

THE RIGHTS OF INDIGENOUS PEOPLES IN THAILAND

Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its first UPR in 2011, Thailand did not receive any recommendations specifically addressing the issues of indigenous peoples. There were some relevant recommendations such as: recognizing social and ethnic diversity in Thai society (made by Oman); strengthening the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants (made by Viet Nam); combating discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability (made by Uruguay); and redoubling efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision-making process, with more consideration given to women from minorities and persons with disabilities (made by the Republic of Korea). Although Thailand accepted these 3 recommendations, it has yet to make any real effort to fully implement them.

Indigenous peoples in Thailand have long faced severe discrimination by Thai society. These indigenous groups are concentrated in three geographic areas of Thailand: (1) fishing and hunter-gatherer groups in the south near the Malaysian border; (2) on the Korat plateau along the borders of Laos and Cambodia; and (3) in the northwestern highlands, where the largest population of indigenous peoples (more often known as "hill tribes") live. It is estimated that between 600,000 and 1.2 million indigenous peoples (approximately 1-2% of the total population of Thailand) live in Thailand.

Thailand voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Since then, indigenous peoples in the country, though not officially recognized in any State legislation, have come together as the Network of Indigenous Peoples in Thailand (NIPT) to raise awareness on the rights of indigenous peoples through public events. As a result, strong discourse on indigenous identities and rights has been established since the formation of NIPT. It currently comprises of more than 38 ethnic groups and advocates for an "indigenous rights based approach" in the formulation and enforcement of government policies. The Thai government has adopted some laws and policies, which can be considered favorable to indigenous peoples to some extent. These include: the Amendment to the Nationality Act 2008, the Community Land Title Deeds Regulation 2010, the Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand 2010, and the Ministerial Regulation on Community Schools 2015. However, the enforcement of such laws and policies has been poor.

The ruling National Council for Peace and Order (NCPO) has made efforts to protect and promote human rights during the promulgation of the current Interim Constitution of 2014 and the ongoing Constitution drafting process. Nonetheless, recent laws such as NCPO Order No. 64/2014 to end deforestation and encroachment on forest reserves have deprived indigenous peoples of their rights. As a result, Karen communities in the northwest and sea gypsies in the south, in particular, are currently facing various land conflicts with ongoing case litigations. Indigenous activists and community members have been subjected to enforced disappearances and other intimidations for their legitimate actions to protect and enjoy their rights over lands and resources, among others.

Challenges

1. Right to Identity and Participation in Decision Making (UNDRIP Articles 3, 18):

The Thai Constitution does not recognize indigenous peoples – let alone their rights as per the UNDRIP. As a result, their right to participate in the constitution drafting process, which would affect their rights, has not been respected while indigenous peoples and their rights are rendered invisible in the national laws and policies.

2. Rights to Lands, Territories and Resources, Traditional Livelihoods and Access to Justice (UNDRIP Articles 8, 10, 11, 19, 22, 25, 26, 28, 29, 38, 46):

The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010 does not provide legal recognition to traditional land tenure and resource management systems by indigenous peoples. It only allows communities to collectively manage and use State-owned land for their living while the State still retains its claim to ownership of these lands. The Cabinet Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand also do not fully meet the aspirations of the indigenous peoples.

Indigenous peoples have been struggling with expulsion from or restrictions of access to their ancestral lands. Recent legal reforms and policies such as NCPO Order No. 64/2014 and the subsequent Forestry Master Plan have resulted in judicial actions against members of indigenous communities within protected forests. Indigenous leaders and activists opposing such injustices have faced harsh reprisals, including enforced disappearances and harassments.

Traditional knowledge of the indigenous peoples on the use of their lands and resources is also being challenged with adverse laws.

Cases, Facts, Comments

In 2014, during the drafting of the current Interim Constitution of Thailand, indigenous peoples submitted proposals for specific legislation for the promotion of the rights of indigenous peoples, but these were not accepted. Indigenous peoples have continued lobbying for the National Legislative Assembly to consider the proposals for such legislation.

According to the Land Reform Network, more than 400 communities were still waiting to be granted community title deeds, indicating poor implementation of the regulation as of 2012, while only one community land title had been issued.

Land Confiscation, Evictions and Criminalization of Traditional Livelihoods

In July 2014, three indigenous Pakayaw Karen families had their lands reclaimed by the Royal Forest Department in Thung Pa Ka village, northern Mae Hong Son province. The move followed the arrest of 39 Pakayaw Karens at the hands of the army in May 2015, for cutting down trees in the surrounding forest to use the timber to build their homes. They now face imprisonment for 1-7 years or fines ranging between 10,000-350,000 Baht. However, the conviction of the indigenous Karens is in violation of Order No. 66/2014, which states that poor people and those living in protected areas prior to the announcement of the Order will not be affected by the policy, and that the authorities will only apply strict measures to prevent further encroachment into protected areas.

By December 2015, Order No. 64/2014 had affected nearly 1,800 families, mostly in the north and northeast, home to large indigenous and minority populations.

There are 681 cases filed against exercise of powers under Order No. 64/2014 towards local and indigenous communities. Among those, litigations on 168 cases involve judicial harassment.

More land confiscation and evictions have also continued in Isan, in the northeastern Lao-speaking region that has faced discrimination from the Thai administration in Bangkok since its incorporation into the modern state of Thailand.

3. Right to Nationality & Access to Basic Services (UNDRIP Articles 6, 21, 24, 33):

Indigenous peoples have been struggling for decades to secure citizenship in Thailand. Citizenship will help indigenous peoples ensure their rights to land, education, and freedom of movement.

Indigenous peoples are also facing oppression from government officials, many of whom still view indigenous peoples as foreign and dangerous. It is for these reasons that the plan to give indigenous people gain access to citizenship has slowed, and over 100,000 indigenous persons are estimated to be without citizenship. Resolving the citizenship issue will also help resolve many of the other problems faced by indigenous peoples in Thailand. The existing policy on the nationality verification process and implementation thereof have failed in many cases due to a lack of knowledge and understanding of both indigenous peoples and officials about the registration and verification systems.

4. Right to Quality and Culturally Relevant Education (UNDRIP Articles 14, 15):

From Thailand's review of their own human rights situation in first cycle of UPR, the government asserts that all children, including "non-Thais, those without a clear legal status, including ethnic groups... are ... entitled to 15 years of free education." However, they also acknowledge they still face "language, cultural and geographic barriers" where health and education is concerned.

Against such acknowledgement, the Thai government continues to implement a monolingual and monoculture system of education in national language and a majority religion/culture, despite the multilingual and multicultural nature of the State.

Indigenous Women and Girls & Human Trafficking (UNDRIP Articles 7, 17, 44):

Thailand remains a "source, transit and destination country" for human trafficking. The human trafficking situation remaining in tier 3 in the latest US Trafficking in Persons (TIP) report, meaning that the Royal Thai Government does not fully comply with the Trafficking Victims Protection Act's minimum standards and is making insufficient efforts to do so.

Human trafficking victims in Thailand are estimated to be in the tens of thousands, with Indigenous Peoples and ethnic minorities making up a disproportionate number of the victims of human trafficking.

Enforced Disappearance

In one particular instance that has garnered some international attention is the case of the missing Bang Kloi village leader and Karen activist, Porlajee "Billy" Rakchongcharoen, who was apprehended and held in custody by the Chief of Kaeng Krachan National Park, in Petchaburi, on 17 April 2014. He has not been seen since. At the time of his "disappearance", he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011.

There has been an ongoing program to register all people living in remote areas as citizens, who have proof that at least one parent was born in Thailand or was granted temporary legal status. The Thai government has also set up various mechanisms to grant temporary residential status. However, in rural areas, even though it is believed that at least 50% of people have a legitimate claim for citizenship, proof is very hard to obtain, and many lack the needed paperwork.

If a person in Thailand lacks citizenship, as stated earlier, freedom of movement is illegal, and thus, moving to a city -- which is on the rise in indigenous communities due to forced evictions or natural disasters in their homelands -- would be considered illegal. Fear of arrest is also constant. The lack of legal status is another huge contributing factor to the volume of human trafficking that occurs in Thailand, especially in areas where indigenous peoples live.

In some of the cases regarding the legal status of persons, investigated by the NHRCT, the recognition is found to conflict with their de facto evidence.

UNICEF and UNESCO's baseline studies on the situation of education in Thailand show high rates of dropout and out of school children, particularly from those from non-Thai, stateless, indigenous, and ethno-linguistic minorities. Based on similar experiences of other countries, educationists are proposing life skills learning in mother-tongue based/multilingual education, with decentralization of school management, to tackle such high dropout and out of school rates.

The Thai government adopted, in 2015, a Ministerial Regulation on Community Schools to improve community participation in education management, but the regulation does not guarantee financial support for its implementation.

Indigenous Peoples, especially women and girls, are a highly vulnerable population group because they have no official citizenship. Reports from UNESCO "assert that lack of legal status is the single greatest risk factor for trafficking or other exploitation of highlanders." Due to their lack of legal status and less access to quality education, many are lured into a situation involving indentured servitude and a debt too enormous to pay off. They are also less likely to report abuse to the authorities because of their lack of legal status -- making them an almost sought after target.

While the 2014 Trafficking in Persons Report done by the US State Department has affirmed that there have been small improvements, more still needs to be done to protect the victims of human trafficking in Thailand, which includes mass amounts of Indigenous Peoples from the hill tribes. Those without documentation, Thai language skills and remain knowledgeable about their rights will continue to be vulnerable and the problem will linger on.

Recommendations

1. Ensure the establishment of a specific mechanism for full and effective participation of indigenous peoples in the ongoing country reforms and constitution drafting process and ensure indigenous peoples are recognized in the new Constitution as peoples with their own distinct identities and collective rights.
2. Accede to International Labour Organization Convention No. 169 and give positive consideration to indigenous peoples' proposals for separate legislation for the promotion and protection of the rights of indigenous peoples through the adoption of national legislation and policies, in line with the 2012 concluding observations of Committee on the Elimination of Racial Discrimination (CERD) to Thailand.
3. Review the relevant forestry laws and programs, including NCPO Order No. 64/2014 and the Forestry Master Plan, in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them, such as reforestation programs, and development and mining projects, while protecting the environment, in line with the 2012 concluding observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples. Ensure that any new law on mining or any other type of resource use complies with the above-mentioned rights of indigenous peoples.
4. Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands, territories and resources, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.
5. Accelerate the process of granting nationality and/or legal status to indigenous persons without citizenship, ensuring that indigenous communities and relevant officials are informed about the registration and verification processes, and implement special measures to reach individuals caught in a protection gap, including indigenous populations to fulfill the State's immediate human rights obligation of non-discrimination and equality. Ensure the birth of every indigenous child is formally registered in national systems, in line with the concluding observation of 2012 CERD to Thailand and recommendation of the Special Rapporteur on the human right to safe drinking water and sanitation.
6. Improve access to education with interventions targeted towards understanding and overcoming specific barriers faced by indigenous people and children in line with the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples. Adopt necessary laws and policies to provide adequate resources for the implementation of mother-tongue based/ multilingual education (MTB/MLE) and for the enforcement of the Community Schools Regulation in order to ensure inclusive and equitable quality education and promote lifelong opportunities for all as provided by SDG4.
7. Ensure that security forces perform their duties strictly in accordance with the law, bringing security personnel guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations. On the other hand, ensure that due process is undertaken in relation to all indigenous people who enter the criminal justice system, as stated in the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
8. Take concrete steps and comprehensive measures to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.
9. Ensure effective grievance mechanisms that are accessible to indigenous women at the local and national levels, including resolution of all cases of Violence against Women and other human rights violations.