

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

# ATROCITY CRIMES RISK ASSESSMENT SERIES

THAILAND

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# INTRODUCTION

In 2014, the United Nations Special Advisers on the Prevention of Genocide and the Responsibility to Protect presented an updated Framework of Analysis to assist with assessing the risks of genocide, ethnic cleansing, war crimes, and crimes against humanity (henceforth referred to as ‘the Framework’)<sup>1</sup>. The Framework serves as a working tool to identify those countries most at risk in order to support the prevention of atrocity crimes around the world.

This risk assessment for Thailand uses the risk factors and indicators as presented in the Framework. Only risk factors deemed relevant to the current situation in Thailand are included for analysis. The absence of some risk factors and indicators does not suggest that they are of objectively lesser importance, but rather that they are currently inapplicable to the Thailand context. Moreover, the presence or absence of risk factors does not guarantee that atrocity crimes will or will not occur. Nevertheless, by analysing the risk factors within their appropriate political, historical and cultural context, it is possible to more fully identify the strengths and weaknesses of Thailand’s current atrocity risk factors, and in doing so support the government’s responsibility to uphold human rights and prevent the potential for atrocity crimes to arise. This assessment, therefore, is a tool for prevention.

## Summary overview of assessment

At the time of writing, this report finds that the current risk of atrocity crimes occurring in Thailand is moderate. Whilst notable economic and human development gains have been witnessed in the country throughout the past few decades, political repression, corruption, limited freedom of expression and a lack of accountability mechanisms contribute to a heightened risk of the likelihood of atrocity crimes manifesting. Serious human rights violations, as well as a violent and unrestrained identity-based armed conflict between the government and ethnic Malay Muslims in the south of the country is also a cause for concern and necessitates monitoring. As such the conflict has the potential to escalate and lead to the commission of atrocity crimes. The presence of a number of mitigating factors reduce the severity of the risk, leading to the classification as moderate.





# FRAMEWORK OF ANALYSIS

The Framework of Analysis comprises 14 Risk Factors of atrocity crimes, with each Risk Factor accompanied by a set of more specific Indicators which are used to determine the degree of risk present. In combination, these risk factors and their associated indicators guide the collection and assessment of information pertaining to atrocity crimes in order to identify their current presence or the risk of them materialising.

The risk factors are divided into two different groups: Common Risk Factors, which are the conditions that increase the probability of atrocity crimes occurring; and Specific Risk Factors, which are divided into the risks associated with genocide, crimes against humanity, and war crimes (ethnic cleansing is incorporated into the other atrocity crimes). The more Risk Factors and Indicators that are present, the greater the risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked by importance and should be considered in a broader context, taking account for a society's politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
<b>Genocide</b>		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
<b>Crimes Against Humanity</b>		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
<b>War Crimes</b>		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be found by visiting the UN website at [www.un.org](http://www.un.org).

# COMMON RISK FACTORS

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Risk Factor 1 refers to “situations that place a State under stress and generate an environment conducive to atrocity crimes”. Commonly, atrocity crimes take place within the context of armed conflict, however, other forms of acute instability, such as a humanitarian crisis or political, economic and/or social instability can also produce an environment in which the propensity to commit atrocity crimes is heightened. With regard to Thailand, the country has experienced a non-international armed conflict since the late 1940’s which shows little sign of subsiding in the near future. Furthermore, multiple coups d’état throughout the country’s modern history have bred political instability and tension. On the economic front, however, poverty has markedly improved. Social instability is also identifiable in the country, thus, of the 11 Indicators subsumed under Risk Factor 1, eight have been identified as most pertinent to the context in Thailand.

### Instability caused by non-international armed conflict

One of the most significant indicators of atrocity crime risk in Thailand is the instability stemming from armed conflict in the south of the country, commonly referred to as the South Thailand insurgency (**Indicator 1.1**). The ongoing conflict in the historical Malay Patani region, made up of the three southernmost provinces of Thailand and parts of a fourth (Narathiwat, Yala, Pattani and Songkhla), originated in 1948 as an ethnic and religious separatist insurgency<sup>2</sup>. The conflict stems from the annexation of predominantly Malay Muslim lands by the Kingdom of Siam in 1901 and was initially fought as a separatist struggle, with the Malay Muslim population seeking secession or, at the least, greater autonomy from the Thai government.<sup>3</sup> However, in more recent decades, the conflict has taken on religious undertones, and the discourse of the struggle is now replete with reference to radical Islamist ideology.<sup>4</sup> This discursive shift has also been accompanied by a radical change in the tactics and methods of violence employed by the insurgents.<sup>5</sup> Whilst orthodox guerrilla-type warfare characterised the early stages of the conflict, new forms of violence of a more terroristic nature have become prominent, with the widespread use of IEDs, the targeting of civilians, and the shift to the urban theatre.<sup>6</sup> To date, insurgent ambushes, bombings and assassinations have resulted in over 7,000 casualties.<sup>7</sup> Nonetheless, since 2007 the number of casualties and violent incidents has declined significantly.<sup>8</sup> However, incidences of insurgent violence in 2019 indicates that the conflict remains a threat to civilians. Most notably on November 5th 2019, twenty gunmen attacked a security checkpoint in Lam Phaya sub district in Yala, killing fifteen people and injuring four.<sup>9</sup> As reported by the International Crisis Group: “Militants bombed a nearby power pylon, felled trees and scattered nails to delay security forces and rescuers responding to the attack.”<sup>10</sup> Although this most recent attack does not necessarily indicate an increase in the potency of the conflict, it is significant as it resulted in a high number of casualties. Despite the chaos in the southern provinces creating inarguable distress for the government, the insurgents are too small a number to truly create widespread political instability, as stated in **Indicator 1.5**.

Nevertheless, the Thai government has sought to engage in peace negotiations with the separatist groups throughout the past few decades. The Malaysian government has facilitated several rounds of peace talks between the Thai government and MARA Patani, a panel representing a number of insurgent groups in the region. However, little progress has been made. The Barisan Revolusi Nasional (BRN) – the largest and most powerful of the separatist groups, refuse to participate in the MARA Patani because the list of five conditions they stipulated for participation in peace talks was rejected by Thai officials.<sup>11</sup> The absence of the BRN has caused concerns that the MARA Patani does not represent fighters inside Thailand.<sup>12</sup> The stagnation of progress is also illustrated by the MARA Patani’s denouncement of the peace dialogue<sup>13</sup> and the suspension of their participation in the dialogue until the conclusion of the 2019 general election, with no current indication of resumption by the Thai delegation.<sup>14</sup>

### Multiple coups d’état

Modern Thailand has a strong history of military coups, having experienced 12 successful coups (plus seven additional attempts) since its transition from an absolutist monarchy in 1932.<sup>15</sup> These coups relate to **Indicator 1.4**, which describes “...abrupt or irregular regime change or transfer in power.” One of the most impactful



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military takeovers occurred in 2006, which led to the ousting of the democratically elected populist Prime Minister Thaksin Shinawatra, by the Thai military.<sup>16</sup> Much like the majority of the coups that have taken place throughout Thai history, this coup was also supported by the Thai monarchy.<sup>17</sup>

Another military takeover took place in May 2014 when then Prime Minister, Yingluck Shinawatra, was ousted.<sup>18</sup> In 2016, King Bhumibol Adulyadej died, raising additional concerns about the country's political stability.<sup>19</sup> The death of the King led to a military crackdown using the lèse-majesté law, which forbids any perceived mocking or insult towards the crown.<sup>20</sup> Several investigations and arrests were made against citizens accused of violating these laws, which carry up to 15 years in prison for each offence.<sup>21</sup>

The government that has been in power since the 2014 coup led by Prime Minister Prayuth Chan-o-cha, has been labelled by some observers as repressive, partially fulfilling the description of **Indicator 1.6**, which pertains to “political tension caused by autocratic regimes or severe political repression.”<sup>22</sup> The characterisation of the Thai government as being repressive has continued since Chan-o-cha was re-elected as Prime Minister in the general election of March 2019. The general election was held after being delayed multiple times<sup>23</sup> and there have been accusations that it was rigged to favour pro military figures.<sup>24</sup> The delays in the election motivated protests both in 2018<sup>25</sup> and 2019<sup>26</sup>. Protests have continued in 2020 in response to the election result.<sup>27</sup> These protests are indicative of growing political tension (**Indicator 1.6**) as a result of political repression.

### Protests

As aforementioned, protests in Thailand have grown in frequency between 2018 to 2020, resulting in a degree of “social instability caused by resistance to or mass protests against State authority or policies,” as stipulated in **Indicator 1.10**. Thailand has a prolific history of political demonstrations. Notably, in March to May 2010, a mass political mobilisation led by the United Front for Democracy Against Dictatorship resulted in clashes between anti-government protesters and security forces, leaving at least 90 people dead, over 2000 wounded, and billions of dollars of arson damage.<sup>28</sup> Mass protests were also frequent between November 2013 and May 2014, resulting in the overthrow of the government and the subsequent installation of the military junta.<sup>29</sup> In response to continued election delays imposed by the junta, protests again broke out in May 2018, engaging around 500 pro-democracy protesters across two locations in Bangkok and prompting a police response of 3000 officers.<sup>30</sup> Most recently, in January 2020, there was a mass protest in Bangkok led by the Future Forward opposition leader Thanathorn Juangroongruangkit. The protest was titled “Run Against Dictatorship” and over 10,000 people registered to join the run.<sup>31</sup> It has been reported that it was the biggest anti-government protest since the 2014 coup.<sup>32</sup> In response to the “Run Against Dictatorship” protest, thousands of government supporters walked in a rival event titled “Walk to Cheer Uncle”.<sup>33</sup> The growing divisiveness between pro and anti-government groups in Thailand is exemplified in the persistence of protests in Thailand. A recent survey released by Super Poll in January 2020 showed a significant decrease in the number of voters that do not align themselves with either pro or anti-government groups. Protests have primarily been confined to Bangkok thus far and therefore have not produced nationwide social instability. However, the growing political divisiveness associated with the protests is a cause for concern. As iterated by Super Poll research office director Nappadol Kannikar, the growing division signals an increase in the risk of confrontation.<sup>35</sup> Consequently, this produces an environment which is more conducive to the commission of atrocity crimes.

### Economic disparity and poverty

**Indicator 1.9** describes “economic instability caused by acute poverty, mass unemployment or deep horizontal inequalities” as a source of atrocity crime risk. Poverty, unemployment and economic disparity remain present in Thailand, however, the country is now classified by the World Bank as an upper middle income economy, having experienced sustained growth throughout the past four decades.<sup>36</sup> A substantial decline in poverty and economic inequality has been witnessed, yet falling agricultural prices and the frequency of droughts and floods continue to pose significant challenges, especially for the country's 7.1 million poor, 80%

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

of whom live in rural areas.<sup>37</sup> A cause for concern is the increase in wealth inequality that has been reported in Thailand.<sup>38</sup> In December 2018, Credit Suisse reported in their Global Wealth Report and Databook that Thailand has the largest wealth gap in the world.<sup>39</sup> Credit Suisse reported that the richest 1% in Thailand controls 66.9% of the country's wealth.<sup>40</sup> Economic and political inequalities in Thailand have been described as “mutually reinforcing” and have long been a point of contention in political discussions.<sup>41</sup> Nonetheless, despite an obvious need for further improvements and development, Thailand's current economic status is unlikely to produce an environment of widespread instability that is conducive to the perpetration of atrocity crimes.

### 2019/2020 Drought

**Indicator 1.3** which pertains to “humanitarian crisis or emergency, including those caused by natural disasters or epidemics”, is currently applicable to Thailand. The Meteorological Department of Thailand has reported that the country is going to experience the worst drought in a decade<sup>42</sup> and the government has declared a drought emergency.<sup>43</sup> The drought has affected the agricultural industry, most significantly the sugar production industry which is one of Thailand's main economic crops.<sup>44</sup> As of January 2020, the government is utilising the army to provide relief from the drought and combat its effects.<sup>45</sup> The drought is expected to cost Thailand approximately 46 billion baht, which is 0.27% of the country's national GDP.<sup>46</sup> Whilst not an immediate threat for the commission of atrocity crimes the emergency level of Thailand's drought places pressure on the government which is a concern for political and economic stability. This is particularly in light of the recent transition from military power to an elected government.

### Muslim minorities and separatist movements

An exemplification of **Indicator 1.11** – “social instability caused by exclusions or tensions based on identity issues, their perception or extremist forms” – can be found in southern Thailand where the persecution of Thailand's Muslim minorities has led to an environment of insecurity. These minorities, specifically the Malay Muslim group, feel socially marginalised from Thai society, and as such, some members of the population have formed separatist groups, calling for greater recognition and autonomy.<sup>47</sup> Specific grievances include the forced assimilation of the Muslim minority through the prohibition of speaking the Malay-Muslim language and studying the group's history or culture in state schools as well as the heavy military presence in predominantly Muslim areas.<sup>48</sup> Abuses against the Malay Muslim minority date back to Siamese rule when ethnic Malays were oppressed or forced to assimilate into Thai culture.<sup>49</sup> Ongoing marginalisation has contributed to the radicalisation of some individuals in the southern provinces and the formation of a myriad of extremist separatist groups. The spread of an ‘us vs. them’ mentality and the fostering of tensions based on issues of identity have produced widespread social instability in the region which shows little signs of abating. Such instability can amplify the potential of atrocity crimes being committed.

### Additional security concerns

**Indicator 1.2** refers to “a security crisis caused by...armed conflict in neighbouring countries...or acts of terrorism.” Whilst Thailand is yet to experience a country-wide security crisis as a result of these two factors, they are nevertheless present in Thailand and, should they develop further, have the potential to induce greater insecurity. This may generate an environment conducive to atrocity crimes. In regard to armed conflict in neighbouring countries, Thailand shares a border with Myanmar, where persecution and violence against the Rohingya minority group is widely documented, leading to the fleeing of some Rohingya people to the country<sup>50</sup>. Whilst Thailand only hosts a small number of Rohingya refugees – many of whom are arrested and detained or live in squalid camps – the political climate and violence in Myanmar shows little sign of stabilising. In turn, the exodus of asylum seekers from Myanmar (and from the overcrowded camps in Bangladesh) show little sign of waning. Thus, if Thailand does not adequately anticipate and prepare for the spill-over effects, such as the potential arrival of asylum seekers, the country may be faced with a worsening security situation which could lead to the commission of atrocity crimes.<sup>51</sup>

Furthermore, **Indicator 1.2** also refers to acts of terrorism, which have, in recent years, increased in Thailand. Bombings in both local and tourist areas, including several small bombings and arson attacks in Bangkok dur-



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ing the August 2019 ASEAN Ministerial meetings<sup>52</sup>, do not yet constitute a national security crisis. They do, however, produce insecurity. Additionally, some observers have raised concerns that the conflict in Southern Thailand could serve as fertile ground for transnational jihadism.<sup>53</sup> Reports about ISIS activity in Thailand are thus far unsubstantiated, but questions do remain concerning the vulnerability of the country's Malay Muslim population in the south to jihadist influence.<sup>54</sup> International Crisis Group does warn that opportunities for exploitation by transnational jihadists, such as ISIS members, could emerge if the expanding conflict in the south of the country is not peacefully resolved in the near future.<sup>55</sup> If the objective of the insurgents in Southern Thailand were to shift from secession and become imbued with sentiments of a more jihadist nature, a security crisis even greater than the one that currently exists could ensue, consequently generating an environment conducive to atrocity crimes.

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

**Risk Factor 2 pertains to any “past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations”. Widespread accounts of enforced disappearances and a well-known network of human trafficking are among the oft-cited violations of human rights in Thailand. Furthermore, restrictions to freedom of expression and the suppression of dissenters are additional human rights violations identified in the country. The ill treatment of protected groups, such as asylum seekers, refugees and the Malay Muslims in the south of the country, also contribute to the applicability of this Risk Factor. Whilst attempts to improve the protection of human rights in Thailand have been made, and in some cases, been successful, impunity for abuses still remains. Therefore, six of the eight Indicators included in this Risk Factor are identifiable in Thailand, heightening concern that the present violations of human rights could develop into atrocity crimes.**

### Suppression of dissenters

**Indicator 2.1** describes “past or present serious restrictions to or violations of international human rights and humanitarian law, particularly if...targeting protected groups, populations or individuals.” Despite providing protections for freedom of expression in the 2017 Thai Constitution, there are important restrictions to this right, as stipulated in the Thai Criminal Code. *Lèse majesté* is criminalised by Section 112, which states that “Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.”<sup>56</sup> Similarly, the Constitution adds: “The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.” Human rights groups have argued that this draconian law is used to “silence dissent” and restricts individuals’ human rights.<sup>57</sup> Whilst the use of the *lesè majesté* law by Thai authorities has decreased since 2018, those who are critical of the monarchy have been prosecuted under other laws.<sup>58</sup> These include sedition, cybercrime activities, illegal assembly and criminal association.<sup>59</sup> In addition to the repressive *lesè majesté* law, the Computer Crimes Act has resulted in severe restrictions on freedom of expression, especially online, where Thai authorities are not only targeting users who post or share dissident material but also those who view it.<sup>60</sup> Throughout 2018 and 2019 the members of the Future Forward Party including their leader Thanathorn Juangroongruangkit have had numerous charges filed against them in relation to alleged violations of the Computer Crimes Act.<sup>61</sup> It is suspected that these prosecutions are politically motivated and are used in order to suppress those who are deemed a threat to the government and others who wield power.<sup>62</sup> The use of these laws resulted in the successful disqualification of Thanathorn as a member of parliament in 2019. Additional to the Computer Crimes Act, the Cybersecurity Law and Data Protection Act were passed in 2019<sup>63</sup> which, according to Amnesty International, allows widespread government surveillance and censorship.<sup>64</sup> An example of this censorship is the establishment of the “Anti-Fake News Centre” which removes any online content that “...misleads people or damages the country’s image...”<sup>65</sup>

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

In April 2017, the United Nations Human Rights Committee published its Concluding Observations on Thailand's compliance with the ICCPR, expressing concern that freedom of expression and opinion was severely and arbitrarily restricted by the country's legislation, such as the Criminal Code and the Computer Crimes Act. The Committee called for the Thai government to repeal the *lese-majesté* law and to refrain from using other laws "as tools to suppress the expression of critical and dissenting opinions".<sup>66</sup> Whilst there have been some improvements, as of February 2020, the Thai government has yet to implement majority of the recommendations made in the international assessment.

Severe restrictions on freedom of peaceful assembly and association also impede individuals from exercising fundamental human rights recognised by international conventions to which Thailand is a party to. In response to protracted political instability, the Thai military government significantly stepped up suppression of dissenters and since 2015 has authorized military officers to arbitrarily detain individuals, and prohibited public political gatherings of more than five people.<sup>67</sup> The law banning political meetings of more than five people without approval was created to ebb the social instability that was created by ongoing protests. However, such a law is in direct violation of international human rights. On numerous occasions, peaceful protestors in Thailand have been arrested and sentenced to up to eight years imprisonment, charged under Article 116 of the Penal Code for performing peaceful protests, including those that opposed military rule and promoted democracy.<sup>68</sup> On 27 January 2018, 39 protestors who participated in a 100-strong pro-democracy gathering at a central Bangkok shopping centre were arrested and faced criminal proceedings under charges allowing for up to one year's imprisonment for violating laws restricting the right to peaceful assembly.<sup>69</sup> These violations of human rights, particularly targeting the pro-democratic population, have exacerbated social instability in Thailand. In December 2018 the ban on public assemblies was lifted.<sup>70</sup> Since the ban has been lifted there have been cases of defendants who have been charged with illegal assembly being acquitted in accordance with rights outlined in the Thai constitution.<sup>71</sup> However, political activists and politicians have reported that they have been subject to physical surveillance, harassment and violent attacks.<sup>72</sup> Therefore, despite the existence of formal provisions for peaceful assembly those associated human rights are nonetheless still restricted.

### Enforced disappearances

**Indicator 2.3** refers to the "policy or practice of impunity for or tolerance of serious violations of international human rights and humanitarian law, of atrocity crime, or of their incitement." A pervasive culture of impunity exists in Thailand, particularly in regard to enforced disappearances, which is indeed a serious violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Thailand is a party, and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which Thailand has signed but not yet ratified.<sup>73</sup> According to a report compiled by the UN Working Group on Enforced or Involuntary Disappearance, there were 79 outstanding cases of enforced or involuntary disappearances in May 2019.<sup>74</sup> Little information can be found about these enforced disappearances. In response to this, the Working Group requested an invitation to visit Thailand in 2011 and as of 2019 has not received a positive response.<sup>75</sup> However, it is known that most victims were outspoken against the Thai government. Although little to no evidence has been officially released, it is widely believed that the military junta has perpetrated or encouraged these enforced disappearances.<sup>76</sup> Some of these outspoken activists who have 'disappeared' include prominent Muslim lawyer Somchai Neelapajit in 2004, and ethnic Karen activist Pot Cha Lee 'Billy' Rakchongcharoen in 2014.<sup>77</sup> The case of 'Billy' is particularly poignant to the issue of enforced disappearances and their impunity. In January 2020, despite hopes for a revival of the case, the most serious charges against the suspects were dropped.<sup>78</sup> DNA evidence from discovered skull fragments matched Billy's DNA, however, prosecutors argued that there is no clear evidence that Billy is dead because the body was never found. The most serious charges the suspects will face now is malfeasance.<sup>80</sup>

In 2016, the Thai government agreed to propose a bill to the national assembly with the purpose of criminalising torture and enforced disappearances as well as ratifying the international Convention for the Protec-

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

tion of All Persons from Enforced Disappearance.<sup>81</sup> However, as of 2019, neither has been done.<sup>82</sup> Enforced disappearances of persons are also listed in the Rome Statute of the International Criminal Court in regard to ‘crimes against humanity’. However, while Thailand is a signatory of the Rome Statute, it has not ratified the Statute nor become a member of the Court. Impunity for, or at least tolerance of, serious violations of human rights is thus present in Thailand, and may heighten the risk of further violations, which may amount to atrocity crimes.

There is also a practice of impunity for serious violations of human rights abuses committed by the Thai government in relation to the conflict in southern Thailand.<sup>83</sup> According to Human Rights Watch: “The government’s counter insurgency operations have countenanced and perpetrated violations such as extra judicial killings, enforced disappearances, arbitrary detentions and torture.”<sup>84</sup> The Human Rights Watch also contend that not a single soldier or other Thai official has been prosecuted for violations over the past 15 years.<sup>85</sup> The impunity of these abuses puts Thailand at a higher risk of atrocity crimes as it exacerbates the conflict by fueling Malay Muslim grievances.<sup>86</sup> This is exemplified by 2019 insurgent activity in the Lam Phaya district that is thought to be in reaction to suspected insurgent Abdulloh Esormusor’s death in Army custody.<sup>87</sup>

### Inadequate protection for refugees

Thailand’s treatment of refugees fulfils **Indicator 2.4** which stipulates: “Inaction, reluctance or refusal to use all possible means to stop planned, predictable or ongoing serious violations of international human rights and humanitarian law or likely atrocity crimes, or their incitement”. According to the UNHCR, in December 2019 Thailand was a host to 93,333 Myanmar refugees, 5070 urban asylum seekers and 474,888 people who have been registered by the government as stateless.<sup>88</sup> Thailand currently has no national legal framework on refugees<sup>89</sup> and is not a party to the 1951 Refugee Convention or its 1967 protocol.<sup>90</sup> Due to this refugees and asylum seekers that come to Thailand are granted minimal rights in addition to often being subjected to harassment, detention and/or refoulement.<sup>91</sup>

In the past five years the actions of the Thai government have been in direct violation of international humanitarian law of non-refoulement and have been openly reprimanded by the United Nations High Commissioner for Refugees. The Thai government has in the past refused to allow the UNHCR conduct refugee status determinations for those held indefinitely in immigration detention such as Lao Hmong, ethnic Rohingya and Uighers.<sup>92</sup> Additionally, according to Amnesty International’s 2016 report on Thailand, “Thai authorities prevented abandoned Muslim Rohingya from Myanmar and Bangladeshi passengers from landing in Thailand and were slow to set up search and rescue operations for boats in distress.”<sup>93</sup> The 2019 Thai policy in response to refugees arriving by sea was to “help-on” or “push back” boats, with Thai authorities oftentimes intercepting and towing ill-equipped boats of refugees back out to sea, which greatly endangers the lives of those on board and contravenes the principle of non-refoulement.<sup>94</sup> Furthermore in 2015, at the request of Chinese officials, Thailand deported, or ‘refouled’, a large portion of its Uighur minority. Approximately 100 or so Uighur refugees were deported from Thailand back to China where they face discrimination, arbitrary arrests and criminal prosecution.<sup>95</sup> The Chinese government has made it near impossible for people belonging to the Uighur minority to obtain passports; therefore entering a country as refugees is one of their only options for asylum.<sup>96</sup> More recently in 2019, Vietnamese dissident Truong Duy Nhat who had applied for UNHCR refugee status was abducted by Vietnamese officials with the assistance of Thai officials according to Human Rights Watch.<sup>97</sup>

Refugees in Thailand are also prohibited by the country’s labour laws from working legally, and consequently, are often forced to engage in work that is unauthorised, dangerous, or degrading.<sup>98</sup> Furthermore, the protections stipulated in Thailand’s Labour Protection Act are not extended to refugees; as a result, refugees are often subjected to work environments that are abusive, exploitative and dangerous.<sup>99</sup> This lack of access to livelihoods and labour protections stands in direct violation of Article 7 of the International Covenant on Economic, Social and Cultural Rights, to which Thailand is a state party.<sup>100</sup>



## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Thailand has made efforts to advance the rights of children through actions such as signing the Memorandum of Understanding (MoU) on the Determination Measures and Approaches to Alternative to Detention of Children in Immigration Detention Centers (2019) and assuming a leadership position in the adoption of the ASEAN Declaration on the Rights of Children in the Context of Migration by ASEAN leaders.<sup>101</sup> However, Thailand has a reservation to Article 22 Convention on the Rights of the Child which limits their obligations in addition to the MoU currently being deemed as inadequately implemented.<sup>102</sup> Additionally, refugee children experience language barriers, restrictions on movement, and discriminatory treatment by school officials which hinders their ability to access education.<sup>103</sup> Whilst outright reluctance or refusal to stop ongoing serious violations of human rights is not the case in Thailand, the inaction of the government to design and implement policies that address these issues and rectify the human rights violations experienced by refugees illustrates the relevance of **Indicator 2.4** to the Thai situation.

To be fair, Thailand currently provides access to universal health care to undocumented migrants<sup>104</sup>, as well as access to education and pathways for acquiring citizenship to stateless peoples in the country. The case of the 13 boys rescued in the Thai cave in 2018 put a spotlight on the problem of stateless children coming from neighbouring countries. Thailand has been granting citizenship to stateless people, including ethnic minorities within the country<sup>105</sup>. In 2015, the UN reported that Thailand granted citizenship to over 18,000 stateless people over a three-year period, or 4.2 percent of over 443,000 stateless people still in the country at the time.<sup>106</sup>

### Human trafficking and slave labour

According to Amnesty International, in the 2015-2016 period, Thailand had one of the highest incidences of human trafficking, forced labour and sexual exploitation in the world.<sup>107</sup> The incidences of human trafficking has recently risen with the number of rescued trafficking victims in July 2019 nearly matching the entire annual number for 2015.<sup>108</sup> The links between human trafficking and forced labour, and human trafficking and sexual exploitation are well-established and share a long history. As a result, efforts to stem one issue are often complexly interwoven with the others.<sup>109</sup> In 2018, the US Department of State's Trafficking in Person (TIP) Report upgraded Thailand to a Tier 2 classification – an improvement on the country's previous Tier 2 Watchlist status – after recognising efforts made by the government to eliminate trafficking.<sup>110</sup> Demonstrated achievements included prosecuting and convicting more traffickers, establishing an anti-trafficking law enforcement task force, creating a victim specialist program, increasing training for labour inspectors on forced labour, and issuing regulations to increase oversight of shelters operated by NGOs and providing access to governmental financial support.<sup>111</sup> Despite this progress, the government did not meet the minimum standards in the elimination of human trafficking in a number of areas, providing evidence of both **Indicator 2.1** and **Indicator 2.3**. A significant example of the human trafficking concerns in Thailand is in the fishing industry. As reported by the US Department of State in 2018; migrant fisherman, primarily of Burmese, Cambodian or Laotian descent, were routinely trafficked onto fishing boats, prevented from leaving or changing employers, and often not paid or paid less than the minimum wage.<sup>112</sup> Whilst efforts have been made to lessen instances of trafficking as iterated in US Department of State's 2019 TIP Report,<sup>113</sup> the continuation of violations such as forced labour in the fishing industry led the United States to suspend significant trade preferences for Thailand in 2019.<sup>114</sup> Additionally, the European Union threatened to ban Thai fish imports under its illegal, unreported and unregulated (IUU) fishing framework, unless human rights violations were addressed.<sup>115</sup> This 'yellow card' issued by the EU has been lifted despite a large degree of scepticism on the validity of the decision.<sup>116</sup> The United States' and the EU's sanctions on Thailand also provides evidence for the partial applicability of **Indicator 2.4**.

In 2015, after a tip-off from locals, Thai officials discovered various shallow graves found in an abandoned trafficking camp along the Thai-Malay border.<sup>117</sup> Approximately thirty bodies were exhumed by Thai officials, the majority of which believed to be Myanmarese, most likely Rohingya, and Bangladeshi migrants.<sup>118</sup> Presumably, these vulnerable migrants fell into traffickers' hands after fleeing to Thailand to escape persecution and to seek better economic opportunities.<sup>119</sup> After this discovery, the Prime Minister of Thailand ordered a

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

‘10-day crackdown on human trafficking’, however this move proved largely ineffective.<sup>120</sup> The senior Thai police investigator appointed to investigate the case and human trafficking in Thailand more broadly found that many senior officials were complicit in the human trafficking trade in Thailand <sup>121</sup>, with this involvement of high-profile persons providing evidence of **Indicator 2.5**: “continuation of support to groups accused of involvement in serious violations of international human rights and humanitarian law, including atrocity crimes, or failure to condemn their actions.” Fearing for his life and concerned about the military’s interference in the investigation, the investigator, Major General Paween Pongsirin, sought political asylum in Australia shortly afterwards.<sup>122</sup> Efforts to curtail the complicity of officials in the human trafficking trade have been attempted and a number of the senior officials identified by General Paween have been held on trial and received major sentences. Two politicians from southern Thailand, one of whom was a former town mayor, were sentenced to 75 and 78 years respectively.<sup>123</sup> Although the US Department of State’s TIP report of 2019 mentioned official complicity as a impeding factor to progress<sup>124</sup>, the punishment of officials suggests that efforts are being made which lessen the presence of **Indicator 2.5**. This history of prosecution limits the risk of atrocity crimes being perpetrated. Nonetheless, much work remains to combat human trafficking, slave labour and sexual exploitation in the country.

### **Absence of reconciliation processes following conflict**

The conflict in Thailand’s southern border provinces has resulted in more than 7,000 casualties since 2004<sup>125</sup>, of which the majority have been civilians from ethnic Malay Muslim and ethnic Thai Buddhist communities.<sup>126</sup> Both the separatist insurgency and the government have reportedly breached their human rights obligations and violated the laws of war.<sup>127</sup> For example, the insurgents continue to target civilians with bombings and arson attacks while the government refuses to prosecute abusive officials.<sup>128</sup> Thai authorities often provide financial compensation to victims in exchange for not pursuing criminal charges against officials.<sup>129</sup> Due to this, there has been an absence of reconciliation and transitional justice processes during the conflict (**Indicator 2.7**).

### **Mistrust in state institutions**

Widespread mistrust in the Thai government is present, particularly amongst the younger generation and minorities, which exemplifies **Indicator 2.8** (“widespread mistrust in State institutions or among different groups as a result of impunity”). One example of impunity leading to mistrust is Prime Minister General Prayut’s decision that military officials “should not be condemned for violence connected to the military dispersal of UDD (United Front for Democracy Against Dictatorship) street protests in April and May 2010”.<sup>130</sup> Approximately 100 people died and more than 2,000 were reported to be injured during the protests.<sup>131</sup> Human Rights Watch states that most of these deaths stemmed from the unnecessary or excessive use of lethal force by the military. However, no member of the Thai military has been charged.<sup>132</sup> This impunity was extended through parts of the 2017 constitution which protect junta members and those acting on their behalf from accountability for human rights violations committed during military rule.<sup>133</sup> Following the 2019 general elections mistrust in state institutions has grown. This can be observed in the numerous allegations that the results were manipulated through electoral fraud.<sup>134</sup> These allegations resulted in the Thai opposition party filing for a vote of no confidence against Prime Minister Prayuth Chan-o-cha and five of his cabinet ministers.<sup>135</sup> The charges that they faced included corruption and economic mismanagement.<sup>136</sup> All six ministers evaded censure.<sup>137</sup>

## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

**Risk Factor 3** concerns “circumstances that negatively impact on the capacity of a State to prevent or halt atrocity crimes.” Whilst weak state structures alone are not the cause of atrocity crimes, they reflect a state’s ability to protect its own population against such an occurrence. Therefore, stability of state structures remains particularly significant when determining the likelihood of atrocity crimes. The current environment in Thailand contributes to this Risk Factor as a number of the included Indicators were found to be present in the country, such as high levels of corruption and poor governance, weak adherence to the rule of law, and a national legal framework that does not ensure international human rights standards are upheld.

### **Institutional protections**

**Indicator 3.1** refers to a “national legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties.” Thailand has ratified the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Economic, Social and Cultural Rights<sup>138</sup>. Additionally, Thailand is a signatory to the Universal Declaration of Human Rights and the ASEAN Human Rights Declaration. However, it has not signed nor ratified the 1948 Convention on the Prevention and Punishment of the Crime of Genocide<sup>139</sup>. Furthermore, Thailand has signed but not ratified the Rome Statute of the International Criminal Court. Despite overwhelming recognition of the majority of the international human rights treaties, the national implementation of such conventions into domestic laws, policies and practices has been far from sufficient. In a 2017 review of Thailand’s compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Council expressed concern that the constitutional and legal framework in Thailand allowed for the violation of a number of the Covenant’s principles and noted specifically that section 44 of the interim Constitution could potentially limit access to effective remedies and possibly lead to immunity of the military government for serious human rights violations.<sup>140</sup> Whilst evidence of **Indicator 3.1** alone does not imply that the perpetration of atrocity crimes is likely, it does undoubtedly show a decreased level of protection for human rights, which, when combined with other risk factors, may increase the probability of atrocity crimes.

### **National human rights commission**

In 2015, the Global Alliance of National Human Rights Institutions (GANHRI) downgraded the National Human Rights Commission of Thailand to a classification of “B” status, which entails that the institution is only partially compliant with the Paris Principles (Principles Relating to the Status of National Institutions on Human Rights).<sup>141</sup> The primary justification for such a grading was based upon concerns about the transparency of the process for selecting the Commission’s members.<sup>142</sup> As of March 2019, Thailand has maintained its classification of “B” by the GANHRI.<sup>143</sup> Concerns about the independence of the Commission have also been raised in the past, such as in 2015 when the military-installed Constitution Drafting Committee proposed to merge the Commission with the Ombudsman’s office, which serves a different function and such an amalgamation would likely result in a weak human rights agency which would have to share resources.<sup>144</sup> Such a proposal was not passed, yet it nevertheless reflects that the importance of independence, transparency, adequate representation and sufficient resources for the effective performance of the Thai National Human Rights Commission was not recognised by the ruling military government. Further concerns about the effective functioning of Thailand’s National Human Rights Commission have been raised following the resignation of two members in August 2019.<sup>145</sup> Tuenjai Deetes and Angkhana Neelapaijit left the seven member commission as they claim that there is a pro government bias that inhibits the meaningful performance of their duties.<sup>146</sup> The resignations in 2019 follow two other resignations, one in 2017 and another in June 2019.<sup>147</sup> Sunai Phasuk from Human Rights Watch in Thailand commented on the resignations saying that it “...shows that the conditions inside the commission [are] not...in accordance with international standards anymore”.<sup>148</sup> This is illustrative of **Indicator 3.2**, which refers to “national institutions, particularly judicial, law enforcement and human rights institutions that lack sufficient resources, adequate representation or training.”



## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

### Weak rule of law

In the 2017-2018 World Justice Project Rule of Law Index Report Thailand was ranked 71st of the 113 countries assessed.<sup>149</sup> This was a decline by seven places from the 2016-2017 report. In 2019, Thailand declined a further place, ranking at 76th whilst maintaining its score of 0.50, with a figure closer to 1 indicating stronger adherence to the rule of law (thirteen new countries were added to the Index in 2019).<sup>150</sup> From a regional perspective, Thailand also performs poorly, placing 10th out of the 15 countries included in the East Asia and Pacific category, behind states such as Mongolia, Malaysia and Indonesia.<sup>151</sup>

The weak rule of law in the country is, in part, due to the country's biased judicial system. Thailand has a long history of judicial bias. One of the earliest examples of this is in 1891 when reforms were made to the judicial system, helping to increase the king's power over judicial affairs.<sup>152</sup> Shortly after that, in 1908 the judicial system was placed completely under monarchical rule.<sup>153</sup> In 1997, however, the constitution declared a separation of courts with the Ministry of Justice. In saying this, the judges must still swear an oath to the monarch and exercise their judicial power in his name. Furthermore, the recruitment process means that new judges must align with the views of the conservative elite.<sup>154</sup> In the 21st century, the judiciary's interest in Thai politics has also become more evident, leading to questions of bias.<sup>155</sup> For example, the Red Shirts (supporters of former Prime Ministers Thaksin Shinwatra and his sister Yingluck Shinwatra) claim that judicial activism was prevalent during the coups.<sup>156</sup> This makes it easy to question whether or not the judicial process truly is impartial. In a 2018 country report compiled by Bertelsmann Stiftung which assesses a state's transformation towards democracy, it was noted that the NCPO junta exerts veto power over the judiciary and increasingly intervenes in judicial affairs, while military courts are deemed higher than other courts.<sup>157</sup> A study of Thailand's Constitutional Court also found evidence of politically biased voting patterns and increasingly partisan nominations to the court, despite appointment procedures being formally apolitical.<sup>158</sup> This suggests that that court is becoming increasingly politicised and the link between the judiciary and political elite is growing. Further evidence of political bias in the Thai judicial system has arisen in February 2020. The Constitutional Court found that the Future Forward Party had violated electoral funding laws and has been disbanded.<sup>159</sup> Rights groups have commented on the ruling saying that it is "...part of a pattern of judicial harassment aimed at smothering democracy."<sup>160</sup> **Indicator 3.3** stipulates a "lack of an independent and impartial judiciary." These aforementioned features of the Thai judicial system make **Indicator 3.3** applicable to Thailand.

The government has made minimal steps to improve the judicial system. For example, following the election in 2019, Prime Minister Prayuth Chan-o-cha ordered an end to the military court system and all cases were transferred to civilian the civilian courts.<sup>161</sup> However, those who were convicted in the previously used military courts have no right to appeal their conviction.<sup>162</sup> Due to this biased judiciary, it makes it difficult for victims to "seek recourse for their claims" and leads to an "absence [of] ...external or internal mechanisms of oversight and accountability" (**Indicator 3.6**). Without such mechanisms in place, the potential for injustice and impunity to prosper is strong, which can consequently create an environment in which the prevention or halting of atrocity crimes is significantly weak.

### Corruption

**Indicator 3.5** accounts for "high levels of corruption or poor governance". In the 2019 Corruption Perceptions Index published by Transparency International, Thailand received a score of 36 out of 100 (with a number closer to 0 indicating greater levels of corruption).<sup>163</sup> This score placed Thailand as the 101st most corrupt country in the world out of the 180 countries included in the rankings. Corruption is pervasive across many domains, however, it is arguably most prevalent in the police force, which has a reputation as one of Thailand's most corrupt institutions.<sup>164</sup> According to a 2019 Transparency International survey, 78 percent of Thai's believed that most or all police officers in the country were corrupt.<sup>165</sup> Corruption is primarily experienced in the form of bribery, with 41% of people admitting in 2017 to having paid a bribe when accessing basic services.<sup>166</sup> The poorest within society are the most affected by such practices of bribery, as 46% of the poorest people admitted to having paid a bribe.<sup>167</sup> This may be due to a number of reasons, such as having

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

fewer alternative options available to them or lacking the power or influence to avoid such payments.<sup>168</sup> Upon their takeover of government in 2014, the military justified their intervention by highlighting the corruption of the civilian government of then-Prime Minister Yingluck Shinawatra, vowing to eliminate corruption from Thai politics.<sup>169</sup> Such a promise has not been fulfilled, nor has much progress been made.<sup>170</sup> This is evident in Thailand's decline by one point from 2018 in its Corruption Perceptions Index score. In late 2017 to early 2018, the junta was entrenched in a corruption scandal, with Deputy Prime Minister and Defense Minister Prawit Wongsuwan's wealth under question, following numerous public appearances in which he was wearing watches and jewellery valued at over 500,000 dollars.<sup>171</sup> The silence on the part of the government to address the allegations only further increases the failure of the government to achieve its anti-corruption agenda.<sup>172</sup> Nevertheless, almost three quarters of participants in Thailand in a 2019 Transparency International survey said that the government was doing a good job in tackling corruption.<sup>173</sup> Whilst the rampant corruption in the country is unlikely to bring about atrocity crimes, it undoubtedly creates an environment in which illegal practices and acts are more readily overlooked.

### RISK FACTOR 4: MOTIVES OR INCENTIVES

**Risk Factor 4 is concerned with “reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals, including by actors outside of State borders.” Although the legal definitions of atrocity crimes do not take into consideration the motives or incentives that lead perpetrators to commit such crimes, they nevertheless warrant investigation. This is because identifying the motivations, objectives or driving factors can help to predict the likelihood of atrocity crimes being committed, as well as opening the opportunity to develop strategies to prevent or neutralise these motives or incentives. An analysis of the Thai situation suggests that a number of the Indicators subsumed under this Risk Factor are present, particularly in the south of the country where identity politics and the construction of an “us” vs “them” binary are leading to violence.**

#### **Power through suppression**

**Indicator 4.1** refers to “political motives, particularly those aimed at the attainment or consolidation of power.” Certainly, the military's suppression of dissent during its reign in government has been driven by political considerations.<sup>174</sup> This suppression and the harsh consequences stemming from the lèse-majesté laws is being used to consolidate the power of the current government by silencing critics.<sup>175</sup> A more in-depth analysis of the government's suppression of dissent is discussed in **Indicator 2.1**.

#### **Elites**

Since its 1932 democratic revolution, Thailand has been ruled by various and interchanging elites.<sup>176</sup> This exemplifies **Indicator 4.2**, which is concerned with “economic interests, including those based on the safeguard and well-being of elites or identity groups, or control over the distribution of resources”. In Thailand, the country's elites are entrenched in Thai politics, showing strong loyalty to the military government and thus seeking to maintain its power.<sup>177</sup> Since the 2006 coup d'état, Thailand has been split into an urban-rural divide. Those who come from rural Thailand primarily constitute the ‘Red Shirts’ – supporters of former Prime Minister Thaksin Shinawatra, who implemented policies which benefitted the rural poor, such as microfinance initiatives and fuel subsidies.<sup>178</sup> The Red Shirts have been protesting against the military junta since the 2006 coup d'état.<sup>179</sup> On the other end of the political spectrum are the ‘Yellow Shirts’, who, as royalists and ultranationalists, support the country military government and are primarily members of the country's urban middle and upper classes residing in Bangkok.<sup>180</sup> The Yellow Shirts are strongly anti-Thaksin as they believe nepotism and corruption were rife in his government.<sup>181</sup> Given the favouritism they receive under the current government, they seek to retain military leadership. The urban-rural divide has not yet resulted in a strong “us” vs “them” binary that has escalated into violence. However, with the reelection of the previous junta Prime Minister Prayuth Chan-o-cha in the 2019 elections and little effort being made to reconcile the differences between the two groups, the potential of violence based on these motivations must be taken into consideration.

## RISK FACTOR 4: MOTIVES OR INCENTIVES

### Land Rights, Mining and Tourism

The Thai government has strategic interests in controlling National Parks and forested areas which has in the past led to Thailand's Indigenous populations falling victim to violence. This demonstrates the presence of **Indicator 4.3** which refers to "strategic or military interests, including those based on protection or seizure of territory or resources." Thai officials have on several occasions used the rationale of upholding land conservation and protection laws to injure and forcefully evict Indigenous populations.<sup>182</sup> The National Parks Act, imposes strict penalties on forest dwellers<sup>183</sup> such as ethnic Karen communities.<sup>184</sup> In 2010 and 2011 Karen communities living in Bang Kloi Bon were forced to relocate and their houses and rice barns were burned and destroyed.<sup>185</sup> Additionally, in 2016 a conflict over land rights entitlement between Baron World Trade Co. Ltd and the Chao Ley indigenous population in the province of Phuket escalated into a violent encounter.<sup>186</sup> Around 40 Chao Ley were injured.<sup>187</sup> Furthermore, in 2018, protests erupted in Chiang Mai due to forcible evictions of farmers and villagers for conservation giving way to the use of the land for industries such as mining<sup>188</sup> and tourism<sup>189</sup>. Enforced disappearances of lands rights activists such as 'Billy' (mentioned in Risk factor 2) further exemplifies that there is an incentive to violate international laws in order to support these strategic interests. Whilst the seizure of lands from Indigenous people for resources and an associated history of violence is present, there are mitigating factors. For example, there is an ongoing debate on the issue and laws are being passed in order to address land use conflicts such as the Land Allocation scheme and the 2018 draft Community Forest Bill which "...encourages public participation in managing forests."<sup>190</sup>

### Homogenisation of Thai regions

The divide between Thailand's Buddhist majority and its Muslim minority has widened due to the ongoing conflict in the south and the escalation of anti-Muslim rhetoric being spouted in neighbouring countries.<sup>191</sup> **Indicator 4.4** refers to the state or another actor's interest in "...rendering an area homogenous in its identity". Although previously discussed in **Risk Factor 1**, it is important to again note the conflict taking place in the mostly homogenous Muslim southern provinces of Thailand, where the Muslim population are fighting against the mostly homogenous Buddhist majority. Radicalised insurgents, who claim to be borne from years of poverty and neglect by the Thai state, can be seen as one of the only actors that benefit from this homogenisation.<sup>192</sup> Many Malay Muslims feel alienated from Thai society due to the Thai government's policy of standardisation and assimilation of Malay culture into the ethnic Thai mainstream, as well as the lack of representation in Thai politics.<sup>193</sup> The Thai government will not allow the self-determination of the Malay minority nor will they accept the Malay Muslim culture or language into the Thai mainstream. This alienation has fuelled a desire for revenge (**Indicator 4.9**) and has consequently resulted in the materialisation of **Indicator 4.6**, which refers to "real or perceived membership of or support for armed opposition groups, by protected groups, populations or individuals." The presence of armed insurgent groups in southern Thailand is evidence of this Indicator.

**Indicator 4.7** refers to "ideologies based on the supremacy of a certain identity or on extremist versions of identity." Evidently, the Malay Muslim population in the south of Thailand believe in the supremacy of their identity, given their desire to secede from the Thai state and to establish their own rule. The Thai state, on the other hand, can also be seen as promoting the 'supremacy' of the traditional Thai Buddhist identity, as stated in **Indicator 4.7**, through its neglect of Malay cultural practices, languages and its inability to rectify past grievances. This includes the aforementioned prohibition of the Malay language at schools and at work.<sup>194</sup> One of the grievances that has yet to be rectified involves the annexation of the Patani region, a Muslim sultanate that the Malay Muslims originate from, by the Siam monarchy in the early 1900s.<sup>195</sup> The homogenisation of the southern provinces has not proved to be beneficial to the Thai state. This is due to the insurgency being borne out of this homogeneity and becoming the cause of thousands of deaths of both Thai Buddhists and Muslims, as well as foreign tourists.



## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

Risk Factor 5 refers to “conditions that indicate the ability of relevant actors to commit atrocity crimes.” In order for atrocity crimes to be committed, they require not only planning on the part of the perpetrators, but also substantial resources and support. It is important to recognise, however, that having the capacity to commit atrocity crimes (in terms of resources, finances and support) does not necessarily entail that an actor will perpetrate such acts. On the other hand, an actor which seeks to commit atrocity crimes but does not have the capacity to do so will fail or face great challenges in attempting to put any plan into action. In Thailand, the supremacy of the military confirms its capacity to commit atrocity crimes if it intended to do so. Although noticeably weaker in comparison, many of the insurgent groups in Southern Thailand, such as BRN-Coordinate, also have substantial resources, however, whether such resources are sufficient enough to commit atrocity crimes is more contested.

### Royal Thai Armed Forces

Thailand has a relatively strong military, ranking 23rd out of 138 countries.<sup>196</sup> Currently, there are estimated to be 360,850 active personnel in the military<sup>197</sup>, with approximately one third of those members being recruited through conscription each year.<sup>198</sup> Whilst there is some opposition to the military draft process, it is, for the most part, supported by the public<sup>199</sup>, which highlights the presence of Indicator 5.3: “Capacity to encourage or recruit large numbers of supporters from populations or groups.” The participation of young Thai men in the conscription process also suggests the existence of **Indicator 5.4**: “Strong culture of obedience to authority and group conformity.” Whilst the Thai government is no longer officially controlled by the military, the reelection of ministers who were a part of the military junta such as Prime Minister Prayuth Chan-o-cha displays continued ties to the military. Therefore the military receives a degree of policy prioritisation. The budget proposal for 2020 allocated approximately 7 per cent of total government spending to defense which equates to around 1.4 per cent of national GDP and an increase of 2.7 per cent from 2019.<sup>200</sup> Since 2016, the already strong and well-equipped Thai military has placed additional emphasis on procuring more armoured vehicles, helicopters and frigates to serve counter-insurgency operations in the southern provinces of the country.<sup>201</sup> This is compounded by the government’s modernization effort ‘Modernisation Plan: Vision 2026’ which is a plan to upgrade land, sea and air capabilities.<sup>202</sup> This acquisition of additional resources provides strong evidence of both **Indicator 5.1** and **Indicator 5.2**, which are described respectively as “availability of personnel and of arms and ammunition, or of the financial resources, public or private, for their procurement” and “capacity to transport and deploy personnel and to transport and distribute arms and ammunition.” Given that the government enjoys the support of the country’s wealthy elite, the presence of **Indicator 5.7** (Financial, political or other support of influential or wealthy national actors) is also assumed. Finally, **Indicator 5.8** (armed, financial, logistic, training or other support of external actors, including States, international or regional organizations, private companies, or others) is also relevant to the Thai situation, as the Thai military shares a long history of bilateral military ties with a number of countries, among them Australia, the US and China.<sup>203</sup> Evidently, a number of the Indicators subsumed under Risk Factor 5 are evidenced in Thailand; nevertheless, this only indicates capacity to commit atrocity crimes, not intention. The lack of strong incentives to commit atrocity crimes (as aforementioned in the previous section) and the presence of mitigating factors (mentioned in the next section) serve to balance out the military’s strong capacity.

### Armed insurgent groups in the southern provinces

Given the numerous different insurgent groups active in the conflict in southern Thailand, and the various divisions and factions within each group, it is very difficult to estimate their exact strength. Nevertheless, attempts to quantify the number of insurgent fighters have been made, with July 2013 figures compiled by the Royal Thai Navy estimating that insurgent strength comprised some 400 key commanders, 2,000 to 3,000 combat-ready fighters, and a further 30,000 non-combatant supporters.<sup>204</sup> A number of the organisations themselves have claimed higher numbers, such as the Patani United Liberation Organization (PULO) who claimed a strength of 20,000 cadres<sup>205</sup>, again illustrating the difficulty in ascertaining the size and power of insurgent actors. Regardless, the havoc, destruction and loss of life caused by insurgent attacks clearly demonstrate that they have the personnel and resources to commit widespread acts of violence, highlighting the

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

presence of **Indicator 5.1** and **Indicator 5.2**. One commentator noted that whilst PULO's strength, capability, and access to material are hard to quantify, the group undoubtedly has assets both inside and outside of Thailand.<sup>206</sup> Similar claims have been made about the BRN-Coordinate, who, as the most powerful of all the insurgent groups, hold a substantial supply of weapons and whose financing is fully self-sufficient.<sup>207</sup> In order to "encourage or recruit large numbers of supporters" (**Indicator 5.3**), the BRN-Coordinate put emphasis on expanding its strength through the network of village-based elementary Koranic schools and private Islamic colleges.<sup>208</sup> This mass indoctrination of young people bolstered the part-time guerrilla-cum-terrorist force.<sup>209</sup> However, International Crisis Group reported in 2020 that the Malay Muslim populations in the south are becoming fatigued by the violence which has limited the BRN's ability to recruit in more recent years<sup>210</sup>, therefore limiting **Indicator 5.3**. The presence of **Indicator 5.8** can also be identified, as support from external actors for the insurgent groups has been documented. There have been reports that financial support from Saudi Arabia, the United Arab Emirates and Pakistan has been (and continues to be) channeled to fund the construction of local Muslim boarding schools, private colleges, and mosques dedicated to the articulation of hard-line Wahhabist and Salafist teachings.<sup>211</sup> Additionally, the PULO has long retained a lobbying presence overseas in Saudi Arabia, Libya, Egypt, Iran, and Syria, and whilst this presence hasn't translated into significant political or diplomatic gains, it nevertheless shows the capacity of the organisation to extend its promotional reach internationally. Whilst the limited information makes it difficult to confirm whether armed insurgent groups in southern Thailand have the capacity to commit acts as serious as atrocity crimes, their strength should certainly not be underestimated.

## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

**Risk Factor 6** refers to the "absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals." It is crucial that the State and the international community have the capacity to halt or prevent atrocity crimes from occurring. This capacity is strengthened when various mitigating factors, such as a strong civil society, an independent media, and the presence of international organisations, are in place. For the most part, Thailand enjoys a number of the mitigating elements described in the Indicators subsumed in this Risk Factor, such as the interest and focus of the international community and international media, membership and participation in international and regional organisations, and open and well-established political and economic relations with other countries. Nevertheless, the absence of some important mitigating factors in Thailand warrants mentioning, as their non-existence could facilitate the commission of atrocity crimes.

### Freedom of the media

Allowing media and news outlets to report honestly and without fear of retribution can be an incredibly important mitigating factor in regard to atrocity crime prevention. **Indicator 6.2** exemplifies this statement, relating a lack of a "free, diverse and independent national media" to threats of atrocity crime perpetration. Since the 2014 coup d'état, which ousted Prime Minister Yingluck Shinawatra and appointed General Prayuth Chan-ocha as head of state, press freedom has significantly deteriorated.<sup>212</sup> Freedom House ranks the press freedom status in Thailand as 'Not Free', primarily due to the systematic use of censorship, intimidation and legal action to suppress journalists and media outlets, and the aggressive enforcement of defamation and lèse majesté laws (discussed extensively in **Indicator 2.1**).<sup>213</sup> Similarly, Reporters Without Borders ranks Thailand 136th out of 180 countries in its 2019 World Press Freedom Index.<sup>214</sup> The practice of self-censorship has become common and widespread in Thailand, with many journalists displaying a reluctance to report on sensitive topics such as the monarchy, corruption or the trafficking of Rohingya refugees in Thailand.<sup>215</sup> This self-censorship means that the availability of, and access to, diverse sources of information has severely declined. Large conglomerates and prominent families, some of whom have political ties, own the majority of print outlets, whilst free-to-air television stations and the approximate 700 officially registered radio stations in the country have traditionally been controlled by the state, which greatly hampers the media's independence.<sup>216</sup> In recent years, the availability of cable, satellite, and internet-based television has challenged the

## RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

state's longstanding domination of broadcast media, however strict laws have ensured that critical comments about the junta and the situation in Thailand are forbidden.<sup>217</sup> Freedom House has deemed Thailand's Freedom on the Net as 'Not Free' in 2019 due to there being significant obstacles to access, limits on content and violations of user rights.<sup>218</sup> The lack of a free, diverse and independent national media in Thailand is deeply alarming, as the media should play a watchdog role that serves a preventative and early warning function.

### Cooperation with human rights mechanisms

As discussed in-depth in the sections dedicated to Risk Factor 2 and Risk Factor 3, violations of internationally-recognised human rights have taken place in the past, and recent reports suggest that they continue to take place at present. **Indicator 6.7** refers to "limited cooperation of the State with international and regional human rights mechanisms." Whilst it would be unjustified to argue that Thailand completely ignores or disregards international and regional human rights mechanisms, the State's lack of constructive effort to combat human rights abuses indicates that this mitigating factor is not strong in Thailand.

## RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

**Risk Factor 7** concerns "events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggest a trajectory towards their perpetration." Atrocity crimes are not isolated or spontaneous events, but rather processes that require planning and resources to occur. Attaining such resources necessary to have the capacity to commit atrocity crimes (as discussed in Risk Factor 5) can be a lengthy process, as can taking steps to create a propitious environment. Therefore, identifying circumstances where actors are undertaking such activities can reveal the likelihood of such crimes occurring. With regard to Thailand, few Indicators included under this Risk Factor were identified, suggesting that, at present, neither extensive preparatory actions to commit atrocity crimes have taken place, nor do the enabling circumstances for such crimes exist.

### Emergency laws

**Indicator 7.1** refers to "imposition of emergency laws or extraordinary security measures that erode fundamental rights." This Indicator is particularly pertinent to southern Thailand where the government has long used the Martial Law Act to allow the military to violate the basic rights of citizens.<sup>219</sup> An Emergency Decree on Public Administration is in force in the southern provinces of Pattani, Yala and Narathiwat and has recently been extended for the 59th time.<sup>220</sup> Recently, on August 1st 2018, a Malay Muslim human rights activist was arrested at his home in Sai Buri (in Pattani province) and transferred to a military camp, where he has been detained without access to a lawyer or effective safeguards against mistreatment.<sup>221</sup> Instances such as these of arbitrary detention and unaccountability are a recipe for abuses which will only lead to further alienation of the Malay Muslim population and could in turn serve as the impetus for increased violence.

### Bolstering military strength

**Indicator 7.3** refers to "strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals." As discussed extensively under Risk Factor 5, the Thai government has committed extra funds to building up the already strong defense force in order to mobilise with even greater strength against insurgents in the southern provinces of the country.<sup>222</sup> Such an act does not imply the intention to use these strengthened forces to commit atrocity crimes, but does enhance their capacity to do so.

### Censorship of media

**Indicator 7.6** concerns the "imposition of strict control on the use of communication channels, or banning access to them." The freedom of the media and censorship, as well as the suppression of dissenters through the strict lèse majesté laws in Thailand have been discussed extensively throughout this assessment, particu-



## RISK FACTOR 7: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

larly under **Indicator 2.1** and **Indicator 6.2**. Undeniably, the government wields strict control over the media, which has only intensified with the imposition of severe laws, such as the Computer Crimes Act, which restricts conduct and the spread of information online. A crackdown on social media users has been widespread with punishment being extended not only to those who publish content deemed inappropriate or unlawful but also those who ‘like’ or view such content. Broadcast media has also been subjected to censorship with television channels that are seen to criticise the government often suspended. This has been exemplified on a number of occasions; Peace TV – a satellite-based television channel linked to the red-shirt United Front for Democracy Against Dictatorship (UDD) – has been a regular target, often being subjected to month-long suspensions due to “violations”.<sup>223</sup> The strict control over communication channels is particularly concerning as a free, diverse and independent national media, as well as freedom of expression online, is vital for ensuring that government and citizen behaviour is monitored. Without such exposure to information and monitoring, the circumstances for atrocity crimes to take place are more enabled.

## RISK FACTOR 8: TRIGGERING FACTORS

**Risk Factor 8 concerns “events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset.” Unpredictable events or circumstances, or those deemed too peripheral to be relevant, can serve to aggravate conditions or precipitate a sudden deterioration in a situation, which can in turn prompt the perpetration of atrocity crimes. Three of the Indicators included in this Risk Factor are pertinent to the Thailand context and could destabilise the stability in the country and trigger unrest, which may escalate into the perpetration of atrocity crimes.**

### Spillover of Myanmar crisis

The persecution and violence directed at the Rohingya population in Rakhine State in western Myanmar has led to the mass exodus of the population from the country with the majority primarily fleeing to neighbouring Bangladesh but in some instances also seeking refuge in Malaysia, Indonesia and Thailand. This situation is an exemplification of **Indicator 8.2** which refers to “spillover of armed conflicts or serious tensions in neighbouring countries.” As a hub for regional human smuggling, Thailand often serves as a common transit point for Rohingya on their way to Malaysia or Indonesia, however some remain in the country without legal recognition as refugees and without the capacity to legally work or obtain accommodation.<sup>224</sup> Whilst the current number of Rohingya in Thailand remains minimal, the continued tensions in Myanmar and worsening overpopulation of refugees in camps in Bangladesh could potentially push more Rohingya to flee to Thailand. The increased arrival of Rohingya – the majority of whom are Muslim – into a country already dealing with deep tensions against a minority Muslim population is likely to be unwelcome and to be met with resistance. Such a circumstance could exacerbate tensions and potentially create an environment conducive to atrocity crimes.

### 2019 Election

In March 2019, Thailand held its first general election since the military coup in 2014. This is related to **Indicator 8.8** which cites a “census, elections, pivotal activities related to those processes, or measures that destabilize them” as triggering factors for atrocity crimes. The election is a significant event for the risk assessment of Thailand because it signifies a period of democratic transition after five years of military rule and democratic transition is “...often fraught with heightened risk of violent conflict and even mass atrocities.”<sup>225</sup> Whilst a degree of stability was maintained because the election did not result in a change in a transfer of power (Indicator 8.4) the election process has triggered significant divisive political activity in Thailand both in 2019 and 2020.

### Terroristic violence

As discussed in detail under **Indicator 1.1** and **Indicator 1.2**, violent conflict is rampant in the south of the country, with frequent attacks against life, infrastructure and property. Furthermore, there has been an in-

## RISK FACTOR 8: TRIGGERING FACTORS

crease in terrorist attacks conducted by Malay Muslim insurgents in wider parts of the country which have resulted in the death or injury of Thais and foreigners. In line with **Indicator 8.5**, these “attacks against the life, physical integrity, liberty or security of leaders, prominent individuals or members of opposing groups”, as well as “other serious acts of violence, such as terrorist attacks” can serve as a catalyst which may trigger the perpetration of atrocity crimes.

## SPECIFIC RISK FACTORS: GENOCIDE

### RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

**Risk Factor 9 refers to “past or present conduct that reveals serious prejudice against protected groups and that creates stress in the relationship among groups or with the State, generating an environment conducive to atrocity crimes.”** This Risk Factor is specifically related to the atrocity crime of genocide, which is an extreme form of identity-based crime against protected groups that can be rooted in real or perceived differences, whether national, ethnic, racial or religious. The Malay Muslim population in Thailand falls under the definition of a ‘protected group’ according to Section 1 of the Framework, as they have been the subject of discrimination and prejudice based on their ethnicity. Furthermore, prejudice and discrimination against the highland ethnic groups, such as the Lahu and Karen people, has also produced a tense and fractured relationship with the ethnic Thais. Whilst the extent of this discrimination does not yet constitute the crime of genocide, it nevertheless highlights that intergroup tension is present in the country, which, if developed further, could spiral into the commission of this atrocity crime.

#### **Patterned discrimination against highland ethnic groups**

As of 2019, there were 474,888 people registered as stateless in Thailand.<sup>226</sup> A large majority of this number come from the highland ethnic groups where country borders have changed over the years, making it difficult to prove their national identity.<sup>227</sup> While the Thai government, with the help of the UNHCR, have made it a national goal to end statelessness by 2024, there is still a long way to go.<sup>228</sup> For example, a lot of people born within the highland ethnic groups do not have their births registered nor can they speak Thai fluently, therefore making the administrative process difficult.<sup>229</sup> Another obstacle facing these minorities is that while considered ‘stateless’, they are prohibited from traveling outside their allocated districts.<sup>230</sup> Although assistance with this process is being provided by the UNHCR, realistically it does not seem feasible to end statelessness with these obstacles in place.<sup>231</sup> It is also important to note that without a DNA test proving a persons’ Thai nationality, these minorities may not be granted Thai citizenship, no matter how long they’ve lived in Thailand.<sup>232</sup> Instead, they may be granted permanent or temporary residency.<sup>233</sup> Therefore, this intentional exclusion, through language and distance, can be considered as a serious restrictive and exclusionary practice against a protected group (**Indicator 9.1**).

As mentioned in **Indicator 4.3** tensions are present between the government and other groups with Thai ethnic groups such as Karen and Chao Ley peoples. These tensions are in relation to rights that ethnic communities claim over the land they inhabit and the interests of the government.<sup>234</sup> These abuses against the Thai highland ethnic groups fulfil **Indicator 9.4**, which refers to “past or present serious tensions or conflicts between protected groups or with the State, with regards to access to rights and resources.... [and] participation in decision making processes.”

The highland ethnic groups have also been targeted throughout the military junta’s ‘war on drugs’. This is due to the high amount of drug smuggling between the borders of Thailand and Myanmar, which is where these ethnic groups reside. However, according to Minority Rights Group International, this ‘war on drugs’ has led to

## RISK FACTOR 9: INTERGROUP TENSIONS OR PATTERNS OF DISCRIMINATION AGAINST PROTECTED GROUPS

enforcement officials being involved in illegal searches, beatings, abuse and even deaths of highland individuals due to the traditional cultivation and use of the opium poppy in these areas.<sup>235</sup> The highland ethnic groups also have a strained relationship with ethnic Thais, mostly because ethnic Thais believe that these minorities are involved in the drug trade.<sup>236</sup> These fractured relations can produce tensions that can escalate into violence, which, if combined with other factors, could heighten the possibility of atrocity crimes. Given, however, that the bulk of this Risk Assessment has not found evidence of significant risk of atrocity crimes taking place against the highland ethnic tribes in Thailand, it is unlikely that such an occurrence will materialise.

### **Patterned discrimination against Malay Muslims**

As well as patterned discrimination against Thai highland ethnic groups in the form of obstacles to gaining citizenship, enforced language barriers and restricted movement, there is also evidence of this type of abuse against Thailand's Malay Muslim population. The conflict occurring in the southern provinces is only exacerbating the tensions between ethnic Thais and Malay Muslims. For example, there is evidence of harsh retaliation from the Thai state against radical Islamists, which in turn, is affecting the entire Muslim community. An example of this is the deployment of approximately 150,000 Thai armed forces along the Southern borders, which is where a majority of the Malay Muslims live.<sup>237</sup> This exemplifies the tensions felt between the Malay Muslims and the Thai state (**Indicator 9.4**).

Another example of this patterned discrimination is the prohibition of the Malay language being taught in all schools except private Islamic schools. According to Minority Rights Group International, in 2006 the Thai National Reconciliation Commission recommended that "...Malay should become an additional working language for administrative offices in the southern provinces." Due to their inability to speak Thai, many Malay Muslims have been excluded from accessing government services and jobs (**Indicator 9.1**).<sup>240</sup> This recommendation has not yet been implemented and progress on the issue seems to be at a standstill since the 2006 coup d'état. Therefore, the unwillingness on behalf of the Thai government to follow the Thai National Reconciliation Commission's recommendations proves that there is a lack of effective national mechanisms and initiatives to deal with these identity-based conflicts (**Indicator 9.6**). Without such mechanisms in place, identity-based tensions and conflicts are only likely to intensify, which may be to such an extent that they give rise to atrocity crimes, such as genocide.

## SPECIFIC RISK FACTORS: CRIMES AGAINST HUMANITY

### RISK FACTOR 11: SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

**Risk Factor 11 describes "signs of violent conduct including, but not limited to, attacks involving the use of force, against any civilian population and that suggest massive, large-scale and frequent violence (widespread), or violence with patterns of periodicity, similitude and organization (systematic)." For the most part, the Indicators present in Risk Factor 11 are not compatible with the current situation in Thailand. Nevertheless, the presence of Indicator 11.3 merits mentioning, as the further increase in this Indicator could escalate into severe crimes against humanity.**

### **Indiscriminate attacks by southern insurgents**

**Indicator 11.3** refers to an "increase in the level of organisation or coordination of violent acts and weapons used against a civilian population." This can be seen as relevant in regard to the augmentation of attacks on civilians by separatist groups in the southern provinces of the country. There is a significant history in the southern provinces of insurgents using bombs specifically to injure and kill civilians, therefore committing

## RISK FACTOR 11: SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

crimes against humanity.<sup>241</sup> Since 2004 more than 90 per cent of the casualties from the conflict have been civilians.<sup>242</sup> An attack in 2019 in the Lam Phaya district that resulted in the highest amount of casualties since late 2001 has raised concerns that there is a resurgence of violence.<sup>243</sup> This is because the attack occurred during a time where the intensity of violence was deemed to be in significant decline.<sup>244</sup> Although it is thus far unsubstantiated that violence is increasing it is worth monitoring the situation.

## SPECIFIC RISK FACTORS: WAR CRIMES

### RISK FACTOR 13: SERIOUS THREATS TO THOSE PROTECTED UNDER INTERNATIONAL HUMANITARIAN LAW

**Risk Factor 13** refers to “conflict-related conduct that seriously threatens the life and physical integrity of those protected under international humanitarian law.” Unlike genocide and crimes against humanity, war crimes must always occur in the context of an armed conflict. Given that armed violence is presently taking place in the southern provinces in Thailand, examining the applicability of this Specific Risk Factor and its Indicators is of vital importance. Whilst the majority of the Indicators were not found to be pertinent to the Thai context, a small number were identified. Curtailing and eradicating war crimes is difficult given that they take place in an active conflict in which respect for law can oftentimes be disregarded, however, there are still measures that can be done to lessen the effects of hostilities and, consequently, to prevent war crimes.

#### Violence against civilians

The escalation of the conflict in the southern provinces of Thailand in recent years can be seen as fulfilling several of the indicators from Risk Factor 13. Both **Indicator 13.3**, which describes an “increased radicalisation or extremism of opposing parties within a conflict”, and **Indicator 13.7**, which refers to “...a threat of or incitement to violence against those protected under international humanitarian law, including as a means to spread terror, intimidate, demoralize, show military strength, provoke displacement, or as preliminary to further violence”, are present in this conflict. This is illustrated by the spate of attacks by the separatists that were specifically aimed at killing civilians. In 2016, the separatists came into contention with the laws of war by specifically aiming to kill civilians through numerous bombings, roadside ambushes, drive-by shootings and assassinations.<sup>245</sup> The government on the other hand, has, in response to this violence, arrested suspected sympathisers and supporters of rebel groups and subjected them to torture and killings amongst other abuses.<sup>246</sup> The government officials accused of perpetrating these abuses have not been prosecuted,<sup>247</sup> only allowing for a culture of impunity to strengthen and actors on both sides of the conflict feeling emboldened to continue their abuses.



# CONCLUSION AND RECOMMENDATIONS

Throughout the past few decades, Thailand has achieved great economic and wider human development gains, which are encouraging and welcome accomplishments. Additionally, Thailand made a pivotal move towards a more democratic society with the first election since the 2014 coup being held in March 2019. However, the country is still marred by political repression, corruption, suppressed freedom of expression for individuals and the media, and a lack of accountability mechanisms. Ongoing human rights violations, as well as social instability and identity-based armed conflict in the south of the country are additional issues which are present in Thailand. **Common Risk Factors 1** (Situations of armed conflict or other forms of instability), **2** (Record of serious violations of international human rights and humanitarian law), and **3** (Weakness of State structures) are the most serious risk factors currently evident in Thailand. The prolonged mistreatment of the ethnic Malay Muslim community also fulfills some elements of **Special Risk Factor 9** (Intergroup tensions or patterns of discrimination against protected groups). Such tension based on identity issues has resulted in the long-lasting armed conflict between the Thai State and Malay Muslim insurgents, which is particularly troubling as discussed in **Risk Factor 5**. Both sides possess the capacity to commit severe destruction to human life, with the insurgents in recent years capitalising on this capacity and inflicting indiscriminate violence through acts of terrorism. Whilst atrocity crimes have not yet explicitly been identified in Thailand, monitoring the conflict in the south is of crucial importance as an escalation of violence could increase the likelihood of the commission of atrocity crimes. Additionally, with the political situation becoming increasingly polarized after the 2019 election, the international community should continue to pay close attention to the effects this might have on social stability. Given these observations and based on this assessment, Thailand's risk assessment is classified as **moderate**.

RECOMMENDATIONS FOR THE GOVERNMENT OF THAILAND	
1	Continue efforts to engage in peaceful negotiations with insurgent groups in the south of the country. Addressing long-existing grievances and deep tensions based on identity issues necessitates involving all conflicting parties, therefore ensuring representation of all insurgent groups should be the primary priority.
2	Implement the recommendation of the United Nations Human Rights Committee to repeal the country's strict lèse majesté laws and allow for freedom of expression amongst individuals and national and international media in accordance with the ICCPR.
3	Take active steps to tackle corruption by creating accountability mechanisms in both government and judicial sectors.
4	Continue efforts made to combat the large and multifaceted human trafficking trade in Thailand through measures such as extensive monitoring and regulating of industries known to have a high population of slave workers, such as the fishing industry. Improving the country's 2020 ranking in the US Department of State's Trafficking in Person (TIP) Report through the implementation of genuine measures should be prioritised.
5	Implement the Thai National Reconciliation Commission's recommendation to allow Malay to be used as an additional working language for administrative offices and as a language of education in the southern provinces in order to facilitate greater integration of the Malay Muslim population.
6	Consider acceding to international refugee law and enhance cooperation with UNHCR. At present, Thailand's refugee 'policies' are not grounded in law and have been described as 'ad-hoc'. To ensure the country's status within the international community, Thailand should ratify the 1951 Refugee Convention relating to the Status of Refugees and the 1967 Protocol instead of just 'observing' it. By ratifying the 1951 Refugee Convention, Thailand can be held accountable for its mistreatment of refugees, such as the Rohingya population who are increasingly fleeing there due to persecution in neighbouring Myanmar.
7	Appoint a national R2P Focal Point. Following this risk assessment, the Thai government should consider inviting a strong R2P presence, in the form of a national R2P focal point, to evaluate the country's risk of atrocity crimes as well as help address them should they arise.
RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	
1	Assist Thailand in fulfilling its international human rights obligations by engaging in dialogue and cooperative measures to combat transnational crimes, such as human trafficking and slave labour.
2	Uphold the commitment to the Responsibility to Protect principle and aid neighbouring Myanmar to ensure the protection of all members of its population, particularly the persecuted Rohingya minority. Thailand is in the best position among ASEAN members to provide humanitarian assistance and capacity building support to Myanmar, given its close cultural and bilateral ties with its government and the military. The spillover effects of the Myanmar crisis are having dire impacts on the stability of the region and are leading to an exodus of people seeking asylum, which in turn affects Thailand.

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