

Human Rights Situation in Thailand

Paper by the National Human Rights Commission of Thailand

Submitted to the UN Human Rights Council under the Second Cycle of the UPR

Part I Implementation of the Recommendations from the First Cycle of the UPR

Recommendations Accepted by Thailand

1. Thailand has implemented some of the UPR recommendations which include the ratification of the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in October 2013 and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in September 2012. It has withdrawn the reservation made to Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women and the interpretative declaration of Article 6 paragraph 5 and Article 9 paragraph 3 of the International Covenant on Civil and Political Rights. In 2015, Gender Equality Act is adopted and the Criminal Code provision on the offenses relating to child pornography has been amended. The government has made an effort to enact a law in compliance with the Convention against Torture and the Convention on the Protection of All Persons from Enforced Disappearance and is studying the possibility of becoming party to the International Labour Organization Conventions No.87 on freedom of association and protection of the right to organize and No.98 on the right to organize and collective bargaining, on which the National Human Rights Commission of Thailand (NHRCT) submitted recommendations to the cabinet in 2014 and 2015 respectively. Although the government has been trying to promote and protect human rights, some of the recommendations received from the first cycle have yet to be implemented in a concrete manner. The government should promote the participation of civil society organizations in monitoring the implementation of those recommendations.

Recommendations not Accepted by Thailand

2. The NHRCT suggests that the government should re-consider some UPR recommendations of the first cycle with a view to implementing them such as those regarding the review of the special laws on security in accordance with international standards, on which the NHRCT proposed recommendations to the cabinet in 2014, and on the death penalty. The inclusion of the death penalty in the Third National Human Rights Plan (2014-2018) is positive development and the NHRCT hopes that the government will take steps towards abolishing such punishment in the future.

Part II Human Rights Situation in Thailand

3. During 2013-2014, Thailand experienced political conflict. Various political groups gathered with aim to call for a reform of the country. The government's attempt to enact amnesty bill which might exempt some corrupted politicians from legal action, the consideration of draft constitutional amendments by the Parliament which would make it easier for relatives of politicians to be elected to the Senate and thus affect the discharging of its check and balance mandate, the following Constitutional Court ruling that such action was unlawful as it amounted to acquiring of power by unconstitutional means, and the corruption in the rice pledging scheme which was believed to incur a great loss to the country, all had created a public distrust in the government at the time and led to a series of anti-government protests attended by a large number of people. During the protest, violence was used against demonstrators by unknown parties but the government failed to ensure safety to the demonstrators. The protest lasted for more than six months affecting the country's economy amidst concerns that violence might be escalated. This made the National Council for Peace and Order (NCPO) to take control of the country on 22 May 2014 and the 2007 Constitution of Thailand was subsequently revoked.

4. The NCPO promulgated the 2014 Interim Constitution of the Kingdom of Thailand leading to the appointment of the National Legislative Assembly (NLA). The NLA then selected General *Prayut Chan-ocha* as the Prime Minister. Meanwhile the NCPO announced a plan to a new

constitution that would secure a political reform before a general election is held to bring democracy back to the country within the period of one year.

Human rights under the NCPO's Administration

5. In taking control of the country, the NCPO declared martial law and undertook measures to control the conflict situation such as the banning of group activities to prevent political incitement, the summoning of members of political parties to adjust their attitudes and the calling for cooperation to cease activities that would further deepen the existing conflict. Such measures led to the ban of seminars which the NCPO considered have political content. Many people were arrested due to their manifested opposition against the coup. Regarding the summoning of persons for attitude adjustment, the NHRCT received complaints from some individuals that they could not contact or visit their relatives who were detained for such purpose. Upon receipt of complaints, the NHRCT coordinated with relevant authorities to visit detainees and found that there was no ill-treatment of detainees visited by the NHRCT. The NHRCT also received complaints relating to civil and political rights after the control of the NCPO such as the enforcement of the 1914 Martial Law Act, the summoning of persons to report before the NCPO, the freedom of expression and academic freedom, the summoning of persons to report before the NCPO due to their comments related to politics and the prosecution of civilians in the military court. The NHRCT is preparing policy recommendations to the cabinet on these issues. However, the government revoked the martial law on 1 April 2015 and has not since summoned individuals for attitude adjustment but exchanging of views is used instead.

Human Rights Situation in the South

6. In 2014, violent incidents and the number of casualties in the Deep South have decreased compared to the previous year. However, unrest continues to exist in the area. The laws on security have been in force in the area until today. Torture acts have somewhat decreased but remained a cause for concern. The NHRCT, therefore, organized trainings for security forces in the area on contents and guidelines for operation in compliance with the Convention against Torture. Furthermore, the NHRCT has established human rights coordination centre in *Pattani* province to support human rights promotion and protection work in the area to provide easy access to the public. The NHRCT work on capacity building of officials has brought about cooperation from government agencies concerned in protecting the rights of people in the area. This includes a permission to NHRCT staff to visit detainees on the very first day of detention and the government's effort to set regulations, practices and procedures to prevent torture in order to build confidence among the public in the carrying out of duties by government officials.

7. As for rehabilitation of victims of violence in the Deep South, the NHRCT received complaints that victim compensation process is delayed, inaccessible and unjust and some regulations present an obstacle to access to compensation such as those regarding the retroactive payment of insurance compensation to government officials who have lost their lives or became disabled and had to leave the service.¹ The NHRCT has recommended the government to set clear guidelines and criteria to help rehabilitate the victims as well as to provide other remedies in addition to financial compensation.

Human Trafficking, *Rohingya* and *Uighur* Migrants

8. After the first cycle of UPR for Thailand in 2011, the government at the time had stepped up efforts to pursue legal action against human trafficking cases and assist the victims, but there was no criminal sanction against business owners, fishing boat owners, Thai captains or public officials in offenses related to human trafficking. In June 2014, the US State Department published a report on the situation of human trafficking in several countries including Thailand

¹ Draft NHRCT Annual Report, 2014.

and downgraded Thailand to tier 3, the classification for countries with no effective action to tackle human trafficking. The NCPO, which came into office in May 2014, gave priority to human trafficking issue and carried out urgent and concrete measures to solve the problem. Employers are required to register their foreign workers to bring them under legal protection, inspection measures are instituted to prevent forced labour in the fishing sector, and government agencies concerned are instructed to effectively enforce the laws.² Those measures have led to the arrest offenders and public officials who are involved in human trafficking. The NHRCT will further follow up on the impact of these measures on the human trafficking situation in the country.

9. In March 2015, a total of 362 *Rohingyas* are detained by the Immigration Bureau. They are considered to be illegal immigrants who are to be returned to their country of origin in accordance with the Thai immigration law. However, given the concern expressed by several parties that these *Rohingyas* might face danger upon their return, the government allowed them to stay in the country temporarily under the supervision of relevant agencies. During the visit of *Rohingyas* in immigration detention centres in Bangkok and other provinces, the NHRCT found some problems such as the overcrowdedness of the detention facilities, the prolonged period of detention and insufficient budget for food. The NHRCT has submitted a number of recommendations to the government such as the separate detention for men and women detainees and coordination with relevant agencies to provide medical treatment for those who are sick. In May 2015, when graves of *Rohingyas* were found, the NCPO instructed concerned government departments to investigate and suppress the trafficking of *Rohingyas* and to provide assistance to them on a humanitarian basis. Additionally, the NCPO assigned the Ministry of Foreign Affairs to organize a meeting on 29 May 2015 with concerned countries and international organizations to discuss ways to jointly solve this problem in a sustainable manner. The NHRCT supports the government's effort to solve the migration of *Rohingyas* and will monitor future developments on this matter.

10. In July 2015, the government sent a group of *Uighurs* back to their country of origin while women and children were sent to third country. Such action has been opposed by many parties. As a consequence, the NHRCT held a meeting with relevant government agencies such as the National Security Council and the Ministry of Foreign Affairs, and expressed concern regarding the sending of such persons back to their home country and the treatment of *Uighurs* during the return process. The NHRCT will monitor further actions by the government in this regard.

The Community Rights and the Sustainable Development

11. Given the severe floods in 2011, various projects have been revived such as the *Mae Wong* dam project, which is opposed by local community and many scholars due to the negative impact it might have on the natural resources and environment. The NHRCT received complaints relating to the project and is concerned that it may affect the community. As a consequence, it cooperated with various sectors to obtain the facts on potential impact of the dam on the community and made recommendations to the government to take precaution to respect the community rights while encouraging the community to exercise their rights.

12. Many communities have been affected by the implementation of development policy which relies on the use or exploitation of the country's natural resources but does not provide adequate protection to the people in areas affected by development projects. This can be seen from such as the impact of industrial development at *Map Ta Phut* area and in *Rayong* province, gold mining in *Loei* province, petroleum exploration projects in *Khon Kaen* province, construction of deep sea ports in *Prachuap Khiri Khan*, *Songkhla* and *Satun* provinces as well as petrochemical

² The NCPO's Order No.68/2557 dated 17 June 2014.

project in *Nakhon Srithammarat* province. Although the 2007 Constitution contained provisions for the public to be consulted on an activity that might affect the environment and natural resources of the community, in practice the opinion of the local people are usually not taken into account. The government often does not provide all the necessary information and the public hearing is organized more as a formality rather than an exercise to obtain opinions of the local people. The implementation of many public and private projects has affected the environment and public health in the nearby areas. People in certain localities have suffered from illnesses believed to be caused by the pollution emanated from industrial activities for many years while the government has failed to solve the problem.

13. After the NCPO took control the country in May 2014 and launched the Orders no. 64/2557 and 66/2557, the NHRCT received complaints from the people who are affected by government operations to combat forest encroachment in accordance with the NCPO Order no. 64/2557. This is in spite of the fact that the Order no. 66/2557 specified that any action taken for that purpose must not impact on the poor people, including no forced eviction, seizure or destruction of property of the people who live in the forest areas. The relevant Sub-committee of the NHRCT found that government officials have implemented the Order without clarity on the nature of acts that fall within the scope of the Order. When there is a mistake in the implementation of the Order, victims do not receive adequate remedies. There are no appropriate measures to accommodate the people who are forced to leave their homes. Those who make claims for the sake of justice without political purpose are usually summoned to report to the authorities for attitude adjustment and detained in military camps. The NHRCT will propose policy recommendation to the cabinet in this regard.

14. The neglect of duty by the government and the delay in addressing the problems have caused the people to fight for themselves and led to disputes between them and public authorities as well as private entities. Some human rights defenders are faced with murder threat such as in the cases of Mr. *Pitan Thongpanang*, leader of opposition group against mining in *Nakhon Srithammarat* province and Mr. *Somsuk Kohklang*, an activist for the right to land in *Krabi* province. This has aggravated the problems of natural resources, environment and conflict management, poverty and economic inequality and created a new conflict which affects harmony, reconciliation and peace.

Part III Recommendations

15. The government should exert more efforts in implementing the UPR recommendations, push for action to achieve tangible results and avoid the use of special security laws.³ Consideration should be given to NHRCT recommendations on the revision of special laws on security to bring them in line with human rights principles such as the amendment of Section 16 of the Martial Law to guarantee the right of those who have been affected by enforcement of the law to claim for damages and the development of rules and criteria for the compensation of damages under Section 20 of the Internal Security Act to mitigate the damage to the people who have been affected by the legislation. As for the recommendations regarding the death penalty, the government should enhance knowledge and understanding of the public that such punishment does not have to do with the reduction or prevention of crime in any significant way. The government should use alternative sanctions such as the promotion of restorative justice whereby the offenders take responsibility for their actions by providing remedies to the victims directly and the parties concerned take part in the development of the treatment and rehabilitation programme for the offenders. Additionally, the government should review and restrict the use of

³ The 1914 Martial Law, the 2005 Emergency Decree and the 2008 Internal Security Act.

death penalty in accordance with Article 6 paragraph 2 of the International Covenant on Civil and Political Rights.

16. The NHRCT is of view that government measures to prevent political divisiveness in the interest of the public have a legitimate aim but the government should be careful and carry out such measures as strictly required by the situation so that they do not affect the rights and freedom of expression of the people disproportionately. It should distinguish between group activities that are organized purely for ulterior political motive and those that are organized by the people who have been affected by government policies or projects. If it is the latter case, the people should be able to exercise their right to freedom of expression by bringing their problems to the attention of relevant authorities.

17. The government should enforce the law fairly. Perpetrators must be brought to justice in order to eliminate the culture of impunity. It should review the enforcement of special laws on security in the Deep South to a strict necessity and for a limited period of time. In areas where the situation has improved, the government should apply the Internal Security Act which allows for the Criminal Procedure Code to be observed and the government should ensure that the authorities strictly follow the procedures provided for in the law. Regarding the complaints on remedies, the NHRCT is of the view that the government should develop a process whereby victims of violence can appeal the decision jointly made by the military, police and administrative officers to ensure justice for the victims who claim for compensation and other remedies.

18. As for the treatment of *Rohingya* and *Uighur* migrants, the government should protect the fundamental rights of *Rohingyas* who are detained in Thailand especially in the area of health and medical treatment for the sick. At the same time, the government should consider other alternatives to detention to reduce the pressure on detainees which could lead to other problems and to address the overcrowdedness of detention facilities. *Uighurs* who are deported or sent to the third country should be treated with respect of their human rights. International organizations and non-governmental organizations should assist them on humanitarian grounds. The NHRCT is of view that the holding of a meeting among concerned countries and international organizations to work together to find sustainable solutions to the migration of *Rohingyas* and government measures to provide them with humanitarian assistance are efforts in the right direction. The NHRCT supports the implementation of the said policy and measures.

19. In formulating a policy on development, the government must take into account the balance between the economy and culture of local communities on the basis of their access to natural resources and environment and the national economy with focus on investment and industry. The government should review large-scale projects that affect the environment and health of people in local communities. There should be measures to deal with negative impacts resulting from the implementation of such projects. The government may impose clear measures for compensation and remedy in cases where damage has been done to the environment and natural resources which affects the health, welfare or quality of life of the people. For example, relevant laws and regulations should be amended to provide for details on calculation of compensation and time period for payment.
