



ADF INTERNATIONAL

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**THAILAND**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report outlines a variety of legal and practical challenges to the right to freedom of religion or belief and freedom of expression in Thailand, especially for religious minorities. Additionally, in light of the recently amended abortion law and the surrounding social pressure, it highlights the challenges with underage pregnancy and the importance of preserving the right to life of the unborn.

### (a) Freedom of Religion and Freedom of Expression

3. According to a recent study by the Pew Research Center, as of the end of 2018 Thailand scored ‘high’ in both government restrictions and social hostilities in the context of religious freedom.<sup>1</sup>
4. Section 31 of Thailand’s Constitution guarantees freedom of religion, ‘provided that it shall not be adverse to the duties of the Thai people’ or infringe on national security, public order or good morals.<sup>2</sup> Section 50 defines the ‘duties of the Thai people’ to include obedience to the law, upholding ‘honour and interests of the Nation’ and serving in the armed forces, among other things.<sup>3</sup>
5. Section 67 provides special privileges to Buddhism as the official state religion, including notably the promotion of education to and dissemination of Buddhist principles, as well as ‘measures and mechanisms to prevent Buddhism from being undermined in any form.’<sup>4</sup>
6. Various provisions of Thai law have an adverse impact on the enjoyment of freedom of religion as well as freedom of expression. In particular, Section 206 of the Criminal Code prohibits insulting or defaming a religion, with a penalty of up to seven years imprisonment for any act towards an object or place of worship ‘in the manner likely to insult such religion.’<sup>5</sup> Similarly, the 1962 Sangha Act punishes the defamation or insult of Buddhism and the Buddhist clergy punishable with up to a year of imprisonment or a fine.<sup>6</sup>

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<sup>1</sup> Pew Research Center ‘In 2018, Government Restrictions on Religion Reach Highest Level Globally in More Than a Decade’ (10 November 2020) <<https://www.pewforum.org/2020/11/10/in-2018-government-restrictions-on-religion-reach-highest-level-globally-in-more-than-a-decade/>>.

<sup>2</sup> Constitution of Thailand, section 31.

<sup>3</sup> *Ibid.*, section 50.

<sup>4</sup> *Ibid.*, section 67.

<sup>5</sup> Thailand Criminal Code, section 206.

<sup>6</sup> P. Slutskiy ‘Prohibition of Defamation and Insult to Buddhism in Thailand: Liberal Perspective’ (2020) 1 CMAP 3, 63.

## *South Thailand Insurgency*

7. The three majority-Muslim southern provinces of Thailand, Pattani, Yala and Narathiwat have been embroiled in an ongoing insurgency since 2001. While generally acknowledged to be a product of ethnonationalism, the insurgency has also resulted in sharp tensions between Muslims and Buddhists.<sup>7</sup> The conflict has reportedly claimed over 7000 lives, the vast majority of which were civilians, and has recently re-escalated with a militant attack on a security checkpoint in November 2020.<sup>8</sup>
8. In addition, the conflict has resulted in the undertaking by the government of a number of discriminatory initiatives targeting the Muslim minority. These include a series of night-time raids in 2018 against Malay Muslim villages in the region, leading to dozens of arbitrary arrests and inciting further radicalization among the targeted communities.<sup>9</sup>
9. In September 2019, the police launched a sweeping intelligence campaign targeting Muslims nationwide. This included ordering universities to monitor and report on the activities of Muslim students. Under claims of 'national security', this campaign has discriminatorily targeted Muslim students who had no identifiable affiliation with the southern militant groups.<sup>10</sup>

## *Situation of Religious Asylum Seekers*

10. Because Thailand has no national legal framework on refugees, authorities generally make no distinction between asylum seekers and illegal immigrants. When they are apprehended by the police, they are kept in detention facilities, in some cases indefinitely, with no chance to apply for refugee status.<sup>11</sup> Alternatively, they are deported back to their country of origin, sometimes in spite of imminent threats to their lives.<sup>12</sup> This is particularly the case of asylum seekers who flee religious persecution in their countries of origin.
11. In July 2019, a group of 51 Pakistani Christian asylum seekers were detained by Thai police in Bangkok, and forcefully taken to Thailand's Immigration Detention Center.<sup>13</sup> Similarly, in January 2021, 19 Rohingya Muslims fleeing persecution in Myanmar

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<sup>7</sup> M. Morch 'The Slow Burning Insurgency in Thailand's Deep South' (6 February 2018) *The Diplomat* <<https://thediplomat.com/2018/02/the-slow-burning-insurgency-in-thailands-deep-south/>>.

<sup>8</sup> M. Wheeler 'Behind the Insurgent Attack in Southern Thailand' (8 November 2019) *International Crisis Group* <<https://www.crisisgroup.org/asia/south-east-asia/thailand/behind-insurgent-attack-southern-thailand>>.

<sup>9</sup> M. Macan-Markar, 'Thai junta's rush to end southern insurgency leaves villages smoldering' (12 February 2018) *Nikkei Asia* <<https://asia.nikkei.com/Politics/Thai-junta-s-rush-to-end-southern-insurgency-leaves-villages-smoldering>>.

<sup>10</sup> *Bangkok Post* 'Muslim sweep a disgrace' (21 September 2019) <<https://www.bangkokpost.com/opinion/opinion/1754929/muslim-sweep-a-disgrace>>.

<sup>11</sup> C. Quinley 'Life in the Shadows: Thailand's urban refugees' (11 September 2019) *The New Humanitarian* <<https://www.thenewhumanitarian.org/news/2019/09/11/Thailand-refugee-policies-asylum-seekers-immigration-detention>>.

<sup>12</sup> T. Boonbandit, 'We never know what tomorrow brings: COVID strands thousands of refugees in Thailand' (19 January 2021) *Khaosod English* <<https://www.khaosodenglish.com/news/crimecourtscalamity/2021/01/19/we-never-know-what-tomorrow-brings-pandemic-strands-thousands-of-refugees-in-thailand/>>.

<sup>13</sup> *UCA News* 'Thai police seize 51 Pakistani Christian asylum seekers' (9 July 2019) <<https://www.ucanews.com/news/thai-police-seize-51-pakistani-christian-asylum-seekers/85590>>.

were apprehended in Bangkok and taken to the same facility.<sup>14</sup> In May 2020, another group of Rohingya asylum seekers, including children, were arrested at the Myanmar border, charged with illegal entry, and faced deportation back to Myanmar despite imminent threats to their lives.<sup>15</sup>

12. As of January 2021, there are estimated to be more than 91,000 Myanmar refugees in Thailand, who have fled religious and ethnic persecution. About half of them are unregistered.<sup>16</sup> Additionally, there are roughly 5000 asylum seekers in Bangkok, including from Pakistan and Vietnam, many of whom have also fled significant religious persecution by their respective governments.<sup>17</sup>

#### *Freedom of Religion and Freedom of Expression in International Law*

13. The right to freedom of religion or belief is enshrined in Article 18 of the Universal Declaration of Human Rights (UDHR), and is binding upon states under Article 18 of the International Covenant of Civil and Political Rights (ICCPR), which Thailand ratified in 1996.
14. According to ICCPR Article 18(3), only such limitations to religious freedom are allowed 'as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' As such, Section 31 of the Constitution is at odds with Thailand's human rights obligations insofar as it subjects religious freedom to respect for the 'duties of the Thai people.'
15. According to General Comment No. 22 of the Human Rights Committee on Article 18 of the ICCPR, 'the fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.'<sup>18</sup> As such, Section 67 of the Thai Constitution, which calls for 'measures and mechanisms to prevent Buddhism from being undermined in any form', must in no way be employed to discriminate against believers of any other religion or none.
16. While the ICCPR and other human rights treaties protect the right of individuals to freedom of religion or belief, there is no basis in international law to protect religions or belief systems as such. In this regard, attaching criminal liability to 'insulting or defaming a religion' is wide open to abuse and arbitrary application by State actors. Regardless of a country's form of government, citizens must be able to speak freely about all matters, including religion, even if such speech is considered insulting or

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<sup>14</sup> UCA News 'No hiding place for Rohingya asylum seekers in Thailand' (11 January 2021) <<https://www.ucanews.com/news/no-hiding-place-for-rohingya-asylum-seekers-in-thailand/90934>>.

<sup>15</sup> A. Pinitwong 'Smuggled Rohingya caught in Tak' (20 May 2020) Bangkok Post <<https://www.bangkokpost.com/thailand/general/1921300/smuggled-rohingya-caught-in-tak>>.

<sup>16</sup> UNHCR 'Thailand-Myanmar Border Refugee Population Overview - January 2021' (12 February 2021) <<https://data2.unhcr.org/en/documents/details/84876>>.

<sup>17</sup> T. Boonbandit, 'We never know what tomorrow brings: COVID strands thousands of refugees in Thailand' (19 January 2021) Khaosod English <<https://www.khaosodenglish.com/news/crimecourtscalamity/2021/01/19/we-never-know-what-tomorrow-brings-pandemic-strands-thousands-of-refugees-in-thailand/>>.

<sup>18</sup> UN Human Rights Committee 'CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993) CCPR/C/21/Rev.1/Add.4, 9.

disrespectful to some. Accordingly, Section 206 of the Criminal Code, as well as the relevant provisions of the 1967 Sangha Act, which restrict expression or actions that insult or defame a religion, are an affront to the right to hold opinions without interference and the right to freedom of expression as enshrined in ICCPR Article 19. These freedoms are fundamental to the operation and maintenance of an open and free society, even when the ideas or opinions that are expressed and disseminated prove unpopular or offensive.

17. Articles 26 and 27 ICCPR further prohibit the discrimination of persons belonging to religious and ethnic minorities. While special measures may be taken on grounds of national security or public order, neither the systematic night-time raids nor a nationwide surveillance of Muslims can be reasonably understood as necessary or proportional interferences with the exercise by those targeted of their human rights.
18. Thailand is not a state party to the 1951 Convention Relating to the Status of Refugees. Nevertheless, the principle of non-refoulement is understood to form part of customary international law and requires states, at a minimum, to ensure that asylum seekers are not returned to any place 'where he or she fears threats to life or freedom'.<sup>19</sup> Furthermore, Article 9 ICCPR prohibits the arbitrary detention of persons including both refugees and immigrants. Thailand's treatment of religious asylum seekers, involving both arbitrary detention and deportation with no regard for the potential threats to their lives, raises serious human rights concerns.

#### **(b) Right to Life**

19. Thailand's regulation of abortion is outlined in the Penal Code Sections 301 to 305. In February 2021, the Thai parliament voted to approve a law to allow for abortions up to 12 weeks from conception in cases of danger to the mother, high risk of fetal impairment or where the pregnancy is a result of rape or coercion, as assessed by a certified medical professional. Abortions outside of this scope remain punishable by up to 6 months' imprisonment or a fine.<sup>20</sup> The new law was enacted following a Supreme Court ruling of 2020 which declared the previous, more restrictive abortion regulation unconstitutional.<sup>21</sup> The right of medical professionals to conscientious objection to abortion is not legally recognized.
20. Despite this development and, pro-abortion advocates have been decrying the new provisions as still too restrictive, and calling for their further liberalization, citing the high rate of underage pregnancies in Thailand.<sup>22</sup>

#### *The Right to Life in International Law*

21. While the concerns about underage pregnancy are justified, they cannot be used to undermine the right to life of the unborn, as established in international law. Article

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<sup>19</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), art. 33.

<sup>20</sup> Reuters 'Thailand backs amendment allowing early-stage abortions' (26 January 2021) <<https://www.reuters.com/article/thailand-abortion/thailand-backs-amendment-allowing-early-stage-abortions-idUSL4N2K114O>>.

<sup>21</sup> Bangkok Post 'Abortion laws to be amended by court ruling' (20 February 2020) <<https://www.bangkokpost.com/thailand/general/1861914/abortion-laws-to-be-amended-by-court-ruling>>.

<sup>22</sup> H. Barr 'Thailand Should Fully Decriminalize All Abortion' (25 January 2021) Human Rights Watch <<https://www.hrw.org/news/2021/01/25/thailand-should-fully-decriminalize-all-abortion>>.

6(1) of the ICCPR stipulates that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

22. The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Article 6(5) states that the 'sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.' This clause must be understood as recognizing the unborn child's distinct identity from the mother and protecting the unborn child's right to life.
23. The travaux préparatoires of the ICCPR explicitly state that 'the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child'.<sup>23</sup> Similarly, other early UN texts note that the intention of the paragraph 'was inspired by humanitarian considerations and by *consideration for the interests of the unborn child*.'<sup>24</sup>
24. Paragraph 8.25 of the Program of Action of the International Conference on Population and Development (ICPD) calls on States to 'make every effort to eliminate the need for abortion.' As such, instead of further liberalizing its abortion law, Thailand should continue to focus on strengthening policies to address the root causes of underage pregnancies, notably by scaling up evidence-based information campaigns and other actions aimed at reducing early sexual debut and promoting responsible decision-making.
25. Finally, the Human Rights Committee's General Comment No. 22 interprets ICCPR Article 18 as including a right to conscientious objection. While the argument is made in the context of mandatory military service, it is based on the principle that 'the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.'<sup>25</sup> Even if legally permitted, the perception of abortion as the taking of innocent life by the person required to perform it is sufficient to generate a 'serious conflict' and violate freedom of conscience.<sup>26</sup> Therefore, Thailand should make explicit provision for the right of medical professionals to conscientiously object from performing, assisting, or referring for abortions or related procedures.

### **(c) Recommendations**

26. In light of the aforementioned, ADF International suggest the following recommendations be made to Thailand:

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<sup>23</sup> A/C.3/SR.819/17, 33; In accordance with the Article 32 of the Vienna Convention, the travaux préparatoires are considered to be a 'supplementary means of interpretation.'

<sup>24</sup> Commission on Human Rights, 5th Session (1949), 6th Session (1950), 8th Session (1952), A/2929, Chapter VI Art 10.

<sup>25</sup> UN Human Rights Committee 'CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)' (30 July 1993) CCPR/C/21/Rev.1/Add.4, 11.

<sup>26</sup> A. Portaru, R. Clarke 'Freedom of Conscience: Protecting Our Moral Compass' (2020) ADF International White Paper, p.24.

- a. Take steps to guarantee the right to freedom of religion of all people, including those belonging to non-Buddhist minorities, in accordance with its obligations under international human rights law;
- b. Amend Section 31 of the Constitution to ensure that the right to freedom of religion or belief is not subject to unjustified restrictions;
- c. Repeal or review Section 206 of the Criminal Code;
- d. Repeal or review the provisions of the 1967 Sangha Act that punish the defamation or insult of Buddhism;
- e. Cease all abuses directed against members of ethnic and religious minorities, especially in southern Thailand;
- f. Investigate all reports of violence and abuse against persons belonging to religious and other minorities and bring those responsible to justice;
- g. Cease all human rights abuses of asylum seekers and take steps to protect the right to asylum in accordance with international norms;
- h. Resist pressures to further liberalize abortion and recommit to protecting the right to life of the unborn child in accordance with international law;
- i. Ensure that no individual or health care institution is compelled to participate in the performance of procedures they object to due to conscience or religious reasons.
- j. Further strengthen efforts to provide quality education and promote positive health practices to reduce early sexual debut and underage pregnancy.



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