



Joint Submission by: EnLaw Foundation, Community Resource Centre Foundation, Campaign for Public Policy on Mineral Resources, and Protection International

Related to: Thailand

UPR Session: Session 39 - May 2021

Submitted: 25 March 2021

EnLaw Foundation

ENLAWTHAI Foundation (EnLAW) was established in 2001 under the concept “environmental justice in Thailand is made possible by human rights and legal mechanisms”. EnLAW works to provide environmental legal support for people, particularly local communities affected by industrial development and pollution, in exercising their rights and accessing environmental justice; to monitor and identify the flaws in the current environmental legal system and to advocate change of the existing law to provide better protection to environment, health and livelihoods.

Community Resource Centre Foundation

The Community Resource Centre Foundation (CRC) was established in 2010 committed to protect and promote human, community, and environmental rights. CRC is a watchdog on the implementation of UN Guiding Principles on Business & Human Rights and of the Covenants on ICCPR and ICESCR. A prominent civil society organization leading the field of business and human rights in Thailand, CRC has worked with, built legal skills and capacities, and represented communities who face serious negative environmental and social impacts of ill-planned and poorly regulated industrial and development projects for more than a decade.

Campaign for Public Policy in Mineral Resources (PPM)

PPM works with rural and community-based Human Rights Defenders (HRDs) in 11 areas, 30 communities throughout Thailand. PPM works to empower the communities to stand up for their right to manage natural resources and the environment by resisting against the corporations conducting mining exploration and operations in their communities. PPM regularly monitors domestic laws and policies related to mineral resources, and demand accountability from the government and private sectors to respect human rights and community rights.

Protection International is an international, non-governmental organisation (NGO) that brings protection strategies and security management tools to Human Rights Defenders (HRDs) at risk. Protection International envisions a world where human rights and fundamental freedoms are universally recognized and respected, and where everyone has the right to defend these rights and freedoms without fear of threats or attack.

The following submission has been prepared by Protection International based on research carried out by these organisations and information received from independent HRDs in Thailand from 2016 until March 2021.

Contact person: Pranom Somwong, PI Protection Desk Thailand Representative,
psomwong@protectioninternational.org

1. General trends facing land, rural, Indigenous and environmental HRDs

Since 2014, the government of Thailand, under the leadership of Prime Minister General Prayuth Chan-o-cha, has used judicial harassment, violence, and threats of violence to repress and intimidate human rights defenders (HRDs). Frustrated with the government's poor response to the COVID pandemic and economic hardship, activists called for human rights, political change, and respect for minority and Indigenous rights. In response, the government tightened its grip on power and used repressive laws, such as the Public Assembly Bill, Sedition Law, Lèse-majesté Law, and Computer Crimes Act, to repress dissidents.

The COVID pandemic and government response has further exposed the systemic injustices impacting human rights and the environment. The Thai government has enacted an Emergency Decree with the stated aim of controlling COVID-19, though it affords them power to act with impunity and further restrict public participation and criminalizes dissent. All those who defend human rights are affected, though the COVID pandemic and response disproportionately affect women human rights defenders (WHRDs) in particular. For WHRDs, the COVID pandemic has compounded the existing structural barriers they face as women and mothers, including poverty, rape and domestic violence, and climate change.

This report highlights the government of Thailand's efforts to intimidate, harass, and repress women/human rights defenders under the period in review, with particular attention paid to the government's COVID-19 response.

2. Judicial harassment and criminalization of HRDs

Human rights defenders regularly face judicial harassment when they publicly oppose government policies or private companies' activities in their communities. When HRDs raise their voice in calling for justice and ethnic and Indigenous rights, they are harassed, threatened, criminalised and perennially exposed to risks to their lives and liberty by state and non-state actors. Rural, Indigenous and women human rights defenders face the greatest risks and are often among the poorest and most harassed in Thai society.

a. HRDs fighting against a power plant in Thepa District, Songkhla Province

On 24 November 2017, a group of 17 villagers from Thepa District began a march to Muang District, Songkhla Province. They planned to deliver a letter to Prime Minister Prayuth Chan-o-cha on 28 November detailing their opposition to the construction of a coal-fired power plant in their province. However, on 27 November, authorities dispersed the crowd and arrested at least 16 people. Later on, another person was arrested, leading to a total of 17 arrests. All 17 defendants have been charged with blocking traffic, marching on a public highway, fighting with police, carrying weapons in public and staging illegal demonstrations. The "weapons" in question were poles used to carry signs and banners. In the Court of First Instance, two HRDs who led the rallies were found guilty and sentenced to pay a 5,000 Baht fine while the rest of the cases were dismissed. In Appeals court, all 17 defendants were found guilty for illegal public assembly. Currently, the case is under consideration of the Supreme Court as the defendants appealed.

b. Land Rights Defenders in Ban Sup Wai communities, Chaiyaphum Province

In June 2014, the National Council for Peace and Order issued a "Forest Reclamation" policy in which the total area of forested land would be increased from 31% to 40% within 10 years.¹ Under this order, the NGO Coordinating Committee on Development estimates that about [9,000](#)

¹ The NCPO is the military junta that ruled Thailand following a coup d'état in May 2014.

[families would be evicted](#) from their lands.² As communities continue to be displaced, land and human rights defenders fight harder to assert their right to land and livelihood. It is of great concern that these HRDs are criminalised in order to advance the government's climate change agenda, particularly when the government is giving away these [forests to coal mining companies](#) to expand special economic zones.³

In 2015, the government deployed military power together with officials from the Department of National Parks, Wildlife and Plant Conservation to remove a community of villagers called Ban Sup Wai in Chaiyaphum Province who had lived there for several decades prior to the announcement of the Order. The 14 villagers were “asked to return the land”, their rubber trees were cut down and trespass charges were filed against them.

The 14 villagers, nine of which are women, were convicted of deteriorating the National Forest reserve and the National Park area within Sai Thong National Park under the National Reserved Forests Act (No. 4), B.E. 2559 (2016), National Park Act B.E 2562 (2019), and Forest Act B.E. 2562 (2019). Thirteen of them were sentenced to imprisonment, with one person given a suspended sentence. They were fined from between 100,000 baht and 1.5 million baht. The Court of Appeals confirmed the judgement and further increased the fine of six of the defendants due to their alleged contribution to climate change by living on the reserved forest area.

In March 2021, the Supreme Court suspended one of the WHRD's sentences in the case, Nittaya Muangklang's, for three years. However, she must still pay 150,000 baht (4,839 USD) in compensation for allegedly contributing to climate change. The court also ordered her to be evicted from the land within 30 days. The rest of hearings of other HRDs in this case will take place in May 2021.

- c. Nam Deang Community, member of The Southern Peasants Federation of Thailand (SPFT), Surat Thani Province

A group of 15 Thai farmers from the Southern Peasants Federation of Thailand (SPFT) faced criminal charges concerning alleged mischief and occupation of property by World Resources Development Company Limited, a mining and extractive company in Yala province and Equatorial Communication (Thailand) Company. The police subsequently accused the 15 Nam Deang community members of criminal association. Members of SPTF also face a civil case brought against them by Kiatnakin Bank, who also claims to have land rights to the area in the form of a “certificate of authorization” and who is trying to force the community to purchase land allegedly belonging to the bank. The court later dismissed the charges on mischief and criminal association, but later found them guilty of occupation of property and sentenced each defendant to two years and eight months' imprisonment.

Four members of SPFT, including two women and land rights defenders, have been killed since 2010 and a fifth and sixth member survived attempted murders on 8 April 2016 and 20 October 2020, respectively.

3. Threats and intimidation against Indigenous HRDs, including judicial harassment

As of 2016, an estimated 100,000 Indigenous persons remain stateless (without citizenship) in Thailand due to alleged problems in the citizenship registration and verification process. Without citizenship, Indigenous communities face barriers in accessing basic services, such as health and education, and restrictions on their freedom of movement and land rights.

² The Momentum, Reforestation and Authoritarianism, April 4, 2018, <https://themomentum.co/reforestation-authoritarianism/>

³ Forest Reclamation? 'Land Watch Thai' reveals NCPO approves over 6,000 Rais of forest land to mega projects, March 8, 2019, <https://prachatai.com/journal/2019/03/81398>

The country's long-standing forest conservation policies have already alienated and criminalized many forest dwellers, including Indigenous Peoples. The 'Forest Reclamation Policies' and a 'Conservation Master Plan' by the Thai military government that came into being in 2014 are implemented discriminately against the poor who face land confiscation, eviction and imprisonment.

a. Karen Indigenous people living in Bang Kloi, Phetchaburi Province

Ethnic Karen villagers were forcibly evicted from their homes in "Chai Paen Din" meaning "Heart of the Land" forest in the Ban Bang Kloi area of the Kaeng Krachan National Park in 2011, when the Department of National Parks, Wildlife, and Plant Conservation (DNP) burned down 90 homes and rice barns and forced 140 villagers from the land. In June 2018, the Supreme Administrative Court ordered the department to pay 50,000 baht to compensate six Karen villagers for destroying their huts and belongings. However, the court ruled the villagers could no longer live in the national park. Scores of villagers have begun returning to Chai Paen Din since the beginning of 2021 and recently launched a campaign titled #SaveBangKloi. However, they face intimidation from state officials, including park officials, police, and military officers who were stationed in the Pong Luek-Bang Kloi Village and have been patrolling the area every day. These officials block food donations at park checkpoints, preventing them from being delivered to the community members who returned to Chai Phaen Din.

Despite the signing of a memorandum of understanding with community representatives promising to allow the community to return to Chai Phaen Din to live according to their traditional ways and to end intimidation against the community, there were reports on 22 February 2021 of helicopter flights taking military units into the Kaeng Krachan forest, as well as reports that the Ministry of Natural Resources and Environment had ordered all community members to be forced out of Chai Phaen Din by 18.00 that day. By nightfall, it was reported that 13 community members had been detained and taken back down to Pong Luek-Bang Kloi. On 5 March 2021, park officials, police and military officers forcibly removed 87 members of the Bang Kloi Indigenous Karen community, including 36 minors, who travelled back to the location of their former village in the Kaeng Krachan forest.

In September 2019, the Department of Special Investigation (DSI) held a press conference to reveal that DNA tests confirmed that bones found in Kaeng Krachan Dam are those of the missing Karen environmental activist and community rights defender Mr **Porlajee "Billy" Rakchongcharoe** who was last seen at a National Park checkpoint on 17 April 2014 after having been detained for allegedly collecting wild honey illegally in the forest. He was a community leader of the ethnic Karen community living in Kaeng Krachan National Park in Phetchaburi Province. In the same area, Taksamol Aobaom was shot dead on a highway on 10 September 2011. He was a lawyer campaigning against the ill practices of officials of the Kaeng Krachan National Park against an ethnic Karen community living inside the park.⁴

b. Rak Lahu Group, Chiang Mai Province

Extra judicial killing: Mr **Chaiyaphum Pasae**, an Indigenous youth rights defender, was killed by police in an extrajudicial killing on 17 March 2017 in northern Thailand.⁵ Following his death, Ms Maitree Chamroensuksakul, an HRD from the Rak Lahu Indigenous group and guardian of Chaiyaphume, reportedly received a death threat and other forms of intimidation by the military. On 29 May 2017, while on his way back from meeting with the UN Special Rapporteur on the Situation of Human Rights Defenders, Maitree's house was raided by policemen and officers

⁴ "For Those Who Died Trying," Photo Exhibition by Protection International and Luke Duggleby

⁵ About a month before the extrajudicial killing of Chaiyaphum, on 15 February 2017, in Chiang Dao District, Chiang Mai Province, a military officer at the checkpoint of Ban Rin Laung in Chiang Dao District used a gun to shoot Abe Saemoo, a Lisu man, resulting in his death. The incident took place at the area between Ban Rin Laung and Ban Pa Bong Ngam Lee So, which is not far from Ban Rin Laung checkpoint. Later the court ordered an inquest hearing, which reads that Abe was killed by the shooting of an M16 weapon by a military officer.

from the Narcotics Suppression Bureau. During the raid, two Indigenous rights defenders, Ms Nawa Chaoue and Ms Chanthana Pasae, were arrested. Ms Nawa was held in pre-trial detention for 331 days before a court dismissed her case and she was released. The court also dismissed Chanthana Pasae's case. Due to the continued misuse of criminal law by the state, Maitree, Nawa and other members of the Save Lahu movement continue to face risks restricting their rights to defend human rights. After Nawa was released, she requested compensation according to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act since she lost opportunities and income during the 331 days of detention. However, on 26 February 2020, the review committee according to the Act rejected her request, saying that since the verdict was not finalized yet, she is therefore not believed to be innocent. The attorney did not appeal, which renders the case final. On 9 April 2020, Nawa submitted an appeal to the Chiang Mai Provincial Justice Office to send the appeal to the Appeal Court.

Chaiyaphum's family filed a civil lawsuit to claim damages from the Army for the killing. On 26 October 2020, the Civil Court ruled that the military shot Chaiyaphum in self-defense and that it was necessary. Therefore, the court held that the Royal Thai Army is not liable to pay damages to Chaiyaphum's family under the Officers' Violation Liability Act 1996 and Chaiyaphum's family submitted their appeal to the Court of Appeals.

c. Lisu Indigenous women right defender, Chiang Mai Province

Ms **Katima Leeja**, a 35-year-old Lisu woman human rights defender from Chiang Dao District, Chiang Mai Province, was visited by a plainclothes military officer around 4pm on 9 May 2020. The plainclothes officer, who was from the 4th Cavalry Regiment in Chiang Mai, said that he was told by his higher up to inquire information about Katima. The incident took place a week after eight Wildlife Sanctuary Inspector Officers got involved in land disputes between three villagers and allegedly hit a 55-year old Lisu man in the head during a confrontation in Chiang Dao Wildlife Sanctuary zone on 2 May 2020. After the incident, Katima led a group of Lisu Network of Thailand members to read out a statement, criticizing such action by the authority and demanding it be investigated by a committee.

4. Physical threats and violence against environmental and land rights defenders

a. Eakachai Isarata, NGO Coordinating Committee on Development (NGO-COD)

On 5 August 2019, Mr **Eakachai Isarata**, a human rights defender in southern Thailand and Secretary-General of the NGO Coordinating Committee on Development, attended a public consultation concerning the construction of a limestone mine by a private company in Phatthalung Province. Once he arrived at the hearing, several unidentified men encircled him and took him to a resort hotel. He was held there for four to five hours until the hearing was over. Before he was released, the men warned him against telling the media about what happened. They threatened him that they could not guarantee his safety otherwise.

Eakachai filed a complaint at the Metropolitan Police Bureau Songkhla provincial office, leading to his abductors' arrest. All five men pled guilty, and the court ordered them to pay compensation to Ekkachai of 250,000 baht (USD 8033), reduced from 500,000 baht (USD 16,065) that Ekkachai originally requested at court. The court found the men guilty for criminal case but suspended the imprisonment sentence. There was no further investigation into other perpetrators for punishment.

b. Lertsak Khamkongsak, Campaign for Public Policy on Mineral Resources (PPM)

Community women and men human rights defenders in Nongbua Lamphu Province (northeastern Thailand) are facing repeated death threats after taking action to reclaim 175 Rai (28 hectares) from a local mining operation on 4 September 2020. Following their successful reclamation, men carrying weapons, including guns, repeatedly approached Mr **Lertsak Kumkongsak** and verbally threatened him, saying that his assassination was commissioned

and he will be shot if he does not back down from protesting against the mining operation. Mr Kumkongsak is an environmental rights defender and an advisor to the Campaign for Public Policy on Mineral Resources (PPM), the Ecological and Cultural Study Group as well as the Network of People Who Own Mineral Resources.

c. Sumeth Rainpongnam, Khon Rak Kroksoomboon Group, Prachin Buri Province

In September 2019, Mr **Sumeth Rainpongnam**, a 48-year-old farmer and community W/HRD in Prachin Buri Province, and his wife were shot at by unknown assailants in three different incidents with a total of 14 gunshots as they were driving home at night. Neither Mr Rainpongnam nor his wife were harmed. Mr Rainpongnam was targeted due to his leadership in Khon Rak Kroksoomboon Group, which, along with the Khon Rak Ban Nong Talad Group, submitted a complaint to the Provincial Governor calling for an official investigation into the issue of toxic smells and alleged chemical contamination of water and soil in their communities. In addition to the physical violence, the company also filed defamation lawsuits against Mr Rainpongnam, demanding compensation of 50-million baht (approx. 1,614,000 USD). Following the pressure from national and international human rights organisations, the company withdrew the complaints against Sumeth.

d. Dam Onmuang, Southern Peasant Federation of Thailand, Surat Thani Province

On 20 October 2020, an unknown perpetrator fired a gunshot at Mr **Dam Onmuang**, a member of the Santi Pattana Community and a land rights defender, while he was on guard duty at the Santi Pattana Community's security checkpoint. However, Mr Dam survived. Somphon Chimruang, the alleged perpetrator of the attack, is believed to have close ties to the palm oil corporation with whom the Santi Pattana Community has been battling for years over a disputed plot of land. Chimruang is facing criminal charges of attempted homicide at Wiang Sa Court.

e. HRDs of Khon Rak Ban Kerd of Six Villages, Loei Province

Khon Rak Ban Kerd of Six Villages (KRBK) is a group of environmental human rights defenders from six villages in Wang Saphung District whose livelihoods have been affected by chemical contamination since a gold mine started operations in 2006. On 11 January 2021, KRBK submitted a petition to the Commissioner-General of the Royal Thai Police via the Wang Saphung District Police Superintendent demanding safety measures to protect human rights defenders from potential threats. After the petition was submitted, the Wang Saphung District Police set up a red box as a security checkpoint at the mine entrance in Na Nong Bong village and dispatched additional officers to the area to provide some security for the KRBK members. The next day, on 12 January 2021, Thanakrit Anthara, a temporary employee on a monthly contract of the district security division, arrived at the mine entrance and started provoking a member of the community's security team. The provocation escalated and a guard successfully moved him away to his car. Thanakrit shot his pistol as he drove his car away from the scene. He turned himself in to authorities and he was released on bail less than 24 hours later.

f. HRDs of Lower Klity Creek Community, Kanchanaburi Province

Lower Klity creek community is an Indigenous, local youth group advocating for the people-centered rehabilitation of the Klity creek in Kanchanaburi Province, western Thailand. The creek, long utilized by Karen Indigenous people living nearby, has been heavily contaminated by lead mineral dressing factory that operated from 1967 to 1998. The Pollution Control Department is currently rehabilitating the creek under an Administrative Court ruling. A 32-year-old women human rights defender from the group, Ms **Chalalai Nasuansuwan**, faced threats and intimidation from the village headman and his assistant throughout 2020, potentially due to her role as facilitator during a parliamentary committee inquiry into the problematic rehabilitation process. As the village headman allegedly has stakes in the rehabilitation process, the threats are speculated to be meant to stop the youth group from participating in the rehabilitation process and defending the community environment.

g. Khon Rak Ban Haeng Group, Lampang Province

Ms **Somma Harntecha**, a woman human rights defender of the anti-mining Rak Ban Haeng Group in Lampang received a visit she described as intimidating from the police on 28 May 2020, after publicly reading a statement echoing the calls of the People's Movement of 5 Regions that demanded the government revoke the Emergency Decree. Around 11.30, three unidentified police officers from Ngao District police station in Lampang came to look for her in the village. The police officers asked Sommai Harntecha why she recorded the video, to which she replied that it was to discuss land issues. The police later told her that the group should not mention or do any public activities regarding the Emergency Decree as it was "the issue of public matter."

5. Enforced disappearances

a. Den Kamlae, Isaan Land Reform Network, Chaiyaphum Province

Den Khamlae was a land rights defender from the KhokYao community, Kon San district, Chaiyaphum province. He was last seen on 16 April 2016 entering a forest close to his home in the Khok Yao community to collect food. After examining human remains found on 25 March 2017, the Central Institute of Forensic Science released its initial finding that there was over a 90 percent probability that the remains were Den's, based on DNA from his younger sister.

b. Kannika Wongsiri, Environment Women Human Rights Defender, Nong Khai Province

On 1 February 2020, **Kannika Wongsiri** was shot dead at her home in Pha Tang Subdistrict, Sangkhom District, Nong Khai province. Ms Wongsiri, 52, was the headperson of the Pha Tang Subdistrict. From February 15-17, the police announced they had arrested five people in relation to the murder, including 57-year-old Samart Thipsak, former subdistrict headperson of Samorthong Subdistrict, Thachana District, Surat Thani Province; 55-year-old Prasit Innaung, the gunman who carried out the operations; 37-year-old Thanaphum Prommart, the gunman from Surat Thani Province; and 31-year-old Panida Joonden, the wife of Thanaphum, who assisted the gunmen to escape the scene. Samart Thipsak hired Prasit Innaung to carry out the murder because Kannika informed the authorities that Prasit had been misusing land for rubber tree plantation, resulting in the confiscation of the land.

7. Institutional protection mechanisms for HRDs

a. National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand (NHRCT) was accredited as B status in 2014 from the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI-SCA). In 2020, GANHRI-SCA conducted another accreditation process of the NHRCT. Protection International, in collaboration with a number of other groups, opposed upgrading NHRCT's status to A because of the institution's continued failure to effectively protect rights, its continually poor performance, and its politically compromised independence, all of which fall substantially short of the minimum international standards mandated in the Paris Principles. In March 2021, GANHRI-SCA decided to defer the consideration of the NHRCT's application for re-accreditation for 18 months. The NHRCT has provided negligible interventions in cases of violations of human rights defenders rights to freedom of expression, assembly and association, such as the arbitrary arrest and intimidation of P-Move, as well as the dozens of cases of judicial harassment by the Thammakaset farm. NHRCT's approach is to selectively intervene on some high-profile W/HRD cases, when in reality it should be acting on all cases. For example, in the high-profile case of Mr **Lertsak Kumkongsak**, the environmental human rights defender who received death threats, and Dam Onmuang, the land rights defender of the Southern Peasant Federation of Thailand who suffered an attempted murder, the NHRCT acted inadequately. By simply reporting these

incidents to government agencies, like the Ministry of Justice, the NHRCT is not fulfilling its role to protect HRDs at high risk.⁶

b. Ministry of Justice's Justice Fund

In 2015, the Government of Thailand codified the **Justice Fund**, a government program that provides financial support or expenses for legal aid, litigation, prosecution, legal execution and provides protection to persons who are deprived of their rights and liberty. However, the process for accessing the Justice Fund remains complex and appears arbitrary, leading to the majority of eligible candidates not receiving assistance. From 2006-2014, the Justice Fund granted assistance to just 43% of those who applied. Only 26 of the 440 applications from community WHRDs to the Justice Fund were approved. The Justice Fund and other remedies remain largely unknown to the general population, and we do not know of any legal literacy education provided for women yet. Furthermore, women are reluctant to report gender-based violence, and women from marginalized communities, such as women with disabilities, women from the Southern Border region, and women sex workers, face additional hurdles in accessing justice and remedies.⁷

c. Royal Thai Police

In some cases where Protection International engaged the Royal Thai Police to protect the rights of HRDs, they partially complied or temporarily acted. In general, they still lack an understanding of their obligation as duty bearers to protect HRDs. For example, in the case of Mr **Dam Onmuang**, the land rights defender from the Southern Peasant Federation of Thailand, PI and the community HRDs repeatedly requested the provincial and local police to provide security and protection to Mr Onmuang while the trial of the gunman was ongoing. However, they failed to meet our minimal requests to set up a police security checkpoint, claiming a lack of police resources.

d. National Action Plan on Business and Human Rights

The **Action Plan for Human Rights Defenders** is one of four key areas of the National Action Plan on Business and Human Rights (NAP), yet there have not been any concrete steps taken to effectively protect or recognize the work of HRDs. The NAP and subsequent articles regarding judicial protections do not have the status of law. They are merely resolutions by the executive branch of the Thai government and are considered a "by-law" pursuant to Section 3 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999). They carry no judicial weight or enforcement capacity.

f. Strategic lawsuits against public participation (SLAPP) and Judicial Protection Mechanisms

Since 2017, more than 200 WHRDs have been charged with crimes. Most of the complaints have been lodged against urban poor women facing eviction. The second largest group of victims has been women defending land and natural resources of their communities. These cases have been filed by, amongst others, mining corporations, palm oil companies and some state-run agencies. Frequently, instead of supporting and protecting WHRDs, the Thai government enables companies to engage in judicial harassment and other forms of intimidation.

In 2019, Articles 161/1 and 165/2 of the Criminal Procedure Code were also introduced to try and address such **SLAPP lawsuits** and other similar forms of judicial harassment. These amendments allow a court to dismiss and forbid the refiling of a complaint by a private individual

⁶ [Joint Statement] Thailand: Strengthen National Human Right Commission before Accreditation Upgrade, 16 December 2020, <https://www.forum-asia.org/?p=33462>

⁷ Protection International, 2020 CEDAW Progress Report Card, p. 27.

if the complaint is filed “in bad faith or with misrepresentation of facts in order to harass or take advantage of a defendant.” However, these new articles have not been effective. Terms such as “bad faith” are not defined in the law, and it is left to each court’s discretion. All applications by HRDs to invoke Article 161/1 to date have been denied.

Under Section 21 of the 2010 Public Prosecutor Organ and Public Prosecutors Act, public prosecutors have the authority to not prosecute complaints brought with the intent to harass, intimidate, or retaliate against human rights defenders or others. However, this is a lengthy procedure and not only up to the public prosecutors alone. It is not clear whether adequate resources and support have been provided to the Attorney-General’s Office to exercise their powers effectively and efficiently.

There is also no clear procedure or provision for fining or otherwise penalizing businesses who have been found guilty of trying to resort to judicial harassment of HRDs. We urge the State to prevent all threats and harassment. Those responsible for attacks on defenders including judicial harassment must be held accountable. Those found to fail to uphold their duty of care to support and protect HRDs must face political, financial and judicial consequences.

8. Development since the previous UPR Cycle

During the UPR session in 2016, Thailand received a total of 249 recommendations. Of these, 181 have been accepted at the UPR Working Group meeting; six were accepted at a later stage; and 62 have been noted. In addition, Thailand has made seven voluntary pledges.

Thailand made a voluntary pledge to promote human rights principles and practices in the business sector, while committing to implementing NAP, which includes protecting human rights defenders as a key priority. However, in many instances, the government has failed to use existing mechanisms to prevent judicial harassment against human rights defenders (see 7.f.)

The government also committed to protecting and facilitating civil and political rights, in particular the right to freedom of expression during the UPR review session. However, as of 28 February 2021, Thai Lawyers for Human Rights’ research shows that at least 382 people in 207 cases have been prosecuted for political gatherings and expression related to the youth-led, pro-democracy protests that have occurred since July 2020. Of those, there were at least 13 minors below 18 years old.

Following the 23 February 2021 cabinet approval in principle of the Draft Act on the Operations of Not-for-Profit Organizations as proposed by the Office of the Council of State, and asked the Office of the Council of State to review the Draft Act on the Promotion and Development of Civil Society Organization and other draft by the Ministry of Social Development and Human Security and opinions from concerned authorities in order to draft the law on not-for-profit organizations. In order to obtain input useful for the review of the draft law, OCS has arranged public consultation hearings on the two Draft Acts, and views can be received between 12 and 31 March 2021.

The draft civil society bills proposed by the Social Development and Human Security Ministry is another worrying trend. Approved by the cabinet in February 2021, the bill would require NGOs to register with the state. At the same time, a committee would oversee NGO affairs, which would comprise the permanent secretaries from the Finance, Interior and Social Development and Human Security ministries as well as the Thai Health Promotion Foundation and Community Organisations Development Institute, two non-profit agencies with close affiliations with the government. The bill was widely criticized as lacking public consultation from CSOs, while many worried that the bill could also be used to single out NGOs critical of repressive bills.

9. Recommendations to the government of Thailand

State’s duties to protect Women and HRDs and those at risks

1. Ensure that all people enjoy the rights and freedoms provided by the constitution to participate in the preservation of the environment, health and community as well as public interest. They should be regarded as HRDs per the “UN Declaration on Human Rights Defenders” which obliges Thailand to uphold the rights of HRDs to perform their activities safely without any fear of intimidation.
2. Protect communities’ rights to defend and care for their land, livelihood and natural resources. The state must ensure that corporations, including extractive industries in particular, and public officials are held accountable for their activities and impact on the public and environment.
3. Ensure that state actors and all relevant business enterprises immediately end judicial harassment of HRDs, especially WHRDs, and to take concrete steps to promote good business with a genuine commitment to human rights according to business and human rights principles.
4. Ensure the state actors and all relevant enterprises immediately end practices, which encourage killings, intimidations and judicial harassment. Those found to fail the duty of care to support and protect HRDs must face political, financial and judicial consequences.
5. The Ministry of Justice must prioritize human rights defenders in its agenda, set up mechanisms to receive complaints from high risk HRDs and effectively act on complaints submitted by them. Human rights defenders ought to be respected and protected.

Access to justice, gender justice and women human rights defenders

6. Simplify the procedure to access the Justice Fund and ensure that it is available and accessible to all women; Increase the capacity and budget of the Justice Fund Office, and prioritize men and women human rights defenders in Thailand in accessing the Justice Fund as they continue to face judicial harassment and criminalization for legitimate human rights work.
7. Address the issue of gender, income and wealth inequality by providing care income for all women and caregivers in the home, including Indigenous women.

Ensure comprehensive public participation in development projects

8. Revoke the Emergency Decree immediately; end all mega development projects for which there has not been comprehensive, prior, public consultation.
9. Adopt a human-rights based approach in its development projects, as well as to establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent.

Indigenous people-specific recommendations

10. Cease repeated violations and intimidation against the livelihoods of Indigenous Peoples in Thailand, including the destruction of their specific means of subsistence and livelihood. Ensure that economic models and policies take into account the ancestral ties Indigenous Peoples have to the land and protect their rights to livelihoods.
11. Effectively remove all obstacles to the enjoyment of traditional individual and communal rights by ethnic minorities in their ancestral lands and take effective measures to guarantee land tenure rights without discrimination so as to ensure access to land and adequate housing for all;
12. Recognize Indigenous Peoples’ Customary Institutions, as the legitimate representatives of Indigenous Peoples and ensure that Indigenous women are effectively engaged in decision making related to COVID 19 to protect the communities.

Ensure civil and political rights for pro-democracy youth HRDs

13. Respect the Convention on the Rights of the Child such that young HRDs’ rights to freedom of expression, freedom of assembly, and the rights to protection are protected. Harassment against pro-democracy HRDs in all forms must end immediately so they can freely participate in the democratic process without fear of reprisals.

