

# Thailand is a Paradise But only for the 1%!

## #FightRacism



Thai CSOs Coalition  
for the UPR

  
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### Report on the Implementation of ICERD

Thailand 2021

Replies to the List of Themes CERD/C/THA/Q/4-8  
105th CERD session (15 November - 3 December)

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# Table of Contents

<b>1. Introduction</b>	<b>2</b>
a. Joining organisations	2
b. Methodology	3
c. Contact details	3
<b>2. Civil Society Replies to the Issues Identified in the LOT</b>	<b>4</b>
a. The Convention in domestic law and the institutional and policy framework for its implementation (arts. 1, 2, 4, 6 and 7)	4
b. Situation of ethnic minorities and indigenous peoples (art. 5)	8
c. Situation of non-citizens, migrants, asylum seekers, refugees and stateless persons (art. 5)	25
<b>3. Endnotes</b>	<b>40</b>

# THAILAND

## Report on the Implementation of the ICERD

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For the Review of the Combined Fourth to Eight Periodic Reports of Thailand  
(CERD/C/THA/Q/4-8)

At the 105<sup>th</sup> session of the Committee on the Elimination of Racial Discrimination  
(15 November – 3 December 2021)



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for the UPR

**#ThaiBHRNetwork**



## I. Introduction

### a. Joining organisations

This Joint report is prepared by Manushya Foundation, the Justice for Peace Foundation, the Thai CSOs Coalition for the Universal Periodic Review (UPR), and the Thai Business and Human Rights (BHR) Network.



**Manushya Foundation** is a Feminist women-led human rights organization founded in 2017. It serves as a bridge to Engage, Mobilise, and Empower Agents of Change by connecting people through inclusive coalition building and by developing strategies focused at placing local communities' voices at the centre of human rights advocacy, domestic implementation of international human rights obligations and standards, and domestic policies that affect them. Manushya Foundation strengthens the solidarity and capacity of communities and grassroots to ensure that they can constructively raise their own concerns and provide solutions in order to improve their livelihoods and the human rights situation on the ground. Since its creation, Manushya Foundation has been supporting the creation of intersectional coalitions/movements of local and marginalised communities to be at the centre of human rights responses and decision-making processes concerning them; including effective engagement in UN human right mechanisms, such as the UPR process and relevant treaty bodies.



**Justice for Peace Foundation (JPF)** was founded in June 2006 as Working Group on Justice for Peace (WGJP) before registered to foundation in 2009 under the Ministry of Interior (Moi). JPF is a network of human rights and peace activists to strengthen non-violent efforts to protect human rights, to promote access to justice, and to end impunity. JPF engages in human rights monitoring and advocacy while encouraging grassroots activism and supporting victims of human rights violations in their fight for justice.

Thai CSOs Coalition  
for the UPR

**Thai CSOs Coalition for the UPR**, created in February 2016, comprises local communities and national civil society organisations from all human rights sectors and across Thailand. The coalition is as of today the widest coalition of Thai CSOs ever brought together to contribute to the UPR process and other UN human rights monitoring mechanisms as well as development obligations. The formation of the Thai CSOs Coalition for the UPR has enabled local communities from different regions of Thailand, experiencing similar challenges (such as land evictions, land grabbing, abusive working conditions), to meet each other and build solidarity, creating momentum and commitment to work together as a strong national movement to hold the government accountable on its international human rights obligations. The Thai CSOs Coalition for the UPR engages in a constructive manner by proposing solutions rather than naming and shaming.

**#ThaiBHRNetwork** The **Thai Business and Human Rights Network** is an informal, inclusive and intersectional coalition of human rights defenders, community leaders, researchers, academics, and non-governmental organisations from the local, national and regional spheres, who are joining hands to ensure local communities are central to the business and human rights response in Thailand. The Network engages in advocacy, dialogue, and monitoring of business and human rights commitments made by the Royal Thai Government, in particular in engaging in the development and monitoring of the National Action Plan on Business and Human Rights.

## b. Methodology

This joint CERD shadow report replying to the List of Themes is prepared based on the CERD Report of July 2020 with latest developments from August 2020 to October 2021 gathered by Manushya Foundation, Justice for Peace Foundation and members of the *Thai CSOs Coalition for the UPR* through field missions, interviews, and data gathered to inform Thailand's 3rd UPR cycle taking place on 10 November 2021 and Thailand's CERD review, taking place on 22-23 November 2021. The [UPR Advocacy Factsheets prepared for Thailand UPR III](#) also form the basis for this CERD shadow report responding to the LOT which also provides credible evidence on issues that have not been identified by the CERD Committee.

## c. Contact details

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## II. Civil Society Replies to the Issues Identified in the LOT

### a. The Convention in domestic law and the institutional and policy framework for its implementation (arts. 1, 2, 4, 6 and 7)

**Issue 2. Data on the ethnic composition of the population, including minority groups, non-citizens and indigenous peoples, based on the criterion of self-identification (CERD/C/THA/CO/1-3, para. 15; CERD/C/THA/4-8, paras. 31–32).**

#### Reply / Comments from Civil Society

1. According to a figure provided by the Department of Provincial Administration of the Ministry of Interior in 2018, Thailand had a population of 66.2 million, of which 65.3 million are Thai citizens, whereas 875.8 thousand are non-Thai citizens.<sup>1</sup> However, as indigenous peoples are still not recognised under the Thai laws, no official census has been conducted to determine the number of indigenous peoples living in the country, making the indigenous peoples largely invisible in state policies and effectively pushing them towards the very margins of Thai society. The Government recognises solely the existence of ethnic groups/minorities. According to the Master Plan for Development of Ethnic Groups in Thailand (2015-2017), Thai ethnic groups comprise a majority of the population, and there are 56 ethnic groups additionally recognised in sixty-seven provinces.<sup>2</sup> These groups continue to use their traditional practices and pass on their folk wisdom from generation to generation<sup>3</sup>, and they are around 6.1 million in number, which is more than 9.68% of the total population of the country.<sup>4</sup> According to the Network of Indigenous Peoples in Thailand<sup>5</sup>, these ethnic groups have been categorised into four groups based on their place of residence, including those living in the highlands; in the plains; in the coastal areas; and in the forests. Geographically, indigenous peoples are concentrated in three regions of the country: fishing groups or ‘chao lay’ and a small number of hunter gatherer groups in the South; small groups in the east and north-east Korat plateau; and highland people or the ‘chao khao’ in the north and north-west – all of which identify themselves as indigenous peoples.<sup>6</sup> Their exclusion from the Thai population on the country’s official census and on the Constitution has become the cornerstone of their marginalisation and struggles. These indigenous peoples continue to face discrimination in many aspects of their lives, including having unequal access to basic services and effective remedies, among others.<sup>7</sup>

#### Recommendation

##### The State Party should:

- 1) Conduct an effective nationwide inquiry into the ethnic composition of the population and citizenship challenges faced by indigenous communities in order to strengthen its efforts to ensure the indigenous communities’ access to social services, access to justice, and legal protections; and address their statelessness.

**Issue 3. Information on progress made in further incorporating the provisions of the Convention in the domestic legal order (CERD/C/THA/CO/1-3, para. 7; CERD/C/THA/4-8, paras. 8–13).**

**Reply / Comments from Civil Society**

***The definition of discrimination laid out in the Convention is yet to be incorporated in the Thai legal system***

2. Provided Article 1 of the Convention, discrimination as laid out in Article 27 of the 2017 Constitution of Thailand<sup>8</sup> is left undefined and it is not inclusive of all grounds, leaving out discrimination based on colour, descent, national and ethnic origin. Although it allows for ‘just’ discrimination – or measures implemented to eliminate obstacles or facilitate people’s ability to exercise their rights – no limitations are set for such measures. Moreover, Article 27 does not distinguish between direct and indirect discrimination, allowing for other State policies and legislations to adversely affect certain groups and lead to indirect discrimination, such as the Forest Reclamation Policy and the National Park Act of 2019, which have left a disproportionate impact on farmers in the north-eastern Isaan region and indigenous groups.<sup>9</sup>
3. Although the 2017 Constitution of Thailand sets out the rights and liberties of Thai people, the duties of the State to protect their rights, and the directive principles of state policy, particularly in Chapter 3, 5 and 6; these rights are only applicable to Thai citizens, as explicitly specified in Section 4 of the Constitution.<sup>10</sup> Consequently, multiple non-Thai groups remain unprotected under Thailand’s domestic legal order and policies, such as stateless persons, migrant workers, and refugees, who face multi-layers of discrimination.
4. Furthermore, the rights set out in the Constitution are guaranteed, except by virtue of the provisions of law specifically enacted for purposes of maintaining security of the State, public order, and good morals. Such exceptions effectively allow for discriminatory State practices and policies that go directly against the rights and protections laid out in the Constitution and disproportionately target a certain ethnic group in the population. For example, with the extensive power granted by a number of special security laws, security officials have randomly collected biometric data, including DNA samples or facial profiles through facial verification measures, from Malayu Muslims in the Southern Border Provinces (SBPs) who are not suspects of any crime, including from innocent children of suspected insurgents.<sup>11</sup> (See Issue 13).

***Indigenous peoples are still not recognised in Thai legal system***

5. The 2017 Constitution does not explicitly recognise indigenous peoples. It leaves out Article 60 of the previous Constitution of 2007 which recognised the rights of *“persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of 8 the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.”*<sup>12</sup> Consequently, indigenous peoples are now enjoying less protection against discrimination and marginalisation under the new Constitution.
6. In mid-2021, Princess Maha Chakri Sirindhorn Anthropology Centre (“SAC”), a public organisation, prepared the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act, which, if passed, would be the first national legislation to specifically address issues particular to ethnic groups/minorities and thereby indigenous peoples in Thailand. While the Draft Act is an important legal milestone for the ingenuous communities in the country, it still presents many flaws and loopholes, and may even result in further hurdles against the full and equal enjoyment of the indigenous peoples’ rights. For example, the rights guaranteed under the Draft Act are only for ethnic groups/minorities registered with the SAC, thus hindering access of stateless persons or unregistered minority groups to the protection and services



prescribed in the Act. It fails to provide protection guaranteed to indigenous peoples as it does not recognise indigenous peoples' inalienable right to their ancestral lands.<sup>13</sup> Therefore, there are no established legal safeguards in line with international standards against land reclamation policies disproportionately targeting indigenous peoples.

7. It is also worth noting that there exists a lack of meaningful involvement of indigenous women in the consultation process to develop the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act. While the SAC has solicited comments from ethnic minorities, indigenous peoples, and the general public on the Draft Act, the Indigenous Women's Network of Thailand (IWNT) reported that the consultation process is not inclusive of indigenous women and that their concerns are not incorporated in amendments to the Draft Act.<sup>14</sup>

### Recommendations

#### The State Party should:

- 1) Revise the 2017 Constitution to explicitly recognise indigenous peoples' rights in accordance with international human rights standards for the rights of indigenous peoples, in line with the 2017 Concluding Observations of the Human Rights Committee to Thailand.
- 2) In line with the 2012 CERD Committee's Concluding Observations to Thailand, fully incorporate the definition of discrimination prescribed in Article 1 of the Convention into its domestic legislation, and guarantee that the rights and protection afforded under the Constitution are applicable to everyone regardless of their nationality. To this end, the State should also distinguish and define direct and indirect discrimination in its legislation.
- 3) Enact specific domestic legislation recognising and protecting indigenous peoples' rights in lieu of the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act and ensure that every member of the Indigenous communities – women or men or gender nonconforming individuals – can all meaningfully participate in the drafting process. The legislation must be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention 169.
- 4) In line with the 2017 CEDAW Committee's Concluding Observations to Thailand, guarantee representation and participation of indigenous women in the decision-making process for matters concerning them, especially in the drafting process of the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act.

***Issue 4. Information on the adoption of legal provisions defining and prohibiting multiple and intersectional discrimination in the State party (CERD/C/THA/CO/1-3, para. 9; CERD/C/THA/4-8, paras. 15–16).***

#### Reply / Comments from Civil Society

8. Although equality and non-discrimination are guaranteed under Section 27 of the 2017 Constitution, no legislation or legal provisions have been adopted to specifically address and eliminate discrimination against all persons. Certain groups, therefore, remain vulnerably under-protected, especially those suffering from intersectional discrimination. Discriminatory acts are prohibited in law under Section 22 of the Child Protection Act B.E. 2546 (2003),<sup>15</sup> and Section 7 of the Child and Youth Promotion Act B.E. 2550 (2007) protects their rights to birth registration, development, protection and opportunity to participate without unfair discriminatory treatment due to birthplace, ethnicity, language, sex, age, disability, physical quality or health, personal status, economic or social status, religious belief and culture, education, or political opinion.<sup>16</sup> However, children belonging to indigenous groups or those with migrant or refugee parents continue to face de facto discrimination in many aspects of their life. For instance, they still face

obstacles in having their birth registered due to a lack of access roads from remote areas to birth registration offices, or discriminatory attitudes shown by officials.<sup>17</sup>

9. Although Thailand acceded to the Convention to End All Forms of Discrimination against Women (CEDAW) in 1995 and subsequently enacted the Gender Equality Act of 2015, this Act still fails to provide comprehensive protection and genuine safeguards to ensure gender equality, especially when it is intersected with other factors. For example, under Article 17 paragraph 2 of the Act<sup>18</sup>, gender-based discrimination is allowed if it is carried out on grounds of safety and wellbeing, religious principles or national security. This poses a particular challenge to Malayu Muslim and indigenous women who face multi-layers of discrimination both within and outside their own communities. Under these realities, a stand-alone legislation is needed to tackle issues of racial discrimination in all cases, especially in order to prohibit multiple and intersectional discrimination.

### Recommendations

The State Party should:

- 1) Adopt a stand-alone legislation to eliminate discrimination against all persons and promote a good understanding among all races
- 2) Taking into account the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, and in line with the 2017 Concluding Observations of the CEDAW Committee to Thailand; adopt temporary special measures and affirmative actions targeting ethnic and minority women so as to ensure their substantive equality with men in all areas.

**Issue 5.** *Information on measures taken to incorporate into the Criminal Code the offences prescribed in article 4 of the Convention, and on their application, after the withdrawal of the reservation to article 4 (CERD/C/THA/CO/1-3, para. 11; CERD/C/THA/4-8, para. 20).*

### Reply / Comments from Civil Society

10. Despite having lifted its reservation on Article 4 of the Convention in 2016, Thailand has made no practical efforts in incorporating the offenses prescribed in this article into its Criminal Code. Although hate speech and negative stereotypes of certain ethnic groups are punishable under provisions related to sedition or defamation in the Criminal Code, these articles have only been invoked against political dissidents or activists critical of the government or the monarchy.<sup>19</sup> The government has instead played a role in instigating divisive discussions on certain ethnic groups. For example, as part of the so-called Information Operations (IO) under the Internal Security Operations Command (ISOC), a coordinated network of military-linked social media accounts have been registered to influence public debate regarding the situation in the restive south of Thailand. On the 'Truth about my home, Pattani' page, founded by an account bearing link to the Thai military which has been detected and removed by Facebook, states that the insurgency movement's idea of creating an uprising against non-Muslim believers clearly violates Islam.<sup>20</sup>

### Recommendation

The State Party should:

- 1) In line with the 2012 CERD Committee's Concluding Observations to Thailand, fully incorporate the offenses laid out in article 4 of the Convention into the Criminal Code and make them punishable crimes by law.

**Issue 6.** *Examples of cases in which the provisions of the Convention have been applied by domestic courts; detailed information on measures taken to raise public awareness of the Convention and, in particular, on how ethnic minority groups and indigenous peoples can access legal remedies (CERD/C/THA/CO/1-3, para. 12; CERD/C/THA/4-8, paras. 21–23).*

### Reply / Comments from Civil Society

11. A range of judicial and non-judicial mechanisms exist for victims of human rights abuses in Thailand to make complaints and seek redress. Those include the courts, the National Human Rights Commission of Thailand (NHRCT), provincial Damrongdharma Centres. However, the ethnic minority groups and indigenous peoples affected by the impacts of corporate and government conduct are still denied access to justice and effective remedy due to the non-recognition of indigenous peoples and their rights in Thai legal framework in line with the UN Declaration on the Rights of Indigenous Peoples. In addition, indigenous community representatives, activists and leaders, who have advocated for their human rights issues have faced various reprisals ranging from arrests, imprisonment to even enforced disappearances and killings. The access to justice for such cases remains a challenge for victims and their families, perpetuating the climate of impunity.<sup>21</sup> ( See Issue 12, Para. 32 – 36)

### Recommendations

#### The State Party should:

- 1) Remove barriers to access effective judicial remedies for indigenous peoples through courts, including by enforcing implementation of existing positive laws and policies effectively through priority over conflicting laws and policies; eliminating biases and discrimination in the laws and justice system through sensitisation and awareness-raising of security and judicial personnel.
- 2) For complaints filed against state authorities and law enforcement officials, ensure prompt investigation through an impartial, independent and an autonomous team of experts.

### b. Situation of ethnic minorities and indigenous peoples (art. 5)

**Issue 7.** *Measures to accord equal civil and political rights to all citizens irrespective of the mode of acquisition of citizenship, in particular the right to stand for elections. Progress made in reviewing national laws, including laws on land tenure, forests, and natural resource management, to ensure respect for the right to free, prior and informed consent in decisions affecting ethnic groups and indigenous peoples; information on measures taken to implement such laws and related policies.*

### Reply / Comments from Civil Society

12. The current legal framework fails to provide equal civil and political rights to all citizens irrespective of the mode of acquisition of citizenship. While Article 95 of the Constitution of 2017 grants the right to vote to any person who has acquired Thai nationality through naturalisation after holding it for at least five years, Article 97 provides the right to stand for elections only to those who obtained Thai citizenship by birth, excluding therefore naturalised Thais.<sup>22</sup>
13. Since indigenous peoples are not recognised in the Thai Constitution, they confront numerous challenges. Their right to participate in decision-making processes affecting their livelihood is limited: they are neither

consulted nor taken into account in processes related to natural resource management or investments in land and trade agreements. While several constitutional provisions grant community rights such as the right to be informed and to have access to public information (Section 41), and others entail the State's duty to conduct environmental and health impact assessments through public hearings of communities prior to any undertaking that may affect them (Section 58), indigenous peoples protection is inadequate because the provisions fall short of international standards for indigenous peoples. Furthermore, although the NAP-BHR, adopted on October 29, 2019, incorporates the right to "Free, Prior and Informed consent (FPIC)" and its use in the management of land, forests, and natural resources, it does not mention how it shall be implemented and it totally leaves out indigenous peoples who exercise this right.<sup>23</sup> As a consequence, ethnic groups and indigenous peoples face significant obstacles to enjoy their human rights. They do not have any decision-making power, and their right to Free, Prior, and Informed Consent is breached.

14. Furthermore, as a result of false climate change solutions proposed by the Thai Government, the livelihoods of indigenous peoples and Khon Isaan are particularly affected. Through the Forest Reclamation Policy of 2015, the Government has tried to ensure stricter enforcement of flawed forest conservation laws such as the Forest Act of 1941, the National Reserved Forests Act of 1964, and the National Park Act of 1961 which was amended in 2019. These legislation and policies were developed without consulting forest-dependent communities and indigenous peoples, and do not recognise them as 'guardians' of the forest and the environment. Instead, they are being considered as 'capitalist investors' destroying the forest.<sup>24</sup> Of particular concern is the National Park Act 2019 which entails that villagers residing in areas designated as national parks are automatically deemed to be in violation of the Act regardless of them having protected the forests and lived there for generations, which was not the case under the previous Act. Under the transitory provisions, villagers who wish to continue to reside in such areas must request permission from the government on a case-by-case basis. If the government grants permission, the villager is allowed to continue to reside in her/his respective area for a period of 20 years.<sup>25</sup> However, the government has not yet indicated what will happen after the lapse of 20 years, so there is a substantial degree of uncertainty in respect of villagers' rights. If the government does not grant permission, the villager must immediately vacate her/his respective area.

**The #SaveBangkloi case:**

15. The Kaeng Krachan Forest Complex (KKFC) – which consists of Kaeng Krachan National Park, Kuiburi National Park, Thaiprachan National Park and Maenamphachi Wildlife Sanctuary – was proposed for inscription as a World Heritage Site in 2011. For hundreds of years, the areas have long been ancestral homes of the indigenous Karen communities, who rely on the forests and its natural resources for their livelihoods, which are based on self-sufficiency practices, such as gathering forest products, hunting and practicing rotational farming.<sup>26</sup> Since the 1960s, four to five Karen communities have been relocated from the Forest Complex areas to the lowlands in the name of forest conservation and threat to national security. According to the government policy, more communities residing in the forest should be relocated to lowlands. Many affected families in Bangkloy-Lang did not receive land for farming as promised by the park authorities after their relocation, leaving them with no other choices but to return to their traditional homeland to farm. Their returns resulted in arrests, forced evictions from their huts and burning of properties in 2011.<sup>27</sup> Six Karen villagers, in 2014, filed a petition against their forced relocation and destruction of property at the Central Administrative Court of Thailand against the Department of National Parks (DNP) and other concerned officials. In 2016, the Court ruled that the Karens had "encroached" forest area and the DNP had rightfully burned their properties but ordered meagre for the damages done to their properties.<sup>28</sup> In response to an appeal by the Karens, the Supreme Administrative Court, despite recognising that they had been living in the forest before the establishment of the Park, did



not allow them to return to their lands as they did not have ownership documents. Although the court later ordered higher compensation in 2018<sup>29</sup>, the park's nomination for the World Heritage Site continued, as well as the forced evictions of the indigenous communities living at the complex.

16. In February 2021, Kaeng Krachan National Park authorities evicted around 100 Karen villagers from their homes in the Bang Kloei - Jai Pandin high land unfairly accusing them of forest encroachment within Kaeng Krachan National Park. On 5 March 2021, 22 members of the indigenous Karen community in Bang Kloei - including women and a disabled person – were arrested by Thai national park authorities and were detained in prison for returning to their ancestral land in the Kaeng Krachan Forest. They were released under the condition that they would not return to the area. Villagers are suffering from starvation due to a lack of access to their ancestral subsistence (foraging natural resources and rotational farming). Karen villagers were forced to relocate and struggle to farm barren soil, putting their health and livelihood at further risk.
17. No progress has been therefore registered in reviewing laws to ensure respect for the right to free, prior and informed consent in decisions affecting ethnic groups and indigenous peoples. This is reflected in this specific case, as The National Park was registered by the government with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee, without having previously consulted with the indigenous Karen communities residing in the park, who would be impacted by such a decision. Despite the detrimental effect on their livelihood and culture, on 26 July 2021, UNESCO proclaimed the National Park a World Heritage Site, dismissing the pleas of indigenous Karen.<sup>30</sup> This decision has set a dangerous precedent by disregarding severe cases of reported human rights violations of the Karen people, further violating international human rights law. Although UNESCO was urged by UN experts and several other human rights organisations to defer the proclamation, and the Thai government was demanded to address the cases of human rights violations, the decision was taken without considering the Karen people and the way in which such a decision would jeopardise their lifeline. On top of that, Phetchaburi provincial prosecutors have prepared an indictment against 27 Bang Kloei villagers on 18 August 2021.<sup>31</sup>

#### 18. **Save #SabWaiVillagers from going to jail:**

In Chaiyaphum province, 14 Sab Wai villagers have been unfairly criminalised and found guilty of trespassing, encroaching, and clearing land belonging to Sai Thong National Park under the Forestry Act, National Park Act, and National Reserved Forests Act enforced through the Forest Reclamation Policy of 2014. The criminalisation of the villagers happened even though they have been living in the area since the 1970s, prior to its declaration as a national park. The villagers have been intimidated by national park officers and were forced to sign papers stating that they would vacate their land. In spring 2021, the Supreme Court confirmed lower instance courts' judgements that all 14 villagers were guilty, putting 11 of them on probation and sentencing 3 of them to jail. In May 2021, one of the villagers, Mr. Suwit Rattanachaisri received a writ of execution with a call for him to pay a civil penalty of 60,000 THB plus an interest rate of 7.5% per year, and to vacate his land.<sup>32</sup>

#### **Recommendations**

##### **The State Party should:**

- 1) Ratify the International Labour Organisation Convention No. 169.
- 2) Expedite the process of granting Thai citizenship to indigenous persons with necessary reforms in the laws, policies, and processes for registration of nationality in order to ensure their access to social services, access to justice, and legal protections.

- 3) Review the relevant forestry and conservation laws and programs in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them, while protecting the environment, in line with the 2012 Concluding Observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
- 4) Revise Forest Conservation Laws, including the National Park Act 2019, to ensure Indigenous Peoples and Forest Dependent Communities are considered Guardians of the Forest and are not criminalised as Capitalist Investors, and refrain from using the Forest Reclamation Policy as Thailand's Climate Solution to evict them from Forest area.
- 5) Stop, without further delay, the abuse of forest conservation laws and policies, to evict indigenous peoples, local communities and individuals who are living in poverty from lands they have been living on for generations.
- 6) Allow the UN to conduct an onsite visit to assess the situation and aid in finding a peaceful solution.
- 7) Cease all discriminatory acts and prejudices targeting the Bang Kloei Karen Indigenous peoples as well as other indigenous groups.
- 8) Use the upcoming 50<sup>th</sup> Anniversary of the World Heritage Convention as an occasion to bring the decision-making of the World Heritage Committee in line with the principles and standards of the United Nations and UNESCO.
- 9) Drop all criminal and civil charges against the 27 Bangkloi Indigenous activists who legitimately exercise their rights to protest and protect their ancestral land in the Kaeng Krachan National Park.
- 10) Refrain from enforcing the Supreme Court verdicts against the 14 Sab Wai villagers to guarantee they can continue living on their land and are not put in a situation of extreme poverty.

**Issue 8.** *Information on measures taken to address civil, political, economic, social and cultural rights violations against ethnic minority groups and indigenous peoples as a result of or with the involvement of transnational business entities and their business operations; information on accountability and remediation measures taken to that end.;*

**Issue 9.** *Information on special measures implemented for ethnic minority groups and indigenous peoples, and on their outcomes; disaggregated data on the enjoyment of economic, social and cultural rights by ethnic groups and indigenous peoples.*

### Reply / Comments from Civil Society

19. The military-backed government has accelerated the push for economic growth, since it has become a priority in the country's 20-year national strategy (2018-2037), Thailand 4.0 Policy and the 12th National Economic and Social Development Plan (2017–2021). Industrial expansion, the construction of big infrastructure projects, and the establishment of special economic zones (SEZs) and corridors are all envisaged as means of achieving this goal.<sup>33</sup> Nevertheless, while these investments contribute to economic development opportunities, the combination of weak land governance, corruption, and lack of transparency has created an unrestricted setting for projects and business practices where local communities' rights are overlooked, being excluded from projects' consultations, silenced by companies and evicted from their land. As a result, their distinct dependence and connection to their land, which is an integral part of their identity and culture, are often not prioritised over profit-making development projects, leading to the infringement of numerous human rights, including their economic, social and cultural rights, and civil and political rights.

20. Thailand does not have any laws that protect human rights in business contexts and fails to require business enterprises to respect human rights, as well as to oversee business enterprises' activities to meet their international human rights obligations. The National Action Plan on Business and Human Rights (Thai NAP-BHR) does not provide either for implementation through legally binding mandatory provisions, in order to hold the business sector and state-owned enterprises accountable for their abusive business conducts.<sup>34</sup> Individual and community rights are frequently impacted when enterprises meddle with property ownership, partly because such impacts are not deemed human rights infractions and abuses, especially in the case of marginalised groups. This aspect is particularly relevant to land rights, because land issues are linked to the enjoyment of specific substantive human rights, such as the right to adequate housing, food, water, health, work, and self-determination. Land grabbing and forced evictions in the name of economic development is a pervasive phenomenon in Thailand, and indigenous peoples are disproportionately harmed by the lack of protection from adverse business conduct, as they rely on the land for their livelihood through either farming or fishing.

21. When being evicted from their land, indigenous peoples' economic and cultural rights are in peril, and sustaining their traditions and ways of life becomes a challenging issue as their cultural sites are destroyed and their farming activities are interrupted, among others. Indigenous women are particularly affected, given their specific roles in the use and management of land and resources in the communities. Despite this, they are largely restricted from participating in dispute resolution mechanisms, even when the dispute concerns them, due to the patriarchal traditions that still exist within the indigenous communities. For instance, indigenous peoples living in Southern Thailand along the coast face displacement owing to land disputes with luxury resorts and other tourism businesses. In this particular case, indigenous women were excluded from the preparation and proceedings of the lawsuit and their concerns were not taken into consideration.<sup>35</sup>

22. Particularly in the course of land dispossession and forced evictions, indigenous women face higher levels of violence, including gender-based and systematic abuse. In 2017, the CEDAW Committee expressed its concerns about the persistence of multiple barriers impeding indigenous women from obtaining access to justice and effective remedies for violations of their rights. Such barriers include (1) social and cultural stigma, which deter women and girls from registering their complaints, in particular with regard to sexual and gender-based violence; (2) limited legal literacy and access to information on remedies that are available; (3) lack of gender sensitivity in the justice system, including negative attitudes of law enforcement officials towards women denouncing violations of their rights, leading to frequent failures to register and investigate complaints; and (4) widespread and pervasive corruption, which continues to impede women's access to justice.<sup>36</sup>

**23. Threat of Land Grabbing for the development of Tourism Resort faced by Urak Lawoi Indigenous Peoples in Koh Sireh**

The indigenous Urak Lawoi peoples of Koh Sireh Island, despite having lived on their ancestral grounds for almost a century, have increasingly experienced the impacts of the island's rapid business expansion and building, which is primarily tied to tourism and real estate projects. Due to a lack of proper land titles, the Urak Lawoi's lands were sold to investors in 2012, and the community was served with an eviction notice. The Urak Lawoi have been fighting a long legal battle to keep their ancestral lands, with the Court of First Instance first ruling in their favour in March 2013, and the Appeal Court ruling against them in September 2017. Despite the Supreme Court's decision in their favour, in August 2019, the Urak Lawoi are still waiting for a practical solution to secure their land rights.<sup>37</sup> The Supreme Court verdict confirmed the unlawful land titles obtained by the investors but did not secure Urak Lawoi's ancestral lands. The Urak Lawoi Women sought to participate actively in the preparation of their Appeal Court lawsuit, being the major voices raising concerns about malpractices of the legal proceedings. However, they were excluded from

the consultative process as well as court proceedings in the case involving their fundamental rights, ancestral lands, and livelihoods. The Urak Lawoi case covers a complex set of issues, ranging from the lack of effective access to justice to the denial of their involvement and consultation, as indigenous women. To this, the pressure and stigmatisation they faced throughout the whole process have to be emphasised, as indigenous women not only face racial discrimination for being indigenous, but also have to experience gender discrimination as women.<sup>38</sup>

24. ***Indigenous peoples' right to health is further undermined by business activities.*** Indigenous peoples face further hardship to enjoy and exercise their human rights, which increases their risks and vulnerabilities. Owing to geographic and socio-economic inequalities, indigenous peoples' right to access basic health services is breached. Indigenous peoples living in remote border areas and highlands are particularly at risk, as healthcare services are often unavailable due to lack of state-funded development of social welfare programs. At the same time, when they are able to reach out to healthcare facilities, the services are neither delivered in indigenous languages nor culturally suitable or consistent with indigenous traditional practices. In the case of indigenous women, owing to the fact that men are primarily considered the head of the households and are thereby granted the roles of community leaders and/or representatives, indigenous women are restricted from making decisions that affect their lives, including decisions regarding their health. This leads to greater negative health consequences, notably in the area of reproductive health.<sup>39</sup>

25. On top of that, the government not only fails to protect indigenous peoples and ethnic minorities' right to health, but it also collaborates with businesses that violate their right to health and the right to live in a healthy environment.

**#SaveOmkoj case – The coal mining operations in Omkoj infringe upon peoples' right to live in a healthy environment:**

26. Omkoj, Chiangmai, a district with no land rights for indigenous and ethnic minorities, has become a target of exploitation by mining corporations. In 1987, a private company bought a large plot of land in the Kaboebin Village, Omkoj District, and some locals sold their land under the threat of uncompensated land grabbing. In 2000, 99 Thuvanon Company Limited requested a coal mining concession certificate, and the Environmental Impact Assessment (EIA) began the same year, ending in 2011. However, its transparency is questionable due to a series of reasons: fake consents (illiterate Thais' names on the EIA's list of people consenting the project); company's lies about the participants attending the hearing, disinformation; and lack of Free, Prior and Informed Consent (FPIC) sought. The coal mine poses serious environmental risks, such as contamination of natural water resources, loss of biodiversity, greenhouse gas emissions, and highly impacts local communities' livelihoods, causing displacement and loss of food security, among others.<sup>40</sup>

27. Furthermore, the impacted communities are frequently denied access to effective remedy and compensation. While the Thai NAP-BHR encourages businesses to organise consultations with human rights defenders and to collaborate in order to prevent, tackle, and provide a remedy against the negative impact of business activities on human rights, it does not adequately include state-based non-judicial grievance redress mechanisms, customary laws and practices of affected communities, and barriers to accessing remedy.

28. **The case of the construction of the Pak Mun Dam displays Thai authorities' failure to protect ethnic minorities right to remedy:** The construction of the Pak Mun Dam, in the Isaan Northeastern region of Thailand, caused severe ecological damage destroying villagers' livelihoods, families, and ties to their



culture and land. Nonetheless, the affected communities were neither informed nor included in the decision-making process. The Electricity Generating Authority of Thailand (EGAT) started construction of Pak Mun dam in June 1990, and has been operating Pak Mun as a run-of-the-river hydropower project since 1994. Because the authorities claimed they did not understand the Lao Isaan dialect, communities were denied adequate compensation for their loss and did not receive full restoration of their livelihoods, for more than 26 years now.<sup>41</sup>

29. The above cases are only representative, indicating the need for effective consultation with ethnic minorities and indigenous peoples before undertaking any legal and administrative decisions affecting their rights. As a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, Thailand must acknowledge implicit and explicit discrimination against indigenous peoples and ethnic minorities, and promote and protect their rights in accordance with international human rights obligations.

### Recommendations

#### The State Party should:

- 1) Adopt a human rights-based approach in its development projects and establish participatory mechanisms in order to seek the free, prior and informed consent (FPIC) of affected communities and indigenous peoples, in line with the 2015 CESCR's Concluding Observations to Thailand.
- 2) Prevent forced and arbitrary land grabbing and eviction of local communities, including cases for the purpose of development projects, whether public or private; ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation, in line with the 2015 CESCR's Concluding Observations to Thailand.
- 3) Amend the NAP-BHR to effectively address violations of the rights of communities to land, natural resources, and the environment and take steps to comprehensively regulate environmental protection and ensure strict enforcement of its environmental legislation, so as to prevent harmful effects on the health of communities, in accordance with the 2015 CESCR's Concluding Observations to Thailand. In particular, expand the NAP-BHR to enact mandatory corporate human rights and environmental due diligence (HREDD) legislation regulating business activities to ensure companies are held into account for their adverse business conducts, and respect human rights and the environment inside Thailand, and for Thai companies to respect human rights and the environment abroad. Companies must exercise HREDD along their entire corporate structure and supply chains, and the HREDD must include assessment of the negative impact of business activities on human rights through Human Rights Impact Assessments (HRIAs), and Community Human Rights Impact Assessments (CHRIAs), Social Impact Assessment; and on specific groups on individuals through Gender Impact Assessments (GIAs).
- 4) In line with the 2015 CESCR's Concluding Observations to Thailand, establish a clear regulatory framework to ensure companies are legally accountable regarding violations of economic, social and cultural rights in their projects, including in cross-border development projects. The corporate human rights due diligence law must establish the company's civil liability for the harm caused by companies under their direct or indirect control when these have infringed human rights or environmental standards. The Law must also ensure disclosure of evidence rules establishing a fair distribution of the burden of proof, making sure that it is the company that would have to, at least, clarify its relationship with the entities involved in the harm, and whether it acted with due care and took all reasonable due diligence measures.
- 5) Remove barriers to access effective judicial remedies for communities that experience violations of their rights by companies, and ensure effective and adequate compensation is provided for the adverse business impacts on community rights, their health, livelihood and the environment.

- 6) Ensure that members of indigenous groups, and ethnic groups, including Isaan people, can avail themselves of legal remedies without any language barriers and stereotypes against them, in line with the 2012 Concluding Observations of the CERD Committee to Thailand.
- 7) Take concrete measures to ensure indigenous women's access to basic rights and services, including access to justice and legal remedies in accordance with the 2017 CEDAW Committee's Concluding Observations to Thailand.

**Issue 10. Information on measures taken to protect ethnic and indigenous languages, including efforts made and resources allocated for the teaching of ethnic and indigenous languages in schools.**

### Reply / Comments from Civil Society

30. The Thai national school system demands that teaching be conducted only in Thai language, despite the promulgation of Promotion and Conservation of Intangible Cultural Heritage Act of 2016<sup>42</sup>, meant to protect and conserve ethnic languages through the registration of 27 local languages, and the drafting of the Strategic Plan to drive forward the National Language Policy to maintain and promote ethnic languages used in Thailand.<sup>43</sup> As education is not provided in the mother tongue of ethnic groups, children belonging to these groups, who do not speak Thai, face barriers in accessing education and are often left behind by the educational system. For instance, children who wish to be educated in their mother tongue in Southern Thailand, where Malayu is the local language, are unable to attend government schools; instead, they attend CSO-run private schools, where they can learn their mother tongue as well as study about their cultural heritage and history, which is neither taught in government schools, despite government's claim to 'maintain diversity in the education sector.'<sup>44</sup>

### Recommendations

The State Party should:

- 1) Strengthen efforts to protect and conserve ethnic languages, and promote the teaching of ethnic languages in schools, in line with the 2012 Concluding Observations of the CERD Committee to Thailand.
- 2) Improve access to education with interventions targeted towards understanding and overcoming specific barriers faced by indigenous peoples and children and adopt necessary laws and policies to provide adequate resources for the implementation of mother-tongue based/multilingual education (MTB/MLE).

**Issue 11. Information on measures taken to eliminate negative stereotypes about ethnic groups and raise awareness among media professionals.**

### Reply / Comments from Civil Society

31. Although hate speech and negative stereotypes about ethnic groups are legally punishable under the Criminal Code with charges of sedition or defamation, in practice, ethnic groups are stereotyped and prejudiced. Thai media continues to disseminate negative stereotypes about them, and there are no official guidelines for how media outlets and professionals should refer to ethnic groups.

32. The Thai government not only has done little to combat hate speech and racial discrimination against ethnic minorities and indigenous peoples, but it also contributes to disseminate negative stereotypes about them. Discrimination taking place at the highest levels of the government ultimately impacts the process of formulation of laws, programs, and policies that affect indigenous peoples. Using the guise of battling the drug trade, the government officials continually ostracize indigenous peoples and their traditional lifestyle. For instance, in view of the state-sponsored racial discrimination labelling indigenous peoples as 'drug traffickers', in June 2021, soldiers subjected members of indigenous communities in Ban Kae Noi, Chiang Mai, to DNA collection under the guise of drug crackdowns, depriving indigenous communities of the right to privacy and non-discrimination.<sup>45</sup> Isaan people are also negatively portrayed and the stereotypes are exacerbated by the Thai media. (See the section on Khon Isaan).

### Recommendations

#### The State Party should:

- 1) Take measures to eliminate negative stereotypes about ethnic groups and indigenous peoples, and avoid giving accounts of incidents involving indigenous and ethnic groups in ways that stigmatise the group as a whole, in line with the 2012 Concluding Observations of the CERD Committee to Thailand.
- 2) Ensure that indigenous peoples do not become targets of discriminatory arrests and searches on drug-related charges and proactively address discriminatory attitudes of Thai authorities and the population.

***Issue 12. Information on measures taken to address acts of violence, threats, intimidation and reprisals against human rights defenders.***

### Reply / Comments from Civil Society

32. The government fails to meet its obligation to ensure human rights defenders can carry out their work in a safe and enabling environment, as it neither recognises Human Rights Defenders (HRDs) in the 2017 Constitution and national legislation nor has specific provisions comprehensively protecting whistleblowers and strengthening their rights. This aspect is partially covered by two relevant Acts: the Organic Act on Counter Corruption of 1999 amended in 2011, and the Witness Protection Act of 2003 prescribing measures for protecting the person giving testimony or for whistleblowers, although the Acts do not define the term “whistleblower”, and with many provisions being vague and discretionary.<sup>46</sup> The Thai NAP-BHR promotes the rights of human rights defenders by exchanging good practices to promote freedom of expression, building the capacity of communities, HRDs, and law enforcement officials on HRDs’ rights; by providing knowledge to HRDs on government services available to assist them; and by creating a list of lawyers and legal advisors with expertise on addressing human rights violations. To remedy violations against HRDs, it promotes mediation at all levels and alternative dispute resolution mechanisms; as well as physical, mental, social, and professional assistance. Nevertheless, these voluntary measures are unknown by businesses, and judicial harassment cases have increased over the past five years.
33. As a result of weak legal protections, human rights defenders are frequently subjected to violence, threats, intimidation and judicial harassment, which prohibit them from carrying out their legitimate actions. Strategic Lawsuit Against Public Participation (SLAPP) is often employed to deter potential dissidents and opponents of the government from speaking out, resulting in the creation of an environment that lacks a democratic space for human rights defenders to voice their concerns.

#### **34. Environmental Human Rights Defenders are most at risk of threats and reprisals**

In 2016, the Special Rapporteur on the Situation of Human Rights Defenders considered Thailand as one of the most dangerous countries for environmental rights defenders<sup>47</sup>, a finding of which is continuously reiterated by the UN Environment Programme and Global Witness. In 2020, Global Witness found that at least 2 environmental defenders were killed in Thailand.<sup>48</sup> Recently, the danger faced by many environmental rights defenders is both growing and spreading, who more often face violent threats, as well as the criminalisation of their activities in order to be silenced. The growing tide of force and violence is influenced by an intensifying focus on disputes over land and natural resources, with indigenous peoples and ethnic minorities being the primary targets of defamation campaigns and violence.

#### **35. The unfair forest conservation laws and the Government's efforts to ostracize human rights defenders:**

Indigenous human rights defenders have been arrested as they #SaveBangkloi. As a result of false climate change solutions proposed by the Thai Government, human rights defenders and community leaders who defy authorities' actions are harassed. For example, In February 2021, Kaeng Krachan National Park authorities evicted around 100 Karen villagers from their homes in the Bang Kloi - Jai Pandin high land unfairly accusing them of forest encroachment within Kaeng Krachan National Park. On 5 March 2021, 22 members of the indigenous Karen community in Bang Kloi - including women and a disabled person – were arrested by Thai national park authorities and were detained in prison for returning to their ancestral land in the Kaeng Krachan Forest, and released under the condition that they would not return to the area. Phetchaburi provincial prosecutors have prepared an indictment against 27 Bang Kloi villagers on 18 August 2021.<sup>49</sup> (See issue 7, Para. 15-17).

#### **Enforced disappearances and killings of Human Rights Defenders**

**36. The case of Karen indigenous rights activist Porlajee "Billy" Rakchongcharoen:** At the time of his disappearance, Billy had been working with Karen villagers and activists on legal proceedings concerning the destruction of villagers' homes and property in the Kaeng Krachan National Park in Petchaburi in 2010 and 2011. He was arrested on 17 April 2014 on charges of "illegal possession of wild honey". Chaiwat Limlikhitaksorn, then head of Kaeng Krachan National Park was the last person to see him.<sup>50</sup> Mr Chaiwat and park authorities claim he was released the same day but he has not been seen since. On 24 April 2014, Billy's wife, Phinnapha Phrueksaphan, filed a habeas corpus petition seeking an inquiry into the lawfulness of her husband's detention. In July 2014, after a six-day habeas corpus inquiry, the Petchaburi Provincial Court concluded that it could not be established that Billy was still in detention when he had disappeared. No light on Billy's fate or whereabouts was shed even through the subsequent appeal of this decision. Local police investigation officers in September 2014 filed malfeasance charges under article 157 of the Penal Code against then head of the National Park, Chaiwat Limlikhitaksorn and four other park officers for unlawfully detaining Billy. They found no record of Billy's release from custody. However, in September 2015, the Supreme Court upheld the decisions of both the Administrative Court and the Appeals Court, dismissing allegations against Chaiwat and his associates due to insufficient evidence.<sup>51</sup> Although the Department of Special Investigation (DSI) under the Ministry of Justice conducted further probe into Billy's case, not much information on the investigation is available. Later, in September 2020, bone fragments in an oil tank submerged in a reservoir were confirmed to belong to Billy; thus, confirming that Billy had been killed.<sup>52</sup> No accountability processes have been successful in shedding light on Billy's fate nor bring adequate remedy and justice to the victims to date.<sup>53</sup>

**37. The case of Lahu indigenous human rights defender Chaiyaphum Pasae:** Members of indigenous communities are often subject to discriminatory arrest and searches on drug-related offenses. In March 2017, Chaiyaphum Pasae, a 17-year-old indigenous Lahu activist working on the rights of his community to help them gain access to a Thai nationality, healthcare and education, was shot dead in Chiang Dao by



Thai military officers who claimed that while they were trying to arrest Chaiyaphum as an alleged drug suspect, he resisted the arrest and “attempted to throw a grenade at the soldiers”.<sup>54</sup> While the relatives and community members of Chaiyaphum, who himself was involved in campaigning against drug use, claim the allegations against him are false, his relatives and associates have also been intimidated.<sup>55</sup> Despite several irregularities such as missing CCTV records, the Civil Court in Bangkok dismissed the case against the police officers in 2020, ruling that the officers acted in self-defence.<sup>56</sup> The court also ignored the case of Nawa Ja-ue who was advocating for justice after Chaiyaphum’s murder. She was arrested, wrongly accused of drug possession, and spent a year in prison.<sup>57</sup>

### Recommendations

The State Party should:

- 1) Adopt all measures necessary to protect human rights defenders, from any and all acts of intimidation, harassment and killings and ensure that perpetrators of such acts are brought to justice. Effectively protect and define ‘human rights defenders’ under the Constitution, in line with the UN Declaration on HRDs.
- 2) Enact a standalone anti-SLAPP law to ensure legal protections against Strategic Lawsuits against Public Participation (SLAPP) aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations. In the meantime, enforce Sections 161/1 and 165/2 of the Criminal Procedure Code and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.
- 3) Undertake fair and effective investigation into the disappearance, killing and other reprisals against indigenous leaders, human rights defenders and community members.

**Issue 13. Information on measures to investigate allegations on the collection of DNA samples and the use of facial recognition technologies by police and military officers to racially profile Muslim Malay citizens in the southern border provinces. Information on allegations of a new discriminatory policy applied only to Thai citizens in the southern border provinces, where citizens are primarily of Muslim Malay ethnic origin, that forces users to register their cell phones’ SIM cards using facial recognition technology to confirm their identities.**

### Reply / Comments from Civil Society

38. The ongoing conflict in Thailand’s Southern Border Provinces (SBPs) has a long and complex history, and the government policies to address the conflict have been ineffective, exacerbating the situation. Human rights violations and discrimination towards the Malayu have created an environment of distrust between Malayu communities and local authorities, frustrating efforts to deal with the insurgency. Severe human rights violations continue to persist in the Southern Border Provinces (SBPs), where violence is still prevalent and perpetrators enjoy unchecked power and impunity facilitated by the special security laws that have been imposed on the region for more than 15 years. Racial discrimination against Malayu Muslims has been perpetuated over time through various ways, and has recently seen an increase as a result of DNA collection and the use of biometric data, digital ID profiling, and AI technology to monitor them. Although military officials argue that such methods are necessary tools for ensuring local security and convicting suspected insurgents, they are disproportionately used against Malayu Muslims in the SBPs, amounting to discrimination and ethnic profiling.<sup>58</sup>
39. As stipulated in Section 131 and 131/1 of the Criminal Procedure Code, a person may be subjected to DNA collection if they are suspected or convicted of a crime.<sup>59</sup> Despite this, security officials have randomly

collected DNA profiles from Malayu Muslims in the SBPs who are not suspects of any crime, including from innocent children of suspected insurgents. The CrCF documented at least 139 cases of forced DNA collection from January to September 2019.<sup>60</sup>

40. Malayu Muslims are also exposed to continued state surveillance and ethnic profiling, being stopped at security checkpoints where authorities take pictures of their ID cards and car plates. Moreover, they have been subjected to discriminatory and disproportionate biometric data collection through facial verification measures and increased CCTV surveillance in the SBPs of Thailand. The Internal Security Operations Command (ISOC) requires Malayu Muslims to register their SIM cards via a facial recognition system along with their national identification card details. Individuals who did not comply with these rules by April 2020 experienced targeted mobile network shutdowns in early May 2020. Surveillance also increased after a January 2020 announcement that the government would use artificial intelligence (AI) in at least 8,200 surveillance cameras across the region. The CCTVs were installed under the excuse of “ensuring local population’s safety.”<sup>61</sup> Currently, the use of the collected personal data remains unknown and there are no legal safeguards in place against potential misuse of the data or violation of the right to privacy. Absence of privacy protections and clear legislation pose a great risk specifically to minority groups and vulnerable individuals who are subject to undue surveillance and the massive collection of their data raises serious human rights concerns.

### Recommendations

#### The State Party should:

- 1) Review and amend the Personal Data Protection Act (PDPA) to bring it in line with Thailand’s international human rights obligations, including to remove the exception clause for data collected under the overbroad justification of “national security” (section 4). Further amend the PDPA to address AI and automation by developing legal procedures and evidentiary standards for biometrics with care to protect human rights and due process.
- 2) Develop effective safeguards against State abuse of surveillance technologies, data collection and violation of online privacy, including by ensuring effective and independent oversight mechanisms are in place to limit unfettered executive discretion and establish redress mechanisms consistent with the obligation to provide victims of surveillance-related abuses with adequate and effective remedy.
- 3) Terminate the practice of search and arrest, as well as the collection of biometric data based on ethnicity and racial profiling, in accordance with the 2012 Concluding Observations of the CERD Committee to Thailand.

**Issue 14. Updated information on legislative and other measures taken to address hate crimes, torture and ill-treatment, enforced disappearances and other forms of discrimination against Malays, paying particular attention to Malay women.**

### Reply / Comments from Civil Society

41. In spite of the Thai Government’s efforts to address the human rights issues in the Southern Border Provinces, the human rights situation on the ground continues to deteriorate, with torture and enforced disappearance still being a regular practice in Thailand. The numbers of torture allegations and cases of inhumane treatment have staggered in recent years, being particularly widespread in the context of the Deep South. Thailand is neither a party to ICPPED and OP-CAT, nor has it achieved a comprehensive national legal framework to protect persons from enforced disappearance and torture.

42. The Prevention and Suppression of Torture and Enforced Disappearance Bill have been in drafting process for ten years since 2010, with over four drafts repeatedly rejected and sent back for further review. The latest draft was eventually approved by the cabinet in June 2020. However, it fails to integrate many key international standards into its provisions: it does not define torture and inhumane treatment fully in line with international law, nor does it prohibit refoulement of individuals to countries where they are at risk of such crimes; it fails to incorporate effective safeguards against enforced disappearance and establishes it as a continuous offense. Although the Bill presents a promising step towards the right direction, a full commitment to international human rights laws and comprehensive national legislation are needed for a definite end to Thailand's long history of torture and enforced disappearances.<sup>62</sup> In late August 2021, House majority whip Wirach Ratanasate confirmed that the Bill would be enacted by the end of 2021, after the parliament finishes its final reading by the September 2021 session and an ad-hoc committee of the Bill finishes its final review by November.<sup>63</sup> The latest version of the Draft Act was approved on 16 September for review by Thailand's House of Representatives, and the Ad-Hoc Committee appointed to review started its consideration on 5 October.<sup>64</sup>
43. Owing to a legal vacuum at the national level, facilitating the climate of impunity for severe human rights violations, the cases of torture are rampant in Thailand, with the Southern Borders Provinces (SBPs) being the usual ground zero for such practice. According to Duay Jai Hearty Support group alone, more than 140 former detainees in the Southern Border Provinces have allegedly been tortured at the hands of Thai security forces since 2010.<sup>65</sup>
44. The special security laws in Thailand's SBPs have been weaponised to target Malayu Muslims as suspected insurgents, subjecting them to violence, discrimination and racial profiling. The enforcement of these laws, which include the 1914 Martial Law, the 2005 Emergency Decree, the 2008 Internal Security Act and the 2019 National Intelligence Act, intended to help control the conflict in the SBPs, have been misused to guarantee security officials' impunity. By disproportionately targeting the Malayu Muslim population and placing barriers between the Buddhist Thais and the Malayu Muslims, they further deepen the divisions and violence in the area. About 80% of the 116 killings documented by Deep South Watch in 2020 belonged to the Muslim community.<sup>66</sup> Due to the overreaching powers of the law, its enforcement is often disproportionate and unclear in scope and definition. No oversight mechanisms have been put in place to ensure legal compliance and accountability, allowing arbitrary arrests and detentions to persist in the region. For example, as documented by Duay Jai Hearty Support Group, over 7,000 people, including 24 women and at least 132 children, have been detained on military bases without charge and without any access to legal assistance since 2010.<sup>67</sup>
45. Harassment and defamation charges against Malayu Muslims human rights defenders and activists documenting rights violations in the Deep South are widespread. On 26 July 2016, ISOC Region 4 had filed a complaint against Pornpen Khongkachonkiet, Somchai Homlaor, and Anchana Heemina for criminal defamation and violation of the Computer Crime Act (CCA), for publishing a report where they documented 54 instances of torture and ill-treatment by security officers in Thailand's Deep South.<sup>68</sup> On 24 October 2017, the Pattani Provincial Prosecutor decided to end the prosecution. In another case, Ismaael Teh, President of the Pattani Human Rights Organisation Network (HAP) revealed in a 2018 TV interview that he had been beaten, electrocuted, and forced to confess at gunpoint by security forces during his 9-day detention at Ingkayutthaboriharn military camp in 2008. Not even two weeks later, the Internal Security Operation Command filed civil and criminal charges against him for defamation.<sup>69</sup>

**Malayu Muslims face hardship in having their right to access justice protected due to both interferences in the justice system and government’s failure to hold the responsible persons accountable:**

46. Khanakorn Pianchana, a senior judge in the Yala provincial court of Southern Thailand, paid a heavy price for being an “impartial & fair judge”, and for not prosecuting Malayu Muslims. He attempted to commit suicide in October 2019 with a second attempt in March 2020 being successful. His actions were in protest of interference in the justice system, after a senior judge forced him to rewrite a judgment in which he exonerated five Muslim suspects for lack of evidence. After his first suicide attempt, disciplinary proceedings and criminal charges were initiated against the judge as he did not follow the systematic trend of persecution and prosecution of Malayu Muslims, even without sufficient evidence against them.<sup>70</sup>
47. Section 17 of the Emergency Decree on Public Administration<sup>71</sup> provides amnesty to security officials for the crimes committed against Malayu Muslims, stating that the violations are necessary to fulfil their duties, making it impossible to hold them accountable for their crimes. In October 2016, in a case filed by Ismaael Teh before the Supreme Administrative Court, the Court concluded that he was a victim of torture and ordered the army to pay him a compensation of 305,000 THB for physical harm and emotional distress. However, no military personnel were prosecuted for this crime.

**Malayu women and children carry the brunt of the battle and bear the impact of the conflict:**

48. Under Section 17 (2) of the 2015 Gender Equality Act, exceptions on grounds of religious principles and national security are allowed with regard to the prohibition of discrimination on the basis of gender. Therefore, the prohibition of discrimination on the basis of gender guaranteed in the 2017 Constitution and the 2015 Gender Equality Act does not apply in the SBPs, where special emergency laws continue to be applied. Women and children, the most vulnerable groups, are particularly affected by the conflict and endure significant challenges in accessing their rights. Children of insurgents are being stigmatised at school, and sometimes, older children drop out completely to help financially support their families, especially in cases when the breadwinner of the family is detained.<sup>72</sup> Also, as highlighted by The Association for Children and Youth for Peace in the Deep South, orphaned children are more easily persuaded to join conflict and seek revenge.<sup>73</sup>
49. In the case of women, notwithstanding the Government’s promise to ensure protection against violence against women “regardless of its religion, race, sexual identity or social condition”, Malayu women struggle in accessing their rights, being sexually harassed and assaulted by soldiers, among others.<sup>74</sup> Although they have the possibility to file a complaint, many girls and women are hesitant to do so, both because of the potential reputational harm to the family, and because the consequences for perpetrators are lenient: if proven guilty, the punishment involves relocation or job termination. In other cases, the perpetrator was judged not guilty based on having claimed that mutual consent was involved. The voices of Malayu Muslims are silenced not only while seeking justice, but also when attempting to engage in discussion. Despite being one of the most affected groups by the conflict and playing a critical role in peace-building efforts on the ground, their presence in the public sphere is not recognised.<sup>75</sup>

**Recommendations**

**The State Party should:**

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

- 2) Amend the Martial Law and Emergency Decree in the Southern Border Provinces to ensure that they comply with all the provisions of the ICCPR, especially with regards to Article 9 on the arbitrary deprivation of liberty, in line with the 2017 Concluding Observations of the Human Rights Committee to Thailand.
- 3) Immediately halt harassment and attacks against human rights defenders, journalists and community leaders in the Southern Border Provinces, in line with the 2014 Concluding Observations of the Committee against Torture (CAT Committee) to Thailand.
- 4) Ensure that all allegations of torture and ill-treatment are promptly and impartially investigated and that responsible individuals are brought to justice, in line with the 2017 Concluding Observations of the Human Rights Committee to Thailand.
- 5) Amend Section 17 of the Emergency Decree on Public Administration that provides amnesty to officials violating human rights and bring it in line with international human rights standards to ensure officials' accountability.
- 6) In collaboration with civil society organizations, launch awareness raising campaigns in schools and in communities to ensure children of insurgents are not discriminated against in school, guarantee their equal access to education and provide them with financial support so they do not drop out of schools to support their families.
- 7) Adopt temporary special measures targeting Muslim women in the Southern Border Provinces so as to ensure their substantive equality with men in all areas, in line with the 2017 Concluding Observations of the CEDAW Committee to Thailand.
- 8) Integrate gender sensitive security measures and peace-building initiatives in the Southern Border Provinces, in line with the 2017 Concluding Observations of the CEDAW Committee to Thailand.
- 9) In line with the 2017 Concluding Observations of the CEDAW Committee to Thailand, revise Section 17 (2) of the 2015 Gender Equality Act to ensure that there are no exceptions to the prohibition of discrimination on the basis of gender, and ensure that all women and girls who live in the Southern Border Provinces (SBPs) that are subject to emergency laws are effectively protected from discrimination, both in law and in practice, recalling that the principle of non-discrimination is non-derogable and continues to apply even during times of armed conflict and in states of emergency, as indicated in the CEDAW Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

## Issues That Have Not Been Addressed

### Khon Isaan

50. Manushya Foundation would like to call the attention of the Committee on the Elimination of Racial Discrimination on the rights violations of **Khon Isaan ethnic group**, which requires special consideration owing to the unique circumstances of their condition.
51. ***Being 'Khon Isaan' in one of the most unequal countries in the world:*** In 2018, Thailand was considered the most unequal country in the world by the Credit Swiss Global Wealth Databook, with 1% of the population owning 66.9% of the nation's wealth. In 2020, according to TDRI, Thailand continues to be among the top ten most unequal countries on this planet for wealth distribution. Thailand's wealth inequality is marked by the fact that rich are getting richer and poor are getting poorer, with Isaan people being at the bottom of Thailand's wealth inequality pyramid. However, Isaan, Thailand's Northeast region is the largest and most populous region of the country, counting 22.24 million people (or 33% of the total population); yet, it is also the poorest region. Despite being Thailand's largest ethnic community, Isaan people are overlooked in the Thai society. The Isaan people refer to themselves as 'Khon Isaan' rather



than as Thai, and they have been historically classified as ‘an inferior sort of Thai’. They are of Lao descent, and are also referred to as ‘Lao Isaan.’ Thailand's failure to implement a comprehensive strategy to strengthen the protection of their rights and guarantee their equal participation and access to opportunities in all spheres of society has resulted in Khon Isaan being discriminated against and marginalized. Instead of promoting equality and embracing diversity, the Thai government forces a culture of ‘Thainess’, resulting in ultra-nationalism and racism against ethnic minorities, creating a caste society grounded in inequalities and injustice. It is no surprise that some prominent leaders of the Youth-led pro-democracy movement which emerged in 2020 are Youth from Isaan. They had enough of ‘Thainess’, inequalities and injustice towards their own ethnic community, enough of the country being economically and politically controlled by 1% of the population and demand constitutional and structural changes.<sup>76</sup>

50. Isaan people have been the target of widespread prejudice for decades, being portrayed as docile and illiterate “unsophisticated peasants”<sup>77</sup> who are easily misled and who cannot speak proper Thai, while women are referred to as ‘mia farang’ (white foreigners’ wife). Because of their defining characteristics, discrimination against Isaan people is a perpetuated phenomenon in Thai society, with the elite and Bangkokian people viewing them as ‘stupid’, ‘dark-skin’, ‘poor lower-class people’. Isaan countryside people are called ‘Baan Nok’, especially those with darker skin, are often represented in the media as uneducated, backwards, helpless, as opposed to the “civilised” and “whiter skin” city people.<sup>78</sup> Thai commercials are littered with skin whitening and skin correcting products, with one of the most controversial being Snowz, an advertisement for whitening pills, with the notorious tagline “Just be white, and you will win”.<sup>79</sup>
51. Although hate speech and stereotypes about ethnic groups are charged with sedition or defamation charges, the government itself contributes to the spread of negative stereotypes. In August 2018, the Ministry of Social Development and Human Security (MSDHS) opened an education centre for Isaan ‘mia farang’ in Khon Kaen, which ‘especially targets Isaan women and girls who do not value studying but like to work in bars and massage parlours instead’.<sup>80</sup>
52. As a result of Thailand's failure to implement a comprehensive strategy to strengthen their rights protection and ensure their equitable participation and access to opportunities in all spheres of society, Khon Isaan suffer ongoing discrimination and marginalisation in all aspects of life. Rejections, hostile school and work environments, limited freedom of gender expression, limited career advancement opportunities, pay gaps, lower job security, and limited access to social benefits are the most common ways through which discrimination is perpetrated against Isaan people in the educational system and the labour market.
53. Due to unequal distribution of Thailand’s fiscal budget, and state-sponsored discrimination against Isaan people, access to healthcare and social services is challenging for the majority of Isaan people. As a matter of fact, while Mukdahan province has seven hospitals, same as Ang Thong province, Mukdahan is four times larger.<sup>81</sup> Having no alternative, patients in Mukdahan province need to travel large distances to get treatment, putting them at significant disadvantage. Furthermore, when Isaan people search for job opportunities, they pay a heavy price for the widespread discrimination against them. They are frequently employed in low-paying positions, such as taxi drivers or construction workers, and many women end up in the sex and entertainment industry.<sup>82</sup>
54. The burden of racial discrimination is also faced by Isaan children who are left behind by Thailand’s educational system. As aforesaid, the Thai national school system demands teaching to be performed only in Thai. This requirement particularly affects Isaan children who, since the early twentieth century, have been denied access to fundamental instruction in their mother tongue as a result of the ‘Thaification’

programme. Speaking the Lao Isaan dialect has been forbidden in Thai schools, in the name of ‘Thainess’, destroying Isaan's culture.

55. Farmers, who account for 85% of the population in the Isaan region and who are already in a vulnerable and destitute situation, are profoundly impacted by numerous pieces of legislation that jeopardise their access to land and worsen the injustices they face. The National Parks Act of 2019 and Thailand’s false climate solution previously mentioned have been used against Isaan farmers, being casted as criminals and accused of encroaching forest land.<sup>83</sup> In the case of Sab Wai Villagers, villagers living in the Sai Thong National Park in Chaiyaphum Province were unfairly accused of trespassing and encroaching the national park area and were sentenced to jail in 2019. Ultimately, from March to May 2021, the Supreme Court ruled that all villagers were guilty and put 11 of them on probation with suspended jail terms, while 3 others were sent to jail. All of them are facing land evictions and are put in a situation of extreme poverty.<sup>84</sup> (See issue 7, para. 18)

### Recommendations

#### The State Party should:

- 1) Address the remaining obstacles in access to the universal health care scheme, in particular for disadvantaged and marginalised individuals and groups, including Isaan People, and ensure good quality health care, in line with the 2015 Concluding Observations of the CESCR to Thailand.
- 2) Distribute the country’s wealth equally among regions and allocate additional financial support to Isaan people to improve their living conditions and ensure the enjoyment of their economic, social and cultural rights, and access to equal opportunities in all spheres of life.
- 3) Strengthen efforts to protect and conserve ethnic languages, and promote the teaching of ethnic languages i
- 4) n schools, including the Isaan dialect, in line with the 2012 Concluding Observations of the CERD Committee to Thailand.
- 5) Ensure respect for ethnic groups’ way of living, livelihood and culture, while protecting the environment, and guarantee Isaan farmers are considered as forest dependent communities protecting the forest and not as capitalist investors, in line with the 2012 Concluding Observations of the CERD Committee to Thailand.

### Ethnic or Indigenous LGBTIQ+ People

56. Manushya Foundation would like to call the attention of the Committee on the Elimination of Racial Discrimination to **LGBTIQ+ people who are part of an ethnic or indigenous group** who, due to particular circumstances of their situation, require individual attention.
57. Even though Thailand hosts one of the largest LGBTIQ+ communities in Asia, it has a long way to go in terms of embracing this community, both on a societal and normative level. Weak legal framework, stigma, and prejudices are key obstacles for LGBTIQ+ inclusion, hindering the individuals from reaching their full legal and social recognition, and fuelling widespread discrimination against them. The intersection with racial discrimination, on the grounds of ethnic origin, makes LGBTIQ+ people even more vulnerable to discrimination and hate-motivated violence.<sup>85</sup>
58. The majority of persons born into poverty, notably in Northeast Thailand, who require specialised medicines, as it is the case of transgender people undergoing medical transition, are unable to pay for the necessary service. As a result, they have to devise alternatives and resort to taking contraception pills instead. On the flip side, inaccessibility to gender health care facilities is a barrier for transgender people

who are able to pay for their own care. The majority of gender health clinics are located in big cities like Bangkok, Chiang Mai, and Khon Kaen. All of this adversity, along with the weight of feeling ostracised from their family, has a significant impact on their mental health, potentially leading to clinical depression and even suicide.

### Recommendations

The State Party should:

- 1) Address the remaining obstacles in access to the universal health care scheme, in particular for disadvantaged and marginalised individuals and groups, including LGBTI Youth and marginalised communities from the Isaan and Southern Regions, and ensure good quality healthcare, in line with the 2015 Concluding Observations of the CESCR to Thailand.
- 2) Eliminate any limitation on the protection against gender-based discrimination by revising Section 17 (2) of the Gender Equality Act, in line with the 2017 Concluding Observations of the Human Rights Committee to Thailand and the 2017 Concluding Observations of the CEDAW Committee to Thailand.

### c. Situation of non-citizens, migrants, asylum seekers, refugees and stateless persons (art. 5)

**Issue 15.** *Information on the impact of measures taken to improve human rights protection for migrant workers (CERD/C/THA/CO/1-3, para. 22; CERD/C/THA/4-8, paras. 64–71).*

#### Reply / Comments from Civil Society

58. There are approximately over 4 million migrant workers in Thailand from Cambodia, the Laos People's Democratic Republic, and Myanmar. However, as of February 2021, out of 4 million, only 1,931,650 migrant workers are legally permitted to work in Thailand.<sup>86</sup> Together, they make up more than 10% of the country's workforce. While Thailand is home to many migrant workers, its policies have been ineffective in managing the growing number of migrant workers. The Thai government has neither ratified the International Convention on the Protection of the Rights of Migrant Workers and their Families nor ILO Conventions 87 and 98, all of which set out international standards for workers' rights. Moreover, no legislation upholding migrants' rights has been implemented.<sup>87</sup> Since policies are often ineffective and ever-changing, migrant workers, particularly undocumented migrants, live with a precarious legal status and are thus vulnerable to human rights violations.
59. As migrants face barriers to registering themselves and obtaining legal status, due to complex procedures and hurdles, migrant workers are vulnerable to labour rights violations. Moreover, due to financial barriers, migrant workers are unable to bear registration costs, rendering many of them vulnerable to debt bondage, a form of modern slavery affecting approximately 610,000 people in Thailand.<sup>88</sup> Even though employers requesting excessive funds from migrant workers may face imprisonment and fines, employers, middleman, and brokers regularly inflate costs, leaving migrant workers with large debts, which leads to rights violations, such as harsh working conditions, wage deductions, and confiscation of personal documents. For example, while the Myanmar government estimates that registration costs amount to THB 3,550, migrant workers from Myanmar have to pay a much higher price, ranging between THB 8,000 and THB 16,000 or more.<sup>89</sup> On top of barriers to registration, migrant workers are subject to restrictions preventing them from changing employers without authorisation, rendering them vulnerable to labour rights violations and subjecting them to arrest and deportation.

60. Furthermore, migrant workers cannot freely choose their employment as the Government of Thailand enforces the Royal Decree 2522 B.E, stipulating the occupations and professions that foreigners are prohibited from performing.<sup>90</sup> According to the information provided by members of the Thai BHR Network, there are companies that advertise labour skill development programs for migrant employees, but when they complete the course, they are unable to obtain a certificate and reclaim their skill fee.<sup>91</sup>

### Recommendations

#### The State Party should:

- 1) Explore the need for additional measures to ensure that all migrant workers, regardless of legal status, are entitled to labour and social protection and can access justice for violations of their rights, in line with the CESCR Concluding observations to Thailand (2015).
- 2) Amend the Royal Decree 2522 B.E. to allow migrant workers to pursue occupations that match their abilities and qualifications, and amend regulations restricting skilled labour registration.
- 3) In line with Principle 1 and 2 of the United Nations Guiding Principles on Business and Human Rights (UNGPs), protect against human rights abuse within its territory and/or jurisdiction, and take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

**Issue 16. Updated information on measures taken to prevent human trafficking, and on their impact, including concrete data (CERD/C/THA/CO/1-3, para. 24; CERD/C/THA/4-8, paras. 73–90).**

### Reply / Comments from Civil Society

61. Thailand has long been the country of origin, transit, and destination for human trafficking. Nevertheless, it still lacks effective implementation of legislation and policies to tackle human trafficking and to assist victims of human trafficking. In 2018, Thailand was promoted from Tier 2 Watch list to Tier 2 in the US Department of State's Trafficking in Persons Report and was delisted from the "yellow-card countries list" of the European's Commission for its progress in tackling illegal, unreported, and unregulated fishing in 2019. As Thailand has had little to no progress in fighting human trafficking since, as demonstrated by the fact that victims of human trafficking are often unable to receive compensation or seek other remedies, Thailand has been downgraded from Tier 2 to Tier 2 Watch list by the US Department of State for the first time in four years in 2021.<sup>92</sup>
62. In spite of the ratification of several international instruments concerning human trafficking, there has been a significant drop in investigations, prosecutions, and convictions, owing to decreased government efforts. In 2013, Thailand ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, also known as the Palermo Protocol. In 2016, it ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which is the region's first legally binding instrument to combat human trafficking. In 2019, Thailand ratified the ILO Convention on Work in Fishing. While Thailand amended the Anti-Trafficking in Persons Act of 2008 to specifically address "forced labour or services" in 2019, the amendment not only prescribed significantly lower penalties for labour trafficking offenses compared to existing penalties, but also created confusion among government officials because of the absence of implementing guidelines.<sup>93</sup> In 2020, the number of reported investigated cases fell from 77 in 2019 to 14 potential cases.<sup>94</sup> This is primarily attributable to a lack of understanding of forced labour among government officials. The role of labour inspectors remains limited, as there is no standard procedure in place for labour inspectors to refer potential cases to law enforcement. In many cases, labour inspectors and law enforcement officials investigate the same cases separately, jeopardising the success of criminal prosecutions.

63. Widespread corruption and official complicity continue to hinder efforts in the fight against trafficking. Collusion with traffickers remains rampant, as government officials profit from trafficking operations, even directly partnering with traffickers or leading trafficking operations. Police officials accept bribes in exchange for protection from raids, inspections, and prosecutions. In many cases, police officials purposely compromise investigations and withhold evidence from prosecutors. In December 2020, Prime Minister Prayut Chan-o-cha set up a special committee to investigate government officials abetting trafficking. In the same month, a local government official was arrested on trafficking charges for allegedly trafficking migrants from Myanmar to work in Thailand’s seafood industry.<sup>95</sup>
64. Nevertheless, suspected government officials typically do not face harsh punishment, as administrative punishments are typically utilised instead of criminal investigations and prosecutions. So far, since 2012, Thailand has investigated 73 officials for official complicity. In 2020, Thailand convicted and sentenced five officials to imprisonment. In the same year, the Anti-Money Laundering Office ordered the seizure of assets in the amount of THB 1.2 million from two complicit government officials. When suspected government officials are investigated and prosecuted, threats are made against witnesses, translators, and police investigators during the investigation and trial.<sup>96</sup>
65. Also, the difficult process of accessing judicial remedy in trafficking cases, including systematic disincentives, combined with the lack of understanding of the nature of trafficking; represent obstacles in the fight to prevent human trafficking. The inability to distinguish between “trafficking victims” and “illegal immigrants” results in trafficking victims being wary of speaking up out of fear of being stigmatised as illegal immigrants and facing criminal prosecution or deportation.

### Recommendations

#### The State Party should:

- 1) Commit firmly to a policy of zero tolerance of trafficking-related corruption and complicity by government officials, in accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children. Offenders should be prosecuted and adequately punished with a view to dissuade such practices.
- 2) Ensure that trafficked victims are provided with the necessary support and assistance to seek remedies, such as legal aid and interpretation assistance, in accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children.
- 3) Intensify efforts to raise awareness about the nature of trafficking, in line with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children. Mandatory training should be carried out to ensure that government officials are cognisant of the difference between “trafficking victims” and “illegal immigrants.”
- 4) Ensure that raids and rescue operations are victim-centred and do not cause any discriminatory impact on victims and those who are not victims of trafficking, in accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children. Victims should also not be criminalised or penalised for status-related offences, such as violations of immigration laws.



**Issue 17. Updated information on measures taken to adopt legislation and procedures for the protection of refugees and asylum seekers and to prevent any further expulsion of Rohingyas seeking asylum (CERD/C/THA/CO/1-3, para. 25; CERD/C/THA/4-8, paras. 91–95).**

### Reply / Comments from Civil Society

66. Notwithstanding the great number of refugees that Thailand hosts in refugee camps (approximately 97,000 refugees as of September 2021<sup>97</sup>), Thailand lacks a comprehensive legal framework to recognise and protect refugees and asylum seekers. Thailand is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. While it is a party to the Convention on the Rights of the Child (CRC), it lodged a reservation limiting the application of Article 22 that specifically relates to “a child who is seeking refugee status or who is considered a refugee” and obligates state parties to provide “appropriate protection and humanitarian assistance.”<sup>98</sup> Without a legal status, they are at risk of facing criminal penalties under Thailand’s 1979 Immigration Act which prohibits unauthorised entry or stay in Thailand. As a result, refugees and asylum seekers, including children, are subject to arbitrary arrest, detention, and *refoulement*. For example, according to international and local organisations working with refugee communities in Thailand, as of the end of June 2021, Thai authorities continued to detain more than 40 children in the Bang Khen and Songkhla immigration detention centres.<sup>99</sup>
67. On December 25, 2019, the government enacted the “Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562” to create a National Screening Mechanism (NSM).<sup>100</sup> The regulation establishing the NSM generally outlines mechanisms to screen for “protected persons”, defined as “any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee...”. In May 2020, Thai authorities established the “Protected Person Screening Committee” in accordance with the regulation, and on April 28, 2021, the Committee created a sub-committee to develop Standard Operating Procedures (SOPs) for the Committee.
68. Despite these steps, progress towards actual implementation of a screening mechanism to identify and protect refugees in Thailand is slow and concerns remain on whether the mechanism will comply with international human rights standards, in view of the flaws identified: (1) the access to screening system might be discriminatory, as it excludes groups of people fleeing particular nations, such as Myanmar and the Rohingya, as well as individuals who have a serious impact on international relations; (2) it fails to specifically guarantee persons undergoing screening the right to remain in Thailand and contains provisions that may amount to custodial detention; (3) the right to appeal is provided only during the pre-screening phase of the application; (4) the criteria for the appointment of members part of the Screening Committee are not mentioned, and their appointment by the Commissioner-General of the Royal Thai Police raises questions about the experts’ impartiality; and (5) the regulation provides an exception to forced return of people in the event that national security is jeopardised – this vague wording leaves room for interpretation, and particular groups may be perceived as security threats based on their ethnicity, religion, or nationality.<sup>101</sup>
69. Thailand has long failed to abide by the legally binding principle of *non-refoulement* and keeps on forcibly returning refugees to places where they might be at risk of prosecution. Following the February 1, 2021 coup in Myanmar, thousands of people were forced to leave Myanmar to seek refuge in neighbouring countries, including Thailand. In response to the potential influx of refugees, on March 19, 2021, Prime Minister Prayut Chan-o-cha instructed the Ministry of Interior, CCSA, and other concerned agencies to “monitor and prevent illegal immigration” along the Thailand-Myanmar border and instructed the

Immigration Bureau to “enforce strict inspection of border crossings.” The government also ordered the deployment of Royal Thai Army troops and patrol boats to “monitor illegal entry along the western borders both by land and sea,” according to meeting minutes of the Thai Centre for COVID-19 Situation Administration (CCSA), dated March 19. Furthermore, a Thai provincial official confirmed to Fortify Rights that in May 2021, Thai authorities forcibly returned at least 2,000 refugees to Myanmar. The official also confirmed to Fortify Rights that Thai authorities prevented humanitarian organisations and U.N. agencies from accessing newly arrived refugees from Myanmar.<sup>102</sup>

70. Thailand, while being a potential destination for Rohingya refugees fleeing Myanmar, fails to protect them by forcing them back out to sea as a result of Thailand’s push-back strategy. Since 2009, Thailand authorities have depicted the Rohingya as a security threat. The situation has significantly worsened since August 2017, when the Myanmar military committed ethnic cleansing and crimes against humanity against Rohingya.<sup>103</sup> The responsibility for their safety extends to the countries in which they seek protection, compelling therefore Thailand to recognise the plight of the Rohingya and allow them seek asylum. However, Thai authorities provide fuel, food, water, and other supplies to arriving boats in exchange for their agreement to travel to other destination countries such as Indonesia or Malaysia. Any boat arriving at Thai shores is seized, and any Rohingyas on board are subject to indefinite detention. In May 2015, Thai authorities refused to work with UNHCR to conduct refugee status determination screenings or to establish temporary shelters for them.<sup>104</sup> In April 2018, a boat of 56 Rohingya refugees reportedly arrived on the island of Lanta in Thailand’s Krabi Province was sent back out to sea, as confirmed by the Thai authorities, putting the lives of the persons aboard in imminent danger.<sup>105</sup> Between 2018 and 2019, Thai officials arrested a significant number of Rohingya refugees, including at least 14 children, who were most likely trafficking victims.<sup>106</sup> Rohingyas arriving in Thailand are condemned to indefinite detention in overcrowded unsanitary detention centres. On May 20, 2020, the latest group of Rohingya arrived in Thailand by land, crossing from Myanmar into Mae Sot district of Tak province. At least 12 Rohingyas have been detained by Thai authorities and brought to the Mae Sot immigration detention facility. Approximately 200 Rohingya people are being incarcerated in Thailand’s immigration detention centres and other facilities.<sup>107</sup>

***The education of stateless children, refugee children and undocumented migrant children is on the brink of collapse***

71. Although the Royal Thai Government adopted the Education for All (EFA) policy in 1990 to promote education for all children regardless of their nationality and legal status, the policy implementation imposes some barriers that prohibit migrant and stateless children, in particular, from enjoying their full rights to education.
72. Of almost 400,000 migrant children currently living in Thailand, an estimated 200,000 are not in school due to socioeconomic reasons. Migrant parents, despite the 15-year free education scheme, still have to pay for the indirect costs for education which they often cannot afford. Even after migrant children enrol in school, an estimated 50% of them drop out due to economic hardships. In addition, the lack of understanding of government policies among school officials and migrant parents has resulted in lower enrolment and higher drop-out rates among migrant children. Parents of migrant children are often not aware of their options for their children’s education, which defeats the intention of the free education policy.<sup>108</sup>
73. Moreover, it is estimated that from 36,344 children living in the camps, who age from 0 to 17, only 18,079 refugee children (8,564 boys, 9,515 girls) attend school. In these border areas, the Royal Thai government has established Migrant Learning Centres (MLCs) which use a standardised curriculum that can be accredited in Myanmar or with Thai non-formal schools. In 2018, the Ministerial Proclamation of

Education For All (EFA) eliminated legal obstacles that prevented migrant children from enrolling in Thai schools. Challenges still remain, however, especially with formal recognition of MLCs and teacher's accreditation, and access to quality and inclusive education for out of school children (OSCC). In time of the COVID-19 pandemic, the MLCs are not permitted to operate. This creates the long-term impact of disrupted education for migrant children. School closures and the wider socio-economic impacts of COVID-19 on communities and society also disrupt children's and young people's normal support systems, leaving them more vulnerable to illnesses and child protection risks such as physical and humiliating punishment, sexual and gender-based violence, child marriage, child labour, child trafficking and recruitment and use in armed conflict. It is estimated that around 19,410 migrant children are affected as a result of the school closure. Tak is one of the country's primary provinces in which migrant children live. The province has the greatest number of MLCs, with around 11,329 children enrolled.<sup>109</sup>

### Recommendations

#### The State Party should:

- 1) Accede to the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.
- 2) Withdraw the reservation to Article 22 of the Convention on the Rights of the Child.
- 3) Implement the National Screening Mechanism in line with international human rights standards, and ensure it is accessible to all potential refugees, including Rohingya asylum seekers, and remove ethnic- or nationality-based exclusions.
- 4) Prevent the refoulement of refugees and ensure their proper screening and protection in Thailand.
- 5) End the arbitrary arrest and detention of refugees, and release all refugees currently detained solely on the basis of their immigration status.
- 6) Take measures to prevent any further expulsion of Rohingyas seeking asylum, and to give them access to the United Nations High Commissioner for Refugees and registration through the Provincial Admission Board mechanism.
- 7) Ensure the continuity of the academic learning of children; that all migrant children, being documented or undocumented, are not denied enrolment/getting back to schools and are provided with equitable and inclusive access to good learning conditions, especially during pandemic conditions requiring additional resources and mitigation measures.

**Issue 18. Updated information on progress made in reducing and preventing statelessness, including measures taken to facilitate the birth registration of stateless children and the naturalization procedure for stateless persons.**

### Reply / Comments from Civil Society

74. At the end of June 2021, there were 553,969 people registered<sup>110</sup> by the Royal Thai Government as stateless, with the actual number believed to be much higher.<sup>111</sup> Stateless people face a lifetime of obstacles, as they have difficulty accessing basic rights such as education, healthcare, employment and freedom of movement.
75. While the Government has committed to attain zero statelessness by 2024 and has both amended and enacted various legislations to this end, about half million people in Thailand are registered as stateless in 2021, and they continue to encounter obstacles in acquiring citizenship. Thailand has not ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Government amended the Civil Registration Act, effective from 15 April 2019, which includes provisions relating to stateless and rootless children. However, shortcomings in birth registration expose children to risks of statelessness. Under the amendment, the registrar has to evaluate a child's

place of birth within 90 days of the notification date of the child’s birth. If the registrar is unable to do so, it shall issue a profile registration and identification document for the child, and the child will apply for Thai nationality after proving to have resided in Thailand for ten consecutive years. This is highly problematic, as children whose birth place cannot be identified within 90 days can only apply for citizenship after ten years. This means that the child will not be able to access public services, such as education and healthcare, for at least ten years.<sup>112</sup>

76. Most of the stateless people in Thailand come from areas where national borders have changed, leaving their nationality in question. Some belong to hill tribes living in remote areas with restricted access to information about nationality procedures. The majority of them are indigenous peoples, particularly from the northern highlands. Others are refugees from Burmese states who have remained in refugee camps due to domestic instability at home and the Thai government’s unwillingness to grant citizenship. This lengthy refugee problem is projected to worsen as a result of greater political and societal instability following the recent military takeover in 2021. In the south of Thailand, there are also stateless individuals known as the Moken or 'Sea Gypsies,' as well as asylum seekers from dozens of countries in the Bangkok metropolitan area. The denial of citizenship restricts people’s enjoyment of all other human rights and fundamental freedoms, and increases their risks and vulnerabilities of exploitation and discrimination.<sup>113</sup>

77. Citizenship is guided by the Nationality Act of 2008.<sup>114</sup> As the system and procedure to apply are complicated, lengthy, and inaccessible in indigenous languages, many indigenous peoples are unaware of their right to obtain citizenship. Inadequate state services, corruption among local police, as well as biases towards indigenous peoples, make it difficult for them to get citizenship. While indigenous peoples could prove through DNA tests that they are related to Thai citizens and are eligible for Thai citizenship, these tests are unaffordable for indigenous peoples. Further, indigenous peoples also face challenges registering themselves due to inadequate state services, such as a lack of roads from remote areas to registration offices. Besides, access to citizenship is hampered by corrupt officials’ illegal conduct. Local government personnel in the Omkoi district were found to engage in corruption and wrongful IDs subrogation, where indigenous peoples were requested to pay illegal fees in order to start citizenship procedures or were threatened with arrest. Some of them flatly refused to begin the proceedings, resulting in their citizenship being illegally denied.<sup>115</sup>

## Recommendations

### The State Party Should:

- 1) Take effective measures to address the obstacles encountered in the acquisition of citizenship by those who qualify for it, including with regard to obtaining the required documentation from local authorities.
- 2) Strengthen efforts to facilitate the registration of births, including by allowing late registration as well as registration through the health-care system.
- 3) Facilitate access to citizenship including by reducing simplifying procedures, disseminating information and reducing waiting times, thus ensuring the hill tribe people can exercise their right to a nationality and all other human rights hampered by their statelessness.

**Issue 19.** *Information on the impact of the coronavirus disease (COVID-19) pandemic on the persons most vulnerable to discrimination and the different groups protected by the Convention, including ethnic minority groups, indigenous peoples and non-citizens. Include measures taken: (a) to protect them against the effects of the COVID-19 pandemic; (b) to protect them against discriminatory acts, and to counter hate speech and stigmatization in connection with the COVID-19 pandemic; and (c) to mitigate the socioeconomic impact of the COVID-19 pandemic on such persons and groups.*

### **Migrant Workers**

78. Migrant workers have been disproportionately affected by the COVID-19 outbreak. After the Thai government had announced a COVID-19 lockdown in March 2020, they were among the first to lose their jobs, leaving them without income to support themselves and their dependents. There could be as many as 700,000 migrant workers who have lost their jobs, according to estimates by the Migrant Working Group (MWG).<sup>116</sup> Although the government has rolled out a number of financial assistance programs for those unemployed during the COVID-19 pandemic, such programs are not at all inclusive of the migrant workers. Laid-off migrant workers have been unable to access financial assistance from the government either because of their foreign nationality or because of their former employer's failure to notify the Social Security Office of their employment termination. Furthermore, Thai labour law remains unnecessarily harsh on migrant workers. They are required to find a new job within 15 days of the termination of employment. Failures to do so result in the automatic suspension of their legal status. Due to business closures and lockdown measures, many migrant workers have been unable to find new jobs within the required time frame, effectively rendering them illegal immigrants subject to arrest and deportation. Although the government later extended the timeframe to 60 days from July 2021 onwards, the extension by a mere 45 days provides little to no relief for migrant workers during the COVID-19 pandemic.<sup>117</sup>
79. Despite their overcrowded working conditions which expose them to a higher risk of infection, and an assurance given by the head of Thailand's disease control department in May 2021 that everyone living in Thailand would be included in its vaccination plan<sup>118</sup>, COVID-19 vaccines remain unavailable to most, if not all, migrant workers and their families, either due to language barriers or their illegal status.<sup>119</sup> Furthermore, when an outbreak erupted among migrant workers in mid-2021, the government's response plan took little account of their physical and mental well-being. For example, in June 2021, the Thai government put all worker camps in Bangkok and surrounding provinces, as well as four southern provinces of Pattani, Yala, Songkhla, and Narathiwat, under strict lockdown, not allowing anyone from inside the camps to leave.<sup>120</sup> The government promised to supply food and drinking water to the workers for the duration of the lockdown. However, there were multiple reports indicating that worker camps had not received any food or drinking water from the government, even though the workers were unable to leave the camps to work and effectively did not have income to purchase food and drinking water on their own. A month later, in July 2021, the government ceased its COVID-19 testing and healthcare assistance programs for migrant workers in Bangkok and surrounding provinces, citing scarce resources and medical personnel.<sup>121</sup>
80. As for migrant workers' children, school closures during the COVID-19 outbreak deprived them of their right to education due to a lack of access to online lessons, combined with language barriers and limited personalised learning support. Many families have had to take out loans to purchase mobile phones for their children to attend online lessons, leaving them with yet another financial burden during such a difficult period. Others have forced their children to drop out of school to help them earn income.<sup>122</sup>



According to the Migrant Working Group, at least 300,000 children of migrant workers in Thailand are in need of education.<sup>123</sup>

81. Not only does the government leave migrant workers and their families out of its pandemic response policies, it also plays a role in creating fears of migrant workers among the Thai public by labelling them as COVID-19 carriers. Prime Minister Prayut Chan-o-cha himself blamed the COVID-19 outbreak on migrant workers, stating: *“This latest flare-up of infections in Samut Sakhon is primarily due to such illegal immigrants and they have brought much grief to the country.”*<sup>124</sup>

### ***Malayu Muslims in the south of Thailand***

82. During the COVID-19 pandemic, the government continues to carry out security operations in the Deep South during the COVID-19 pandemic, which shows little regard for the health of the local communities. For example, security officials continued to conduct arbitrary DNA collections, making them even more vulnerable to contracting the virus as such operations require them to breach social distancing protocol. The military ISOC also have not stopped suspending unregistered mobile numbers in the region during the pandemic, a time when quality telecommunication services are needed the most for an immediate access to medical and humanitarian assistance.<sup>125</sup>
83. Thailand has also long been known for its substandard and unsanitary prison conditions. Due to its overcrowded facilities, detainees remain at great risk of contracting communicable diseases, including COVID-19. During the first COVID-19 outbreak in 2020, the Government failed to address these health risks. A total 42 detainees at the immigration detention centre located in Sadao district in the southern province of Songkhla tested positive for the virus on 25 April 2020, out of the 53 new cases recorded nationwide on that day.<sup>126</sup>

### ***‘Khon Isaan’ (Isaan People)***

84. The Isaan region remains under-protected during the COVID-19 pandemic. Due to the unequal distribution of Thailand’s fiscal budget and the deep-rooted biased sentiment against Khon Isaan people, they have faced severe obstacles accessing quality public services essential for the full enjoyment of their fundamental rights. In addition to these pre-existing problems such as the lack of quality and sufficient healthcare services, education, and food security as well as the difficulty to afford adequate housing, the COVID-19 pandemic has put them in an even greater vulnerability. Moreover, they continued to bear the adverse impacts of many government-funded activities. For example, despite the fact that the government had already announced the COVID-19 State of Emergency and halted all business operations nationwide, it continued to allow mining activities to proceed at proposed and active mines in the provinces of Loei, Nong Bua Lamphu, Mukdahan, Sakon Nakhon, and Chaiyaphum<sup>127</sup>, which posed great risks to the well-being and health of nearby populations.

### ***Indigenous Peoples***

85. Indigenous peoples continue to have their basic rights and services denied, including access to healthcare and social security funds, which are of great importance in times of a nationwide health emergency like the COVID-19 pandemic. In particular, indigenous peoples experienced limited road access to hospitals and clinics, making it highly difficult, or nearly impossible, for them to have their health checked and/or test for coronavirus during the pandemic. As many of the indigenous peoples have not been granted Thai citizenship, they have limited access to COVID-19 vaccines, masks, and disinfectants.<sup>128</sup>

86. Moreover, the Thai government’s response to the COVID-19 outbreak is neither gender-responsive nor gender-sensitive, harming indigenous women in the process. In particular, information provided by the government on COVID-19 preventative measures, as well as treatment options, is only available in Thai. This shows a complete disregard of the circumstances of indigenous women. Since the average level of education is higher for men than women due to gender stigma within the indigenous communities, men alone have access to coronavirus-related information, leaving the women to turn to fake news disseminated within their communities, which ultimately endanger their health and lives. Examples of fake claims within indigenous communities include the claim that the consumption of chicken feces could cure coronavirus infection.<sup>129</sup>

### ***Asylum Seekers and Refugees***

87. Urban refugees and asylum seekers are not included in the Government’s COVID-19 response plans, including COVID-19 tests and treatments, or its vaccination programs. Although a set of guidelines was issued by the Thai Ministry of Public Health in May 2021, authorising public hospitals and provincial health offices to provide medical treatment to patients who do not have rights to access governmental treatment scheme<sup>130</sup>; urban refugees and asylum seekers have experienced barriers accessing those services, which include: fear of high costs of testing; lack of pertinent information; and fears of being arrested and reported due to the lack of official legal status in Thailand.<sup>131</sup> For the situations inside the IDCs, access to healthcare is severely limited with minimal medical care levels offered. The situation is further exacerbated by the overcrowded cells and inadequate sanitation, putting the detainees at high risk of contracting the coronavirus.<sup>132</sup> For example, according to a May 2020 news report, all of the 18 new cases recorded on that day came from an immigration detention centre in Songkhla, including 17 Rohingya women and one 10-year-old Rohingya boy.<sup>133</sup>

88. Refugees and asylum seekers are also left out of the Thai labour market and the protection schemes under the Thai labour law, making them even more vulnerable during the COVID-19 pandemic. According to a survey conducted by Asylum Access in May 2020, 85 percent of 74 refugees in urban communities who worked illegally lost their jobs and had no access to the government’s compensation scheme. Half of the respondents had to borrow money from others and could not pay their rent nor buying essential goods for their family members, such as hygiene products, baby supplies, and drinking water. They had to withdraw their children from school because they had no money to pay for transportation.<sup>134</sup>

### **Recommendations**

#### **The State Party should:**

- 1) In line with the UN experts call on Governments to adopt urgent measures to protect migrants in their response to COVID-19, adopt inclusive measures aimed at protecting migrants, and take steps towards the regularization of undocumented migrants whenever necessary, in view of facilitating their access to health services during the fight against the pandemic.
- 2) Address the remaining obstacles in access to the universal health care scheme, in particular for disadvantaged and marginalised individuals and groups facing intersectional discrimination, and ensure good quality health care.
- 3) In line with the CESCR Concluding observations to Thailand (2015), step up efforts to ensure that all children under its jurisdiction, especially those of marginalised groups and regardless of their legal status, effectively have access to free basic primary education; address the causes for school dropout; and improve the overall quality of education.
- 4) Halt any security measures and operations that might put the health of Malaya Muslims at risk during the COVID-19 pandemic, in accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

- 5) Take practical measures to improve conditions of immigration detention centres and ensure that the living conditions inside are in compliance with international standards and COVID-19 prevention measures, particularly with regard to the amount of space allocated per detainee, sanitation facilities, and the availability of adequate healthcare.
- 6) Strengthen the gender responsiveness and gender sensitivity of the Thai government's response to the COVID-19 outbreak, while considering the circumstances of indigenous women and other women of marginalized communities.

## Issues That Have Not Been Addressed

### Sex Workers

89. Manushya Foundation would like to draw the attention of the CERD Committee on the rights violations that **sex workers** experience related to ICERD.
90. Due to socio-economic disparity, many women in the Isaan region as well as woman migrant workers resort to sex industry to support themselves and their families. However, since sex workers are not recognised as 'workers' under Thai law, migrant sex workers and those of Isaan ethnic origin are subject to numerous rights violations compounded with a multi-layer of discrimination.
91. In Thailand, about 300,000 individuals earn a living from sex work, contributing to 10% to 12% of the GDP. Even though sex workers are not recognised as 'workers', sex work is criminalised and sex workers are treated as second class citizens. They are discriminated against in many areas, including access to goods and services, housing and lodging, job opportunities, and justice. The criminalisation of sex work is prescribed in the Criminal Code of 1956<sup>135</sup> (the "Criminal Code") and the Prevention and Suppression of Prostitution Act of 1996<sup>136</sup> (the "Act"). Under the Act, sex workers face a fine of up to THB 40,000 or imprisonment of up to two years, or both. The Prevention and Suppression of Prostitution Act of 1996 criminalises sex work by also linking it with human trafficking, confusing sex work with trafficking. Ultimately, the police use trafficking to justify raids on entertainment establishments to arrest and detain sex workers, either as criminals under the Criminal Code and the Prevention and Suppression of Prostitution Act, or as victims of trafficking under the Prevention and Suppression of Human Trafficking Act of 2008.<sup>137</sup>
92. In 2021, the Thai government renewed its efforts to modernise and reform laws on sex work in response to calls from sex workers to decriminalise sex work. The Department of Women's Affairs and Family Development (DWF) under the Ministry of Social Development and Human Security opened a public consultation on the direction of the regulation of sex work from August 6, 2021, to October 5, 2021.<sup>138</sup> The Director-General of the DWF expects that the direction of the regulation of sex work will be determined in December 2021. Despite this recent attempt to modernise its legislation, the government still does not take into account sex workers who are members of marginalized groups, leaving out the intersectional discrimination they suffer from the discussion.

### ***Sex workers face systemic discrimination and stigma due to the criminalisation of sex work***

93. Thai legislation denies sex workers labour protection, subjecting them to exploitative working conditions and unfair employment practices. Although Section 74 of the 2017 Constitution sets out the duty of the State to provide labour protection and social security benefits, the government fails to extend these protections to sex workers, while the same protections are guaranteed to workers in all other sectors.

According to the study conducted by EMPOWER Foundation, 87% of women employed in the entertainment industry work in conditions failing to meet national legal standards for labour protection or the ILO criteria for decent work.<sup>139</sup> Poor working conditions, including a lack of adequate toilets, dirty workplaces, loud noises, lack of privacy in shared quarters, the absence of ventilation, fire exits, iron bars or fixtures on doors and windows, are endured by sex workers. Additionally, they experience excessive working hours with insufficient rest days, and unfair wage deductions for sick leaves.

94. Due to the criminalisation of sex work, sex workers cannot formally access legal protection and, as a result, have little to no access to state-based judicial remedies when their rights are violated. Fearing being charged, sex workers are often reluctant to report crimes or rights violations. Unable to report crimes and rights violations or turn to new types of work, sex workers are forced to continue to work under exploitative conditions. In 2019, more than 24,000 people were arrested, prosecuted, and fined for offenses related to sex work.<sup>140</sup> They also experience various forms of abuse, violence, and harassment at the hands of police and other law enforcement officials, ranging from frequent violent raids and random drug tests, to arbitrary arrests, extortion, and demands for bribes or protection money. Police officers utilize the Prevention and Suppression of Prostitution Act to demand bribes. Consequently, in some places in Thailand, 10% to 17% of sex workers' earnings go towards paying bribes to the police. In the case of migrant sex workers, socio-economic exclusion and prejudice compounds the intersectional discrimination sex workers already face as they belong to the marginalised migrant community. When police agree to let all the sex workers off on the payment of a bribe, migrant workers pay more than their Thai counterparts, amounting to even 26% of their monthly earnings. To them, justice is not delayed, but also often denied. When they went to report a crime, migrant women reported being arrested based on their identity documents or the lack thereof, their right to work or the legality of their work.<sup>141</sup>

### ***Sex workers during the COVID-19 pandemic***

95. During the outbreak of COVID-19, criminalisation takes on a heightened impact on sex workers, making them even more vulnerable during the COVID-19 pandemic. They are not only ineligible for any forms of government assistance, but also subject to the risk of being arrested and deported to their country of origin. Sex workers were the first affected and one of the worst affected groups owing to the physical contact that their activities entail as well as its dependence on the tourism sector. With the shutdown of entertainment establishments by the government, sex workers have struggled to survive with no income to support themselves and their dependents. Some sex workers go for days without any food and shelter, while others are forced to borrow from loan sharks. Ultimately, many sex workers end up working on the streets, where the risk of contracting COVID-19 is increased. No response plan or assistance program targeting sex workers have been rolled out.<sup>142</sup> On top of putting their lives at risk, street-based sex workers face the risk of arrest and prosecution. To date, the government has charged several street-based sex workers with violating the COVID-19 Emergency Decree, which is punishable by a fine of up to THB 40,000 or imprisonment of up to 2 years, or both.<sup>143</sup>

### **Recommendations**

#### The State Party should:

- 1) Decriminalise sex work through the repeal of the Prevention and Suppression of Prostitution Act of 1996 and other relevant laws, in line with 2017 CEDAW Committee's Concluding Observations to Thailand and the 2019 Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises.
- 2) Consult sex workers on how to address and measure exploitation within the entertainment industry. The following forms of exploitation, as recognised by sex workers, should be urgently addressed: salary cuts; compulsory alcohol consumption; interference with their freedom to choose or refuse

customer; and receipt of any less than 50% share of the earnings. For migrant sex workers, the additional elements of passport retention and/or movement restriction should be recognised as indicators of exploitation.

- 3) Take practical measures to improve the regulation of the entertainment industry by ensuring the full application of labour laws and social benefits within the industry. Legal reforms should include labour rights for sex workers; labour inspections, led by a team composed of sex worker organisations and law enforcement; the introduction of good labour practices for decent sex work, and improvement of occupational safety and health.
- 4) Ensure that sex workers can effectively challenge employment practices that violate their human rights through employment tribunals and other grievance mechanisms offered by the 2015 Gender Equality Act, the National Human Rights Commission (NHRCT) and the national justice system.
- 5) Investigate and punish individuals who exploit women in sex work, including government officials; and immediately end the practice of violent raids of entertainment venues, entrapment operations and extortion and hold individual police officers accountable for their involvement in such activities and in corruption practices, such as bribes, according to the 2017 CEDAW Committee's Concluding Observations to Thailand.
- 6) Address the remaining obstacles in access to healthcare, in particular for disadvantaged and marginalised individuals and groups facing intersectional discrimination in times of the COVID-19 pandemic.

#### LGBTIQ+ Refugees and Migrants

96. Manushya Foundation would like to draw the attention of the CERD Committee on the rights violations that **LGBTIQ+ refugees and migrants** experience related to ICERD, owing to the unique vulnerability and their specific needs.
97. According to the Organisation for Refugee, Asylum and Migrants (ORAM), LGBTIQ+ refugees are among the most vulnerable people in the world and confront significant barriers when seeking to secure international refugee protection.<sup>144</sup> The plethora of systemic inequalities that exists at the intersection of sexual orientation and gender identity and status as migrant, asylum seeker or refugee exacerbates the risk of other human rights violations.<sup>145</sup>
98. According to the study conducted by Equal Asia Foundation, there are approximately 30 LGBTIQ+ refugees registered with the UNHCR in Thailand who have applied for asylum based on their SOGIESC.<sup>146</sup> Since the situation of LGBTIQ+ refugees in Thailand is poorly documented, stakeholders may mistakenly believe that they do not exist and consequently overlook their special needs. This affects the creation of tailored provisions and their application to the sexual orientation, gender identity and expression, and sex characteristics of refugees (SOGIESC). LGBTIQ+ refugees and asylum seekers endure multiple forms of discrimination as a result of the unique circumstances surrounding their SOGIESC, which are not necessarily faced by other people seeking shelter.

#### ***LGBTIQ+ refugees and migrants face harassment and discrimination in detention centres***

99. Owing to the lack of legal recognition of refugees and asylum seekers, all the persons entering in Thailand without a legal permission, are treated according to the 1979 Immigration Act that provides for arbitrary arrest and detention. LGBTIQ+ refugees and irregular migrants facing arbitrary arrests, as a result of their entry and stay in the country, are further exposed to harassment and discrimination from the authorities who often deny them protection. LGBTIQ+ migrants in an irregular situation may be even more vulnerable



to harassment, violence and exploitation, as their migratory status may discourage them from seeking redress for the human rights violations they endure. These negative experiences are compounded for trans persons, as they are frequently detained in wards that do not correspond to their self-identified gender or are held in solitary confinement for long periods of time. The placement of LGBTIQ+ people in solitary confinement is recognised as physically and psychologically destructive and can lead to permanent mental and physical health issues.<sup>147</sup>

100. When they are detained, they are likely to be subjected to inadequate vulnerability screenings, non-gender-appropriate searches, forced nudity, verbal and psychological abuse, physical and sexual violence, and a general lack of medical treatment. Due to the strict binary gender partition of prisons, LGBTIQ+ inmates are subjected to forced nudity and individual genital exams in order to decide if a transgender refugee should be placed in the male or female cell. Forced disclosure of gender identity not only violates rights to personal dignity, it also puts LGBTIQ+ persons at serious risk of harm within the detention environment. If a transgender woman has not had gender reassignment surgery, she will most likely be placed in a male cell and ordered to cut her hair. Also, transgender women refugees might not be allowed by men in the cell to use the bathroom with them. This situation further exposes transgender detainees to risks of physical, sexual and psychological violence from both immigration detention officers and their cellmates. In addition to that, their access to the medical treatment required by them is very limited in detention centres, while hormone replacement therapy and other treatment associated with gender affirming care are prohibited. In this setting, LGBTIQ+ migrants' physical and mental health are jeopardised while in detention, as the inability to continue hormone therapy can have grave medical consequences. Several arrested transgender women refugees reported that their transitions were abruptly disrupted and that their facial hair reappeared, causing them severe psychological distress.<sup>148</sup>

***LGBTIQ+ refugees face unique obstacles and perils within their own communities***

101. Even outside of detention centres, LGBTIQ+ refugees and asylum seekers are rejected from their own communities and face severe social isolation. Unlike other refugees, who are frequently supported by family members who remain at home, most LGBTIQ+ refugees have few, if any, relational ties when they arrive. This is due to the fact that their families or communities of origin are frequently the ones from which they had to flee. As a result, LGBTIQ+ people experience even more marginalization among asylum seekers and refugees. The situation in the receiving country is similar: many LGBTIQ+ refugees encounter xenophobia and discrimination from their fellow refugees seeking asylum for reasons unrelated to their SOGIESC rights. As a result, they feel compelled to conceal their identity for fear of further maltreatment, even from within their own refugee communities, due to alleged homophobia or transphobia. This has a negative influence on the ability of LGBTIQ+ refugees to form social and communal bonds, resulting in significant isolation and marginalization.

***LGBTIQ+ migrants and refugees face discrimination due to the lack of recognition of same-sex families***

102. While refugees and migrants are recognised the right to family reunification, this right is inexistent to LGBTIQ+ refugees and migrants. Owing to the absence of a legislation recognising rights to family establishment of LGBTIQ+ people, people suffer significant social exclusion and human rights violations. Since Thailand does not recognise same-sex partners and spouses of LGBTIQ+ refugees, their right to legally reunify with their families in an effective and timely manner is breached. Furthermore, because of the hidden nature of the relationship and the antagonism or even criminalisation of same-sex partnerships in the nation of origin, LGBTIQ+ people have a harder time attesting relationships as grounds for reuniting with their partners.

103. In the case of homosexual married couple who relocates to Thailand for work, the spouse traveling with the worker spouse is not awarded a 'dependent' visa, as is the case of heterosexual couples.<sup>149</sup>

***LGBTIQ+ migrants and refugees remain vulnerable during the COVID-19 pandemic***

102. The COVID-19 has exacerbated the challenges faced by the LGBTIQ+ community in Thailand as its healthcare services are neither gender-sensitive nor responsive for LGBTIQ+ people. During the pandemic, the LGBTIQ+ community is in a particularly 'vulnerable' position, as noted by the OHCHR<sup>150</sup>, due to de-prioritised access to required health services, such as HIV medications; decreased access to work and livelihoods; and discrimination. For example, Sister Foundation Pattaya, RSAT, and Transpiration Power received complaints from transgender COVID-19 patients who were forced to be admitted in the male ward of COVID-19 field hospitals. A survey also found that 47% of the LGBTI population lost their jobs or were forced to go on unpaid leave.<sup>151</sup> These realities are likely made more complicated for the non-Thai LGBTIQ+ people, especially migrant workers, refugees and asylum seekers, as they continued to face severe intersectional discrimination both because of their migration status and their sexual identity.

**Recommendations**

The State Party should:

- 1) Develop specific and practical guidance on protecting LGBTIQ+ refugees and migrants and ensure its full implementation. Such guidance should be developed in close partnership with civil society groups including refugee rights groups and those who work with LGBTIQ+ communities. This guidance should seek to ensure LGBTIQ+ refugees and migrants are able to access services and support on the basis of equality and with dignity.
- 2) Prioritise the implementation of LGBTI-sensitive screening procedures that allow LGBTIQ+ persons to promptly disclose their gender identity in a safe, dignified and confidential manner.
- 3) End the immigration detention of LGBTIQ+ persons and explore, develop and implement LGBTI-sensitive alternatives to detention.
- 4) When LGBTIQ+ refugees and migrants are put into detention centres, provide access to LGBTI-sensitive medical and authorise treatments associated with gender affirming care, making sure that every transgender detainee can access them.
- 5) Establish safe spaces created and designed for LGBTI+ refugees. These could include social support groups for LGBTIQ+ refugees, special days/times for LGBTI+ refugees to register or hold interviews, or an LGBTIQ+-specific hotline that addresses inquiries from LGBTI+ refugees. Providing these safe spaces is essential for reducing isolation and increasing self-esteem, social support, resilience, and sense of security.
- 6) Address the remaining obstacles in access to healthcare and improve its gender-sensitivity and -responsiveness, in particular for non-Thai LGBTI+ facing intersectional discrimination in times of the COVID-19 pandemic

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