติ. รายงานการวิเคราะห์สถานการณ์ความยากจนและความเหลื่อมล้ำในประเทศไทย ปี, (2562), available at: https://www.nesdc.go.th/ewt_dl_link.php?nid=10857

NOTES



THAILAND UPR III 2021 – UPR FACTSHEET

ASYLUM SEEKERS & REFUGEES IN THAILAND

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

During the 2nd UPR Cycle, Thailand received eight recommendations relevant to refugees and asylum seekers, including recommendations to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and provide legal status to refugees, abide by the principle of *non-refoulement*, and end the arbitrary detention of refugees. Other recommendations relevant to refugees included addressing human trafficking, ensuring birth registration of all children born on Thai territory, improving access to health, education, and social welfare for all, and improving labor rights and migration laws. Thailand largely noted recommendations specifically relating to refugees. Out of the eight recommendations, Thailand noted six of them, and only supported two (from Kazakhstan and Japan).

According to the U.N. High Commissioner for Refugees, as of July 2021, approximately 91,635 refugees from Myanmar live in nine refugee camps along the Thailand-Myanmar border, and at least another 5,000 refugees and asylum seekers from various nationalities reside in Bangkok and other urban areas. Given the lack of a legal framework to identify refugees in Thailand, many more refugees are likely uncounted in Thailand.

This factsheet focuses on three key challenges continuing to affect refugees in Thailand: (1) the continuing lack of legal status for refugees in Thailand; (2) violations of the principle of *non-refoulement*; and (3) the arbitrary arrest and detention of refugees.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Thailand lacks a legal framework to provide legal status to refugees

Thailand noted recommendations made during the 2nd UPR Cycle to provide legal status to refugees.

Thailand is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. While Thailand is a party to the Convention on the Rights of the Child (CRC), it lodged a reservation limiting the application of Article 22 as “subject to the national laws, regulations and prevailing practices in Thailand.” Article 22 of the CRC specifically relates to “a child who is seeking refugee status or who is considered a refugee” and obligates state parties to provide “appropriate protection and humanitarian assistance.”

Thailand lacks a legal framework to specifically recognize and provide protections to refugees. Without legal status in Thailand, refugees are at risk of facing criminal penalties under Thailand’s 1979 Immigration Act, which prohibits unauthorized entry or stay in Thailand. As a result, refugees in Thailand are subject to arbitrary arrest, detention, and refoulement.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

On December 25, 2019, the government enacted the “Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562” to create a National Screening Mechanism (NSM). The regulation establishing the NSM generally outlines mechanisms to screen for “protected persons.” Clause 3 under the regulation defines a “protected person” as “any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee...”

In May 2020, Thai authorities established the “Protected Person Screening Committee” in accordance with the regulation, and on April 28, 2021, the Committee created sub-committee to develop Standard Operating Procedures (SOPs) for the Committee. Despite these steps, progress towards actual implementation of a screening mechanism to identify and protect refugees in Thailand is slow and concerns remain on whether the mechanism will comply with international human rights standards.

Challenge 2: Refugees in Thailand are subject to refoulement

While Thailand noted recommendations made during the UPR to abide by the principle of non-refoulement, refugees in Thailand remain subject to forced return.

Thailand's response to the potential influx of refugees from Myanmar

Following the February 1, 2021 coup in Myanmar, the military junta's subsequent widespread and systematic attack on the general population forced thousands of people in Myanmar to seek refuge in neighboring countries, including Thailand. In response to the potential influx of refugees, on March 19, 2021, Prime Minister Prayut Chan-o-cha instructed the Ministry of Interior, CCSA, and other concerned agencies to “monitor and prevent illegal immigration” along the Thailand-Myanmar border and instructed the Immigration Bureau to “enforce strict inspection of border crossings.” The government also ordered the deployment of Royal Thai Army troops and patrol boats to “monitor illegal entry along the western borders both by land and sea,” according to meeting minutes of the Thai Centre for COVID-19 Situation Administration (CCSA), dated March 19.

A Thai provincial official confirmed to Fortify Rights that in May 2021, Thai authorities forcibly returned at least 2,000 refugees to Myanmar. The official also confirmed to Fortify Rights that Thai authorities prevented humanitarian organizations and U.N. agencies from accessing newly arrived refugees from Myanmar. Groups of displaced persons continue to gather along the Myanmar side of the Thailand-Myanmar border, according to the U.N. Refugee Agency and aid workers who spoke with Fortify Rights.

Challenge 3: Thai authorities continue to arbitrarily arrest and detain refugees, including refugee children, in immigration detention centers and government-run shelters

Thailand noted the recommendation made during the 2nd Cycle UPR to end the arbitrary detention of refugees.

Without a legal framework in place to provide legal status, refugees remain subject to the 1979 Immigration Act, which prohibits unauthorized entry or stay in Thailand. As a result, refugees are subject to arbitrary arrest and detention.

On January 21, 2019, seven Thai government authorities signed the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU). Despite this commitment, children remain subject to immigration detention. For example, according to international and local organizations working with refugee communities in Thailand, as of end of June 2021, Thai authorities continued to detain more than 40 children in the Bang Khen and Songkhla immigration detention centers.



RECOMMENDATIONS

1. On Challenge 1: Refugees and asylum seekers are not provided protection

1.1. Accede to the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.

1.2. Withdraw the reservation to Article 22 of the Convention on the Rights of the Child.

1.3. Implement the National Screening Mechanism in line with international human rights standards.

2. On Challenge 2: Refugees and asylum seekers are subject to *refoulement*

2.1. Prevent the *refoulement* of refugees and ensure their proper screening and protection in Thailand.

2.2. Ensure the U.N. High Commissioner for Refugees and other U.N. and humanitarian agencies have full, unfettered access to Myanmar refugees in Thailand, especially at the border.

3. On Challenge 3: Refugees and asylum seekers, including children, continue to be arbitrarily arrested and detained

3.1. End the arbitrary arrest and detention of refugees.

3.2. Release all refugees currently detained solely on the basis of their immigration status.



REFERENCES

Fortify Rights et al., Submission to the U.N. Committee on the Elimination of Racial Discrimination, August 2, 2021, <https://www.fortifyrights.org/downloads/submission-to-CERD-sept.pdf>

Fortify Rights, Thailand: Prevent Pushbacks, Establish Protection Mechanisms for Refugees Fleeing Myanmar, May 12, 2021, <https://www.fortifyrights.org/tha-inv-2021-05-12/>

Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E.2562, December 25, 2019, <https://www.refworld.org/docid/5e675a774.html>

Thai Centre for COVID-19 Situation Administration (CCSA), Summary of the 4th/2564 at the Parliament House, March 19, 2021, https://resolution.soc.go.th/PDF_UPLOAD/2564/P_403404_1.pdf

Ministry of Foreign Affairs of the Kingdom of Thailand, Press Release: Signing Ceremony of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers, <http://www3.mfa.go.th/main/en/news3/6886/98779-Signing-Ceremony-of-the-Memorandum-of-Understandin.html>

U.N. Human Rights Council, Matrice of Recommendation, April 22, 2020, http://lib.ohchr.org/HRBodies/UPR/Documents/Session25/TH/UPR25_Thailand_recommendations.docx

U.N. Human Rights Council, Report of the Human Rights Council on its Thirty-Third Session, April 22, 2020, <https://undocs.org/en/A/HRC/33/2>

U.N. Refugee Agency, Factsheet Thailand, June 30, 2021, https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/07/UNHCR-Thailand- Fact-Sheet_30-June-2021.pdf

U.N. Refugee Agency, Myanmar Emergency Update, August 1, 2021, <https://reporting.unhcr.org/sites/default/files/Myanmar%20Emergency%20Update-1August2021.pdf>

U.N. Refugee Agency, Refugees in Thailand, <https://www.unhcr.org/th/en>

UPR Info, Thailand's 2nd Cycle UPR Recommendations, [https://upr-info-database.uwazi.io/en/library/?q=\(allAggregations:!f,filters:\(cycle:\(values:\(!b237423c-6c85-4329-b3b0-acd1ceae04ed\)\),issues:\(values:\(!%2747822743-19d9-4f56-9849-a8d2b0d157d1%27\)\),state_under_review:\(values:!%271cstjpesois%27\)\)\),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:\(!%275d8ce04361cde0408222e9a8%27\),unpublished:!f}](https://upr-info-database.uwazi.io/en/library/?q=(allAggregations:!f,filters:(cycle:(values:(!b237423c-6c85-4329-b3b0-acd1ceae04ed)),issues:(values:(!%2747822743-19d9-4f56-9849-a8d2b0d157d1%27)),state_under_review:(values:!%271cstjpesois%27))),from:0,includeUnpublished:!f,limit:30,order:desc,sort:creationDate,types:(!%275d8ce04361cde0408222e9a8%27),unpublished:!f})

NOTES

RIGHTS OF THE CHILD

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

During the 2nd UPR cycle, Thailand received 34 recommendations directly addressing Child Rights. The supported recommendations include increase the minimum age of criminal responsibility, regulation to prevent and eliminate online violation against children, corporal punishment, eliminate child labour and sexual exploitation of children in travel and tourism, and the involvement of children in armed conflicts.

In the five years since the 2nd Cycle of the UPR, the evidence prove that the government has persistently failed to implement any of the recommendations received. There are still children and youth who were physical and emotional abused, including domestic violence, discriminations, and exploitation where the government should pay the attention of the Working Group on the UPR (Working Group) and to the Human Rights Council (Council) seven issues relating to the rights of children and Thailand's implementation of its obligations under the UN Convention on the Rights of the Child and the three optional protocols (Optional Protocol on the Involvement of Children in Armed Conflicts; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol on a Communications Procedure): (1) Online sexual abuse and violence against children; (2) Stateless children, refugee children and undocumented migrant children, (Articles 22 and 7 UNCRC); (3) Minimum age for marriage law and enforcement; (4) Corporal Punishment (Article 19 UNCRC); and (5) Children's right to quality care.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Online sexual abuse and violence against children

Since 2016, children have been able to increasingly access online services and platforms, with an estimated 52 million social media users in Thailand as of January 2020[1]. Thailand remains a host country for child sexual abuse images (ranking 6th out of the top 15 countries (ECPAT and UNICEF Situation Analysis, 2015) and undoubtedly COVID-19 is increasing attempts to access existing material or coerce more children living in Thailand in selling or exposing intimate photos online. 45% of respondents from COPAT's survey reported being involved in collecting, downloading and sharing illicit materials i.e., child pornography, while 17% of respondents reported having been sexually harassed including pressured to share sexual images. Thailand Internet Crimes Against Children Taskforce (TICAC) has reported that online sexual abuse in 2020 has hit a record high. TICAC received 404,002 TIPS of online child sexual exploitation from the U.S. National Center for Missing and Exploited Children (NCMEC), compared to 117,232 TIPS for the entire year in 2019. The majority of victims of online sexual exploitation are between 8-14 years old.

While there are many obvious educational and social benefits to online access, especially during the COVID-19 pandemic, there are evident negative impacts and risks to children, making them vulnerable to cyberbullying, sexual exploitation through online grooming, theft of personal information, and the growing problem of "digital addiction." A recent study by Thai Health reported that children in Thailand spend more than 35 hours a week on smartphones and that 61% of the 15,000 children aged 6 to 18 surveyed showed risks of being addicted to online games.

COPAT's 2020 national survey shows that children 12-18 years of age are increasingly exposed to different forms of online abuse with 69% of children respondents reported experiencing cyber bullying, 43% expressing that the excessive amount of time spent online (10 hours and above) had resulted in a negative impact on their family relationships as well as their education performance and 68% revealing that they practice online risk-taking behaviour.

The establishment of a Cyber Crime Investigation Bureau (CCIB) in October 2020 is expected to streamline and build collaboration across Ministries. Unfortunately, the number of designated, qualified officials is limited with case processing facing bottlenecks. Consequently, child victims face unnecessarily long legal proceedings and risk becoming re-traumatized during court procedures. The existing framework, i.e. the National Strategy for the Protection of Children and Youth from Online Exploitation and Abuse (2017-21), will come to an end soon.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Thus, all key responsible agencies including the Sub-Committee on the Protection of Children from Online Abuse, the Committee for the Development of Children and Youth, and the Child Online Protection Action Thailand (COPAT) under the Department of Children and Youth need to set a new direction and strategies for the online protection for children.

Challenge 2: Stateless children, refugee children and undocumented migrant children

Although the Royal Thai Government adopted Education for All (EFA) policy in 1990 to promote education for all children regardless of their nationality and legal status, the policy implementation imposes some barriers that prohibit migrant and stateless children, in particular, from enjoying their full rights to education.

Of almost 400,000 migrant children currently living in Thailand, an estimated 200,000 are not in school due to socioeconomic reasons. Migrant parents, despite the 15-year free education scheme, still have to pay for the indirect costs for education which they often cannot afford. Even after migrant children enroll in school, an estimated 50% of them drop out due to economic hardships. In addition, the lack of understanding of government policies among school officials and migrant parents has resulted in lower enrolment and higher drop-out rates among migrant children. Parents of migrant children are often not aware of their options for their children's education, which defeats the intention of the free education policy.

These combined factors ultimately leave these children vulnerable to child labour, exploitation, and trafficking. Almost 50% of migrant children drop-outs stated that they needed to work to take care of family members. Because of the legal age limit for employment in Thailand set at 15, migrant children drop-outs entering the labor force are economically exploited. 21 % of the migrant workers reported that there were children under 18 working with them.

Challenge 3: Minimum age for marriage law and enforcement

Based on the latest available statistics, Thailand ranks 19th among 193 UN States as having the highest number of girls married or in a union before the age of 18 years. Regarding the highest prevalence of early childhood marriage among boys, Thailand ranks 11th among UN States. Child early and forced marriage and unions (CEFMU) is globally acknowledged as an issue that violates the many rights of children, especially of girls, that could lead to severe mental and physical health deprivations, high school drop-out rates, and contribute to an ongoing cycle of poverty, among others.

Thailand does not have a specific law with respect to the rights and obligations of refugees and asylum-seekers, and the Royal Thai Government does not undertake formal refugee status determination (RSD). Thailand has made a reservation to article 22 of the Convention on the Rights of the Child concerning refugee children. It is estimated that 36,344 children age 0 to 17 are living in the camps of which only 18,079 refugee children (8,564 boys, 9,515 girls) attend school.

In these border areas, the Royal Thai government has established Migrant Learning Centers (MLCs) which use a standardized curriculum that can be accredited in Myanmar or with Thai non-formal schools. In 2018, the Ministerial Proclamation of Education For All (EFA) eliminated legal obstacles that prevented migrant children from enrolling in Thai schools. Challenges still remain, however, especially with formal recognition of MLCs and teacher's accreditation, and access to quality and inclusive education for out of school children (OSCC). In time of the COVID-19 pandemic, the MLCs are not permitted to operate. This creates the long-term impact of disrupted education for migrant children. School closures and the wider socio-economic impacts of COVID-19 on communities and society also disrupt children's and young people's normal support systems, leaving them more vulnerable to illnesses and child protection risks such as physical and humiliating punishment, sexual and gender-based violence, child marriage, child labour, child trafficking and recruitment and use in armed conflict. It is estimated that around 19,410 migrant children are affected as a result of the school closure. Tak is one of the country's primary provinces in which migrant children live. The province has the greatest number of MLCs, with around 11,329 children enrolled.

During the 2019 International Conference on Population and Development (ICPD25), the government of Thailand committed to reducing child marriage below age 18 by empowering female students to continue their education. Yet, under the current Thai Family Law, Section 1448, a marriage [in Thailand] can take place only when the man and woman have completed their seventeenth year of age. In addition, a glaring loophole in this law that leaves children and, especially girls, vulnerable is a provision that states that the Court, "in case of having appropriate reason, [may] allow [children] to marry before attaining such age." Conforming to international standards of raising the minimum age for marriage to 18 years together with the elimination of loopholes in its domestic marriage law, will go far towards eliminating child early and forced marriage and unions in Thailand while enabling Thai girls and boys to assert their nationally and internationally recognized rights based on the UNCRC, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence Against Women, the Declaration on the Elimination of Violence against Children, as well as commitments made concerning the same at the 23rd ASEAN Summit.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

In the second UPR Cycle (2012-2016), Thailand accepted the recommendation by Sierra Leone to ensure that the minimum age of marriage is 18 for both boys and girls (A/HRC/33/16 - Para. 158.129). The State has not yet implemented this recommendation.

Challenge 4: Corporal Punishment

Though Thailand has enacted many laws related to child protection, parent/guardian duties, and domestic violence, none of these laws explicitly prohibit corporal punishment and thus, by default, corporal punishment remains lawful in domestic settings. In school settings, there are two sets of regulations related to corporal punishment, included in teacher and staff ethics guidelines. Although corporal punishment is unlawful, specific, humiliating punishment of children in schools is not regulated.

Thailand is currently in the process of preparing the progress report numbers 5-6 for submission to the UNCRC committee, although the plan to submit by October 2017 was delayed. In the public hearing for draft progress report numbers 5-6, the report mentioned that Thailand has drafted a revision of the Civil and Commercial Code to protect children from violence, including corporal punishment, in order to comply with the UNCRC and the ASEAN Regional Forum on Child Violence Action Plan. In 2016, the recommendations from UPR review process related with corporal punishment were again put forward in the second cycle (2012-2016). The Royal Thai government accepted the recommendation, asserting that the government would “carry out measures to prohibit corporal punishment of children in all settings, including the home... prohibit corporal punishment of children in all settings [and]...explicitly prohibit in law any form of corporal punishment or other cruel or degrading punishment of children in all settings.” At the time of this report, the government’s commitment has not been matched by its progress in implementing the recommendations from the second Universal Periodic Review of Thailand in 2016.

Challenge 5: Children's right to quality care

Thailand has developed a heavy reliance on private institutional care for children which is the least desirable option for the overall wellbeing of children as confirmed by numerous research findings and the United Nations Guidelines for the Alternative Care of Children (UNGL). The risk of harm to children's healthy development is increased in Thailand where many private care facilities remain unregistered and unmonitored by the government. There is growing concern that the quality of care in many of these facilities is very low.

While there is substantial investment by private sector actors in Thailand in the provision of private institutional facilities, there is little investment in services to support families so that children need not enter private institutional facilities in the first place. This means many children are being removed from their families (or extended families) unnecessarily before all possible efforts to support families to care for their own children have been exhausted. In effect, institutional care has become the first option for many children, instead of the last resort. Furthermore, most moves into institutional type care are long term and there are no existing mechanisms attempting to return children to their families as soon as possible as recommended in the UNGA.

The government's own residential care facilities still record poverty as one of the primary reasons for children to be in their care, just like many private institutional facilities. For example, from Sangkhlaburi alternative care research, the two main causes of child intake are poverty and lack of access to education. The study found that less than 10% of children living in Sangkhlaburi's private institutions are double orphans. So it can be assumed that with a regular review and access to family support services, the chances for the majority to be reintegrated back to their families are high. Unfortunately, such reviews are lacking, raising concern that very few government officers or private care providers who are responsible for the alternative care of children in Thailand possess a working awareness of the UN Guidelines.

At the time of this report, the number of children in the 30 government child institutions is 4,177. The CRCCT has documented over 500 private children's homes operating in Thailand, including 239 unregistered private children's homes. A 2015 UNICEF report into the situation of Alternative Care in Thailand stated that Thai government boarding schools are also, to all intents and purposes, alternative care institutions. In excess of 33,000 children are currently living in these schools.

RECOMMENDATIONS

1. On Challenge 1: Online sexual abuse and violence against children

- 1.1. Review and extend the National Strategies to Protect Children from Online Exploitation and Abuse in alignment with the UNCRC's General Comments No.25 (2021) and the "WeProtect" (Working to protect children from the growing threat of sexual exploitation and abuse online) Global Alliance's framework.
- 1.2. Set up the National Center for the Protection of Children from all forms of Online Exploitation and Abuse to coordinate collaboration and resources among different ministries, and CSOs referring to the five pillars for online safety: Policy, Prevention, Protection, Prosecution and Promotion.

2. On Challenge 2: Stateless children, refugee children and undocumented migrant children

- 2.1. Ensure the continuity of the academic learning of children; that all migrant children, being documented or undocumented, are not denied enrolment/getting back to schools and are provided with equitable and inclusive access to good learning conditions, especially during pandemic conditions requiring additional resources and mitigation measures.

3. On Challenge 3: Minimum age for marriage law and enforcement

- 3.1. Raise the minimum age for marriage to 18 years and eliminate legal loopholes that allow children to be married or enter into a union by revising Section 1448 of the Thai Family Law and in compliance of its existing international UN and ASEAN commitments.
- 3.2. Accelerate efforts to implement national action plan to end child marriage in Thailand **in line with recommendations from United Nations Population Fund, United Nations Children's Fund and concerned civil society organizations supporting the effort in Thailand.**

4. On Challenge 4: Corporal Punishment

- 4.1. Revise the Child Protection Act, B.E. 2546 (2003) and the Civil and Commercial Code, B.E. 2551 (2008), Article 1567 to state a clear prohibition of corporal punishments in domestic settings.

5. Challenge 5: Children's right to quality care

- 5.1. Commit to the 2019 UN Resolution on the Rights of the Child and maximize the reinforcement power of the 2003 Child Protection Act to bring oversight and accountability to both government and private children's homes as a first step towards implementation of the UN Guidelines of Alternative Care (UNGL).



REFERENCES

Ministry of Education and Migrant Working Group, 2018, available at: <http://hrdfoundation.org/wp-content/uploads/>

Tyrosvoutis, G. (2019). Bridges: Participatory action research on the future of migrant education in Thailand.
Teacher FOCUS Myanmar

Migrant Working Group, 2019, available at: <https://www.mwgthailand.org/en>

Girls Not Brides, Child Marriage Prevalence Rates in Thailand, available at: <https://atlas.girlsnotbrides.org/map/thailand/> (accessed March 2021)

Save the Children Field Reports, 2020

Tyrosvoutis, G. (2019)

Migrant Educational Coordination Center (MECC), 2020



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