



Human Rights Situation in Thailand
The National Human Rights Commission of Thailand submitted to the HRC
under the Third Cycle of the UPR

Part I: Implementation of the recommendations from the 2nd cycle

Recommendations accepted by Thailand

1. Thailand has implemented recommendations from the 2nd cycle and voluntary pledges resulting in many progresses which can be summarized as follows:

(1) **Ratification of treaties** The government ratified the Marrakesh Treaty, the 2014 ILO Protocol to the 1930 Forced Labour Convention, the ILO Convention No.188, including withdrawal of the reservation to article 4 of the CERD.

(2) **Strengthening the legal frameworks** Thailand has put into force the Constitution of the Kingdom of Thailand, B.E. 2560 (2017). The Constitution recognizes human dignity, rights, liberties and equality of persons and prohibits all forms of discrimination in accordance with the international human rights principles¹. Domestic laws and regulations have been amended to strengthen the protection of rights and liberties to be more inclusive and in compliance with the international standards, such as (1) the Criminal Procedure Code, Sections 161/1 and 165/2 to prevent the Strategic Lawsuit Against Public Participation (2) the 2017 Anti-Human Trafficking Act, the 2016 Human Trafficking Procedure Act, and the 2019 Decree Amending the Anti-Human Trafficking Act to increase effectiveness in the prevention and suppression of human trafficking and (3) the 2017 Corrections Act, to reform the corrections system to comply with the UN Minimum Standard Rules².

(3) **Promotion of Human Rights Education (HRE)** The NHRCT made recommendations on HRE, by introducing the Curricula on HRE for Diverse Target Groups³ and the Handbook on HRE for Basic Education⁴, which were developed with collaboration of the Ministry of Education to promote learning of human rights. Later, the government responded that it would implement such recommendations in further promoting human rights in formal education and training.

Voluntary pledges

2. In promoting human rights principles in business sector, the NHRCT has supported the government to cooperate with private sector in signing the Declaration on Cooperation to Implement the UN Guiding Principles on Business and Human Rights since 31 May 2017, leading to the adoption of the first National Action Plan on Business and Human Rights (2019 - 2022)⁵. This can be regarded that Thailand is the first country in the region to put in place the Plan.

Recommendations accepted by Thailand but without due progress

3. The government accepted the recommendations regarding amendment of domestic laws to be in line with the CAT, which is in the process of considering the draft Act on Prevention and Suppression of Torture and Enforced Disappearance. This has caused an impact on ratification of the CED. The NHRCT views that the draft Act has taken longer than seven years and lacks substantial elements of “torture” in according to the CAT, including the duty of States party to provide procedures concerning the acts of ill treatment⁶ as stipulated in Article 16. The government should intensify the consideration process and ensure that the draft Act is in compliant with the obligations of State party⁷.

4. As for the OPCAT ratification, the government has undertaken studies about possibility to ratify the OPCAT but no further progress has been made in this matter. The NHRCT still receives complaints on the rights of detainees such as police detention rooms and immigration

detention centres. Therefore, the government should speed up its consideration to ratify the OPCAT.

Recommendations not accepted by Thailand but has progress in implementation

5. The NHRCT appreciates the fact that the government is considering to withdraw its reservation to Article 22 of the CRC, and views that the government is ready to do so since improvements have been made to laws and policies on the protection for children or persons in refugee status⁸. The government should withdraw such reservation, which should yield positive results in the protection of the rights of child refugees in compliance with the CRC.

Strengthening the national human rights institution

6. Thailand has solved concerns of the Sub-Committee on Accreditation (SCA) regarding the process of selection and appointment of the NHRCT, which may lack broad participation and immunity for the NHRCT in carrying out its duties. Such concerns have been solved with the current Constitution and the 2017 Organic Act on the National Human Rights Commission. However, the SCA has concerns regarding the NHRCT mandates under Section 247(4) of the Constitution and Section 26(4) of the Organic Act. The provisions state that the NHRCT has to clarify and report without delay the true facts in the case that incorrect or unfair report on the situations regarding human rights in Thailand. The SCA's concern is that such provisions may undermine the NHRCT's actual or perceived independence. The SCA views that the NHRCT should have clear mandate in mediation, which will help the NHRCT in providing assistance to the victims of human rights violations.

7. Recommendations

(1) Section 247(4) of the Constitution and Section 26(4) of the Organic Act should be removed since the law have already stipulated the mandate of the NHRCT to produce annual reports. This will address the concerns and prevent any misunderstanding about the NHRCT's independence.

(2) The law should prescribe the NHRCT with conciliation to assist the victims of human rights violations by ending the conflict and duly providing them with remedies⁹.

Part II: Human rights situation

The COVID-19 and its impacts

8. During the COVID-19 pandemic, the government declared a state of emergency to put in place the measures to control the spread of the disease. Some measures limit rights and freedoms of people in various circumstances. Generally, it is found that the measures had been undertaken as necessary, proportionate with the severity of the situation, and efficient in controlling the spread of the disease.

9. However, the new wave of pandemic found among migrant workers illegally crossing the borders and in illegal gambling establishments. This reflected the lack of strict law enforcement, which is partly due to the corruption. Corruption has severely affected people's rights and freedoms during the pandemic.

10. As for providing assistance and compensation for the people affected by the COVID-19 prevention and control measures, it is found that the government has put in place various measures, especially financial ones, to assist and compensate the affected people. However, the NHRCT views that there are certain affected groups who could not get access to the assistance, especially those using online platform, such as the poor, older persons and people with disabilities. Also, children have been deprived of their right to go to school, by having to stay at home and attend online classes instead. This affects children in rural areas, without needed equipment nor sufficient means. The unemployment problem including the lack of or lower income for people as a result of the declining economy will be a long-term problem which the

government has to tackle through good responsive measures, so that people can enjoy a good standard of living.

11. Recommendations

(1) The government should set measures that are more inclusive, considering limitations in getting access to the assistance packages for all, determining on proper channels to provide such assistance to all people and facilitating to access and enjoy their rights.

(2) In implementing measures to tackle economic problems in the long term, the government should provide assistance to the people with extreme difficulties to enable them to get back on their feet in becoming self-reliant.

(3) The government should enforce the laws in tackling the problems of illegal importation of migrant workers and gambling establishments. In any case where there are government officers involved, strict punishments must be imposed, and the government should embark on the elimination of corruption.

Political demonstrations

12. Since 2020, there have been continuous political demonstrations, started by students and young people, demanding reforms in many issues such as education, violence in schools and gender equality. At the first stage, the demonstrations occurred within educational institutions and later, they widely expanded to organize protests in public places. The three main demands are: the resignation of the Prime Minister, drafting a new constitution, and reform of the monarchy. Their third demand has caused deeply divided opinion among the public. There have been gatherings of people who strongly oppose the ideas of the protesters. Both sides have used social media platforms for their campaigns, defaming others and publicizing fake news on several occasions. There have been incidents where opposing groups assembled at nearby places and almost at the same time, resulting in confrontations, including verbal incitation as well as physical intimidation and assault against each other side. There have also been clashes between the protesters and police officers. Recently, it is reported that weapons were used against police officers, resulting in injuries on both sides but no death. A number of core leaders and protest goers were charged and arrested as offenders on various charges and occasions.

After the new wave of pandemic, there have been less frequent protests in public places, due to the disease and prohibition under the state of emergency, laying down measures for controlling the spread of the disease. The NHRCT has monitored the situation and submitted letters to relevant authorities¹⁰, expressing its concerns and providing recommendations to promote and protect human rights in the situation. It has also issued statements and news releases to raise awareness of all parties on the respect for human rights¹¹. The NHRCT is currently in the process of preparing its investigation report.

13. Impacts on the rights and freedoms in the political demonstrations

(1) **Exercise of the rights and freedoms in the public assembly and the state administration**
Overall, the protesters were able to exercise their rights and freedoms. The government did not obstruct the peaceful assembly and arranged officers to facilitate their demonstrations. The organizers were allowed to organize the protests, despite their failure to inform the authorities beforehand, according to the law¹², and even though regulations had been imposed during the pandemic under the 2005 Emergency Decree¹³. However, the NHRCT is concerned about the state administration of assembly, from its monitoring of demonstrations. In certain situation, measures were used by officers to disperse the protest deemed not proportionate to the situation¹⁴. Besides, in enforcing the relevant laws through arrest and detention of persons in political protests, it is imperative to consider the principle of legality¹⁵, especially in arresting persons who are children and youth. The public should be informed of the measures in maintaining law and order during any assembly.

At the same time, protesters should be aware not to excessively violate the rights of other people while enjoying their rights and freedoms, e.g. blocking of traffic during rush hours or organizing protests in central economic areas. It is found that speeches were frequently made to accuse public persons without concrete evidence, to devalue and defame other persons, as well as other treatment and use of words considered as hate speech which causes hatred that may lead to confrontation with the other side.

(2) **Use of social media** The fact that both the protesters demanding reforms and the other side with different views use online platforms extensively can be regarded that there exists an easily accessible space where people can exercise their right to freedom of expression quite freely. However, in using social media to publicize fake news, accuse, defame or insult other people without concrete evidence, or use of words which causes hatred can have impact on other people's rights and freedoms and may lead to confrontation with the other side.

The NHRCT is concerned about the law enforcement against online media users, e.g. the 2017 Computer Crimes Act and its amendment. The government should implement such measures with extreme caution, so not to over-enforce it to the extent of intruding into people's right to privacy, or limiting their rights to express their opinion freely or their liberty in getting access to information from any source broadly on the grounds of national security, law and order, and public moral. Besides, the government officers concerned must consider the principle of legality in enforcing the laws in a just manner without any discrimination, especially in arresting or detaining the persons accused of committing crimes including the public access to information. It is also important that the government has to ensure safety for journalists.

14. Recommendations

(1) The government should raise awareness of the people on the exercise of their rights to freedom of expression and peaceful assembly while respecting the rights of other people including refraining from the use of stigmatized, discriminatory and hate speeches.

(2) The government should present information to the public promptly to counter fake news rather than arresting persons, some of whom were charged with heavy punishment. The NHRCT views that in the world of online communication, imposing strict law enforcement measures may have limitations, in which its objective may not be met, and may cause chilling effects among the people in exercising their rights and freedoms.

(3) In general, the officers have been accepted for their tolerance in maintaining law and order during the protests. However, the use of strict measures to disperse the protests, even if by following the steps as stipulated by the law, can cause widespread consequences, especially impacts on demonstrations with a large number of people including children and women. Therefore, the imposition of harsh measures should be avoided as much as possible.

The right in the administration of justice: the case of justice fund

15. The government has given an opportunity to people with poverty and those facing injustice by providing them the financial source to help the victims in criminal cases under the 2001 Damages for Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act and its amendment related to reimbursements for trial expenditures, request for temporary release of a defendant, and assistance of victims affected by human rights violations. However, the NHRCT found that people still face difficulties in getting access to the fund which is partly due to the fund management. The Sub-Committee has used its discretion in judging whether the request can be admitted by strictly adhering to the criteria laid down under its 2016 Regulations. For example, the Sub-Committee will consider bail approval of the defendant for temporary release by presuming whether such person has committed a crime or assessing whether the person will escape. In considering to grant assistance from the fund, the Sub-Committee has to consider whether the crime is of the nature that undermines public order or

moral, or that the defendant must not be the person with ongoing dispute with the government. Also, the composition of the Sub-Committee is mainly composed of government representatives. The problems do not correspond with the principles and objectives of the fund with the aim to reduce inequality in the justice process and to guarantee people's right to defend themselves in according to the principle on presumption of innocence, not under the concept of providing state assistance or welfare.

16. Recommendation The government should amend the 2016 Regulations of the Justice Fund Committee which obstructs the people or defendants in criminal cases from fairly getting access to the fund in accordance with the fund principles.

Situation in the Southern Border Provinces

17. From 2016 till present, violent incidents in the southern border provinces have been on a decline¹⁶. The government has still enforced the security laws to solve the unrest in some areas. The NHRCT is of the view that the government has put efforts in lifting the enforcement of security laws in areas where the unrest situation has improved. Additionally, the measures to prevent the violation the rights of detained persons have been introduced including the CCTV installation, the physical examination by medical doctors and regular human rights training courses for officers. Nevertheless, the NHRCT has received complaints regarding alleged torture against the suspects on the charges related to national security and DNA samples collection without explanation. The compensation for victims mainly focuses on financial assistance. The NHRCT views that the government should consider other remedies to the victims of human rights violation, which include enabling them to return to their lives in normalcy, long-term assistance to family who lost bread feeder and psychological treatments.

18. Recommendation The government should enforce the security laws to solve the unrest problem as deemed necessary and within a limited time. Any measures must be cautiously introduced in case they may affect people's rights with respect of the rule of law and the principle of non-discrimination such as the collection of DNA samples. The government should organize regular trainings on human rights for officers at all levels. Apart from financial compensation, other remedial measures should be put in place by considering the General Comment No.3 of the Committee Against Torture.

Endnotes

¹ Sections 4 and 27 of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017).

² UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

³ There are three courses on human rights for diverse target groups, which are (1) Human Rights Education: basic education course by subject with target groups include the government sector, private sector, educational institutions, mass media, including vulnerable groups whose human rights are at risk of being violated. (2) Human Rights Education: specific course by subject for the personnel in justice process with target groups include judges, public prosecutors, military officers, police officers, corrections officers, lawyers, military cadets, police cadets and those persons operating in the justice process. (3) Human Rights Education for high-level executives with targets groups being top executives from all sectors, both government and private sectors.

⁴ Basic education is formal school education during childhood, which comprises lower and higher primary school, and lower and higher secondary school.

⁵ The Plan focuses on four major issues: (1) labours (2) community, land rights, environment and natural resources (3) human rights defenders and (4) trans-boundary investments and multinational enterprises.

⁶ Other cruel, inhuman or degrading treatment or punishment

⁷ Currently, the draft Act on Prevention and Suppression of Torture and Enforced Disappearance is under consideration of the House of Representatives.

⁸ Implemented laws, policies and measures are: (1) the Memorandum of Understanding on the Determination of Measures and Approaches on Alternative to Detention of Children in Immigration Detention Centres, signed on 21 January 2019, which include child refugees (2) the Civil Registration Act, B.E. 2534 (1991) and 2nd Amendment, No.2, B.E.2551 (2008) Section 20 that guarantees the issuance of birth certificates for all children born in the Kingdom, and (3) Regulations of the Office of the Prime Minister on Screening Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin, B.E. 2562 (2019), which is regarded as a law on the administration of refugees and asylum seekers in Thailand.

⁹ The Senate has already passed its resolution since 15 February 2021, approving the expansion of the NHRCT's mandate to include the mediation function for human rights disputes. Its report, observations and recommendations are being submitted to the Cabinet and the NHRCT for further proceedings.

¹⁰ Prime Minister, the President of the National Assembly and the Police Commissioner-General

¹¹ The NHRCT issued 12 statements and news releases.

¹² Section 10 of the 2015 Public Assembly Act

¹³ The 2005 Emergency Decree on Public Administration in Emergency Situations

¹⁴ Statement of the NHRCT on the dispersal of demonstration in the evening of 16 October 2020.

¹⁵ i.e. it must be enforced in an appropriate, justice and predictable manner in accordance with the due process of law.

¹⁶ Statistical data of violent incidents and numbers of victims/affected persons in the southern border provinces (as endorsed by the three parties) during 2004-2020 of the Southern Border Provinces Administrative Centre (data as of 31 December 2020)