



Submission to the Universal Period Review of Thailand

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Submitted by the Justice for Peace Foundation

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Thailand UPR Submission

Justice for Peace Foundation¹

Introduction

This submission analyses fundamental human rights in Thailand addressing the period from May 2016 until this submission's date of 25th March 2021. It focuses on enforced disappearances; human rights defenders; gender equality and human rights situation during COVID19.

Enforced Disappearance:

1. Regarding to enforced disappearance, in its second UPR, Thailand welcomed States' recommendations on investigating all cases of enforced disappearance, enacting the draft law on Prevention and Suppression of Torture and Enforced Disappearances Act B.E. ... and Ratify International Convention of the Protection of All Persons from Enforced Disappearance (ICPPED).
2. Up to now the Draft National Law on Prevention and Suppression of Torture and Enforced Disappearance is pending since a decade and Thailand has not ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), JPF sincerely appreciate the Prime Minister Order No. 131/2560, dated 23 May 2017 establish The National Committee for Managing Cases Relating to Torture and Enforced Disappearance to address alleged cases of torture and enforced disappearance and to prevent the future occurrences of such cases.
3. However JPF concern about the measures taken by The National Committee for Managing Cases Relating to Enforced Disappearance, including the transparency, independently and inclusiveness of investigations carried out and the outcome of cases of enforced disappearance especially the cases of victims who are vulnerable and marginalized.
4. JPF received several complaints from victim families that instead of investigating the fate and whereabouts of victims The National Committee tried to convince the families to withdraw the cases from the UN Working Group on Enforced or Involuntary Disappearance (WGEID). To date out of 87 cases in the WGEID's original list, the National Committee has been able to clarify 12 cases. There is no detail of how these cases have been clarified. 75 names are still on the WGEID

¹ "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. 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."

list². At present despite the information of the WGEID, Thai Government has no record or documentation about enforced disappearance in the country.

5. JPF is deeply concerned that the truth about the circumstances of cases of enforced disappearances could be further denied by the government. The withdrawing of cases from the outstanding list of enforced disappearance cases of the UN WGEID could be used by the government to deny continuation of the problem of enforced disappearances in Thailand especially accountability and remedy.
6. The prominent cases of enforced disappearance in Thailand such as the disappeared of human rights lawyer *Somchai Neelapaijit* who disappeared in 2004 the investigation has been stopped since 2016, while the case of *Pholageeaka Billy Rakjongchareon* (2017) – the human rights defender from Karen ethnic minority, it disagrees with Prosecutor’s opinion that there is insufficient evidence to prosecute the four named suspects and have submitted its dissenting opinion to Attorney General Office. The case is now with the Attorney General to decide.
7. Since the Military Coup in 2014 nine Thai dissidents including *Mr. Wanchalearm Satsaksit* have disappeared from neighboring ASEAN countries without investigation³, in 2018 two dead bodies were found while seven still unknown about their fate and whereabouts.

Recommendations;

(a) Ensure that all cases of enforced disappeared must be investigate the perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;

(b) Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;

(c) Ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition;

(d) The Thai Government should ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) without delay.

² <https://undocs.org/A/HRC/45/13> (page 13)

³ <https://www.bbc.com/news/world-asia-53212932>

(e) Judicial remedies, the right to truth and the right to reparations for enforced disappearances remain largely denied by the state in Thailand. The failure to define “enforced disappearance” as a crime in Thailand stands in the way of prosecutions. Compounding this is weak investigatory and prosecution bodies that lack independence.

(f) Invite UN Working Group on Enforced Disappearance for official visit.

The Kingdom of Fear: Situation of Human Rights Defenders

8. Since the first and second of UPR Thailand review, the government of Thailand adopted recommendations of States to protect human rights defenders but in practice there have no mechanism to protect HRDs from harassment and intimidations.
9. JPF appreciate Thailand adopted the UN Guiding Principle on Business and Human Rights and Thailand is the first country in ASEAN that have National Action Plan on Business and Human Rights (2019-2022) and human rights defenders is one of fourth priorities of NAP. However JPF regret that the NAP are not implemented and human rights defenders still faces so many kind of harassment and intimidations. The most concern is judicial harassment, a lot of human rights defenders especially women faced criminal defamation when they protect their community environment, resources or when they exercise their freedom of expression.
10. From 1995 to 2017, 59 Thai Human Rights Defenders (HRDs) were killed and disappeared⁴. Regarding to Protection International, since 2014 to 2019 at least 440 women human rights defenders are facing judicial harassment with criminal defamation⁵. JPF would like to draw more attention to the increasing number of criminal cases brought against human rights defenders in Thailand for reporting allegations of torture and ill-treatment.
11. Women Human Rights Defenders who work in Southern Border Provinces (SBPs) often targeted by online bullying when they came out to give an opinion on how the performance of duties by security forces has led to the violation of human rights. Such online smear campaign would be waged against them allowing people to post their offensive remarks to incite hatred against them. Their gender has been weaponized to dehumanize them, the violence of which has taken significant toll on their mentally. Some WHRDs has so far reported their cases to the Technology Crime Suppression Division (TCSD) and police stations, but no progress has been made to their investigation.

⁴ <https://www.bbc.com/thai/thailand-38807815>

⁵ <https://prachatai.com/journal/2020/02/86233>

12. On 25 March 2020, it was found agencies under ISOC Region 4 had been supporting online information operation (IO) in the SBPs financially to launch a smear campaign against HRDs. In October 2020, Twitter disclosed that it had uncovered a network of 926 accounts allegedly involved in information operations linked to the Thai Army. It said the accounts were engaging in amplifying pro-Royal Thai Army and pro-government content and also targeting prominent political opposition figures.⁶
13. On 3 March 2021, Facebook said it had removed a Thailand-based network that included 77 accounts, 72 pages and 18 groups on Facebook and 18 accounts on Instagram, citing “coordinated inauthentic behaviour”. Facebook said in a report the operation was linked to the Thai military’s Internal Security Operations Command (ISOC) and targeted audiences in Thailand’s southern provinces, where conflict has flared on and off for decades as insurgent groups continue a guerrilla war to demand independence.⁷
14. Women Human Rights Defenders who work on women’s rights or LGBT’ rights have faced threats, intimidation and dehumanization committed against them by some communities and religious leaders.

Recommendations;

- (a) The government must foster a culture of human rights in which the fundamental role played by human rights defenders in guaranteeing democracy and rule of law is recognized publicly and unequivocally;*
- (b) The government shall commit to the ending of culture of impunity undertaking with implementation of serious investigation, prosecution and punishment for all actors involved;*
- (c) The Government should account and provide psychological remedy to women human rights defenders who are attacked with sexual harassment by cyberbullying of the social media networks supported by the government;*
- (d) The government should adopt the UN Guidelines on HRDs to protect HRDs.*

Gender Equality

15. On 9th January 2015, the National Legislative Assembly (NLA) enacted the Bill on Gender Equality. Still, the law poses many challenges and fails to provide genuine safeguards to ensure gender equality. The Gender Equality Act 2015 still gives rooms for gender discriminatory practices in Section 17, paragraph two, by allowing exemptions for reasons of religious principles or national security in order to overcome obstacles or encourage all persons to exercise their rights and

⁶ <https://www.channelnewsasia.com/news/asia/facebook-thailand-probes-removal-army-accounts-14331810>

⁷ <https://www.reuters.com/article/us-facebook-thailand-idUSKBN2AW1K9>

liberties equally, or to protect their welfare and safety.

Legal pluralism & Situation of Malay Muslim Women in SBPs

16. Since 1946, *The Islamic Family and Inheritance Law* was apply in Southern Provinces, in the determination of civil cases concerning family and inheritance matters, and where both parties are Muslim. As a result, The Islamic Family rather than the provisions of the Thai Civil & Commercial Code, apply in relation to matters such as marriage, divorce, determinations of personal status and inheritance.⁸ This make significant levels of confusion as to the limits of Islamic law jurisdiction in the provinces. The distinctions between what is required as a matter of law and what is simply a prevailing religious or social approach to a particular issue appear to be blurred in some instances.⁹

Informal Justice Systems & Community Self Regulations

17. In 2012 the Committee on the Elimination of Racial Discrimination is concerned by that Malayu Muslim women in SBPs are facing double discrimination in many fields of political and social life. The Committee urges the Government of Thailand to take the necessary measures, including legislative ones, to ensure, in accordance with the Convention, the equal treatment and non-discrimination of Malayu Muslim women¹⁰.
18. JPF concern about the establishment of '*informal justice systems*' in a large number of villages in 3 SBPs, in the context of which village authorities put in place '*Hukum Pakat*', or local regulations based on religious and cultural principles, and enforce them through specific sanctions. These regulations and enforcement systems appeared to be a source of considerable fear for women and girls.
19. In January 2021, the police chief of Yaha district, Yala province and the national Islamic authority of Yaha established '*Hukum Pakat*' committee that the police endorsed a crackdown and forced marriage arrangement on unmarried couples displaying affection in public. The crackdown is being enforced in Yala's Yaha district under strict community rule, which also threatens to punish any unchaperoned teens who interact with each other in public, raising concerns of potential civil rights violations and sectarianism. In some cases that involve sexual acts, the couples would be made to marry by the clerics.¹¹
20. In the Southern Border Provinces (SBPs), Malayu Muslim women's political participation and decision making are restricted by factors concerning religion,

⁸ The Act of Implementation of Islamic laws in Pattani, Narathiwat, Yala and Satun Provinces B.E. 2489 (1946).

⁹ *Women Access to Justice*, International Commission of Jurists and JPF, 2012.

¹⁰ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=THA&Lang=EN

¹¹ <https://www.khaosodenglish.com/news/crimecourtscalamity/2021/01/06/police-national-islam-authority-back-strict-sharia-law-in-yala/>

culture and tradition as well as local values which underpin the belief that women are supposed to act as wives and mothers. Also, there has been a rise in the number of women having access to education more than men. Still, women's roles have still been impeded and no effort has been made to promote their leaderships in society and to facilitate the making of their own decisions regarding issues at local and national levels.

Recommendations;

- (a) The State should amend the Gender Equality Act 2015 by abolishing the clause on exemptions for discrimination on grounds of religious principles or national security, according to Section 17;*
- (b) Specification that the Islamic Family and Inheritance Act 1946 is subject to the Thai Constitution and Thailand's international legal obligations and must be applied and interpreted in a manner that complies with Constitutional rights protections, including those relating to gender equality and nondiscrimination;*
- (c) The government should stop child marriage by establish the minimum age of marriage at 18 for all citizens regardless of religion, ethnicity, and geographic location;*
- (d) The government must adopt the UNSC Resolution no. 1325 to promote the roles and decision-making of women in the peacemaking process. The peace process in southern conflict must include women on the peace table;*
- (e) More representation of women in the Committees or Task Forces set up by the state to develop and make decisions concerning policy issues should be encouraged. More women officials including police, community leaders and commanding officials must be deployed to give instructions and to make decisions in various areas.*

Inequality and Discrimination under Coronavirus Pandemic (COVID-19)

21. The Emergency Decree on Public Administration in Emergency Situation to combat the COVID-19 outbreak, and measures imposed under the Decree that may constitute a blanket restriction on fundamental freedoms, including the rights to free expression, opinion, information, privacy and freedom of assembly and association, with no opportunity for the courts to review these extraordinary measures.
22. After the widespread of Coronavirus Pandemic (COVID-19) people were asking to stay at home but in reality the stay-at-home and social distancing policy is blind to the situation of the impoverished masses and their needs for assistance especially for the low-income workers who cannot afford if stop working.

23. **Education** –during Coronavirus Pandemic (COVID-19), schools are closed some children can access to education by learning from internet at home while the marginalized children who live in the remote area or children in the poor families that cannot access to internet cannot do that. This is the same situation of children of low income workers face and it's not only difficult to access education, mostly these children can access good food at school but when schools are closed this means the vulnerable children will not have enriched food especially milk in many months during the COVID-19 outbreak.
24. **The low income workers**, such as farmers and construction or factory workers face a higher risk of income loss during the Covid-19 lockdown as it is less possible to conduct their jobs from home. Although the Thai government announced a stimulus package for those working in the informal sector, the 5,000 baht (around \$154) per month that will be issued between April and June 2020 but it not cover all groups of people of low income workers in the country¹².
25. **Migrant, Refugees & Asylum Seekers** - JPF is concerned at the overcrowding and general conditions of places of detention such as prisons and Immigration Detention Centers, particularly with regard to sanitation and access to health care. JPF is appreciate that in April 2020 The Department of Corrections has suspended jail sentences for more than 8,000 prisoners currently held for minor offenses nationwide to ease overcrowding in prisons during the Covid-19 pandemic.¹³ Regrettably there are no policy to protect the illegal migrants, refugees and asylum seekers especially those who were detained at Immigration Facilities all over the country. The crowded detention places make it impossible for social distancing and make these groups of people more vulnerable.
26. On 25th April 2020, Thailand reports the 42 cases including a pregnant Myanmar worker of COVID19 who are illegal migrant workers at the detention center at Songkla Province, on the Malaysian border¹⁴. Later on 4th May it was reported that 17 Rohingya women and one boy age 10 were affected by COVID19. Even the Thai Government announced to end child detention in January 2019 but in reality some refugee children have to stay with their mothers at IDC. Recently on 23 March 2021, 393 illegal migrants – 370 men and 23 women – had contracted Covid-19 in one of the bureau's detention facility in Bangkok. The facility had 490 illegal migrants.¹⁵

Recommendation;

¹² <https://www.bangkokpost.com/thailand/general/1885640/cash-handouts-for-informal-workers>

¹³ <https://www.bangkokpost.com/learning/advanced/1899730/8-000-prisoners-released-to-ease-virus-risk>

¹⁴ <https://thethaiger.com/coronavirus/cv19-asia/cv19-thailand/immigration-wants-to-move-26-rohingya-women-detained-in-songkhla>

¹⁵ <https://www.bangkokpost.com/thailand/general/2088411/about-400-detained-migrants-test-positive>

- (a) The Government of Thailand should guarantee the wellbeing of all people especially those who are vulnerable. The strong social welfare system should coverage, meanwhile, show respect for human dignity, equal rights and non - discrimination for all people in the country;*
- (b) The Government should bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners as a matter of priority. Detention should be viewed only as a last resort, and provision should be made for alternative measures;*
- (c) The Government should establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect;*
- (d) The Government should observe its obligation to respect a fundamental principle of international law, the principle of non-refoulement;*
- (e) The Thai Government should ratify the Refugee Convention 1951.*