

### UPR Stakeholder Submission

1. This stakeholder submission comprises 64 national NGOs in Thailand which established the “Thai NGOs Coalition for UPR” during two UPR trainings, which took place on 21-22 July 2015 in Hatyai/South Thailand and on 29-30 July 2015 in Bangkok, organized by PEF and Forum-Asia. The Thai NGOs coalition for UPR is the extension of the previously formed “PEF’s UPR Network”, created for Thailand’s 1<sup>st</sup> UPR cycle, which made its first stakeholder submission in 2011 and had also submitted the NGOs’ midterm report to the Human Rights Council in 2014. People’s Empowerment Foundation (PEF) acted as the secretariat of this UPR network.

### Review of Thailand’s Compliance with the UPR Process

2. The Thai government has translated 172 recommendations into Thai language and has submitted its midterm report in 2014. It has set up a committee to oversee the development of its midterm report and to monitor the implementation of the accepted UPR recommendations, chaired by the Permanent Secretary of the Ministry of Foreign Affairs. Various government agencies have been tasked to develop action plans and to submit reports to the committee to assess the implementation of UPR recommendations periodically<sup>1</sup>. The action plans have been developed without public consultation and have been implemented without the inclusion of civil society, which did not take part in the monitoring of the state’s implementation. In practice, the implementation of the recommendations has not followed an inclusive and cooperative approach.

#### **Recommendations:**

- a) Conduct National Consultations between the State and civil society to assess and monitor the implementation of UPR recommendations in compliance with the Human Rights Council Resolution 6/21, § 17 encouraging States to conduct broad consultations with all relevant stakeholders;
- b) Provide Awareness raising trainings on UN human rights mechanisms to all civil society, and ensure that the implementation of UPR recommendations is reported to the public, government officials and media;
- c) Create Joint-taskforces between the State and civil society to ensure a cooperative implementation of the recommendations;
- d) Conduct Inclusive Consultations with civil society actors on a yearly basis to review the implementation of the recommendations; and
- e) Provide resources for civil society to monitor progress of the action plans.

### Accession to International Human Rights Treaties

3. Civil society agrees with the recommendations made by the UN Human Rights Committee.<sup>2</sup> Although the Thai government has expressed its willingness to sign more treaties; in practice, no progress has been made. It is critical that the government not only sign but ratify these international human rights treaties is critical to establish important human rights mechanisms and principles in the country in order to the promotion and protection of human rights and improve the human rights situation on the ground.

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<sup>1</sup> From the briefing “Proposed recommendations adopted by Thailand from the Universal Periodic Review (UPR)” published by the Ministry of Foreign Affairs p.3

<sup>2</sup> Recommendations calling on Thailand to sign various Conventions and to revise its laws so they are in compliance with international treaties, including the revision of criminal laws to comply with the Convention Against Torture (CAT), as well as the revision of laws to provide better protection for women and children.

**Recommendations:**

- a) Consider becoming a state party to: the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention relating to the Status of Refugees and the International Convention on the Rights of All Migrant Workers and Members of Their Families (ICRMW); as well as to all other human rights treaties related to the protection of fundamental human rights;
- b) Sign and ratify the ILO Conventions no. 87 and 98;
- c) Sign and Ratify Additional Protocols, promptly;
- d) Allow UN agencies to support Thailand to act in compliance with the international treaties the country has ratified; and
- e) Encourage the public to submit shadow reports along with the country reports.

**Country Visits by UN Special Procedures**

4. So far, only two Special Rapporteurs have made official visits to the country<sup>3</sup>. Thailand has asked to reschedule the visit of the Special Rapporteur on Torture in early 2014 due to the coup on 22 May 2014. Nevertheless, several Special Rapporteurs have extended their country visit requests, but have not been received a response<sup>4</sup> nor confirmation. It indicates a lack of commitment by the Thai government to collaborate with the UN Special Procedures. Civil society believes that by accepting the request and by acting in compliance with the recommendations of the Special Rapporteurs, the human right situation in Thailand will be improved.

**Recommendations:**

- a) Review and accept the request for country visit of the Special Rapporteur Against Torture;
- b) Allow UN Special Rapporteurs to conduct country visit at least one person per year to indicate Thailand's commitment to promote, develop and support the UN human rights mechanisms in collaboration with the UN;

**Revision of Domestic Laws and the Justice System**

5. Thailand used to have a "Law Reform Commission (LRC)" to "review the laws and promote the role and participation of civil society", but it was abolished<sup>5</sup> claiming that under the new Constitution, there will be Reform Councils on various affairs and their work could be redundant with the LRC. The establishment of Local Justice Coordinating Centers is a good idea, but several of them have no permanent officers and are not accessible by Thai citizen.

**Recommendations:**

- a) Conduct a public Law reform process, to allow civil society and the public at large to participate in;
- b) Reinstall the Law Reform Commission and allow it to oversee and propose law reforms to ensure domestic legislations are in compliance with human rights principles and standards;
- c) Revoke Laws incompatible with human rights principles;

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<sup>3</sup> Ms. Hine Jillian, Special Rapporteur on Human Rights Defenders and Ms. Catarina De Albugurree, Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation

<sup>4</sup> Including the Special Rapporteur on Freedom of Expression who has made 16 requests so far, but has not received any responses, the Special Rapporteur on Human Rights Defenders has extended another request to monitor the implementation after the previous visit by the former Special Rapporteur, the Special Rapporteur on the Right to Peaceful Assembly and Association has extended a request.

<sup>5</sup> On 15 July 2015

- d) Ensure that Civilians are not tried in the Military Court;
- e) Ensure the judiciary is separated from the Executive and is functioning independently;
- f) Ensure Thai citizen are entitled to monitor the exercise of power by the state.

#### **Strengthen human rights mechanisms, human rights education and training**

6. The Thai Government has failed to implement the national human rights master plan and Thai citizen are not aware of the national human rights master plan. Furthermore, domestic human rights mechanisms are weak and the selection of Commissioners to the National Human Rights Commission of Thailand has failed to meet the standards set by the Paris Principle. As a result, the NHRC will not comprise human rights experts. Will not be diverse and will fail to work to protect and promote human rights.

#### **Recommendations:**

- a) Raise awareness on the national human rights master plan and ensure that it is applied at all levels;
- b) Ensure that the Selection Committee of the NHRC acts in accordance with the Paris Principle to guarantee that the selected Commissioners are human rights experts;
- c) Promote and support the writing of human rights report by NGOs (ANNI, Asian NGOs, Network for National Institution) to ensure that there is a taskforce to monitor the performance of the NHRC;
- d) Establish a Network for the Protection of People's Human Rights.

#### **Non Equal Access to Education in the Deep South of Thailand: Human rights Education is not integrated into basic educational curriculum**

7. The Tadika Schools (Sunday Schools) and Pondok Schools are still perceived as a breeding ground of insurgents causing biased judgment by government agencies, and have been discredited. The Tadika Schools (Sunday Schools) and Pondok Schools have developed their educational teaching based on their own curriculum but the Government has tried to intervene and added content from its national curriculum. Apart from controlling the teaching, the State even wants to control its management<sup>6</sup>. As a result, many Pondok Schools have expressed their disagreement and several of them have been closed down by State orders. The state has pledged to promote the right to education among marginalized children to ensure all of them equal access to education.<sup>7</sup> However, the existing educational system has failed to ensure such equality in education.

#### **Recommendations:**

- a) Provide human rights training for government officials, military conscripts, rangers and other law enforcement officers and the Human Rights Defenders;
- b) Set the human rights education as a national agenda;
- c) Allow Tadika schools to freely prepare their curriculum in coordination with Tadika school coordinating center (Pergaso);
- d) Provide trainings for behavior change to government and local officials toward Pondok schools and allow them to have their self-independence management;

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<sup>6</sup> By requiring that the Tadika schools have to register with the Ministry of Interior and Pondok Schools with the Ministry of Education.

<sup>7</sup> Voluntary Pledges of the Thai government, no. 7

- e) Add to the educational curriculum subjects concerning conflict resolution, i.e., peace study, human rights courses including the rights of the child, women's rights; and
- f) Allow the schools to teach local history.

#### Civil and Political Rights:

##### Democracy, the promotion and protection of the right to freedom of expression and opinion

- 8. The ratification and implementation of international treaties will produce concrete impact only if a climate of democracy reigns. But democracy in Thailand has been undermined since the Coup in May 2014. The drafting of the constitution has induced outcry.<sup>8</sup> The government has lifted Martial Law only to replace it with the enforcement of Section 44 of the 2014 Interim Constitution.<sup>9</sup> Section 44 and all other orders issued under it are found to be unlawful and in breach of international human rights laws since they cannot be challenged either by judicial power or others.
- 9. Stringent control and harassment of leaders of the United Front for Democracy Against Dictatorship (UDD) and dissidents to the government<sup>10</sup>: these individuals are critics of the Prime Minister, Gen. Prayut Chan-o-cha and of the work of NCPO, and have been invited for attitude adjustment several times. It is believed that more people will be summoned for the same purpose.<sup>11</sup> In addition, the passport of Mr. Chaturon Chaisang, Former Deputy Prime Minister, was revoked and on 5 September 2015, former Prime Minister Thaksin Shinawatra had his police rank removed.
- 10. Students organized an activity to commemorate the first anniversary of the coup<sup>12</sup>, but three groups of students were violently arrested<sup>13,14</sup>. Although all students were released unconditionally, the military has threaten their families<sup>15</sup>. According to the Public Assembly Act, permission has to be sought prior to any demonstration and it has led to the deprivation of many rights.<sup>16</sup>

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<sup>8</sup> Due to its undemocratic content. Thus, it was voted down by the National Reform Council. It will take more time to draft the new version, and thus the election will be delayed for at least 60 more months and it will probably take place in 2017.

<sup>9</sup> Which provides the Head of the National Council for Peace and Order (NCPO) with extraordinary power to suppress any acts deemed detrimental to national security

<sup>10</sup> Former Prime Minister, Ms. Yingluck Shinawatra, has been removed from office by the resolution of the National Legislative Assembly (NLA) appointed by the junta and her right to run in election has also been temporarily revoked. She also stands in a trial on her rice pledging scheme and for civil suit, she might be forced to pay a huge amount of money for the loss due to the mismanagement of the program. Mr. Pichai Nariphaphan, Former Minister of Energy, Mr. Karun Hosakul, former MP of the Pheu Thai Party and Mr. Pravit Rojanaphruk, The Nation's reporter.

<sup>11</sup> Mr. Phumtham Wechayachai, Executive Secretary of the Phue Thai Party and Mr. Nutthawut Saikua, UDD core leader.

<sup>12</sup> On 22 May 2015

<sup>13</sup> a) 11 members of the Young People for Social-Democracy Movement (YPD) and the Youth Development Association (YDA) who organized a public discussion on "Community rights, freedom and education" to mark the first anniversary of the coup, were all held in custody at the Chana Songkhram Police Station, b) students from Khon Kaen University including seven students from Dao Din Group, were held in custody at the Khon Kaen police station, c) 34 students from the art performance to mark the first anniversary of the Coup were held in custody at the Pathumwan Police Station.

<sup>14</sup> Violent arrests can be viewed here: [www.youtube.com/watch?v=ye3U9PIk\\_RA](http://www.youtube.com/watch?v=ye3U9PIk_RA)

<sup>15</sup> By visiting their home causing panic among their families.

<sup>16</sup> Including the right to express opinion, and the right to strike for workers.

**Recommendations:**

- a) Ensure the fundamental right to peaceful assembly to allow civic and political space;
- b) Restore a genuine democratic system and allow the exercise of freedom of opinion and expression;
- c) Make the human rights roadmap and democracy roadmap compatible with international human rights standards and allow people to have a role in drafting the two roadmaps.

**The right to Economic, Social and Cultural Rights: Natural Resources and the Environment**

11. It was recommended by the UN Human Rights Committee for the Thai government to eradicate poverty and social inequality,<sup>17</sup> but in practice, the power to manage resources continues to be controlled exclusively by the State with no participation of the community. It has affected livelihood of the community and has led to destruction of their local and traditional culture. The imposition of the NCPO Announcement no. 66/2014 to increase forest coverage by 41% has led to the reclamation of forest area and the eviction of community without providing them resettlement. It has affected thousands of families of farmers around the country. Large scale development projects have caused impact on the community and its leaders who have risen up to protect the community have either been arrested or injured, some have been fatally killed.
12. The construction of Pak Moon Dam has made it impossible for fish from the Mekong to enter the Moon River. It has decimated diversity by 70%, causing negative impact on people lives in the ten provinces in the Northeast, including food insecurity. According to the study of power generation by independent researchers from the Ubonratchathani University since 1994, the loss of income per year when the dam is open is around 140 million baht. The NCPO Order banning gathering of five persons and upward has not been used just to suppress political gathering, but has also been applied to suppress any political protest against development projects negatively impacting livelihoods, including the case of Pak Moon dam.
13. Oil spill in the Gulf of Thailand has taken place for two years, but the legal wrangle continues and no settlement has been made. It has taken so long for the restoration of marine resources and toxic can be found in fish in the sea. No specific laws in Thailand exist to hold polluters accountable and no fund can be established to ensure the restoration of the natural resources since such a fund would not be supported by the investors.

**Recommendations:**

- a) Stop using Section 44 which affects people's livelihoods;
- b) Allow people to take part in decision making concerning large scale development projects which affect their lives;
- c) Reveal information concerning land holding and must reform and redistribute land holding rights;
- d) No large scale dam should be built since it causes negative impacts on livelihoods of the community and dams that fail to deliver as planned should be decommissioned including the Pak Moon Dam;
- e) Laws proposed by civilians have never been tabled for the review of the Parliament, but the government has introduced draft laws made by political parties without people's participation. The Thai state should enforce the law according to the social and community context;
- f) All agencies and ministries should review the country's map and streamline the sets of information;

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<sup>17</sup> UPR Recommendation, version 1, no.38

- g) Establish public hearings for large scale development projects, public hearing should be held among stakeholders prior to its implementation;
- h) Many policies introduced by the State in the Deep South have failed to address economic problems in the area. Any activities must be designed by local people and shall not lead to infringement on local culture and tradition.
- i) If the Government wants to use natural resources for exploitation, the benefits have to be shared fairly with local communities;
- j) The Thai Government must not violate community rights and should protect small scale farmers and guarantee prices of commodities;
- k) Stop removing and cutting down plants of the villagers in dispute areas since it infringes on the rights and benefits of local people.

### **The promotion and protection of marginalized groups in society and migrant workers:**

#### **Migrant workers**

14. Despite UPR recommendations no. 75-80,<sup>18</sup> problems still exist as indicated from the view of migrant workers. It was found that labour laws continue to give favor to investors at the expense of equal treatment of labour according to relevant laws.<sup>19</sup> The migrant workers are deprived of the right and liberty to get organized and are barred from participating in policy-making processes related to migrant workers. The use of labour agent has forced workers to pay exorbitant expenses. Migrant workers are given fewer occupational choices and are subjected to discrimination. They have no access to public services and compensation funds, and have problem in communication with a lack of interpreter in various agencies providing services to migrant workers. According to the ILO Conventions no. 87 and no. 98, migrant workers should access legal redress mechanisms but in practice they are deprived of this right when experiencing dispute with the employers.

#### **Recommendations:**

- a) Ensure that migrant workers are entitled to the right and freedom to get organized and to participate in the tripartite system concerning themselves: migrant workers should be entitled to have the right to form their own labour unions, to participate in collective bargaining as per the ILO Convention no. 87 and 98,
- b) Ensure migrant workers have access to equal rights without discrimination;
- c) Allow the migrant community to participate in the Special Economic Zone and labour rights must be respected according to the standards;<sup>20</sup>
- d) Provide migrant workers with decent occupations;
- e) Provide one stop services to facilitate the entrance into the country by migrant workers without having to go through different agents.

#### **Informal workers:**

15. It was recommended by the CESCR no.19<sup>21</sup> that informal workers contribute immensely to the economic development including formal economy, but they are not entitled to basic rights albeit they live as a part

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<sup>18</sup> Regarding the strengthening of law enforcement for the sufficient protection of migrant workers, minimum wage, occupational safety and access to health services and equal justice of migrant workers.

<sup>19</sup> Including labour protection law, social security law, and workmen's compensation fund law, etc.

<sup>20</sup> Views of migrant workers shared during the workshop on UPR, 29-30 July 2015, IBIS Hotel, Bangkok.

of the supply chain. Income security is a big issue for the informal workers as they earn meagerly and inconsistently. The use of same old technology for production, a lack of access to marketing information and capital has all impeded competitiveness. The transfer of old age benefits of the self-insured informal workers as to Article 40 of the Social Security Act to the National Savings Fund has deprived them of their original rights and decrease the benefits they receive. Political problems in Thailand and ASEAN integration has led to the shifting of production bases and affected wages of informal workers and homeworkers making them jobless. The Home Workers Protection Act B.E. 1553 (2010) has not been enforced effectively and has failed to protect the home-based workers. The unregulated importation of cheap and low cost merchandise from China has affected manufacturing in Thailand reducing the number of producers and employment opportunities. The formation of informal workers for production<sup>22</sup> helps them to solve their problems. Meanwhile, the government has no policy to support or promote their economy.

**Recommendations:**

- a) Systematically survey and document occupations and problems of informal workers;
- b) Provide for clear policy in response to the need and to protect informal workers and address their problems and necessities;
- c) Design and review regulations to help informal workers gain access to services and projects by the state including credit line, marketing and investment information, job opportunities among agencies, and the taxation systems catered to the income of the informal workers;
- d) Control prices of merchandise, making it appropriate to the income earned and must control the importation of goods since it affects domestic production and employment;
- e) Become a welfare state.<sup>23</sup>

**Formal workers:**

16. CESCR's Recommendation no. 22<sup>24</sup> and in compliance with Article 7 of the ESCR<sup>25</sup>, Article 23<sup>26</sup>. Recommendation no. 24,<sup>27</sup> revoke the Public Assembly Act, and Section 44 of the Interim Constitution which authorizes the Head of NCPO to suppress collective bargaining rights of workers. The minimum wage does not correspond to the rising living cost and the subcontract work has put down wages. Workers are also subjected to unfair employment contracts with a lack of occupational safety.

**Recommendations:**

- a) Revoke subcontract work;

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<sup>21</sup> The state party use all necessary measures to reduce the ratio of informal economy to formal economy and to increase job opportunity for formal workers. Also, additional effort should be made to ensure that all workers including subcontract workers, homeworkers, and informal workers have full access to their rights.

<sup>22</sup> Including sewing, weaving, handicraft production, food processing, sales and services.

<sup>23</sup> According to Mr. Manop, informal workers participating in the UPR workshop in Bangkok, 29-30 July 2-15.

<sup>24</sup> Suggests that the state party ensures that all procedures are put in place to guarantee minimum wage of all workers to help them and their families attain decent living.

<sup>25</sup> It is recommended that the state party further implement initiatives to bridge the income gaps between male and female workers.

<sup>26</sup> Recommends that the state party ensures that all employees in private and state sectors have access to effective right to form a labour union and to become a member of the union voluntarily.

<sup>27</sup> Suggests that all government employees, except those in service section, should be entitled to the right to strike. The state party is also encouraged to ratify the ILO Convention no. 87 and 98 regarding Freedom of Association and Protection of the Right to Organize.

- b) Make Thailand a welfare state;
- c) Issue laws favorable to the workers;
- d) Ensure minimum wage must not be less than 300 baht and the state must control prices of goods;
- e) Sign the ILO Convention no. 87 and 98 to protect the Freedom of Association and the Right to Organize.

#### **Ethnic and stateless persons**

17. It is recommended by the CESCR to improve measures to facilitate naturalization and to enable stateless persons<sup>28</sup> to live in the country and to bridge the gaps in the Nationality Act. The laws relating to the status of stateless persons already exists, but the process to implement it has been redundant making children born in Thailand having no nationality. Children of migrant workers or irregular migrants can be charged for breaking immigration law even though they are born in Thailand. The rights of ethnic groups are limited in the Constitution; they have no access to their right to sanitation and health. The indigenous peoples and stateless persons are deprived of their community rights and participation in government projects. The state officials negatively discriminate against stateless persons. They have no right to own the land. There is a lack of participation among civil society in drafting the law. There are no protection and guarantees in national security laws and human security. Thus, the statelessness and a lack of effective laws continue due to the lack of participation from civil society in developing policies providing solutions on nationality issues.

#### **Recommendations:**

- a) Redistribute land holding rights;
- b) Provide children born in Thailand with the Thai nationality;
- c) Ensure people living in Thailand longer than twenty years should be entitled to Thai nationality;
- d) Nationality verification among the ethnic groups should be conducted and recognized promptly;
- e) Recognize Community rights and the rights of indigenous peoples in the Constitution and statues;
- f) Advocate for the Act on the Council of Indigenous Peoples.

#### **Refugees and human trafficking<sup>29</sup>**

18. Recommendations made during the 1<sup>st</sup> cycle UPR<sup>30</sup> have not been implemented as the situation of asylum seekers in Thailand has gotten worse since the Thai government has no human rights policy regarding the asylum seekers. In early May 2015, more than 50 camps of Rohingya were found dotted along the Thailand-Malaysia border including a few corpses. The Thai government has since then paid attention to suppress the human trafficking rings. Arrests have been made against more than 200 Thai and Rohingya human traffickers. It does not mean the rights of the Rohingya Refugee have been protected and recognized. The Rohingya do not have better living conditions inside Myanmar or in the destination countries. They all have no future.<sup>31</sup>

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<sup>28</sup> There are basically three stateless persons including a) stateless indigenous peoples, b) immigrants from neighboring countries in over the past 20 years and their children born in Thailand (urban refugee) c) the Thai Diasporas.

<sup>29</sup> The refugees can be divided into (1) those fleeing from conflicts and living along the Thailand-Myanmar border in nine temporary shelters, (2) urban migrants, (3) those irregular migrants being held in custody by the immigration authorities and (4) victims of human trafficking.

<sup>30</sup> To address arbitrary arrest and detention of asylum seekers, to support and protect the asylum seekers, to stop pushing them into a dangerous situation.

<sup>31</sup> The information from the Rohingya Refugee living in Thailand who participated the UPR training in Hatyai on 21-22 July 2015.

19. The protection of the asylum seekers is minimal. In July 2015, the Thai government has forcibly deported 109 Uyghur asylum seekers to China. Although China guarantees their safety, but no one believes it. The Thai government continues to violate the rights of asylum seekers by its national security policy. The push back policy toward the sea asylum seekers is grossly inhumane and has been widely criticized by domestic human rights organizations.
20. The urban refugees have no recognized status and are forced to pay bribes to Thai officials. Their children have not been entitled to equal rights. Although some of them have the right to go to school, but they have no future if they have no clear status. Refugees in temporary shelters along the Thailand-Myanmar border must not be forcibly deported since the areas where the ethnic minorities live are still dangerous. The signing of ceasefire agreements cannot guarantee peace in Myanmar.

**Recommendations:**

- a) Offer personal status to the Rohingya who have lived in Thailand for more than 20 years, particularly their children who are born here should be offered some kind of status to ensure their access to education and health services;
- b) Open temporary shelters to accommodate the Rohingya and the UNHCR must be allowed to have access to the people and resettlement in third countries must be an option to explore;
- c) Allow visits to those detained by the immigration authorities so that their communities can help to reduce burden on the Thai government;
- d) Investigate cases of human trafficking and prosecute human traffickers operating as multinational rings. International cooperation is needed to prevent them from fleeing from one country to another;
- e) Ratify the Convention on Refugees and its protocols;
- f) Allow civil society to take part in the screening of human trafficking victims to include social dimension and to ensure transparency;
- g) No forced deportation of refugees should be made;
- h) The closing of temporary shelters along the Thailand-Myanmar border should be considered based on the willingness of the refugees and in recognition of their dignity and safety;
- i) Conduct consultations with community in Myanmar to explore how the refugees can be reintegrated with dignity, willingly and permanently,;
- j) ASEAN countries should cooperate to address issues of migration;
- k) Revise immigration laws which are not protecting the fundamental rights of migrants.

**Sexual Orientation, Gender Identity and Gender Expression (SOGIE) Issues**

21. Although few organizations provided information on SOGIE issues in joint submissions during the 1<sup>st</sup> cycle UPR, no recommendation was formulated to the Thai government on this issue. There is no effort to support and help society understand the issues of LGBTI and thus they have been subjected to discrimination in various aspects,<sup>32</sup> such as discrimination against transgender people during arrests.<sup>33</sup>

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<sup>32</sup> Including their right to work, freedom of expression, the right to marry, the Surrogacy Act, etc. The issues affect LGBTIs since they want to have their children, to have their families, to have the right to live their life and to choose their gender (for the bisexuals).

<sup>33</sup> The case of Natcha KongUdom, a transgender woman who was apprehended due to her violating the NCPO Order. She was not supposed to be held in a men's prison and should not be subjected to physical examination conducted by men given her gender identity disorder. No case can be filed with the Court since the Thai adjudication rests exclusively on the gender of birth.

Given that there was no gender recognition law, the rights of LGBTIs have been grossly violated.<sup>34</sup> It could be said that all the laws are quite backward. The LGBTIs continue to be perceived as social perverts. They are struggling for their right to exist. The rights of the LGBTIs are human rights. Their problems need to be tackled with diverse and sensitive solutions.

**Recommendations:**

- a) Recognize the right to have family for LGBTIs by supporting the Marriage Bill, the version provided by civil society and to implement it concretely;
- b) Revise Article 17 bis 235 in the Gender Equality Act by adding clearer content to guarantee equality and fairness for the gay people;
- c) Establish rights protection policy for the LGBTI in its justice system by ensure they have access to justice and by providing them with complaint mechanisms to ensure equal treatment to the LGBTIs;
- d) Revise the laws that affect LGBTIs including the Civil and Commercial Code<sup>35</sup>
- e) As to the Surrogacy Act, allow same-sex couples, unmarried couples and singles to seek surrogacy right;
- f) Revise sex education curriculum creatively;
- g) Legally recognize the gender of LGBTIs, particularly the transgender women and transmen who have undergone sex-reassignment surgeries as their current genders do not match their genders at birth. Therefore, they should be legally treated differently from before. The recognition of their gender identity should include their right to criminal justice process at all levels from the arrest to search. The law enforcement officials must carry out their duties with sensitivity toward the LGBTIs, the persons with gender identity disorder may request for an official of the preferred gender to carry out the body search. And the search and inspection must be subjected to judicial review as well;
- h) The adjudication by the Court must be made based on sensitivity to the LGBTIs when any orders are to be made for the detention or imprisonment of the LGBTIs with gender identity disorder. If deemed fit or if requested for, the Court may order the detention of the LGBTIs according to the actual gender based on a case by case basis;
- i) The new Constitution must clearly recognize the existence of LGBTIs<sup>36</sup> and should include constitutional guarantees and anti-discrimination clause inclusive of SOGIE.

**The Women Living with HIV/AIDs**

22. Positive HIV-women and girls are forced to disclose their HIV status to their partners. They are barred from having new partners, or children. The HIV-positive girls are deprived of their right to education due to blood test requirement. The Bank for Agriculture and Agricultural Cooperatives has denied loans to HIV-positive people.

**Recommendations:**

- a) Ensure that policies and measures do not discriminate against HIV-positive women and girls and provide sufficient financial resources to launch prevention programs among HIV-positive women and girls;
- b) HIV-positive people should be allowed to become members to have access to loans from the Bank for Agriculture and Agricultural Cooperatives for their economic opportunities and should be allowed to study.

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<sup>34</sup> Including their right to public health services, medical services, military conscription, etc.

<sup>35</sup> Regarding family and ensure that LGBTI spouses have the right to manage the marital property and other rights including medical decision and others according to the law.

<sup>36</sup> Using the terms gender and sexuality.

### Women Injecting Drug Users (IDUs)

23. Women Injecting Drug Users have been subjected to sexual molestation by male police officers during drug inspection and body search. Some are asked to have sex in order to get released. They are subjected to torture and physical assault. If they demand their rights or resist the arrest or try to negotiate with the officials, they could be subjected to contempt and dehumanizing acts. Women subjected to violence from spouses are left unattended to and without due legal protection. If they report the case to the police, they might be arrested for drug charges. The officers in service facilities hold prejudice against the LGBTIs and lack understanding and sensitivity on gender aspects making the women transgender who live with HIV/AIDS or inject drugs or have sexual problems feel less inclined to visit the health clinics.

#### **Recommendations:**

- a) Revise Drug laws to decriminalize drug use and stop treating drug users as criminals;
- b) Women police should be employed for body search with cases of women IDUs who are victims of domestic violence;
- c) HIV-positive transgender who need treatment for HIV/AIDS should be separated from their male counterparts when seeking the services;
- d) Design HIV prevention program separately between the HIV-positive MSMs<sup>37</sup> and the HIV-positive transgender people;
- e) Provide clear information related to the side effects of the antiretroviral drug on the transgender women on hormone treatment and training should be provided for officers and organizations to have enough knowledge when transgender women come to seek services from the ARV clinics.

### Sexual and Reproductive Rights of Women: The access to safe abortion:

24. Abortion is criminalized in Thailand and many women have to risk their lives seeking unsafe abortions. The state has failed to provide information about safe abortion options to public and comprehensive counseling services as well as safe abortion for women with unwanted pregnancy. The services are confined just to women subjected to sexual violation or suffering grave health problems. As a result, women have to seek abortion themselves when it gets too later for term of pregnancy.

#### **Recommendations:**

- a) Decriminalize abortion and public service providers should offer safe abortion services to women;
- b) Publicize widely information on safe abortion to reduce the risk for unsafe abortion at the late pregnancy term and the services should be provided based on decision of the women rather than those surrounding them;
- c) Women should be the persons to determine the number of children and pregnancy interval.

### Persons with Disabilities

25. In 2011, Thailand has accepted the 2 recommendations related to protect the rights of persons with disabilities in accordance with the Convention on the Rights of Persons with Disabilities (CRPD).<sup>38</sup> In

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<sup>37</sup> Men who have Sex with Men

<sup>38</sup> An emphasis is made on recognizing the importance for persons with disabilities to live by themselves and independently and have the freedom to choose their own paths. Most persons with disabilities live with poverty and it is extremely important to address negative impacts from such impoverishment toward the persons with disabilities, respect of differences and accept that persons with disabilities are a part of society. This should help

2013, the government has amended “The Persons with Disabilities Empowerment Act of 2007” to include provisions on monitoring of the access by persons with disabilities to their rights. However, in practice, children living with disabilities are still facing discrimination and unequal access to education and social services. In addition, article 33 of the Promotion and Development of Quality of Life for Disabled Persons Act B.E. 2550 (2007) requires that a business entity must hire persons with disabilities at 1% of workforce. If they are unable to do so, they are required to pay contributions to the Fund for the persons with disabilities. But in reality, the persons with disabilities need the jobs available. Although some employers employ persons with disabilities, they tend to break the law by failing to provide minimum wage and hire them just for part-time work to avoid having to pay contributions to the Fund for the persons with disabilities. As a result, the persons with disabilities have to earn additional income by wandering and singing for money in the street as they earn less income. The persons with disabilities are also prevented from studying with other people as a result of the lack of facilities and human resources specially trained to teach the persons with disabilities or their parents have no time to send them and bring them back from school. The persons with disabilities also earn unfair wages.

**Recommendations:**

- a) Provide public services including buses and other travel support;
- b) Improve facilities in school to meet the need of persons with disabilities of all kinds and provide teaching staff specially trained to teach the persons with disabilities of all kinds;
- c) Prevent disabilities caused by occupational environment and industrial complexes and ensure the payment of compensation and indemnities;
- d) Seriously enforce the law concerning the right to work of persons with disabilities to ensure they get paid fairly for work;
- e) Ensure the persons with disabilities live in society from birth until death.<sup>39</sup>

**Older persons**

26. Their main problems involve a lack of secure income when getting older and their health. As society ages, the state must provide for policy to take care of the ageing population. The International Plan of Action on Ageing adopted at the Second World Assembly on Ageing in April 2002 calls for a change in attitude, policy and practice to ensure that older persons are not treated simply as welfare seekers, but an active member in the development process. Their rights should also be respected. Older persons can contribute to society.

**Recommendations:**

- a) Create an enabling legal environment in response to the concerns of the older persons;
- b) Recognize the clear goals to ensure the older persons can live a happy life toward the end of their life.<sup>40</sup>

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them to live their life independently and to fully participate in all aspects of living. They should be assisted to get adjusted to the physical environment, transportation, and information structure. They should be entitled to equal right to work and affirmative action should be provided to help them gain access to labour market.

<sup>39</sup> From the brainstorming among persons with disabilities during the UPR workshop on 29-30 July 2015, IBIS Hotel, Bangkok

<sup>40</sup> With reference to “Aging in the 21<sup>st</sup> Century: The celebrations and challenges”

file:///C:/Documents%20and%20Settings/User/My%20Documents/Downloads/Thai%20summary\_Ageing%20in%

### The Urban Poor

27. The Prime Minister announced eviction of community along the 10<sup>th</sup> canal claiming their settlement a reason of floods has affected more than 70,000 people. The committee was appointed to solve the problem without seeking opinions from members of the community.

#### **Recommendations:**

- a) Move the community inside if possible to provide for enough perimeter for flood prevention;
- b) Provide for resettlement sites within 5-10 kilometers from where they currently live;
- c) Opt to use the state or state enterprises land;
- d) Provide financial resources and resolve legal problems;
- e) Set up community taskforces with representatives of affected community.

### Situations in the Deep South

28. Violence continues unabated in the Deep South despite some discussion has begun to resolve the conflicts. The third round of discussion on 27 August 2015 in Kuala Lumpur, Malaysia, provided some progress and concretized efforts. Six groups were involved in the discussion under the umbrella of MARA PATANI and their three major demands<sup>41</sup>. So far, the Thai government has failed to make clear response to the proposals from the MARA PATANI.

29. Those who used to be held in custody by the Emergency Decree have not had their names deleted from the database even after their release. As a result, they continue to be stopped at checkpoints. Some former alleged offenders as to the Emergency Decree had been murdered, after they were acquitted by the Court.

#### **Recommendations:**

- a) Stop the intimidation by abusing the law;
- b) Stop assassinating former suspects or alleged offenders in security related cases after their release;
- c) Bring to justice the victims and persecute perpetrators of such assassinations;
- d) Demilitarize public areas including schools, hospitals, since it may harm the public and stop setting up checkpoints in community area;
- e) Names of former alleged offenders should be erased instantly after they have been released from prison;
- f) Establish Laws against torture and in juvenile detention.

### Patani Human Rights Defenders:

30. The Patani HRDs are often subjected to human rights violations including: (1) Being forced to undergo DNA test.<sup>42</sup> Many of NGOs offices in the south were inspected by military troops who forced everyone to

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<sup>41</sup> Three major demands tendered to the Thai state are: a) prioritize the Deep South as a national agenda and the state must place importance on solving the problem consistently, b) the Thai state must recognize the MARA PATANI, c) the Thai state must provide legal protection for participants in the talk.

<sup>42</sup> Apart from Mr. Taweesak Pee, the authorities have raided offices of several civil society organizations, using cars to block the roads and conducting DNA test causing damage to the reputation of staff members in those offices including women staff members since they were treated as if they were offenders. Reporter of Media Salatan Community Radio <http://www.deepsouthwatch.org/node/6263>

undergo DNA tests, including the women activists; (2) Discrediting Patani groups through social media and on websites<sup>43</sup> managed by unknown groups. These websites intend to inflict damage to the reputation of Patani Human Rights Defenders.

End

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<sup>43</sup> for example, <http://pulony.blogspot.com/?m=1>