

THAILAND

NGO CEDAW SHADOW REPORT ON BEHALF OF INDIGENOUS WOMEN IN THAILAND

For the 67th Session of CEDAW
(Sixth and Seventh Periodic Report)

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ABBREVIATIONS

AIPP	Asia Indigenous Peoples Pact
ASEAN	Association of Southeast Asian Nations
CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
FIMI	International Indigenous Women’s Federation
GBV	Gender-based Violence
IEN	Indigenous Education Network
IP	Indigenous Peoples
IW	Indigenous Women
IWNT	Indigenous Women’s Network of Thailand
MTB-MLE	Mother Tongue Based Multilingual/Bilingual Education
NCIP	National Council of Indigenous Peoples
NESDP	National Economic and Social Development Plan
NIPT	Network of Indigenous Peoples in Thailand
NLA	National Legislative Assembly
OHCHR	United Nations Human Rights Office of the High Commissioner
SRH	Sexual and Reproductive Health
THB	Thai Baht
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPR	Universal Periodic Review
VAIW	Violence Against Indigenous Women

EXECUTIVE SUMMARY

Despite an estimated population of 1 000 000 Indigenous Peoples (IPs) in Thailand (50% of which are women), the government does not legally recognise their indigenous status, obstructing the individual and collective rights of this section of the population. The IPs of Thailand, which make up 1-2% of the national population are spread mainly across three geographical regions; the Chao Ley fisher communities in the south, small groups in the north-east and east of Thailand and the many highland peoples, or hill tribes as they are referred, in the north and north-west. Over 100 000 IPs are estimated to be without citizenship however accurate numbers are missing in both total and stateless populations.

The Indigenous Women's Network of Thailand (IWNT) was founded in 1996 to provide a gender perspective to development activities affecting indigenous communities in Northern Thailand. On the first weekend of April 2017, IWNT facilitated 27 indigenous women (IW) to gather in Chiang Mai, Thailand, for a National Consultation in preparation of this report. The National Consultation provided a forum for the participants to identify their main causes of concern in regards to the implementation of the CEDAW at the national level and the following report is a consolidation of these concerns, including a lack of all women in politics and decisions making, and a total invisibility of indigenous women in state structures.

In September 2016, the new Thai Constitution was voted in favour of by the Thai population via referendum (although since then, the King has signed a different, unseen version of the Constitution). Despite IPs submitting proposals for specific legislation for the promotion of the rights of IPs and these recommendations making it into the drafting process, this draft of the constitution was rejected. The failure of the State to formally recognise Thailand's indigenous population has a series of implications for the indigenous women of Thailand and facilitates their ongoing discrimination. As a result, IW face a lack of access to basic social services, including; education, health care including sexual and reproductive health (SRH) care, access to information and justice, among other things.

Indigenous women are continually excluded from participation in the country's development plans. The IW participants, during the consultation, raised that despite them being at the forefront of the effects of climate change and having already played a key role in the development of adaptation and mitigation, they were continually left out of national and local-level climate change strategies. Another policy issue raised was that of the zoning of national parks and world heritage sites over indigenous territories in recent years having had negative impacts on the well-being of indigenous communities. These policies and practices have had a specific impact on the indigenous women of Thailand, yet the Thai Government overlooks them but failing to acknowledge their indigeneity/ethnicity and the intersectional discrimination that they experience.

Ultimately, the IW of Thailand believe that their experiences can be greatly improved alongside the legal recognition of Indigenous Peoples and their rights as embodied in international human rights instruments, particularly the UNDRIP and especially their collective right to their lands, territories and resources. Whilst this is not the only recommendation that was to come from the national consultation, it was the underpinning foundation for all subsequent recommendations and was highlighted as the priority for the IW participants.

However, the realisation of legal recognition alone is not enough to truly change the conditions for indigenous women, and Indigenous Peoples in general. In addition, this report calls for: the right to citizenship of Indigenous Peoples, including their equal access to basic social services such as education, health and employment; recognition that human trafficking is a systemic problem, specifically affecting indigenous women and focus on prevention strategies rather than palliative means of combating trafficking; a targeted and appropriate education programme for all indigenous children; establishment of a specific mechanism for full and effective participation of indigenous women in the ongoing country reforms and constitution drafting process; strengthen the office of the

national ombudsman for Indigenous Peoples; ensure Indigenous Peoples' lands are protected and Indigenous communities are adequately consulted in all matters affecting them; and finally, evaluate and align all legislation and government programs with the CEDAW and the UNDRIP.

This alternative/shadow report is divided into three sections. The first which looks at articles 1-5 and compares the reality for indigenous women in Thailand to that of the situation as presented by the State Report in 2015, including the impact of existing laws and policies on the elimination of discrimination, realisation of human rights and negative stereotyping. The second section, inclusive of Articles 6-14 focusses on three main issues facing the indigenous women of Thailand, according to the priorities set out by the participants of the National Consultation. The first issue being that of trafficking and prostitution of indigenous women (Article 6); the second focusses on the situation of IW in regards to their basic social services, mostly stemming from their lack of access to citizenship (Articles 9, 10, 11, 12, 13 and 16); and finally the third section which looks at land rights and natural resource management (Article 14). These categories, and everything documented within them regularly intersect to create a unique set of obstacles for indigenous women in Thailand.

PREPARATION PROCESS

On the first weekend of April 2017, 27 indigenous women of Thailand gathered in Chiang Mai for a National Consultation. The aim for the two-day event was to identify the needs and priorities of indigenous women in Thailand to be highlighted in this alternative/shadow report submitted as part of Thailand's review process during the 67th Session of the CEDAW Committee.

The event included an introduction to the CEDAW mechanism, including alternative reporting procedures and a breakdown of the articles. The indigenous women participants were able to engage effectively in the proceeding discussions, succinctly provide their experiences and their objectives in taking part in this process.

The results of the two-day National Consultation have been consolidated here and comprise the alternative/shadow report as a means to inform the CEDAW committee of the realities of indigenous women in Thailand from their own perspectives.

CONTEXT

Thailand is home to many different indigenous groups, yet the concept of Indigenous Peoples has no legal recognition in Thailand. The Thai government only recognises the presence of nine *ethnic groups*, forcing many other groups to live in Thailand without official recognition. The Indigenous Peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south; small groups in the north-east and east; and the many different highland peoples in the north and north-west of the country.

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The vast majority of IW in Thailand have been raised according to their unique traditions and customs, many of which are patriarchal in nature. For example, men in indigenous communities in Thailand are generally allowed more respect and value than women, even in matrilineal communities. Men are still expected to be the main, and in some cases, the *only* source of familial income, and they are the ones granted the roles of community leaders and/or representatives. Women, on the other hand, are expected to take care of the well-being of their families and the domestic responsibilities. Indigenous women in Thailand are also the primary holders of traditional knowledge that has been passed down through generations, long having ensured the sustainability of their community's way of life.

Indigenous women in Thailand are often restricted from making decisions which affect their lives, including decisions regarding education, work, marriage and sexual and reproductive health. High rates of domestic violence, and violence against women in general, exist in some indigenous communities and often unaware of their rights, indigenous women have limited access to justice. Drug and alcohol addiction is also present in some indigenous communities in Thailand, fuelling domestic violence and the increase of debt. Meanwhile, the roles women are expected to play in their communities provide them with little, if any, space for autonomy, decision making or participation in the public sphere.

In recent years, the government of Thailand has imposed various policies that have negative impacts on the well-being of indigenous communities, including the zoning of national parks and world heritage sites over indigenous territories. Without a unified platform and in light of the aforementioned challenges, indigenous women have limited capacity to advocate against these policies, although some such opportunities do exist. The Indigenous Women's Network of Thailand was founded in 1996 to provide a gender perspective to development activities affecting indigenous communities in Northern Thailand. Between its establishment and 2010, IWNT operated within the

Inter Mountain Peoples Education and Culture Thailand Association (IMPECT) - one of the largest indigenous organizations in Thailand - to oversee and advise on gender related aspects of IMPECT's activities.

Over the years IWNT has been involved in projects targeting indigenous communities in Thailand and conducted research on themes related to women's rights and wellbeing in these communities. Through this work, it was evident that there was little room for the needs, priorities and participation of indigenous women within the mainstream indigenous movement in Thailand. As a result, in early 2011, the women of IWNT decided that it was time to establish IWNT as an independent organization working towards improving the lives of indigenous women in Northern Thailand. IWNT currently consists of a Committee of 10 indigenous women (one from each of 10 indigenous groups in Northern Thailand) who are dedicated to empowering, strengthening and supporting indigenous women.

In 2014, the National Council of Indigenous Peoples (NCIP) was finally adopted at the first Indigenous Peoples' Council Assembly in Tak Province and was attended by thirty-nine Indigenous Peoples' networks from all over Thailand. Four major decisions were reached by consensus during this event. These include adopting the draft indigenous peoples' law, the Constitution of the National Council of Indigenous Peoples, a short-term work plan and a joint statement to be submitted to the National Reform Council and the Constitution Drafting Committee.

Despite progress made in organizing IPs, and IW, at the national level, IW remain absent from many aspects of Thai society, including from the newly adopted Constitution of Thailand, the Thai State report submitted to the CEDAW committee in 2015 and most statutory regulations in between. It is in this context that the following report has been prepared.

PART A: ARTICLES 1 – 5

A1. DEFINITION OF DISCRIMINATION (ARTICLE 1)

In September 2016, the new Thai Constitution was voted in favour of by the Thai population via referendum², including a provision (Section 27) ensuring the equal enjoyment of rights between men and women, equality before the law and equal protection under the law. It elaborates upon the intersections of marginalisation to include origin, ‘race, language, sex, age, disability, physical or health condition, personal status economic or social standing, religious belief, education or political view’, neglecting specific reference to sexuality, gender identification, citizenship or ethnicity/indigeneity. The section does not elaborate upon the definition of discrimination, nor does it articulate the dichotomy between direct and indirect discrimination. Section 27 of the new constitution does not make reference to discrimination by State or non-State actors³.

The Thailand Gender Equality Act of 2015, Section 3, provides an articulation of discrimination, which is inclusive of indirect and/or direct actions, as well as incorporating person’s whose gender identification is different from what it was at birth. While IWNT acknowledges that the addition of a non-binary gender category is progressive, the organization is alarmed by the fact that – unlike the constitution – there is no mention of further marginalised sub-groups of women, including indigenous or ethnic women.⁴

A2. POLICY MEASURES TO BE UNDERTAKEN TO ELIMINATE DISCRIMINATION (ARTICLE 2)

Indigenous Peoples in Thailand are roughly estimated to comprise around 1 million people (1-2% of the population), a figure that can only be approximated due to their exclusion from citizenship mechanisms (over 100 000 IPs are estimated to be without citizenship)⁵ and insufficient census data. We estimate that indigenous women of Thailand are around 500 000 people. In 2007, Thailand ratified the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) however state legislation fails to recognise these (estimated) 1 million people as ‘indigenous’, rather using the term ethnic minority limiting the applicability of the UNDRIP.

Progress was made during the drafting process of the new Constitution; IPs submitted proposals for specific legislation for the promotion of the rights of IPs during the drafting of the interim constitution and “Indigenous Peoples” was written into one of the draft constitutions⁶. Unfortunately, this draft was rejected and indigenous terminology is ultimately missing from the adopted Constitution.

It is the position of this Shadow/Alternative Report, and the Indigenous Women’s Network of Thailand, that failure to recognise Indigenous Peoples in Thailand as indigenous, is a fundamental flaw in any attempt to reduce discrimination against them. Furthermore, for IW, whose challenges are amplified by their intersectionality as indigenous and as women, without this formal recognition, there is little hope that any State-wide efforts to reduce discrimination of women will reach this estimated population of 500 000 women.

The failure of the State to formally recognise Thailand’s indigenous population has a series of implications. Central to ongoing acts of discrimination made against indigenous women in the country is the lack of access to basic social services, including; education, health care including sexual and reproductive health care, access to information (in particular that pertaining to the living situations of indigenous communities leading to displacements and disappearances) and legal assistance. These factors interact to make indigenous women in Thailand particularly vulnerable to human trafficking,

both domestically and internationally, and without any access to justice or remedies that are available for women in mainstream (non-indigenous) society.

A3. GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ARTICLE 3)

In the State Report, the Women's Development Plan under the Tenth National Economic and Social Development Plan (2007-2011) (WDP/10th NESDP) is claimed to build upon the lessons learned of the previous women's development plan, particularly in overcoming traditional values and beliefs which negatively effect women and perpetuate gender discrimination. However, six years on from the completion of the plan, we are still experiencing a lack of all women in politics and decisions making, and a total invisibility of indigenous women in state structures, one of it's core objectives. When it comes to addressing negative traditional values affecting women's experiences in Thailand - a significant challenge for indigenous women who have to deal with compounded stigma related to their ethnicity, levels of education and social statuses – there has been no progress made. In fact, the Social Development Ministry is currently drafting a bill which prioritises traditional family values over that of the individual human rights of women (discussed further in Section A5).

As mentioned in the earlier section, the failure to formally recognise indigenous women in Thailand as indigenous, despite State support of the UNDRIP, has led to a series of repercussions which facilitate their (IWs) ongoing discrimination. One such repercussion is the exclusion of indigenous women from participation in the country's development plans. During the national consultation of indigenous women in preparation of this report, it was raised that indigenous women were particularly disappointed to be excluded from national and local-level climate change adaptation and mitigation strategies, despite their unique experiences and invaluable contributions to both. Indigenous women in Thailand are at the forefront of climate related challenges, suffering the consequences of climatic disasters to a more extreme degree than their male counterparts. They have also been forced to come up with strategies to adapt to decreasing food security and insecure natural resources. To exclude 0.5-1% of the countries total population, who are arguably the most vulnerable to the effects of climate change, from climate change strategies is just one example of their exclusion at the policy level.

Furthermore, when there is insufficient disaggregation of data pertaining to the exact numbers of indigenous women versus rural women, the specific indigenous groups which occupy rural areas, or the number of women who remain stateless due to their restricted access to social services, the application of the CEDAW convention remains a challenge for this percentage of the population.

A4. TEMPORARY SPECIAL MEASURES TO ACHIEVE EQUALITY (ARTICLE 4)

Despite the supposed affirmative actions such as the proposed Tambon Council and Tambon Administrative Organisation Act, women's participation in politics in Thailand is minimal. The current legislative leg of the Thai Government, the National Legislative Assembly (NLA) is made up of 250 members, only 13 of which are women⁷. There are no indigenous representatives in the NLA. In state-run agencies, women's participation is similarly miniscule, such as the police force where women represent roughly only 5%.

In addition, Section 128 of the Constitution sets out guidelines for *ad hoc* committees to consider bills, and for the inclusion of at least one-third of members to be of the category by which the bill is relative to, including 'children, youth, women, elderly or persons with disabilities'. This section fails to mention Indigenous Peoples or ethnic minorities. There is no such stipulation or quota system for the overall constitution of the NLA.

A5. SEX ROLES AND STEREOTYPING (ARTICLE 5)

Indigenous Peoples in general are collectively stigmatised and blamed, including for such things as harming the environment with their centuries-old shifting cultivation practices. Indigenous women suffer from negative sex-roles and stereotyping, stemming from both within their communities and mainstream Thai society. This negative stereotyping has manifested itself in the form of discrimination when seeking health care services, particularly SRH which is taboo in some indigenous communities and made worse by language and cultural barriers, at school and in the pursuit of job opportunities outside of the community. In addition, certain State policies perpetuate these negative stereotypes, despite the State reporting progress in eliminating discriminatory behaviours.

One such policy is the Criminal Law Article 277, which allows girls between 13 and 15 years of age to marry their alleged rapists, in the place of criminal punishment. Articles such as this perpetuate stigma associated with sexual assault and rape, particularly in conservative indigenous communities whereby limited education, legal knowledge and/or traditional practices may already make it difficult for the victim to access justice.

Community leaders explained that survivors of sex-trafficking, as an example, often face stigma upon return from being trafficked, a factor which further impedes IW's empowerment in their communities. Community responses to returned survivors are varied, from acceptance to ostracism. Those who reintegrate often have "reduced" chances of finding work and the victimization affects the entire family. The Criminal Law Article 277, in this way, does little to curb the stigma associated with sexual assault, rape or prostitution, within the community or outside of it.

In addition, the Social Development Ministry is currently drafting the Welfare Protection Bill, which shall serve to uphold the family above the individual; promoting reconciliation and negotiation over the safety and security of the individual family members. The drafting process, which has so far been done without a public hearing, will limit women's access to justice in the case of domestic violence, once again making indigenous women particularly vulnerable given their already precarious situations in their communities and broader Thai society. The drafting of this bill is of deep concern to IWNT and our indigenous women members.

PART B: THEMATIC AREAS

B1. INDIGENOUS WOMEN'S AND HUMAN TRAFFICKING IN THAILAND ARTICLE 6: TRAFFICKING AND PROSTITUTION

In 2016, Thailand moved up from Tier 3 to the Tier 2 Watch List in the US State Departments Trafficking in Persons Report, where it is listed as a “source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking.”⁸ A recent crisis of the Rohingya “boat people” has shifted the focus to labour trafficking in the fishing industry from the previous years’ anti-trafficking policies on sex trafficking.⁹ The 2001 United Nations Palermo Protocol¹⁰ is designed to protect Thai citizens from trafficking, however, the Thai government has two reservations on this initiative: Article 7, regarding birth registration and Article 22, regarding children who seek refugee status in Thailand¹¹, revealing an unwillingness to extend protections to refugees and stateless Indigenous Peoples or ethnic minorities¹².

In the domestic arena, Thailand has implemented anti-trafficking legislations including: the National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children (1996) and the 1997 amendment to the Act on Prevention of Trafficking in Women and Children to include boys¹³. In 1992, Thailand ratified the Convention on the Rights of the Child (CRC) and more recently adopted the Optional Protocol on the sale of children, child prostitution and child pornography.¹⁴ Recent government actions include: increased prevention efforts, establishment of a new Prime Minister-level anti-trafficking committee, increasing the minimum age of workers in agriculture and on fishing vessels, establishing a minimum wage, and amending the 2008 trafficking law to increase penalties for traffickers and protection of whistle-blowers¹⁵. However, the government has come under criticism for failing to apply these reforms due to the prevalence of corruption including from police and state officials.¹⁶

In January 2016, Asia Indigenous Peoples Pact (AIPP), with the support of IWNT, conducted a study on the trafficking of IW in the Mekong Region. The data found that despite the aforementioned policies, the trafficking of IW in Thailand continues. An estimated three to four million migrant workers, primarily from ethnic communities in neighbouring countries reside in Thailand. Shan women living in Thailand are regularly trafficked to spa and massage parlours in Singapore and Korea, and ethnic Cham, Khmer, Tay, Nung, Mong women have reportedly been trafficked from Thailand to China, South Korea, Taiwan, Malaysia, and Singapore¹⁷. Indigenous women from groups such as Shan, Karen, Kachin, Mon, Chin, Muong, Lahu who migrate informally across Thailand’s borders and enter into sex work are subject to discrimination on the basis of their ethnic status, denied basic rights including access to healthcare and education¹⁸. Those without birth registration documents or passports are further penalized.

The data revealed key factors that underscore trafficking and labour exploitation, and expounds on the often simplistic narrative that drives policies to combat trafficking. The data also revealed problems with the taken-for-granted notion that national policies automatically have a positive effect on IPs. In addition to the already well-documented push factors associated with trafficking and labour exploitation—including lack of education, low economic opportunity, and gender discrimination- this research found that additional, more complex factors underscore the particular circumstances and insecurities surrounding indigenous peoples’ –and particularly indigenous women’s experiences.

The trend to migrate away from home communities is a direct effect of problems associated with agricultural production, and the loss and degradation of IPs’ control over their own land. These difficulties are critically linked to trafficking. A Karen respondent from Thailand, explained this connection in further detail: *“Because the area is still under the national conservation policy, the government can declare to take back the land whenever they want. We don’t feel secure, and are afraid.”* Rotational farming and chemical use, she explained, exacerbated these fears of government land confiscation because the government did not allow for this type of farming, even though it was

necessary for the community's wellbeing. Climate change, she added, had compounded these issues as weather patterns became increasingly unpredictable.

The study found that there was an overwhelming perception that government communication around trafficking and the associated policies to combat it, were not being adequately shared at the community level. The Karen respondent from Thailand said that there have been no efforts - nothing significant had been seen - when asked about the national government's actions to combat trafficking.

Some respondents pointed to the government's highlighting of the problem and heavy focus on "rescue" instead of effective prevention strategies, designed to prevent trafficking from occurring in the first place. Respondents stressed the need for awareness raising campaigns and participatory projects implemented at the local level. Others called for improved funding for outreach activities, health education, skills development in communication, advocacy, and for community leaders to impart their knowledge and experiences of trafficking to the community. The need for improved legislation was cited by several community members, including calls for improved labour laws, international laws, and a "Gender Equality Law." But as one Shan respondent noted, even when such laws did exist they rarely had any impact because, she said, "*We have to find the information ourselves.*"

Government complicity around trafficking was also identified as a problem, as well as the need for governments to increase protection policies in light of the impending opening of ASEAN, as respondents highlighted the implications of ASEAN opening up without governments first instilling adequate labour protection policies across member countries, and pointed to a need, on the part of governments, to address migration trends under a more open ASEAN.

B2. INDIGENOUS WOMEN'S ACCESS TO SOCIAL SERVICES

ARTICLE 9: NATIONALITY

It can be said that the overarching factor perpetuating discrimination of IW in Thailand can be traced back to a lack of citizenship and non-recognition of their indigenous identity, a process by which the Thai Government has failed to make available or accessible. Without citizenship, IW cannot receive appropriate access to education, health care services or access to livelihoods, making them particularly vulnerable to trafficking and prostitution. On the other hand, without appropriate access to education, knowledge and resources in their mother tongue, IW are ill-equipped to access any services the government does have in place. Limited Thai language ability for most indigenous women means the inability to manoeuvre the obstacle course which is the process of applying for and obtaining Thai citizenship. Without citizenship, they are denied their rights as women, indigenous people, and most importantly, as human beings.

Furthermore, as indigenous women are largely confined to their communities the need for citizenship is perhaps not pressing enough to overcome the obstacles that are in her way to receiving it. As a result, the exact numbers of stateless indigenous women in Thailand remain unclear, whilst their vulnerability to external factors remains heightened. In 2016, NIPT and AIPP stated that over 100 000 IPs are estimated to be without citizenship, and though at least 50% of those are thought to have a legitimate claim for it, it is very difficult to prove due to lack of access to paperwork, knowledge around the registration system and limitations in the national language¹⁹. If a person lacks citizenship in Thailand, freedom of movement is illegal and unregistered IPs are living in constant fear of arrest as a result. The State Report refers only to actions taken to ensure foreign women who are married to Thai citizens have equal access to citizenship as foreign men, but the report does not reference the more pressing issue of Thailand's own peoples, both indigenous or otherwise, who are lacking access to a variety of social services stemming from their lack of citizenship.

In discussing citizenship rights, T. H. Marshall explained, "*Citizenship is a status bestowed on those who are full members of a community*"²⁰. The US State Department approach—replicated by

governments throughout the Mekong Region—puts emphasis on catching criminals; however, often times stateless or at-risk migrants are, themselves, viewed by the state as criminals, thus rendering them doubly vulnerable to a system which is not designed to protect their rights. As noted by numerous scholars and practitioners, policies that emphasize criminalization often reinforce government control apparatuses of policing and control while ignoring the needs of women, especially indigenous women.²¹

ARTICLE 10: EQUALITY IN EDUCATION

The formal Thai education system has continually failed to respond to the diverse cultural groups with different social, economic and cultural contexts, particularly marginalized indigenous communities, as well as other groups in remote and border areas. The current education system is centralized in terms of management; this makes it not adequately available, accessible, adaptable, acceptable or attainable to the diverse needs and contexts of the entire population in Thailand²². First and foremost, indigenous children do not have sufficient access to Mother Tongue Based Multilingual/Bilingual Education (MTB-MLE), an approach which has proven successful in providing appropriate education for indigenous children. According to NIPT and IEN, only 10 language groups are catered for in 35 pilot schools nationwide. Without sufficient access to education, most indigenous children are already starting their education well behind their mainstream peers.

According to the State Report, all children must receive nine years of compulsory education and are entitled to receive 12 years of basic education under the National Education Act B.E. 2542 (1999) and its amendment (No. 2) B.E. 2545 (2002). This does not include indigenous children who do not have citizenship. Furthermore, for indigenous communities who don't have access to one of the 35 MTB-MLE Pilot Schools, accessibility of education goes beyond whether they have access to a physical school. For remote communities, such as the islands in the south or in the mountains in the north of Thailand, children have to be sent out of the community for schooling, incurring additional costs to the family.

Often if there is a choice between boy's and girl's education, the boy is chosen as he is expected to be the breadwinner in the long-term future. In addition, in research by AIPP on the factors leading to human trafficking of indigenous women and girls in Thailand; community leaders, survivors and organizational employees emphasized societal expectations around children's labour, noting that often, indigenous children between ages 10-15 were often expected to leave school and help their families with income-generating activities.

For indigenous girls, societal expectations are often centred around being a good homemaker and caregiver to the elderly and children of the family and managing other domestic chores. Faced with an alternative of schooling which is linguistically challenging, especially when there are already economic constrictions, the level of education between indigenous girls and women remains less than that of their male peers.

Unfortunately, indigenous women's limited access to culturally-appropriate education has a range of long-term consequences. Without fluency in Thai language, IW struggle to navigate the process of obtaining citizenship. They have limited access to income opportunities and thus are more vulnerable to trafficking. They have limited understanding of SRH, what is often not discussed within their communities, a limitation which is made worse by language barriers and cultural discrimination when an indigenous women or girl has to seek treatment in a hospital and cannot speak the national language.

During the National Consultation of Indigenous Women which served to inform this report, there were accounts of indigenous girls facing expulsion from public schools when they became pregnant as teenagers. There were several cases mentioned of urine testing on school premises as a way to find out if students were pregnant. When SRH is taught in schools, indigenous girls are left behind as the

language used is overly complex, teachers are often male causing shyness amongst the girls to readily engage in their own learning.

ARTICLE 11: EMPLOYMENT

With limited access to education, lack of citizenship and dwindling natural resources in the context of climate change, indigenous women in Thailand are being forced out of their traditional roles of homemakers and domestic carers into low-skilled, low-salaried, insecure jobs to compensate for their family's livelihoods. When all of these factors intersect, IW in Thailand, are made further vulnerable to trafficking and gender-based violence as they are more and more economically dependent on their male counterparts.

While, as the State Report says, there are measures in place to support informal workers (Home Workers Protection Act B.E. 2553 [2010]) and the provision of social security (Social Security Act B.E. 2533 [1990]), these mechanisms are only beneficial to indigenous women if they have 1) citizenship papers; 2) if they are familiar with the process to access these benefits; 3) are aware of their eligibility.

Alongside the food insecurity that is a result of climate change, indigenous women are migrating more and more to the cities for labour. Here, according to our preparatory National Consultation, they are facing lower wages than men. For example, for working as day-labourers in an orange garden, IW participants reported earning 170 THB per day, as compared to 200 THB by the men. In addition, they are required to work with toxic chemicals and without the necessary safety equipment to protect themselves. The employers are known to withhold wages, and without citizenship or language proficiency indigenous women are apprehensive to go to the police.

For the Moken IW in Southern Thailand, there are reports of being forced into dangerous jobs, such as planting bombs in the ocean. This high risk job has resulted in multiple deaths of local IPs but without proper papers, the deaths are underreported. Also in the south, overfishing of the waters has led to the indigenous communities unable to maintain their fisherfolk lifestyles as they once had. With strict policies imposed by the national parks, they are forced to sell their fish for a much cheaper price which is no longer sufficient to cover their familial needs.

Government programs to promote the cultural diversity of Thailand are often exploitative in nature and not implemented in consultation with IPs, or more specifically indigenous women. IW are the keepers of traditional knowledge, including on handicraft production, indigenous cuisine, local medicines and farming, yet when government-sanctioned cultural tours are run through their territories they are excluded from the benefits. Instead, livelihoods are lost or corrupted; for example, traditional embroidery is stolen and computerized so that it can be reproduced and sold for cheaper prices and the so-called 'long-neck Karen' or 'Sea Gypsies' are treated as human zoo exhibits.

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

As mentioned earlier, sexual and reproductive health is often not openly discussed in conservative indigenous communities. Therefore, indigenous youth rely heavily on the knowledge provided in the education system to frame their family planning. As already discussed, there are gaps in the sexual education policy in Thailand, making it difficult for indigenous women to make informed decisions regarding their own SRH.

Discrimination of IW when accessing health care services is widespread in Thailand; there is a tendency towards treating the indigenous patients as burdensome, ignorant and/or uneducated. The preparatory National Consultation yielded several stories of mistreatment and medical malpractice resulting in death of the indigenous patient. In these cases, it is reportedly commonplace to pay off the

patient's family in order to avoid proper investigation. The IPs in question do not know proper channels to access justice and so often settle these malpractice suits for much less than if they had proper access to justice.

For indigenous women who are pregnant, the dual stress of facing discrimination in the hospitals and overcoming cultural taboos to discuss SRH with a stranger, makes giving birth at home without medical aid more appealing. Accessing information and strategies on family planning is even less possible. Yet, at the community level, it is also the woman who will be the first to suffer from stigma, gossip and discrimination if she is unmarried and pregnant – an attitude that is shared across indigenous communities in Thailand.

Indigenous women in Thailand call for healthcare, which is culturally respectful and available in their mother tongue. Through the provision of indigenous translators, particularly in areas which have high populations of indigenous communities, the government can dramatically improve the situation of indigenous women and their access to appropriate health, including SRH.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

In 2015, the Committee on Economic, Social and Cultural Rights concluded its consideration on the periodic reports of Thailand on the implementation of the International Covenant on Economic, Social and Cultural Rights. *“Experts expressed concern about the disproportionate poverty and economic marginalization of hill tribes and ethnic minorities in north and north-eastern province. They noted that 90 per cent of the land was in the hands of some 50 private or legal persons...”*²³ In the absence of formal recognition of IPs in the Constitution, and in light of the consequences of that neglect, IPs, particular IW are lagging behind the mainstream society economically and socially speaking.

Meanwhile, the poverty measured in the northern provinces, fails to acknowledge the customary ownership of the land or the estimated 100 000 stateless IPs. Thus it is impossible to get a clear vision of the economic realities of indigenous women in this region, or the remote islands in the south of Thailand. What we do know is that given indigenous women's barriers in accessing education, inability to access the justice system and high prevalence of early marriage, the economic disempowerment of indigenous women is higher than their mainstream counterparts and of the indigenous men.

The economic and social situations of IW in Thailand is closely tied to their relationship with the land, their rights to land and the status of natural resources management in their communities. Therefore, the situation relating to Article 13 of the CEDAW, will be further discussed under the next thematic area (B3).

ARTICLE 16: MARRIAGE AND FAMILY LIFE

Under the customary laws of some indigenous communities in Thailand, women do not enjoy equal rights as men. For example, within the Akha community women are restricted from becoming village leaders. In the Hmong community, women are not welcomed back into the familial home in the case that she is widowed. In the Karen community, the sanctity of marriage is upheld even when the marriage is violent. Many IW who attended the preparatory consultation reported that a widowed woman is considered a burden on the community and she will often face immense pressure to remarry as it is thought that she cannot take care of herself. When a woman becomes pregnant outside of marriage and the father does not wish to be involved, the indigenous woman is the one who will face the stigma and the burden of raising the child alone. Sometimes, women in this position commit suicide rather than facing the ongoing pressure from the community.

Whether these practices are enforced as customary law or are deeply ingrained traditional attitudes which reinforce gender-based discrimination, Thailand's own view on the traditional family

constitution does nothing to reduce such inequality. For example, policies such as the Criminal Law Article 277 and the drafting of the Welfare Protection Bill (referred to earlier in Section A5) perpetuate the idea that marriage between a male and a female can override domestic and sexual abuse, drug and alcohol abuse and economic violence. Furthermore, lack of knowledge around existing laws, frequently-changing policies, the Constitution not being available in local languages and existing stigma when accessing social services all intersect to prevent IW from seeking help outside of the community in these situations.

B3. INDIGENOUS WOMEN'S LAND RIGHTS AND NATURAL RESOURCE MANAGEMENT

ARTICLE 14: RURAL WOMEN

The previous sections have focussed on the situation of IW in regards to their basic social services, mostly stemming from their lack of access to citizenship but also relating back to stigma from mainstream society, lack of culturally appropriate education and isolation from state policies. During the National Consultation of Indigenous Women, held as preparation for the drafting of this report, the IW participants highlighted two main issues at the root of their discrimination: 1) The aforementioned lack of access to social services and 2) Land Rights and Natural Resource Management. These two categories, and everything reported within them regularly intersect to create a unique set of obstacles for indigenous women in Thailand.

The UN Special Rapporteur on Indigenous Peoples has previously discussed the unique connections between the historical experiences of land confiscation and the realities of indigenous women and girls and their rights. *“It is vital to consider the unique historical experiences of indigenous communities. Those have included gross and sustained assaults on the cultural integrity of indigenous peoples; denigration and non-recognition of customary laws and governance systems; failure to develop frameworks that allow indigenous peoples appropriate levels of self-governance; and practices that strip indigenous peoples of autonomy over land and natural resources.”*²⁴

At the local level, respondents of AIPP's trafficking of indigenous women and girls in the Mekong research revealed that reliance of their economy on agricultural industries and the degradation of the environment and climate change are linked to rising incidents of gender-based violence (GBV). One Karen respondent, noted that there have recently been more violations at the household level, as a result of men, after working extended hours to earn extra income, drinking alcohol, going home and fighting with their wives. GBV often goes unpunished by community leaders because of the need for men to continue working the land and she noted that *“Even with international law and the rights of women, it is difficult at the community level because in agriculture, we need manpower to do this kind of work.”*

For IPs, environmental degradation and the erosion of land rights directly intersect with experiences of migration and trafficking. IPs, who maintain an intrinsic relationship with the land, rely heavily on agricultural production as their primary means of income-generation. However, state-sanctioned erosion of land rights, compounded by climate change, threatens this relationship and creates vulnerabilities within indigenous communities. As reported by OHCHR in 2015, experts were also worried about the negative impact the National Council for Peace and Order's policies on forest conservation on rural communities, including through forced evictions and destruction of food crops.²⁵

IW in Thailand are directly affected by the following policies, several of which were flagged in 2016 by NIPT in submission to Thailand's Universal Periodic Review (UPR);

- The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds does not provide legal recognition of traditional land tenure and resource management systems that have long been maintained by IPs.

- Cabinet Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand also do not fully meet the aspirations of the IPs in those groups.
- NCPO Order No. 64/2014 and the subsequent Forestry Master Plan have resulted in judicial/extra-judicial actions against members of indigenous communities within protected forests. By the end of 2015, this order had affected nearly 1800 families in the north and northeast of Thailand. Despite their being a stipulation in order 66/2014 that poor people and those living in protected areas prior to the announcement of the order will not be affected by the policy; three indigenous Karen families had their lands reclaimed by the Royal Forest Department in Thung Pa Ka village, Mae Hong Son Province. Following that, 39 Karen IPs were arrested for cutting down trees in the surrounding forest to use the timber to build their homes²⁶.
- The planned policy for Special Economic Zone in Mae Sot, which will directly impact the Karen people living within it, as it invites private companies to come in and use the land traditionally belonging to the Karen community.
- The Thai Government's policy for halting slash and burning practices for a 60-day period during Summer, as a means to reduce excessive smoke levels is directly harming IW who practice rotational farming and who are then forced to use herbicides to compensate for the insufficient time left to complete the technique effectively. This policy is resulting in food insecurity which affects the indigenous women primarily as the providers and caretakers of the community.

IW of the preparatory National Consultation flagged a number of concerns in relation to Government policies regarding their land rights and natural resource management; all of which could be significantly reduced by providing legal recognition of Indigenous Peoples in the Constitution and the collective land titling of IPs in their traditional lands and territories. At the local level, IW are concerned by maintaining their traditional role of ensuring the food security of their families as State sponsored projects encourage cash crops and chemicals; private companies (such as CP) deplete natural resources, including fish stocks; and water shortages in places like Chiang Dao and the remote island communities affects sanitation and irrigation. For IW, these challenges increase their daily burdens to provide for their families and directly lead to migration and GBV at the household level.

Indigenous women participants of the Consultation also raised concern over large-scale projects, such as Kaeng Suea Ten Dam in the Phi Pan Nam Range in Phrae Province and the building of Nam Huyi Nok Khim dam in Phaka sub-district, Nan Province which is being planned without adequate data from the IPs of the upland areas and in spite of the fact that it will leave these communities without water and vulnerable to mass flooding as it lies of an earthquake fault-line. In Phan Nga Province in the south, IW are concerned about the announcement of more national park designations and plans to build an airport, which will require a 200 rai of land.

PART C: VIOLENCE AGAINST WOMEN

C1. GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN

The nature of violence against indigenous women (VAIW) in Thailand, and Asia in general, takes on a more specific form than the violence experienced by women in general. IW in Thailand experience violence against their collective, social and economic rights as Indigenous Peoples, and this violence has very specific impacts on indigenous women. In addition, disturbing the relationship between IW and their lands and resources – as is happening in Thailand through various policies and legislative directives – plays a large role in how they will be able to address said violence.

As articulated by the International Indigenous Women's Federation (FIMI), VAIW is “*shaped not only by gender discrimination within Indigenous and non-Indigenous arenas, but by a context of ongoing colonization and militarism; racism and social exclusion; and poverty-inducing economic and ‘development’ policies*”.²⁷ Due to the complexity of this nature of violence, to address VAIW requires a holistic approach which takes into consideration the multiple human rights frameworks that ensure the rights of IW; including CEDAW and collective rights as enshrined in the UNDRIP.

The root, overarching and intersecting causes of violence facing IW in Thailand are:

Land Acquisition and Alienation, and Loss of Natural Resources: When IP lose their access to land, whether that be through statutory policies or as a result of state-sanctioned private ownership agreements, IW are more vulnerable to different forms of violence, including domestic violence, economic violence and trafficking. In most indigenous communities in Thailand, women are the main food producers, knowledge holders and transmitters of traditional knowledge. When their relationship to the land is threatened, so are these traditional roles, leading to the IW having to engage in other forms of income generation including low wage labour and high-risk jobs. In addition, losing their roles in the household may often lead to increases in domestic violence, economic violence and/or sexual violence as families struggle to make ends meet.

Exclusion from Social Services: The denial of citizenship rights and the right to permanent ownership of land are at the forefront of IW's exclusion from basic social services. These two fundamental rights trickle down and effect all experiences of IW in Thailand, including education, labour, health care and social benefits. This kind of ‘structural’ violence perpetuates the collective experience of poverty facing indigenous communities in Thailand and make it near impossible to break the cycle of violence. As with the loss of land and land alienation, the consequences of this deprivation of social services is leading to forced labour and human trafficking, lack of basic health care including SRH and family planning and ongoing stigma from mainstream society and from within the indigenous communities themselves.

Violence in the Name of Tradition: Perhaps the most complex form of violence enacted on IW in Thailand and which requires specific address is violence in the name of tradition. In addition to discrimination from the external society, traditional and customary practices also routinely discriminate against IW in Thailand's indigenous communities. However, long histories of exclusion, militarisation and colonisation and a general distrust of government policies means that any state-run intervention on harmful traditional practices must be done with very specific, culturally sensitivity. Limiting access to education, particularly MTB-MLE, serves as a way of reinforcing these traditional practices.

CONCLUSION AND RECOMMENDATIONS

While it is clear that the Government of Thailand is making clear steps towards reducing discrimination against women in the country, these steps are not aligned with the indigenous women who comprise at least 0.5% of the population. Thus, IWNT, on behalf of the indigenous women of Thailand, urge the CEDAW Committee to make the following recommendations when reviewing the current status of Thailand's implementation of the Convention.

1. Legal recognition of Indigenous Peoples and their rights as embodied in international human rights instruments particularly the UNDRIP especially their collective right to their lands, territories and resources
2. Ensure the right to citizenship of Indigenous Peoples, including their equal access to basic social services such as education, health and employment. Ensure indigenous women's right to a nationality by creating a pathway for IW of Thailand to secure their Thai citizenship, taking into account the aforementioned limitations which currently restrict them from doing so.
3. Recognize that human trafficking is a systemic problem resulting from other human rights violations inflicted on Indigenous Peoples by national governments. In this context, legal and policy reforms as well as enforcement of laws and policies on the rights of women and children should be implemented.
4. Focus on prevention strategies rather than palliative means of combating trafficking. Governments need to invest their resources to prevent trafficking by addressing the causes and factors of discrimination of indigenous women and girls, while adopting and enforcing a zero tolerance policy on police and other officials who facilitate the exploitation of migrant and indigenous women and children, both within the country and across its borders.
5. Implement a targeted and appropriate education programme for all indigenous children, including MTB-MLE from Primary school.
6. For formal education in Thailand, there must be an educational structure specifically designed for ethnic and indigenous communities with decentralization of management and decision making with regard to the recruitment of personnel for the Office of Primary Education Service Area. Special consideration should be given to selecting and recruiting teachers and educational personnel who are indigenous and volunteer-minded, with cultural sensitivity.
7. Ensure establishment of a specific mechanism for full and effective participation of indigenous women in the ongoing country reforms and constitution drafting process, including consideration to their proposals for a separate legislation for promotion of the rights of Indigenous Peoples
8. Strengthen the office of the national ombudsman for Indigenous Peoples, in order to make sure that Indigenous Peoples feel there is a safe channel of communication between Indigenous Peoples and government officials in which they can air grievances.
9. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Thailand.
10. Ensure Indigenous Peoples' lands are protected and Indigenous communities are adequately consulted in all matters affecting them, including and specifically indigenous women, and especially regarding development projects.
11. Evaluate and align all legislation and government programs with the CEDAW and the UNDRIP.

ANNEX**ANNEX 1: PARTICIPANT LIST OF NATIONAL CONSULTATION**

List of participants
National consultation on CEDAW alternative report
1-2 April 2017 at Holiday Garden Hotel, Chiang Mai

No	Name-Surname	Indigenous group
1	Wanitchaya Kanthayuang	Thaiyai
2	Nan Kham Sein (Kham Jing)	Thaiyai
3	Noraeri Thungmueangthong	Karen
4	Amporn Phraiphanasamphun	Karen
5	Duangduen Sanyakit	Thai
6	Jitti Pramongkit	Urak Lawoy
7	Ganda Pramongkit	Morkan
8	Orawan Hanthale	Morklan
9	Darunee	Karen
10	Kham Nainuan	Dara ang
11	Apinya Danwithayakul	Cambodian Thai
12	Rinrada Suta	Thin
13	Ladamanee Suta	Thin
14	Angkhana Neelapaijit	Muslim Thai
15	Kanlaya Chularattakorn	Hmong
16	Tanya Lutvey	Australia: non-IP
17	Chanda Thapa	Nepal: Magar
18	Kamonphan Saelee	Lisu
19	Pirawan Wongnitisathaporn	Karen
20	Ong Lungnor	Dara ang
21	Supunsri	Hmong
22	Natrada	Hmong
23	Buder Bunyuenkul	Akha
24	busaba Laecher	Akha
25	Withawat Thepsong	Monni
26	Phornwipha Laokho	Lisu
27	Ameema Laokho	Lisu
28	Pranee Kheereewiriya	Hmong

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