



COMMUNITY-LED &  
PARTICIPATORY RESEARCH REPORT

# RAISING OUR VOICES

# TO SAVE OUR FUTURE

SEPTEMBER 2019



OVERVIEW OF THE HUMAN  
RIGHTS CHALLENGES FACED BY  
INDIGENOUS WOMEN IN  
THAILAND  
& THEIR PRACTICAL SOLUTIONS  
FOR A SUSTAINABLE FUTURE

By the Indigenous Women Network of Thailand (IWNT) & Manushya Foundation



Activity supported by the  
Canada Fund for Local Initiatives  
Activité réalisée avec l'appui du  
Fonds canadien d'initiatives locales

Canada

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The Indigenous Women Network of Thailand (IWNT) and Manushya Foundation would like to sincerely thank everyone who contributed to the realization of this Research case studies on Indigenous women's rights issues.

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# Acknowledgments

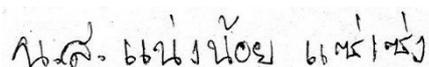
Indigenous Women’s Network of Thailand (IWNT) and Manushya Foundation would like to sincerely thank everyone who contributed to the realisation of this research report on key human rights challenges faced by indigenous women in Thailand. In particular, we would like to express our deep appreciation to all IWNT members for their invaluable support and inputs throughout the phases of the research from identifying the human rights issues at the first inception and training workshop to documentation at the community levels and data gathering and analysis for various cases and development of this report.

Special gratitude is given to IWNT and Manushya Foundation team members who were involved in the project to develop this report and who played vital roles through their engagement in conducting trainings on community-led documentation and research, designing and implementing various documentation tools from carrying out community surveys to conducting focus group discussions (FGDs) and interviews, undertaking data translation and analysis, desk research and review for production of the report, incorporating voices and recommendations from indigenous women, and providing further analysis of good practices. Those team members include:

- For IWNT: Noraeri Tungmuangtong, IWNT Vice-Chair; Kanlaya Chularattakorn, IWNT Manager; Amporn Pripanasumpun, IWNT member; Piboon Tuwamonton, IWNT volunteer; Kanda Pramongkit, IWNT Committee member; Jitti Pramongkit, IWNT Committee member; and Peenee Monkaew, IWNT member.
- For Manushya Foundation: Emilie Pradichit, Founder & Director; Prabindra Shakya, Senior Advisor; Evie van Uden, Human Rights & Development Researcher; Tanida Itthiwat, Human Rights Research & Documentation Officer; and Anouk Dancert-Verot, Human Rights & Development Research Intern.

IWNT and Manushya Foundation are particularly grateful to Prabindra Shakya for writing and editing the report, Anouk Dancert-Verot for significant writing and research assistance, Evie van Uden for editing the report, Kanlaya Chularattakorn for reviewing the report, and Emilie Pradichit for reviewing, editing and finalising the report. We would also like to thank Chumchonchai Foundation and Samphan Naksueb, headman of Laem Tukkae village in Southern Thailand for sharing information for and contributing in analysis of two of the case studies in the report as well as Ekachai Pinkaew for his support in analysis of the data collected in the research.

IWNT and Manushya Foundation would also like to acknowledge the financial contribution of the Canada Fund for Local Initiatives (CFLI) and Mama Cash, which kindly supported the development of this report and the trainings conducted on the ground. We are particularly thankful to the Ambassador, H.E. Donica Pottie, for her kindness and support in hosting the Launch of the Report at her Residence on 25 September 2019.



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# Acronyms

ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CFLI	Canada Fund for Local Initiatives
CIPT	Council of Indigenous Peoples in Thailand
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
DNA	Deoxyribo Nucleic Acid
DSI	Department of Special Investigation
FGD	Focus Group Discussion
FIO	Forest Industry Organization
FPIC	Free, Prior, and Informed Consent
HDI	Human Development Index
HIV	Human Immunodeficiency Viruses
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ID	Identification Organization
ILO	International Labour Organization
IMPECT	Inter-Mountain Peoples Education and Culture in Thailand Association
IWHRD	Indigenous Women Human Rights Defenders' Network
IWNT	Indigenous Women's Network of Thailand
NCPO	National Council of Peace and Order
NGO	Non-Governmental Organisation
NHRCT	National Human Rights Commission of Thailand
NIPT	Network of Indigenous
OHCHR	Office of the High Commissioner for Human Rights
PACC	Office of the Public Sector Anti-Corruption Commission
P-Move	People's Movement for a Just Society
Por Wor	Revolutionary Declaration No.337
RTG	Royal Thai Government
SDGs	Sustainable Development Goals
THB	Thai Baht
Tor Ror	Household Registration
UDHR	Universal Declaration of Human Rights
UHC	Universal Health Care
UN	United Nations
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USD	United States Dollar
WHO	World Health



# Executive Summary

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IWNT and Manushya Foundation have produced this report, based on community-led participatory research, to present an investigation into the human rights situation of indigenous women in Thailand. It focuses on the priority human rights challenges of indigenous women and their communities, including to their lives, livelihoods and environment, due to State and non-State actors and suggests practical solutions to those challenges as shared by the indigenous women and men in the communities.

The core principle of the research that led to this report has been to empower indigenous women to conduct community-led participatory documentation on the human rights violations concerning them and their communities, and to engage indigenous women in the concerned communities to undertake evidence-based advocacy and offer possible solutions to address those violations and bring positive change to their communities. Accordingly, the report includes analyses of four key challenges for human rights of indigenous women in Thailand in the form of three case studies and one summary case within “voices from the ground”.

The primary methodologies used for this research include desk reviews, surveys, semi-structured interviews, Focus Group Discussions (FGDs) and fact-finding missions as deemed appropriate for the human rights challenges under this study. Indigenous communities, mostly women, from northern and southern Thailand and their representatives were engaged in the surveys, discussions, and fact-finding missions that were conducted by women from the communities themselves. Data collected was shared and analyzed among indigenous women representatives, key informants, and experts. Several methods of data collection with representative samples were combined with review of various pieces of evidence in terms of sources and nature to reach an adequate and scientific level of objectivity in the research.

This report includes a background on indigenous peoples in Thailand, whereby the concept of indigenous peoples in international law, and their overall situation and movement in the country are discussed in brief. It then provides an analysis of international human rights standards and Thailand’s national legal framework related to the rights of indigenous peoples, that are particularly pertinent to the human rights challenges examined in the report.

Three case studies are then presented to reflect the realities on the ground of the human rights situation of indigenous women in relation to: (1) their challenges in obtaining citizenship, (2) discrimination faced by them in accessing healthcare services, and (3) their role in frontlines defending lands and resources of indigenous communities. Two summary cases in relation to (1) business encroachment in traditional cemetery of indigenous peoples, and (2) impacts of tourism on indigenous women are also included to complement the case studies. For each case study, relevant international human rights standards and the national legal framework are recalled to apply a human rights-based approach to examine the challenges. Analysis of the findings of the study and voices from the ground demonstrate that indigenous women and their communities continue to experience significant discrimination and violations of their fundamental rights in various aspects of their economic, social and cultural life. Indigenous women face multiple layers and forms of discrimination and violence not just in the broader societies but also within their own communities. The case studies and voices from the ground include practicable aspirations of indigenous women to resolve those human rights challenges.

Finally, IWNT and Manushya have drawn a list of major recommendations based on the case studies and overall information in the report. Primary among them is that the Royal Thai Government (RTG) should take immediate and targeted steps for resolving the challenges of statelessness and access to health and other social services within many indigenous communities across the country. Recognition and respect of indigenous ethnic groups and their rights in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including to their lands and resources and Free, Prior and Informed Consent (FPIC), are key to ensuring long-term solutions to many of their issues. The Government should take urgent legal and administrative measures

in conjunction with concerned indigenous peoples or their organizations for implementation of above recommendations with meaningful participation of indigenous women. Finally, it is necessary to adopt and implement specific legal protection to prevent gender-based discrimination against indigenous women and promote their rights, including through special measures as guaranteed under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).





# INTRODUCTION

This research report presents an investigation into the human rights situation of indigenous women in Thailand. Based on community-led participatory research approach, it focuses on the priority human rights challenges of the indigenous women and their communities, including to their lives, livelihoods and environment, due to State and non-State actors and suggests practical solutions to those challenges as shared by the indigenous women and men in the communities.

The core principle of the research that led to this report has been to empower indigenous women to conduct community-led participatory documentation on the human rights violations concerning them and their communities, and to engage indigenous women in the concerned communities to engage in evidence-based advocacy and offer possible solutions to address those violations and bring positive change to their communities. The overall goal of the project, under which the research was undertaken, was to strengthen the Indigenous Women Human Rights Defenders' Network (IWHRD) in Thailand by building capacities of indigenous women in human rights documentation so that they can develop evidence-based advocacy tools to promote and protect their rights. IWNT and Manushya Foundation partnered for the project whereby the latter provided technical assistance for IWNT to enable indigenous women conduct community-led documentation on their human rights challenges on their own. IWNT and Manushya Foundation conducted several training and workshops with indigenous women representatives from across Thailand on various tools for human rights documentation, planning data gathering and analysis of data collected with the aim of building credible evidence for advocacy on their rights. Further, Manushya Foundation provided IWNT technical assistance and mentoring for the design and implementation of documentation tools, planning and execution of the data gathering, analysis of the information collected and writing of this report.

Consequently, the report contains analyses of four key and representative challenges for human rights of indigenous women in Thailand as three case studies and one summarised review within "voices from the ground". The idea was to evolve indigenous women from victims to their own agents of change by placing them at the center of necessary human rights responses to their issues. This research report thus combines an overview of indigenous women's human rights challenges in Thailand with their own solutions addressed to the government authorities, other decision-makers and non-State actors so as to prevent harms to their well-being, achieve their better living conditions and ultimately contribute to the realization of women's rights in the country.

## METHODOLOGY

The primary methodologies used for this research include desk reviews, surveys, semi-structured interviews, Focus Group Discussions (FGDs), and fact-finding missions as deemed appropriate for the human rights challenges under study. During the project inception workshop and documentation training, as many as fifteen issues or cases of violations of human rights of indigenous women in Thailand were identified based on the preliminary documentation of representatives from across the country. A quick analysis of existing and necessary evidence was undertaken for each of those cases. Accordingly, four human rights challenges were chosen for further data gathering based upon priority and feasibility. An investigation plan was prepared for community-led documentation and data analysis and an initial outline of the research report was also determined.

As per the investigation plan, Manushya Foundation supported IWNT to design, test, and finalize necessary tools for data gathering, including questionnaires for surveys, FGDs, and semi-structured interviews. IWNT conducted data gathering at community levels, including with local authorities, while Manushya Foundation also supported in collecting and verifying information with central authorities and led the desk review on those human rights challenges.

Data collected was shared and analyzed among indigenous women representatives, key informants and experts during a workshop. Further analysis of the collected data was undertaken using Microsoft Office applications. Draft research studies were then verified with documenters, key informants, and also through peer review to finalize this research report.

We acknowledge that this research was ambitious given the endeavor to undertake community-led documentation on a number of human rights challenges with limited time and resources. However, it was also a unique undertaking, whereby our principal objective was to enable indigenous women to build a close insight into their human rights issues affecting their daily lives.

In this research, we combined several methods of data collection with representative samples and various pieces of evidence in terms of sources and nature to reach a scientific level of objectivity and provide an overview of the rights of indigenous women under various case studies.

## CASE STUDY 1

### Indigenous women's challenges in accessing citizenship



#### METHODOLOGY

Semi-structured interviews were conducted for data gathering.



#### SAMPLE

21 persons aged 15 to 82 years participated in the interviews, including 12 women and nine men, living in three different subdistricts of Omkoi district in Chiang Mai province in Northern Thailand.



#### ADDITIONAL INFORMATION

Information of other surveys has been used to complement the findings from the interviews. Using information from the larger surveys provided more objectivity and evidence to the case study and confirmed our original findings.

## CASE STUDY 2

### Discrimination faced by indigenous women in accessing healthcare services



#### METHODOLOGY

Data was collected through three methods: surveys, in-depth interviews and focus group discussions.



#### SAMPLE

In total, 43 women and 17 men between the age of between 18 and 75 years from two villages in Omkoi and Mae Wang districts in Chiang Mai province in Northern Thailand responded to the survey. At the same time, 19 women and two men participated in the focus group discussions from five villages of the two districts.



#### ADDITIONAL INFORMATION

The choice of using FGDs, surveys, and in-depth interviews has been made to minimise sociological bias. Using all the three methods allowed us to analyse the most objective data possible. Additional information was also used from existing literature and research studies on the issue.

### CASE STUDY 3

#### Indigenous women in Frontlines Defending their Ancestral Lands



##### METHODOLOGY

This case study combines two cases of challenges to land and resource rights of indigenous Chao Lay peoples in Southern Thailand, which are based on the review of primary and secondary sources of evidence. Accordingly, an overall community profile of Chao Lay is presented at the beginning of the study while each case includes community profiles of the village or island. Semi-structured interviews were also undertaken with the villagers to support the case study.



##### PIECES OF EVIDENCE

**For Sapum village case**, we reviewed investigation reports from the Chumchonchai Foundation as well as official notices from the concerned government.

**The Sireh island** case is based on review of several pieces of evidence: court documents, dated pictures and other legal proof, official reports of investigation by the National Human Rights Commission of Thailand (NHRCT) and the Office of Public Sector Anti-Corruption Commission (PACC), and media reports.



##### ADDITIONAL INFORMATION

Additional information was mainly collected for preparing the community profiles and verifying the original information on the cases.

### VOICES FROM THE GROUND

Two cases concerning rights of indigenous women are included as “Voices from the Ground” in this report. The first case, based on review of media reports of business encroachment on a traditional cemetery of indigenous peoples in Phang Nga province in Southern Thailand, complements the case study related to indigenous women defending indigenous peoples’ right to land and resources. The second case presents the impacts of tourism on indigenous women and has been documented based on interviews with eight leaders, officials, and villagers in three villages in Chiang Mai province in Northern Thailand. “Voices from the Ground” are the cases which require further investigation to establish better understanding on them.





# BACKGROUND ON INDIGENOUS PEOPLES IN THAILAND

## 1.1. Indigenous Peoples in International Law

There is no singularly authoritative definition of ‘indigenous peoples’ in international law. The most commonly used one is the “working definition” formulated by Jose Martinez Cobo, former Special-Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights, in his study of the problem of discrimination against indigenous populations (1986):

*“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”*

The study lists several factors, including occupation of ancestral lands, and culture and language for determining their historical continuity. Self-identification as indigenous – on an individual basis and through group consciousness – is regarded as a fundamental element in the definition.

The definition of indigenous peoples can also be drawn from the **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** of the International Labour Organization (ILO), which states, in its Article 1, that the Convention applies to:

*“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;  
(b) peoples in independent countries who are regarded as Indigenous on account of their descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present states boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”*

The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which its provisions apply. It provides the same rights to “indigenous” and “tribal” peoples and the terms are used interchangeably in international human rights discourse.

In 2007, the UN General Assembly adopted the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, which establishes the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world. 144 States voted in favour of the Declaration with only four States voting against (that have all reversed their positions by 2010) and 11 abstaining.

According to a 2009 United Nations (UN) study, indigenous peoples number around 370 million across 90 countries worldwide, representing around 5,000 distinct cultures and occupying around 20 percent of the earth's territory, which hold 80 percent of the remaining biodiversity.<sup>1</sup> On the other hand, while they make up around 5 percent of the global population, they account for 15 percent of the extreme poor.<sup>2</sup> Two-thirds of the world's indigenous people live in Asia and the Pacific. Recent estimate of indigenous peoples' organizations suggests that about 411 million indigenous people live in the Asia region alone.<sup>3</sup>

## 1.2. Indigenous Peoples in Thailand

Although the Royal Thai Government (RTG) voted in favour of the adoption of the UNDRIP, it does not officially recognize indigenous peoples in the country and only acknowledges the existence of "ethnic groups/minorities" and "hill tribes". According to the government's Master Plan for Development of Ethnic Groups in Thailand (2015-2017),<sup>4</sup> 56 ethnic groups that continue to use traditional practices and pass on their folk wisdom from generation to generation are identified in 67 provinces. They are around 6.1 million in number, which is more than nine percent of the total population of the country. The ethnic groups are categorised into four groups based on their residential areas: those living in the highland areas;<sup>5</sup> those in the plain areas;<sup>6</sup> those in the coastal areas;<sup>7</sup> and those in the forests.<sup>8</sup>

The government officially recognizes nine "hill-tribes" - Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin, and Khamu,<sup>9</sup> while ten groups are sometimes mentioned, including Palaung, in some official documents.<sup>10</sup> Recent estimates place population of "hill tribes" at 1.2 million people.<sup>11</sup> Started in the early 2000s by leaders of the ten "hill tribes", the indigenous movement in Thailand has expanded to include representatives of an additional 30 ethnic groups from across Thailand and thus has the potential to include all the 56 ethnic groups or 6.1 million people.<sup>12</sup> At the same time, as of 2017, the total population of Thailand is 66.2 million, of which 65.3 million are Thai citizens whereas 875,800 are non-Thai citizens, which could also include some persons belonging to indigenous groups due to the long history of disenfranchisement of those groups.

Geographically, the indigenous groups in Thailand are mainly concentrated in three regions of the country:

- fishing groups ("seafarer communities" referred to as "*Chao Lay*") and small populations of hunter-gatherers (Mani people) in the South;
- small groups in the Korat plateau of North-east and East; and
- highland peoples in the north and North-west ("hill tribes" called "*Chao Khao*" in Thai).

A widespread misconception that indigenous peoples are engaged in drug trade and pose a threat to national security and environment dominates the modern history of Thai policies, particularly in relation to "hill tribes." Those policies are rooted in the perception of the State and mainstream society of those indigenous groups as "migrants,"<sup>13</sup> which is one of the underlying reasons for continued challenges of statelessness in those groups.

Indigenous representatives argue against such claim of the government and assert that many indigenous groups have lived in their homelands hundreds of years even before the creation of the modern nation State. According to studies, the highland border regions in the north and northwest, where many indigenous groups have long resided, were only directly incorporated into the central Thai State as recently as the 1980s, and as a result, the indigenous groups were largely excluded from the State's earlier administrative efforts to identify, document, and regulate its national population. Further, there are numerous and complex reasons why the Thai State has long viewed indigenous groups in the highland areas as illegal migrants.

While the State, during the Cold War, came to view those groups as prime suspects of divided loyalties as a result of their cross-border movements and ties of ethnic kinship, their disenfranchisement in terms of legal citizenship and land tenure has long served the intertwined political and economic interests of the State and Bangkok elite in promoting the capitalist accumulation of indigenous lands and natural resources by way of their State enforced legal dispossession.<sup>14</sup>

Since the 1980s, the Thai government has been pushing the establishment of national parks and other protected areas to promote sustainable forest management, which has particularly affected indigenous communities living in forest areas and contributed to loss of their livelihoods. Yet, reports suggest that State authorities have themselves conducted illegal logging and timber trading. For example, the Forest Industry Organization (FIO), a Thai state enterprise allowed to harvest and sell timber from forest land permitted for conversion, has been questioned more than once by local communities. In 2007, villagers in Surin province filed a complaint that the FIO had illegally logged conservation plantation forest and in 2016, its partner illegally cut down 37 teak trees from a villager's plantation. Also, in North-eastern Thailand, local people were evicted to make way for FIO's teak and eucalyptus plantations.<sup>15</sup>

Further, in Northern Thailand, forest-related regulations, including a ban on shifting cultivation in many areas designated as reserved forests, national parks, etc., have led to a dramatic reduction of traditional rotational cultivation practices. Many communities have also experienced forced evictions and relocation and the problems of the restrictive forest conservation approach have exacerbated more recently after the military coup in 2014.

At the same time, indigenous peoples in the Southern coastal areas have faced large number of, often violent, disputes with luxury resorts and other tourism establishments. Besides such direct impacts, indigenous communities across the country are facing challenges with exploitative tourism practices while getting little benefits. Indigenous peoples have also faced human rights abuses due to agribusiness and extractive industries while indigenous communities often face limited protections due to non-recognition of their rights, which are compounded by their lack of nationality and reprisals against indigenous leaders and human rights defenders, including even disappearance and killing.

Furthermore, indigenous women suffer from multiple layers and forms of discrimination and violence on the grounds of indigeneity and gender, among others, within their communities and wider societies. They are more vulnerable to negative impacts for the loss of lands and livelihoods of indigenous peoples, which result in challenges such as high rates of trafficking of indigenous women. They also face lack of participation and representation in matters affecting them, including due to their traditional roles in their communities. That also results in severe inequalities for indigenous women in access to education, health, and other services as well as to employment.

### 1.3. Indigenous Peoples' Movement in Thailand

#### 1.3.1. Network of Indigenous Peoples in Thailand (NIPT)



The indigenous movement in Thailand officially came into being when a **Network of Indigenous Peoples of Thailand (NIPT)** was established, in follow up to the first annual "Festival of Indigenous peoples in Thailand" organized by 24 ethnic groups in August 2007, to campaign for State and public recognition of indigenous peoples and their rights. The NIPT has since worked to establish the **Council of Indigenous Peoples in Thailand (CIPT)** as a new, independent quasi-state organ comprised of indigenous representatives with the central mandate to advise the State on policies and plans relevant to indigenous peoples, particularly between 2014 and 2016 during the constitutional reform process initiated by the military junta.<sup>16</sup> However, despite significant lobbying with relevant State agencies, the NIPT has not yet been successful to achieve legal

recognition for indigenous peoples and the CIPT in new constitutional or legislative framework of Thailand.

As a result, the NIPT has moved forward independently of the State to establish the CIPT with its First National Assembly held in 2014.<sup>17</sup> The NIPT had eventually gained official recognition of indigenous peoples in the first constitutional draft in April 2015. Yet, the military-appointed National Reform Council later rejected the first draft and the second and final constitution ratified in August 2016 did not refer to indigenous peoples. 190 members representing 38 indigenous groups had attended the Second Assembly in 2015 of the CIPT, which has grown to 40 indigenous groups and three sub-national councils by 2016.<sup>18</sup>

The movement has tried to get the Thai translation of the term ‘indigenous peoples’ used as “*chon phao phuen mueang*” and defined as:

*Communities, peoples and nations which, by way of historical and social continuity from the time of the establishment of contemporary state boundaries, consider themselves to have a cultural identity that is different from that of the mainstream society. They are a non-dominant group and are determined to preserve, develop and transmit to future generations their ancestral territories and ethnic identity, inclusive of their own language, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems, while peacefully and happily coexisting with other members of the nation state.*<sup>19</sup>

1.3.2. Inter-Mountain Peoples Education and Culture in Thailand Association (IMPECT)<sup>20</sup>



IMPECT is an indigenous-led non-governmental organisation (NGO) founded in 1991 and managed by representatives of members of the indigenous communities of Northern Thailand. It focuses on development work within ten indigenous groups living in the Northern highlands. As an association, it works with groups and networks of indigenous peoples providing opportunities for participation and ownership of development activities to their representatives. Its works are in three main areas: cultural revival and alternative education, environment and natural resources management, and support and strengthening indigenous peoples’ movement.

1.3.3. Indigenous Women Network of Thailand (IWNT)<sup>21</sup>



IWNT was founded in 1996 as part of the IMPECT to provide a gender perspective to development activities affecting indigenous peoples in Thailand. In 2011, it was established as an independent organisation to work towards improving the lives of indigenous women in the country. It has worked with groups or members from Karen, Lisu, Hmong, Lahu, Akha, Dara’ang, Taiyai, Lua, Kachin and Mien indigenous groups. Their main aims are:

- Advancing indigenous women’s rights as women and indigenous peoples;
- Promoting national and international instruments for women’s protection;
- Strengthening indigenous women’s participation in local government, natural resource management sector and other decision-making bodies; and
- Acknowledging and supporting indigenous women’s traditional knowledge.



# ANALYSIS OF THE LEGAL & POLICY FRAMEWORK IN RELATION TO THE RIGHTS OF INDIGENOUS PEOPLES

## 2.1. Relevant International Human Rights Standards

### 2.1.1. Key international instruments



The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** is the most comprehensive international instrument on the rights of Indigenous peoples, which elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples. Thailand voted in favour of adoption of the Declaration by the UN General Assembly in 2007. Although the Declaration is not legally binding, it contains the rights of indigenous peoples, which are already set out in binding international human rights law – of which some may be considered customary international law.



**Indigenous and Tribal Peoples Convention, 1989 (No. 169)** of the International Labour Organization, which replaced the ILO Indigenous and Tribal Populations Convention No. 107, is the only legally binding document dealing specifically with the rights of indigenous peoples. The forerunner to the UNDRIP covers a wide range of issues, including consultation and participation, rights to land, employment and vocational training, education and communication, health and social security, customary law, traditional institutions and cross-border cooperation. 23 States across the world have ratified the Convention to date though Thailand is not a State party to it.

Further, although existing human rights treaties do not specifically provide for the rights of indigenous peoples, treaty bodies for the **International Covenant on Civil and Political Rights (ICCPR)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** in particular have elaborated on the rights of indigenous peoples, as they relate to the treaties, in their general comments and recommendations. Thailand is a State party to all those treaties as well as the **Convention on the Rights of the Child (CRC)** and the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**.

Provided below in brief are some of the rights of indigenous peoples as affirmed in above-mentioned international instruments, that are particularly pertinent to the case studies under this report.



### Right to equality and non-discrimination

#### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Article 1.** Indigenous peoples have the right to full enjoyment, as a collective or as individuals, all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

**Article 2.** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

## ILO Indigenous and Tribal Peoples Convention (No. 169)

**Article 3.** Indigenous peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.



### Right to self-determination

#### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Article 3.** Indigenous peoples have the right to self-determination by virtue of which, they freely determine their political status and pursue their economic, social and cultural development. To exercise the right to self-determination, they have the right to autonomy or self-government in matters relating to their internal and local affairs.

Right to self-determination of all peoples is enshrined in articles 1 of both the **ICCPR** and the **ICESCR**, which is elaborated for indigenous peoples in the **UNDRIP**.



### Right to nationality

#### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Article 6.** Every indigenous individual has the right to a nationality.

**Article 33.1.** Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions, which does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

#### International Covenant on Civil and Political Rights (ICCPR)

**Article 24.3.** Every child has the right to acquire a nationality.

#### International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

**Article 5.d.iii.** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to nationality.



### Rights to lands, territories and resources

#### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Article 26.** Indigenous peoples have the rights to “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and to “own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation”. States should “give legal recognition and protection” to those lands, territories and resources.

**Article 27.** States shall establish and implement, in conjunction with concerned indigenous peoples, a fair, independent process to recognise and adjudicate the rights of indigenous peoples to their lands, territories and resources.

**Article 28.** Indigenous peoples have the right to redress for their lands, territories and resources which have been confiscated, taken, occupied, used or damaged with their free, prior and informed consent.

## ILO Indigenous and Tribal Peoples Convention (No. 169)

**Article 14.** Ownership and possession rights of indigenous peoples over the lands which they traditionally occupy shall be recognized and measures shall be taken to safeguard their right to use lands not occupied by them but traditionally accessed for their subsistence and other activities.

**Article 15.** The rights of indigenous peoples to the natural resources present on their lands shall be specially safeguarded, including the right “to participate in the use, management and conservation of these resources.”

**Article 16.**

1. Indigenous peoples “shall not be removed from the lands which they occupy.”

2. “Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.”

### Free, Prior and Informed Consent (FPIC)

The UNDRIP requires States to obtain **FPIC** of indigenous peoples prior, including to:

- removal of indigenous peoples from their lands and territories (art. 10);
- adopting and implementing legislative or administrative measures that may affect them (art. 19);
- storage or disposal of hazardous materials on lands and territories of indigenous peoples (art. 29.2); and
- approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water and other resources (art. 32).

***FREE** implies no coercion, intimidation or manipulation;*

***PRIOR** implies sought far enough in advance of any authorisation or commencement of activities, and the time requirements of indigenous consultation and consensus processes are respected;*

***INFORMED** implies that all information relating to the activity is provided to indigenous peoples and that the information is objective, accurate and presented in a manner or form that is understandable to indigenous peoples;*

***CONSENT** implies that indigenous peoples have agreed to the activity that is the subject of the consultation while indigenous peoples also have the prerogative to withhold consent or to offer it with conditions.*

In its General Recommendation No. 23, the **Committee on the Elimination of Racial Discrimination (CERD)** has called upon States to recognize and protect the rights of indigenous peoples to own, develop, control, and use their communal lands, territories, and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Similarly, the **Committee on Economic, Social and Cultural Rights (CESCR)**, in elaboration of the **ICESCR** in its General Comment No. 24, has affirmed that States and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including to their lands, territories and resources.



### Rights to development and culture

#### UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

**Article 23.** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, they have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer those programmes through their own institutions.

**Article 20.** Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development and engage freely in all their traditional and other economic activities. They are entitled to just and fair redress for deprivation of their means of subsistence and development.

**Article 31.** Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage and traditional knowledge, including seeds. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage and traditional knowledge.

#### **ILO Indigenous and Tribal Peoples Convention (No. 169)**

**Article 7.1** Indigenous peoples shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

#### **International Covenant on Civil and Political Rights (ICCPR)**

**Article 27** of the ICCPR provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Human Rights Committee that monitors the implementation of the Covenant in its General Comment No. 23 on the article has affirmed that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples and thus the right to enjoy culture may include such traditional activities as fishing or hunting and the right to live in reserves protected by law, which may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.



### **Right to health**

#### **UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**

**Article 21.** Indigenous peoples have the right, without discrimination, to improvement of their economic and social conditions, including, inter alia, in the areas of ... health. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions with particular attention paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

**Article 24.** Indigenous peoples have the right to their traditional medicines and to maintain their health practices. Indigenous individuals also have the right to access, without discrimination, to all social and health services. They have an equal right to the enjoyment of the highest attainable standard of physical and mental health and States shall take necessary steps for progressive realization of the right.

#### **ILO Indigenous and Tribal Peoples Convention (No. 169)**

**Article 24.** Social security schemes shall be extended progressively to cover indigenous peoples and applied without discrimination against them.

#### **Article 25.**

1. Governments shall ensure that adequate health services are made available to indigenous peoples or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be coordinated with other social, economic and cultural measures in the country.

### International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

**Article 5.e.iv.** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to public health, medical care, social security and social services.



## Equality between men and women within indigenous peoples

### UN Declaration on the Rights of Indigenous Peoples

**Article 44.** All the rights and freedoms recognised in the Declaration are equally guaranteed to male and female indigenous individuals.

#### Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of the Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

### ILO Indigenous and Tribal Peoples Convention

**Article 3.** The provisions of the Convention shall be applied without discrimination to male and female members of indigenous peoples.

#### 2.1.2. Other relevant international instruments

## 2030 Agenda for Sustainable Development



The 2030 Agenda is a broad and universal policy agenda, with 17 **Sustainable Development Goals** and 169 associated targets, which are described as integrated and indivisible. It was adopted by the UN Member States, including Thailand, in September 2015 and came into effect on 1 January 2016 for implementation within the next 15 years.

With the States' pledge to leave no one behind and to endeavour reaching the furthest behind first, the 2030 Agenda includes six references to indigenous peoples: three times in the political declaration; two in the targets under Goal 2 on zero hunger (target 2.3) and Goal 4 on education (target 4.5), and one in the section on follow up and review, which calls for indigenous peoples' participation.



In **Goal 2**, “End hunger, achieve food security and improved nutrition and promote sustainable agriculture”, States aim, by 2030, to double the agricultural productivity and incomes of small-scale food producers, in particular indigenous peoples, among others, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.



In **Goal 4** “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”, States seek to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including indigenous peoples, by 2030.

## Convention on Biological Diversity, 1992



Thailand signed the Convention in 1992 and became a State Party in 2004. The Convention recognizes the close and traditional dependence of many indigenous peoples on biological resources and the desirability of equitable sharing of benefits from the use of traditional knowledge, innovation and practices relevant to for the conservation of biological diversity and its sustainable use. Article 8 of the Convention requires that States respect, preserve, and maintain knowledge, innovations and practices of indigenous and local communities for the conservation and sustainable use of biological diversity, and promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

## The Paris Agreement (2016) under the UN Framework Convention on Climate Change



Thailand is one of the State Parties that ratified the Paris Agreement in September 2016. The Preamble of the Agreement acknowledges that Parties should respect, promote and consider their human rights obligations, including the rights of indigenous peoples, as well as gender equality, empowerment of women and intergenerational equity when taking action to address climate change. Under Article 7.5, Parties to the Agreement also acknowledge that climate change adaptation should be based on and guided by knowledge of indigenous peoples, as appropriate.

### 2.2. Relevant National Legal and Policy Framework

#### 2.2.1. Constitution of the Kingdom of Thailand, 2017

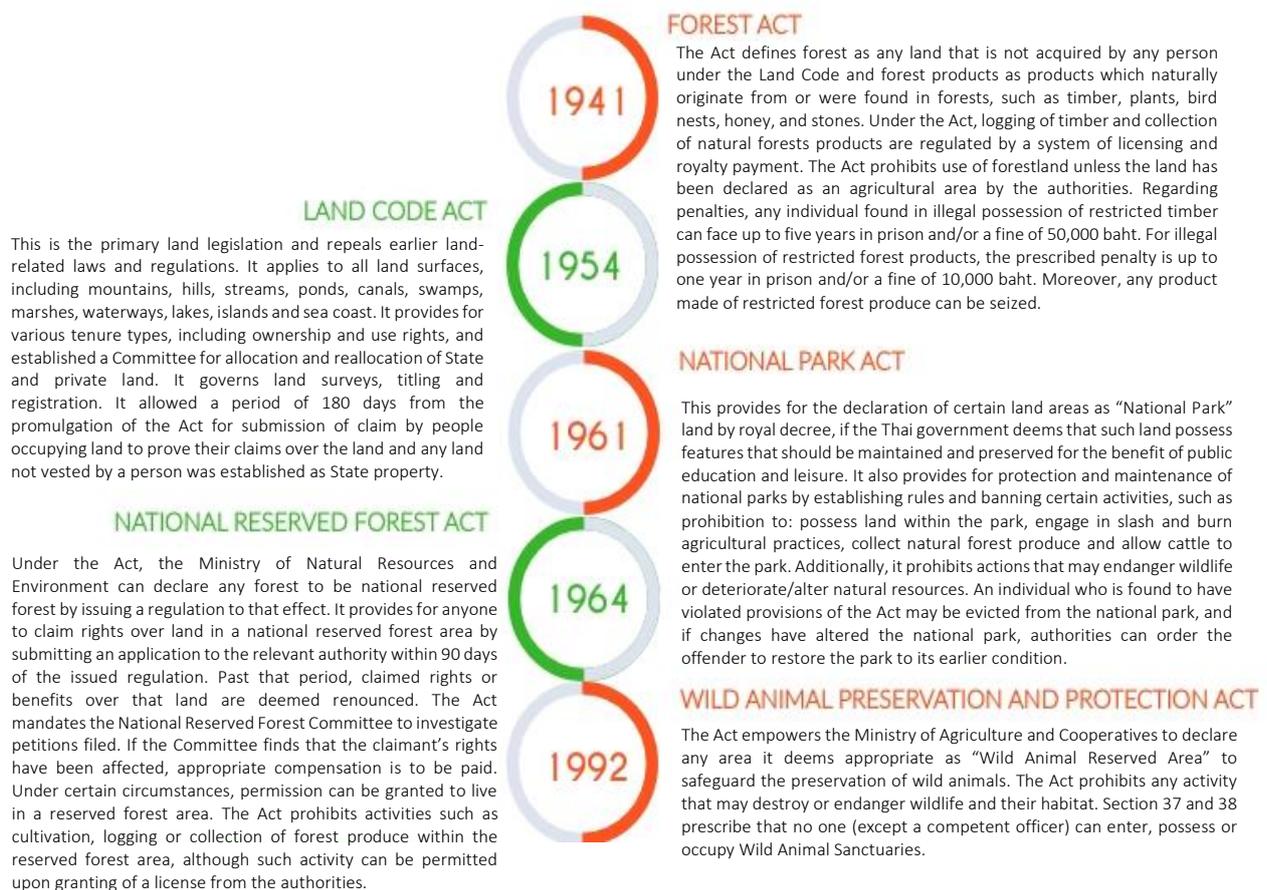
The 2017 Constitution of Thailand, as mentioned above, does not recognize indigenous peoples in the country. Under the Directive Principles of State Policies, it requires the State “to promote and provide for different ethnic groups to have the right to live in the society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, insofar as it is not contrary to public order or good morals or does not endanger the security of the State, health or sanitation.”<sup>22</sup> Thus, ambiguous restrictions are placed on the duty of State to promote and provide the right of ethnic groups to live as per their traditional culture and ways of life in the name of public order and State security, among others. At the same time, the Constitution did away with the provisions of the earlier constitutions for the right 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 participate in the management, maintenance, preservation and exploitation of natural resources and the environment.<sup>23</sup>

The 2017 Constitution nonetheless continues provisions for collective rights of communities, along with individual rights of persons, to conserve, revive or promote wisdom, arts, culture, tradition, and good customs at both local and national levels; and manage, maintain, and utilize natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law.<sup>24</sup> It also affirms the rights of communities to be informed and have access to public information and the State duty to undertake environment and health impact assessment through public hearings of communities in advance of any undertaking that might affect them and lays down the requirements for permitting such undertaking.<sup>25</sup> The provisions however fall short of international standards for the rights of indigenous peoples.

### 2.2.2. Nationality Act, 1965

Disenfranchisement of citizenship is one of the fundamental challenges for indigenous groups in the country, particularly in the northern highlands. Since Thailand's first Nationality Act in 1913, the Act has been repealed or amended significantly while various cabinet resolutions have been issued and implemented to address statelessness among indigenous communities. Various mechanisms to grant temporary residential status have also been set up by the government, but although it is estimated that at least 50 percent of the indigenous people have a legitimate claim for citizenship, many of them lack the relevant paperwork and proof is thus complicated to obtain. Some positive amendments<sup>26</sup> have been made in 2008 to the **Nationality Act (1965)**,<sup>27</sup> which provides that children of ethnic groups born before 1992 should be granted Thai nationality and measures be adopted to offer them birth certificates where there are without one. However, the NIPT has pointed out that the right to obtain nationality still affirms "jus sanguinis" (right of blood principle) and denies "jus solis" (right of soil or birth right principle). Consequently, children born in Thailand to indigenous peoples can still be considered as having entered the country illegally and be denied access to all social security systems.<sup>28</sup>

### 2.2.3. Legal framework related to lands and resources<sup>29</sup>



## CABINET RESOLUTION

**Cabinet Resolutions, 17, 22 and 29 April** – The resolutions had provided some recognition for people living in the forest areas to attenuate the restrictions set up by forest-related laws, which provided for sub-committees at the provincial level to examine petitions and consider revoking declarations of forest land or national parks for certain areas.

1997

## CABINET RESOLUTION

**Cabinet Resolution, 30 June** - This revoked the earlier resolutions and went even further to explicitly provide for relocation of people living in protected areas and specified that any action deemed forest encroachment was to be strictly dealt under the law. Under this resolution, 85 percent of the people living in the forests would be considered to be in violation of the law.

1998

## CABINET RESOLUTION, 11 MAY

This resolution, adopted after protests against the 1998 Cabinet resolution, set up a registration process for communities living in forests and stipulated that people under the verification process could not be evicted or charged with forest encroachment. It was deemed largely fair at the time.

1999

## REGULATION OF THE PRIME MINISTER'S OFFICE ON THE ISSUANCE OF COMMUNITY LAND TITLE DEEDS

It provides for communities to collectively manage and benefit from State-owned land for their livelihood; the State retains ownership of these lands. However, it still does not cover legal recognition of indigenous traditional lands tenure and resource management systems. As of 2012, more than 400 local communities were in the process of waiting to be granted community title deeds, and only 55 community land titles were approved.

2010

## CABINET RESOLUTION

**Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Chao Lay and Karen in Thailand** – These resolutions adopted in June and August 2010 on restoring Chao Lay and Karen livelihoods respectively list out short- and long-term policies in the areas of ethnic identity and culture, natural resource management, citizenship rights, transfer of cultural heritage and education, among others for implementation by responsible government ministries or other State agencies, including non-governmental entities. For example, the Cabinet resolution recommend ceasing arrest and detention of Karen people living in communities traditionally living on disputed (forest) land. Further, it recommended Ministries of Natural Resources and Environment, Interior and Justice, together with the Karen Network for Culture and Environment, to form demarcation committee to eliminate land conflicts between Karen communities and government bodies. Unfortunately, the resolutions have been poorly implemented due to bureaucratic obstacles, political instability, lack of understanding amongst government departments and the low budget allocated for activities to meaningfully implement the resolutions' objectives.

2010

## NATIONAL COUNCIL FOR PEACE AND ORDER (Order No. 64/2014, No. 66/2014) and REFORESTATION MASTER PLAN TO PREVENT ENCROACHING ON CONSERVED LANDS

These sought to end deforestation and encroachment of reserves and rearrange the management of forest territories towards the government's goal to increase forest cover in Thailand to 40 percent within ten years. However, since implementation of the plan, it became apparent that the government's goal is to monopolise natural resources. Order 64/2014 enabled government agencies to put an end to deforestation by removing any encroachers on national reserve lands. Two months after the Order, the Master Plan was issued and detailed the implementation of the Order, which was described as a measure to stop deforestation caused by commercial investors' exploitation of Thailand's natural resources. With the implementation of Order 66/2014, the NCPO declared that its operations would only affect wealthy investors. The Order stated that government operations must not impact the poor and landless people, who had lived on the land before the enforcement of Order 64/2014. However, during its implementation of the Master Plan, the government has persistently targeted impoverished villagers and indigenous peoples, resulting in a complete disregard of the protection measures set out by Order 66/2014.

2014

## COMMUNITY FOREST BILL

The National Legislative Assembly approved the bill in February after 30 years since it was first drafted to ensure that those who are residing locally in forests can work together with the State in management and use of natural resources in a sustainable manner for the environment. Once enforced as law, it sets out a process whereby local communities have to develop a five-year plan on the use and conservation of the forest within their community and this blueprint will undergo a process of assessment once every five years. While it is significant that the bill provides, for the first time, legal recognition of the right of local communities to manage their forests, it also has several limitations in its scope and application. Community forests have been identified by the bill as those that are outside the conservation area managed by the State, thus excluding communities that are living in or are dependent on the forest areas designated as national parks. The bill does not address the customary rights to ownership of lands and resources of hundreds of communities, predominantly indigenous peoples. With the forest department controlling the use of resources, the bill does not ensure the engagement of the forest department with communities on equal footing.



## AMENDMENTS TO THE NATIONAL PARK ACT

**Amendment to the National Park Act (1961) and the Wildlife Conservation Bill** – The amendment was adopted by the National Legislative Assembly in March despite widespread opposition from community groups and civil society organisations (CSOs). It further restricts the rights of forest-dwelling communities to access the forest and resources therein and does not address the concerns of the communities that have lived in the forests before their designation as national park or conservation areas and thus have overlapping claims with the State. Under the amendment, conditions are introduced to resolve overlapping claims, but with some limitations set, including a limited residency of 20 years. Some penalties to be imposed under the new bills are also too harsh and further threaten communities. However, the government claimed that those residing in the forest will still have access to forest resources but only with new conditions set.

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Within above legal framework, the Thai State effectively asserts control over all land and natural resources, which are not privately owned. That denies the rights of indigenous peoples to the lands, territories and resources, including their tenure and management systems. As a result, forced evictions or relocation of indigenous and local communities from their traditional lands are regularly undertaken without any consultation or due compensation. While progress on few positive cabinet measures in relation to community land titling and restoration of Chao Lay and Karen livelihoods has been slow and ineffective, the military junta has instituted its forest reclamation orders negatively impacting the communities in new laws or amendments.

### 2.2.4. Gender Equality Act, 2015

Of particular significance for indigenous women is the **Gender Equality Act**, which prohibits discrimination based on gender. Violation of the law can lead to a maximum jail term of six months and a fine of 20,000 THB (625 USD). It particularly requires non-discrimination in governmental, private and individual policies, rules, regulations, notifications, projects, and procedures.<sup>30</sup> However, as this report demonstrates, gender-based discrimination against indigenous women is still common, which is often due to gender-blind policies or programs.



# REALITIES ON THE GROUND

## 3.1. CASE STUDY 1: INDIGENOUS WOMEN'S CHALLENGES IN ACCESSING CITIZENSHIP

### 3.1.1. Overview of Access to Citizenship for Indigenous Peoples in Thailand

Thailand is one of the countries with the highest number of stateless people in the world. Important reforms in 2008 and the adoption of a progressive nationality strategy by the Royal Thai Government (RTG) to address statelessness, have seen some 100,000 stateless persons acquire Thai nationality since then. Thailand has joined the UN Refugee Agency UNHCR's '#IBelong Campaign to End Statelessness by 2024' and is also a leader of the core group of State parties to the 'Friends of the Campaign'.<sup>31</sup>

National sources estimate that there are currently around half a million people in Thailand without citizenship. However, the NGO Plan International states that the real number is twice as high. Thus, more than one million in Thailand could be stateless, most of them being children and persons belonging to indigenous ethnic groups in the Northern and Western highlands (called "hill tribes") while there are also nomadic indigenous seafarer groups in the Andaman sea possibly facing the same challenge.<sup>32</sup> As of 2013, the Thai government estimated more than half a million stateless "hill tribes" people in the country, making them the second largest stateless population in the Southeast Asia region (after the Rohingya in Myanmar) and one of the largest stateless groups in the world.<sup>33</sup>

However, due to the lack of official recognition and effective census of indigenous peoples, there is space for national data on statelessness to be distorted, which also affects the programs aimed at addressing statelessness. According to Thailand's Department of Welfare and Social Development, the total "hill tribes" population is around one million. Estimates suggest that 40 to 60 percent of them are denied citizenship even though they were born in Thailand or have legitimate claim to it.<sup>34</sup> According to UNHCR data, in 2011, about 900,000 "hill tribe" identification card holders were stateless and considered 'illegal aliens.'. Further, a UNESCO Highland Peoples Survey conducted amongst 63,724 people from 192 villages in the provinces Chiang Mai, Chiang Rai, and Mae Hong Son found that 37 percent of the "hill tribe" people did not obtain citizenship.<sup>35</sup>

Statelessness of indigenous persons in Thailand occasionally receives widespread public attention through news reports, such as the recent reports of a stateless ethnic Thai Yai girl from Chiang Rai province, who was denied a visa for the United States of America to attend a science fair in May 2019, and of the stateless football players and coach, who were rescued from Tham Luang cave in the same province in 2018.<sup>36</sup> Despite some legal and policy reforms and administrative, ad-hoc measures taken by the government, the problem remains. The laws related to citizenship remain unclear - even for the local officials. For example, the Civil Registration Act does not clearly define whether a child born in Thailand to an "illegal migrant" is entitled birth registration, resulting in the fact that many were denied access to the procedure by official representatives. This was denounced by NGOs such as Plan International, although the organisation reported that nowadays, 95 percent of the new births are registered.<sup>37</sup>

Further, the process of verification is slow and complicated and local administrative agencies lack human and financial resources, which forces many stateless people to wait at least ten years before they will be granted citizenship. The waiting time represents a significant loss of opportunities for children, who spend their childhood without having any rights recognized.<sup>38</sup> The complexity of the procedure is often worsened by corruption among local officials or their discrimination, prejudicial stereotypes, and biases against indigenous peoples. Further, the common misconception that indigenous peoples cause deforestation, environmental destructions, and are engaged in drug smuggling has been engraved in people’s mind, mainly because of the positions of the government and the public press towards indigenous peoples. Racism and discrimination also take place at the highest levels of the government and it impacts the process of formulation of laws, programs, and policies that affect indigenous peoples.<sup>39</sup>



*The process of verification is slow and complicated and local administrative agencies lack human and financial resources, which forces a lot of stateless people to wait at least 10 years before being granted citizenship.*

Denial of citizenship not only represents an obvious violation of indigenous peoples’ basic right to nationality, but it also results in many other hardships, inequalities and discrimination faced by them, which drastically jeopardises their living conditions. Lack of citizenship is among the main reasons for violations of the fundamental human rights and freedoms of persons belonging to indigenous groups because citizenship is a condition to be able to access healthcare, education, employment, and to travel freely and obtain land titles, among other fundamental rights and freedoms. The lack of citizenship or legal status thus implies a lack of legal recognition and status that causes many other human rights violations. Furthermore, it hides their social and economic situation since they are absent from data, consequently, their daily hardships are made invisible in most national social surveys. Indigenous peoples are thus excluded from several development programmes and government services.<sup>40</sup>

This case study reviews the problem of statelessness among indigenous peoples in Thailand by presenting the situation of indigenous persons, most of them women, in a district in Northern Thailand, where legal and policy changes and positive commitments of the government to address statelessness have not been fully implemented. The experiences of the villagers clearly evidence the legal, procedural, and administrative obstacles to obtain citizenship, which is worsened by corrupt and unjust practices of local officials in some of the cases. This study indicates the need for more effective measures and greater responsibility from the State to ensure the fulfilment of the basic right to citizenship of persons belonging to indigenous groups so that they are able to enjoy their other fundamental rights.

### 3.1.2. Methodology of the Study

For this case study, semi-structured interviews were conducted with 21 indigenous persons living in Omkoi district, situated in the south of Chiang Mai province in northern Thailand who have been facing challenges in obtaining citizenship. The district is divided in six sub-districts that are further subdivided into 95 villages.

The interviewees included nine men and 12 women aged between 15 and 82 years. Among them,

- seven interviewees live in Yang Piang subdistrict (five in village no. 3, Baan Maelan Luang and two in village no. 12, Baan Kong Sang). This subdistrict comprises of 17 villages with 7,990 inhabitants;
- six interviewees live in Mae Tuen district (five in village no. 9 and one in village no. 10), which comprises of 16 villages with 9,180 inhabitants;
- three interviewees are from Sop Khong district (village 3, 8 and 9) which consists of a total of 12 villages and 6,285 people;
- five interviewees did not provide their residential information.

Information was also collected through a brief interview with the headman of Maelan Luang village. The interviews were compelling to highlight the situation of statelessness among indigenous peoples and violations of their fundamental rights by government authorities in Thailand. However, other external surveys and studies have also been referred to complement the findings under this case study. Due to limited financial and human resources available to conduct research on a larger scale, including a more representative sample, those external surveys and studies which confirmed our own findings, brought more objectivity and evidence to the case. An assessment of relevant international human rights standards and the national legal framework of Thailand was undertaken to examine the challenges of statelessness experienced by indigenous peoples in the country, focusing particularly on indigenous women.

### 3.1.3. Relevant International Human Rights Framework

Article 15 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to a nationality, and no one shall be deprived of his nationality nor denied the right to change his nationality. The right to nationality is guaranteed through protection of the rights of children and the principle of non-discrimination in international human rights treaties. The International Covenant on Civil and Political Rights (ICCPR) provides that every child has the right to acquire a nationality (Art. 24.3), this is also reiterated in the Convention on the Rights of the Child (CRC) (Art. 7). Further, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires States to prohibit and eliminate racial discrimination in all forms and guarantee the right of everyone, without distinction on the grounds of race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to nationality (Art. 5).

Above international human rights instruments place obligations on the Thai State to respect, protect, and fulfil the right to nationality. In reviewing Thailand's compliance of the ICCPR, the UN Human Rights

Committee, while acknowledging the progress made for civil registration since the adoption of the 2008 Act and the government’s commitment to eliminate statelessness by 2024, has expressed concern about high number of stateless persons, particularly among indigenous peoples and ethnic minorities. The Committee also expressed concerns about the stereotypes, bias, and discrimination indigenous peoples endure, including with regard to citizenship and access to basic services. Therefore, the Committee has recommended Thailand to guarantee full enjoyment of rights of indigenous peoples, including protection against discrimination.<sup>41</sup>

The Committee on the Elimination of Discrimination against Women (CEDAW) has also expressed its concerns that among indigenous peoples and ethnic minorities, men are reportedly given priority to register for nationality, leaving a disproportionate number of indigenous and ethnic women without nationality, and limited access to services and protection. CEDAW has also remained concerned about the persistence of multiple barriers preventing women and girls from accessing justice and effective remedies when their rights are violated, particularly for women belonging to indigenous and ethnic groups. Therefore, CEDAW has recommended Thailand to simplify procedures for women belonging to indigenous and ethnic groups, to access the Justice Fund, and to increase information dissemination on legal remedies.<sup>42</sup>

The 1954 Convention relating to the Status of Stateless Persons (also known as the Stateless Convention) defines a stateless person as “a person who is not recognized as a national by any State under the operation of its law” and provides the foundation of the international legal framework addressing statelessness. The Convention recognizes the rights of stateless persons to education, housing, access to courts, employment, and public relief, among others. It also requires States to issue identity and travel documents to stateless persons in their territory and prohibits their expulsion lawfully. Similarly, the 1961 Convention on the Reduction of Statelessness is the leading international instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent statelessness. However, **Thailand has ratified neither of the 1954 and 1961 Conventions, has not defined statelessness in domestic legislation, and does not recognise the rights of stateless persons.**



*The lack of citizenship or legal status implies a lack of legal recognition and status that causes other human rights violations, such as restricted access to healthcare, education, and land. This leads to hardships, inequalities, and discrimination for indigenous peoples, drastically jeopardising their living conditions.*

Further, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Thailand voted in favour of adoption in 2007, guarantees that every indigenous individual has the right to a nationality (Art. 6) and that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions, which does not impair the right of indigenous individuals to obtain citizenship of the State in which they live (Art. 33.1).

### 3.1.4. Relevant National Legal Framework

Thailand's first **Nationality Act** of 1913 allowed acquiring citizenship (1) by descent (*jus sanguinis*) and (2) by birth on the Thai territory (*jus soli*). The subsequently revised Nationality Acts in 1952, 1953, 1956, and 1960 were repealed by the Nationality Act (No. 5), 1965, which has undergone significant amendments in 1992, 2008 and 2012.

In 1956, a **Civil Registration Act** was introduced, and a national census was undertaken. However, many indigenous peoples were neglected and undocumented in the census because the government did not reach out to the remote areas where they lived and also because indigenous peoples were indifferent about participating in registration, as they were not fully informed. Moreover, in 1972, the **Revolutionary Declaration No. 337 (Por Wor 337)** added significant restrictions on obtaining nationality by birth (*jus soli*) in the Nationality Act, whereby a child born in Thailand to foreign parents could only be granted Thai nationality if both parents have permanent residence in the country. This was also retroactively applied and resulted in revocations of nationality. In 1992, this Declaration was repealed but the *jus soli* restriction was integrated into the Nationality Act and remains in force to date.<sup>43</sup>

Consequently, Thai nationality is legally granted by birth if the child has at least one biological parent who is a Thai citizen or if the child was born in Thailand to legal aliens. Nationality is not given to children of parents who were permitted to stay temporarily in Thailand or entered the state illegally, even if the children were born in Thailand. Thus, citizenship was not provided to indigenous persons who were not registered in the census as Thai or otherwise, or to those who have lived in Thailand for centuries but cannot prove themselves different from those who entered Thailand illegally by fleeing Myanmar and joined the communities in Thai border areas.<sup>44</sup> Marriage to a male Thai citizen is another way of acquiring Thai nationality but women cannot confer Thai citizenship to their non-citizen spouse.<sup>45</sup>

In 1990, a cabinet resolution called for a census of highlanders living in 20 provinces in Northern and Central-western Thailand.<sup>46</sup> Accordingly, the highlanders were issued **highlander identification cards**, together with "non-hill tribes" people in the highlands.<sup>47</sup> Thailand has developed a complicated system of as many as 20 similar sorts of coloured identity cards, which are used to document specific waves of immigrants - some of which encompass indigenous peoples. Thus, many members of indigenous groups who could not register as Thai citizens, were basically classified together with other migrants and their children have retroactively been barred from nationality by birth.<sup>48</sup>

However, there was some improvement with the implementation of the **29 August 2000 Cabinet resolution**,<sup>49</sup> which classified indigenous peoples into three categories:

1. those who were born in Thailand between 10 April 1910 and 13 December 1972 and are entitled to citizenship;
2. those who immigrated to Thailand before 3 October 1985 and are entitled to permanent residence in Thailand with migrant status;
3. those who illegally immigrated to Thailand after 3 October 1985 with illegal migrant status.

Currently, persons belonging to various ethnic groups without nationality are registered under the Central Registration Bureau under the Ministry of Interior and are granted pink-colour identification cards (IDs) with a 13-digit identification number, which are used to classify them with respect to legal status and applicable laws and regulations. At the same time, the ID provides them with the right to travel freely inside the district (however, they have to apply for permission to travel outside the district and the province),<sup>50</sup> and to marry legally and be able to register their marriage without any denial due to their lack of citizenship.<sup>51</sup> Those owning pink IDs also have the right to education and cannot be denied by schools or to be provided a school certificate due to the reason of alien status.<sup>52</sup> They also have access to 27 types of occupations.<sup>53</sup>

Further, a major **amendment to the Nationality Act in 2008** has allowed individuals, who faced revocation of their nationality or who were barred from nationality because of the **1972 Declaration** that was in force between 1972 and 1992, to acquire Thai nationality with the conditions of (1) having evidence of their birth and subsequent residence in Thailand and (2) demonstration of good behaviour. Although many indigenous persons who are stateless due to the 1972 Declaration can benefit from the amendment, questions remain about satisfying requirements for evidence and effective implementation of the amendment.<sup>54</sup>

Furthermore, on **7 December 2016**, **two resolutions** proposed by the Ministry of Interior were enforced by the Cabinet to address the issue of statelessness and promote the rights of stateless persons in Thailand.<sup>55</sup> The first resolution grants foreign children who are born in Thailand the right to legally stay in the country, in line with the rights of the parents, preventing them from being criminalised as illegal migrants. The second resolution allows foreign children who were born in Thailand to apply for the Thai nationality under the following conditions:

- their parents must be from ethnic minority groups registered by the Ministry of Interior and must have lived in Thailand for at least 15 years;
- if their parents belong to other groups, the child must obtain a Bachelor's degree or equivalent;
- children that are currently studying in Thailand can apply for Thai nationality;
- abandoned children can apply for Thai nationality if they have lived in Thailand not less than ten years and have a certification from the Ministry of Social Development and Human Security.

While these reforms are positive, challenges remain. Firstly, with regards to evidence of birth as first step to citizenship in Thailand, the Civil Registration Act allows access to **birth registration** for persons:

- with Thai nationality;
- with the right to permanently reside in Thailand;
- with the right to temporarily reside in Thailand (visa and passport holders);
- who are granted permission to temporarily reside in Thailand under the Immigration Act 1979 (Art. 17) (including minority group members with IDs).



Thus, children born to illegal migrant parents who do not have the right to reside in Thailand cannot access birth registration. This causes problems with respect to their legal status and statelessness across generations, which is in violation of Thailand's international human rights obligations under the ICCPR (Art. 24, right of child to birth registration).<sup>56</sup> Thai law only recognises ten ethnic groups as "hill tribes" and persons belonging to other indigenous groups who do not have any identification can automatically be considered as illegal migrants, even though they have lived in Thailand for many decades.

The second way to obtain Thai citizenship is through **household registration** (Tor Ror 13).<sup>57</sup> The conditions to get permission for permanent residence are also burdensome as the conditions<sup>58</sup> are complicated and might be difficult to meet for indigenous persons, particularly for those without legal status.

### 3.1.5. Analysis of the Findings of the Study

Each interviewee in this study faces the common challenge of denial of citizenship due to difficulties faced in the process of obtaining Thai citizenship. The interviewees can be broadly classified into four groups:

1. those whose parents or siblings have been awarded citizenship but are now dead, and they lack evidence to prove their blood relations, which is required to obtain citizenship;
2. those whose parents are registered but their birth was not registered because of remoteness, administrative difficulties or personal issues;
3. those who have lived in Omkoi for a long time but do not have any relative living nearby;
4. those who lived along the Thai-Myanmar border, travelled to Omkoi for employment with their parents when they were young and have lived in the area for years.

All the cases indicate violations of their right to nationality or their rights as stateless persons according to international human rights standards. Some of the cases even demonstrate clear contravention of Thailand's national legal framework regarding citizenship and rights provided to people born in Thailand.

#### a. Direct or indirect responsibility of government authorities

According to the interviews, in all cases, government authorities are directly or indirectly responsible for the violation of the right to nationality. **There are six cases in which local government officials are directly responsible due to their involvement in corruption, wrongful subrogation of ID (substitution of one's ID to another person) or unjustified denial of citizenship.** In the reported cases of corruption and wrongful subrogation of ID, interviewees were asked to pay illegal fees in order to start procedures to obtain citizenship or they have been threatened with arrest. For some of the interviewees, government officials in Omkoi district have outright refused to start the procedures and have illegally denied citizenship.

**In 14 cases, government authorities are indirectly responsible for the violation of the right to nationality due to lack of effective access of the villagers to the process of birth registration or obtaining citizenship.** The reasons vary from inadequate state services, including all-season roads in remote areas and lack of dissemination of official information to outright denial of consideration of people lacking evidence required for obtaining citizenship.

Many interviewees reported that they experienced difficulties in accessing administrative services, such as birth registration, because they live in remote areas and are unable to travel during the rainy season. In several cases, only a walking trail connects their villages to the main city of the district where the district office is located. This demonstrates the government's failure to provide appropriate services to those people to access their fundamental right to nationality. Further, villagers who lack financial resources for their travel cannot afford any service. Additionally, women often cannot travel by themselves and rely on the availability of men to accompany them.

Further, each person interviewed has at least one family member (parent, sibling, spouse and/or children) who has obtained Thai citizenship – most of them have even two such members. More precisely,

- 79 percent of the interviewees' spouses have obtained Thai citizenship,
- 74 percent has siblings or/and children who have obtained Thai citizenship, and
- 32 percent of the interviewees has parents who are Thai citizens.

In most of the cases, this should be sufficient to acquire citizenship. However, proving family roots requires literacy in Thai language and administrative skills, which most of the Omkoi villagers lack. Alternatively, proving family roots can be done through DNA tests. However, the fees of such tests are

high and villagers face both financial and practical difficulties to undergo such tests in the district office. Four of the interviewees without citizenship are also listed in their household registration. It can thus be concluded that all interviewees in this survey could meet the conditions set to be granted citizenship under Thai legislation.

However, in Thailand, there is a significant contrast between what is provided in the law and the practices on the ground. As stated by **Chutima Morelaeku** of the Inter Mountain People Education and Culture in Thailand (IMPECT), who is an expert on legal status and rights of the indigenous peoples, in a 2011 UNESCO report, *“the majority of officials does not understand the laws and processes, and therefore cannot aide villagers in accessing their rights.”*<sup>59</sup>

#### **b. Corruption and unjustified denial of citizenship**

Local officials could be misinformed but some cases in Omkoi district show that officials often benefit from the fact that indigenous peoples are not familiar with administrative procedures. In this study, it was found that cases have occurred in which corrupt officials asked illegal fees, considered as bribes, for issuing citizenship or subrogating IDs. Such cases have also been reported earlier.<sup>60</sup> Three interviewees have faced such issues from officials – in one case, the official demanded excessive fees and the IDs of the interviewees were wrongfully subrogated in two cases.

The case of government officials demanding excessive fees for the citizenship process allegedly took place in 2010 and was witnessed by the village headman. An official had requested 30,000 Thai Baht (THB) for granting Thai citizenship to a 64-years-old woman, while application fees for naturalization or for recovery of Thai nationality, as provided in the Nationality Act, cannot exceed 10,000 THB.<sup>61</sup> All family members of the woman, including her parents, already hold Thai citizenship.

Another corrupt practice occurred in 2014, when one of the interviewees had gone to the District Office to register for an ID and found out that her ID had already been issued to another person. It has been alleged that the Deputy District Chief sold her ID – he manipulated the head of the village and her parents to sign for the subrogation of ID without informing them of what they were signing on while they thought that they signed the registration document needed to apply for the victim’s citizenship. In another reported case of subrogation of ID which occurred in 2009, the authorities even threatened the villager with arrest if she would come back again to apply for citizenship.

On the other hand, two interviewees have reported that they had faced unjustified denial from the officials to even start their citizenship procedures, even though they could meet the necessary requirements. One interviewee had submitted several applications for Thai citizenship at Omkoi District Office for 16 years, but authorities have refused to start the process. Another interviewee explained that officials refused to believe the parents’ claim that she was their child. In another case, the person had applied for citizenship at the district three years ago, but he had not received any news on his application ever since while the officials have just told him to wait. This happened despite the law stipulates deadlines that must be respected by officials to provide documentation.

#### **c. Difficulty of the process and lack of information**

**Janepicha Cheva-Isarakul**, a researcher and lecturer at Victoria University of Wellington in New Zealand who is specialised in statelessness issues in Thailand, has noted that *“A process that relies heavily on documents as absolute proof of identity risks placing blame on the people for not having the documents, rather than questioning why they did not have the documents to begin with.”*<sup>62</sup>

The process of applying for Thai citizenship is long and complicated. The process of collecting official evidence of birth is burdensome when some indigenous persons still lack any form of identification,

even birth certificates. Moreover, the administrative procedure requires Thai language proficiency, which prevents many indigenous persons to initiate the procedure.

Further, most indigenous peoples live in remote areas with no or unsafe roads from their village to the main cities. Consequently, during the rainy season, they cannot travel without risks. On top of that, the travel is expensive. As informed by the headman of Maelan Luang village, there are 12 people that do not have the citizenship in his village and most of them could not be registered at birth due to unsafe roads conditions, absence of roads, difficulties caused by the rainy season or the long travel time needed to go from the village to the district office (ten out of 19 respondents). Some of the villagers have tried to get citizenship for ten years but have still not been able to obtain it.

Also concerning is the lack of information provided by authorities. As revealed during the interviews, people are often unaware of their rights to obtain citizenship, neither of the benefits they could have with citizenship. Two persons interviewed admit that they do not obtain citizenship because they lack information on the procedures. Thus, there is an urgent need to effectively disseminate the information on citizenship procedures to the grassroots level, including through the provision of translators who speak local languages and have knowledge of local contexts and relevant laws.

Furthermore, there is the additional challenge of the financial burden for those who need to undertake a DNA test to prove the blood relationship with relatives who are holding Thai citizenship. In an interview, the village headman of Maelan Luang village informed that DNA tests cost around 5,000 THB (157 USD). As found in this study, Omkoi villagers do not have sufficient financial resources and lack literacy skills necessary to undertake the procedures. This challenge is not only faced by Omkoi villagers – for instance, the NGO Plan International has reported about two teenagers from Pa Deang village in Mae Ai district, who were born in Thailand but their parents could not register them at birth, so they had to undergo a DNA-test to prove their genetic relationship to their aunt who is a Thai citizen. Without the financial help of the NGO that paid around 8,150 THB (256 USD) for both girls to undergo the DNA tests, they would not have been able to afford citizenship.<sup>63</sup> Thus, indigenous peoples face financial barriers to assert their right to nationality, which in itself constitutes a violation of this right.

#### **d. Consequences of deprivation of citizenship**

The denial of the right to nationality and deprivation of citizenship or other identification documents cause violations of other fundamental human rights of indigenous peoples – they are unable to access education, healthcare, employment, and move freely and they do not have the right to own land.<sup>64</sup> They fear being detained by police officers at any time and those who live in Chiang Mai province in northern Thailand are particularly at risk because there are many checkpoints and inspections as this area is one of the world's major drug routes.<sup>65</sup>

In this case study, Omkoi villagers particularly shared about their challenges of having limited freedom of movement and the lack of access to healthcare and education. For instance, in Maelan Luang village, twelve people hold “registered alien card” with which they are allowed to travel to access healthcare services. However, they have to pay for the costs of the services that are often unaffordable to them. The head of the village explained that a woman had to pay 10,000 THB (314 USD) to the hospital when she delivered her baby. Consequently, she remains in debt since her delivery. Challenges in accessing healthcare particularly affect women because under the gender division of tasks, they are the ones to care of sick family members.

At the same time, several surveys show that stateless children are facing multiple challenges and discrimination, which prevent them from enjoying their right to education, which was another concern of the Omkoi villagers. According to the above-mentioned UNESCO Highland Peoples Survey, indigenous persons who lack citizenship are 80 percent less likely to enter primary school and 75 percent less likely

to progress to secondary school, compared to those holding Thai citizenship.<sup>66</sup> Further, it has been reported that school administrators specifically mention “non-Thai citizen” on the high school certificates of stateless students, which constrains their future opportunities and denies them equality of chances, even if they would obtain citizenship later. Besides that, stateless students face higher tuition fees and are denied student loans.<sup>67</sup>

Since stateless persons cannot work legally, most families live hand to mouth and are not provided legal protection that would ensure their labour rights. Without legal status, indigenous persons are also highly vulnerable to human trafficking, which particularly concerns women and girls, as they are not protected by the government.<sup>68</sup> UNESCO has confirmed that lacking citizenship is one of the main risk factors for becoming a victim of trafficking and exploitation.<sup>69</sup> The lack of citizenship of indigenous women exacerbates their vulnerability and their gender makes them prone to sexual violence. Further, as documented by NGO Plan International, the abuse of children, who work as slaves and in the sex industry in Thailand’s karaoke bars and massage salons, as well as abroad, are among the human rights violations caused by statelessness.<sup>70</sup>

Although this case study, due to its limitations, could not dig deeper on the impacts of denial of citizenship for Omkoi villagers, there is strong evidence that due to the lack of citizenship, indigenous persons are deprived of their basic rights to health and education, among other rights. Moreover, there are other potential grave risks of their exploitation for which the district, provincial and national government authorities should be accountable.

#### **e. Access to remedies for challenges in obtaining citizenship**

As found in the study, the Omkoi villagers have been mobilizing at the community level to address the challenges of indigenous persons to access citizenship. One of the villagers, Khun Piboon, has helped the stateless villagers to document their names and collect supporting documents required for the citizenship process. He has also informed the National Human Rights Commission of Thailand (NHRCT) about their situation and a petition was submitted to the Provincial Administrative Department of the Ministry of Interior. In November 2018, representatives of the Provincial Administrative Department came to collect information in the village but further information about the outcomes of these steps is not available until the date of the study.

Besides that, some NGOs have been supporting those facing statelessness problems caused by the failures of the State to address them. For example, the IWNT has provided technical training on Thai citizenship laws, citizenship procedures, and qualifications and requirements for applying for Thai citizenship. IWNT has also helped to document the life stories of the stateless people as well as to collect their supporting documents and evidence needed to apply for citizenship. As stated above, Plan International has also reportedly provided financial and technical support to people so that they can start citizenship procedures and helped almost 6,000 mainly young people to obtain Thai citizenship as of 2014.<sup>71</sup> Further, NGO Mirror Foundation has reportedly assisted over 2,000 people in acquiring Thai citizenship within Mae Yao subdistrict in Chiang Rai province.<sup>72</sup>

Further, several international aid organisations and UN bodies, including the UN High Commissioner for Human Rights (OHCHR) and the Committee on the Rights of the Child, have called for reforms in Thailand’s Nationality Act and birth registration and citizenship processes. Besides that, they called for loosening restrictions so that non-citizens are able to access their basic rights and can have decent living conditions.<sup>73</sup> Although the government has made some changes and provided eligibility for citizenship to certain groups and tried to implement programs to educate them about their rights, NGOs and activists point out that because of widespread corruption and inefficiency among local officials, there are still a lot of unfairly denied applications and eligible persons, who still lack citizenship.<sup>74</sup>

### 3.1.6. What do Indigenous Women want?

Indigenous women and men in Omkoi district who participated in the study, call for the following specific actions:

- The NHRCT should support in addressing the challenges by conducting a fact-finding mission in the village concerning the violations of the fundamental right to nationality;
- The Ministry of Interior should undertake an effective investigation about citizenship challenges in the village, including possible corruption of local authorities, and take necessary action to address the challenges.

### 3.1.7. Conclusion

This case study reveals the urgent issue of violations of the fundamental human right to nationality of indigenous peoples. The situation in Omkoi district of Thailand's Chiang Mai province where at least 21 persons – majority of them women – are facing challenges to obtain citizenship is representative of the human rights challenges experienced by indigenous peoples across the country. Although the Thai government has made some progress for relevant legal and policy changes, this study shows the needs for greater and significant political and administrative reforms.

Whereas those who have legitimate claims to nationality have been denied one of their basic rights, it is particularly critical to immediately address illegal practices like corruption and abuse of authority causing deprivation of citizenship, which must be sanctioned according to national and international law. Local officials should be aware of the relevant legal framework and they should effectively facilitate registration and citizenship processes for persons belonging to indigenous groups, including through awareness raising and outreach to grassroots levels.

Denial of citizenship restricts indigenous peoples' enjoyment of other rights and freedoms, which are guaranteed in national and international law. Lack of citizenship increases their risks and vulnerabilities of discrimination and exploitation. They are forced to cope with living conditions that are neither legal nor acceptable. The issue requires actions from communities and support from organisations at national and international levels, including financial and technical assistance for the stateless persons to acquire citizenship, and advocacy for necessary reforms in related laws and policies. The concerned State agencies should now take their responsibility and undertake necessary and effective measures to fully understand and resolve the underlying causes of the problem of statelessness among indigenous peoples.

### 3.2. CASE STUDY 2: DISCRIMINATION FACED BY INDIGENOUS WOMEN IN ACCESSING HEALTHCARE SERVICES



*Indigenous peoples, especially those living in remote border areas and highlands, face geographic and socio-economic challenges accessing basic health services. Those challenges are more severe for indigenous women than men due to gender inequalities and specific healthcare needs.*

#### 3.2.1. Overview of Access to Healthcare Services in Thailand

Over the years, Thailand has made significant progress in terms of human development. It has attained high Human Development Index (HDI) ranked at 83 among 189 countries worldwide with improvement in each component of the HDI: education, income and health. Between 1990 and 2017, Thailand's life expectancy at birth increased by 5.2 years to 75.5 years.<sup>75</sup> The health system has notably been improved by the implementation of the primary healthcare system – Universal Health Care (UHC) introduced in 2002. It broadened the scope of coverage to 18 million people, who were earlier uninsured, and improved the situation of 29 million who were covered by less comprehensive schemes.<sup>76</sup> In 2014, the most important causes of death in the country as defined by the World Health Organization (WHO) are cardiovascular diseases (accounting for 29 percent), communicable maternal, perinatal and nutritional conditions (accounting for 18 percent) and cancers (accounting for 17 percent).<sup>77</sup>

As indicated in the data that communicable maternal, perinatal and nutritional conditions are the second biggest cause of death, reproductive and maternal health is a major issue in Thailand which makes women particularly vulnerable regarding the access to health. Between 1990 and 2015, the general maternal mortality ratio has been improved and decreased from 40 to 20 per 100 000 live births.<sup>78</sup> However, the teenage pregnancy rate in Thailand remains the highest in Southeast Asia according to the Ministry of Public Health – the number of adolescents that

gave birth has increased since 2000 to 54 per 1000 adolescents in 2012. The country lacks accessible and available health services concerning sexual and reproductive rights for the youth while early pregnancy has a huge impact on education and poverty which is higher for women.<sup>79</sup>

Besides, high economic inequality and poverty also pose serious challenges in terms of access to healthcare. Although rapid economic growth has contributed to overall decrease in poverty, the income gap remains significant as the richest ten percent of the Thai population accounted for 36 percent of total income in 2013, while the poorest ten percent accounted for only one percent.<sup>80</sup> According to the WHO, certain groups are especially vulnerable, including ethnic minorities (indigenous peoples) and disadvantaged women and children, while data on those groups have only been collected sporadically.

### 3.2.2. Challenges of Indigenous Peoples, particularly Indigenous Women, for Health Services

Globally, indigenous peoples have a lower life expectancy than their non-indigenous counterparts and they suffer from high rates of malnutrition and undernutrition, child mortality and infectious diseases. At the same time, indigenous persons suffer from infectious diseases such as tuberculosis and rheumatic fever which are not widespread among the non-indigenous population. They also suffer from diseases like obesity, heart diseases, cancer, type 2 diabetes and physical, social and mental disorders that mainly result from their voluntary or involuntary migration away from their traditional lands and consequent changes in their previous ways of life. While there is a significant lack of aggregated data concerning the health situation of indigenous peoples, they also face language barriers and discrimination in accessing health services, which are often not culturally appropriate or in line with their traditional health practices. Those challenges are more severe for indigenous women than men due to gender inequalities, including exclusion from the educational system.<sup>81</sup>

Few studies have shown significant differences in access and use of health services of indigenous women in Asia compared to the rest of the population, whereby they are excluded from health services and less likely to seek care when ill.<sup>82</sup> They are more vulnerable than non-indigenous women to poor health and face greater challenges and barriers to receive appropriate and equitable healthcare services. They are also less likely to receive preventive healthcare education and indigenous women are also more affected by sexually transmitted diseases, for example due to disproportionately higher impacts of human trafficking. As a result, inequities remain in health and access to healthcare for indigenous women in Asia.

Similarly, indigenous peoples in Thailand face geographic and socio-economic challenges in access to basic health services, especially among those living in remote border areas and highlands. The Thai government does not legally recognize indigenous peoples or their rights as per international human rights standards and refers to them as ethnic groups or minorities. It officially recognises ten hill tribes, leaving almost half a million indigenous persons stateless and vulnerable to denial of basic human rights, including right to health, and to discrimination.<sup>83</sup> Thus, indigenous peoples are concerned by two main issues regarding their access to health services:

- health insurance eligibility linked to citizenship that results in incomplete coverage or absence of coverage for those, who cannot prove their nationality;
- they are living in remote areas, where the government has poorly invested in health services and they experience difficulties to go to health centres.

A recent ethnographic study among indigenous women in northern rural Thailand has shown that persistent inequities in health and access to healthcare services for indigenous women in Thailand remain a significant challenge.<sup>84</sup> Inequities in healthcare lead to greater negative health consequences for indigenous women in Thailand – for example, many of the women affected by preventable diseases such as cervical cancer and HIV/AIDS are indigenous.<sup>85</sup>

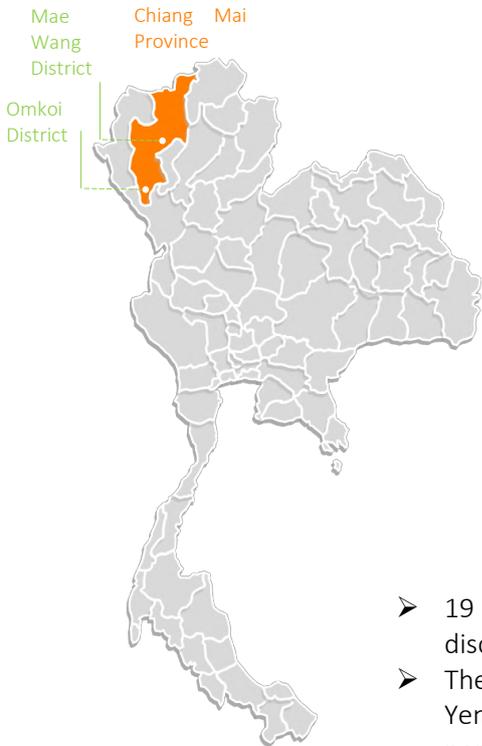
At the same time, when they are able to access healthcare services, persons belonging to indigenous groups in Thailand are often subjected to ethnicity-based discriminatory practices and negative attitude of healthcare providers. Indigenous women face greater and multiple layers of discrimination based on gender inequalities (within and outside their community) as well as indigenous identity – attributed as ‘double burden’<sup>86</sup>. Such layers further multiply when accompanied by discrimination based on social or economic status. 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.

**This case study provides an analysis of the challenges of indigenous women to access healthcare services in Thailand, focusing on physical distance and costs involved, discrimination faced in terms of barriers to health information, as well as the practices and attitudes of health personnel.** Providing equity in the access of health is not only a public health issue but it concerns the accountability of the State and a challenge for democratic governance and social justice. It is crucial to adopt a rights-based and gendered approach to the issue of healthcare services for indigenous women in consideration of their specific challenges, needs, and aspirations.

**3.2.3. Methodology**

This study concerns the communities that live in Huay Yen and Pa Kluay villages in Mae Wang district, Mae Lan Luang village in Omkoi district, and Huay E-Khang and Thung Luang villages in Mae Wang district – all located in Chiang Mai province.

Information for this case study was collected through three methods: in-depth interviews, focus group discussions (FGDs), and surveys.



- In Huay Yen village (Mae Wang district), all the three methods were used.
- In Pa Kluay village (Mae Wang district), information was collected through survey and in-depth interviews with village leaders, some villagers and indigenous women leaders.
- In Mae Lan Luang village (Omkoi district), Huay E-Khang and Thung Luang (Mae Wang district), focus group discussions were conducted.

- 19 women and two men participated in the focus group discussion.
- The surveys were responded by over 60 individuals (30 in Huay Yen and 30 in Pa Kluay), of which 70 percent is women and 30 percent is men. The survey provides essential information about the sociological profile of the participants: In total, 43 women and 17 men answered the survey. In Pong Lomrang (Pa Kluay), 17 women and 13 men answered the survey. In Huay Yen, 26

women and four men completed the survey questionnaires. The 60 respondents are between 18 and 75 years old.

Among the respondents, 30 percent have no education, 23 percent had dropped out after elementary school, 7 percent are vocational high school graduates and 33 percent are high school graduates. Five percent of the respondents have a Bachelor's degree and two percent have a Master's degree or higher. In the analysis, the respondents who graduated from high school and vocational high school are grouped together since it is the same degree of study.

The choice of using in-depth interviews, FGDs and surveys has been made to minimize sociological bias. Answering questionnaires can be biased by the lack of awareness of one's situation and the lack of comprehension of conceptual terms by the respondents – in case of concepts like discrimination for instance. FGDs enriched the study with more personal answers, the discussions allowed explicative details and sharing information and participants to feel confident in the group. Surveys are more personal and formal, so it can prevent participants from being honest because they can feel judged. On the other hand, surveys have the benefit of collecting a large amount of data and sometimes to collect personal opinions with less influence from the group. Using both methods allowed us to analyse the most objective information possible.

A brief review of the international human rights framework relevant to the right to health of indigenous women in Thailand precedes the analysis of the findings. The aim is to apply a human rights-based approach to the examination of the challenges of indigenous women to access healthcare services. An assessment of the legal and policy framework at the national level vis-à-vis the international human rights obligations was beyond the scope of this case study, which could be a limitation of this study.

#### 3.2.4. Relevant international human rights framework

According to the WHO, the right to health is a claim to a set of institutional arrangements and environmental conditions that are needed for the realization of the highest attainable standard of health. It is an inclusive right, which extends beyond timely and appropriate healthcare to the underlying determinants of health such as adequate housing, nutritious food and clean water, healthy occupation and environmental conditions and access to health-related information and education. Governments must generate those conditions in which everyone can be as healthy as possible, even though the right to health does not mean the right to be healthy.<sup>87</sup>

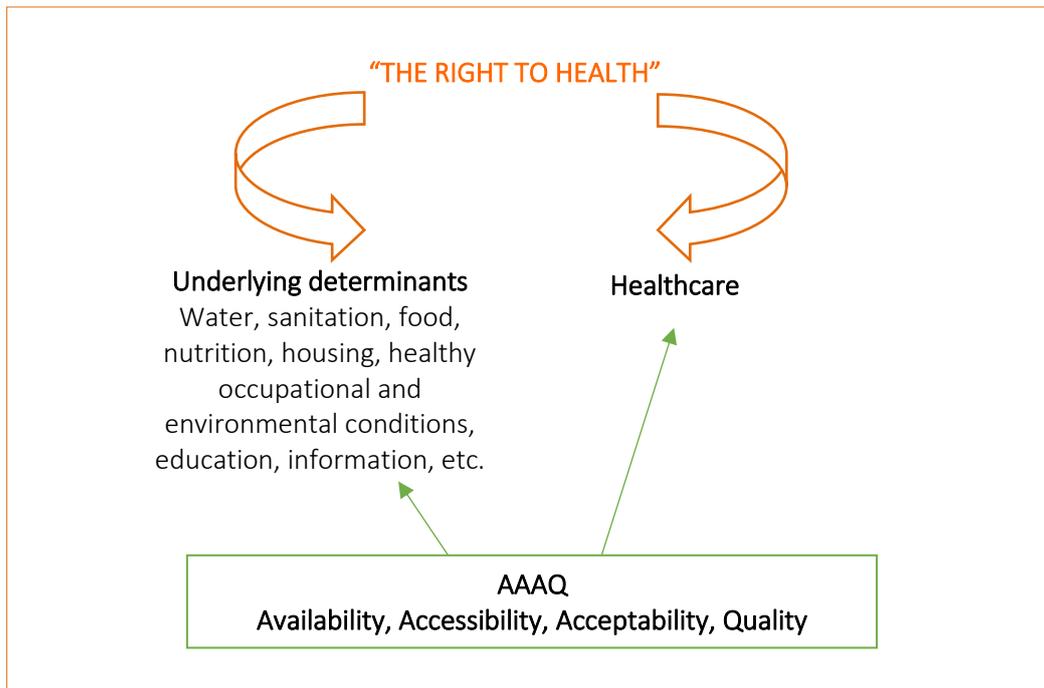
Article 25(1) of the Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to a standard of living for the health and well-being of himself and of his family, including ... medical care and necessary social services.” Similarly, the WHO Constitution affirms that “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without the distinction of race, religion, political belief, economic or social condition.”

The right to health is also guaranteed in various international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which are applicable to Thailand.

In its General Comment on the right to health, the UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, has set out four criteria by which to evaluate the right to health:<sup>88</sup>

- **Availability:** goods, services, and programs need to be available in sufficient quantity;
- **Accessibility:** non-discrimination, physical accessibility, affordability, and information accessibility;

- **Acceptability:** ethical, gender-sensitive, and culturally appropriate facilities, goods and services;
- **Quality:** health facilities, goods and services of good quality e.g. trained health professionals, safe drugs etc.



Source: World Health Organization Regional Office for Southeast Asia

Adopted in 2012, the ASEAN Human Rights Declaration (Article 29 (1)) also guarantees the right of every person to the highest attainable standard of physical, mental and reproductive health, to basic and affordable health-care services, and to have access to medical facilities.

Specifically, with regards to the rights of indigenous women to health, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Thailand voted in favour of in 2007, sets out the following key provisions:

- Indigenous peoples have the right, without discrimination, to improvement of their economic and social conditions, including, inter alia, in the areas of ... health. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions with particular attention to the rights and special needs of indigenous women. (Article 21)
- Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development, in particular to be actively involved in developing ... health and other economic and social programmes affecting them, and as far as possible, to administer such programmes through their own institutions. (Article 23)
- Indigenous peoples have the right to their traditional medicines and to maintain their health practices. Indigenous individuals also have the right to access, without discrimination, to all social and health services. They have an equal right to the enjoyment of the highest attainable standard of physical and mental health and States shall take necessary steps for progressive realization of the right. (Article 24)

### 3.2.5. Analysis of the Findings



*Indigenous peoples face language barriers and are subjected to negative attitudes of healthcare providers and ethnicity-based discriminatory practices when accessing health services. Besides that, healthcare services are often not in line with indigenous peoples' traditional health practices.*

#### a. Health conditions, traditional medicine and health practices

The surveys and FGDs conducted for this case study reveal that indigenous peoples suffer from several diseases that require regular follow-up care and adapted treatments. 40 percent of the respondents suffer from different cases of body pain. Among those respondents, 38 percent suffer from migraine and headache and developed pain reportedly because of the use of insecticides (as noted by 30 percent of them). 32 percent of the respondents suffer from chronic conditions such as notably high blood pressure (51 percent), diabetes (27 percent) and gout (22 percent). According to the participants of the FGDs, the causes of above diseases are environmental changes and the consumption of oily and salty food. The trend shows that men are more affected by chronic disease (including high blood pressure, diabetes and gout) than women (62 percent against 39 percent) notably because of the consumption of alcohol and tobacco.

The survey respondents declare that they use traditional medicines or herbs or go to traditional healers if they are sick although the level of practice of traditional medicines and health systems, including mid-wives, varies among the villages. They would go to the hospital only if they suffer from a severe disease or if the traditional healer does not find a cure for them. Although the respondents still use traditional medicines and health practices, they criticize the Thai government that it does not promote or support these practices. As per the FGDs results, the practices depend on the communities. In Huay Yen village, indigenous peoples follow traditional beliefs and go to the traditional doctor if they are sick. However, in Pa Kluay, villagers are mostly Christians thus they use less traditional practices and medicines.

#### b. Free healthcare but challenges of long distance and high costs

##### *Remote areas and long distance as a challenge to access healthcare*

While the participants of the study have appreciated free healthcare provided through government health facilities under Thailand's Universal Health Care (UHC) scheme, the distance is a crucial issue faced by indigenous peoples, notably because they live in remote villages far from government

hospitals, and they usually do not own a private vehicle. The survey reveals that approximately 30 percent of the respondents do not have any private vehicle. In the FGDs, each participant identified long distance and lack of public transportation as the main concern about health as the nearest hospitals or clinics are situated between 30 to 50 kilometres from the villages. In each village, there is no or not enough public transportation from the villages to the hospitals or clinics. For example, the Nong Tao sub-district hospital, which serves 19 nearby villages, reportedly does not even have one van and uses the vehicle of the local administrative office. Worse, roads are bad and during the rainy season, villagers cannot travel because it is too dangerous. Further, as shared in one of the FGDs, women face greater challenges due to distance as they have to rely on men, who are the only one who can drive, to take them to the hospital.

### *High costs as a challenge to access healthcare*

Most of the people in rural indigenous communities are self-employed and face additional pressures such as fear of income loss when taking time away from work for medical visits.<sup>89</sup> These journeys cost a lot to villagers – in Mae Lan Luang, they spend 5,000 to 6,000 THB (157 to 188 USD) to travel to the nearest hospital. People in Huay Yen and Huay E-Khang spend 1,000 to 1,500 THB (31 to 47 USD) to go to the nearest hospital. The cost prevents them from having regular health check-ups and necessary follow-ups because they often have to borrow money from other people and have to work a lot to repay their debt, which brings additional stress.

As per the survey in Huay Yen, there is reportedly a private clinic in nearby village closer (20 minutes by car) than the nearest government health facility (30 minutes by car). However, the villagers cannot use the public health coverage in the private clinic and thus have to pay more with the starting cost of at least 50 THB (1.5 USD) compared to 30 THB (less than 1 USD) under the UHC scheme. At the same time, they also face challenges due to the procedural limitations of the UHC scheme as the coverage is reportedly provided only through local hospital, which is often further than the closest health facility and thus they either have to make greater hardships to travel for less medical costs or pay higher medical costs at the closest hospital.

The FGDs also revealed that disabled people face even harder challenges to access their right to health, notably because they do not have access to healthcare as they are only provided with financial help for the transport to the hospitals. However, they do not have any help or support to move to the health centres even within the community, whereas they cannot do the travel by themselves.

### *No public healthcare service for indigenous persons without citizenship*

Indigenous persons without citizenship or official ID face severe challenges to access health services as they are not covered by the government health service under the UHC. Thus, they have to pay high costs to receive medical services. For instance, as found in one of the FGDs, a person in Omkoi district without an official ID in lack of public health coverage reportedly had to pay up to 20,000 THB (626 USD) to be cured at the hospital, for which he had to use his motorcycle as collateral while the hospital kept them until the bills were paid. Most of the time, people cannot afford the travel and medical costs.

### **c. Specific challenges and multiple forms of discrimination against indigenous women**

It is more difficult for indigenous women to access health services as they face specific health problems and a myriad of obstacles in their quest to achieve healthcare, which constitute multi-layered discrimination against them. First and foremost, they suffer from gender inequalities due to traditional divisions of roles and responsibilities. Women have to endorse a caretaker role in the family and in the community, which prevents them from having time to care for their own health. They often concurrently

hold both unpaid work in the household (cooking, household chores and looking after children and elderly) and paid work to complement the family income. They also suffer from expectations related to their reproductive roles. The study conducted shows that gender inequalities and unequal distribution of familial and labour responsibilities lead to unequal opportunities to seek care, invest in educational and vocational skills, and participate in paid work. As a result, they have less time to care about their own health needs and even less to travel to the hospital, which has huge consequences for the women's health situation. Other studies have also revealed how cultural values and gender roles affect health inequalities.<sup>90</sup>

Besides, the surveys, FGDs and interviews under this case study also demonstrated the following challenges and forms of discrimination against indigenous women to access healthcare services.

### *Inequality in education and lack of healthcare information*

The study reveals that the first form of discrimination faced by indigenous women in their access to health services is linked with the inequalities in their educational attainment. The survey demonstrates that the average level of education is better for men than women and that men have attained higher education than women. 37 percent of women who responded to the survey do not have any education compared to 18 percent of the men, 37 percent of the women are high school graduates against 47 percent men. Finally, there was a male respondent with master's degree or higher but not any women. This has huge impacts on the access to healthcare and notably to prevention. Indigenous women and girls need to obtain culturally appropriate education to be able to improve their health situation and access to health services for themselves and their communities. They are particularly concerned by a lack of trust regarding mainstream healthcare practices, which prevents them from going to hospitals and mainly stems from the lack of healthcare information.

Further, during FGDs, female participants revealed that they suffer from a lack of information about various healthcare schemes, such as social health insurance, migrant health insurance, etc. and associated services. The participants were critical that there is only one free health check-up over five years, and women are not aware of other services provided, whether maternal health services are covered or why some of them have to pay for services while others do not. There was clearly a significant lack of clear understanding on healthcare services available, which could also be due to language barriers.

### *Inadequate healthcare or specialized services needed for indigenous women*

As per the study, one of the main challenges when indigenous women go to health facilities is that the services are not adequate or specialized for their specific health problems. Most of the community health centers that are the most accessible lack specialized services and staff and do not have sufficient equipment and space. As found in our surveys and also confirmed by another study<sup>91</sup>, most indigenous persons go to those centers when they feel ill and people who can directly access the hospitals bypassing the centers for extra pay are those who are better educated, have a higher income, have experience with medical conditions and/or know someone working in a healthcare setting.

Nonetheless, in the FGDs, participants pointed out a general lack of specialized services for women's health conditions in their nearest health facilities (health center or hospital), which do not have dedicated space and services, particularly concerning reproductive and maternal health. In one of the FGDs, the participants were also critical that the local hospital does often not refer patients to another hospital even when they lack specialized services in order to save their budget allocation. 90 percent of the survey respondents also indicated the need for medical specialists at the local health facility in response to what specific health services indigenous women need in the village. It shows that the

implementation of targeted health services for women is a crucial issue for indigenous women. The lack of specialized services for women and maternal healthcare can result in disabilities for the new-born.

The comparison between FGDs and surveys and between the different answers in the survey show that women are also poorly aware of the special services that should exist for them. In the survey, every woman responded positively to the question if the specific health services for indigenous women were available in the nearest hospital. However, the FGDs participants revealed that most of the hospitals lack special rooms for pelvic examination, which is the main challenge they face when they are pregnant. At the same time, the study shows that even within indigenous communities, men are not really aware about the specific challenges experienced by women.

On the other hand, there are grave concerns relating to midwives, who represent an essential go-between for indigenous women to access health services. Indigenous women can communicate easily with the midwives, who are among the first person they see when they are sick. However, the lack of recognition given by the government towards traditional midwives worsens the situation as they provide healthcare to women. Midwives are not allowed to enter the delivery rooms at hospitals although they could provide important support to indigenous women, who have to deliver in a place where they lack trust and confidence. The FGDs demonstrated that there is a lack of comprehension and ignorance among the medical staff in the hospitals towards midwives. It is a critical issue as the important roles of traditional midwives are on the wane. There are two traditional midwives in the community of Mae Lan Luang but this practice might disappear in the future as the youth does not want to take on the work because the government does not promote or support midwives.

The lack of specialised services also concerns persons with disabilities as there is no targeted service for them. In schools, hospitals, and health centers, there is no specific equipment suited to their disabilities. Villagers lack knowledge about disabilities, so persons with disabilities face discrimination and exclusion. The FGDs show that the mental health of persons with disabilities is drastically affected, with many of them suffering from depression and poor health conditions. Women with disabilities women are even more affected because of the gender role of women. Men are more respected than women and women are supposed to take care of the family, which results that most women with disabilities remain single because they cannot find a husband.

### *Language barrier and ethnic discrimination at health facilities*

The language barrier is a huge issue for indigenous peoples in accessing health services, which results in difficulties in explaining their health problems and understanding the instructions or information at health facilities in Thai. In the hospitals, most of the time, nobody can speak indigenous language(s) and information is provided in Thai and/or Northern Thai language. Thus, in the survey, all of the respondents said that nobody speaks their language at the health facilities and health information is not provided in their language. Because they are poorly informed about healthcare and because of misunderstandings due to the language barriers, they often do not trust medicines. For example, they are afraid of being allergic to the medicine. The respondents shared experiences of lack of explanation about medical treatments.

That causes inequalities because the less informed people are the most vulnerable – the elderly and women are particularly concerned. They thus end up having less care about their own health because of difficulties to access health services. It also worsens their health situation because of misunderstandings in explaining their problems and the medical personnel not being able to provide the proper treatment. In the FGDs, indigenous women explained that they have suffered from bad treatment from medical personnel because they consider that it is the patient's fault if they are not cured by the medicine prescribed. In one of the FGDs, the participants criticized that the local hospital was even providing information in Burmese language but not in indigenous languages.

### *Good Practice: Local interpreters in Huay Yen village promoting access to health services*

In a good practice, surveys and FGDs in Huay Yen show that there are a few interpreters arranged for the villagers to access services at the local health facilities with the support of Thai Health Promotion Foundation. The interpreters have been of great help, particularly for the elderly and women who are not able to communicate in Thai. They have also created a messaging group on social media application Line, in which they can discuss health problems and services with the health center staff. Indigenous women representatives however say that the government should provide specific support for such interpreters, who should be aware of local contexts and are also able to support for specific sexual and reproductive health issues of women.

Even when they are able to tackle language barriers through the use of interpreter, indigenous persons seeking health services face discriminatory behaviours due to lack of understanding of the medical personnel about indigenous communities and their negative attitudes towards them. In the survey, respondents reported three types of discriminatory or negative experiences from medical personnel, who:

- (1) often consider indigenous persons as dirty or have other bias;
- (2) do not give adequate time and attention to their health problems; and
- (3) downplay or misconstrue their health problems.

Added to other difficulties they face in accessing healthcare, these discriminatory practices are truly problematic for persons belonging to indigenous groups because it prevents them from coming back to health centers, where they feel judged or treated unequally. Generally, indigenous persons feel discriminated in city hospitals. Indigenous women are particularly vulnerable to those discriminatory practices when they have to deal with their sexual and reproductive health issues.

Other studies have also reported a lack of trust of indigenous women in non-indigenous healthcare providers resulting from first-hand experiences of discriminatory and insensitive behaviours from medical staff like unfriendliness, lack of attention, negative reactions to indigenous person's accent appearance, and lack of education.<sup>92</sup> While the participants in the surveys and FGDs were able to give examples of discriminatory experiences they have encountered, 93 percent of survey respondents answered negatively to the question if they have experienced bias or mistreatment against them or their community members in the hospital they often go to. This is indicative of the lack of awareness among indigenous peoples on the discrimination they face. The survey respondents also reported that there is not any individual from their indigenous community among the medical staff in their local health facilities. The lack of representation of indigenous peoples among the medical personnel also prevents them to access proper healthcare and worsens their living health conditions, including due to lack of healthcare information, language barriers, experiences of discrimination, and loss of trust.

### *Good practice: Indigenous staff at Omkoi district hospital enhancing healthcare*

According to one of the FGDs under the study, the Omkoi district hospital employs a few personnel from local indigenous groups, which has helped in addressing the challenges of indigenous peoples to access health services. The indigenous staff members have contributed to tackling language barriers and building trust in the healthcare services at the hospital. Such good practice is also confirmed in other studies, whereby indigenous women reported feeling that they were respected, accepted, and cared for when they can form strong positive relationship and particularly in places where there are indigenous healthcare providers as the shared cultural and linguistic roots improve trust and acceptance. Nonetheless, interviews with indigenous leaders indicate the need to also have dedicated interpreter(s) in the Omkoi district hospital for long-term and proper solutions to challenges of language barriers. Further, the interviewees said that the government should provide targeted scholarship opportunities for indigenous youth in medical education to increase indigenous healthcare providers across Thailand.

#### **d. Access to remedies for challenges in healthcare services**

The FGDs and survey results demonstrate a general lack of awareness in indigenous communities, particularly among indigenous women, about available remedial processes and mechanisms if they face challenges in accessing health services, particularly in relation to discriminatory or other negative behaviours from medical personnel. They were not informed whether hospitals had complaint or grievance mechanisms to address discrimination in healthcare services or if they could go to other authorities. Participants of one of the FGDs also expressed fear of not being taken care of if they would complain about their challenges.

Indigenous women representatives who were interviewed shared a few experiences of remedies sought for medical mistreatment by doctors of illnesses of indigenous women, which are often facilitated by other NGOs. While one or two cases have been successfully remedied, there is often lack of response from hospitals. As further study would be required to understand the challenges for indigenous peoples to get remedy for their healthcare challenges, particularly discrimination and mistreatment, future research could be directed to understand and recommend on the topic.

#### **3.2.6. What do Indigenous Women want?**

- Indigenous women and men, who participated in the study, want good hospital(s) to be within 30 minutes to one hour by car. They identify the need for regular public transportation to the hospitals.
  - In Mae Lan Luang village, they want two hospital vans that operate 24/7.
  - In Huay Yen, Huay E-Khang and Thung Luang, villagers also ask for specialized services for disabled people.
- Indigenous women say that the local health facilities should have specialized medical personnel with expertise on women's health issues, including sexual and reproductive health, as well as necessary equipment and dedicated space. They want the government to improve public health schemes for annual health check-ups and greater coverage of maternal health issues. They also suggest providing e-medical services in facilities in remote areas.
- The government should also provide interpreters with good knowledge on indigenous peoples' issues and women's health in the local hospitals to tackle language barriers and discrimination. Training health volunteers as interpreters is also proposed. Medical personnel in hospitals in indigenous areas or the areas where majority of the population is indigenous should be sensitised on the issues of indigenous peoples and their socio-cultural specificities.

- Further, the hospitals should provide information on healthcare, public health schemes and services in indigenous languages and ensure that the communities are well informed about them. Indigenous women leaders also call for specific scholarships for indigenous youths in medical education.
- Indigenous women strongly call on the government to support and promote indigenous peoples' traditional medicines and health practices in hospitals alongside mainstream medicines and practices. They particularly want that traditional midwives and midwifery practices are recognised and assisted and they state that midwives are required in hospitals to improve women's confidence in non-indigenous healthcare.
- They also urge that capacity building activities are implemented to inform indigenous women about their rights and enable them to assert the rights.

### 3.2.7. Conclusion

Although Thailand has made great progress in providing public healthcare for its citizens, this case study affirms that persons belonging to indigenous groups, particularly indigenous women, continue to face persistent inequities in their health and access to healthcare services in violation of their fundamental right to health. While there is only limited data available on the health situation of indigenous peoples and even less on indigenous women in Thailand, the case study undertaken in indigenous villages in Chiang Mai province clearly demonstrates that they face multitude of challenges to their right to health in terms of:

1. Availability – insufficient quantity of healthcare services and programmes, particularly for those deprived of citizenship;
2. Accessibility – long distance and high travel costs to health facilities, inadequate information on healthcare and services, inequalities due to cultural values and gendered roles, and discrimination based on language and ethnicity by medical personnel;
3. Acceptability – non-recognition of indigenous peoples' traditional medicines and health systems, such as midwifery practices, and lack of culturally sensitive health services and personnel;
4. Quality – lack of specialised and good quality services and resources for specific health challenges of indigenous women.

Thus, much more remains to be done to ensure the right to health of indigenous women and their communities in Thailand is in line with the country's international human rights obligations. For that, indigenous women and men participating in the case study have presented some specific and practicable solutions to improve their access to healthcare services and the situation of their right to health. Concerned government authorities and other stakeholders should, in conjunction with indigenous peoples, particularly women, take urgent steps to address the challenges identified and improve the current healthcare system in order to ensure effective access to health services for indigenous women and men.

It is the mandatory duty of the government to provide adequate health facilities and services for the indigenous communities, including those persons disenfranchised of citizenship. Also, particularly concerning are the experiences of discrimination of indigenous peoples, particularly women, at the hands of medical personnel, for which medical personnel as well as authorities should bear responsibility and undertake immediate measures to eliminate such discrimination. Indigenous women and their communities also hold the right to maintain and develop their traditional medicines and health systems, including midwifery practices, alongside mainstream health systems. The government should take necessary targeted steps to support realisation of that right.

There is a need to increase further understanding on health problems and experiences of indigenous women, the differences in how they view and take care of their health, their cultural and religious beliefs and practices to implement appropriate strategies in order to improve their health conditions.

### *Related Good practices from around the World*

#### “Promotion of Human Sustainable Development along the Santiago River”<sup>93</sup>

In the Santiago River District in Peru, UNICEF implemented the “Promotion of Human Sustainable Development along the Santiago River” project between 2002 and 2009, which was financed by the Government of Finland. The project focused on Wampis and Awajún indigenous communities and aimed at improving their access to health, education, and infrastructure, as well as promoting the sharing of cultures, and protecting children’s and women’s rights in the community.

Regarding health, particular attention was given to maternal and child health. Because of difficulties of access, the cost of displacement, the poor quality of the health services delivered, and cultural discrimination; the maternal and child health rates in the communities are quite low. More precisely, at the beginning of the project, 56 percent of mothers and children received antenatal care and 45 percent of the sick persons went to the health center. After the project, the first percentage rose up to 81 percent and the second to 60 percent thanks to different measures. They notably implemented a comprehensive primary healthcare subproject with educational training for nurses, community health workers and village birth attendants and a focus on maternal and child healthcare. They also worked on improving communication between non-indigenous health-centre staff and indigenous peoples by proposing trainings in intercultural healthcare. Thanks to that, women that want to deliver with professional assistance are also allowed to give birth according to indigenous customs and in a medically safe environment.

#### National Health Strategic Plan in Cambodia<sup>94</sup>

In Cambodia, the National Health Strategic Plan 2008-2015 introduced special measures to ensure the access of indigenous peoples to health service and to receive a culturally appropriate service. One of the measures was to implement consultations with indigenous peoples to better identify their needs, challenges, and key areas of intervention.

### 3.3 CASE STUDIES 3: INDIGENOUS WOMEN IN FRONTLINES OF DEFENDING THEIR ANCESTRAL LANDS

#### 3.3.1. Overview of the rights of indigenous peoples, particularly indigenous women, to their lands

Indigenous peoples maintain a profound spiritual relationship with their ancestral lands and natural surroundings that is linked with their identity and culture. Physical and overall well-being of indigenous peoples depends on their ownership, control and access to their lands and resources notably because they significantly rely on natural and biological resources, which are crucial for their survival. In that, indigenous women have a particular role because they are the main food producers, natural resources management experts, ethnobotanists, and transmitters of indigenous culture and knowledge.<sup>95</sup>



*Indigenous women are not mere victims but are widely recognized for their roles in the frontlines of their communities' struggles to defend their lands and resources. Women defenders have played critical role in organizing and mobilizing communities against powerful threats. Indigenous women face greater impacts than men when it regards to challenges against their collective land rights of indigenous peoples, given their specific roles in use and management of land and resources in the communities.*

In this context, the crucial role of indigenous peoples, and particularly women, in the preservation of the environment and biodiversity must be noted, which is acknowledged at national and international levels.<sup>96</sup> Further, as indigenous peoples' lands hold most of the world's natural resources, they are often targeted by governments, businesses and other actors, and rights of indigenous peoples are regularly sacrificed in the name of economic development and conservation.<sup>97</sup> Specific policies and programs that aim to preserve indigenous collective rights on lands and resources are thus needed since indigenous peoples' rights are defined through an individual and collective legal framework. The community is considered as a legal person so their collective rights to the lands, territories and resources can be assimilated to the individual non-indigenous right to private property.<sup>98</sup> However, in lack of legal recognition of collective and individual land and resource rights of indigenous peoples, they are often subjected to forced evictions, usually with the use of violence, threat and intimidation, which have a critical impact on indigenous peoples' mental and physical health and security.

Indigenous women face greater impacts than men when it regards to challenges against their collective land rights of indigenous peoples given their specific roles in use and management of land and resources in the communities. However, they also face greater impacts because indigenous women experience discrimination within their own communities and in the wider societies and national context based on gender. Mostly, men are considered as the head of the households in indigenous communities with patriarchal beliefs. Men are also the ones who hold access and control to private and collective property and resources.

Indigenous land tenure systems, although collective, are also often discriminatory towards women. They do not have equal participation in decision-making in land-related or other matters of the communities. Particularly in cases of relocation, 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. Nonetheless, indigenous women are not mere victims but also widely recognized for their roles in the frontlines of their communities' struggles to defend their lands and resources. Women defenders have played a critical role in organizing and mobilizing communities against powerful threats, which, however, has often made them targets of reprisals.

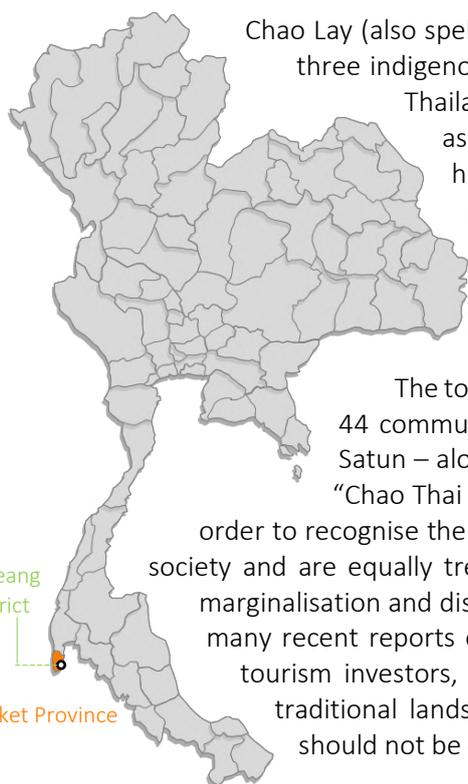
In above context, indigenous peoples in Thailand have been facing significant challenges to their lands and resources. As most of them live in or near forest areas, forest conservation policies and programs, such as designation of national parks, have been one of the key sources of those challenges. As a result, many communities, particularly in northern Thailand, have experienced forced evictions and relocation due to restrictive forest conservation approach. Those have exacerbated more recently after the military coup in 2014 that brought the junta called National Council for Peace and Order (NCPO) to power, which have adopted and enforced orders for "forest reclamation".

At the same time, State-led development efforts as well as business operations, which are often connected, have also affected land and resource rights of indigenous peoples in Thailand. For example, illegal logging and timber trading used to be a State-led industry in the country earlier. Other business sectors, such as extractive industries, agribusiness and tourism have also been disruptive for the lives and livelihoods of indigenous communities. Indigenous communities, particularly in southern coastal areas, have faced large number of, often violent, disputes with luxury resorts and other tourism establishments and operations while the community members are also facing challenges with exploitative tourism practices in exchange for few benefits.

Accordingly, this study focuses on challenges to accessing land and resource rights for indigenous peoples in southern Thailand known as Chao Lay. It includes a compilation of two cases of land rights violations of Urak Lawoi people, which is a group within Chao Lay, in Phuket province. In the first case, a poorly conceived government policy/project threatens the rights of the community while land buyers linked to tourism and real estate investments in Phuket are responsible for challenges in the second case. Against the challenges to their land rights, indigenous women in the communities, like across Thailand, have not borne disproportionate negative impacts silently but have played a strong role in mobilizing the communities to fight for justice – even resisting discrimination within their own communities as shown in the second case.

Provided below is firstly a brief general account of Chao Lay in Thailand followed by a summary of key relevant international human rights framework and national laws and policies. The two cases were documented through different methodologies, which are explained and followed by an analysis of the violations of rights and the solutions presented by indigenous women for resolving the challenges under each case.

### 3.3.2. Chao Lay in Thailand – focus on Urak Lawoi



Chao Lay (also spelled as Chao Lay or Le or Lae) is a collective term used to refer to three indigenous groups – Moken, Moklen and Urak Lawoi – living in southern Thailand in the islands and coast of the Andaman Sea. Chao Lay, known as seafarers or sea gypsies, constitutes one of the few remaining hunter-gatherer groups in Southeast Asia. They have maintained a self-sufficient sea- or semi-nomadic way of life for hundreds of years foraging food from oceans and forests, trading shells and fish for other necessities and traveling by boat across the waters of southern Myanmar and Thailand.<sup>99</sup>

The total population of Chao Lay in Thailand is estimated at 13,000 across 44 communities in five provinces – Phang Nga, Phuket, Krabi, Ranong and Satun – along the Andaman Sea. Chao Lay (meaning “people of the sea”), or “Chao Thai Mai” (new Thai) is the name given by King Bhumibol Adulyadej in order to recognise the people as Thai citizens to ensure that they feel part of the global society and are equally treated. However, the Chao Lay have been subjected to poverty, marginalisation and discrimination for decades, including denial of citizenship. There are many recent reports of violations of their land rights and other rights, particularly by tourism investors, as most of the Chao Lay do not have ownership titles to their traditional lands as such titles contradict with their belief that land and water should not be owned or controlled by one person but shared by many.<sup>100</sup>

Among the Chao Lay, the Urak Lawoi traditionally lived in villages on the beach, not in boats, like the Moken. There are many theories about the origins of Urak Lawoi and consequent settlement in Thailand. According to a UN-supported study in 2007,<sup>101</sup> the Urak Lawoi communities in Phuket are believed to be up to 200 years old while many Urak Lawoi in Thailand refer to Lanta Yai in Krabi as their original home. The Thai government reportedly used the presence of Urak Lawoi in Adang Archipelago (off Satun province) to prove to the British colonial administrators of Malaysia that the Archipelago belonged to Thailand when national borders were being drawn in 1909. It is estimated that a total of more than 6,000 Urak Lawoi live in various locations across southern Thailand.

### 3.3.3. Relevant international human rights framework

Indigenous peoples’ rights to their lands and resources are guaranteed in several international human rights instruments, including in general comments of UN human rights treaty bodies. The Human Rights Committee, which monitors the implementation of the **International Covenant on Civil and Political Rights (ICCPR)**, has affirmed in its General Comment No. 23 that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples and thus the right to enjoy culture may include such traditional activities as fishing or hunting and the right to live in reserves protected by law, which may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

The Committee on Economic, Social and Cultural Rights (CESCR), in elaboration of the **International Covenant on Economic Social and Cultural Rights (ICESCR)** has affirmed the rights of indigenous peoples in its General Comment No. 24 on State Obligations under the ICESCR in the Context of Business Activities,<sup>102</sup> among others. It affirmed that States and businesses should respect the principle of Free, Prior, and Informed Consent (FPIC) of indigenous peoples in relation to all matters that could affect their rights, including to their lands, territories and resources. Further, it calls for elimination of discrimination against indigenous women and girls, sharing of benefits with indigenous peoples, their right to control

intellectual property over their cultural heritage and their accessibility to effective remedies and protection of indigenous leaders at risk.

In its General Recommendation No. 23, the **Committee on the Elimination of Racial Discrimination (CERD)** has especially called upon States to recognize and protect the rights of indigenous peoples to own, develop, control, and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their FPIC, to take steps to return those lands and territories.

More specifically, the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** guarantees the right of indigenous peoples to the lands, territories and resources which they have “traditionally owned, occupied or otherwise used or acquired” and to “own, use, develop, and control” such lands, territories and resources, for which the State should “give legal recognition and protection” to those lands, territories and resources (Article 26). The **Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization (ILO)** also recognizes the rights of ownership and possession of traditional lands and of management and conservation of natural resources in those and the role of protection of the State in its Articles 14 and 15. Article 7 also specifies their rights to decide their own priorities concerning the process of development of their lands.

Further, the UNDRIP obliges States to obtain FPIC prior to removal of indigenous peoples from their lands and territories, adopting and implementing legislative or administrative measures that may affect them, and approval of any project affecting their lands, territories and resources, among others (Articles 10, 19, 29, 30 and 32). ILO Convention 169 also requires free and informed consent of indigenous peoples for their relocation from their lands (Article 16). The rights to maintain their traditions and cultures and to benefit from State protection in its preservation are defined in the UNDRIP Articles 8, 11 and 31 and the Convention 169 specifies that the cultural and spiritual values on the lands shall be respected (Article 13).

The UNDRIP affirms that all the rights in the Declaration apply to men and women equally but it also calls for particular attention to be paid to the rights and special needs of **indigenous women** to ensure improving their economic and social conditions as well as in the overall implementation of the Declaration and obliges States to take measures to ensure that indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination (Articles 21 and 22). The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** requires States to take appropriate measures to ensure that rural women have the right to access to equal treatment in land and agrarian reform as well as land resettlement schemes (Article 14) and to accord equality between women and men in all aspects of life, including before the law (Article 15). States should also undertake reforms to provide women with equal rights to economic resources, as well as access to ownership and control over land and other forms of property under Goal 5 of the **Sustainable Development Goals (SDGs)**.

#### 3.3.4. Relevant national legal framework

The **Constitution of the Kingdom of Thailand 2017** guarantees the equality between men and women to enjoy rights and prohibits discrimination against persons on various grounds (Section 27). It recognizes the collective rights of communities, along with individual rights of persons, to conserve, revive or promote wisdom, arts, culture, tradition, and good customs at both local and national levels; and manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law (Section 43). It also affirms the rights of communities to be informed and have access to public information, as well as to petition to or take legal action against a State agency for an act or omission of public official (Section 41). It further lays down State’s duty to undertake environmental and health impact assessment through

public hearings of communities prior to any undertaking that might affect them as well as the requirements for permitting such undertaking (Sections 58).

Further, the 2017 Constitution states that the State should promote and provide for different ethnic groups to have the right to live in society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, insofar as it is not contrary to public order or good morals or does not endanger the security of the State, health or sanitation (Section 70). In Section 72, it affirms that the State shall provide measures to distribute landholding in a way that allows people to have land for making a living, for which a national reform to ensure “a fair distribution of land holding, as well as an examination of ownership and holding of land throughout the country with a view to systematically solving the problems of land ownership and possessory rights” should be carried out (Section 258).

The **Land Code Act (1954)**<sup>103</sup> is the primary land legislation in Thailand and repeals earlier land-related laws and regulations. It applies to all land surface, including mountains, hills, streams, ponds, canals, swamps, marshes, waterways, lakes, islands, and sea coast. It provides for various tenure types, including ownership and use rights, and established a Committee for allocation and reallocation of State and private land. It governs land surveys, titling, and registration. It allowed a period of 180 days from the promulgation of the Act for submission of a claim by people occupying land to prove their claims over the land and any land not vested by a person was established as State property. Besides the Land Code, which mainly applies for individual land rights of indigenous persons but not for community land rights, other laws related to forests (Forest Preservation and Conservation Act, 1938, the Forest Act 1941, the National Park Act 1961, the Forest Reserve Act 1964) are often used in to determine or deny land and resources rights of indigenous peoples as they often lived in forest areas.

Nonetheless, the government had adopted the **Regulation of the Prime Minister’s Office on the Issuance of Community Land Title Deeds 2010**, which could be considered somewhat positive for collective rights to land. However, it still does not cover legal recognition of indigenous peoples’ traditional land tenure and resource management systems but only provides for communities to collectively manage and benefit from State-owned land for their livelihood while the State retains ownership of these lands. As of 2012, more than 400 local communities were in the process of waiting to be granted community title deeds, and only 55 community land titles approved.<sup>104</sup>

The **Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Karen and Chao Lay in Thailand (2010)** are more positive measures in the sense that they recognise the rights of the two groups to their ethnic identity and culture, natural resource management, citizenship rights, transfer of cultural heritage and education, among others. The resolutions list out short- and long-term policies for implementation by responsible government or State agencies, including non-governmental entities of indigenous peoples. Unfortunately, the resolutions have been poorly implemented due to bureaucratic obstacles, political instability, lack of understanding amongst State departments and the low budget allocated for activities to meaningfully implement the resolutions’ objectives.<sup>105</sup>

## A. Threats of Forced Evictions of Urak Lawoi by the Government in Sapum village in Phuket province

### A.1. Methodology

This case is primarily based on investigations undertaken by **Chumchonchai Foundation** in Sapum village. The documents from the Foundation provided detailed information on the community and their struggles for their land and other rights even before Thailand's Marine Department threatened forced evictions of the village in 2018. Semi-structured discussions were held on various occasions with the Foundation's representatives to further understand the situation in the village. The official documents from Thailand's Marine Department and the villagers' letter to the Governor were also referred to for the study. Accordingly, a community profile of Sapum village and chronology of events in relation to this case are provided below followed by an assessment of impacts on human rights of Urak Lawoi in the village and presentation of solutions suggested by indigenous women to address the impacts.

### A.2. Analysis of the Findings



*Physical and overall well-being of indigenous peoples depends on their ownership, control, and access to their lands and resources notably because they significantly rely on natural and biological resources, which are crucial for their survival.*

#### a. Community profile

Sapum village is located at Moo. 3, Ban Sapum, Koh Kaew sub-district, Muang district in Phuket province. As of 2016, at least 53 Urak Lawoi households, consisting of 242 people (70 men, 59 women, 75 children, and 11 elderly) live in Sapum village according to the official reports. They have been threatened with forced evictions by the Marine Department though they moved in the area before February 1972 when the Department had announced its ownership over the land.

The Urak Lawoi in Sapum village began migrating to and settling in Sapum more than 60 years ago. According to Mr. Sit Pramongkit, an elderly in the village, most villagers migrated from Baan Laem Klang of Sireh island (Koh Sireh), Ratsada sub-district, Mueang district, Phuket province. The first family of Uncle Uhalan migrated before 1952, when two families settled in the current Sapum village followed by 20 other families. As most of the families came from Sireh island, the two communities have developed close relationships. Their main occupation and source of income is fishing (for 95 percent of the villagers) through traditional techniques. There is a distinct division of tasks and responsibilities between men and women: men work outside as fishermen and women stay at and take care of the home.

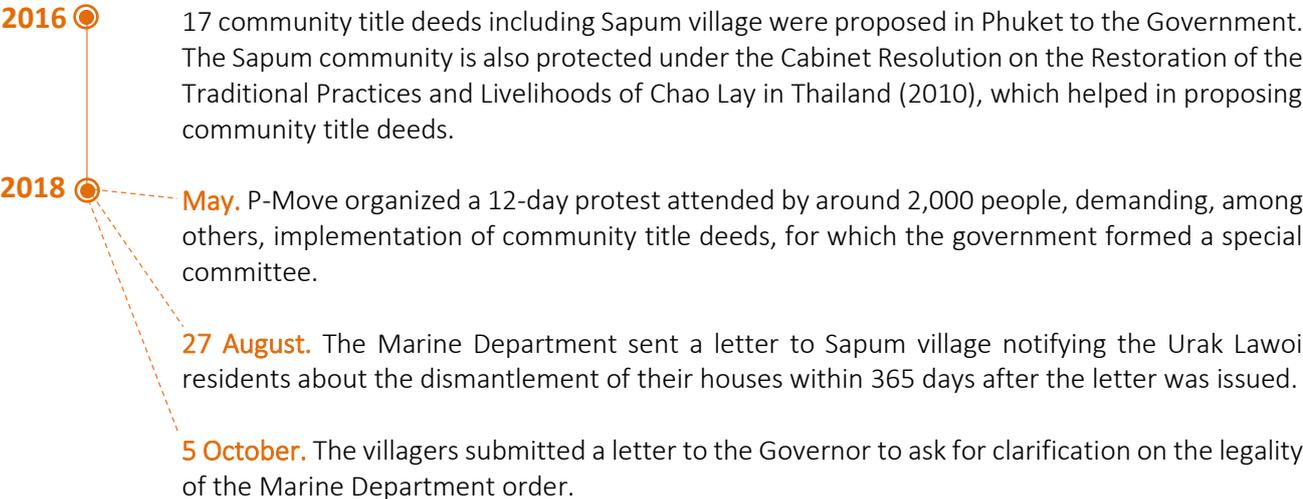
Most of the older generation in Sapum village had not received formal education, which is on the way to change as most of the children are going to school now. However, many villagers do not consider the importance of education and some children drop out of school after elementary level. Their conditions of living and sanitation are quite low. There is no water supply system and the community have to buy water from a truck. There is no drainage system and wastewater is released in the ocean, which causes pollution. The electricity system does not fit the legal standards and is only temporarily connected.

**b. Chronology of events**

As per the Chumchonchai Foundation, Sapum village is included among community title deeds proposed to the government in 2016 by the People’s Movement for a Just Society (P-Move), a grassroots group campaigning for land rights for the rural poor. The group had proposed, as per the Regulation of the Prime Minister’s Office on the Issuance of Community Land Title Deeds (2010), 17 community land titles in Phuket province among 486 titles across Thailand, for which they are awaiting cabinet approval.<sup>106</sup> In May 2018, the Thai government formed a special committee after a 12-day protest from the group demanding implementation of community land title deeds, among others.

On 27 August 2018, the Marine Department reportedly sent a letter to the community in Sapum village notifying that the houses of all villagers will be dismantled after one year from the date of issuance of the letter. The Department invoked the NCPO Order 32/2017 dated 1 August 2017 that allows dismantling of houses situated in a forbidden area. As per the Chumchonchai Foundation, the Marine Department plans to build a Marina Port in the area although the community has settled in the village for a long time. Before sending the letter, the Department had organized a meeting with the villagers and asked them to sign documents, which they did not entirely understand and might represent their legal approval for the project.

On 5 October 2018, the Sapum villagers sent a letter to the Phuket Provincial Governor asking for clarification on the Department’s notification, on which there has not been any response to date.



### c. Impacts on rights to consultation and consent, land and resources, and livelihood and culture

As mentioned above, investigation from the Chumchonchai Foundation based on observation, administrative documents, and reported interviews with members of the village shows that the Urak Lawoi had settled in Sapum village since 1952. That is 20 years before the Marine Department declared its ownership of the land in February 1972. Thus, it raises questions on the legitimacy of the Department's claim of ownership of land in the village and notification for eviction.

So far, the Urak Lawoi have not received adequate information in relation to the Marine Department's notification even after they asked for clarification from the Provincial Governor. Even during the meeting organized by the Department with the villagers before the notification, the villagers did not understand what documents they were made to sign. The lack of clear information and meaningful consultation with the Urak Lawoi clearly infringes on their right to participate and to free, prior and informed consent in decisions affecting them.

Sapum village has been reportedly recognized as traditional Urak Lawoi community and thus even received support for building village infrastructure. The Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand (2010) allows the Urak Lawoi to manage their natural resources. Thailand's constitution also ensures community rights to manage, maintain and utilize natural resources and conserve and promote culture. Forced evictions of the Urak Lawoi from the village will thus constitute violations of their constitutional and legal rights to their lands and resources, also guaranteed in international human rights instruments.

At the same time, as 95 percent of the Urak Lawoi in Sapum village have fishing as their main occupation and means of subsistence, moving them away from the sea will also result in loss of their livelihoods and traditional practices and culture. The Marine Department's notification for evictions hence threatens their rights to work and cultural rights.

Furthermore, as informed by the Chumchonchai Foundation, besides the threats of forced evictions, the Urak Lawoi have already been facing negative impacts on their cultures and traditions due to increasing tourism business operations in the area. They have faced restrictions in observing their traditional and spiritual celebrations, like the "Loi Rua Festival" for instance, that has been displaced to Sireh Island because they do not have space anymore to celebrate the festival. As discussed in the following case further below, communities in Sireh Island are also under threat of losing their land and cultures. This represents widespread violations of indigenous peoples' rights and failure of the State to protect them.

#### A.3. What do Indigenous Women want?

As informed by the Chumchonchai Foundation, the indigenous women and men in Sapum village seek:

- Government approval of the community land title deed for the village to protect against the evictions;
- Safeguarding of the livelihoods and other rights of the Urak Lawoi in the Marine Department's plans in the area.

#### A.4. Conclusion

This case clearly and concisely demonstrates how the indigenous Urak Lawoi community in Sapum village are facing challenges to their rights to consultation and free, prior and informed consent on decisions affecting them, to their traditional lands and resources and livelihoods and culture due to a poorly conceived government project or policy. A community land rights title for Sapum village is seen as key to addressing other challenges to their livelihoods and cultures as well as their participation in decision-making. Thus, the Thai government should, without any delay, proceed with the approval process for land title deeds for the village and other communities that might be facing similar threats of eviction or other risks due to lack of land rights, as Sapum is only a representative case. According to the villagers' recommendations, the Marine Department should take immediate actions beginning with the cancellation of its notification for evictions of the village, followed by undertaking meaningful consultations to obtain consent of the Urak Lawoi for any project it plans to implement in the area.

## B. Land Grabbing of Urak Lawoi by Business Actors in Sireh Island in Phuket province

### B.1. Methodology

This case concerns a land dispute between indigenous Urak Lawoi villagers and business investors in Baan Laem Tukkae (Tukkae Cape) in Sireh Island in Phuket, which has undergone various court processes. The study is based on a review of various court documents, pictures and other legal evidence presented by the Urak Lawoi, official reports of investigation by the National Human Rights Commission of Thailand (NHRCT) and the Office of the Public Sector Anti-Corruption Commission (PACC) as well as media reports. Further, semi-structured discussions were held with the Urak Lawoi women and men and representatives from Baan Laem Tukkae at various occasions since 2017 to build better understanding of the community as well as events under the case. Accordingly, a community profile has been prepared along with the chronological timeline of events provided below. That is followed by an assessment of the impacts of the land dispute on human rights of the Urak Lawoi and presentation of solutions from the community.



### *Evidence analysed for the case study*

#### **Visual and other records**

- At least five pictures showing historical settlement of Urak Lawoi in Sireh island, along with a picture of a school situated in Moo 1, Ratsada subdistrict, Mueang Phuket district, Phuket Province dated 1935 and related documentation;
- Pictures of the Princess Mother's visit in 1967.

#### **Court Documents**

- The Appeal Court sentence dated 7/09/2017;
- The execution of the Sentence of the Appeal Court dated 12/10/2017 sent on 21/01/2019;
- The request of appeal by the defendants dated 9/02/2018.

#### **Human Rights investigation**

- Report on the results of the investigation on human rights violations by NHRCT Report 247/2551, 2008;
- Memorandum No. 1226/43 by the Office of Public Sector Anti-Corruption Commission (PACC), 24/01/2011.

#### **Press document**

- PPTV News video clip report dated 4/9/2016.

## B.2. Analysis of the Findings

### a. Community profile

Sireh Island (Koh Sireh) is a small island with an area of around 20 square kilometres located around 10 kilometres away from Phuket. Urak Lawoi in Sireh island is believed to be the oldest and biggest group of Chao Lay population in Phuket. It is said that there were initially no people living in Sireh island and their ancestors settled in the area around Laem Klang (a few kilometers away from Laem Tukkae) in the island. However, when a company named Asia Stannum Company Limited came to buy the land for mining purpose, the Urak Lawoi had to move to settle around Laem Tukkae in 1959. Nonetheless, the community elders also say that they had previously lived for generations in Laem Tukkae but then they moved to Laem Klang due to a cholera epidemic. Baan Laem Tukkae was originally Moo 1 but now it has been changed to Moo 4 under Ratsada subdistrict, where there are 310 households with around 1,163 people.

Records show that following the visit of His Majesty King Rama IX to another Chao Lay community in Rawai beach village in Phuket in 1959, the Princess Mother had visited the community in Laem Tukkae in 1967. Realizing the need of ID cards for the communities, the Chao Lay in Laem Tukkae and in Rawai were given the surname “Pramongkit” for registration and citizenship. The Princess Mother reportedly also visited the area several times after, which made the authorities to build facilities and provide services there.

The Urak Lawoi in Koh Sireh mainly rely on coastal fishery and sometimes work for daily wage labour. They are not involved in agriculture for growing rice or other crops as they do not have much land. The arrival of businesses in the area caused the establishment of hotels, tourist attractions, and the construction of the pier. Currently, the villagers reside on a small piece of land attached to the beach and are struggling to secure sufficient financial resources to sustain their life since they can no longer maintain their lives with fishery, which used to be their main livelihood. The job market is also limited, which often leads to conflicts among the villagers since they have to compete with each other for jobs.

Access to basic services such as drinking water and electricity is limited. Drinking water is a particularly crucial issue, because the priority of access is given to the hotel. This has significant impacts on the living conditions of the Urak Lawoi. Records show that a school had been established in Sireh Island as early as 1935. The leaders of the community were the only ones to be educated in the past and had to transmit their knowledge to the leaders of families. Almost every child from the community attends school nowadays.

Moreover, the number of businesses and constructions in Sireh Island is increasing, which affects the lives of Urak Lawoi. Particularly, their lack of official land titles opens possibilities for others to obtain titles to their traditional lands even though they would have come later to the lands. That is reportedly the issue in this case, whereby the current land title holders have taken judicial actions against Urak Lawoi villagers in Baan Laem Tukkae because the Urak Lawoi refused to leave from the lands, on which they say they have lived for more than a century. They were first sued in 2012 and received favourable judgement in the Court of First Instance but unfortunately the Appeal Court decided against them. Though the recent Supreme Court judgement has also reportedly been favourable for the Urak Lawoi, they are still awaiting effective resolution of their land rights.

## b. Chronology of events

- 
- 1935** ○ Earliest recorded proof of a school established in Laem Tukkae in Sireh Island supporting claims of Urak Lawoi settlement in the island for centuries.
  - 1953** ○ Mr. Arthit Limsiriwaraluk was reportedly given the land under dispute with a coconut plantation in an area of 92 rai located in Moo 1, Ratsada Subdistrict, Muang Phuket District by Mr. Kitti Tantavanich.
  - 1955** ○ Mr. Arthit requested for (claim) certification of land title notification (Sor Kor 1) for this land.
  - 1959** ○ About 30 families of Urak Lawoi settled on the land. When there were more Urak Lawoi settling on the land, Mr. Arthit asked the leader of the group to sign a contract to allow them to live on the land. Only three out of 50 people allegedly signed.
  - 1964** ○ As per the NHRCT, the villagers signed their names in agreement to install electricity in the village, which was used by Mr. Arthit to issue land titles claiming ownership of the land. Following a complaint of Mr. Arthit, the government decided to implement an official rental agreement for the land. However, the villagers did not agree, and no contract was signed.
  - 1967** ○ The Urak Lawoi were given the surname “Pramongkit” after the visit of Thailand’s Princess Mother Srinagarindra for their registration.
  - 1978** ○ The Urak Lawoi population in Laem Tukkae had risen by then and they asked the government to provide them with accommodation since they were threatened to be removed from their land. The government allocated land in national forest (through the Phuket province order 196/1978), which they refused because as fishermen, they would be obliged to stop their livelihood and practices if they do not live near the sea. They continued to live on Mr. Arthit’s land.
  - 1982** ○ Mr. Arthit divided the land into five plots to obtain land titles for 60 rai of land, including the land title no. 35049 (11 rai, 2 ngan and 12 square yard) under dispute in the courts. He kept two plots and allocated the rest to his relatives.
  - 1993** ○ Urak Lawoi petitioned the Cabinet to inform that their lands are being taken over.
  - 2004** ○ Mr. Arthit died. Ms. Angnawadee, his trustee divided his land into several plots and sold them.
  - 2008** ○ The NHRCT published its report on the investigation undertaken on human rights violations of Urak Lawoi due to land disputes in Laem Tukkae. It concluded that the Urak Lawoi have been living in the area around Laem Tukkae for a long period before 1957, where there were originally ten houses. Further, the Urak Lawoi have been protecting the natural resources in the area, whereby the area behind the community was designated a national reserved forest. Thus, the Commission recommended the concerned national and provincial authorities to investigate and repeal land title no. 35049, and two other land titles, all originally owned by Mr. Arthit, issued in the area of residence of the Urak Lawoi community. Similarly, the NHRCT recommended repealing two other land titles issued illegally and currently held by Siriya Marina and Resort in mangrove forests in the Laem Tukkae. The actions were to be taken within 60 days of receipt of the report, but no information is available if they have been followed through.
  - 2011** ○ In response to the petition of the Urak Lawoi, the PACC conducted preliminary investigations into the land disputes in Laem Tukkae. Based on oral testimonies of Urak Lawoi villagers and

other evidence, the Commission agreed for further investigation into the case and recommended the Ministry of Justice to inform the concerned department to consider revoking the land title until the investigation would take place. However, no title has been revoked.

○ Four people bought the land from Ms. Angnawadee: Mr. Phupoj Homsakmongkol, Mr. Phumin Pumphuanmuang, Mr. Anusak Kittisirisawad, and Ms. Natanong Ratsameeloykaew. Before buying, at least one of them visited the area and saw the Urak Lawoi community living there but did not come in contact with them. Later, they notified the Urak Lawoi with a legal notice for eviction, which the Urak Lawoi did not respond to.

**2012** ○ The former head of the village passed away. Mr. Opath Jitpan was selected as new head of the village and he appointed Mr. Danai as his assistant.

○ Mr. Prompong, a former member of Parliament, proposed his professional lawyer to defend the case of Urak Lawoi. The Urak Lawoi met him and the lawyer, Mr. Jirawat, at Khuekkhak Temple, Ta Kua Pa District, Phang Nga Province.

○ Another meeting was held between Mr. Jirawat and the head of the village, his assistant, and the five Urak Lawoi defendants (Ms. Kanda and others) at Mr. Jirawat's house in Thai Muang District, Phang Nga Province. 20 Urak Lawoi assisted in the meeting, including two women. Mr. Jirawat asked the head of the village to raise funds and prepare essential information and testimonies for the Court. They also selected the witnesses.

○ Mr. Jirawat visited Laem Tukkae village to gather evidence and eventually selected the witnesses.

**2013** ○ **Court of First Instance.** The Court dismissed the case filed against Ms. Kanda and other Urak Lawoi defendants by the investors, who called for eviction and compensation. The Court also ordered to the plaintiffs (investors) to take the court fees upon themselves. The plaintiffs (investors) appealed against the Court decision.

**2017** ○ **Court of Appeal.** The new head of the village reportedly collected more than 20,000 THB per household to pay the lawyer, Mr. Jirawat. The villagers paid but did not fully participate in the lawsuit. Information was restricted between the head of the village and the lawyer. The Appeal Court made a judgement against the Urak Lawoi ordering eviction from the land and a compensation of 5,000 THB per month to the four plaintiffs since 21 March 2013 (date of prosecution).

**2019** ○ In January, the Phuket Provincial Court sent a notification to the Urak Lawoi to follow the Appeal Court's judgement within 30 days, stating that there will be civil actions, including confiscation or arrest as per the law.

○ Though some Urak Lawoi villagers suspected the lawyer, Mr. Jirawat, of wrongdoing, the defendants submitted an appeal to the Supreme Court through him in February 2019 against the Appeal Court's judgement. Another lawyer was nonetheless engaged for the court proceedings. Subsequently, according to the newly elected village headman, Mr. Samphan Naksueb, on 22 August, the Supreme Court reportedly ruled in favour of the villagers and dismissed the case. The villagers now plan to request the Land Department to withdraw current land titles after gathering necessary evidence. They are in consultation with Chumchonchai Foundation on further legal process.

### c. Violations of rights to the lands and livelihoods

There are plenty of evidences suggesting that Urak Lawoi settled on the land in Sireh Island for a long time. According to a UN assisted study,<sup>107</sup> Urak Lawoi communities in Phuket are believed to be as old as two centuries. Further, investigations of the NHRCT and the PACC clearly indicate the lands under dispute in Laem Tukkae as areas of residence of Urak Lawoi for generations. The lands under dispute should thus be considered as traditional lands of the Urak Lawoi that they have right to in line with national and international legal framework.

In its investigation on the case, the NHRCT considered the constitutional rights of a traditional community to their resources among other relevant national laws as well as the peoples' rights to their natural wealth and resources as per the ICCPR (Articles 1 and 47) and ICESCR (Articles 1 and 25). The land disputes in Laem Tukkae also contravene the Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand (2010), which allows the Urak Lawoi to manage their natural resources and conserve their culture. Denial of the land and resource rights of the Urak Lawoi also constitutes their rights as an indigenous group guaranteed in international human rights framework, particularly the UNDRIP. The UNDRIP also ensures the rights of the Urak Lawoi to their traditional livelihoods and practices of coastal fishery, which are already restricted due to tourist resorts and other business operations and will be completely denied if they are forced to move away from their lands.

At the same time, both NHRCT and PACC reveal wrongdoing in the issuance and transfer of the land ownership titles in Laem Tukkae to the current title holders and they have recommended further investigation and repeal of these land titles. Specifically, for the land title no. 35049, the NHRCT has concluded that the title is over areas of residence of Urak Lawoi along with land titles no. 33741 and 33742 – all originally owned by Mr. Arthit. Further, the NHRCT found that issuance of land titles no. 33739 and 33740 (earlier owned by Mr. Arthit) – both currently owned by Siriya Marina and Resort – was illegal as the areas were beach mangroves, which was the property of the nation. The PACC also made similar considerations to revoke these land titles. Thus, an effective investigation is needed on the legality of the processes of issuance and transfer of the land titles in Laem Tukkae, which are resulting in infringement of the rights of the Urak Lawoi.

### d. Questions on effective access to justice

The judgement of the Appeal Court, which reversed the dismissal of the land title holders' claims on the lands over Urak Lawoi residence by the Court of First Instance, is seemingly unfair. It is reportedly based on the justification that the Mr. Arthit had more rights to the land (title no. 35049) than the five Urak Lawoi defendants, who Mr. Arthit allowed to live temporarily on the land and those rights were transferred to the current title holders. On the claim that the Urak Lawoi had lived in the disputed land for a long time, the court did not find the evidence of the defendants reliable. That was based on the the claim of Ms. Wipada, that her husband, Mr. Arthit had owned the land before migration of the Urak Lawoi, on behalf of the plaintiffs, which corroborated the testimony of a witness of the defendants - Mr. Manee who was not born in Sireh Island and had relocated to the village with his wife.

The court also did not find any wrongdoing in the issuance or transfer of the land titles, which was mainly based on the testimony of Ms. Wipada, while the evidences from the defendants were considered less reliable. Although the PACC letter was presented to the Appeal Court by the defendants in order to evidence conspiracy of a local land officer and Mr. Arthit to issue the illegal land title, the Court simply noted that no land title had been noted or no person had been prosecuted. No further inquiry was made.

Given the context of the investigations of the NHRCT and the PACC on the land disputes in Laem Tukkae, the judgement of the Appeal Court raises serious questions about the effectiveness of judicial measures to provide justice to affected communities in Thailand. The judgement of the Appeal Court could be a manifestation of judicial interference, undermining remedy and accountability for the violation of rights of affected communities in favour of businesses or investors.<sup>108</sup>

e. Signs of community manipulation<sup>109</sup>

There are many signs suggesting manipulation of the Urak Lawoi, from illegal issuance of land titles to malpractices in the legal proceedings.

Firstly, as confirmed during the NHRCT investigation, the land titles issued for Mr. Arthit were based on the agreement provided by the villagers to install electricity in the village in 1964. The signatures were used to claim that he was the owner of the land. Besides Mr. Arthit, local authorities could also be responsible for such manipulation. In response to a complaint made by Mr. Arthit, the Provincial Governor had then invited the villagers to agree to rent the land to live on, which they did not agree to. Later, the villagers also made complaints against the Province office (Ratsada Subdistrict Administration) for its construction of a wave ridge on the beach in front of the community, which promised them better facilities. However, promises remained unfulfilled.

In more recent context, the Urak Lawoi women suspect the former Member of Parliament, the current head of the village as well as the lawyer of malpractices in the court process.

- During the proceedings of the Court of First Instance, which produced a favourable result, the Urak Lawoi reportedly had a different lawyer. The former Member of Parliament, Mr. Prompong Nopparit, had chosen the new lawyer, Mr. Jirawat, for them. He asked for 50,000 THB (1,576 USD) from the villagers for the lawyer's fees and assured the villagers that they would win the case immediately. When Ms. Kanda expressed doubts about such assurance based on information of other similar cases, Mr. Prompong excluded her and other women from the meeting, accusing them of lack of competence.
- The Urak Lawoi women have also raised concerns on the conduct of Mr. Opath, the current head of village, with regards to the case. Particularly, he has been suspected of financial manipulation after he collected 150,000 THB (4,729 USD) without credible justification, while the legal fees requested were 50,000 THB (1,564 USD). The villagers were made to pay, and if they refused, they would have to move out of the village. The head of the village together, with the parliamentarian and the lawyer, also allegedly restricted the effective participation of the villagers, particularly of women, in the legal proceedings, including in evidence gathering and presentation.
- Furthermore, the Urak Lawoi women find the actions of the lawyer, Mr. Jirawat Kurtsangwan, highly dubious. For example, for the choice of witnesses on behalf of the defendants in the Appeal Court, the majority of villagers had suggested Mr. Soros (the husband of Ms. Kanda, who is one of the defendants), who had documented the history of the village through surveys. However, Mr. Jirawat chose Mr. Danai, the assistant of the head of the village, saying he had better communication skills and a close relationship with Mr. Prompong. The head of the village agreed with the lawyer. After Mr. Danai's death, the new assistant, Mr. Manee, was chosen as witness despite the Urak Lawoi villagers disagreed as he was not born in Sireh Island. When Mr. Soros was not agreed as witness, the villagers had proposed another witness, Mr. Majoi, who was born and grew up in the village, but the lawyer and the head of the village insisted on Mr. Manee. Eventually, Mr. Manee's testimony was counterproductive for the villagers and helped the plaintiffs in the Appeal Court.

#### **f. Denial of effective participation and consent of indigenous women**

As mentioned above, the Urak Lawoi allege that they were unashamedly excluded from the preparation and proceedings of the lawsuit in the Appeal Court, even though it concerned their fundamental rights, their daily life, and their future. The little consultations that were conducted were not inclusive, and women who ventured doubts about the process were pressured and stigmatized by the lawyer, the parliamentarian, and other members of the community. In general, the villagers could not attend the lawsuit and did not have access to the legal and official documents during and after the courts. But the women, in particular, were denied any significant space.

By failing to meaningfully consult the indigenous women and the community in general, and take into consideration their suggestions and concerns, the legal proceedings in the Appeal Court were not undertaken in the principle of free, prior and informed consent. The then head of the village should have ensured that the community received full information and were enabled to effectively participate in their struggle for access to remedy with the court, as well as ensuring that women could equally and effectively participate in decision making in the process. The local and provincial authorities should have been responsible to take necessary steps if the head of village was not effectively carrying out his duties.

#### **B.3. What do Indigenous Women want?**

Based on the discussions held with Urak Lawoi women representatives and an analysis of the evidence findings of the case, indigenous women have called for:

1. Legal support for the withdrawal of the current land titles from the governmental authorities and non-governmental organizations;
2. Necessary steps from provincial and national authorities for issuance of a community land title to protect the community from land encroachment and evictions in future.

#### **B.4. Conclusion**

This case represents the tip of the iceberg of the land rights challenges that the Chao Lay communities are facing in Southern Thailand at the hands of land buyers, which are mostly related to tourism and real estate projects. The situation in Laem Tukkae demonstrates how indigenous communities are denied their rights to occupy and use their ancestral lands, manage their resources, and participate in decision-making on matters affecting those lands and resources, and to exercise their right to free, prior and informed consent as part of their self-determination. This case is particularly significant to show the lack of equal and effective participation of indigenous women even within their communities. Women have been particularly undermined in the lawsuit processes in Laem Tukkae by their elected and community representatives.

Lacking official titles of their lands, which is stemmed from their belief of land not being owned or controlled by one person, the Urak Lawoi in Laem Tukkae have been manipulated and have not only lost their lands and resources but also face denial of access to effective remedy for the harms they have suffered. Manifestations of community manipulation and judicial interference against the rights of the community and in favour of land investors indicate signs of corporate capture over struggles for land and resource rights. Indications of corruption or wrong doing of local officials in dispossession of lands call for immediate actions from the concerned provincial and national authorities to ensure that the Urak Lawoi in Laem Tukkae do not face further injustice. Effective investigation by competent authorities and guarantees for legal protections to prevent recurrence of such abuses are what the indigenous women want and should get.

***Voices from the Ground – Moken people in Phang Nga province fight to protect their traditional cemetery from business’ encroachment<sup>110</sup>***

5,834 indigenous Moken people live in Phang Nga province, who have eight main graveyards. The Moken communities in Tambon Khuek Khuk in Takua Pa district of the province are currently under threat of losing their traditional cemetery. In the 1980s, their graveyard was encroached on by mining activity and shrimp farms. The Ministry of Interior had then declared eight rai of land to use as cemetery. However, the cemetery is now being encroached on as tourism business expands.

While a road has already been built through the graveyard to shops and restaurants at the beach nearby, walkway construction and hotel expansion are now planned and will also encroach on the land where bodies are buried. As per the village chief, only two rai is left out of eight rai preserved for cemetery. The Moken bury their dead in nearby forests and believe that they protect the living by means of their presence nearby and that if cremated, they cannot go stay with their ancestors.

Despite informing about the conflict to local and higher authorities and efforts for negotiations, there has not been any conclusion. The community thinks the local authorities are too weak to protect and preserve their traditions and way of life.

*“It looks like we end up stepping back to where we started whenever there is a conflict,”* Withawat Thepsong, coordinator of the Adaman Sea Gypsy Network and a Moken himself said. ***“More and more committees are set up and nothing happens. We have still lost our land.”***

According to Withawat, the denial of indigenous peoples’ land rights is a common issue and has increased since the 2004 tsunami, for which at least three committees have been set up but made little progress. The Moken communities have decided to act collectively to defend their rights.

***Related Good practices in Thailand and from around the World***

**Collaborative mapping and management in Ob Luang National Park**

In Ob Luang National Park, a project of collaboration between indigenous communities living in the area and the park authorities was implemented by the Thai and Danish government. It involved Karen and Hmong communities. A mapping of the area was conducted, and final maps were negotiated and accepted by the two parties, which secured their rights to the land.

**The Orissa Tribal Development project in India<sup>111</sup>**

In India, the Orissa Tribal Development project has implemented land settlement schemes that allowed the allocation of 17,175 hill lands to 6,837 persons belonging to indigenous groups. The titles were registered in the names of both wife and husband. It also recognised indigenous collective rights over community and forest lands.

**Legal recognition of indigenous peoples’ rights to land and resources in Indonesia and Cambodia<sup>112</sup>**

In Indonesia, indigenous peoples’ collective and customary rights over forests and natural resources are recognized. In 2003, the Indonesian Constitutional Court made a judgement establishing legal recognition of communities over forests. In 2013, their customary rights were supported in several pieces of legislation like the Basic Agrarian Law and the Forestry Act.

In Cambodia, the Land Law recognizes indigenous peoples' collective ownership over the lands on which they have settled for generations and where they conduct traditional cultivation.<sup>113</sup> The 2002 Forestry Law acknowledges traditional user rights to forest products while creating community forests that are areas in permanent forests reserved for indigenous communities. The inter-ministerial circular No. 001 legally protects the lands owned by indigenous communities during the registration procedure process. The National Strategic Development Plan 2014-2018 focused on curbing poverty, promoting social and economic development, protecting the security of land tenure, and the protection of indigenous peoples' land rights.



### *Voices from the Ground – Impacts of Tourism on Indigenous Women*

The tourism sector is a major contributor to Thailand’s economy and has been one of the major driving forces of economic development in its mountainous northern region. In three villages of Mae Wang district in Chiang Mai province – Thung Luang, Huay Hoi and Pong Lom Raeng (a hamlet in Pakluay village) that have been surrounded by elephant tourism, there have been positive benefits of tourism for some groups of people, especially those who have land with a good location and those who have connections with local Thai tour companies and tour guides. Those benefits include creation of job opportunities and improvement in income, including for indigenous women as housemaids or other domestic workers, as well as jewellery and handicraft sellers. Tourism has also brought cultural knowledge and sharing of local Karen culture.

However, as documented in interviews with eight leaders, officials, and villagers, including four women, indigenous communities there have also faced detrimental impacts of tourism in their area, including worsening living conditions,

lack of access to benefits, deprivation and degradation of natural resources and livelihoods, and rise in drug consumption and crimes, particularly among youth.

While tourism development has led to an increase in income for some families, the majority of those interviewed working in the sector reportedly earn less than 3,000 THB (94 USD) a month which is three times less than the Thai minimum wage. In Huay Hoi, the villagers worked as tourist guides and managed trekking in the past but businesses that settled on their land have taken those jobs away. In Thung Luang, tourists do not visit anymore, as the new roads constructed to elephant sanctuaries have bypassed the village. The villagers suspect that there was an ill-intentioned agreement between the businesses and local officials to construct the roads. Furthermore, forests, water sources and other resources have been affected due to pollution from the businesses (elephant parks and resorts), which has decreased diversity of fishes and restricted access to the river for villagers.

More importantly, tourism has caused particularly awful consequences for young people and women. Addiction to drugs brought in by tourists and workers in tourism businesses has been widespread among young people. That has caused severe problems for them and their families as parents struggle to keep their children away from drug addiction. In Thung Luang, 80 percent of the young people between 13 and 16 years of age are reportedly addicted to illegal drugs (marijuana, amphetamine, and heroin). Further, women suffer from increased domestic violence and abuse due to high rates of alcoholism among men in the communities. Their everyday life has been stressful due to the situation with children and husband and mental health problems are increasing. There are fears that drugs and alcohol might result in an increase in other crimes such as murder and robberies. Finally, there is also a rise of divorce and domestic disputes, as interviewees spoke about “broken family”.

“I want the authorities to tackle the drug addiction issue; as parents, we try to protect our children but it’s hard. When we ask our children to go to work, they refuse; and we are stressed and worried for their future,” a woman interviewee said. The villagers say that the government should provide support for jobs and training with tourism businesses, so that they can better adapt to the sector, particularly for young people and women. The villagers also say that the government should design and implement

community-led tourism projects for equal sharing of the benefits for the communities. They also need their land and resources protected from tourism investments and there has been a call to raise awareness among tourists about indigenous culture, protection of the natural resources, and environmental-based tourism.



# RECOMMENDATIONS

## 4. KEY RECOMMENDATIONS

In each case study above, indigenous women have provided clear and practicable solutions to the human rights challenges they face. Building on the case studies and the solutions provided, IWNT and Manushya Foundation present below a list of key recommendations to the Royal Thai Government (RTG) and other concerned stakeholders. The Government and other stakeholders must implement the recommendations in conjunction and collaboration with indigenous peoples, particularly indigenous women, to ensure that any actions that might affect them meet their objective to improve the overall human rights situation of indigenous women and their communities in Thailand.

### 1. Guarantee the fundamental right to nationality of indigenous women and men

- a. Undertake urgent legal reforms, including amendments to the Nationality Act, to affirm the right to nationality both by descent (*just sanguinis*) and by birth (*jus solis*);
- b. 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;
- c. Provide trainings to local officials to effectively implement citizenship-related laws and procedures without any prejudice and stereotype against indigenous individuals, and with less strenuous need for evidence required from them for registration;
- d. Carry out targeted measures to ensure that indigenous peoples are aware of the necessity and benefits of obtaining citizenship so that they will acquire citizenship, such as relevant public education and awareness raising, citizenship distribution camps in remote villages, and a national census/survey of indigenous communities.

### 2. End discrimination against indigenous women and their communities in their right to health

- a. Provide adequate resources to health facilities in areas where indigenous peoples live so that they are equipped with necessary personnel and services, specifically in relation to women's health issues such as sexual and reproductive health;
- b. Improve public health schemes for indigenous peoples, particularly for women, such as free, regular, and maternal healthcare, in order to end disparities in health standards with non-indigenous peoples;
- c. Undertake targeted measures such as e-medical services, regular health camps, and free medicine distribution in remote indigenous villages;
- d. Sensitize medical personnel in health facilities in areas where indigenous peoples live on health practices and issues of indigenous communities to promote an inter-cultural approach to healthcare services;
- e. Support and promote indigenous peoples' traditional medicines and healthcare practices, including through legal reforms and administrative measures, along with modern healthcare systems, particularly for maternal and reproductive health such as by recognising and promoting traditional midwives and midwifery practices;
- f. Carry out awareness raising campaigns in indigenous communities on public healthcare services as well as on remedies available to them in case of discrimination and wrongdoing by medical personnel;

- g. Encourage medical education for indigenous youth, including through providing specific scholarships for them.

### **3. Improve the access of indigenous women and their communities to public services**

- a. Provide adequate facilities and health personnel in local communities including recruiting qualified persons from indigenous groups to work for their communities;
- b. Improve road access and provide free or affordable public transportation to indigenous villages to enhance their access to administrative and social services such as citizenship registration offices, and healthcare facilities in particular;
- c. Ensure that local authorities and healthcare facilities provide information about administrative and social services, including citizenship and health, in indigenous languages;
- d. Provide indigenous language interpreters with good knowledge of issues of indigenous peoples, particularly women, in local offices and hospitals to tackle language barriers and discrimination.

### **4. Ensure land and resource rights of indigenous women and their communities**

- a. Undertake immediate legal reforms to land and forest-related laws, including the Forest Act, Land Code, National Park and Reserved Forest Acts, to recognize and safeguard the rights of indigenous peoples over their traditional lands and resources, including their land tenure and resource management systems;
- b. Implement the 2010 communal land titling regulation effectively, including through provision of necessary resources and capacity building of concerned government authorities, to issue official land titles for traditional lands of indigenous peoples. Further, expand the land titling programmes for their forestlands with rights of ownership and control to protect against forced evictions or displacement from their lands and resources;
- c. Carry out urgent investigations into land disputes of indigenous peoples with State agencies or non-State actors such as businesses through competent authorities such as the Department of Special Investigation (DSI) to ensure effective remedy for the affected peoples, including delineation and return of traditional lands and resources, through judicial and/or non-judicial mechanisms;
- d. Ensure development and business-related laws, plans and projects are implemented only after obtaining Free, Prior and Informed Consent (FPIC) of the affected indigenous communities, particularly in case of forced relocation of the communities;
- e. Conduct a national inquiry into the challenges for land and resource rights of indigenous peoples through the National Human Rights Commission of Thailand to analyse trends and patterns of the challenges and draw necessary recommendations for required follow up by the concerned State authorities;
- f. Promote and protect indigenous peoples' livelihood and ways of lives so that they can maintain their identities and culture, including through effective implementation of the 2010 Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Chao Lay and Karen in Thailand.

## **5. Adopt development schemes for indigenous peoples in conjunction with them**

- a. Design and implement development programmes concerning indigenous peoples and their lands and resources, such as those related to tourism or agriculture or other poverty-reduction schemes, only after meaningful consultation with them to obtain their free, prior and informed consent. Ensure that indigenous peoples can effectively participate in decision making processes and that they lead in implementing such programmes so that programmes will be sustainable;
- b. Support and promote indigenous peoples' traditional livelihoods and indigenous-led enterprises such as those related to tourism or commercial farming, including through the provision of financial and other assistance, as per their own capacities and knowledge without external pressure or imposition;
- c. Ensure access to land ownership, market facilities, financial and other services and resources for indigenous communities to develop and execute their own local development projects.

## **6. Recognize, promote and protect the rights of indigenous peoples in the country**

- a. Amend Thailand's legal and policy framework, including the Constitution and land and forest-related laws and regulations, in order to recognise the indigenous peoples in the country and their rights, particularly to their lands and resources, in line with the UN Declaration on the Rights of Indigenous Peoples;
- b. Review and address the demands of the Network of Indigenous Peoples in Thailand with relation to the establishment of a Council of Indigenous Peoples in Thailand (CIPT) to advise on State policies and plans relevant to indigenous peoples;
- c. Enhance awareness of indigenous communities, particularly women, as well as the concerned government authorities and State bodies, including the judiciary and parliament, on the rights of indigenous peoples and challenges therefor in Thailand, such as through regular dialogues and interactions;
- d. Enhance the protection of indigenous leaders and human rights defenders to ensure that they will not face risks or reprisals, such as enforced disappearance or killing, while defending the rights of their communities and the environment.

## **7. Ensure equality of and non-discrimination against indigenous women in matters concerning them**

- a. Guarantee equal representation and participation of indigenous women in decision-making process of indigenous peoples, particularly in relation to land and resource rights related law-making, governance of tenure systems and titling or other programmes; formulation and implementation of development plans or projects; and establishment of mechanisms such as the CIPT;
- b. Provide necessary resources and assistance to indigenous women and their organizations and groups to allow them access to knowledge about their rights and capacities or skills to realise those rights;
- c. Support proportional inclusion of indigenous women in all levels of State mechanisms in course of promotion of women's participation, particularly in law-making and government bodies, including through special temporary measures and affirmative actions;
- d. Ensure that adequate attention is paid to the specific needs of indigenous women when designing legal and administrative measures related to indigenous peoples, and to the particular challenges they face when addressing violations of indigenous peoples' rights such as loss of lands or resources;

Carry out targeted measures to resolve specific violence and discrimination that indigenous women and girls face at disproportionately high levels such as in the case of human trafficking.

## ENDNOTES

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- <sup>5</sup> These cover 9 hill tribes: Karen; Hmong or Maew; Mien or Yao; Akha or Ikor; Lahu or Muser; Lisu or Lisor; Lua or Thin; Kamu; and Mlabi or Thong Luang residing in the north and western of Thailand.
- <sup>6</sup> These cover 38 ethnic groups: Mon; Tai Lue; Tai Song Dam; Tai Yai; Tai Khoen; Tai Yong; Tai Hya; Tai Yuen; Phu Tai; Lao Krang; Lao Ngaw; Lao Kar; Lao Tee; Lao Wieng; Sak; Sere; Prang; Brue (Soe); Song; Sotawing; lempeekong; Kula; Sauot (Saung); Kui (Saew); Yakul (Chao Bon); Yao; Yaew; Tai Kamer. Vietnam (Yuan), Yermeesor (Besu); Chong; Kasong; Malayukaleang and Lao Song (Tai Dam).
- <sup>7</sup> These include 3 chao lay groups: Mokaen; Moklean; and Urakrawoew.
- <sup>8</sup> These include 2 hunter-gatherer groups known as Mlabi (Tong Luang) in the north and Mani in the south.
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- <sup>12</sup> The ten so-called "hill tribes" from the North that initiated the indigenous movement in Thailand are the Akha, Dara'ang, Hmong, lu-Mien, Kachin, Karen (Pgakenyaw and Pholong), Lahu, Lisu, Lua (Lawa), and Shan (Tai-Yai). The additional 30 ethnic groups that have since joined the IP movement are the Bisu, Bru, Chong, H'tin, Kaloeng, Kayong, Khamu, Kui, Laokang, Lao-song, Lao-wiang, Mlabri, Moken, Moklen, Mon, Phalang, Phu-Thai, Saek, Sawng, So, Sothawueng, Tai-ya, Thai-koen, Thai-song-dam, Thai-yong, Thai-yuan, Urak Lawoi', Yahakun, Yaw, and Yo. With the exception of the H'tin, Khamu, and Mlabri, all of these latter groups are considered lowland ethnic groups. See ISEAS Issue 2016 [https://www.iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2016\\_68.pdf](https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_68.pdf)
- <sup>13</sup> In its communication with the Special Rapporteur on the rights of indigenous peoples, the government has stated that "hill tribes" are "migrants...who by nature and historical background are not indigenous to the country". S. James Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya - Summary of cases transmitted to Governments and replies received*, HRC 9a 9/10/2008 A/HRC/9/9/Add.1/Corr.1, United Nations Office of the High Commissioner for Human Rights, 10 September 2008.
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1. Be considered a hill tribe member and hold a highlander identification card (blue-colour) or household registration (Tor Ror 13);
  2. Have lived in Thailand not less than 15 years or have continuously had a permanent domicile in one specific district for a consecutive period of not less than 10 years from the day the cabinet resolution was passed (this process must be approved by the village heads and Committee on Hill Tribes in the district);
  3. Obey laws and official regulations;
  4. Have interest in using the Thai language;
  5. Have loyalty towards country and King;
  6. Have rendered distinguished service to Thailand or done acts to the benefit of the government or community;
  7. Have a legal occupation and financial stability;
  8. Not have any involvement with narcotics;
  9. Not have any involvement with environmental destruction;
  10. Conditions in 5, 6, 7, 8 and 9 must be guaranteed by: an officially reliable person with Thai nationality; the second, the Committee of the District Council; and finally, a government official having a rank classification over the fourth level and also working in the same area where the applicant resides."
- Regarding "other people in the highland community (not hill tribes, but considered ethnic minorities and under the responsibility of the Information Division, DOPA).

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The ministerial letter No. 0310.1/1683 sent on 26 January 1995 states the following qualifications:

1. Be a highlander or in the process of creating highlander personal records who illegally migrated into Thailand before 3 October 1985;
2. Have a domicile in Thailand, personal records, and an ethnic minority identification card;
3. Have sufficient command of the Thai language to able to speak and understand;
4. Have loyalty towards country and King;
5. Not pose any risk to national security or act as prohibited under Article 44 of the Immigration Act 1980 (B.E. 2523):
  - 5.1) Be convicted either by Thai or foreign court, excepting minor offenses and negligence or mistakes as excepted by law
  - 5.2) Unable to hold a regular occupation due to being physically or mentally disabled or in a chronic condition as mentioned in the ministerial regulation;
6. Have a legal occupation and financial stability;
7. Intend to apply for legal migrant status.”

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- 108 Judicial interference as a characteristic of corporate capture refers to the influence corporations exert over the proceedings and rulings of courts which provide favourable outcomes for corporations and undermine due process and efforts at seeking access to remedy and accountability. For more info, see ESCR-Net at <https://www.escr-net.org/node/366470>
- 109 Community manipulation in the context of corporate capture refers to the corporate undermining of community decision-making processes related to an investment project. The strategies employed involve the use of financial or other incentives to entice community leaders to support corporate projects that undermine the interests and decisions of the wider community. For more info, see ESCR-Net at <https://www.escr-net.org/corporateaccountability/corporatecapture/manifestations>
- 110 Apinya Wipatayotin, *Sea gypsies fight to save graveyard*, The Bangkok Post, (October 2018), available at: <https://m.bangkokpost.com/news/general/1557478/sea-gypsies-fight-to-save-graveyard>
- 111 Victoria Tauli-Corpus, *Good Practices on Indigenous Peoples' Development*, 2006 quoted in UNDP Millennium Development Goals and Indigenous Peoples, (2015), available at: [https://www.undp.org/content/dam/rbap/docs/Research%20%20Publications/democratic\\_governance/APRC-2010-MDG-Indigenous-Peoples.pdf](https://www.undp.org/content/dam/rbap/docs/Research%20%20Publications/democratic_governance/APRC-2010-MDG-Indigenous-Peoples.pdf)
- 112 Stefania Errico, *The rights of indigenous peoples in Asia Human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction*, ILO, AIPP, (2010), available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_545487.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_545487.pdf)
- 113 Article 25 and 26.

### **About the Indigenous Women Network of Thailand (IWNT)**

The Indigenous Women's Network of Thailand (IWNT) was founded in 1996 as a part of the Inter Mountain Peoples Education and Culture in Thailand Association (IMPECT) to provide a gender perspective to development activities affecting indigenous peoples in Thailand. In 2011 IWNT was established as an independent organization to work towards improving the lives of indigenous women in Thailand. IWNT works with the following Indigenous groups or "chon paos" of Northern Thailand: Karen, Lisu, H'mong, Lahu, Akha, Dara'ang, Taiyai or Shan, Lua, Kachin and Mien. IWNT has the following aims: advancing Indigenous Women's rights as Women and as Indigenous Peoples, promoting national and international instruments for women's protection, strengthening Indigenous women's participation in local government, natural resource management sector and other decision making bodies acknowledge and support Indigenous Women's traditional knowledge.

<https://iwnt.webs.com/>

### **About Manushya Foundation (MF)**

Manushya Foundation is an Asia regional organisation aiming at empowering local communities to put them at the heart of decision making processes that concern them, to advance human rights, social justice and peace. Manushya Foundation serves as a bridge to engage, mobilise, and empower agents of change by: connecting humans through inclusive coalition building and; by developing strategies focused at placing local communities' voices in the centre of human rights advocacy and domestic implementation of international human rights obligations and standards. Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to ensure they can constructively raise their own concerns and provide solutions in order to improve their livelihoods and the human rights situation on the ground. For further information on the work of Manushya Foundation, visit:

<https://www.manushyafoundation.org>