

THAILAND: NGO Submission on the List of Themes concerning Thailand's Combined Fourth to Eighth Periodic Reports

Submitted by
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11 May 2020

The Cross-Cultural Foundation (CrCF) is a Bangkok-based non-governmental organization that provides legal assistance for victims of state violence and advocates for the reform of the justice system in Thailand. CrCF places an emphasis on helping marginalized groups, especially ethnic and indigenous minorities residing near Thai borders and conflict areas. In the context of the southern border provinces, CrCF has been working to promote human rights and peace in the region with a network of civil society groups including Duayjai Group, Patani Human Rights Organization Network (HAP) and JASAD Group. Our work with them includes documenting human rights abuses, capacity-building programs for staffs and affected communities, psychosocial services for victims of human rights abuses, and trial observations.

Network of Indigenous Peoples in Thailand (NIPT), is based in Chiangmai Province. CIPT is a network of IP populations in Thailand that assists IP communities in 1) Documenting the human rights situation of IP communities and advocating for change 2) Creating a safe and fair environment for IP communities and individuals to participate in self-advocacy; 3) Increasing public awareness of IPs within the general public and relevant agencies.

Introduction

1. The CrCF has previously engaged with the UN Committee on the Elimination of Racial Discrimination as it led the Coalition on Racial Discrimination Watch, which consisted of 18 civil society groups across Thailand. On 9 August, 2012, this Coalition submitted an alternative shadow report concerning Thailand's Combined First to Third Periodic Reports for the Committee's review . That submission was by the Cross-Cultural Foundation (CrCF), and supported by Council of Indigenous People in Thailand (CIPT), Duayjai Group, HAP-Patani Human Rights Network, JASAD, and other contributing individuals.
2. Since then, there have been several concerning developments that CrCF wishes to bring to the attention of the Committee. CrCF organized the Workshop on Engaging with the UN Committee on the Elimination of Racial Discrimination for Civil Society Organizations in Thailand during 24 and 25 February 2020 to prepare our local CSO partners in documenting racial discrimination and writing the shadow report. There were 25 participants from IPs communities and the border provinces in the southern Thailand. We wish to update their human rights situations and to achieve collective work plan on submitting a shadow report to the UN Committee on the Elimination of Racial Discrimination for the review in August 2020. The CrCF, therefore, welcomes the opportunity to make this submission of the List of Themes concerning Thailand's Combined Fourth to Eighth Periodic Reports submitted by the Royal Thai Government (RTG) as follows.

Legal framework and policies to eliminate racial discrimination

3. The Constitution of the Kingdom of Thailand (2017 Constitution) guarantees the principles of equality before the law and non-discrimination.¹ However, Thailand has not yet enacted any specific law to eliminate racial discrimination.
4. Despite these well-documented facts, the Royal Thai Government (RTG) claimed in its Combined Fourth to Eighth Periodic Reports that there are no national or local laws that have a discriminatory impact on any particular ethnic groups.² This knowledge gap could be considered a result of the lack of disaggregated data by ethnicity for legislative policy affects, which allow the RTG to identify patterns of discrimination in its national and local laws.
5. In this regard, the civil society actors have proposed a non-discrimination bill to the parliament called the Elimination of Discrimination against Person Act B.E.... (CSO version).³ The CSO bill has the objective to eliminate all forms of discrimination against persons, including both direct and indirect discrimination and harassment. The CSO bill also proposes to create an institution that will systematically monitor and collect data pertaining to racial discrimination.

Prevention and Suppression of Torture and Enforced Disappearance Bill

6. The RTG has been trying to adopt domestic legislation criminalizing torture and enforced disappearance. The bill was once adopted in principle by the National Legislative Assembly of Thailand (NLA) in December, 2018. However, the NLA's consideration progress surpassed deadlines and the bill subsequently was taken back from parliament.
7. During review, the NLA removed the infliction of pain and suffering for the purpose of discrimination from the definition of torture in the bill. The CrCF is concerned this removal overlooks the rampant racialized state violence against ethnic and indigenous minorities. It also poses a significant challenge to the prosecution of officials who committed torture or enforced disappearances, including extrajudicial killings. Such discriminatory actions are particularly used against Malay Muslims detained under counter insurgency laws and policies, and against indigenous populations in the border-mountainous area under war on drug laws and policies.
8. While the CrCF wants to pass the Bill on the Prevention and Suppression of Torture and Enforced Disappearances, the CrCF is also concerned that the government's edits to the bill may not yet fully comply with international human rights obligations. Therefore, the CrCF, together with 12 partner human rights organizations, developed the CSO version to supplement the government bill, including the addition of a clause in Section 4 outlawing any torture or enforced disappearances based on discrimination of any kind. The CSO version of the bill was proposed to the Standing Committee on Legal Affairs, Justice, and Human Rights, and interested political parties, in Feb 2020⁴.

¹ Section 27 of 2017 Constitution guarantees that all persons are equal before the law and prohibits discrimination against a person on the differences grounds, available at http://www.constitutionalcourt.or.th/occ_en/download/article_20170410173022.pdf

² CERD/C/THA/4-8, para 17

³ Bangkokbiznews, Submitted to the 'President of Parliamentary' a proposal on a draft Act on Elimination of Discrimination against Person B.E..., dated 12 November 2019, available at <https://www.bangkokbiznews.com/news/detail/854227> (Only in Thai)

⁴ Draft prevention and suppression of torture and enforced disappearance, Nov 2029 available at <https://crcthailand.org/2020/05/04/translation-draft-prevention-and-suppression-of-torture-and-enforced-disappearance-act-b-e-people-version/> see Section 4: In this Act;

"Torture" means severe pain or suffering, whether physical or mental inflicted by any act of the public official, including or for any following purposes:
(1) obtaining information or a confession from a person or a third person;

(2) punishing a person for an act that person or a third person has committed or is suspected of having committed;

Special counterinsurgency legislations and their impacts on Malay Muslims population

9. In the southern border provinces (SBPs), the RTG enforces special counterinsurgency legislation, including the Martial Law Act B.E. 2457 (1914) (ML)⁵ and the Emergency Decree on Public Administration in State of Emergency B.E. 2548 (2005) (ED).⁶ The ML and ED give special powers for counterinsurgency operations, including the cordon and search, arrest, and detention of suspected insurgents for interrogation inside military facilities without criminal charges. The CrCF has concerns over the legality and justification of the counterinsurgency operation against the Malay Muslims.
10. The RTG stated in its report that “racial profiling is not practiced.”⁷ However, it remains unclear which supporting evidence or methodology was used to assess this situation. The CrCF, on the other hand, has documented the widespread perception among Malay Muslims that they are disproportionately subjected to stops at military checkpoints and house searches without any acts of suspicious behavior.
11. In 2015, the UN Committee on the Elimination of Racial Discrimination found that DNA collection dragnets amount to racial profiling because the officials presume that Malay Muslims are automatically suspected insurgents due to their ethnicity. However, the Thai security forces continue to practice DNA collection in Malay Muslim communities, allegedly for securing a database that would help them convict suspected insurgents more effectively. In 2019, at least 139 cases were reported to, and verified by, the CrCF.⁸ Moreover, in April 2019, approximately 20,000 men in SBPs where the population majority is Malay Muslims were subjected to DNA collection during military conscription without prior and informed consent. The nation wide military conscription in other part of Thailand did not include DNA collection.⁹
12. CrCF and its partners in the Southern border provinces¹⁰ are concerned the use of facial-recognition technology in Malay Muslim dominated areas violates people’s privacy and freedom. Racial profiling may lead to the arrest and prosecution of the innocent especially in the context of counter insurgency laws; Martial law and Emergency Decree.

The situation of Thai women of Malay ethnic origin in the SBPs

13. Malay Muslim women in the SBPs face increased threat of discrimination and violence due to their religious affiliation, ethnicity, and gender within their community and wider society. Deep South Watch, a local documentation center, reported that 70 women were either injured or killed among the 423 reported casualties in 2019. Women, whose male heads of household were killed by acts of violence or a clash between security forces and insurgents, bear the burden of providing for their families despite their limited access to education and employment.
14. Women are also targeted by the security forces who increasingly detain wives of suspected insurgents and subject them to psychological torture to elicit confessions or military intelligence.

(3) intimidating or coercing a person or a third person; or

(4) for any reason based on discrimination of any kind.

⁵ The ML, available at <https://www.icj.org/se-asia-security-law/martial-law-1914/>

⁶ The ED, available at <https://www.icj.org/se-asia-security-law/emergency-decree-on-public-administration-in-emergency-situation/>

⁷ CERD/C/THA/4-8, para 61

⁸ <https://wordpress.com/post/crcfthailand.org/13804>

⁹ CrCF Statement: Stop collecting and destroy DNA samples collected from those registered for military conscription in southern border provinces <https://bit.ly/2WFPeCq>

¹⁰ <https://thethaiger.com/news/south/facial-recognition-security-push-in-thailands-south> and

<https://wordpress.com/post/crcfthailand.org/13148>

In 2019, at least eight women were detained inside military inquiry units under special counterinsurgency laws although they were not actual suspects. Only one of them was charged after being detained under Article 168 of the Criminal Code (aiding and abetting) for allegedly giving lodging to suspected insurgents. Wives and children of suspected insurgents were also forced to undergo DNA collection, usually during search-and-seizure operations. All of them were asked to sign a consent form after the test but reported that the consent was not given prior, informed, or given by free will.

15. In their own Malay Muslim community, they also face domestic violence, patriarchal violence, and socioeconomic barriers justified by their religion and culture. The Narathiwat Islamic Council's Women Empowerment and Counselling Center received 760 complaints of domestic violence from Malay Muslim women from January 2017 to October 2019. Still, many women lack knowledge about their rights and fear stigmatization from their conservative communities should they speak out about domestic violence in their own families.
16. Lesbians and transgender women suffer from even more severe marginalization. In 2017, a football club that provided a safe space for local women and LGBTQ+ to express their sexual orientation and gender identity were harassed and received threats from Islamic leaders who accused them of 'spreading homosexuality' in Malay Muslim communities.

Ethic groups living in forests/national parks/reserved area

17. The CrCF and partner organizations have concerns pertaining to the large number of indigenous peoples that have been charged for allegedly encroaching on forest reserves or using national resources in the areas. The RTG's forest reclamation policy has resulted in forced evictions and land confiscation measures.¹¹ It was reported that in the first half of 2019, more than 1,830 forest encroachment cases were filed against impoverished people under the forest reclamation policy.¹²
18. Since 2014, the Thailand's National Council for Peace and Order (NCPO) adopted several executive orders, laws, and policies that have discriminatory impacts on indigenous populations in northern and western border provinces. The CrCF found that the NCPO used policy to forcefully evict indigenous peoples and impoverished forest residents from their lands. Many indigenous peoples are subject to lawsuits for charges of forest encroachment. Lacking knowledge about the law and not fluent in Thai, they often fail to defend themselves in court and end up disproportionately incarcerated. In response, over the past six years, CrCF has been working with our partners in providing legal assistance for affected indigenous persons. The CrCF has also been empowering indigenous-led CSOs to advocate for democratic natural resource management with relevant government authorities. In 2020, the new National Park Act will come into effect. The said law will further increase the vulnerability of indigenous people because the power to allow them to stay in their ancestral lands will solely rest with the authorities. IP communities who are living in National Parks will be further at risk of losing their rights to the land and their means of maintaining their traditional livelihood.

¹¹ As a subsequence of the laws and executive orders on forest and environmental conservation, including the National Council for Peace and Order (NCPO) No. 64/2014 and 66/2014, and the 20 years National Action Plan as approved by the NLA.

¹² The Nation, New government urged to revoke forest reclamation policy, work with local forest communities, dated 9 July 2019, available at https://www.nationthailand.com/news/30372624?fbclid=IwAR1A_yRs0QY2dcDhrcmiCmSxmMJcfNLIpsjCWayb-Ho58cw7y0cfAHnmaMw

Access to citizenship and public services

19. The CrCF and its partner organizations are concerned over the challenges posed to stateless individuals in accessing Thai citizenship or registration status, especially for children. Stateless children, or those with no registration status, are able to study in the public-school system, totaling 90,640 persons,¹³ but only 2,789 children have access to basic healthcare, while the remainder is still pending.¹⁴
20. We are also concerned about IP populations that have not obtained full citizenship, such as the peoples with ID number “0” or with 0-xxxx-89xxx-xx-x. There are at least 152,869 applications still pending due to the long and complex citizenship process. Without full citizenship, some IPs faces exclusion from public services, including universal health care and higher education.
21. The Moken, known as “sea gypsies,” are seafaring indigenous people living along the Thailand-Myanmar marine border in the Andaman Sea.¹⁵ Historically, they had a semi-nomadic hunter-gatherer lifestyle, migrating from place to place, living on the sea in a traditional wooden boat called kabang while subsisting on artisanal fishing. During the monsoon season (May- October), they would move back to the shore and live in a temporary stilt house. However, after the emergence of modern nation-states and demarcation of national boundaries, the Moken were subjected to strict regulations under both the Thai and Myanmar governments. Their lifestyle completely altered. Many are still not able to obtain full Thai citizenship even though some recent laws and regulation provide more accessible verification process. Access to health care and full citizenship is still a major concern for this group.

Drug suppression policy

22. The CrCF and its partner organizations are concerned about the safety of Indigenous peoples in Thailand who have historically been stereotyped as drug smugglers, especially in the eyes of law enforcement officers. The CrCF has been closely monitoring two cases concerning indigenous Lisu and Lahu individuals who were shot dead at military checkpoints. In both cases, the perpetrators argued that the indigenous people owned illegal drugs and attempted to resist arrest.

The protection of human right defenders

23. The CrCF and its partner organizations have concerns about the issue of judicial harassment or the Strategic Lawsuit against Public Participation (SLAPP). The current Criminal Code, which contains offences on defamation and libel, poses high risks to human right defenders. These defenders may be sued for their peaceful actions to protect the rights of ethnic and indigenous minorities.
24. The concerns also include the Information Operation (IO), which indirectly received funds from the government. An example is pulony.blogspot.com. That website published information portraying human rights defenders, academics and activists as deforesters, drug smugglers, or threats to national security.

¹³ Information received from the Ministry of Education in 2016

¹⁴ The Ministry of Public Health, the Ministry of Interior and the National Security Council are responsible for collecting information on the stateless children and propose the Cabinet for an approval.

¹⁵ <https://wordpress.com/post/crcfthailand.org/12837>

Access to remedy and reparation

25. The CrCF and its partner organizations are concerned over the inability of civilians and NGOs to access remedy and reparations, including the following cases.

Porlajee Rakchongcharoen

26. Mr. Porlajee Rakchongcharoen or “Billy” was a leading community rights activist in the indigenous Karen community in Kaeng Krachan Forest Complex (KKFC). He disappeared on 17 April, 2014, after he was arrested and held in the custody of national park officials for allegedly collecting wild honey in the park. Before his disappearance, Billy organized seminars about Karen community rights and assisted lawyers in filing a lawsuit against the park rangers who burned down his village.
27. On 3 September 2019, the Ministry of Justice’s Department of Special Investigation (DSI) announced that it found bone fragments inside an oil tank submerged in a creek inside KKFC. They determined these bone fragments likely belonged to Billy. The DSI pressed charges of premeditated murder and concealment of evidence against five national park officials, including the park chief Mr. Chaiwat Limlikit-aksorn. On 24 January 2020, public prosecutors dropped the murder charges against the five accused, who now face only the charge of malfeasance under Article 157 of the Criminal Code for failing to hand over the Karen activist to the police after he was initially arrested.

Abe Saemu and Chaiyaphum Pasae

28. Mr. Abe Sae-mu, a 32-year-old indigenous Lisu man, and Mr. Chaiyaphum Pasae, a 17-year-old indigenous Lahu human rights defender, were shot dead at the Rin Luang military checkpoint in Chiang Dao District of Chiang Mai Province on 15 February 2017 and 17 March 2017, respectively. The military officers who killed them claimed that they were acting in self-defense, alleging that the IPs owned illegal drugs and resisted arrest. The families of Mr. Chaiyaphum and Mr. Abe have been struggling to access justice.
29. The perpetrators in both cases have not been brought into a criminal justice process as the cases remain pending at the Attorney-General Office. Only the mother of Mr. Abe has received financial compensation from her lawsuit against the Royal Thai Army in the Civil Court while the trial for Mr. Chaiyaphum’s family has been subject to undue delay for more than three years. According to the information received, the Third Region Army revealed that a CCTV camera captured the shooting of Mr. Chaiyaphum. However, the hard disk drive containing the footage was ‘lost’ when the army supposedly handed it to the police investigating this case. This ineffective management of the chain of custody strengthens the pervading impunity for state crimes against indigenous persons and poses a significant challenge for Mr. Chaiyaphum’s family to access justice.

Masukri Salae and Abdullah Isomuso

30. According to the Combined Fourth to Eighth Periodic Reports, on 23 May 2017 the government established the National Committee for Managing Cases Relating to Torture and Enforced Disappearance to address allegations of torture and enforced disappearances. However, as of the date of the submission, there has been no public report on the progress in investigating cases in the SBPs falling under the remit of the Committee. In 2020, the two major allegations of torture against Malay Muslim detainees held at Ingkayuthaborihan Military Camp- Mr. Masukri Salae and Mr. Abdullah Isomuso- remain uninvestigated and no perpetrators have been brought to justice.

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