

Human Rights Situation in Thailand

Paper by the National Human Rights Commission of Thailand
Submitted to the UN Human Rights Council under the UPR Process¹

Part I Human Rights Situation in Thailand

Overview

1. The Constitution of the Kingdom of Thailand of 2007 guarantees fully the rights, freedoms and equality of the people but the delay in putting in place enabling laws and mechanism, or lack of it, severely hampers effective enjoyment of certain rights stipulated in the Constitution. Such is the case of the community rights to participate in the decision making process in matters that impact on its way of life, environment, and well-being. In addition, an independent body to give an impartial views on environmental and health impact assessment provided for in Section 67, paragraph 2, of the Constitution² does not exist. The government is also slow in enacting the law that would allow the National Human Rights Commission of Thailand (NHRCT) to discharge its additional functions prescribed by the 2007 Constitution.³ The draft law on NHRCT, as it now stands, does not permit the NHRCT to disclose any information obtained during the carrying out of its functions and imposes a penalty for such disclosure. This restriction would severely affect the NHRCT's function as a monitoring body.
2. Inequality is deep-rooted in Thai society and remains a serious problem which leads to widespread violations of human rights. The people do not have access to resources and lack equal opportunity to self-development. Such phenomenon is a structural problem which cannot be solved by law enforcement or centralized development policy. Recently, the government has shown its support to the national reform process initiated by the civil society to address social injustice and inequality, but there have not yet been concrete results.
3. Thailand is party to 7 international core human rights instruments⁴ and has given voluntary pledges at the election of the Human Rights Council membership to promote human rights by, inter alia, amending relevant laws, raising human rights awareness, promoting the rule of law and the rights of marginalized groups. However, progress is slow and concrete results are yet to be realized. Many recommendations of the UN treaty bodies⁵ have not been implemented. Several laws relating to human rights have been passed⁶ but the lack of effective enforcement is a serious problem. Many issues remain to be addressed. This includes ensuring people's access to due process of law; providing effective remedies to victims of human rights violations; bringing perpetrators to justice, especially those committing extrajudicial killings during the former government's anti-drug campaign; training law enforcement officers to respect the rights set out in the Constitution and applicable international conventions; and protecting vulnerable groups such as women and children, especially from falling victims to violence and human trafficking, migrant workers, stateless persons, human rights defenders and asylum seekers.
4. The government has integrated human rights promotion in its policy and put in place a national human rights plan since 2001. But due to the lack of an effective monitoring and evaluation mechanism, such plan is not seriously implemented by government departments which are not held responsible for their inaction.
5. As an institution established by the Constitution, the NHRCT has carried out the monitoring mandate entrusted to it since 2001. The current Human Rights Commission (2009-2015) is of the view that there are 5 human rights issues which are of major concerns within the country as outlined below.

Violent situations in the South

6. Violent situations in the Deep South which escalated in 2004 have continuously caused a great loss of life and property to the people living in the area. The violence is rooted in 3 main factors: (1) human factor arising from the excessive use of power by administrative authorities, the use of violence by the insurgents and thus leading to violent retaliation by the government; (2) structural factor caused by unfair treatment in the justice system and weak local economy; and (3) cultural factor characterized by the distinct ethnic and religious identity of the local population.⁷ During 2004-2010, there are 11,523 incidents of violence, 4,370

deaths and 7,136 injuries in total.⁸ Those affected from violence include the local people, Buddhists and Muslims alike, as well as government authorities, both civil and military personnel.

7. In its attempt to control the situation and ensure security to the people, the government declared 3 special laws in the affected area namely (1) the Martial Law 1914, (2) the Emergency Decree 2005, and (3) the Internal Security Act 2008. However, the enforcement of such laws over a long period of time has given rise to human rights violations as these laws have vested authorities with exceptional power without safeguard against possible abuse. Under these laws, authorities have the power to detain a person for interrogation for a longer period than provided for in the Criminal Procedure Code without disclosing the place of detention, detainees are denied access to family members, the detention and treatment of juvenile persons below the age of 18 years are not in accordance with international standards, and officials are immune from civil and criminal liabilities for human rights abuses committed under these laws.⁹

8. The NHRCT has received many complaints regarding unfair treatment relating to arrests and detention, excessive use of force, torture and enforced disappearances. In 2010 alone, the NHRCT received 15 complaints of torture. Other important cases of human rights violation in the Deep South which have yet to be concluded are the disappearance of Somchai Neelapaijit, a Muslim lawyer, the violent incidents at Krue Se Mosque and Tak Bai District in 2004, and the torture to death of Yapha Kaseng in 2008. The judicial process is usually slow and perpetrators are rarely brought to justice.¹⁰

9. The NHRCT is of the view that the enforcement of special laws is a contributing factor to violence in the South. It thus supports the lifting of the Emergency Decree in Songkhla Province and in Mae Lan District of Pattani Province. It hopes that the government would lift the state of emergency in other areas and apply special laws strictly only when circumstances really warrant.

Political Demonstrations

10. The right of peaceful assembly without arms is guaranteed in Section 63 of the 2007 Constitution. The restriction of such right can only be imposed by virtue of law specifically enacted for the purpose of securing public convenience in the use of public places. In general, Thai people can exercise their right to peaceful assembly for various purposes, including for protesting against government policy on specific issues and demanding the government to address their grievances.¹¹

11. During 2009-2010, the United Front for Democracy against Dictatorship (UDD) staged political demonstrations with reports of alleged violence and violations of laws including blockade of various places, obstruction of roads, armed raid into a hospital, incitement of hatred, and threat to use of violence. The government declared the state of emergency in Bangkok and several other provinces¹² where UDD members took to the streets to give authorities more power to maintain public order. The government announced that they would use step-by-step measures to control and disperse the crowd. However, clashes between the protestors and security forces were inevitable. The situation was further complicated as an unidentified armed group took advantage of the turmoil. There were extrajudicial killings and use of heavy arms and arson attacks resulting in a large number of casualties and severe damage to property. The incident is still under investigation and relating details and causes of human rights violations have yet to be established by relevant bodies and mechanism.

12. The declaration of state of emergency imposed restriction on certain rights. Although this is permissible in international practice, the NHRCT is concerned that protection of certain rights relating to due process of law may not be in accordance with international standards, such as the tracking of political suspects who were later arrested and charged with serious criminal offences. The NHRCT has coordinated with all parties concerned, including relevant government agencies, to ensure that detainees have access to due process of law, especially the right to provisional release before and during trial. However, some detainees are still denied their basic rights and are not treated in due process of law.

13. The enforcement of special laws also imposes restriction on the freedom of expression. Law enforcement officers use the Criminal Code and Computer Crimes Act of 2007 to curb information in printed media. They also closed down many websites and local community radio stations for security

reasons.¹³ Several arrests were made and cases filed with the court but details were not disclosed to the public. The government's attempt to control information based on broad and vague security reason, the exercise of discretionary power by competent authorities under the above-mentioned laws without clear and specific guidelines, and the charge of serious offences disproportionate with the gravity of the crime committed, especially in the case of lese-majeste, have created an atmosphere not conducive to free expression of opinions. The media people thus revert to self-censorship. In addition, such laws are used against people with different political opinion.

14. The initiative to enact a law to lay down rules for a public gathering in accordance with the purpose of the Constitution can serve as a tool to create a balance between the need to guarantee the right to peaceful assembly and freedom of expression and association with others, and the duty of state to maintain public order and protect the rights of others. But contrary to the purpose of the Constitution, the current draft law on public assembly proposed by the government seeks to control the gathering rather than guarantee and protect the right to peaceful assembly without arms.

The Community Rights and the Equitable and Sustainable Management of Natural Resources, Environment and Land

15. The 2007 Constitution guarantees the right of a community to participate with the state in the management, preservation, and exploitation of natural resources and the environment to ensure their sustainable livelihood. The Community Rights are especially important for Thai people living in the rural area because the government's exploitation of natural resources has usually created negative impacts on the way of life of the local people. There are conflicts arising from the government's declaration of natural reserves overlapping the forest areas which have long been utilized and managed by local communities. A similar problem is caused by the issuance of land utilization certificate to some government departments and individuals which fall in the areas that have been occupied by local people. The government's policy that puts too much emphasis on stimulating economic growth has also adversely affected the environment, way of life, health and well-being of the people and their community in the industrial zones and the areas where state mega projects are implemented.¹⁴

16. The Constitution fully guarantees the community rights and stipulates that state and the private sector have to undertake a process whereby the community rights, such as the rights to have access to information and to participate in the environment and health impact assessment of a project that might affect the community, can be protected. The government, however, has not taken any action to give effect to these rights. This is the case with the Mab Ta Pud community which has been severely affected by industrial pollution for a protracted period. Without a proper mechanism to protect the community rights, the problem has deteriorated and a Committee to Solve the Problem Relating to the Implementation of Section 67, Paragraph 2, of the Constitution, composed of representatives of relevant government departments, the private sector, the affected community members and the academia, has to be set up on an ad hoc basis to allow all stakeholders to work together to find appropriate solutions to the problem. The government, however, did not honour the Committee's recommendations and the Mab Ta Pud people had to file a complaint with the NHRCT. Community leaders who rally against large industrial projects often face a life threatening situation, some of them having been killed while the culprits have not been prosecuted.

Human Trafficking

17. The different level of economic development between Thailand and her neighbours has caused many women, children and workers to migrate to Thailand through the common borders to seek better economic opportunities. Many of them have fallen victims to human trafficking. Women and children from poor families and of ethnic origins in Thailand are also lured into sex trade in the country or abroad. In 2008, the Prevention and Suppression of Human Trafficking Act was passed to serve as an important tool to combat human trafficking. There are reports of 137 cases filed under this law during 2008-2009.¹⁵ The government has adopted several measures to tackle the problem including the implementation of an action plan and the

setting up of a coordinating mechanism at national level and cooperation with neighbouring countries. But problem persists with reports of corruption among officials and inability to prosecute traffickers.

18. Human trafficking for the purpose of labour exploitation involves illegal migrant workers from Myanmar, Cambodia and Laos which are estimated about 2 million.¹⁶ Many of these workers are taken advantage of by recruiters both in the country of origin and destination country and are at risk of having their rights violated both by employers and authorities. They are usually mistreated when arrested, and are often denied their basic labour right to fair wage, freedom to travel, right to decent living and safe working condition and access to health care. The government has adopted a more open door policy to manage rather than reject migrant workers through a registration process and allow them to work temporarily in the country.¹⁷ It has also introduced, in cooperation with neighbouring countries, a nationality verification process with a view to bringing migrant workers into the proper employment system which will entitle them to protection under the law. Nevertheless, not all migrant workers have come forward to register and have their nationality verified. This group of workers, together with family members of migrant workers, registered and unregistered alike, has no legal protection. There were cases of pregnant migrant women being deported. The government should ensure that their basic human rights are respected.

Problem on Status and Rights of Stateless Persons, Refugees, Former Displaced Thai Citizens, and Asylum Seekers

19. Thailand has a population who are either stateless or do not have legal status and are deprived of basic human rights. The government's policy to deal with this issue is encapsulated in the Strategy to Address Problems Relating to the Status and Rights of Persons adopted in 2005. Although relevant laws have been amended, there is not much progress in the naturalization of ethnic groups in the North and former Indochinese refugees in the Northeast. In addition, former displaced Thai citizens who have not reacquired their Thai nationality are unable to enjoy such rights as the right to freedom to travel freely, right to work, right to education and right to health care.

20. The sporadic fightings between Myanmar government forces and ethnic groups near Thai-Myanmar borders have caused people fleeing into Thailand. The Thai government has provided them with temporary refuge and humanitarian assistance before sending them back home after the situation calms down. However, there are several reports of displaced villagers being returned to Myanmar despite unsafe conditions at home. The problem of asylum seekers of ethnic origins has become complicated as some of them are also economic migrants. In that case, they are usually treated as aliens illegally entering the country and are subject to deportation. The Rohingyas fall into this category. Recently, a number of Rohingyas have illegally entered Thai waters in small boats. Some of them were pushed back into the open seas although their lives were at risk.

Part II Recommendations

21. The government should reform the justice system to restore people's confidence, including by pressing for a body to review laws and the administration of justice system ranging from the police, the prosecutors, the court and the corrections department, in accordance with the objectives of the Constitution. The government should also promote Restorative Justice, and further develop the community justice system to all over the country.

22. The government should revoke special laws in the southern border provinces. Should it deem such laws are necessary, clear explanation must be given to the public. There should be guidelines for law enforcement officers that are in accordance with international standards (such as procedures regarding search, arrest, detention, questioning and investigation). Officers should be trained to respect human rights and a safeguard mechanism should be put in place to check against possible abuse.¹⁸

23. The government must ensure indiscriminate law enforcement. State officials who commit an offence must be prosecuted to prevent culture of impunity. Remedies should be provided to victims timely and adequately without discrimination. The government should expedite the amendment of relevant laws to

fully comply with its obligations under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It should become party to the Convention for the Protection of All Persons from Enforced Disappearances.

24. The government must provide information and render full cooperation to those bodies responsible for investigating and establishing facts about the incidents relating to past political demonstrations.

25. The government must review the draft law on public assembly which runs counter to the objectives of the Constitution. The draft law should be amended to promote and protect the exercise of the rights to peaceful assembly without arms as guaranteed in Section 63 of the Constitution. The use of special laws in time of public demonstration must be applied strictly and only when circumstances warrant. There must be clear guidelines governing the use of power under such special laws for law enforcement officers.¹⁹

26. The government must adhere strictly to the provisions of the Constitution in guaranteeing the freedom of expression of the media and the people. It must not act or allow others to act, directly or indirectly, in ways that impede access to information, or interfere with or violate the right to freedom of expression of the media and the people. The government must expeditiously carry out media reform in accordance with the objectives of the Constitution giving utmost importance to the interest of the general public.

27. The government must undertake necessary actions to give effect to the community rights set out in Sections 66 and 67 of the Constitution.²⁰ It must speedily solve the problems arising from violations of such rights and provide remedies to the affected people. The government should also review its policy relating to land utilization and the expansion of natural reserve areas with meaningful participation of the people according to Section 87 of the Constitution.²¹

28. In formulating a development policy, the government must try to achieve a balance between a local economy based on local culture, access to natural resources as well as environment and large-scaled industrial investment and economy. The government should review implementation of mega projects that adversely affect the environment, the way of life and health of the local people.

29. The government should ensure that the Prevention and Suppression of Human Trafficking Law is enforced effectively, especially the prosecution of traffickers and appropriate protection of women and children who are victims of trafficking. The government should ensure the protection of rights of registered migrant workers according to relevant laws and expedite the process of ratifying the ILO Conventions no. 87 (Freedom of Association and Protection of the Right to Organize) and no. 98 (Right to Organize and Collective Bargaining).²² It should treat those migrant workers who have not yet acquired appropriate legal status with respect of human dignity and taking into account the basic principles of human rights.

30. The government should accelerate the implementation of its 2005 Strategy to Address Problems Relating to the Status and Rights of Persons so that stateless persons are accorded Thai nationality or other appropriate legal status. It should also reinstitute Thai nationality to former displaced Thai citizens and ensure that their basic rights are accorded.

31. The NHRCT commends the government for long providing temporary shelter and humanitarian assistance to Myanmar asylum seekers. In sending these asylum seekers back homes, however, the government must comply with the international human rights principle of “non refoulement” by not forcing their return if there are reasonable grounds to believe that their lives would be in danger.

32. The NHRCT fully supports the national reform process initiated by the civil society to address social inequalities and bring about a just society for all. The government must seriously support this process in a sustained manner, giving priority to the issues of land reform, tax system reform, justice system reform, educational system reform, welfare society system, the media reform, and the decentralization of power to local communities. The national reform process would bring about more respect of human rights and human dignity in Thai society at large.

Notes

¹ This report is submitted to the UN Human Rights Council Working Group for its review of human rights situation in Thailand under the Universal Periodic Review process to be held in October 2011. The National Human Rights Commission of Thailand (NHRCT) made available the draft report on its website at www.nhrc.or.th to receive views and comments from the general public. The NHRCT also organized a hearing forum attended by various stakeholders, especially civil society groups, on 1 March 2011. The summary of the hearing forum appears in the annex to this report.

² Section 67, paragraph 2, of the Constitution stipulates that any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organization ... have been obtained prior to the operation of such project or activity

³ The National Human Rights Commission of Thailand (NHRCT) is an independent institution created by the Constitution of the Kingdom of Thailand of 1997. Its main functions were to monitor human rights situation in the country, receive complaints on human rights violations, promote human rights awareness and education, and make recommendations to the parliament and government on ways to ensure better promotion and protection of human rights. The new Constitution adopted in 2007 gives the NHRCT additional function of filing cases with the Constitutional Court, the Administrative Court and the Court of Justice to redress the

⁴ Thailand is party to 7 out of 9 International core human rights instruments. They are: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention on the Rights of the Child and its 2 Optional Protocols; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of Persons with Disabilities.

⁵ This refers to the concluding observations of the 3 treaty bodies to which Thailand submitted its periodic reports as contained in following documents: CCPR/CO/84/THA dated 8 July 2005, CEDAW/C/THA/CO/5 date 3 February 2006, and CRC/C/THA/CO/2 dated 17 March 2006.

⁶ Such as the Law on the Protection of Children, 2003, the Law on the Protection of Victims of Violence in the Family, 2007, and the Law on the Prevention and Suppression of Human Trafficking, 2008.

⁷ Extract from the deliberations of Prof. Amara Pongsapich, NHRCT Chairperson, at a Panel Discussion on “Taking Stock and Looking Ahead: Human Rights in Southern Border Provinces Amidst Violence,” jointly organized by the Senate Committee on Human Rights, Rights, Freedoms and Consumer Protection and the NHRCT on 1 February 2011 at Parliament Building 2. The deliberations referred to the report of the Independent National Reconciliation Commission of June 2006.

⁸ Special report on Dissecting Southern Violence Budget: 1.45 Trillion Baht in 8 Years. 17 January 2011. From: <http://www.bankkokbiznews.com/home/detail/politics/analysis/201193/372604/ฉบับไฟใต้ละลาย-1.45-แสนล้าน.html>

⁹ The National Human Rights Commission of Thailand. Report on the Human Rights Situation in Thailand, 2004-2007. (Bangkok: Miracle Creation Interprint, Ltd., 2009), pages 51-55. On the Emergency Decree, the UN Human Rights Committee observed in its concluding recommendations after considering the report of Thailand on the implementation of the International Covenant on Civil and Political Rights (Document CCPR/CO/84/THA dated 8 July 2005) that the Decree did not explicitly specify, or place sufficient limits on, the derogations from the rights protected by the Covenant that may be made in emergencies and did not guarantee full implementation of article 4 of the Covenant. It was especially concerned that the Decree provided for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity. Detention without external safeguards beyond 48 hours should be prohibited.

¹⁰ In its concluding recommendations (Document CCPR/CO/84/THA dated 8 July 2005), the Un Human Rights Committee also made an observation regarding instances of extrajudicial killings and ill-treatment by the police and members of the armed forces illustrated by such incidents at Tak Bai, Krue Se Mosque and large number of killings during the “war on drugs” that investigations had generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity.

¹¹ The National Human Rights Commission of Thailand. Report on the Human Rights Situation in Thailand, 2004-2007. (Bangkok: Miracle Creation Interprint, Ltd., 2009), pages 136.

¹² The government declared the state of emergencies relating to political demonstrations in 24 provinces as follows: Bangkok, Nonthaburi, Pathumthani, Samut Prakarn, Nakorn Pathom, Ayutthaya, Chonburi, Nakorn Sawan, Chiangmai, Chiangrai, Lampang, Nan, Khon Kaen, Udon Thani, Chaiyaphum, Nakorn Ratchasima, Srisaket, Ubon Ratchathani, Mahasarakham, Nongbualamphu, Roi-et, Sakonnakorn, Kalasin, and Mukdahan.

¹³ News report on the press conference by the Campaign Committee for Media Reform, Community Radio Federation of Thailand and Net Citizens Network on 23 June 2010.

¹⁴ For example, the construction of a deep sea port and embankments in Songkhla province has blocked the flows of water between Songkhla Lake and the Gulf of Thailand, affecting water circulation and leading to the depletion of fish in the Lake. Many local people could no longer earn their living from fisheries. The water in the Lake has become polluted. The Lake becomes shallower, resulting in more floods in the area. (2008 NHRCT Annual Report, pages 36-37.)

¹⁵ Draft sixth and seventh Thailand periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. According to the Trafficking in Persons Report 2010 by the US State Department, the Royal Thai Police reported investigating 134 trafficking cases from June 2008 to November 2009. The Office of the Attorney General reported that prosecutors initiated 17 trafficking-related prosecutions in 2009 and eight in the first two months of 2010.

¹⁶ Yongyuth Chalamwong and Raphaella Prugsamat. "The Economic Role of Labour Migration in Thailand: Recent Trends and Implications for Development" in Thailand Development Research Institute Quarterly Review, Vol.24, No.3, September 2009.

¹⁷ Vitit Muntarbhorn. The Mekong Challenge "Employment and Protection of Migrant Workers in Thailand: National Laws/Practices versus International Labour Standards?" (Bangkok, ILO Office, 2005).

¹⁸ Draft NHRCT Report on consideration of complaints on violations of rights relating to the judicial system: Cases of alleged torture and other inhuman treatment and punishment in the Southern border provinces.

¹⁹ Paper on views and preliminary proposals of NHRCT on the Draft Law on Public Gathering B.E.... submitted by the government to Parliament.

²⁰ Sections 66 and 67 of the Constitution stipulates that a community... shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion, and that the right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

²¹ Section 87 of the Constitution stipulates that the State shall act in compliance with the public participation policy as follows:

- (1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;
- (2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;
- (3) encouraging and supporting public participation in the examination of the exercise of State power at all levels in the form of profession or occupation organisation or other forms;
- (4) strengthening the politics power of the public, and preparing the laws establishing civil politics development fund for facilitating the communities to organise public activities and for supporting networks of the groups of people to express opinion and requirements of the communities in the localities; ...

²² Draft NHRCT Annual Report, 2009. Chapter 2, section 2, pages 24-26. Also, the paper on Migrant Workers 2010 ๓๐๓ South East Asia National Human Rights Institutions Forum (SEANF), pages 45-48.
