

#ThaiBHRNetwork

1. Introduction

1.1 In this submission, the authors examine the compliance of the Thai Government with the recommendations received during the 2nd UPR cycle of Thailand, particularly in relation to social economic and cultural rights (ESCR). In this context, we analyse the efforts made by the government to implement recommendations received related to protection of rights and provision of public services and social welfare to vulnerable populations, and preventing discrimination against women. We particularly assess the ESCR of migrants and sex workers, and of communities affected by loss of access to natural resources and the environment, on which they are often dependent for their livelihoods. The authors then draw specific, measurable and result-oriented recommendations to address to the protection of ESCR rights of marginalised communities.

1.2 During the 2nd UPR cycle, the Thai government received 32 recommendations related to ESCR. Of these recommendations, 30 were supported and 2 were noted. Our assessment demonstrates that the government persistently failed to implement the recommendations since its last UPR.

1.3 We are deeply concerned with Thailand's lack of protection of the ESCR of marginalised groups and local communities. Particularly, social protections, including healthcare and education, are not extended to migrants and sex workers. This is problematic as they are amongst the most vulnerable ones due to the high health risks they are exposed to in their workplaces resulting from bad working conditions and nature of their work. We are also concerned with Thailand's economic growth strategy, in which it prioritises profit over its people, overlooking the rights of local communities, and causing harm to their livelihoods, as they are often dependent on natural resources and the environment.

1.4 This submission indicates that ESCR of marginalised communities are severely violated, in the following manner:

Section 2 discusses barriers faced by migrants to accessing their ESCR

Section 3 discusses barriers faced by sex workers to accessing their ESCR

Section 4 discusses barriers faced by people with disabilities (PWD) to accessing their ESCR

Section 5 discusses the ESCR' violations faced by local communities when they lose their access to natural resources and the environment on which they are dependent for their livelihoods

Section 6 includes recommendations to the Thai government, addressing the challenges and rights violations discussed in foregoing sections

2. Migrants face barriers to accessing their ESCR

2.1 During the 2nd UPR cycle, the Thai government received 13 recommendations addressing the necessity to strengthen efforts to ensure vulnerable populations' access to public services, including healthcare services, education, and social welfare. It also received 14 recommendations addressing the protection of rights of vulnerable groups, and five calling upon the government to prevent discrimination. Of these recommendations, four directly

#ThaiBHRNetwork

addressed the protection of migrant workers. Out of 32 recommendations, the Thai government supported 30 and noted 2. Among others, the Thai government committed to “continue the progressive measures taken to promote the rights of migrant workers and their health”. However, as evidenced below, the Thai government persistently failed to implement these recommendations in the context of migrants, who continue to face severe challenges accessing even their basic human rights, including ESCR. Particularly, they face challenges accessing healthcare services and education. For challenges faced by migrants regarding their rights to work and collective bargaining, kindly refer to our joint UPR submission on BHR.

- 2.2 Although Thailand has laws in place that safeguard workers’ labour rights, which apply to all workers, regardless of their nationality and legal status, such as the Labour Protection Act, 2019, the Social Security Act, 2015, and the Workmen’s Compensation Act, 1994, they are insufficient to protect migrant workers’ rights. They include restrictions for migrant workers, including for migrant domestic workers over the age of 55 who cannot register a work permit.ⁱ Additionally, in instances, employers are exempted from complying with their obligations under the law, and labour laws are poorly implemented and enforced. As a consequence, migrant workers are often discriminated, their rights are violated and they enter workplaces without being informed about the type of work, working hours, conditions and wage. Therefore, they face exploitation at the workplace and on many occasions are dismissed without receiving early notice or compensation.
- 2.3 Often times, migrants are put at risk due to unsafe working conditions at their workplaces, because they do not have access to safety equipment or are exposed to pesticides that are toxic. Despite their high exposure to occupational incidents and risks posed to their health, many migrant workers do not have access to healthcare services.ⁱⁱ There is a gap in Thai legislation as the National Health Insurance Act of 2002 and the Social Security Act of 2015 state that health insurance and social security cannot be applied to migrant workers who do not obtain proper documents, leaving behind numerous unregistered migrants who are forced to pay for health services out of pocket.ⁱⁱⁱ Moreover, migrants working in the informal economy, such as domestic and agricultural spheres, cannot access the social insurance system. Although there have been some positive developments, such as the health insurance coverage that was extended to migrant workers in 2001 and to their dependants in 2005 as well as to unregistered migrants and their dependants in 2013 who can voluntarily opt in but are subject to approval by the contracted hospital,^{iv} in practice, implementation gaps remain. Even if migrant workers obtain health insurance, they are required to pay for services first and be reimbursed later. However, as treatments are often costly, migrants are unable to advance the funds. Consequently, they are unable to access healthcare services.
- 2.4 On top of that, for unregistered migrant workers infected with HIV, they face even more barriers in accessing healthcare. Pregnant migrant women living with HIV are entitled to receive ARV treatment from PMTCT program for free. However, after they deliver the baby, they are supposed to pay in case they want to continue on ARV treatment. Accordingly, the current policy tends to protect baby from HIV transmission more than protect pregnant women living with HIV. Since they are not part of a comprehensive HIV policy, they are often left out once they deliver. This information can be proved by HIV prevalence among pregnant women which never went down under 0.5% since 1991.^v
- 2.5 Other challenges faced by migrants while accessing healthcare services are that health facilities are often distant from where migrants live and work, and transport cost and time

#ThaiBHRNetwork

may stop them from going. Healthcare practices in Thailand may not be aligned with migrants' cultural values and beliefs. Moreover, migrants are being discriminated against by healthcare personnel who demonstrate unfriendly behaviour to them because they do not understand the socio-cultural context of migrants.^{vi} Lastly, healthcare facilities often do not obtain the language skills to communicate effectively with migrants as there is a lack of interpreters available to them. These barriers withhold migrants from accessing healthcare services altogether.

- 2.6 Related to the aforementioned point, the language barrier represents a sensitive issue also with concern to migrants' right to access information in many other aspects, not only in those related to healthcare. Considering that the Government policies are published solely in the national language, migrants are often left out and unaware of their rights as they cannot access the information available on online platforms. Additionally, due to the lack of interpreting services in police stations and courts, migrant workers cannot access justice and receive a fair judgement, which makes them victims of a chain of fundamental human rights violations.
- 2.7 Not only the right to access information is restricted, but also the right to freedom of movement. On base of their legal status, undocumented migrants are prohibited to travel all over the country without asking for permission document, which constitutes a grave violation of their freedom of movement. Not having official documents to claim their residence in Thailand puts them at risk of being excluded from the social security system, being inexistent in the country and therefore more likely to endure numerous kinds of violations.
- 2.8 Undocumented migrants residing in Thailand are often arrested and detained in immigration detention centres (IDCs) for extended periods of time.^{vii} They are not able to contact their embassies, counsel or CSOs, and the conditions inside the IDC are poor and exacerbate their suffering. For instance, on 6 June 2016, Mr. Ijaz, a Pakistani national, was arrested at his apartment in Bangkok by local immigration police officers, based on allegations that he had entered Thailand illegally. Mr. Ijaz was brought to Suan Plu IDC where he was detained, pending deportation. His health situation worsened in the following months and he was taken to the hospital. Upon his return to the IDC, he was asked by an officer to pay 10,000 THB (\$320) to cover for his medical cost, which he did not have and, for not having paid the fees, he was placed in solitary confinement, where he was detained for four months and was not allowed to receive any visitors. Mr. Ijaz died in his cell.^{viii}
- 2.9 During the outbreak of COVID-19, the health circumstances in overcrowded IDCs became even more worrisome. While, in April 2020, the Thai government made efforts to reduce overcrowding in prisons as it had released 8,000 prisoners imprisoned for minor offenses, it failed to protect irregular migrants, refugees and asylum seekers, especially those who have been detained in the overcrowded and unhygienic IDCs, for whom the risk of transmission remains very high as social distancing is impossible.^{ix} This was of particular concern owing to 42 detainees, including a pregnant Burmese worker, at the Songkhla IDC facility on the Malaysian border testing positive for COVID-19 on 25 April 2020.^x With children and their families, persons with disabilities and older persons still being held in detention, the Thai government's negligence in failing to introduce community-based, non-custodial alternatives to detention for these migrants has been criticised.^{xi}
- 2.10 Discrimination against migrants in healthcare facilities also worsened during the COVID-19 outbreak, when Burmese migrants were stereotyped as having COVID-19 just because of

#ThaiBHRNetwork

their nationality. For example, a Burmese worker accompanied her friend to a hospital, where they were asked to undergo virus screening outside, only after seeing their pink ID cards, indicating that they are migrants.^{xii}

- 2.11 Despite the assurances of the Thai government in January 2021 that anyone with symptoms of COVID-19, who had visited known hotspots or who is suspected to be infected, would access free COVID-19 testing and treatment, some migrant workers who visited government hospitals were denied COVID-19 testing as they were deemed ‘low risk’. Migrant workers who are denied COVID-19 testing at government hospitals are also unable to get tested at private hospitals, as they charge exorbitant fees of THB 4,000 for a test. These fees serve as a significant barrier to ensuring that efforts to contain COVID-19 are inclusive of migrant workers. Additionally, migrants are reluctant to get tested because of their illegal status, and those who had tested positive for COVID-19 had refused to receive treatment as they want to retain their jobs.^{xiii} Additionally, migrants are reluctant to visit healthcare facilities as they have negative experiences visiting such facilities,^{xiv} where they, for example, experience stigma and xenophobia among health professionals.^{xv}
- 2.12 On 11 January 2021, the Social Security Office (SSO) approved new guidelines permitting workers to receive proactive COVID-19 screening, which allows them to receive the test results within three hours. The guidelines have been effective since 11 January 2021. New criteria and service fees were set for COVID-19 testing, allowing workers who are enrolled in the Social Security System to have better access to medical services related to COVID-19. The guidelines specifically target workers in provinces declared as ‘highest control areas’ by the CCSA. While the guidelines represent a step in the right direction, it is only applicable to workers enrolled in the Social Security System, which excludes undocumented workers and many workers employed in the informal sector. Therefore, many migrant workers are excluded and remain unable to access COVID-19 testing and treatments. Without a concrete government policy in place to assist migrant workers, migrants rely on the assistance of civil society organisations, such as the Migrant Health Volunteers (MHVs) Network which reaches out to migrant communities and provides them with relevant information and medical support.^{xvi}
- 2.13 Migrant children also face barriers accessing healthcare services, as they are dependent on their parents to purchase healthcare insurance. Given that healthcare insurance can only be purchased by those who are registered, many migrants and their children are left without any access to healthcare services.^{xvii}
- 2.14 Migrant children are not only deprived of their right to healthcare, but also to education. In 2019, UNICEF estimated that about 200,000 migrant children did not have access to formal education.^{xviii} Their access to education is further limited by the lack of teachers in Migrant Learning Centres. To illustrate this, in 2019, 10 migrant learning centres in Ranong province were shut down due to the lack of teachers.^{xix} Consequently, the Thai government only relocated 300 students to Thai schools, while 3,000 children lost their opportunity to learn. Migrant children do not have access to education despite the efforts of the Thai government to enhance rights of all children within its jurisdiction, through the Education for All Policy of 1999 and the Cabinet Resolution on Education for Unregistered Persons of 2005. Therefore, existing government policies to enhance migrant children’s right to education are insufficient.

#ThaiBHRNetwork

- 2.15 Migrant children also face challenges accessing education due to high costs, language barriers, the need to travel far distances, and requirements for enrolment that are unreasonable or unnecessary.^{xx} Additionally, policies that subsidise education have been introduced, but these are only applicable to migrant children whose ID numbers are registered with the Ministry of Interior (Moi), which contains only ten percent of all of migrant children. To the already mentioned challenges, it adds the consequence of the COVID-19 outbreak that impeded presential schooling. Limited learning equipment, language barriers and financial constraints prevented children from participating in online lessons. A recent survey found that many migrant children lack their own mobile phones to access online lessons, leaving them behind in online education.^{xxi} Apart from barriers in online learning, many migrant children even drop out of school to work in low-paid industries in order to alleviate economic pressure faced by their families due to the loss of income during the COVID-19 pandemic, which raises the issue of child labour.^{xxii}

3. Sex workers face barriers to accessing their ESCR

- 3.1 During the 2nd UPR cycle, the Thai government received only one recommendation directly addressing the rights of sex workers, which it supported. By doing so, the Thai government committed to ‘increase its efforts to ensure the right to the highest attainable standard of health also to sex workers by ensuring them access to health care and services and comprehensive sexuality education’. Furthermore, in total, the Thai government received 13 recommendations addressing the necessity to strengthen efforts to ensure vulnerable populations’ access to public services, including healthcare services, education, and social welfare, 14 recommendations addressing the protection of rights of vulnerable groups, and five calling upon the government to prevent discrimination. Out of 32 recommendations, the Thai government supported 30 and noted 2. However, as evidenced below, the Thai government persistently failed to implement these recommendations in regard to sex workers. While implementing the recommendations, the Thai government’s focus has always been on enhancing the rights of other vulnerable groups, while sex workers continue to face severe challenges accessing their rights and sex work continues to be criminalised under the Suppression and Prevention of Prostitution Act of 1996. This severely affects their access to healthcare services, including sexual and reproductive healthcare, which are vital for sex workers. Due to the nature of their work, sex workers are among the most at risk of HIV/AIDS prevalence and transmission, with about 12 to 20 percent of the total sex workers in Thailand living with HIV/AIDS. Moreover, about 50 percent of those affected are not even aware of their HIV/AIDS status. For challenges faced by sex workers regarding their rights to work and collective bargaining, kindly refer to our joint submission on BHR.

- 3.2 While Section 74 of the Constitution of 2017 sets out the State’s duty to provide labour protection and social security benefits, including healthcare insurance and services, the Thai government fails to extend these protections to sex workers the same way it has guaranteed to workers in all other sectors. Even though sex workers are not explicitly excluded from social protection laws, they are often deterred from accessing social security out of fear of facing arrest, public shaming, and deportation if they are migrants. These deterrents, namely the criminalisation of sex work broadly and insufficient oversight of labour conditions, prevent sex workers from reporting employer non-compliance with social protection laws, as well as limit them from accessing benefits, including pensions and insurance. Sex workers who are not formally employed cannot enrol in social security

#ThaiBHRNetwork

schemes. Only managers, cashiers, and the few who have employee status as entertainment workers are enrolled in the Thai social security programme.^{xxiii}

- 3.3 The domestic law on Prevention and Suppression of Prostitution Act is not only a wicked law, but it is also enforced in a discriminatory manner, as it criminalises sex work and, additionally, it is implemented unfairly with sex workers punished for selling sex, but customers not targeted for buying it. Besides, the current legislation links sex workers with human trafficking. Due to criminalisation, sex workers cannot formally access legal protection and are often deterred from reporting exploitative conditions. The struggle for the recognition of sex work is closely tied to the struggle for decriminalisation. Owing to the criminalisation of their work and the missed opportunity of addressing in in the Thai National Action Plan on Business and Human Rights, they see also their labour rights disregarded and they are not granted the social protection that all workers are entitled to, regardless of occupation. Criminalisation perpetuates stigma, discrimination and social marginalisation by alienating sex workers from formal labour protections, creating conditions in which violations of sex workers' rights, including their labour rights, can continue with impunity. This is what creates room for forcing them to pay bribes to access basic rights, including the right to protection under the law, the right to privacy, the right to work, etc. In some places in Thailand, 10-17% of the earnings of sex workers go towards paying bribes to the police.^{xxiv} Considering that they make up 65% of the entertainment industry in Thailand and generate employment for other individuals, it is clear that they contribute to the economy in a substantial manner and therefore need to be protected, having their rights respected accordingly.
- 3.4 According to ILO Recommendation No. 200 on HIV and AIDS and the World of Work, sex workers must be guaranteed special protection and access to prevention programmes. While there have been efforts by the Thai government to improve confidentiality and access to HIV/AIDS testing and treatment in general, sex workers continue to face challenges to access healthcare services due to fear of stigma and criminalisation. The lack of mandatory and regular testing of HIV/AIDS for sex workers linked to poor labour protection policies in the entertainment sector, expose sex workers to higher risk.^{xxv}
- 3.5 Sex workers face challenges in accessing HIV prevention programmes, especially at the State level, due to stigma, discrimination, repressive laws, ignorance and even hate. At the community level there is a higher degree of feeling safe, as demonstrated by the 2016 United Nations Political Declaration of Ending AIDS, which recognised the essential role that communities play in advocacy, coordination of AIDS response and service delivery. Community-based services often support fragile public health systems by filling critical gaps. They are led by or connect strongly with women and other marginalised populations. They provide services that complement clinic-based care, and they extend the reach of health care to groups that would otherwise fall through the gaps. A 2019 study by Anti-Trafficking Review found that sex workers are less willing to get tested and access treatment as community-based clinics are losing staff and services, due to the centralisation of health services in provincial hospitals. Sex workers often feel uncomfortable seeking care in large state-run hospitals because of the high volume of patients, longer waiting times, and a less welcoming atmosphere for them. Healthcare providers may have biased perceptions against sex work and end up discriminating against them.
- 3.6 While Thai sex workers can access healthcare services through Thailand's Universal Healthcare System, including STI screening once in three months, migrant sex workers do

#ThaiBHRNetwork

not have this option because sex work is not recognised as legitimate employment. Therefore, they are often unable to enrol for available health insurance schemes, even though health insurance was extended to migrant workers in 2001. Their employers often do not provide these benefits. Consequently, migrant sex workers are forced to visit private clinics to undergo STI and HIV testing, and obtain treatments, which are expensive. Due to the cost and discrimination faced by migrants in healthcare facilities (as explained in Section 2), they are often discouraged from accessing healthcare altogether.

3.7 During the outbreak of COVID-19, the Thai government imposed a partial lockdown to prevent the spread of the virus. Accordingly, clinics and hospitals deprioritised various services which were not related to COVID-19. Consequently, sex workers had even less access to healthcare services they require, including HIV/AIDS treatment, and they were cut off from their medical aid.

4. People with disabilities (PWDs) face barriers to accessing their ESCR

4.1 During the 2nd UPR cycle degree, Thailand received 25 recommendations related to the rights of PWDs. Out of these, it accepted 24 and noted one. However, the government only addressed one of the recommendations in its mid-term report, regarding the development and implementation of a national action plan on business and human rights (NAP on BHR). As evidenced below, the government made insufficient efforts to implement the recommendations received regarding the rights of PWDs.

4.2 Although Thailand ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008, and it adopted several laws to enhance PWDs rights, such as Section 27 of the 2017 Constitution, Section 71, which guarantees state support for the disabled to be able to have a quality living,^{xxvi} it still lacks effective legislation to protect and uphold the rights of PWDs. In this light, Section 15 of the Persons with Disabilities Empowerment Act, 2013, (PDEA), Section 1670 of the Civil and Commercial Code, and Section 26 of the Mental Health Act 2008 constitute outstanding discriminatory legislations to PWDs.

4.3 PWDs are severely discriminated against in employment and have almost no employment opportunities, apart from stereotypical and low-paying jobs lacking social security. In order to promote PWD's employment, under Section 33 of the PDEA, private and public businesses are required to hire PWDs in positions suitable to them, in proper proportions of the entire number of their workforce. Moreover, Section 34 provides that if employers do not recruit sufficient PWDs, they shall make contribution to the Fund for Promotion and Development of Life Quality of Disabled Persons, which shall be used to enhance protection and development of life quality of disabled persons. However, while PWDs' employment is being promoted, these clauses are not well implemented and are often misused by employers, who fail to either hire PWDs or pay to the Fund, or who exploit PWDs because they want to benefit from tax exemptions.

4.4 The real concern of their overlooked needs comes from their underrepresentation in politics, public administration and government entities, which leads to the enactment of law and policies that do not take into account their considerations and do not address them. An instance could be represented by the discrimination they endure in accessing public spaces: cities, roads, sidewalks, and public transportation are not designed to accommodate people with disabilities, in spite of current national legislation that prohibits discrimination against

#ThaiBHRNetwork

PWDs.

5. ESCR of local communities are affected when they lose their access to natural resources and the environment on which they are dependent for their livelihoods

5.1 Thailand largely focuses on achieving economic development, such as through industrial expansion, large infrastructure projects, and the establishment of special economic zones (SEZs) and economic corridors. Problematically, economic development is conducted in an unsustainable manner and leads to exploitation of Thailand's natural resources and environment, on which local communities are dependent for their livelihoods.

5.2 During its 2nd UPR cycle, the Thai government received one recommendation specifically addressing natural resources and the environment, i.e., to 'monitor enforcement of environmental legislation to protect the rights of local communities and prevent environmental degradation', which it all supported. Additionally, the Thai government received 14 recommendations that are related to protecting the rights of marginalised communities, all of which were supported. Among others, the Thai government committed to 'address the issue of human rights in the pursuit of economic growth in local areas'. However, as evidenced below, the Thai government failed to implement these recommendations, as rights, including ESCR, of local communities have been continuously violated through businesses and development projects, and they have lost their access to natural resources and the environment.

5.3 Under Section 43 of the Constitution of 2017, communities have the right to manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner.' However, in reality, communities do not have this right and are unable to do so. Instead, legislation enacted to manage natural resources and achieve and regulate economic development cause violations of the rights of communities and limit their access to and ability to manage natural resources. Section 58 of the Constitution of 2017 also states that activities that may severely affect natural resources, environmental quality, health, sanitation, quality of life, or any other essential interest of the people or the environment, must conduct a study and assess impacts of activities prior to receiving permission to implement activities. This includes the arrangement of public hearings. Under Section 41 of the Constitution of 2017, communities also have the right to access public data or information in possession of the State. However, in reality, communities are unable to participate in decision-making processes of projects that affect them and their natural resources, they are not informed of projects, their consent is not sought, and Environmental Impact Assessments (EIAs) and Environmental and Health Impact Assessments (EHIAs) are often not properly conducted.^{xxvii} These issues are explained in further detail in our joint submission on BHR.

5.4 As no proper environmental and health impact assessments are conducted before development projects are undertaken, these projects adversely affect the environment, natural resources, and livelihoods, health, and well-being of communities. Examples of negative impacts faced are pollution, threats to water supplies, and the transformation of fertile farmlands into industrial areas. One example is the Eastern Economic Corridor (EEC) supporting industrial sectors in three provinces, i.e., Rayong, Chon Buri, and Chachoengsao. In the western part of Chachoengsao exists the most essential watershed of Eastern Thailand located, the low riverplain of the Bangpakong River. According to the World

#ThaiBHRNetwork

Resources Institute, the EEC will pose risks to the Bangpakong River basin's water and food security by 2030, which will lead to further consequences across the region.^{xxviii} As there is insufficient water, local communities suffer from unfair allocation of water resources, as the Thai government prioritises providing water to the industrial sector over communities. In January 2020, the Thai government already reclaimed over 200,000 rai of land in Chanthaburi province to build four reservoirs to supply EEC project with 300 million cubic metres of water.^{xxix} The large water supply required for EEC projects is particularly problematic for communities, as Thailand is also experiencing the worst drought in 40 years.^{xxx} Not having access to water, communities will not be able to cope with droughts and will not have sufficient water for domestic purposes. Not having access to sufficient clean water is a clear violation of communities' right to an adequate standard of living, enshrined in the ICESCR. Another example is that of Phichit province, where over 6,000 villagers are severely affected by the operations of gold mining company Akara Resources PLC. Mining operations, which caused contamination and pollution of the environment and natural resources, disrupting the villagers' livelihoods and affected their health and well-being. Because of the polluted resources, communities were no longer able to cultivate their land and, thus, lost their main source of income, causing economic instability and forced migration to other areas in search of employment or long-distance travel to work every day. In most cases, those who found alternative employment were employed in low paid jobs, such as in the construction, agriculture, or informal sector, lacking decent working conditions and protection under labour laws. Those unable to migrate or afford daily transportation costs to work outside of their area were forced to continue farming activities on the contaminated land, posing a risk to their own health as well as to the health of end consumers of their crops. Not being able to farm and grow and consume their own crops, villagers lost their access to food security and were forced to travel outside of their own area to purchase clean crops and water elsewhere. Consequently, they were subject to a higher cost of living, as they had to spend more to purchase water and vegetables if they were able to afford it. However, not all villagers are able to afford spending more and are forced to continue consuming and using the contaminated water and crops, posing a risk to their health.

- 5.5 Problematically, when communities lose their access to natural resources and the environment on which they are dependent for their livelihoods, and their ESCR are being violated, they do not have access to effective remedies. For example, In Kanchanaburi province, in 2007, 151 villagers sued Lead Concentrates Co. Ltd. for violating environmental laws, as the company and its mining operations caused pollution to the Klity Creek, harming locals. Ten years later, in 2017, the case is finally concluded with the Supreme Court's Environmental Division ruling in favour of the villagers, ordering the company to pay THB 36.05 million to the plaintiffs. In 2018, the Kanchanaburi Court also ruled that the company is required to pay for the cleaning up of Klity Creek undertaken by the Pollution Control Department, which is estimated to cost THB 500 million.^{xxxi} To date, despite the court orders, villagers have not received compensation, and Klity Creek has not been restored.

6. Recommendations to the Thai Government

Manushya Foundation, the Thai CSOs Coalition for the UPR, and the Thai Business & Human Rights Network make the following specific recommendations to the Thai government and call on to guarantee the protection and promotion of ESCR of marginalized groups and local communities.

#ThaiBHRNetwork

6.1 Regarding barriers faced by migrants to accessing their ESCR

- a. In accordance with article 28 of ICRMW, Thailand should ensure that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.
- b. In relation to the Labour Protection Act, 2019, the Social Security Act, 2015, and the Workmen's Compensation Act, 1994, Thailand should eliminate all restrictions for migrant workers, including allowing migrant domestic workers over the age of 55 to register a work permit.
- c. In line with the Social Security Act, Thailand must take all necessary measures to ensure that migrant workers can access to social insurance system and adequate health insurance, without receiving a discriminatory treatment from service providers.
- d. In line with article 33 and article 39 of ICRMW, Thailand should ensure that migrant workers are respected the right to be informed in a language they understand, through providing interpreting services in every migrant-related department, and the right to liberty of movement in the territory of Thailand.
- e. In line with article 24 of the Convention on the Rights of the Child, Thailand must uphold all children's right to enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.
- f. In line with article 30 of the ICRMW, Thailand should ensure that each child of a migrant worker shall enjoy access to education on the basis of equality of treatment with Thai children concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation in Thailand.
- g. In accordance with the considerations of the Committee on the Elimination of Discrimination against Women (CEDAW) of the combined sixth and seventh periodic reports of Thailand (2015) on its implementation of the provisions of CEDAW, issue clear standard based on human rights approach for positive women migrant workers, providing ARV treatment, powdered milk and safe abortion counselling.

6.2 Regarding barriers faced by sex workers to accessing their ESCR

- a. In line with article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure a remuneration that provides all workers with fair wages; rest and leisure.
- b. In accordance with Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognise the right of everyone to social security, including social insurance.

#ThaiBHRNetwork

- c. As per the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2020), repeal all laws criminalising sex work and practices around it, establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled; and implement programmes and educational initiatives to allow sex workers access to appropriate, quality health services.
- d. In line with Concluding Observation 27 (a) and (b) of the Concluding observations by the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh periodic reports of Thailand (2017), review the Prevention and Suppression of Prostitution Act to decriminalise sex work.
- e. In line with General Comment No. 22 of the Committee on Economic, Social and Cultural Rights, repeal or eliminate laws, policies and practices that criminalise, obstruct or undermine sex workers' access to sexual and reproductive health facilities, services, goods and information; and ensure that such persons have access to the full range of sexual and reproductive health-care services.
- f. In accordance with Concluding Observation 38 of the Concluding observations by the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh periodic reports of Thailand (2017), improve women's access to health-care services, such as the universal health coverage scheme and reduce rates of HIV infection.
- g. According to ILO Convention No. 200 on Recommendations concerning HIV and AIDS and the world of work (2010), ensure access for sex workers to comprehensive safety and health programmes as well as access to HIV and AIDS information, testing, prevention, treatment, care, and support in the workplace.

6.3 Regarding barriers faced by PWDs to accessing their ECSR

- a. In line with Article 5 of the United Nations Convention on the Rights of Persons with Disabilities, and in accordance with Sections 4 and 27 of its Constitution, Thailand must recognise that all persons are equal before the law and are entitled without any discrimination to the equal protection and benefit of the law.
- b. In line with Article 2 of the ILO Discrimination Convention, 1958 (No.C111), Thailand should declare a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. This includes amending Article 5.6 Paragraph of the Thai Labour Standards on Corporate Responsibility (TLS 8001-2010) and the Labour Protection Act to include the prohibition of discrimination on the grounds of disabilities.
- c. In accordance with Article 9 of the United Nations Convention on the Rights of Persons with Disabilities, to enable persons with disabilities to live independently and participate fully in all aspect of life, Thailand shall take appropriate measures to ensure to persons with disabilities access to safe, inclusive, accessible and green public spaces.

6.4 Regarding economic, social, and cultural rights' violations faced by local communities when they lose their access to natural resources and the environment on which they are

#ThaiBHRNetwork

dependent for their livelihoods

- a. In accordance with the Committee on Economic, Social and Cultural Rights Concluding Observation 31 (2015), take steps to comprehensively regulate environmental protection and ensure strict enforcement of its environmental legislation, so as to prevent harmful effects on health of the population.
- b. In line with the UN Working Group on Business and Human Rights Guidance on National Action Plans on Business and Human Rights (2016), adopt legislation preventing and addressing adverse environmental impacts, such as those polluting the air, soil, or water.
- c. In accordance with the UN Working Group on Business and Human Rights Statement at the end of visit to Thailand (2018), adopt a more holistic approach of sustainability impact assessments that include social and human rights dimensions and take into account sector-specific risks.
- d. In line with the Committee on Economic, Social and Cultural Rights Concluding Observation 10 (c) (2015), adopt a human-rights based approach in its development projects, as well as 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.

ⁱ Mekong Institute, *Migrant Domestic Workers in Thailand: Employment Situation and Comparative Study on Regulations*, 2015, available at:

https://www.mekonginstitute.org/uploads/tx_ffpublication/WPS_N6_2015.pdf

ⁱⁱ Manushya Foundation, *The Protection of Migrant Workers in the Context of Business and Human Rights*, (March 2019), available at:

[https://a9e7bfc1-cab8-4cb9-9c9e-](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_cadd532e1da546069734672fc844c19e.pdf)

[dc0cee58a9bd.filesusr.com/ugd/a0db76_cadd532e1da546069734672fc844c19e.pdf](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_cadd532e1da546069734672fc844c19e.pdf); International Labour Office (ILO), *Safety and Health in Agriculture*, (June 2000), available at:

[https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_110193.pdf)

[safework/documents/publication/wcms_110193.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_110193.pdf)

ⁱⁱⁱ Manushya Foundation, the Justice for Peace Foundation, the Thai CSOs Coalition for the Universal Periodic Review (UPR), and the Thai Business and Human Rights (BHR) Network, *Joint Civil Society Report: List of Themes to be Considered by the Committee on the Elimination of Racial Discrimination (CERD) for the Review of the Combined Fourth to Eighth Periodic Reports of Thailand (CERD/C/THA/4-8) at the 102nd session of the CERD Committee*, (November 2020), available at: [https://a9e7bfc1-cab8-4cb9-9c9e-](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_891806028a194e8e811258bc2ea9220e.pdf)

[dc0cee58a9bd.filesusr.com/ugd/a0db76_891806028a194e8e811258bc2ea9220e.pdf](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_891806028a194e8e811258bc2ea9220e.pdf); Manushya Foundation, *Executive Summary: First Experts Meeting to Inform the CSO National Baseline Assessment on Business and Human Rights in Thailand*, (September 2017), available at: [https://a9e7bfc1-cab8-4cb9-9c9e-](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/0ac4f6_78c985279a764300a0a3aec2cb02b437.pdf)

[dc0cee58a9bd.filesusr.com/ugd/0ac4f6_78c985279a764300a0a3aec2cb02b437.pdf](https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/0ac4f6_78c985279a764300a0a3aec2cb02b437.pdf)

^{iv} Viroj Tangcharoensathien, Aye Aye Thwin and Walaiporn Patcharanarumol, *Lessons from the field: Implementing health insurance for migrants, Thailand*, (October 2016), available at:

<https://www.who.int/bulletin/volumes/95/2/16-179606/en/>; Chantal Herberholz, *The role of external actors in shaping migrant health insurance in Thailand*, *PLoS One*. 2020; 15(7), 2 July 2020, available at:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7332068/>

^v National AIDS Management Center Bureau of AIDS, TB and STIs, Thailand Progress Report Prevention And Control Of Aids 2017, available at:

https://www.unaids.org/sites/default/files/country/documents/THA_2017_countryreport.pdf

^{vi} Friedrich Ebert Stiftung Asia, *Migrant workers struggling under lockdown in Thailand*, (4 May 2020), available at: <https://www.fes-asia.org/news/migrant-workers-struggling-under-lockdown-in-thailand/>

^{vii} Fortify Rights, *Abuse of migrants counterproductive*, (28 May 2020), available at:

<https://www.fortifyrights.org/tha-inv-oped-2020-05-28/>

#ThaiBHRNetwork

- viii OHCHR, Letter regarding the death of Mr. Ijaz, (3 October 2017), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33731>
- ix UCA News, *Migrant workers contract COVID-19 at Thai detention center*, (5 May 2020), available at: <https://www.ucanews.com/news/migrant-workers-contract-covid-19-at-thai-detention-center/87922>
- x Khaosod English, *NGO calls for more virus protection in detention facilities*, (29 April 2020), available at: <https://www.khaosodenglish.com/news/crimecourtscalamity/2020/04/29/ngo-calls-for-more-virus-protection-in-detention-facilities/>; The Thaiger, *Immigration wants to move 26 Rohingya women detained in Songkhla*, (1 May 2020), available at: <https://thethaiger.com/coronavirus/cv19-asia/cv19-thailand/immigration-wants-to-move-26-rohingya-women-detained-in-songkhla>
- xi Channel News Asia, *Migrant workers left out in Thailand's fight against COVID-19*, (19 April 2020), available at: <https://www.channelnewsasia.com/news/asia/covid-19-thailand-migrant-workers-left-out-unemployment-12637164>
- xii Bangkok Post, *Pawns in a hellish blame game*, (2 February 2021), available at: <https://www.bangkokpost.com/life/social-and-lifestyle/2061163/pawns-in-a-hellish-blame-game>
- xiii Reuters, *Migrant workers suffer as coronavirus cases surge in Thailand*, 8 January 2021, available at: <https://www.reuters.com/article/thailand-migrants-workers/migrant-workers-suffer-as-coronavirus-cases-surge-in-thailand-idUSL8N2J3194>
- xiv Internews, *Migrants in Thailand during COVID-19*, (June 2020), available at: <https://internews.org/sites/default/files/2020-07/iea-report-migrants-in-thailand-2020.pdf>
- xv Friedrich Ebert Stiftung Asia, *Migrant workers struggling under lockdown in Thailand*, (4 May 2020), available at: <https://www.fes-asia.org/news/migrant-workers-struggling-under-lockdown-in-thailand/>
- xvi The Diplomat, *COVID19: Thailand's looming second wave*, (1 June 2020), available at: <https://thediplomat.com/2020/06/covid-19-thailands-looming-second-wave/>
- xvii Manushya Foundation, *The Protection of Migrant Workers in the Context of Business and Human Rights*, (March 2019), available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_cadd532e1da546069734672fc844c19e.pdf
- xviii UNICEF, *Removing barriers to migrant children's education in Thailand*, (19 December 2019), available at: <https://www.unicef.org/thailand/press-releases/removing-barriers-migrant-childrens-education-thailand>
- xix Reuters, *Migrant school closures fuel child labour in Thai seafood industry*, (7 October 2020), available at: <https://www.reuters.com/article/thailand-workers-education-idAFL8N2GB3G9>;
- xx OHCHR, *Migrant Working Group Thailand submission to the Universal Periodic Review*, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRTHStakeholdersInfoS25.aspx>
- xxi Bangkok Post, *Migrant children need education*, (1 July 2020), available at: <https://www.bangkokpost.com/opinion/opinion/1943776/migrant-children-need-education>
- xxii Thomson Reuters Foundation, *Migrant school closures fuel child labour in Thai seafood industry*, (7 October 2020), available at: <https://news.trust.org/item/20201007000853-6xbn1/>
- xxiii Manushya Foundation, *Gender-based discrimination and sexual harassment in the workplace in Thailand*, (March 2019), available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_28e0280277cd4047ab3050385a7fb248.pdf
- xxiv Wongboonsin, Patcharawalai, ed. *Trafficking for Sexual Exploitation into Southern Thailand*. Bangkok: Institut de recherche sur l'Asie du Sud-Est contemporaine, 2007, available at: <https://books.openedition.org/irasec/453?lang=en>
- xxv Manushya Foundation, *Gender-based discrimination and sexual harassment in the workplace in Thailand*, (March 2019), available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_28e0280277cd4047ab3050385a7fb248.pdf
- xxvi Thailand's Constitution of 2017, available at: <http://www.unesco.org/education/edurights/media/docs/e60903d5f4cb9278215dc0c231ac42a4da007434.pdf>
- xxvii Manushya Foundation, *Community rights, management of natural resources and the environment*, (March 2019), available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_e989e6a620134e67a31f8501fc29cc2c.pdf
- xxviii Cheevapattananuwong P., Baldwin C., Lathouras A., Ike N., 'Social Capital in Community Organizing for Land Protection and Food Security' *MDPI Land* 2020, 9, 69 (28 February 2020), available at: <https://www.mdpi.com/2073-445X/9/3/69/pdf>

#ThaiBHRNetwork

^{xxix} Bangkok Post, *Water wars looming*, (16 January 2020), available at:

<https://www.bangkokpost.com/business/1836554/water-wars-looming>

^{xxx} East Asia Forum, *Thailand's water shortage and inequality crisis*, (20 March 2020), available at:

<https://www.eastasiaforum.org/2020/03/20/thailands-water-shortage-and-inequality-crisis/>

^{xxxi} Manushya Foundation, *Community rights, management of natural resources and the environment*, (March 2019), available at: https://a9e7bfc1-cab8-4cb9-9c9e-dc0cee58a9bd.filesusr.com/ugd/a0db76_e989e6a620134e67a31f8501fc29cc2c.pdf