

Report on domestic human rights situation and the UPR

Concerning human rights and restriction of access to justice process in Thailand, the case of Human Rights Defenders¹ and human rights abuse and human rights violation, the report by civil society

Introduction

1. This report is written based on the results from consultations organized by the Human Rights Lawyers Association (HRLA), a civil society organization². Until now, HRLA has been providing legal assistance to people who have been subjected to human rights violation to ensure that they have access to justice process and fair trial process as well as protection according to the guarantees of fundamental rights and liberties and international human rights principle and appropriate redress. HRLA is taking this role to report on behalf of various organizations participating in the consultations.

2. It is intent of this report to shed light on human rights abuse and human rights violation faced by the Human Rights Defenders (HRDs). Recommendations are made to address the problems systematically including factors that contribute to the impediment and negligence of access to justice process among the HRDs who have been subjected to human rights abuse and human rights violation in Thailand. Based on cases of legal assistance provided by HRLA, it looks quite concerning that the human rights abuse and human rights violation against HRDs will become more exacerbated. The human rights abuse and human rights violation against HRDs in Thailand include those taking place as a result of the enforcement of law by the state, that there is no legal provision to criminalize the act and to provide redress and as a result of the existence of the culture of impunity. The three major factors have made HRDs continue to face the risk of human rights abuse and human rights violation and have restricted access to fair justice process making the protection and redress impossible.

¹ The Human Rights Defenders are individuals or groups of individuals or social units working to promote and protect fundamental and universally recognized human rights and liberties. It does not include those individuals or groups committing or harboring violence. The definition of Human Right Defenders is reflected in the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

² Founded in 2008 and registered as a legal entity on 16 January 2013, it aims to strengthen community of human rights lawyers, particularly the new generation of rights lawyers in order that they can become instrumental in the promotion and protection of human rights and access to justice and to create legal precedence in Thailand.

The promotion human rights and protection against human rights violation in Thailand

3. The promotion and protection of rights and liberties of people are enshrined in Section 4³ of the 2014 Interim Constitution of the Kingdom of Thailand. In light of the collaboration of Thailand on human rights, it is found that Thailand is a state party to various human rights treaties which oblige it to ensure respect, promotion, protection and guaranteeing fundamental rights and liberties including among others the Universal Declaration of Human Rights (UDHR), the international Covenant on Civil and Political Rights (ICCPR), to which Thailand as a state party has to enforce to ensure fundamental rights and liberties, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocols, the Convention on the Rights of the Child (CRC) and its two Optional Protocols on involvement of children in armed conflict and on sale of children, child prostitution and child pornography, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of Persons with Disabilities (CRPD). Two Conventions which have not been signed by Thailand including the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Rights of All Migrant Workers and Members of Their Families (ICRMW). Also, specific measures for the protection HRDs based on fundamental human rights principle and international standards have yet to be developed.

The human rights abuse and human rights violation against HRDs in Thailand

4. In the context of human rights abuse and human rights violation against HRDs, the report shall describe cases of HRDs who have been subjected to human rights abuse and human rights violation including those who have been receiving legal assistance from HRLA as follows;

The human rights abuse and human rights violation as a result of the enforcement of law by the state:

5. **The NLA case** regarding the right to freedom of expression and assembly, the Case no. 04383/2553: On 30 December 2010, ten representatives from civil society sector were charged for inciting unrest and disaffection amongst the people in a manner likely to cause disturbance in the country and to commit encroachment by using violence, during their demonstration to prevent the National Legislative Assembly from rushing to pass so many laws. The ten members of Thai civil society organizations who had been observing the law promulgation deemed that the NLA was not a righteous body and should not rush to

³ Section 4 states that "Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution."

pass so many laws, in particular the laws which can infringe on the rights and liberties of the people. Despite their call, the NLA pressed ahead with its legislative process.

6. After the Appeal Court issued the Judgment that the act of the ten defendants was the exercise of their rights to oppose the law enactment by the National Legislative Assembly as accorded by the Constitution and thus was not considered an offence as charged by the prosecutor and the case was dismissed. On 17th February 2015, the prosecutor filed petition against the Judgment of the Appeal Court. On 27th May 2015, the ten defendants filed a reply to petition. The Court admitted the reply to petition and provided a copy to the prosecutor. Even though the right to freedom of expression and assembly is clearly enshrined in the ICCPR to which Thailand is state party and is obliged to act in its compliance, but the exercise of such fundamental rights and liberties of the HRDs in the case were not protected and thus cases were filed against them.

7. **The case of Phuketwan news agency:** The case no.2161/2557, concerning the right to freedom of expression and dissemination of information by media outlets and HRLA has been approached by them for legal help. The local news outlet features reports in English on issues concerning trafficking in persons to combat the trafficking in persons and to rescue victims of the trafficking via its website. Based in Phuket Province, its editor is Mr. Alan Morison, former reporter of the *Melbourne Age*, Australia and freelance reporter for international newswires including CNN, *The Sydney Morning Herald* and *The South China Morning Post* and reporter Ms. Chutima Sidasathian.

8. On 17 July 2013, Phuketwan published an article which reproduced part of the news report by Reuters concerning cases of trafficking in persons in Phang-nga province. Based on interviews of the Rohingya survivors of trafficking in persons and interviews of those concerned with trafficking in persons from Myanmar until their reaching to Thailand via boats, the article is written to the effect that naval forces in Thailand have been found to stay complacent or even aid and abet the trafficking in persons process and the smuggling of the Rohingya migrants from Myanmar to destination country. It detailed how each of the Rohingya was forced to pay up to 2,000 baht to the human traffickers. After the publishing of the article, a libel case was brought against the two reporters and Phuketwan by the Royal Thai Navy. Capt. Panlop Komlotok was authorized to file a case against them on libel offence and offence against Article 14(1) of the Computer Crime Act on 16 December 2013 at the Wichit Police Station. CCA was invoked in the case in order to increase the possible penalty rate additional to the criminal libel.

9. On 1 September 2015 at 09.00, the Provincial Court of Phuket dismissed the case filed by the Royal Thai Navy against the Phuketwan news outlet for criminal defamation and for violating the 2007 Computer Crime Act's Article 14 for reproducing a paragraph from a report by Reuters which alleges that Thai armed forces were benefiting from trafficking in persons against the sea migrants.

The human rights abuse and human rights violation as no legal provisions are specifically provided to protect and provide redress:

10. **The enforced disappearance of Mr. Pholachi Rakchongcharoen, aka "Billy":** Since 17 April 2014, a defender of the rights of ethnic community and the right to land of Ban Pong Luk-Bang Kloy, has been made disappeared. He was on his way from Ban Pong Luk-Bang Kloy where he collected and prepared information to use as evidence to file a case against officials of the Kaengkrachan National Park who had destroyed and burned houses and property of the Karen villagers living in the Kaengkrachan National Park since 2010. He was last seen on 17 April 2010 around 17.00 while being held in custody by officials of the Kaengkrachan National Park who had conducted the search and found Mr. Billy had in possession illegally bee hives and honey. The enforced disappearance against him happened then, even though the state officials who conducted the arrest against him and deprived him of liberty claimed they have already let him go. Nevertheless, there was no evidence pertaining to the records of his arrest or release. While he was made disappeared, he was preparing information in litigation and it is believed that he had evidence concerning the litigation and his complaints, and it could have something to do with his enforced disappearance.

11. On 22 April 2014, HRLA started to provide legal assistance to the family of Mr. Billy by helping them to file a case with the Provincial Court of Petchaburi, as the Black Case no. special 1/2557 asking for a hearing to review the custody of Mr. Billy and to release him from any unlawful detention invoking Article 90 of the Criminal Procedure Code and Section 32 of the 2007 Constitution of the Kingdom of Thailand. It is imperative that the state has to come up with effective measures to ensure investigation in an enforced disappearance case and to prevent it from occurring again. Thailand has signed the International Convention for the Protection of All Persons from Enforced Disappearance and as a state party, it should consider using necessary measures to prevent enforced disappearance and bring to justice the perpetrators.

The perpetuation of the culture of impunity

12. **The murder of a member of the Southern Peasant Federation Cooperative, the case no. 1273/2558, Mr. Chai Boonthonglek,** core leader of the KlongSaiPattana Community, who was shot dead on 11 February 2015 and the onslaught of violence faced by members of the community. The deceased was the fourth death of core members of the community and no one has been brought to justice. It is believed by members of the community that such violence has been caused by land dispute in KlongSaiPattana Community, whose members have occupied and set up their community to demand land reform. The land had been occupied illegally by Jew Kang Jui Co. Ltd. HRLA has accepted to help the case as a human rights case since 1 May 2015. Our team of lawyers went for fact-finding in the area during 1-2 June 2015 and asked for information from inquiry official and public prosecutor. It was found that many obstacles are impeding access to justice process and they might make it difficult to bring the perpetrators to justice.

Obstacles and constraints against access to justice process, the case of HRDs

Obstacles and constraints against access to justice process among HRDs in Thailand can be described as follows;

13. The legal provision and its enforcement is not conducive to access to justice process: Based on the human rights abuse and human rights violation faced by HRDs in the past six years, it has been found that a number of laws have been promulgated to restrict rights and liberties of the people and their enforcement has made it a challenge for access to justice process, particularly among the HRDs. According to the existing cases presented herewith, that legal provisions exist to exempt the officials from liability has made access to justice process impossible or has failed to provide a fair access to justice. For example, in the enforced disappearance of Mr. Billy after his being held in custody, in fact, the search and apprehension of a person has to be carried out by competent officials and the person should then be released after being informed of the charges against themselves. The procedure has to be carried out transparently. But it was not the case in this case. There is also impediment to access to the Justice Fund. For example, when the Phuketwan reporters had to face libel suit filed by the Royal Thai Navy, an attempt was made to request for help from the Justice Fund (according to regulations of the Ministry of Justice), but the Justice Fund Committee has made their decision as if they were the Court. The Fund Committee in its memo stipulated that "The request for help from the Justice Fund is denied since the applicants who administrate the website and work as reporters help to spread false information to public,,," the accusation was made even though the case was still pending in the Court. Therefore, the request for help from the Justice Fund might cause some damage. Laws concerning witness protection and redress of victims do not provide for prompt witness protection and redress for the victims. Delay in redress or disproportionate redress can also impede access to justice process.

14. A lack of specific legislations to protect human rights can become an obstacle against access to justice process. For example, in Thailand, the act of enforced disappearance is not criminalized by any specific law. As a result, it makes it difficult to launch any litigation, i.e., the enforced disappearance of Mr. Billy. No legal action can be undertaken to accelerate the process to investigate information and it poses as a challenge to access to justice process of the victims. In addition, with a lack of protection list of individuals or groups of individuals vulnerable to the human right abuse and human right violation has made it possible for HRDs to face the violations.

15. The perpetuation of the culture of impunity: In cases concerning human rights abuse and human rights violation against HRDs, no one has been brought to justice including the murder of Mr. Chai, core member of the Southern Peasant Federation Cooperative in KlongSaiPattana Community. Three core members had been killed as they had come out to campaign on the land dispute, and yet no one has been brought to justice. The investigation reports of those cases contain many flaws and it showed how the concerned officials have not put their best effort into the investigation. They simply rush to bring the case to

the Court, but given the meager evidence they had, it would make it difficult for the real culprits to be convicted.

Recommendations

16. As this report is written by HRLA, we urge that the Royal Thai Government promptly review and address risks faced by the HRDs and endeavor minimize obstacles against access to justice process of the HRDs making free from human right abuse and human right violation as follows;

17. Review and revise laws that exempt liability of concerned officials, particularly the exemption of liability as a result of the exercise of power which has infringed on the rights and liberties of people and the exercise of power which has given rise to human rights abuse and human rights violation against HRDs.

18. Review and revise certain laws which put restriction on the rights and liberties of the people and which have been used as a tool to intimidate HRDs who have express their opinions or organize peaceful assembly, i.e., the review of offences as to the Computer Crime Act and the Public Assembly Act, etc.

19. Review the management of the fund to provide assistance to people facing lawsuits, or review the criteria for people who want to apply for money to deposit as bail.

20. Advocate the protection and minimize risks of HRDs making them free from all kinds of intimidation and human rights violation including keeping an updated list of individuals vulnerable to risks and proving them with proper and timely help to address the human right violation.

21. Advocate laws to combat enforced disappearance and the act of torture, cruel and inhuman treatment since Thailand has no specific law to criminalize such an act. In addition, there is no law providing to provide for comprehensive redress and conviction. The problem exists since the Act for the Granting of Compensation to Aggrieved Parties and the Accused in Criminal Cases B.E. 2544 (2001) does not cover victim of enforced disappearance since there is no specific law to criminalize the act. Therefore, effective "redress" and "compensation" cannot be made possible in Thailand In addition, in the Thai law code, there is no notion of restitution, compensation, rehabilitation for the affected people.

22. Advocate the exploring of measures to minimize the culture of impunity, i.e. it should be possible to hold the justice process to account to prevent corruption and not to allow the culture of impunity to exist.