

The Impact of COVID-19 on the Economic, Social and Cultural Rights of the Marginalized in Thailand

A Briefing Paper
August 2021



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International Commission of Jurists
P.O. Box 1740
Rue des Buis 3
CH 1211 Geneva 1
Switzerland
t: +41 22 979 38 00
f: +41 22 979 38 01
www.icj.org

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ICJ LEGAL BRIEFING

THE IMPACT OF COVID-19 ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE MARGINALIZED IN THAILAND

25 August 2021¹

1. Introduction

The COVID-19 pandemic has had a devastating impact on the social and economic well-being of many people in Thailand, and in particular has adversely affected their enjoyment of a range of civil, cultural, economic, political, and social rights. As of 24 August 2021, COVID-19 had infected a total of at least 1,066,786 people and contributed to at least 9,562 deaths in the country.²

Thailand initially drew recognition for its apparent success in containing the initial wave of COVID-19 infections in 2020.³ However, like most countries, it has experienced a sharp rise in COVID-19 cases since April 2021 and containment has proved elusive.⁴ Like many countries, Thailand's economy was hit hard by the COVID-19 pandemic, with the World Bank noting that the April 2021 wave of infections "has proven especially severe with strict containment measures reducing mobility and negatively affecting consumption and business sentiment".⁵ The latest wave has also left the country's healthcare system overwhelmed.⁶ Thailand's national vaccination programme has also been hit by a supply shortage.⁷

As the ICJ documented in respect of the first wave,⁸ the pandemic, and States responses to it globally, have impacted the enjoyment of human rights, including the economic, social and cultural rights (ESCR) of all people. These rights, protected under international human rights law and Thailand's particular human rights obligation, include the rights to health services, goods and facilities; nutritious food and sufficient water and sanitation; secure housing; decent

¹ The information in this legal briefing is accurate as of 25 August 2021.

² Available at: <https://ddc.moph.go.th/viralpneumonia/index.php>. In many parts of the world, official death tolls undercount the total number of fatalities. It is likely that the number of excess deaths is greater than the number of covid-19 fatalities officially recorded by the government. See, Charlie Giattino, Hannah Ritchie, Max Roser, Esteban Ortiz-Ospina and Joe Hasell, 'Excess mortality during the Coronavirus pandemic', 11 August 2021, available at: <https://ourworldindata.org/excess-mortality-covid>.

³ See, for instance, Thai PBS, 'WHO director praises Thailand as a good model for containing COVID-19', 15 November 2020, available at: <https://www.thaipbsworld.com/who-director-praises-thailand-as-a-good-model-for-containing-covid-19/>; UN News, 'Thailand's COVID-19 response an example of resilience and solidarity: a UN Resident Coordinator blog', 4 August 2020, available at: <https://news.un.org/en/story/2020/08/1069191>.

⁴ Reuters, 'Thai Prime Minister reassures public after most severe COVID-19 wave', 23 April 2021, available at: <https://www.reuters.com/world/asia-pacific/thailand-reports-daily-record-over-2000-covid-19-cases-4-new-deaths-2021-04-23/>.

⁵ The World Bank, Thailand Economic Monitor July 2021: The Road to Recovery, 15 July 2021, available at: <https://www.worldbank.org/en/country/thailand/publication/thailand-economic-monitor-july-2021-the-road-to-recovery>.

⁶ Bangkok Post, 'Health system in crisis, critics tell government', 21 July 2021, available at: <https://www.bangkokpost.com/thailand/general/2152531/health-system-in-crisis-critics-tell-government>.

⁷ Channel News Asia, 'Thailand's COVID-19 national vaccination programme hit by supply shortage, uncertain delivery schedule', 22 July 2021, available at: <https://www.channelnewsasia.com/asia/thailands-covid-19-national-vaccination-programme-hit-supply-shortage-uncertain-delivery-schedule-2040571>.

⁸ ICJ, 'Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses', September 2020 ('ICJ Right to Health Report'), pp. 18 – 30, available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

work; social security and assistance; and an adequate standard of living that is continuously improving.⁹

However, in Thailand, as is the case globally, the pandemic has not impacted the human rights of people from various groups equally. It has disproportionately harmed the rights of people in already marginalized and disadvantaged groups who are often more vulnerable to COVID-19 itself or the indirect impacts of State responses to COVID-19. In the specific context of Thailand, some examples of groups disproportionately impacted by the pandemic include: (1) refugees, asylum seekers, stateless persons and migrant workers; (2) LGBTI persons; (3) indigenous persons; (4) sex workers; (5) persons deprived of their liberty; and (6) persons with disabilities.¹⁰ The disproportionate harms of the pandemic have been exacerbated by the Thai authorities' failure to sufficiently include people from these marginalized groups in their COVID-19 response. This exclusion stands to "increase the suffering of the most marginalized groups"¹¹ that has been caused by the COVID-19 pandemic.

As a State party to the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), Thailand has the obligation to "take measures to prevent, or at least mitigate" the "profoundly negative impacts on the enjoyment of economic, social and cultural rights, especially the right to health of the most vulnerable groups in society".¹²

Article 26 of the ICCPR entitles all persons to equality before the law and equal protection of the law, and prohibits any discrimination and guarantees to all persons "equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".¹³ This is "an autonomous right", which "prohibits discrimination in law or in fact in any field regulated and protected by public authorities," including those involving both civil and political rights and ESCR.¹⁴

Further, under article 2(2) of the ICESCR, Thailand must guarantee ESCR without discrimination.¹⁵ According to the UN Committee on Economic, Social and Cultural Rights (CESCR), the body of experts that monitors the implementation of the ICESCR by State parties and tasked with the authoritative interpretation of its contents, non-discrimination is an "immediate and cross-cutting obligation" which requires States to realize both formal and substantive equality.¹⁶ In the specific context of the pandemic, the CESCR has indicated that this requires States to "prioritize the special needs of these groups" and "make every effort to mobilize the necessary resources to combat COVID-19 in the most equitable manner".¹⁷

⁹ ICJ, 'Adjudicating Economic, Social and Cultural Rights at National Level: A Practitioners Guide', 2014, available at: <https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf>.

¹⁰ This is not an exhaustive list of individuals and groups disproportionately harmed by COVID-19. The exclusion of any individuals and groups does not reflect the comparative importance or severity of situations faced by individuals and groups vulnerable to human rights violations as a result of COVID-19. It is worth noting as well that individuals can belong to several of these marginalized and vulnerable groups and face intersectional discrimination as a result: for instance, many refugees and asylum seekers have also been deprived of their liberty by being detained in immigration detention facilities due to their irregular migration status; and there are many LGBTI persons working in the sex industry who are migrants, which compounds the challenges they face in the COVID-19 pandemic. See also ICJ Right to Health Report; and Committee on Economic, Social and Cultural Rights, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2 July 2009 ('General Comment No. 20').

¹¹ Committee on Economic, Social and Cultural Rights, 'Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights', UN Doc. E/C.12/2020/1, 17 April 2020 ('CESCR COVID-19 Statement'), para. 2.

¹² *Ibid.*

¹³ Article 26, ICCPR.

¹⁴ UN Human Rights Committee, 'General Comment No. 18: Non discrimination', 10 November 1989, para. 12.

¹⁵ Article 2(2) of the ICESCR provides: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

¹⁶ General Comment No. 20, para. 7 – 9. For more details on the State obligations to realize ESCR and the right to non-discrimination, especially for the right to health, see, ICJ Right to Health Report, pp. 18 – 30.

¹⁷ CESCR COVID-19 Statement, para. 14.

This briefing paper complements the ICJ's report, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, released in September 2020, which explains the international human rights law and standards on the right to health and documents the adverse human rights effects wrought by the COVID-19 pandemic.¹⁸

2. Refugees, Asylum Seekers, Stateless Persons and Migrant Workers

As of 24 June 2021, the Department of Disease Control reported that there have been at least 48,135 foreign migrant workers who have been tested positive for COVID-19.¹⁹ On 1 June 2021, a spokesperson from the United Nations High Commissioner for Refugees (UNHCR) stated that they had seen a "worrying increase" in the number of COVID-19 cases among refugees and asylum seekers in several countries, including Thailand.²⁰

Thailand is home to 91,682 Myanmar refugees residing in nine temporary shelters on the Thai-Myanmar border, and 5,286 urban refugees and asylum-seekers residing in different areas of the country.²¹ Thailand is not a State party to the 1951 Refugee Convention, and there remains no national legal framework for the specific protection of refugees and asylum seekers.²² Urban refugees and asylum seekers, who generally enter and remain in Thailand through irregular migration channels, are vulnerable to being arrested, detained and/or deported under the Immigration Act, B.E. 2522 (1979).²³

The International Organization for Migration (IOM) estimates that there are four to five million foreign migrants working in Thailand.²⁴ IOM Thailand further notes that many migrant workers and their families, especially those who migrate irregularly, "are particularly vulnerable to abuse and exploitation due to their precarious legal status."²⁵

According to the UNHCR, at the end of June 2020, there were 479,943 people registered by the Royal Thai Government as stateless.²⁶

International human rights law protects all persons, irrespective of nationality and citizenship status. This is explicit from article 26 of the ICCPR, which prohibits discrimination in law and in practice. In the context of the ICESCR, the CESCR has made clear that the prohibition of discrimination also includes discrimination against persons, including non-citizens, on the grounds of nationality, and that the rights in the ICESCR apply to everyone including migrant workers, refugees and asylum seekers, "regardless of legal status and documentation".²⁷

The Office of the United Nations High Commissioner for Human Rights (OHCHR), IOM, UNHCR, and the World Health Organization (WHO) issued a joint statement in March 2020 emphasizing that migrants and refugees should be ensured equal access to health services and "effectively included in national responses to COVID-19, including prevention, testing and treatment".²⁸

¹⁸ ICJ Right to Health Report.

¹⁹ Human Rights and Development Foundation, 'Statement: Calling the Thai Government to Provide COVID-19 Assistance Packages to Migrant Workers without Discrimination', 30 June 2021, available at: <http://hrdfoundation.org/?p=2597>

²⁰ UN News, 'Amidst COVID surge, Asia-Pacific region needs 'immediate and stronger support'', 1 June 2021, available at: <https://news.un.org/en/story/2021/06/1093162>

²¹ These numbers are current as of 30 June 2021: UNHCR, *Thailand: Fact Sheet*, 30 June 2021 ('UNHCR Thailand Fact Sheet'), p. 1, available at: https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/07/UNHCR-Thailand-Fact-Sheet_30-June-2021.pdf.

²² *Ibid.*, p. 2.

²³ Section 54 of the Immigration Act states that "[a]ny alien entering or staying in the Kingdom without permission, or with permission that is expired or revoked, may be repatriated from the Kingdom by the competent official." The "competent official" may also arrest and detain those whom they suspect of entering Thailand irregularly without judicial oversight, as stipulated by Articles 19 and 20 of the Act. For an unofficial English translation of the Immigration Act 1979, see, https://web.krisdika.go.th/data/outside/outside21/file/Immigration_Act_B.E._2522.pdf.

²⁴ IOM Thailand, 'Labour Migration', available at: <https://thailand.iom.int/labour-migration>.

²⁵ *Ibid.*

²⁶ UNHCR Thailand, 'Statelessness', available at: <https://www.unhcr.org/th/en/statelessness>. It is worth noting that stateless persons in Thailand also include indigenous peoples, which will be discussed further in Section 4 of this briefing paper.

²⁷ General Comment No. 20, para. 30.

²⁸ World Health Organization, 'The Rights and Health of Refugees, Migrants and Stateless must be protected in COVID-19 response', 31 March 2020, available at: <https://www.who.int/news/item/31-03-2020-ohchr-iom-unhcr-and-who->

The OHCHR further noted in their Guidelines on COVID-19 and the Human Rights of Migrants that “the scarcity of resources is not a sufficient basis for treating migrants’ healthcare needs differently”.²⁹

a. Barriers to accessing COVID-19 healthcare services

Non-citizens, especially those who migrated to Thailand through irregular channels, continue to face barriers in accessing necessary healthcare services, especially those specific to COVID-19. These non-citizens include refugees, asylum seekers,³⁰ stateless persons and migrant workers.

Pursuant to an Announcement of the Thai Ministry of Public Health, COVID-19 testing and treatment are available free-of-charge for all who meet the government’s criteria of being a “high risk individual”.³¹ Furthermore, the Thai Ministry of Public Health reportedly issued a set of guidelines in May 2021 that “authorize public hospitals and provincial health offices to provide medical treatment to “patients who do not have rights to access governmental treatment scheme”.³²

However, in practice, this policy has not been effectively implemented. For instance, urban refugees, asylum seekers and stateless persons, the majority of whom have not been accorded an official legal status in Thailand, experience a range of barriers to access to COVID-19 testing and treatment including:³³

- Fear of high costs of testing if they do not meet the criteria of a “high risk individual”;
- Lack of information about the virus, the COVID-19 policies of hospitals and the criteria used for this assessment; and
- Fear of being arrested when presenting themselves for testing and treatment as they lack documented legal status in Thailand.

These challenges are confirmed by an impact assessment survey conducted by UNHCR in February 2021 with urban refugees and asylum seekers, which found that:

“[the] overall majority of those who reported being unable to receive COVID-19 testing and treatment cited lack of financial resources as the main reason (73%), followed by inability to afford visits to health facilities (39%), understanding that testing and treatment is not available for refugees and asylum-seekers (23%), [and] fear of arrest (20%)”.³⁴

[joint-press-release-the-rights-and-health-of-refugees-migrants-and-stateless-must-be-protected-in-covid-19-response](#). For more details on State obligations to migrants, refugees and stateless persons as well as the common global challenges they face in accessing their ESCR, see ICJ Right to Health Report, p. 40 – 48.

²⁹ OHCHR, ‘COVID-19 and the Human Rights of Migrants: Guidelines’, 7 April 2020 (‘OHCHR COVID-19 and Migrants Guidelines’), available at:

https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf; ICJ Right to Health Report, pp. 40 – 42.

³⁰ The CESCR has previously noted in 2015 that refugees and asylum seekers in Thailand “still face obstacles in accessing basic health care services”; see, Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the combined initial and second periodic reports of Thailand’, UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, para. 29.

³¹ UNHCR, ‘COVID-19 Impact Assessment: Urban Refugees and Asylum-seekers in Thailand’, February 2021 (‘UNHCR COVID-19 Impact Assessment’), p. 6, available at: [https://thailand.un.org/sites/default/files/2021-03/UNHCR%20Thailand%20Second%20Urban%20COVID-](https://thailand.un.org/sites/default/files/2021-03/UNHCR%20Thailand%20Second%20Urban%20COVID-19%20Impact%20Assessment_February%202021_RBAP.pdf)

[19%20Impact%20Assessment_February%202021_RBAP.pdf](https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/); Daron Tan and Manachaya Yankittikul, ‘A Looming Catastrophe: COVID-19, Urban Refugees, and the Right to Health in Thailand’, Refugee Law Initiative, 11 May 2020 (‘COVID-19, Urban Refugees, and the Right to Health in Thailand’) available at:

<https://rli.blogs.sas.ac.uk/2020/05/11/a-looming-catastrophe-covid-19-urban-refugees-and-the-right-to-health-in-thailand/>; and Ministry of Public Health, ‘Press Release’, available at: https://hss.moph.go.th/show_topic.php?id=3816.

³² UNHCR Thailand Fact Sheet, p. 3.

³³ COVID-19, Urban Refugees, and the Right to Health in Thailand. As noted by the Refugee Rights Network in Thailand, the government has simply “not included refugee groups in its COVID response plans”; see, Refugee Rights Network in Thailand, ‘Joint Submission Universal Periodic Review of Thailand: Thailand Cycle 3’, 39th Sessions (‘Refugee Rights Network in Thailand UPR Submission’), June 2021, para. 27, available at:

https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf.

³⁴ *Ibid.*

These challenges are similarly faced by foreign migrant workers, especially those in irregular migration status. The International Labour Organization reported that migrant workers in Thailand “have limited access to COVID-19 testing and treatment and might not seek medical support due to costs involved, and fear of the repercussions of engaging with authorities, including deportation for those in irregular status.”³⁵ Further, on 5 July 2021, the Ministry of Labour rescinded a policy on proactively testing migrants working in risk-prone areas for COVID-19, due to the increasing pressure on the Thai health system as COVID-19 cases rise.³⁶

The ICJ is also concerned that a significant number of non-citizens, including refugees, asylum seekers, migrant workers and stateless persons, have not been included in Thailand’s COVID-19 vaccination campaign. In May 2021, the head of Thailand’s disease control department gave the assurance that everyone living in Thailand would be included in its vaccination plan.³⁷ However, in practice, migrant workers face language barriers when attempting to register to be vaccinated even if they are eligible.³⁸ Further, those who are undocumented are unable to register in the vaccination booking systems without a valid identification document.³⁹

b. Lack of effective measures to guarantee other ESCR

The pandemic has also harmed the other ESCR of refugees and asylum seekers, including their rights to housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. This in turn also threatens their right to health, as these other ESCR are not only self-standing rights, but are also recognized as the underlying social determinants of health and therefore comprise components of the right to health itself.⁴⁰ The Thai authorities have not taken effective targeted measures to guarantee and provide a full range of ESCR necessary for the protection of the health and welfare of non-citizens in the context of COVID-10.⁴¹

Many urban refugees and asylum seekers – a large number of whom work in the informal sector as they generally cannot obtain formal employment in Thailand – have lost their jobs and are unable to access the government’s compensation scheme. They have therefore faced difficulties

³⁵ International Labour Organization, ‘COVID-19: Impact on migrant workers and country response in Thailand’, 3 July 2020, p. 7, available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/briefingnote/wcms_741920.pdf; ICJ Right to Health Report, p. 44.

³⁶ Migrant Working Group, ‘Press Statement: The Department of Employment’s letter to cancel healthcare assistance to migrants condemned’, 14 July 2021, available at: <https://www.mwgthailand.org/en/press/1626307854>; VOD, ‘Covid-19 Testing at Workers’ Quarters in Thailand Go Quiet, Raising Concerns’, 23 July 2021, available at: <https://vodenGLISH.news/covid-19-testing-at-workers-quarters-in-thailand-go-quiet-raising-concerns/>. The Ministry of Labour explained that they rescinded such a policy because the testing of migrants is under the responsibility of and to be administered by the Bangkok Communicable Disease Committee and the respective Provincial Communicable Disease Committees. See: Bangkok Employment Office, ‘MOL explains why the policy to support migrants was revoked’, 13 July 2021, available at: https://www.doe.go.th/prd/ar6/news/param/site/150/cat/7/sub/0/pull/detail/view/detail/object_id/48592.

³⁷ Bangkok Post, ‘Official assures foreigners they will get vaccines’, 6 May 2021, available at: <https://www.bangkokpost.com/thailand/general/2111307/official-assures-foreigners-they-will-get-vaccines>.

³⁸ Migrant Working Group, ‘Migrants with accessibility to COVID-19 vaccine’, 27 June 2021, available at: <https://www.facebook.com/mwgthailand/photos/pcb.4448080781868564/4448080728535236>.

³⁹ *Ibid.* The registration procedures are varied, depending on the province foreign migrants are residing. To the ICJ’s knowledge, many provinces only allow documented foreign migrants to register for vaccinations. For example, in Phuket province, foreign migrants who would like to register for COVID-19 vaccination are required to present to the relevant authorities a work permit, pink ID card for foreigners, visa and passport. See: <https://www.phuketcity.go.th/news/detail/5088>. Further, in Samut Sakhon province, the Government Public Relation Departments stated that only documented migrants are eligible for vaccination. See: <https://www.prd.go.th/th/content/category/detail/id/39/iid/20478>. For the central registration website, eligible migrant workers must have social security number. See: <https://expatvac.consular.go.th/>.

⁴⁰ Committee on Economic, Social and Cultural Rights, ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’, UN Doc. E/C.12/2000/4, 11 August 2000 (‘General Comment No. 14’), para. 4.

⁴¹ The CESCR has reminded State parties to urgently “adopt special, targeted measures ... to protect and mitigate the impact of the pandemic on vulnerable groups”, such as through “providing water, soap and sanitizer to communities that lack them; implementing targeted programmes to protect the jobs, wages and benefits of all workers, including undocumented migrant workers; imposing a moratorium on evictions or mortgage bond foreclosures against people’s homes during the pandemic; providing social relief and income-support programmes to ensure food and income security to all those in need; [and] taking specially tailored measures to protect the health and livelihoods of vulnerable minority groups”; CESCR COVID-19 Statement, para. 15.

paying rent and buying essential goods to maintain an adequate standard of living.⁴² UNHCR reported that 77% of respondents in their impact assessment survey on urban refugees and asylum seekers “did not have a household member working or engaging in income generating activities”, mainly due to the “lack of availability of work” and “lack of legal status”.⁴³ Many urban refugees and asylum seekers also “live in poor conditions with overcrowded rooms”, which “increases the risk of the rapid spread of COVID-19”.⁴⁴

Migrant workers in Thailand have also had their lives and livelihoods upended by the pandemic. For instance, between 28 June 2021 and 1 August 2021, it was reported that camp sites where some 80,000 construction workers live – mostly Burmese, Cambodian and Thai workers – were closed and guarded by Thai police and army,⁴⁵ confining “migrants in congested conditions with limited access to medicine and food”.⁴⁶

The Human Rights and Development Foundation also noted in June 2021 that migrant workers had been discriminatorily excluded from COVID-19 assistance packages provided by the Thai authorities.⁴⁷ For example, some packages require applicants to register for the cash hand-out via the government’s “e-wallet” application and only applicants holding Thai national ID cards can access the e-wallet and would therefore be eligible for the cash hand-out remedy.⁴⁸

c. Enforcement of immigration laws and policies

The OHCHR has recommended that States should “separate immigration enforcement activities from health service provision” and make it clear in their communication messages and public information campaigns that migrants in irregular situations “will not be penalized or targeted for immigration enforcement when seeking access to healthcare services”.⁴⁹ It further recommended that States should “consider the temporary suspension of enforced returns during the pandemic”.⁵⁰

Unfortunately, these recommendations have not been followed by the Thai authorities consistently. In December 2020, the Thai government announced that it would issue work permits to undocumented migrant workers from Cambodia, Laos and Myanmar to work in the country legally for about two years to curb the spread of COVID-19.⁵¹ However, after the registration period ended in mid-February 2021, the Ministry of Labour set up several teams to investigate and arrest foreign workers considered “illegal” under Thai immigration laws and their employers.⁵² The coordinator for the Migrant Working Group, a coalition of Thai non-governmental organizations working on health, education and labour rights, noted that this “will hamper disease control efforts” since some workers had gone into hiding, which made

⁴² COVID-19, Urban Refugees, and the Right to Health in Thailand; Refugee Rights Network in Thailand UPR Submission, para. 36 – 40.

⁴³ UNHCR COVID-19 Impact Assessment, p. 25.

⁴⁴ COVID-19, Urban Refugees, and the Right to Health in Thailand.

⁴⁵ Bangkok Post, ‘Troops, cops seal 600 worker camps’, 27 June 2021, available at:

<https://www.bangkokpost.com/thailand/general/2138967/troops-cops-seal-600-worker-camps>.

⁴⁶ ASEAN Parliamentarians for Human Rights, ‘To tackle COVID-19 outbreaks, ASEAN MPs call for more inclusive policies for migrant workers’, 19 July 2021, available at: <https://aseanmp.org/2021/07/19/to-tackle-covid-19-outbreaks-asean-mps-call-for-more-inclusive-policies-of-migrant-workers/>. See also: Thaiger, ‘CORONAVIRUS (COVID-19) Locked in a construction worker camp in Bangkok – Thailand’s hidden Covid tragedy | VIDEO’, 21 July 2021, available at: <https://thethaiger.com/coronavirus/locked-in-a-construction-worker-camp-in-bangkok-thailands-hidden-covid-tragedy>.

⁴⁷ Human Rights and Development Foundation, ‘Statement: Calling the Thai Government to Provide COVID-19 Assistance Packages to Migrant Workers without Discrimination’, 30 June 2021, available at: <http://hrdfoundation.org/?p=2597>.

⁴⁸ *Ibid.*

⁴⁹ OHCHR COVID-19 and Migrants Guidelines, p. 1.

⁵⁰ *Ibid.*, p. 2.

⁵¹ Thomson Reuters Foundation, ‘Thailand offers work permits to undocumented migrants to curb COVID-19’, 29 December 2020, available at: <https://www.reuters.com/article/us-thailand-workers-migrants-idUSKBN293193>.

⁵² Bangkok Post, ‘Close the vaccine gap: illegal migrants need help’, 27 June 2021, available at:

<https://www.bangkokpost.com/thailand/special-reports/2139103/close-the-vaccine-gap-illegal-migrants-need-help>.

The teams consist of labour inspectors and the immigration police, and were put together and trained by the Ministry of Labour. Their official name is the “Ad Hoc Task Force that Suppress, Arrest and Prosecute Illegal Foreign Migrant Workers During the COVID-19 Pandemic”; see, Bangkok Biz News, ‘Minister ordered 5 Task Forces to Crack Down on Illegal Migrants’, 6 June 2021, available at: <https://www.bangkokbiznews.com/news/detail/942006> (in Thai).

them vulnerable if they contract COVID-19 as they would avoid seeking healthcare for fear of being arrested.⁵³

Similarly, it has been reported that urban refugees and asylum seekers continue to be arrested and detained for immigration-related offences, despite attempts at advocacy and interventions from UNHCR and non-governmental organizations.⁵⁴ The ICJ fears that some of these may involve arbitrary detention, as some refugees and asylum seekers face the prospects of indefinite detention⁵⁵ if they are not resettled to a third country, released from detention on bail, or voluntarily repatriated to their country-of-origin.⁵⁶ The indefinite detention of refugees and asylum seekers, solely on the basis of their irregular immigration status, and Thailand's policy of not providing alternatives to detention for refugees and asylum seekers violate their rights to liberty and security under article 9 of the ICCPR.⁵⁷ As the Human Rights Committee has made clear, asylum seekers should only be detained as an exceptional measure of last resort following an individualized assessment and after the exhaustion of all alternatives to detention.⁵⁸

Despite the commitment made by Thailand's Prime Minister to protect refugees, including those fleeing across the border from Myanmar into Thailand,⁵⁹ Fortify Rights and civil society actors in Karen State documented that Thai authorities forcibly returned most of the 5,000 individuals who crossed into Thailand in March and April 2021 and at least 2,000 individuals fleeing violence in Myanmar's Karen State in May 2021 back to Myanmar.⁶⁰ The ICJ fears that in the absence of individualized assessments, some of them may have been returned in breach of the prohibition of *non-refoulement*.

In April 2021, several organizations called on Thailand to protect "people fleeing violence and repression in Myanmar" noting that "while any movement of people must be properly managed with rigorous public health measures in light of the ongoing COVID-19 pandemic, trying to contain the pandemic is no excuse to push people back to unsafe situations".⁶¹ They called on the Thai authorities to instead ensure that adequate COVID-19 screening, quarantine and treatment facilities are available for those crossing the border.⁶²

3. LGBTI Persons

LGBTI persons in Thailand commonly face barriers to equal access to ESCR.⁶³ Under international human rights law, "sexual orientation" and "gender identity" are prohibited

⁵³ Bangkok Post, 'Close the vaccine gap': illegal migrants need help', 27 June 2021, available at:

<https://www.bangkokpost.com/thailand/special-reports/2139103/close-the-vaccine-gap-illegal-migrants-need-help>.

⁵⁴ Daron Tan and Manachaya Yankittikul, 'Thailand's Response to COVID-19, Urban Refugees and Asylum Seekers, and Immigration Detention', in *COVID-19 Impacts on Immigration Detention: Global Responses (Immigration Detention Coalition and HADRI/Western Sydney University)* ('Thailand's Response to COVID-19, Urban Refugees and Asylum Seekers, and Immigration Detention'), p. 51, available at: <https://idcoalition.org/wp-content/uploads/2020/10/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>.

⁵⁵ Refugees and asylum seekers can be detained indefinitely in immigration detention, while awaiting deportation. Under Section 54 of the Immigration Act, "while waiting for the alien to be deported... the competent official may detain the alien at any given place as may be necessary", with no time limit set on the maximum period of detention.

⁵⁶ Asylum Access Thailand, Asia Pacific Refugee Rights Network, Coalition for the Rights of Refugees and Stateless Persons and Fortify Rights, *Submission to the U.N. Committee on the Elimination of Racial Discrimination on Thailand's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, September 2020, pp. 11 – 15, available at: <http://aprrn.org/wp-content/uploads/2021/07/submission-to-CERD-sept-002.pdf>.

⁵⁷ The only exception to this is mothers and children, pursuant to the Memorandum of Understanding on the Determination Measures and Approaches to Alternative to Detention of Children in Immigration Detention Centers. *Ibid.*, p. 11.

⁵⁸ UN Human Rights Committee, 'General Comment No. 35: Article 9 (Liberty and Security of Person)', UN Doc. CCPR/C/GC/35, 16 December 2014, para. 18.

⁵⁹ Bangkok Post, 'We won't push back refugees', 31 March 2021, available at:

<https://www.bangkokpost.com/thailand/general/2092191/we-wont-push-back-refugees>.

⁶⁰ Fortify Rights, 'Thailand: Prevent Pushbacks, Establish Protection Mechanisms for Refugees Fleeing Myanmar', 12 May 2021, available at: <https://www.fortifyrights.org/tha-inv-2021-05-12/>.

⁶¹ APRRN, 'Thailand: Protect refugees fleeing violence and repression in Myanmar', 8 April 2021, available at: <https://reliefweb.int/report/thailand/thailand-protect-refugees-fleeing-violence-and-repression-myanmar>.

⁶² *Ibid.*

⁶³ OutRight Action International, 'Thailand', available at: <https://outrightinternational.org/region/thailand>; Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliá Savelev and Daron Tan, *State-Sponsored Homophobia 2020: Global Legislation Overview Update*, ILGA World, December 2020, p. 103, 226, 299, 311, available at:

grounds of discrimination, as affirmed by the CESCR and other international human rights bodies.⁶⁴

The OHCHR has identified LGBTI persons as particularly “vulnerable” during the pandemic, in part due to de-prioritization of required health services, increased risk of domestic violence and abuse and decreased access to work and livelihoods.⁶⁵ Existing stigma and discrimination against LGBTI persons may also exacerbate risks and reduce the probability of them seeking and receiving healthcare goods and services on an equal basis.⁶⁶ The UN Independent Expert on Sexual Orientation and Gender Identity (SOGI) has affirmed that States must “adopt measures to incorporate [LGBTI people’s] concerns and challenges into the design, implementation and evaluation of the measures for pandemic response and recovery” and protect LGBTI persons from “violence and discrimination” in the context of the pandemic.⁶⁷

a. Barriers to accessing healthcare services

Travel and movement restrictions in response to the pandemic has negatively impacted access to healthcare services essential to LGBTI persons. In June 2020, in a survey conducted by the United Nations Development Programme (UNDP) and the Asia Pacific Transgender Network (APTN), 85% of respondents reported being most affected by “the lockdown and travel and movement restrictions”, which have “prevented transgender people from traveling to other provinces or to healthcare facilities to maintain their supply of hormones”.⁶⁸ There were also reports of how government measures, such as limiting public transportation across the country, have had a significant negative impact on the delivery of HIV-related services in the country.⁶⁹

Further, LGBT persons in Thailand have faced increased difficulties accessing HIV treatments due to the overloading of the healthcare services. The UN Independent Expert on SOGI has stressed that, since gay men and trans women represent “a significant proportion of those living with HIV-induced compromised systems”, they are at a higher risk “of developing severe symptoms of COVID-19”.⁷⁰ Many community-based organizations providing healthcare services have had to scale back their operations and working hours, which, in turn, has negatively impacted HIV testing and treatment services for LGBTI people.⁷¹

https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf. It is worth noting that in Thailand, consensual same-sex sexual conduct is not criminalized.

⁶⁴ General Comment No. 14, para. 18; General Comment No. 20, para. 32. For more on ICJ’s work on how the pandemic has affected LGBT persons, see, ICJ Right to Health Report, p. 62; ICJ, ‘Invisible, Isolated, and Ignored: Human Rights Abuses Based on Sexual Orientation and Gender Identity/Expression in Colombia, South Africa and Malaysia’, March 2021 (‘ICJ Report on Human Rights Abuses Based on SOGIE’), available at: <https://www.icj.org/wp-content/uploads/2021/03/Colombia-SouthAfrica-Malaysia-SOGIE-Publications-Reports-Thematic-reports-2021-ENG.pdf>; Young Park, ‘Stigmatization and Criminalization of LGBT Persons in Uganda during the COVID-19 pandemic’, *Opinio Juris*, 30 June 2021, available at: <http://opiniojuris.org/2021/06/30/stigmatization-and-criminalization-of-lgbt-persons-in-uganda-during-the-covid-19-pandemic/>. Further, Principle 17 of the Yogyakarta Principles makes clear that States should facilitate access to healthcare for LGBT persons without discrimination, including the provision of sexual and reproductive healthcare, goods, services and facilities; and access “by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support”; The Yogyakarta Principles plus 10, available at: https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

⁶⁵ OHCHR, *COVID-19 and the Human Rights of LGBTI People*, 17 April 2020, available at: <https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>.

⁶⁶ *Ibid.*

⁶⁷ UN General Assembly, ‘Protection against violence and discrimination based on sexual orientation and gender identity’, UN Doc. A/75/258, 28 July 2020 (‘IE SOGI Report on LGBTI Persons and COVID-19’), para. 84 – 91.

⁶⁸ APTN, ‘Joint Survey with UNDP Thailand on the Impact of COVID-19 on LGBTI Communities Findings’, 30 June 2020 (‘UNDP and APTN Joint Survey’), available at: <https://weareaptn.org/2020/06/30/joint-survey-with-undp-thailand-on-the-impact-of-covid-19-on-lgbti-communities-findings/>.

⁶⁹ APCOM, ‘The COVID-19 Effect Series: Community clinics in Thailand strives to provide HIV services amid COVID-19’ (‘APCOM, The COVID-19 Effect Series’), available at: <https://www.apcom.org/apcoms-the-covid-effect-series-thailand-based-community-clinics-continues-to-provide-hiv-services-amid-covid19/>; ICJ Right to Health Report, p. 69.

⁷⁰ OHCHR, ‘States must include LGBT community in COVID-19 response’: The how and why from a UN expert’, 17 May 2020, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25889&LangID=E>.

⁷¹ APCOM, The COVID-19 Effect Series.

b. Lack of LGBT-affirming healthcare services

Even though government-based clinics may offer access to HIV medication and hormones, LGBT persons “are reluctant to visit public hospitals for services in fear of discrimination and prejudice from the staff”.⁷²

In May 2021, it was reported that several transgender women had been placed in a field hospital ward for men instead of women because their identification documents indicated that they were assigned male at birth.⁷³ As a result, they were fearful of accessing healthcare services related to COVID-19.⁷⁴ This is in part due to the fact that Thailand has no law enabling transgender persons to change their title, sex or gender on official documentation, in contravention of international standards.⁷⁵

c. Violence against LGBTI persons

The UN Independent Expert on SOGI has documented how LGBTI persons are generally at increased risk of violence during the COVID-19 pandemic due to “stay-at-home directives, isolation, increased stress and exposure to disrespectful family members”.⁷⁶ In Thailand, 14% of respondents in the survey conducted by UNDP and APTN indicated having experienced “increased intimate, family, or gender-based violence or economic violence while staying at home”.⁷⁷

The Independent Expert has further affirmed how the violence experienced by LGBTI persons is also psychological, with LGBTI persons suffering disproportionately because of “socioeconomic instability, the inability to leave abusive environments and aggravation of anxiety and other pre-existing conditions related to mental and emotional well-being”.⁷⁸ To this end, 69% of respondents in the survey conducted by UNDP and APTN reported that “isolation, the inability to socialize and do activities outside, and working from home for an extended time led to loneliness, increased stress, and depression”, which is typically brought about or exacerbated by economic pressures.⁷⁹ Some 47% also reported “a loss of income/job or were forced to go on unpaid leave”.⁸⁰

4. Indigenous Persons

The estimated population of indigenous persons in Thailand is approximately 6,100,000 people,⁸¹ comprising indigenous fisher communities, hunter-gatherers in the south and small groups on the Korat plateau in the north-east and east and highland peoples in the north and northwest of the country.⁸²

⁷² Bangkok Post, ‘LGBT community vows to push harder in 2021’, 15 February 2021, available at:

<https://www.bangkokpost.com/thailand/general/2068191/lgbt-community-vows-to-push-harder-in-2021>.

⁷³ Matchon Online, ‘Marginalized among the marginalized: COVID and the Lives in Crisis of the LGBT+’, 22 May 2021, available at: https://www.matchon.co.th/news-monitor/news_2733945 (in Thai).

⁷⁴ *Ibid.*

⁷⁵ UNDP and MSDHS, ‘Legal Gender Recognition in Thailand: A Legal and Policy Review’, May 2018, p. 11, available at: https://www.th.undp.org/content/thailand/en/home/library/democratic_governance/legal-gender-recognition-in-thailand—a-legal-and-policy-review.html. See also, ICJ Report on Human Rights Abuses Based on SOGIE; ICJ, Pakistan: Transgender Persons (Protection of Rights) Act, 2018: A Briefing Paper, March 2020, available at: <https://www.icj.org/wp-content/uploads/2020/03/Pakistan-Transgender-Advocacy-Analysis-brief-2020-ENG.pdf>.

⁷⁶ IE SOGI Report on LGBTI Persons and COVID-19, para. 11. For more on ICJ’s work on violence against LGBT persons, see, ICJ Report on Human Rights Abuses Based on SOGIE.

⁷⁷ UNDP and APTN Joint Survey.

⁷⁸ IE SOGI Report on LGBTI Persons and COVID-19, para. 15.

⁷⁹ UNDP and APTN Joint Survey.

⁸⁰ *Ibid.* The loss of income suffered by LGBTI persons in Thailand was also reported by Edge Effect, which noted that there has been “a significant urban-to-rural shift of LGBTIQ+ workers since the beginning of the crisis, as income generating opportunities are lost in cities”, with LGBTIQ+ people often lacking “savings that could support them through this period” of COVID-19; see, Edge Effect, ‘Briefing Note: Impacts of COVID-19 on LGBTIQ+ people’, April 2020, p. 3, 5, available at: https://www.edgeeffect.org/wp-content/uploads/2020/04/LGBTIQ-COVID19_EdgeEffect_30Apr.pdf.

⁸¹ Matchon Online, ‘Indigenous peoples are Thai people’s ancestor, Thai are inclusive of all indigenous peoples’, 14 January 2021, available at: https://www.matchon.co.th/prachachuen/news_2528858 (in Thai).

⁸² IWGIA, ‘Indigenous peoples in Thailand’ (‘IWGIA, Indigenous peoples in Thailand’), available at: <https://www.iwgia.org/en/thailand/4252-iw-2021-thailand.html>.

The OHCHR has noted the disproportionate impact of the pandemic on indigenous people, “exacerbating underlying structural inequalities and pervasive discrimination”.⁸³ The Special Rapporteur on the rights of indigenous peoples noted how COVID-19 has increased existing hardships for indigenous people with regard to their livelihoods: for those working in urban contexts in informal sectors, job losses were common, resulting in many “left with no other choice but to return to their communities, as they could no longer afford to pay rent or buy food”.⁸⁴

To this end, the Special Rapporteur has affirmed the need for States to “act collectively and in solidarity to rapidly scale up emergency support for indigenous peoples in all their diversities”, and for the “distribution of relief [to] never discrimination against anyone on such grounds such as indigenous status, ethnicity, race, [and] nationality (including statelessness)”.⁸⁵

Further, the UN Declaration on the Rights of Indigenous Peoples provides that indigenous peoples and individuals have the “right to access, without any discrimination, to all social and health services”, “an equal right to the enjoyment of the highest attainable standard of physical and mental health” and “the right ... to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”⁸⁶

a. Barriers to accessing healthcare services

The pandemic has exacerbated the challenges faced by indigenous peoples in the enjoyment and exercise of human rights, including their right to health. In particular, indigenous communities in Thailand are often located in remote regions, usually left behind with limited or no access to healthcare and medical support.⁸⁷ Without formal citizenship,⁸⁸ indigenous communities in Thailand face challenges accessing State resources, such as health and education,⁸⁹ and experience restrictions on freedom of movement as they are forbidden to leave the specific area of their hometowns, unless they seek approval from the District Chief.⁹⁰

On 21 July 2021, at a meeting between more than 40 individuals representing indigenous communities in Thailand, Thai government officials, UN representatives and civil society organized by the ICJ, the OHCHR and Amnesty International Thailand, the indigenous representatives described how the pandemic had made it more difficult for them to enjoy and exercise the full range of their ESCR in Thailand. Among others, they raised concerns about them having limited access to clean water, sanitation, healthcare services, goods and facilities – including COVID-19 vaccines, masks and disinfectants – in part due to the fact that some members of indigenous communities are not granted Thai citizenship. They further noted that

⁸³ OHCHR, ‘COVID-19 and Indigenous Peoples’ Rights: What is the Impact of COVID-19 on Indigenous Peoples’ Rights?’, 29 June 2020 (‘OHCHR, COVID-19 and Indigenous Peoples’ Rights’), p. 1, available at: https://www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf.

⁸⁴ UN General Assembly, ‘Rights of indigenous peoples’, UN Doc. A/75/185, 20 July 2020, para. 71 – 72.

⁸⁵ *Ibid.*, para. 93.

⁸⁶ Articles 23 and 24, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (‘UN Declaration on the Rights of Indigenous Peoples’), available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

⁸⁷ Manushya Foundation and Indigenous Women Network of Thailand (IWNT), ‘The Rights of Indigenous Women: Thailand UPR III 2021 (3rd UPR Cycle)’, 16 April 2021 (‘Manushya Foundation and IWNT UPR Submission’), paras. 7.1 – 7.8, available at: <https://www.manushyafoundation.org/joint-upr-submission-ipwomen>.

⁸⁸ Thailand has, in recent years, eased its laws to make it easier for stateless people to acquire citizenship, including for indigenous peoples. However, many indigenous persons still do not have Thai citizenship, and may face obstacles in applying for citizenship, such as the lack of identification documents like birth certificates and house deeds; see, Reuters, ‘I waited all my life’: Elderly indigenous people struggle for Thai citizenship’, 2 November 2020, available at: <https://www.reuters.com/article/us-thailand-migrants-lawmaking-trfn-idUSKBN27I03G>.

⁸⁹ For example, Onouma Thummapol, Sylvia Barton, and Tanya Park, ‘Healthcare Access Experiences Among Indigenous Women in Northern Rural Thailand: A Focused Ethnographic Study’, *Cent Asian J Glob Health*, 2018, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6393055/>.

⁹⁰ Minority Rights Group International, ‘World Directory of Minorities and Indigenous Peoples - Thailand: Highland indigenous peoples’, 2008, available at: <https://www.refworld.org/docid/49749c9c4b.html>. See also: Announcement of the Ministry of Interior regarding the Determination of Restricted Areas and the Permission for Certain Aliens who Stayed in the Kingdom Temporarily to Leave the Restricted Areas Temporarily, dated 5 August 2016, available at: https://www.doe.go.th/prd/assets/upload/files/singburi_th/cf729cf094ea06e58e27a4b35db036f0.pdf (in Thai).

they faced language barriers in accessing relevant and reliable information about COVID-19 and health services.⁹¹

Furthermore, COVID-19 travel restrictions have affected the access of indigenous women to sexual and reproductive healthcare services, such as contraception and safe abortions. Manushya Foundation and the Indigenous Women Network of Thailand noted in April 2021 that sexual and reproductive healthcare services were viewed as “non-essential”.⁹² They further noted that attempts by some organizations to provide sexual and reproductive healthcare were hindered “by not having any access to marginalized populations requiring their services the most, such as indigenous women and migrant women in border areas.”⁹³

b. Loss of income and work opportunities

The pandemic has resulted in a loss of income and work opportunities for many indigenous persons in Thailand, who have also faced additional challenges in accessing existing and new state relief measures.

A study conducted by the Indigenous Peoples’ Foundation for Education and Environment and the Swedish Program for ICT in Developing Regions reported that many of the “most vulnerable indigenous people” suffered from a loss of income as a result of being unable to sell their farm products, being unable to secure wage labour, the drop in prices of marine animals and the loss of income from selling products and the reduction of cultural tourism.⁹⁴ The study further reported high unemployment rates, especially for the Mlabri, Moken and Plong Karen, “as there was no work available during the pandemic and country lockdown period”.⁹⁵

These findings were echoed by the global NGO International Work Group for Indigenous Affairs, which noted that indigenous people who had migrated to live in the city “became unemployed and suffered a lack of income after companies and businesses were temporarily shut down” and “some farm product such as cabbages, tomatoes, pumpkins, etc., could not be transported and sold in the city as all markets were closed in line with the lockdown measures imposed by the government”.⁹⁶

Indigenous persons have also faced barriers in accessing existing state welfare schemes and COVID-19 relief measures. For instance, while State welfare schemes are available to those with an annual income of less than 30,000 Baht (approx. USD\$900), including indigenous people, many indigenous people are unable to access this scheme as they live in “remote areas that are inaccessible by normal means of transport” and may face language barriers when trying “to navigate the bureaucracy”.⁹⁷ Noting how a good proportion of the populations surveyed could not access the government’s COVID-19 relief schemes, the study concluded that the main challenges faced by the populations in accessing such schemes include their: (1) lack of citizenship status; (2) illiteracy; and (3) lack of mobile phones and other communication devices.⁹⁸

⁹¹ ICJ, ‘Thailand: Indigenous communities face hardship during Covid-19 pandemic’, 21 July 2021, available at: <https://www.icj.org/thailand-indigenous-communities-face-hardship-during-covid-19-pandemic/>.

⁹² Manushya Foundation and IWNT UPR Submission, para. 7.9.

⁹³ *Ibid.*

⁹⁴ Thailand IPs & COVID-19, ‘Study findings on the access to government’s relief packages by the MVIPs’, available at: <https://sites.google.com/thaiportal.info/thailand-ips-covid-19/research-output/study-finding?authuser=0>.

⁹⁵ *Ibid.*

⁹⁶ IWGIA, Indigenous peoples in Thailand. On the impact of COVID-19 on Thailand’s Moken ethnic group, also known as “chao ley”, see, CNN Travel, ‘After centuries of nomadic living, Thailand’s ‘sea people’ adapt to life on land’, 19 April 2021, available at: <https://edition.cnn.com/travel/article/thailand-tourism-sea-people-moken/index.html>.

⁹⁷ Thailand IPs & COVID-19, ‘Access to existing government welfares and relief measures issued by the government’, available at: <https://sites.google.com/thaiportal.info/thailand-ips-covid-19/research-output/access-to-existing-government?authuser=0>. The study noted: “The variation among the different ethnic groups is diverse with the more than half of the Plong Karen and Mlabri people receiving benefits. While less than 5% of the Moken people received any benefits and the Mani in the Klongwalang community has not receiving these benefits at all. The latter is due to not yet receiving Thai citizenship. While, 12 Mani people at Loh Han Community were able to get welfare with the assistance of local administrative organisation staff and community volunteers.”

⁹⁸ Thailand IPs & COVID-19, ‘Access to COVID-19 Remedial Measures of The Most Vulnerable Indigenous Peoples in Thailand’, available at: <https://sites.google.com/thaiportal.info/thailand-ips-covid-19/research-output/covid-19-remedy-access-of-mvip?authuser=0>. For instance, the study noted that only 34.7% of the population received “additional financial aid for the poor” for those affected by the COVID-19 pandemic; and only 10.1% of the population

c. Denial of access to ancestral lands

The UN Declaration on the Rights of Indigenous Peoples affirms a range of human rights with respect to “the lands, territories and resources which [indigenous peoples] have traditionally owned, occupied or otherwise used or acquired.” The Declaration states that indigenous peoples shall not be forcibly removed from these lands or territories, nor shall any relocation take place without their free, prior and informed consent. The Declaration also outlines States’ duties to recognize and protect indigenous peoples’ rights to lands, territories and resources, and to provide effective mechanisms for prevention of, and redress for “any action which has the aim or effect of dispossessing them of their lands, territories or resources”.⁹⁹

However, there have been reports of indigenous people who have been denied access to their ancestral lands and their traditional plantation areas, despite attempts to return in the face of the COVID-19 pandemic.¹⁰⁰

Notably, members of the Karen ethnic group have been attempting to return to Upper Bang Kloi and Jai Pandin, their ancestral lands, as a result of the food insecurity caused by the COVID-19 pandemic.¹⁰¹ The Karen people used to live there until 1996 when the Thai government resettled them to another piece of land “due to border security concerns and efforts to conserve the Phetchaburi watershed forest”.¹⁰² The report noted how many had been “arrested for encroaching on a protected area inside the Kaeng Krachan National Park”.¹⁰³

A group of independent UN human rights experts, including the Special Rapporteur on the rights of indigenous peoples, Special Rapporteur on human rights and the environment and Special Rapporteur on the situation of human rights defenders, has expressed concern on the situation. They noted that in 2021, “harassment of the Karen has escalated and over 80 community members were arrested and 28 of them, including seven women and one child, were criminally charged for ‘encroachment’ on their traditional lands in the national park”.¹⁰⁴ Further, they stated that the approval of the heritage status of Kaeng Krachan national park would “perpetuate the denial of the Karen’s right to remain on their traditional lands and carry out their traditional livelihood activities based on rotational farming”.¹⁰⁵

This concern is consistent with the OHCHR’s acknowledgment that lockdowns and restrictions on movement during the pandemic can have a negative impact on indigenous people’s “right to land, natural wealth and resources, particularly for those who already face food insecurity as a result of land confiscation or grabbing and the loss of their territories”.¹⁰⁶

in 8 communities surveyed received financial assistance from a government scheme aimed at helping workers and self-employed workers not in the social security system who had been affected by COVID-19.

⁹⁹ Articles 8, 10 and 26, UN Declaration on the Rights of Indigenous Peoples.

¹⁰⁰ See also: ICJ, ENLAWTHAI Foundation and Land Watch Thai, ‘Submission to the Universal Periodic Review of Thailand’, 25 March 2021, available at: <https://www.icj.org/wp-content/uploads/2021/04/Thailand-UPR-Submission-1-ENG-2021.pdf>.

¹⁰¹ Channel News Asia, ‘IN FOCUS: Fearing starvation, Thailand’s ethnic Karens of Bang Kloi seek return to ancestral land’, 22 May 2021, available at: <https://www.channelnewsasia.com/news/asia/thailand-bangkloi-ethnic-karens-seek-return-to-ancestral-land-14827686>. It was reported that the Karens were attempting to move back to Upper Bang Kloi and Jai Pandin due to fear of starvation: the new settlement was remotely located with “restricted access to infrastructure and development” and had “[p]oor soil, limited food and insufficient water”, and those who had moved to the city to find jobs had “lost their jobs” during the pandemic. In contrast, “food used to grow in fertile soil and people lived freely with their traditions” in Upper Bang Kloi and Jai Pandin.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ OHCHR, ‘Thailand: UN experts warn against heritage status for Kaeng Krachan national park’, 23 July 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27333&LangID=E>.

¹⁰⁵ *Ibid.* Kaeng Krachan Forest Complex was added to the World Heritage List by UNESCO in July 2021; see, Bangkok Post, ‘Kaeng Krachan added to world heritage list’, 26 July 2021, available at: <https://www.bangkokpost.com/thailand/general/2155099/kaeng-krachan-added-to-world-heritage-list>.

¹⁰⁶ OHCHR, COVID-19 and Indigenous Peoples’ Rights, p. 7.

5. Sex Workers

It is estimated that there are approximately 144,000 sex workers in Thailand.¹⁰⁷ However, this number is likely to be significantly higher due to underreporting, in part due to the fact that sex work is criminalized in Thailand under the Prevention and Suppression of Prostitution Act, B.E. 2359 (1996).¹⁰⁸

The CESCR has indicated that States parties should “take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination”, and should “ensure that such persons have access to the full range of sexual and reproductive healthcare services”.¹⁰⁹ The Special Rapporteur on the right to health has noted that the “criminalization of sex work infringes on the enjoyment of the right to health, by creating barriers to access by sex workers to health services and legal remedies”.¹¹⁰

a. Loss of income and work opportunities

The COVID-19 pandemic and the lockdown measures imposed by the authorities have left sex workers in Thailand without their main or exclusive source of income. It was reported that an estimated 200,000 – 300,000 sex workers had lost their jobs when the government ordered the closure of nightlife venues to curb the spread of COVID-19.¹¹¹ There have been further reports of how the closure of Thailand’s international borders to foreign tourism has severely diminished the income of sex workers.¹¹² In September 2020, a study conducted by Janyam et al found that 91% of the sex workers they surveyed had become unemployed and lost their income because of COVID-19 measures.¹¹³

Sex workers have also been largely excluded from social protection schemes rolled out by the government to mitigate the socioeconomic impact of the pandemic. UNAIDS reported in May 2020 that most citizen and non-citizen sex workers in Thailand “are not eligible for social protection measures” or for the government’s stimulus package provided to informal workers.¹¹⁴ It was also noted sex workers were unable to access the social security system due to commercial sex being illegal in Thailand, and that sex workers “who are migrants or from tribal communities and have no Thai ID are formally undocumented; they therefore not only lack access to government support but also risk being arrested because of their illegal status in the country.”¹¹⁵

¹⁰⁷ Surang Janyam, Dusita Phuengsamran, Jamrong Pangnongyang, Wutikan Saripra, Ladda Jiwattanapataya, Chalidaporn Songsamphan, Patchara Benjarattanaporn, Deyer Gopinath, ‘Protecting sex workers in Thailand during the COVID-19 pandemic: opportunities to build back better’, WHO South-East Asia Journal of Public Health, September 2020 (‘Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic’), p. 100, available at: <https://apps.who.int/iris/bitstream/handle/10665/334191/seajph2020v9n2p100-eng.pdf?sequence=1&isAllowed=y>.

¹⁰⁸ Section 5 of the Act states: “Any person who, for the purpose of prostitution, solicits, induces, introduces herself or himself to, follows or importunes a person in a street, public place or any other place, which is committed openly and shamelessly or causes nuisance to the public, shall be liable to a fine not exceeding one thousand Baht”. Section 6 states: “Any person who associates with another person in a prostitution establishment for the purpose of prostitution of oneself or another person shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand Baht or to both”; see, Thailand: Prevention and Suppression of Prostitution Act B.E. 2539 (1996), available at: <https://www.refworld.org/docid/482aff982.html>.

¹⁰⁹ Committee on Economic, Social and Cultural Rights, ‘General comment No. 22 (2016) on the right to sexual and reproductive health’, UN Doc. E/C.12/GC/22, 2 May 2016, para. 32. For more on the ICJ’s work on how COVID-19 has harmed the ESCR of sex workers, see, ICJ Right to Health Report, pp. 98 – 103.

¹¹⁰ Human Rights Council, ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover’, UN Doc. A/HRC/14/20, 27 April 2010, para. 43.

¹¹¹ The Bangkok Post estimated that 200,000 sex workers had lost their jobs; while the ASEAN Post estimated that 300,000 sex workers had lost their jobs: Bangkok Post, ‘Sex workers left in cold by outbreak’, 23 May 2020, available at: <https://www.bangkokpost.com/thailand/general/1922736/sex-workers-left-in-cold-by-outbreak>; The ASEAN Post, ‘Thai Sex Workers Hit Hard By Virus Lockdown’, 14 April 2020, available at: <https://theaseanpost.com/article/thai-sex-workers-hit-hard-virus-lockdown>.

¹¹² NPR, ‘How The Pandemic Has Upended The Lives of Thailand’s Sex Workers’, 3 February 2021, available at: <https://www.npr.org/sections/goatsandsoda/2021/02/03/960848011/how-the-pandemic-has-upended-the-lives-of-thailands-sex-workers>.

¹¹³ Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic, p. 101.

¹¹⁴ UNAIDS, ‘Supporting sex workers during the COVID-19 pandemic in Thailand’, 7 May 2020, available at: https://www.unaids.org/en/20200507_Thai_sex_workers. Sex workers who work in formal business sectors such as bars and other adult entertainment venues are entitled to the government benefit and, at times, social security benefits - but they often have to conceal their occupation to receive such support.

¹¹⁵ Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic, p. 101. They note that in “April 2020, it was announced that 137,4288 workers covered by the social security system (SSS) were to receive

b. Decreased access to sexual and reproductive healthcare, goods and services

The pandemic has disrupted access to essential sexual and reproductive healthcare, goods and services. Janyam et al's study found that 48% of sex workers surveyed lacked access to sexually transmitted infections (STI) testing and treatment as a result of COVID-19, with female and non-Thai sex workers having greater difficulty in accessing such services.¹¹⁶ A study published by the UNDP in October 2020 reported that STI screening of sex workers had decreased by 90%, with almost half of sex workers surveyed having difficulties accessing STI screening and treatment.¹¹⁷

UNDP's study also found that nearly 40% of sex workers surveyed had increased difficulty accessing condoms.¹¹⁸ Similarly, Janyam et al's study found that sex workers faced difficulties accessing "condoms, pre-exposure prophylaxis (PrEP), and harm reduction and drug treatment services", and sex workers living with HIV reported difficulties accessing antiretroviral therapy.¹¹⁹

Access to family planning, contraception and safe abortions have also been disrupted by COVID-19. It was reported in May 2020 that "many women seeking abortion services face barriers in obtaining safe and legitimate channels to do so" during the COVID-19 pandemic,¹²⁰ and that half of the healthcare centers that had been providing safe and legal abortion services were either closed or overwhelmed with COVID-related patients.¹²¹ In addition, according to the Thai Referral System for Safe Abortion (RSAThai), due to the limited access to healthcare services during the pandemic, the rate of unsafe abortions being carried out through purchasing abortion pills online is likely to increase.¹²² This is contravention of the UN Human Rights Committee's admonition that, consonant with a State's obligations under article 6 and 7 of the ICCPR, States "should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion."¹²³

c. Homelessness and irregular housing for sex workers

The financial hardships wrought by the COVID-19 pandemic has rendered some sex workers homeless, which may further compound the risk of COVID-19 contraction. This undermines the right to adequate housing, protected under article 11(1) of the ICESCR, which requires the Thai government to take immediate measures aimed at conferring a minimum degree of security of tenure, at the very least, sufficient to provide legal protection for people against forced eviction, harassment and other threats.¹²⁴ Further, an eviction may be considered to be justified only if it is carried out in strict compliance with the relevant provisions of international human rights law, but it must not ever "render individuals homeless or vulnerable to the violation of other human rights".¹²⁵

compensation of 62% of their daily wage for a period of 3 months. Furthermore, 15.1 million workers not covered by the SSS and not in the agricultural sector and another 7.1 million workers not covered by the SSS and in the agricultural sector were to receive a direct transfer of 5,000 baht per worker per month for 3 months."

¹¹⁶ Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic, p. 101.

¹¹⁷ UNDP, 'Socio-Economic Impact Assessment of COVID-19 in Thailand', October 2020, p. 49, available at: <https://thailand.un.org/sites/default/files/2021-02/UN%20Thailand%20Socio-Economic%20Impact%20Assessment%20of%20Covid-19%20in%20Thailand-EN-low%20res.pdf>.

¹¹⁸ *Ibid.*

¹¹⁹ Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic, p. 101.

¹²⁰ The Online Citizen Asia, 'Thailand: Lockdown restricts women's ability to obtain safe abortion during COVID-19 pandemic, says pro-choice group', 16 May 2020, available at: <https://www.theonlinecitizen.com/2020/05/16/thailand-lockdown-restricts-womens-ability-to-obtain-safe-abortion-during-covid-19-pandemic/>.

¹²¹ Prachatai, 'Revealed that COVID 19 pandemic risks to access to safe abortion', 18 May 2020, available at: <https://prachatai.com/journal/2020/05/87708> [in Thai]; ICJ Right to Health Report, p. 101.

¹²² Matichon, 'COVID increase the number of unsafe abortion by using abortion pills', 24 June 2021, available at: https://www.matichon.co.th/lifestyle/social-women/news_2793100.

¹²³ Human Rights Committee, 'General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life', UN Doc. CCPR/C/GC/36, 30 October 2018, para. 8.

¹²⁴ CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)', UN Doc. E/1992/23, 13 December 1991, para 8(a); and CESCR, 'General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions', UN Doc. E/1998/22, 1997, para. 16.

¹²⁵ *Ibid.*

The study conducted by Janyam et al found that 75% of sex workers surveyed “could not make enough money to cover daily expenses” and 66% “could no longer cover the cost of food, daily necessities and housing/accommodation, both for themselves and for their dependents”.¹²⁶ Additionally, 18% of the sex workers surveyed reported having “had to move out of their accommodation or had nowhere to live”.¹²⁷

Additionally, given their financial constraints during the pandemic, some sex workers were forced to stay in shared accommodation arrangements and faced greater challenges in maintaining social distancing as it is nearly impossible for them to do so in such shared settings.¹²⁸

6. Treatment of Persons Deprived of their Liberty

More than 310,000 detainees were being held in prisons around Thailand, as of the end of May 2021.¹²⁹ As of 24 August 2021, more than 55,000 detainees in prisons across Thailand had been reportedly infected with COVID-19, with 98 having passed away due to COVID-19.¹³⁰

The Department of Corrections has acknowledged that the high number of detainees and the overcrowdedness of the prisons have obstructed the implementation of COVID-19 prevention measures.¹³¹

The treatment of persons deprived of their liberty is government by a number of human rights obligations including under article 7 and 10 of the ICCPR; the UN Convention against Torture; and article 12 of the ICESCR (right to health).¹³² The CESCR has affirmed that States must refrain from “denying or limiting equal access for all persons, including prisoners or detainees ... to preventive, curative and palliative health services”.¹³³

The revised Standard Minimum Rule for the Treatment of Prisoners (The Mandela Rules), adopted by the UN General Assembly on 17 December 2015, set out the bare minimum to safeguard the state of health of persons deprived of their liberty including: (1) climatic conditions e.g. minimum floor space, lighting and ventilation; (2) suitable items to ensure personal hygiene; (3) adequate clothing; (4) food of nutritional value adequate for health and strength; (5) drinking water; and (6) possibility of participating in recreational and cultural activities to maintain good mental and physical health.¹³⁴

a. Overcrowded and unhygienic environments within prisons

Several UN agencies and civil society organizations have repeatedly called for the Thai government to reduce the number of prisoners, especially human rights defenders and activists who have been arbitrarily detained in violation of international human rights law, as well as to

¹²⁶ Janyam et al, Protecting sex workers in Thailand during the COVID-19 pandemic, p. 101.

¹²⁷ *Ibid.*

¹²⁸ ICJ Right to Health Report, p. 102.

¹²⁹ UNODC, ‘UNODC supports Thai prisons to respond to COVID-19 outbreak’, 16 June 2021, available at: <https://www.unodc.org/southeastasiaandpacific/en/2021/06/thai-prison-covid-19/story.html>.

¹³⁰ Available at: <https://www.facebook.com/prthaidoc/>.

¹³¹ Thairath Online, ‘Department of Correction confirms COVID-19 case spike in prisons’, 17 May 2021, available at: <https://www.thairath.co.th/news/local/2094210> (in Thai).

¹³² General Comment No. 14, para 34. See, also: European Prison Rules, rule 39; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle X; Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), guideline 31. For more on the ICJ’s work on how COVID-19 has harmed the ESCR of persons deprived of their liberty, see, ICJ Right to Health Report, pp. 80 – 89; ICJ, ‘Myanmar: The right to life and health of prisoners must be protected amidst a worsening COVID-19 situation’, 5 August 2021, available at: <https://www.icj.org/myanmar-the-right-to-life-and-health-of-prisoners-must-be-protected-amidst-a-worsening-covid-19-situation/>; ICJ, ‘The Right to Health: Redirecting the “Unconstitutional Path” of Nepal’s COVID-19 Responses’, November 2020, pp. 15 – 16, available at: <https://www.icj.org/wp-content/uploads/2020/11/Nepal-Right-to-health-Advocacy-analysis-brief-2020-ENG.pdf>.

¹³³ General Comment No. 14, para 34.

¹³⁴ Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), rules 13, 18-19, 22, 42, 78 and 105.

use alternative measures to detention or imprisonment where appropriate.¹³⁵ Despite the high infection rate and the overcrowding in prisons, the Thai government has been moving very slowly to reduce the number of inmates. It has been reported that in the period from 1 April to 1 July 2021, “the total prison population decreased by a mere 0.2%”.¹³⁶

The Department of Corrections has been implementing numerous measures to mitigate the spread of the virus within prisons. These measures include the reduction of movement of inmates i.e. traveling to the Courts and inmate visiting; 14-days quarantine for any inmate returning from the Courts or hospital; denial of entrance for any prison staff and outside person with fever or other cold symptoms; and the provision of face masks, hand soaps and hand sanitizers for prison staff and detainees.¹³⁷

However, the ICJ received information from persons recently released from prisons that COVID-19 preventive measures were not being implemented effectively.¹³⁸ For instance, the areas in which detainees are quarantined are not completely separate from the prison staff or other inmates.¹³⁹ Physical distancing measures in prison are also not always possible given the limited space.¹⁴⁰

These challenges have also been observed by those detained in immigration detention facilities, where many refugees and asylum seekers who are alleged to have committed immigration-related offences are held. Civil society actors have noted that detention conditions are “extremely unpleasant and overcrowded”; “social distancing is not observed in detention and is virtually impossible because of the overcrowding in cells” and “detainees are not provided with masks, soap, or hand sanitisers.”¹⁴¹ The overcrowding in immigration detention facilities increases the risk of COVID-19 infections: as noted by Immigration Bureau Commissioner, the “crowded conditions of the centres” contributed to the infection of 297 migrants with COVID-19 in Suan Phlu and Bang Khen immigration detention centres, as reported on 23 March 2021.¹⁴²

b. Insufficient and delayed access to health goods, services and information

The ICJ has also been informed by persons released from the prisons recently that they had experienced delays in accessing medical services.¹⁴³ They recounted that inmates in some prisons did not have access to doctors, but only to nurses.¹⁴⁴ They also recounted that access to COVID-19 information within the prisons where they were detained in were very limited.¹⁴⁵

¹³⁵ ICJ Right to Health Report, pp. 86 – 90. See also: UNODC, ‘UNODC supports Thai prisons to respond to COVID-19 outbreak’, 16 June 2021, available at: <https://www.unodc.org/southeastasiaandpacific/en/2021/06/thai-prison-covid-19/story.html>. The agency suggested that Thai government to, among others, “review and update the national drug law and sentencing guidelines to reduce the prison population in the country over time” as “Over 80% of inmates in Thailand are incarcerated for drug offences”. See also, Human Rights Watch, ‘Thailand: Covid-19 Outbreaks in Prisons: Accelerate Releases; Improve Protection, Medical Care in Detention Facilities’, 13 May 2021, available at: <https://www.hrw.org/news/2021/05/13/thailand-covid-19-outbreaks-prisons>; and ‘FIDH, ‘Thailand: Joint Letter on Prison Conditions and Covid-19’, 19 July 2021, available at: <https://www.fidh.org/en/region/asia/thailand/joint-letter-on-prison-conditions-and-covid-19>.

¹³⁶ FIDH, ‘Thailand: Joint Letter on Prison Conditions and Covid-19’, 19 July 2021, available at: <https://www.fidh.org/en/region/asia/thailand/joint-letter-on-prison-conditions-and-covid-19>.

¹³⁷ Department of Corrections, Ministry of Justice, ‘COVID-19 Updates’, available at: <http://en.correct.go.th/news/covid-19-updates/>.

¹³⁸ Amnesty International Thailand, ‘COVID-19, Lessons Learnt and Recommendations to End COVID-19 Clusters in Prisons’, 22 June 2021, available at: <https://www.amnesty.or.th/latest/news/930/>. See also: Amnesty International Thailand and OHCHR Southeast Asia, ‘Minutes of Focus Group Discussion’, 17 June 2021.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ Thailand’s Response to COVID-19, Urban Refugees and Asylum Seekers, and Immigration Detention, p. 52; BBC Thai, ‘COVID-19: the number of infected immigrant detained in Sadao district immigration detention centre increased from 42 to 60 in two weeks’, 28 April 2020, available at: <https://www.bbc.com/thai/thailand-52451271> (in Thai); and Bangkok Post, ‘297 migrant detainees test positive for Covid’, 23 March 2021, available at: <https://www.bangkokpost.com/thailand/general/2088011/297-migrant-detainees-test-positive-for-covid>.

¹⁴² Bangkok Post, ‘297 migrant detainees test positive for Covid’, 23 March 2021, available at: <https://www.bangkokpost.com/thailand/general/2088011/297-migrant-detainees-test-positive-for-covid>.

¹⁴³ Amnesty International Thailand, ‘COVID-19, Less Learnt and Recommendations to End COVID-19 Clusters in Prisons’, 22 June 2021, available at: <https://www.amnesty.or.th/latest/news/930/>. See also: Amnesty International Thailand and OHCHR Southeast Asia, ‘Minutes of Focus Group Discussion’, 17 June 2021.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

The COVID-19 vaccine rollouts within prisons have also been slow. For instance, although the first COVID-19 infection in the prisons has been confirmed since 2 April 2021 in Narathiwat Provincial Prison,¹⁴⁶ vaccinations for inmates and prison staff only began on 3 June 2021.¹⁴⁷ As of 3 August 2021, about 18% of prisoners across the country have either received one dose of the COVID-19 vaccine or been fully vaccinated, while 251,195 were not yet inoculated.¹⁴⁸ Though it is accurate to say that the vaccination in the prisons is as slow as that of the general public,¹⁴⁹ the Thai government has the duty to ensure prompt access to the COVID-19 vaccine for both the general public and prisoners and detainees as part of its duty to fulfil the rights to the highest attainable standard of physical and mental health under article 12 of the ICESCR.

The Thai authorities have also failed repeatedly to detect infections within the prisons early on in order to mitigate the spread of the virus. Although prison authorities have been conducting mass COVID-19 testing in many prisons, the process and frequency of such mass testing is unclear. For instance, when mass testing was carried out in Klong Prem Prison Complex in Bangkok in May 2021¹⁵⁰ and Ayutthaya Provincial Prison in August 2021,¹⁵¹ about half of the population in these prisons tested positive for COVID-19, suggesting that these tests were being conducted too late and too infrequently.

7. Persons with Disabilities

The UN Convention on the Rights of Persons with Disabilities (CRPD) defines disability as an “evolving concept” resulting from “the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.¹⁵² At the end of 2020, there were at least 2,076,313 Thai persons with disabilities.¹⁵³

Persons with disabilities enjoy an equal right to access to health services, goods and facilities without discrimination under the ICESCR. As the CESCR has pointed out, persons with disabilities must be provided with the “same level of medical care within the same system as other members of society”.¹⁵⁴ The fulfilment of this right requires provision of health services to allow independent living and access to rehabilitation services.¹⁵⁵ This applies to both public and “private providers of health services and facilities”.¹⁵⁶

a. Loss of income and work opportunities

Persons with disabilities have had their income and work opportunities disproportionately impacted by COVID-19 lockdown measures. For instance, spas and massage places are appropriately not allowed to operate to curb the risk of COVID-19 infections, which has left

¹⁴⁶ Thairath, ‘Shock! 112 COVID-19 cases reported in Narathiwat provincial prison, deputy governor ordered strict control and screening measures’, 4 April 2021, available at: <https://www.thairath.co.th/news/local/south/2063069> (in Thai).

¹⁴⁷ Thaipost, ‘Department of Corrects reveals prison staffs and inmates will started to be vaccinated from 3 June’, 2 June 2021, available at: <https://www.thaipost.net/main/detail/105056> (in Thai).

¹⁴⁸ MCOT, ‘Urgent vaccine rollout in prisons to curb the spread of COVID-19 in prisons’, 3 August 2021, available at: <https://tna.mcot.net/social-751524> (in Thai).

¹⁴⁹ *Ibid.*

¹⁵⁰ Khaosod Online, ‘More than half of the population of Bangkok Central Prisons are infected with COVID-19, 100% mass testing performed’, available at: https://www.khaosod.co.th/covid-19/news_6394224.

¹⁵¹ Channel 7 News, ‘More than 1,000 inmates contracted COVID-19 in Ayutthaya’, 4 August 2021, available at: <https://news.ch7.com/detail/505039>.

¹⁵² World Health Organization and World Bank, World Report on Disability (2011), available at: https://www.who.int/disabilities/world_report/2011/report.pdf.

¹⁵³ Bangkokbiznews, ‘Statistics on numbers of persons with disabilities and the welfare they are eligible for’, 28 April 2021, available at: <https://www.bangkokbiznews.com/news/detail/934598>. Out of the total number: “49.73% are having physical disabilities, 18.87% are deaf or hard of communication, 7.79% are having mental health conditions, 6.82% are having intellectual disability, 5.98% are persons with multiple disabilities; 0.76% are having autism; 0.62% are having learning difficulties; and 0.24% are to be determined”.

¹⁵⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 5: Persons with Disabilities’, UN Doc. E/1995/22, 9 December 1994, para 34.

¹⁵⁵ *Ibid.* For more on the ICJ’s work on how COVID-19 has harmed the ESCR of persons with disabilities, see, ICJ Right to Health Report, pp. 73 – 80.

¹⁵⁶ General Comment No. 14, para 26.

many persons with visual impairments who work as masseuses out of a job.¹⁵⁷ Additionally, the fact that people are spending significantly less time in public spaces has also led to a loss of income for persons with disabilities who generate income, for example, by selling lottery tickets or busking.¹⁵⁸

It is worth noting that, in response to the COVID-19 pandemic, persons with disabilities are eligible to apply for small financial relief packages worth 3,000 Baht (approx. USD\$100) per time, for not more than three times per year.¹⁵⁹ In general, persons with disability also receive monthly financial aid from the government: 1,000 Baht (approx. USD\$30) for those younger than 18 year of age or older than 60 years old and 800 Baht (approx. USD\$24) for those between 18 – 59 years old.¹⁶⁰ However, this aid will often be insufficient to ensure an adequate standard of living for persons with disabilities, especially for those who have lost income and work opportunities as a result of the pandemic.

b. Discrimination in access to healthcare and life-saving treatment

Persons with disabilities in need of life-saving treatment may be at risk of being discriminated against and denied essential healthcare when hospitals face scarcity of medical resources.

For instance, on 22 July 2021, Thammasat University Hospital, a State-owned hospital, issued a set of guidelines for doctors considering intubation for critically-ill COVID-19 patients when there is a shortage of medical resources.¹⁶¹ The guidelines state that doctors must consider withholding intubation for patients who fall under at least two of the following four criteria: “over 75 [years of age]; have serious diseases such as late-stage cancer; a *Clinical Frailty Scale level of six or over*; or who are terminally ill” (italics added for emphasis).¹⁶²

These guidelines were promulgated despite concerns raised by disability advocates that the use of Clinical Frailty Scale may discriminate against those with disabilities. This reason is that “persons with disabilities are more likely to score higher on the [Clinical Frailty Scale] score, because of their general disability-related care needs and reduced activity”.¹⁶³ The Clinical Frailty Scale may also “unjustifiably exclude individuals with [intellectual disabilities] from [intensive care] treatment”, with a study demonstrating that 74.9% of individuals with intellectual disabilities would be “incorrectly classified as too frail to have a good probability of survival”, which may result in them being unfairly denied life-saving treatment.¹⁶⁴ The ICJ has previously noted that the use of triage protocols and health care rationing decisions can result in discrimination against persons with disabilities accessing life-saving interventions.¹⁶⁵

c. Inaccessibility to information concerning COVID-19

Saowalak Thongkuay, a member of the Committee on the Rights of Persons with Disabilities, has noted that Thailand is not providing adequate information on COVID-19 to persons with

¹⁵⁷ BBC Thai, ‘COVID-19: no one left behind? Persons with visual impairment are severely affected’, 18 April 2020, available at: <https://www.bbc.com/thai/52336652> (in Thai); and Thairath Online, ‘Thailand Association of the Blind pledge for donations to be made for blind persons who lost income during COVID-19 pandemic’, 29 April 2021, available at: <https://www.thairath.co.th/news/local/2080263> (in Thai).

¹⁵⁸ *Ibid.*

¹⁵⁹ Matichon Online, ‘Persons with disability are eligible for 3,000 THB financial relief’, 4 August 2021, available at: https://www.matichon.co.th/local/quality-life/news_2866985 (in Thai).

¹⁶⁰ *Ibid.*

¹⁶¹ Bangkok Post, ‘Thamassat low on medical resources’, 24 July 2021, available at: <https://www.bangkokpost.com/thailand/general/2153923/thammasat-low-on-medical-resources>; Khaosod Online, ‘Thammasat issued guideline on considerations for COVID-19 patients intubation refusal’, 23 July 2021, available at: https://www.khaosod.co.th/covid-19/news_6525107.

¹⁶² *Ibid.*

¹⁶³ ARCH Disability Law Centre, ‘ARCH Submissions Detailing its Position on the Inclusion of the Clinical Frailty Scale in Ontario’s Triage Protocol’, 1 September 2020, available at: <https://archdisabilitylaw.ca/resource/arch-submissions-detailing-its-position-on-the-inclusion-of-the-clinical-frailty-scale-in-ontarios-triage-protocol/>.

¹⁶⁴ Dederieke A. M. Festen, Josje D. Schoufour, Thessa I.M Hilgenkamp, Alyt Oppewal, ‘Determining Frailty in People With Intellectual Disabilities in the COVID-19 Pandemic’, *Journal of Policy and Practice in Intellectual Disabilities*, 24 January 2021, available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/jppi.12371>.

¹⁶⁵ ICJ Right to Health Report, pp. 78 – 79.

disabilities.¹⁶⁶ She stressed that Thailand had not followed the example of the many States that are providing COVID-19 information in various forms including: information in simplified language that people could easily understand; “the information concerning COVID-19 provided by the Thai authorities remain scattered, information suitable for large print for visually impaired persons; information in braille; and information in sign language which are available on various mediums including websites, mobile applications, call centers and radio”.¹⁶⁷

8. Recommendations

In light of the above-mentioned concerns, the ICJ recommends that the responsible Thai authorities take a number of actions, giving particular attention to members of marginalized groups:¹⁶⁸

1. Take extraordinary measures to devote their maximum available resources to the realization of human rights and in particular ESCR in the situation of COVID-19, and thereby to mobilize the necessary resources to combat COVID-19 in the most equitable manner by allocating resources prioritizing the special needs of persons from marginalized groups;
2. Design and adopt targeted measures, aimed to protecting the right to health and other human rights, in consultation with members of marginalized groups;
3. Ensure that all persons, including members of marginalized groups, have:
 - adequate access to all healthcare facilities, services and goods without discrimination, including the necessary COVID-19 prevention, treatment (including COVID-19 vaccines) and screening services on an equal basis, even in situations of scarcity of resources;
 - adequate access to information on the prevention, early diagnosis and treatment of COVID-19, as well as measures taken to address its spread, in a language they understand and in formats they can access;
 - non-discriminatory access to social security and support schemes, regardless of migration or citizenship status or occupation;
 - access to relief or support measures to alleviate economic hardships arising from COVID-19 that cater to individuals from marginalized groups;
 - adequate access to essential services for people during the pandemic, including nutritious food, sufficient water and sanitation, secure housing, electricity and services; and
 - adequate measures to respond to the heightened risk of violence, including gender-based violence, due to the pandemic.
4. Put in place at least a temporary moratorium on forced evictions from homes and shelters;
5. Encourage, empower, support and coordinate with businesses and other non-State actors to ensure individuals from vulnerable groups have access to healthcare services without discrimination.

With regards to non-citizens, including refugees, asylum seekers and migrant workers:

6. Desist from penalizing or otherwise targeting members of marginalized groups for immigration/law enforcement when seeking access to healthcare services. Specific efforts should be made to ensure that members of marginalized groups are not subjected to discrimination or fear retribution for seeking healthcare;
7. Refrain from using detention or unwarranted restrictions on freedom of movement of non-citizens as a control measure, including to curb the spread of COVID-19;
8. Put in place at least a temporary suspension of enforced returns during the pandemic; ensure that enforced returns are only carried out if they comply with the principle of *non-refoulement* and the prohibition of collective expulsions, as well as the right to a

¹⁶⁶ Matichon Online, ‘Depressing situations for persons with disabilities amid third wave of COVID-19: no money-no access to COVID-19 testing-home isolation when infected’, 6 May 2021, available at: https://www.matichon.co.th/local/quality-life/news_2709023.

¹⁶⁷ *Ibid.*

¹⁶⁸ For a more comprehensive list of detailed recommendations specific to each group, please refer to ICJ Right to Health Report, pp. 47, 55, 61, 72, 80, 89, 98, 102 – 103.

fair hearing and related procedural guarantees, including due process, access to lawyers and translators, and the right to appeal a return decision.

With regards to LGBTI persons:

9. Refrain from deprioritizing health services that are particularly relevant to LGBTI persons on a discriminatory basis, including access to HIV treatment, hormone replacement therapy and gender reaffirming surgeries;
10. Take active measures to combat hatred, stigma and discrimination against LGBTI persons;
11. Ensure that LGBTI persons who have suffered from violence or other human rights abuses have access to an effective remedy, including cessation of any wrongful and reparation for any harm occurred.

With regards to indigenous persons:

12. Ensure that timely, accessible and accurate information about the COVID-19 pandemic is available and accessible to indigenous people, in indigenous languages and formats (oral, written, child-friendly);
13. Refrain from removing indigenous persons from or denying them access to their lands or denying indigenous persons access to their land, or relocating them without their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.

With regards to sex workers:

14. Refrain from deprioritizing health services for sex workers on a discriminatory basis and ensure consistent access to sexual and reproductive healthcare, goods and services, including contraceptives, abortion services and HIV treatment;
15. Take immediate measures to ensure that all State authorities, including the police, refrain from harassing, arresting and detaining sex workers, including for violations of measures, public nuisance laws and laws that criminalize sex work.

With regards to the treatment of persons deprived of their liberty:

16. Prevent overcrowding in prisons and places of detention and employ alternative measures or release at-risk categories of detainees, including elderly and people with chronic diseases, as well as persons in pre-trial detention, those convicted of minor and non-violent offences and persons with imminent release dates;
17. Ensure overall conditions in detention comply with international human rights law and standards, including with respect to the human treatment and freedom cruel, inhuman or degrading treatment and the right to health; access to COVID-19 testing and treatment; and adequate water, sanitation, soap, sanitizer and PPE materials to prevent COVID-19 transmission; and comply in full with the Mandela Rules.

With regards to persons with disabilities:

18. Prohibit the denial of COVID-19 testing and treatment, including in particular, lifesaving treatment, on the basis of disability regardless of resource scarcity; and ensure the training of health workers and sufficiently clear guidance to prevent this and other forms of disability discrimination;
19. Provide public and accessible health information that caters to a full range of disabilities, including sign language, Braille, accessible electronic formats, alternative script, and augmentative and alternative modes, means and formats of communication.

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**International
Commission
of Jurists**

9/4 Muban Seefah
Soi Phahonyothin 9
Phahonyothin Road
Samsennai, Phayathai
Bangkok 10400

t +66 2 61 98 477/478
f +66 2 61 98 479
www.icj.org