



THAILAND

Joint Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/THA/Q/2)

For the Review of the Second Periodic Report of Thailand
(CCPR/C/THA/2)

At the 119th session of the Human Rights Committee
(Geneva – March 2017)

Submitting organizations:





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Asia Indigenous Peoples Pact
108, Moo 5, T. Sanpranate,
A. Sansai, Chiang Mai, 50210 Thailand
Email: aippmail@aippnet.org
Phone: +66 (0)53 380 168
Fax: +66 (0)53 380752
Web: <http://www.aippnet.org>



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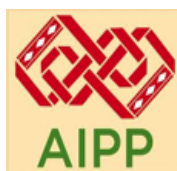
I. Introduction

a. Joining organisations

This joint report is prepared by the Asia Indigenous Peoples Pact (AIPP) and the Network of Indigenous Peoples in Thailand (NIPT).



Indigenous peoples in Thailand have joined together as the Network of Indigenous Peoples in Thailand (NIPT) to organize campaign activities calling for their acceptance by the state and public, as well as recognition of their rights since the year 2007. Central to this has been the annual celebration of the indigenous peoples day in Thailand and a forum for the exchange and mutual learning among indigenous people, state authorities, academics, social developers, and interested and responsible parties.



Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements. AIPP is committed to the cause of promoting and defending indigenous peoples' rights and human rights and articulating issues of relevance to indigenous peoples. Based in Chiang Mai, Thailand, AIPP currently has 47 member organizations from 14 countries in Asia. It has Special Consultative status with the UN Economic and Social Council (ECOSOC).

b. Methodology

The joint report is prepared based on the information collected through the Indigenous Peoples Human Rights Defenders (IPHRDs) in Thailand, which comprise of indigenous communities' rights activists, advocates and leaders. Various indigenous peoples organizations associated in the NIPT support the works of the IPHRDs. The report is compiled through their inputs and analysis of Thailand's State Report and Reply to the List of Issues undertaken by the joining organizations, mainly for the Issues #8, #11, #16 and #28.

c. Contact details

For Asia Indigenous Peoples Pact (AIPP)

Prabindra Shakya

Human Rights Campaign and Policy Advocacy Programme Coordinator

prabin@aippnet.org, shakya.prbn@gmail.com

For Network of Indigenous Peoples in Thailand (NIPT)

Kittisak Rattanakrajangsri

kittisak.rattanakrajangsri@gmail.com

II. Civil Society Replies to the Issues identified in the LOI

a. Violence against women (arts. 3 and 7)

Issue 8: *In the light of the Committee's previous recommendations (see CCPR/CO/84/THA, para. 12), please provide information on the practical implementation and impact of the Domestic Violence Victim Protection Act and, in particular, on the possibility of reconciliation, withdrawal of complaints and possible charges. Please clarify if marital rape is considered a crime under the provisions of the law. Please provide statistical information on the number of complaints filed concerning all forms of violence against women and the number of convictions handed down, including the sentences imposed and the compensation awarded to victims, during the period under review. Please indicate if the one-stop service crisis centres are provided with sufficient financial resources to perform their functions.*

Reply / Comments from Civil Society

AIPP and NIPT would like to draw the attention of the UN Human Rights Committee on the issue of violence against indigenous women, which has not been addressed in the reply to the LOIs provided by the Royal Thai Governmentⁱ, due to the lack of constitutional and legal recognition of Indigenous Peoples in Thailand and the lack of official disaggregated data concerning indigenous women victims of violence.

Indigenous Women lacking protection under the Gender Equality Act 2015

1. The Gender Equality Act B.E. 2558 (2015) prevents from discrimination and violence based on gender, but does not protect indigenous women and does not take into account their specific needs. 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. The roles women are expected to play in their communities provide them with little, if any, space for autonomy, decision making and participation in the public sphere. Discrimination based on gender and the resulting marginalization, is not only another obstacle for indigenous women to have to deal with, it has the effect of intensifying the multiple layers of marginalization (social, political, economic, cultural, linguistic and geographic) already experienced by indigenous women.ⁱⁱ Further, due to their lack of legal recognition and citizenship, indigenous women are at high risk of becoming victims of abuse, violence and human trafficking. Indigenous and refugee women, women victims of human trafficking, and women human rights defenders facing discrimination, violence and threats are not specifically protected under the Gender Equality Act B.E 2558 (2015). The Gender Equality Act should provide for a greater attention to the needs of marginalized women and indigenous women by ensuring their full protection from discrimination and violence, without any exception.

Section 17, paragraph 2 of the Gender Equality Act 2015 in contradiction with the ICCPR: lawful discrimination for natural security and religious reasons

2. The section 17, paragraph 2 of the Gender Equality Act permits exceptions on the basis of national security and religion, allowing for lawful discrimination. The interpretation of the exceptions presented in section 17 paragraph 2 is under the discretion of the National Committee on Gender Equality Group, comprised of representatives from various ministries, external qualified persons, as well as experienced individuals from private organizations. Women's rights groups have expressed

concerns that these exceptions allowing for discrimination against women for national security reasons would put marginalized women at greater risk of abuses and violence, especially women lacking legal recognition and citizenship, such as indigenous women. The Gender Equality Act B.E 2558 (2015) could be seen as a loophole to justify discrimination and violence against women, in particular marginalized women and indigenous women.ⁱⁱⁱ Therefore, the exemption under section 17 paragraph 2 of the Gender Equality Act B.E 2558 (2015) is a main challenge to the interpretation of the law as it contradicts human rights principles and is not in line with the ICCPR and CEDAW.

Recommendations

The State Party should:

- 1) Ensure the Gender Equality Act 2015 provides full protection from discrimination and violence for indigenous women, with and/or without citizenship, and allows them to access justice and compensation.
- 2) Review the Gender Equality Act 2015 to be in full compliance with the ICCPR as well as with CEDAW and revoke the exemptions in section 17, paragraph 2 allowing for lawful discrimination for national security or religious reasons. This recommendation complies with the 2006 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) to Thailand.
- 3) Conduct the necessary research to provide disaggregated data related to rates of indigenous women victims of domestic violence and develop evidence-based policies responding to indigenous women needs.
- 4) Ensure effective grievance mechanisms that are accessible to indigenous women at the local and national levels, including resolution of all cases of Violence against Women and other human rights violations.

b. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, para. 3; 6 and 7)

Issue 11 (a) & (e): *Please report on measures taken to define and criminalize the offence of torture and enforced disappearance in accordance with international standards. Please also provide information on: (a) Reports of the unlawful use of force and violations of the right to life by State agents, in particular in the form of enforced disappearance, torture and extrajudicial killings, including during the state of emergency in the southern border provinces; (b) Steps taken to establish an independent external monitoring mechanism to investigate allegations of unlawful acts committed by law enforcement officials; (c) Measures taken to conduct a prompt and effective investigation into the case of Kritsuda Khunasen, who was allegedly subjected to enforced detention and torture in May 2014 and was released on 24 June 2014 by the military; (d) Measures taken to ensure that law enforcement officials act in a manner consistent with articles 6 and 7 of the Covenant; and (e) Measures taken to prevent human rights violations committed by State agents, to promptly and impartially investigate such violations, to bring the perpetrators to justice and to provide adequate remedies to victims.*

Reply / Comments from Civil Society

3. Thailand signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in January 2012 but it is yet to ratify the Convention to date. In May 2016, Thailand's Cabinet has approved in principle the draft Act on Prevention and Suppression of Torture and Enforced Disappearances. According to the draft Act, family members of victim of torture or enforced disappearance will be considered as injured party for the purpose of legal proceeding. However, as of today, the draft law has been criticized for not being in line with relevant international standards, and is yet to be enacted.
4. The current lack of legal framework for the act of enforced disappearance results in a failure to prosecute those responsible for enforced disappearance. No legal action can be undertaken to accelerate the process to investigate information and it remains a challenge for victims and their families to access to justice.

11 (a): The case of Porlajee "Billy" Rakchongcharoen: legal proceedings and special investigation^{iv}

5. One of the most recent cases of enforced disappearance is the disappearance of indigenous Karen activist Porlajee Rakchongcharoen "Billy", who was last seen on 17 April 2014 in the custody of Kaeng Krachan National Park officials in Petchaburi province. At the time of his "disappearance", he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011.

Legal proceedings:

6. In April 2014, Billy's wife, Phinnapha Phrueksaphan, filed a habeas corpus petition at the Petchaburi Provincial Court seeking an inquiry into the lawfulness of her husband's detention. In July 2014, following a six-day habeas corpus inquiry, the Court concluded that it could not be established that Billy was still in detention when he had disappeared. Subsequent appeal of this decision to the Appeal Court also failed to shed any light on Billy's fate or whereabouts.
7. Park officials admitted that they had detained Billy for "illegal possession of wild honey" but had released him the same day. In September 2014, local police investigation officers filed malfeasance charges under article 157 of the Penal Code against then head of the Park, Chaiwat Limlikitaksorn and four other park officers for unlawfully detaining Billy. They found no record of Billy's release from custody.
8. In September 2015, the Supreme Court upheld the decisions of the Appeals and Lower Courts dismissing the case against the former chief of the National Park, Chaiwat Limlikhit-aksorn. The Court ruled that there was no credible evidence against Chaiwat and his associates (Supreme Court case No. 7237/2515).

Special Investigation:

9. In August 2015, Phinnapha filed a request with the Department of Special Investigation (DSI) of the Ministry of Justice. The DSI had reportedly collected witness testimonies and taken the Park office vehicles for examination after finding bloodstains on the carpet of one of the cars after Billy's disappearance. The DSI had also put 100,000 Baht as a reward for clues to his disappearance. However, in January 2017, the DSI refused investigation into the disappearance as a special case due to insufficient evidence or witness testimony to prosecute people suspected of involvement in the case.

National Human Rights Commission of Thailand (NHRCT):

10. Similarly, in response to a request from Phinnapha, the National Human Rights Commission of Thailand (NHRCT) held a review progress meeting on the case attended by the concerned officials of the Royal Thai Police, the DSI and the Office of Public Sector Anti-Corruption Commission (PACC) in January 2016. As per the briefing of the meeting, the Police found the testimonies of the Park officials involved in Billy's detention were 'inconsistent'. The Police have also put 100,000 Baht cash reward to persons who can provide useful information on the case. Further, the PACC has gathered witness testimonies on the case after it accepted the case file for consideration and is now investigating the forensic evidence of blood stain in Chaiwat's car. PACC was expected to submit the case file to the prosecutor in March 2016, who will decide whether to file charges of malfeasance in office against the Park officials involved in Billy's detention. However, further information on their investigation is not available. The NHRCT, in the briefing, indicated inadequacy of legal framework for accountability in cases of enforced disappearances in Thailand.

11 (e): The case of Porlajee "Billy" Rakchongcharoen displays Thai authorities' failure to credibly investigate cases of enforced disappearance

11. On the other hand, despite a long list of allegations against Chaiwat for serious abuses and misconduct while he was in charge of the Park, Thailand's Government promoted him to lead Thailand's influential "Tiger Corps" forest and wildlife protection unit in May 2016. At the same time, the Government has proposed listing the Kaeng Krachan Forest Complex as a Natural World Heritage Site, which the Karen communities have opposed with the condition that their land and natural resources rights in the Park should be ensured before such listing. The World Heritage Committee has referred nomination of the Park recommending Thailand to address those concerns.

12. Billy's disappearance in the context of violation of rights of indigenous Karen communities in Kaeng Krachan National Park is only a representative case of such violations whereby Thailand has failed to undertake prompt and impartial investigation to bring perpetrators to justice and provide adequate remedies to victims. Earlier, in September 2011, Billy's associate and another activist **Tassanakamol Aobaom** was also killed, which is believed in relation to his activism. Thailand's State Report and Reply to the LOI does not provide any information on those reports or measures taken to prevent and address them.

Recommendations:

The State Party should:

- 1) Immediately ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and enact the Act on Prevention and Suppression of Torture and Enforced Disappearances after necessary revisions to ensure its compliance with the ICPPED.
- 2) Resume and expedite the investigation, including through the Department of Special Investigation (DSI), into the disappearance of Porlajee Rakchongcharoen "Billy" and other human rights activists or persons and prosecute those responsible for the disappearances.
- 3) Ensure families members of victim of torture or enforced disappearance are considered as injured party for the purpose of legal proceeding and can effectively access justice.
- 4) Open safe channels of communication between the Government authorities and human rights activists and communities facing human rights violations so that they can air grievances without reprisals, and fear thereof.

c. Prohibition of slavery and forced labour (art. 8)

Issue 16: *With reference to the information provided in the State party's report (see CCPR/C/THA/2, paras. 64-65), please provide updated information, disaggregated by age, sex and ethnicity of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences that have been imposed in cases of human trafficking since the State party's initial report was considered. Please provide information on the measures taken to ensure effective implementation of the Act on Human Trafficking Prevention and Suppression (2008), in particular to strengthen and effectively enforce appropriate mechanisms aimed at the prevention and early identification of cases of human trafficking and at referring, assisting and supporting victims of trafficking. Please describe the impact of the Human Trafficking Prevention and Suppression Committee and the Human Trafficking Prevention and Suppression Coordinating and Supervisory Committee.*

Reply / Comments from Civil Society

13. While the submitting organizations note the Royal Thai Government's reply to the LOI stressing on the state's vital role in setting "Zero tolerance for human trafficking" policy, NIPT and AIPP would like to draw the attention of the UN Human Rights Committee on the lack of disaggregated data related to indigenous women and girls victims of human trafficking, as well as their lack of access to justice, compensation and related support mechanisms.^v
14. Thailand remains a "source, transit and destination country" for human trafficking.^{vi} The Thai state is currently on the Tier 3 list within the US State Department's Trafficking in Persons Report, as the national legal framework does not fully comply with the Trafficking Victims Protection Act's minimum standards. Although the US State Department report highlights slight improvements with the implementation of the Act on Human Trafficking Prevention and Suppression, there is a critical need to ensure the full protection of victims of human trafficking in Thailand, which includes mass amounts of Indigenous Peoples from the hill tribes, regardless of their ethnicities, age and sex.^{vii} Indeed, human trafficking victims in Thailand are estimated to be in the tens of thousands^{viii}, with Indigenous Peoples and ethnic minorities making up a disproportionate number of the victims of human trafficking.^{ix}
15. Indigenous Peoples, especially women and girls, are highly marginalized because they have no official citizenship. Reports from UNESCO assert that "*lack of legal status is the single greatest risk factor for trafficking or other exploitation of highlanders.*"^x Due to their lack of legal status, poor Thai language skills and little access to quality education, many are lured into a situation involving indentured servitude and a debt too enormous to pay off.^{xi} Because of their lack of official documentation, they are also less likely to report abuse to the competent authorities and access justice, making them an almost sought-after target.^{xii}

Recommendations

The State Party should:

- 1) Take concrete steps and comprehensive measures to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.
- 2) Ensure law enforcement officials receive proper training in order to protect indigenous women and girls victims of human trafficking and do not arrest them because of their lack of legal status and official documentation.

d. Rights of persons belonging to minorities (art. 27)

Issue 28: *With reference to the Committee's previous recommendations (see CCPR/CO/84/THA, para. 24), please provide information on the measures taken to ensure effective consultation with indigenous peoples in making decisions on matters affecting their rights. Please also describe measures taken to ensure respect for the rights of persons belonging to minorities, including the right to enjoy their own culture, to profess and practice their own religion and to use their own language, in community with other members of their groups.*

Reply / Comments from Civil Society

Indigenous Peoples are not recognized in the Thai Constitution, which is the cornerstone of their marginalization and struggles

16. Thailand voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. However, the Government does not recognize indigenous peoples in its Constitution but only various ethnic groups. According to the Master Plan for Development of Ethnic Groups in Thailand, B.E. 2558- 2560 (2015-2017) of the Ministry of Social Development and Human Security of Thailand, fifty-six ethnic groups are identified with continual manifestation and upholding of traditional practices with their folk wisdoms for generations in sixty-seven provinces, with around 6,100,000 population in total or approximately 9.68 percent of total population in Thailand. These ethnic groups are categorized into four groups upon their residential and arable areas, as: those residing in the highland areas; those dwelling in the plain areas; those locating in the coastal areas; and those found in the forests.^{xiii} Those fishing and hunter-gatherer groups concentrated in three geographic areas of the country – in the south near the Malaysian border, on the Korat plateau along the borders of Laos and Cambodia and in the northwestern highlands, where they are known as “hill tribes” – identify themselves as indigenous peoples.
17. These indigenous peoples have faced discrimination and have unequal access to basic services while government officials have also used the guise of battling the drug trade to continually ostracize them and their traditional lifestyle, as well as an excuse to regularly raid villages and arrest community members.^{xiv} Citizenship and land related rights are major challenges for indigenous peoples which remain unresolved, if not worsened, due to the lack of their effective participation in making decisions that affect them.

Lack of citizenship pushing Indigenous Peoples at the margins of society, making them vulnerable to human rights abuses

18. Many indigenous peoples have been struggling for decades to secure Thai citizenship; this situation pushes them at the margins of society. Indeed, the rights to land, education, and freedom of movement are associated with citizenship.^{xv} There has been an ongoing program to register all people living in remote areas as citizens, who have proof that at least one parent was born in Thailand.^{xvi} However, in rural areas, even though it is believed that at least 50% of people have a legitimate claim for citizenship, proof is very hard to obtain, and many lack the needed paperwork.^{xvii} Indigenous peoples are also facing oppressive government officials, many of whom still view indigenous peoples as foreign and dangerous.^{xviii} It is for these reasons that this operation has slowed, and over 100,000 Indigenous persons are estimated to be without citizenship.^{xix}
19. Resolving the citizenship issue will also help many of the other problems the indigenous people of Thailand are facing. For example, if a person in Thailand lacks citizenship, as stated earlier, freedom

of movement is illegal, and thus, moving to a city -- *which is on the rise in indigenous communities due to forced evictions or natural disasters in their homelands* -- would be considered illegal, and the fear of arrest is constant.^{xx} As indicated under paragraph 15, lack of legal status is another huge contributing factor to the volume of human trafficking that occurs in Thailand, especially in the area of indigenous peoples.

Impossible participation, consultation and consent of indigenous in decision affecting their livelihoods

20. As indigenous peoples are not constitutionally recognized in Thailand, they can only exercise their rights to participation, consultation and provide their Free, Prior and Informed Consent (FPIC) through community rights guaranteed under the 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand. These constitutions provide that communities who have originally gathered as folk or local communities shall have the right to participate in the management, preservation, and utilization of natural resources and the environment of their communities in a balanced and sustainable manner. The law also stipulates that the management of local resources should be fundamentally based on the local religious beliefs, cultures and decent traditions, with the community people's compassion, sharing mutual reliance and assistance.^{xxi} The Royal Thai Government reply to the LOI indicates that the *"draft new Constitution specifically ensures the protection of ethnic groups as Section 70 places duty on the State to promote and protect their rights to culture, traditions and traditional lifestyle. The right of a community to preserve its traditional culture and manage their own natural resources is also guaranteed in the draft Constitution"*.^{xxii}
21. However, in practice, the realities lived by indigenous communities in Thailand are tragic as they are not participating and not consulted for decisions related to their ancestral lands. Indeed, indigenous peoples cannot exercise their community rights guaranteed under the 2007 Constitution, 2014 Interim Constitution and the draft new Constitution because of the lack of legal recognition of their ancestral lands, which are considered State-own lands under two 2014 NCPO orders aiming at stopping deforestation in Thailand (see paragraph 23). This results in the forced eviction of indigenous communities' from their ancestral lands and to the convictions of indigenous peoples resisting evictions.

No legal recognition of Indigenous Peoples' ancestral lands, allowing for their forced eviction and imprisonment

Very slow issuance of land title deeds:

22. The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010 does not provide legal recognition to traditional land tenure and resource management systems by indigenous peoples. It only allows communities to collectively manage and use State-owned land for their living while the State still retains its claim to ownership of these lands. According to the Land Reform Network, more than 400 communities were still waiting to be granted community title deeds, indicating poor implementation of the regulation as of 2012, while only one community land title had been issued. Although the Cabinet Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand have welcomed steps to protect the rights of those indigenous groups, they also do not fully meet the aspirations of indigenous peoples.

Restrictive 2014 NCPO orders affecting the rights of indigenous peoples to live on and manage their ancestral lands:

23. Further, traditional knowledge of indigenous peoples on the use of their lands and resources is also

being challenged with adverse laws introduced shortly after military seizure of power on 24 May 2014. The newly established ruling National Council for Peace and Order (NCPO) launched a series of reforms, including NCPO Order No. 64/2014 (2557) and Order No. 66/2014 (2557) ('Return Forest Policy') in June 2014 and a reforestation 'Master Plan' (forest plan to suppress illegal logging and deforestation) two months later. These policies outline plans to stop deforestation, change the management of the forest plan and protect the forests from harmful forces with the goal of increasing forest cover throughout the country.^{xxiii} Since many of Thailand's indigenous territories are in protected forests, these policies have resulted in judicial action against them and violations of their rights as well as other poor communities living in the forests.^{xxiv}

24. By December 2015, Order No. 64/2014 had affected nearly 1,800 families, mostly in the north and northeast, home to large indigenous and minority populations. There are 681 cases filed against exercise of powers under Order No. 64/2014 towards local and indigenous communities. Among those, litigations on 168 cases involve judicial harassment.

The case of the indigenous Pakayaw Karen families – convicted for encroachment and illegal logging:

25. In July 2014, three indigenous Pakayaw Karen families had their lands reclaimed by the Royal Forest Department in Thung Pa Ka village, northern Mae Hong Son province. The move followed the arrest of 39 Pakayaw Karen at the hands of army for cutting down trees in the surrounding forest as timber to build their homes. They were convicted for encroachment and illegal logging in October 2014 and face imprisonment or fines.^{xxv} Of them, three are currently serving their jail terms of 4-7 years. Other twenty were sentenced for 1-3 years in jail and were bailed out, their bail amounting between 150,000-350,000 Baht. Ten were fined between 10,000-20,000 Baht depending on the volume of timber in their possession. Two died before the verdict. The Department claimed the Karen villagers were cutting down the wood in protected areas for commercial reason. However, the conviction of the 37 persons is in violation of Order No. 66/2014, which states that poor people and those who are living in protected areas prior to the announcement of the Order will not be affected by the policy, and that the authorities will only apply strict measures to prevent further encroachment into protected areas. Despite this order and the fact that the Karen Indigenous peoples mentioned above have been living in the questioned forest areas for long periods of time, they were still subjected to the Return Forest Policy/Order No. 66/2014 resulting in their conviction.

The case of the Lisu communities – confiscated land:

26. In October 2014, two indigenous Lisu communities had their land confiscated by forest officials in collaboration with military officers, who destroyed the communities' agricultural crops. After series of dialogues and negotiations one community received compensation as their land was returned to them, but the other community was allocated small plots of land for each household, which were not sufficient to address their basic needs resulting in further poverty and marginalization.^{xxvi}

The case of the Indigenous Sea Gypsies in the South of Thailand – protecting their ancestral lands over businesses:

27. In the south, indigenous sea gypsies (popularly known as Moken) have long been struggling and resisting eviction from their ancestral territory, occupying highly prized lands in Phuket whose title deeds are owned by several businessmen. In February 2013, a Phuket court ordered seven sea gypsy households to vacate their homes. However, the Department of Special Investigations (DSI) has found that the community has occupied these lands for at least 100 years through DNA analysis of burial grounds, though they lacked any formal title deeds. In November 2014, the Ministry of Justice

recommended the Department of Lands to consider revoking the title deeds of 11 rai of land held by several businessmen where the Moken community lives, while the ownership of the other 10 rai in the same area was still pending investigation. Currently, there are about 1,042 sea gypsies living in about 210 homes in the community, who are poor villagers who mostly work as fishermen.^{xxvii}

28. In early January 2016, sea gypsies living on the Rawai beach in Phuket faced land evictions by real estate developer owning land title deeds over the 33-rai ancestral lands of these communities. On 28 January 2016, Thailand's Deputy Prime Minister ordered authorities to investigate the land title deeds of land developers and determine whether they were legally acquired after they engaged in a dispute with the sea gypsy community the day before, during which about 100 men allegedly hired by the real estate developer, Baron World Trade Company, blocked access to the sea gypsies on the Rawai beach with boulders culminating to a scuffle between the two sides, leaving several people injured. In February 2016, a group of 30 sea gypsies addressed an official petition to the Deputy PM, seeking his support to settle the land dispute with the real estate developer. The sea gypsy leaders called on the Land Department to revoke the land title deeds issued to the real estate developer, which overlap on 19 rai of their ancestral land on the Rawai beach.^{xxviii} Finally, in January 2017, the Phuket Provincial Court dismissed the Company's lawsuit against the seafarers, reasoning that their settlement predates the time when Land Department issued the title deed to the company in 1965.^{xxix}
29. The above cases are only representative, which indicate the need for effective consultation with indigenous peoples before undertaking any legal and administrative decisions affecting their rights. However, Thailand's State Report and Reply to List of Issues do not recognize the specific and disproportionate human rights violations on indigenous peoples due to failure of such effective consultations and only maintain that they are entitled to rights and dignity the same way as all Thai people and right to public participation. Thailand, being a signatory to the International Convention on Elimination of All Forms of Racial Discrimination, must recognize implicit and explicit discrimination existing based on ethnicity against indigenous peoples and promote and protect their rights as per international human rights obligations.

Recommendations:

The State Party should:

- 1) Ensure the establishment of a specific mechanism for full and effective participation of indigenous peoples in the ongoing country reforms processes.
- 2) Ensure indigenous peoples are recognized in the draft new Constitution as peoples with their own distinct identities and collective rights.
- 3) Accelerate the process of granting nationality and/or legal status to indigenous persons without citizenship, ensuring that indigenous communities and relevant officials are informed about the registration and verification processes, and implement special measures to reach individuals caught in a protection gap, including indigenous populations to fulfill the State's immediate human rights obligation of non-discrimination and equality. Ensure the birth of every indigenous child is formally registered in national systems, in line with the concluding observation of 2012 CERD to Thailand and recommendation of the Special Rapporteur on the human right to safe drinking water and sanitation.
- 4) Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands,

territories and resources, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.

- 5) Review the relevant forestry laws and programs, including NCPO Order No. 64/2014 and the Forestry Master Plan, in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them, such as reforestation programs, and development and mining projects, while protecting the environment, in line with the 2012 concluding observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples. Ensure that any new law on mining and minerals or any other type of resource use complies with the above-mentioned rights of indigenous peoples.
- 6) Ensure that people who have been evicted for reasons of forest encroachment or for development projects are able to return to their land or are provided with adequate compensation, and that in the future, expropriation of land is only permitted in cases of necessary, proportionate, well construed public interest, with strong procedural safeguards.
- 7) Ensure that security forces perform their duties strictly in accordance with the law, bringing security personnel guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations. On the other hand, ensure that due process is undertaken in relation to all indigenous people who enter the criminal justice system, as stated in the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
- 8) Adopt a human-rights based approach in development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC), in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights to Thailand.
- 9) Accede to International Labour Organization Convention No. 169 and enhance promotion and protection of the rights of indigenous peoples through the adoption of national legislation and policies, in line with the 2012 concluding observations of Committee on the Elimination of Racial Discrimination (CERD) to Thailand.
- 10) Reform land laws to ensure that land reform fully recognizes customary/collective land tenure rights, including those of indigenous peoples, to ensure that people who do not have sufficient evidence and/or written documentation are not subjected to arbitrary land expropriations and continue the issuance of community land title deeds.

III. Endnotes

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- i C/THA/Q/2/Add.1 (CCPR, 2016) – Para. 38 to 41.
- ii More background information on Indigenous Women in Thailand can be provided by the Indigenous Women Network of Thailand (IWNT), and is available on their website at: <http://iwnt.webs.com/background.htm>.
- iii Thai CSOs Coalition for the UPR, (2016), *Women's Rights in Thailand*, UPR Advocacy Factsheet prepared by the Foundation for Women (FfW) to inform Thailand 2nd Universal Periodic Review (UPR), March 2016. Available at: <https://goo.gl/Cciye8>
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