

**Observations on the State of Human Rights of Indigenous Peoples in Thailand
in Light of the
UN Declaration on the Rights of Indigenous Peoples
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Submitting organizations



Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org. Contact agnes@culturalsurvival.org



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



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

Executive Summary

Despite the fact that the Indigenous Peoples in Thailand make up around 1% of the Thai populationⁱ, these communities are facing serious issues that are threatening and essentially, prohibiting the rights guaranteed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which Thailand voted for in 2007ⁱⁱ. Indigenous Peoples regularly face discrimination and have little access to basic services that come with the Thai citizenship that has been denied to them by their constitution.ⁱⁱⁱ There have been several instances where Indigenous rights to free, prior and informed consent have been violated, for example, with the current proposal of a World Heritage site in the Kaeng Krachan Forest Complex, where many Indigenous Karen communities live.^{iv} Along with numerous cases of missing Indigenous activists, minimal efforts to curb human trafficking, and land deed complications, these are all evidence that the Thai government needs to institute new policies that will allow Indigenous Peoples to obtain rightful citizenship, provide quality services, and to constitutionally recognize the Indigenous Peoples and their rights as specified in the UN Declaration on the Rights of Indigenous Peoples.

Introduction & Background

The Indigenous groups of Thailand are concentrated in three geographic areas of the country: fishing and hunter-gatherer groups in the south near the Malaysian border, on the Korat plateau along the borders of Laos and Cambodia and in the northwestern highlands, where the largest population of Indigenous Peoples, more often known as “hill tribes”, live. While there is no direct account of the total population of ethnic groups in Thailand, the population of hill tribe people is estimated at nearly one million.^v

Indigenous Peoples in Thailand have long faced severe discrimination by general Thai society. The term “*chao khao*,” which is what hill tribe people are commonly referred to as, translates to also mean ‘wild,’ or ‘uncivilized.’^{vi} Indigenous rights groups have tried to get the general public using a Thai translation of the term ‘Indigenous Peoples’ -- “*chon phao phuen mueang*” -- but this has been rejected by the Thai government, who claim that they are “not considered to be minorities or Indigenous Peoples but as Thais who are able to enjoy fundamental rights and are protected by the laws of the Kingdom as any other Thai citizens.”^{vii} However, the Thai constitution does not recognize Indigenous Peoples.^{viii} Thus, there is no specific development policies or programmes targeted for Indigenous Peoples. Non-recognition of Indigenous Peoples is also the reason why they have not been provided any specific mechanism for participation in the ongoing country reforms and drafting of new constitution.

As well as discrimination, government officials have also used the guise of battling the drug trade to continually ostracize Indigenous Peoples and their traditional lifestyle, as well as an excuse to regularly raid villages and arrest community members.^{ix} Land rights, citizenship and ending discrimination are huge issues for the Indigenous Peoples of Thailand as the country moves forward following the military coup in May 2014 that removed the previous democratically-elected government from power.^x

Citizenship & Access to Basic Services (UNDRIP Articles 6, 21, 24, 33)

Indigenous Peoples have been struggling for decades to secure Thai citizenship. With citizenship will come the rights to land, education, freedom of movement and education.^{xi} 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.^{xii} 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.^{xiii} Indigenous Peoples are also facing oppressive government officials, many of whom still view Indigenous Peoples as foreign and dangerous.^{xiv} It is for these reasons that this operation has slowed, and over 100,000 Indigenous persons are estimated to be without citizenship.^{xv} Resolving the citizenship issue will also help

many of the other problems the Indigenous people of Thailand are facing. For example, if a person in Thailand lacks citizenship, as stated earlier, freedom of movement is illegal, and thus, moving to a city -- which is on the rise in Indigenous communities due to forced evictions or natural disasters in their homelands -- would be considered illegal, and the fear of arrest is constant.^{xvi} Lack of legal status is another huge contributing factor to the volume of human trafficking that occurs in Thailand, especially in the area of Indigenous Peoples, which is another problem that could be resolved if the problem as a whole in the country.

Human Trafficking (UNDRIP Articles 7, 17, 44)

Thailand remains notorious as a participant in human trafficking, as a “source, transit and destination country.”^{xxvii} The state is currently on the Tier 3 list within the US State Department’s Trafficking in Persons Report, meaning they do not fully comply with the Trafficking Victims Protection Act’s minimum standards and are making insufficient efforts to do so.^{xxviii} Human trafficking victims in Thailand are estimated to be in the tens of thousands.^{xix} Indigenous Peoples and ethnic minorities make up a disproportionate number of the victims of human trafficking.^{xx}

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.”^{xxi} 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.^{xxii} 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.^{xxiii}

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.^{xxiv} Those without documentation, Thai language skills and remain knowledgeable about their rights will continue to be vulnerable and the problem will linger on.^{xxv}

Access to Quality and Culturally Relevant Education (UNDRIP Articles 14, 15)

From Thailand’s review of their own human rights situation, 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.”^{xxvi} And while the report admits that they are committed to providing education to children in more remote areas, such as the highland areas in the northeast where the hill tribes are located, they also acknowledge they still face “language, cultural and geographic barriers” where health and education is concerned.^{xxvii} This is particularly evident when the naturalization process of the hill tribes is analyzed, as well as when observing the proportion of Indigenous persons that are counted among human trafficking victims. A huge contributing cause for the latter is lack of education.

Not enough quality, organized education is being provided for the Indigenous children that is offered in an accessible means and appropriate to their lifestyle and in their native language.^{xxviii} As stated previously before, many of these problems, education and human trafficking in particular could be ameliorated with the securement of Thai citizenship for Indigenous Peoples.

Ending Discrimination (UNDRIP Articles 2, 8, 9, 14, 15, 16, 21, 22, 24, 29)

Discrimination is at the root of the inequalities that Indigenous Peoples face in Thailand. Thailand claims that it is a national priority to promote “public understanding and recognition of ethnic groups in Thai society and their rights in order to reduce inequalities and discrimination within society.”^{xxix} However, Thailand has not taken sufficient action to follow through with these goals. Indigenous communities are still often stereotyped as threats to national security, drug cultivators, and destroyers of forests.^{xxx}

The end of discrimination can also come with citizenship. If Indigenous people are truly like every other Thai citizen, then every member of these communities should be offered citizenship and then the rest of Thai society will begin to see Indigenous communities as the same as themselves, not people to make fun of, be scared of or ostracize.

Land Confiscation, Evictions and Criminalization of Traditional Livelihoods (UNDRIP Articles 8, 10, 11, 19, 25, 26, 28, 29)

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

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

More land confiscation and evictions continued, many in Isan, the northeastern Lao-speaking region that has faced discrimination from the Thai administration in Bangkok since its incorporation into the modern state of Thailand. Indeed, by December, Prachatai news had reported that nearly 1,800 families had been affected by the order, mostly in the north and northeast, home to large indigenous and minority populations.^{xxxix}

A community of indigenous Moken sea gypsies has also been struggling to resist eviction from their ancestral territory, occupying highly prized lands in Phuket whose title deeds are owned by several businessmen. A lower court ordered the eviction of over 100 people, but the Department of Special Investigations has found that the community has occupied these lands for at least 100 years through DNA analysis of burial grounds, though they lacked any formal title deeds.^{xxxix}

A newly proposed Mining Bill - shot down during the previous government - was also revived and will soon be up for approval by the National Legislative Assembly, causing concern for indigenous communities in mineral-rich areas as the new bill has weakened impact assessments.^{xxxix}

Disappearances of Activists, Access to Justice, and Impunity (UNDRIP Articles 22, 26, 29, 38, 46)

A more severe form of discrimination that is unfortunately frequent is crimes committed by government officials toward Indigenous communities and rights activists. Under the cover of preventive measures against the 'war on drugs,' government officials periodically raid communities and houses and

arrest community members.^{xxxvii} For example, in May of 2014, 39 Karen villagers were arrested for illegal possession of timber, when in actuality they were using the wood for traditional purposes and the maintaining of their homes.^{xxxviii}

In one particular instance that has garnered some international attention is the case of the missing Bang Kloi village leader, Pawlajee Rakjongcharoen, known as Billy.^{xxxix} Bang Kloi is located in Kaeng Krachan National Park, where a lawsuit was filed in 2014 against park officials for looting more than 20 homes of the Indigenous Karen community.^{xl} Billy was witness to this crime and had submitted a report to the Bureau of Royal Household demanding justice.^{xli} On April 17, 2014 park officials apprehended him for possession of illegal honey.^{xlii} The officials said that they released him soon after, but it came out that authorities had held him for much longer than they had claimed.^{xliii} An investigation was launched into his disappearance, but Billy has not been seen since.^{xliv} The park chief, Chaiwat Limlikhitaksorn, had already been under investigation for the killing of another Karen activist in 2011. In July, the provincial court cleared Chaiwat of involvement in Billy's disappearance, but by December a representative from the National Human Rights Commission (NHRC) publicly stated that their investigation into the case has found that the officers never released Billy.

Thailand needs to open safe channels of communication between the government and Indigenous rights activists so they can air their grievances without fear of reprisals. The government needs to ensure that all the rights guaranteed to Indigenous people in UNDRIP are protected and that any government official that violates them is prosecuted.

Kaeng Krachan Forest Complex World Heritage site proposal & Free, Prior and Informed Consent (UNDRIP Articles 8, 10, 11, 19, 25, 26, 28, 29)

A monumental issue currently facing Indigenous Peoples is the government proposal to list Kaeng Krachan Forest Complex (KKFC) as a World Heritage site that is currently undergoing review. KKFC is made up of four protected areas in which primarily the Karen people live.^{xlv} The Karen people have already faced evictions throughout 2013-2014, and the plan proposed for the World Heritage site would cause more.^{xlvi} According to reports, most of the villagers living in KKFC areas have received very little information regarding the World Heritage site proposal, which is a violation of their right to Free, Prior and Informed Consent, as stated in Article 10 of the UN Declaration on the Rights of Indigenous Peoples.^{xlvii} There has also reportedly been little information provided for villagers who live in the area about the project. Communities are especially wary that the site will interfere with their daily lives and cause problems for the continuation of their lifestyles.^{xlviii}

The Karen Network for Culture and Environment and many other Indigenous rights activists have contacted the Bureau of World Heritage Committee and recommended that certain measures be taken before the proposal is finalized, such as total conflict resolution, so any issues that Indigenous groups want to discuss and resolve.^{xlix}

Recommendations relevant to Indigenous Peoples from First Cycle of UPR

Following are the recommendations from the first UPR of Thailand, which are yet to be effectively implemented:

- “Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants.” (Vietnam)
- “Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability.” (Uruguay)

- “Redouble its efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision- making process. Indeed, more consideration should be given to women, persons with disabilities and other minorities.” (Republic of Korea)

- “Continue to strengthen the general concept recognizing social and ethnic diversity in Thai society and protect fundamental rights.” (Oman)

Recent National Developments

Indigenous Peoples in Thailand had joined together as the Network of Indigenous Peoples of Thailand (NIPT) to organize campaign activities calling for their acceptance by the state and public, as well as recognition of their rights since the year 2007. In 2010, the Council of Indigenous Peoples in Thailand (CIPT) was established as a mechanism to support this goal of acceptance of indigenous diversity and rights. The First National Assembly of the Council of Indigenous Peoples of Thailand, held in November of 2014, ratified the Constitution of the CIPT to serve as a joint agreement for action to benefit the council and associated networks in coordinating the efforts of all partners in addressing economic, social, political, cultural, education, local wisdom, environment, spiritual space, and human rights issues and problems.¹ The Second Assembly of CIPT was convened in August 2015, in which there were 190 members representing 38 Indigenous groups. Two indigenous councils were adopted at local levels and 15 executive committee members selected from the Assembly.

In 2014, during the drafting of the current Interim Constitution of Thailand, Indigenous Peoples submitted proposals for a specific legislation for promotion of the rights of Indigenous Peoples but they were not accepted. Indigenous Peoples have continued lobbying with the National Legislative Assembly for considering the proposals for such legislation.

Some Suggested Questions for States:

1. How is the government of Thailand planning to tackle high rates of human trafficking among the Indigenous Peoples?
2. What plans does the government of Thailand have to secure citizenship to Indigenous Peoples and officially recognize Indigenous Peoples in the country's constitution?
3. How does the government of Thailand plan to address the increasing land confiscations and evictions of indigenous communities, along with disappearances and killings of activists in course of such evictions?

Recommendations

The organizations making this joint submission recommends that the government of Thailand:

1. Recognize the Indigenous Peoples of Thailand in the new constitution as peoples with their own distinct groups and cultures and collective rights, particularly over their lands, territories and resources.
2. Ensure establishment of specific mechanism for full and effective participation of Indigenous Peoples in the ongoing country reforms and constitution drafting process, including consideration to their proposals for a separate legislation for promotion of the rights of Indigenous Peoples
3. Ensure Indigenous Peoples' right to a nationality by creating a pathway for Indigenous Peoples of Thailand to secure their Thai citizenship.
4. Take concrete steps and comprehensive measures to begin to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.
5. Strengthen the office of the national ombudsman for Indigenous Peoples, in order to make sure that Indigenous Peoples feel there is a safe channel of communication between Indigenous Peoples and government officials in which they can air grievances.

6. Make sure that communities affected by the KKFC World Heritage site plan and the new forestry plan are consulted and informed and involved in the decision-making process.
7. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Thailand.
8. Ratify ILO Convention 169.
9. Ensure Indigenous Peoples' lands are protected and Indigenous communities are adequately consulted in all matters affecting them, especially regarding development projects
10. Take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all Indigenous Peoples in Thailand
11. Evaluate and align all legislation and government programs with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
12. Adopt a national action plan on the implementation of UNDRIP to ensure Indigenous Peoples' effective and politically meaningful participation in the decision-making process and equal representation in the governance of the country as provided under the Declaration.
13. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting a National Plan of Action to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples.

ⁱ Central Intelligence Agency. "Thailand." In *CIA World Factbook*. N.p.: n.p., 2015.

ⁱⁱ *Ibid.*

ⁱⁱⁱ Erni, Christian, ed. *The Concept of Indigenous People in Asia: A Resource Book*. N.p.: n.p., 2008. p. 444 - 445.

^{iv} Rattanakrangsri, Kittisak. *Thailand*. Compiled by International Work Group for Indigenous Affairs. N.p.: n.p., 2015. p. 280 - 283.

^v International Work Group for Indigenous Affairs. "Indigenous peoples in Thailand." International Work Group for Indigenous Affairs. Accessed September 15, 2015. <http://www.iwgia.org/regions/asia/thailand>.

^{vi} Network of Indigenous Peoples in Thailand, "Indigenous Peoples of Thailand." *FOCUS* 62 (December 2010). Accessed September 15, 2015. <http://www.hurights.or.jp/archives/focus/section2/2010/12/Indigenous-peoples-of-thailand.html>.

^{vii} Erni, p. 444.

^{viii} *Ibid.*

^{ix} Minority Rights Group International. "Highland ethnic groups." World Directory of Minorities and Indigenous Peoples. Last modified June 15, 2015. Accessed September 15, 2015. <http://minorityrights.org/minorities/highland-ethnic-groups/>.

^x Minority Rights Groups International, comp. *State of the World's Minorities and Indigenous Peoples 2015 - Thailand*. N.p.: Minority Rights Group International, 2015.

^{xi} UN Office of the High Commissioner for Human Rights, comp. *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 - Thailand*. Universal Periodic Review. N.p.: n.p., 2011. p. 7.

^{xii} Erni, p. 445.

^{xiii} *Ibid.*

^{xiv} "Highland ethnic groups."

^{xv} Minority Rights Groups International. *The State of the World's Minorities and Indigenous Peoples 2015 - Thailand*.

^{xvi} *Ibid.*

^{xvii} HumanTrafficking.org. "Thailand." HumanTrafficking.org. Accessed September 15, 2015. <http://www.humantrafficking.org/countries/thailand>.

^{xviii} U.S. Department of State, Trafficking in Persons Report 2014 - Tier Placements, Rep. (2014).

^{xix} "Thailand." Not For Sale. Accessed September 15, 2015. <https://notforsalecampaign.org/our-strategy/thailand/>.

^{xx} HumanTrafficking.org. "Thailand."

^{xxi} *Ibid.*

^{xxii} *Ibid.*

^{xxiii} U.S. Department of State, Thailand - Trafficking in Persons Report 2014, Rep. (2014).

^{xxiv} *Ibid.*

^{xxv} *Ibid.*

^{xxvi} Thailand, comp. *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1**. Universal Periodic Review. N.p.: n.p., 2011. p. 10.

^{xxvii} *Ibid.*, p. 15

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- xxviii UN Office of the High Commissioner for Human Rights., p. 11.
- xxix Thailand, p. 20.
- xxx International Work Group for Indigenous Affairs. "Indigenous peoples in Thailand."
- xxxi Rattanakrangsri, p. 280, 283.
- xxxii <http://www.prachatai.com/english/node/4854>
- xxxiii <http://phuketwan.com/tourism/minorities-enduring-struggle-survival-thailand-22746/>
- xxxiv *Ibid.*
- xxxv *Ibid.*
- xxxvi *Ibid.*
- xxxvii Minority Rights Groups International. *The State of the World's Minorities and Indigenous Peoples 2015 - Thailand.*
- xxxviii Rattanakrangsri, p. 284.
- xxxix *Ibid.*
- xl *Ibid.*
- xli *Ibid.*
- xlii *Ibid.*
- xliii *Ibid.*
- xliv *Ibid.*
- xlv *Ibid.*
- xlvi *Ibid.*
- xlvi *Ibid.*, p. 282.
- xlvi *Ibid.*
- xlvi *Ibid.*, p. 283
- ¹ http://www.aippnet.org/index.php?option=com_content&view=article&id=1554:thailand-commemorates-international-day-of-the-world-s-indigenous-peoples&catid=130&Itemid=100056