A world map with a dark blue background. The landmasses are shown in a lighter blue. Thailand is highlighted in a bright red color. The map is centered on the Indian Ocean region.

# 2nd Cycle Universal Periodic Review Thailand UPR 2016

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**Information on the Status of the Human Rights Situation  
in Thailand**

**Thai CSOs Coalition for the UPR**

# 2nd Cycle Universal Periodic Review

## Thailand UPR 2016 - UPR Advocacy Factsheets

### Information on the Status of the Human Rights Situation in Thailand

One of the key mandates of the UN Human Rights Council is to undertake a **Universal Periodic Review** (UPR), on the fulfillment of each States human rights obligations and commitments. The UPR is therefore a unique human rights mechanism and an important political process for advancing the realization of human rights on the ground. Thailand 2<sup>nd</sup> UPR Cycle is scheduled to take place on 11 May 2016, when the Royal Thai Government's compliance with its human rights obligations will be reviewed by all UN Member States at the UN Human Rights Council.

The “*Information on the Status of the Human Rights Situation in Thailand*” consists of **23 UPR Advocacy Factsheets**, developed by local human rights organizations comprising the *Thai CSOs Coalition for the UPR*, three regional and international non-governmental organizations, and the National Human Rights Commission of Thailand, to guarantee local civil society organizations across sectors could raise their human rights concerns and provide a clear overview of Thailand's human rights situation to Recommending States prior to the country's 2<sup>nd</sup> UPR. These Factsheets have been prepared on the basis of the UPR NGO submissions submitted to the UN Human Rights Council in September 2015, including updated data as of March 2016, and contain all the necessary information diplomats would require for their review of Thailand's human rights records:

1. *Brief Assessment of the Implementation of 1st Cycle UPR Recommendations;*
2. *Remaining challenges, New human rights concerns, First hand cases;*
3. *Specific & Actionable Recommendations for an Effective Implementation.*

The UPR Advocacy Factsheets cover the most challenging human rights issues in Thailand, as identified by the Thai CSOs Coalition for the UPR: (1) *Armed Conflicts & the Human Rights Situation in the South of Thailand;* (2) *Land Rights in Thailand;* (3) *Natural Resources Management and Human Rights (Dam);* (4) *Mining, Petroleum, Environment and Human Rights;* (5) *The Adverse Impact of Bilateral and Regional Trade Agreements on Public Health;* (6) *Sexual and Reproductive Health and Rights;* (7) *Migrant Rights & Human Trafficking;* (8) *Asylum Seekers & Refugees;* (9) *The Rights of Indigenous Peoples;* (10) *The Rights of the Child;* (11) *Women's Rights;* (12) *Sexual Orientation, Gender Identity and Gender Expression (SOGIE) Rights;* (13) *The Rights of Persons with Disabilities;* (14) *The Rights of the Elderly;* (15) *Freedom of Opinion and Expression & Freedom of Assembly and Association;* (16) *The Right to Privacy;* (17) *Administration of Justice & Military Courts;* (18) *Torture;* (19) *Enforced Disappearances;* (20) *Death Penalty;* (21) *Institutional Reforms;* (22) *Human Rights Education and Training & International Legal Instruments;* and (23) *Thailand's Human Rights Situation by the NHRCT.*

To support local organizations inclusive and effective participation in Thailand 2nd UPR cycle, and to ensure local voices could be heard before the country's review, *UPR Info Asia and the Thai CSOs Coalition for the UPR* convened the “**Bangkok UPR Info's Pre-Session**”, consisting of an inclusive dialogue between local grassroots organizations and diplomats in Bangkok, on 16 March 2016, hosted by the Embassy of Switzerland in Thailand, and complementing UPR Info's UPR Pre-Session in Geneva (30 March 2016). The goals of the UPR Info's Pre-Sessions are to discuss the human rights situation in Thailand and to provide diplomats with the UPR Advocacy Factsheets comprehending reliable information and data from the ground, and evidence-based solutions through precise and concrete UPR recommendations.

**The UPR Advocacy Factsheets represent a useful advocacy tool to ensure the UPR Recommendations formulated by Recommending States to the Royal Thai Government reflect local voices and address vulnerable groups' needs. As of today, the UPR is the only Political Process which effectively brings solutions from local communities to the Government, with UN Member States acting as the main Bridge. Therefore, it is hoped that the UPR recommendations would form the basis of the next generation of human rights responses for the Royal Thai Government.**

The development of the UPR Advocacy Factsheets and the organization of the Bangkok UPR Info's Pre-Session took place thanks to the financial support of the EU Delegation to Thailand.

**For more information on the Thai CSOs Coalition for the UPR, please contact its Leader, Parinya Boonridrerthaikul:**  
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\* Created in 2008 following the inception of the UPR mechanism, UPR Info is the only organization in the world focusing specifically on the UPR process. The organization's extensive experience in this area is unique as it addresses all human rights issues and all countries without discrimination or politicization. UPR Info Asia Regional Office opened in May 2015 with the goal to support the effective and inclusive participation of local civil society in the UPR process by promoting a cooperative implementation of UPR recommendations among all UPR Stakeholders in order to advance the human rights situation on the ground. The UPR Info's Pre-Session offers UN Member States the opportunity to be informed on the status of implementation of recommendations made during the previous review, while providing a safe space for civil society to influence the process by lobbying several countries at once. More info at: [www.upr-info.org](http://www.upr-info.org)



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# ARMED CONFLICTS & THE HUMAN RIGHTS SITUATION IN THE SOUTH OF THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1st UPR in 2011, Thailand received 9 recommendations on the human rights situation in the Southern border provinces. Thailand accepted 7 of the 9 recommendations, related to increasing efforts to improving the situation in the South (made by the United Kingdom, Indonesia, South Africa, and Qatar), on the implementation of plans to strengthen the administration of justice (made by Malaysia), and the investigation of allegations of human rights violations (made by Australia and Canada). However, these recommendations have not been adequately implemented.

Thailand also received 9 recommendations, on the signing and/or ratifying of international instruments, which were not fully accepted. On 9 January 2012, the government signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED), however no progress has been made towards its ratification.

Thailand received and accepted general recommendations pertaining to strengthening the judicial system (made by Oman, Lebanon, and Qatar), the investigation of, and prosecution for human rights violations (made by Austria), addressing impunity (made by Sweden and Slovenia), and criminalizing torture (made by Austria and Canada). Civil Society has continued to monitor the human rights situation, and has observed that human rights violations are still occurring and the act of torture is yet to be criminalized for cases taking place in the South.

## National Legal Framework

Special security laws such as the Martial Law Act B.E. 2457 (1914), the Emergency Decree B.E. 2548 (2005), and the Internal Security Act B.E. 2551 (2008) have severely curtailed fundamental rights, notably in the southern most provinces, where they have been in place for the past 11 years.

### Martial Law Act B.E. 2457 (1914)

The provisions of the Martial Law Act place no restraints or limits on the military's actions. Under the law, the military can prohibit any activity, censor the media at will, outlaw meetings and assemblies, search and seize any item, occupy areas, and detain people without charge for up to 7 days, and without judicial oversight. In addition, there is no effective redress for harms caused since the law bars remedy for damage caused as a result of military actions under martial law.

### Emergency Decree B.E. 2548 (2005)

The Emergency Decree authorizes any State authority to detain anyone, without charge or trial, in an undefined place of detention for 30 days. It allows for the unenforced judicial review of arrest warrants and for authorities to deny requests for personal visits to detainees. The use of unofficial detention centers and the lack of consistent, unhindered, and independent monitoring of detention centers, allowed under the Emergency Decree, facilitate torture and other ill-treatment. The Emergency Decree also authorizes virtually unfettered censorship of news and information outlets, and grants immunity from prosecution for officials who commit human rights violations in the course of their duties.

### Internal Security Act B.E. 2551 (2008)

The Internal Security Act established the Internal Security Operations Command (ISOC) under the control of the Prime Minister to implement the law. While the Act requires the Cabinet to pass a resolution in order for the ISOC exercise its powers, no declaration of a state of emergency is necessary. In addition, the ISOC has exceptional powers to respond to alleged threats to national security, undermining fundamental rights and overriding civilian administration and due process of law.

## Challenges

**Special security laws in Pattani and other provinces in the South**, intended to be used as measures to reduce violence, have been in place for 11 years. Such laws include: the 1914 Martial Law, the 2005 Emergency Decree, and the 2008 Internal Security Act. However, these laws and security measures have failed to curb the violence, and instead have been used by security forces to persecute and intimidate civilians.

**The lack of Transparency of the Judicial system & Impunity of Officials:** The judicial system in the South has played a major role in the intimidation of civilians and in allowing human rights violations to continue. The Judicial and Inspection Committee lacks transparency and violators of human rights violations, specifically acts of torture and extrajudicial killings, are not prosecuted. In addition, the Emergency Decree expressly confers immunity from prosecution for officials who violate human rights law in the course of their duties.

## Cases, Facts, Comments

Authorities have used the special security laws to collect DNA samples without consent from civilians. The Muslim Attorney Center (MAC) has reported ongoing human rights violations in the South. Between 2014 and 2015, more than 19 civilians were subjected to forced collection of DNA samples in Yalla province alone.

Recommendation 89.39 (made by the United Kingdom) to "take immediate steps to improve the situation in Southern Thailand so the special security laws can be lifted" was implemented as a number of troops were withdrawn from the area. The capacity of State agencies and civilians in the region were also improved. However, the remedies did not succeed in their objectives, even provoking some civilians to bear arms, creating further divisions in society.

The reports on human rights violations in the South by the MAC state that between 2014 and 2015, peace-keeping officers committed acts of physical assault and torture against 33 civilians in the southern provinces.

Thailand has failed to implement the accepted recommendations 88.67 "Investigate allegations of human rights abuses by all parties in the southern border provinces of Thailand" (made by Australia) and 88.68 "Promptly investigate all allegations of human rights violations, including in the three southernmost provinces, and bring perpetrators to justice" (made by Canada).

## Challenges

The government has not enacted any new legislation on the judicial system relating to physical abuse and torture, and forced abductions, despite having accepted recommendations 88.3 "Include a definition of torture into the Criminal Code, in line with article 1 of the Convention against Torture" (made by Austria) and 88.4 "Enact legislation criminalizing torture and amend all relevant laws to fully comply with the obligations under CAT" (made by Canada).

### Need for rehabilitation for victims of torture:

Victims of torture are not provided with independent torture rehabilitation centers or independent psychological health units.

While some projects have laid down suitable foundations for the establishment of rehabilitation centers for torture victims, none are meeting the needs of victims, due to those working in the centers lacking adequate training in torture rehabilitation.

In its 2014 concluding observations, the Committee against Torture raised concern about the absence of the provision of rehabilitation and redress to victims of physical and psychological consequences of torture, including appropriate medical and psychological care.

### Silencing the Truth:

State officials have negative perspectives towards human rights defenders and those who oppose them in the South. Security forces have intimidated human rights defenders (notably those who report human rights violations to INGOs) through intimidation and the use of special security measures and laws.

In August 2014, the director of the Cross Cultural Foundation (CrCF), Ms. Pornpen Khongkachonkiet, was charged by officers of the 41st Advanced Guard Division on counts of libel and defamation for publishing a report on human rights violations in the case of Adil Samae. Ms. Pornpen then gave information to the Human Rights Commission and the Office of the United Nations High Commissioner on Human Rights, requesting an investigation into the case. The charges against her were later dropped.

**Limited Peace Talks Process:** The peace talks process has not allowed civil society or the international community adequate space for their participation, posing challenges to the peace process.

There have been limited public hearings on the peace talks and there has been no international community presence to monitor whether the peace talks process is being carried out in line with international standards. In 2015, Thai Army delegates met with the Mara Patani umbrella organization (comprising several separatist groups) for several rounds of peace talks, which took place behind closed doors. Civilians and academics were excluded from participating in the talks.

## Recommendations

1. Extensively revise or repeal the Martial Law and ensure that any emergency measures, if enforced, are in strict compliance with international human rights law and standards, in line with the 2005 concluding observations of the Human Rights Committee. In particular, amend provisions of the Emergency Decree that do not conform to such law and standards, including Section 17, which provides immunity to officials from prosecution under most circumstances, and continue to assess the need for the special laws and establish an independent mechanism to monitor their enforcement, in line with the 2012 concluding observations of the Committee for the Elimination of Racial Discrimination.
2. End the practice of identity checks and arrests based on racial profiling, in line with the 2012 concluding observations of the Committee for the Elimination of Racial Discrimination, as well as DNA collection based on racial profiling as it is against human rights principles.
3. Reduce the military presence in the region, including local armed forces and involve civilians in the development of best practices to prevent further violence in the region, in particular, continue efforts to train police officers, members of the military, and prison officers to scrupulously respect applicable standards, in line with the 2005 concluding observations of the Human Rights Committee.
4. Ratify the Rome Statute, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), and the International Convention for the Protection of All Persons from Enforced Disappearances (CED) and take the necessary steps effectively to implement the provisions at national level soon after ratification, and conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly on December 9, 1998.
5. Ratify Additional Protocols 1 and 2 to the 1949 Geneva Conventions to improve the legal protection covering civilians and the wounded, and establish detailed humanitarian rules that apply in non-international armed conflicts.
6. Actively pursue the establishment of an independent civilian body to investigate complaints filed against law enforcement officials, in line with the 2005 concluding observations of the Human Rights Committee, and allow an environment where civilians can express their political status, as stipulated by Article 1 of the ICCPR and the ICESCR.
7. Take all necessary measures to ensure that the situation in the Southern border provinces has no adverse effects on the enjoyment of economic, social and cultural rights, in particular, by ensuring that schools, teachers and medical personnel are adequately protected from attacks and that everyone has access to education and adequate health services, in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights.
8. Thoroughly and impartially investigate all unlawful killings and other human rights violations, including those allegedly committed by security forces, in line with the 2012 concluding observations of the Committee on the Elimination of Racial Discrimination, and try alleged perpetrators in proceedings that adhere to international standards of fairness and transparency, and ensure reparations to victims of unlawful killings, including through disclosure of the truth, and taking steps toward ensuring that such abuses are not repeated.
9. Support the establishment of independent torture rehabilitation centers for torture victims in the Deep South and also at the national level, as well as an independent psychological health unit for Deep South detainees.
10. Grant the requests to visit Thailand issued by the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; and the Independent Expert on minority issues; and issue standing invitations to the Special Rapporteur on the situation of human rights defenders; and the Special Representative of the Secretary-General for children and armed conflict.
11. Withdraw its interpretive declarations to Articles 4 and 22 of ICERD.

# ARMED CONFLICTS & THE HUMAN RIGHTS SITUATION IN THE DEEP SOUTH OF THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR Cycle in 2011, 9 Recommendations were received on the Situation in the South. 7 recommendations were accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1Rar8d4>

### Accepted Recommendations on the Situation in the South:

1. South Africa: Continue to accelerate efforts to resolve the situation in the Southern Border Provinces and ensure the reconciliation remains a priority
2. Qatar: Strengthen efforts to find a solution to the unrest in the Southern border areas and ensure that justice is achieved for all sides
3. Malaysia: Continue monitoring and assessing closely the implementation of the Master Plan for the Administration of Justice, and the Strategic Plan for Development of Justice Process in the Southern Border Provinces of Thailand
4. Australia: Investigate allegations of human rights abuses by all parties in the southern border provinces of Thailand
5. United Kingdom: Take immediate steps to improve the situation in Southern Thailand so the special security laws can be lifted
6. Indonesia: Continue to address the inequality and social injustice that has been a factor in fostering social conflict and political unrest over the past 2-3 years, including in the South.
7. Canada: Promptly investigate all allegations of human rights violations, including in the three southernmost provinces, and bring perpetrators to justice.

### Accepted Recommendations on strengthening the judicial system:

1. Oman: Continue to develop the judicial system in order to ensure respect for, and protection of citizens' rights
2. Qatar: Accelerate the reform of the judicial system in order to ensure good governance and equality of treatment of people from different social classes
3. Lebanon: Further accelerate the reform of the justice system to ensure equal treatment for all citizens while continuing to pay specific attention to women and children

### Accepted Recommendations on Prosecuting Human Rights Violations:

1. Austria: Continue to take measures to ensure that alleged human rights violations by the police and security services are properly investigated and prosecuted

### Accepted Recommendations on addressing Impunity:

1. Sweden: Address the issue of impunity in certain cases and for certain parts of Thai society, not least by strengthening the independence of the Office of Prosecutor and the independence of the judiciary
2. Slovenia: Increase efforts to tackle corruption and impunity of State officials

### Accepted Recommendations on Criminalizing Torture

1. Austria: Include a definition of torture into the Criminal Code, in line with article 1 of the Convention against Torture
2. Canada: Enact legislation criminalizing torture and amend all relevant laws to fully comply with the obligations under CAT

## National Legal Framework

1. Emergency Decree Act <http://61.19.241.65/DATA/PDF/2548/00166932.PDF>
2. Martial Law <http://www2.ocsc.go.th/sites/default/files/attachment/page/stability-2551.pdf>

## Challenges and Cases

1. Cross Cultural Foundation: <https://voicefromthais.files.wordpress.com/2014/05/e0b8abe0b899e0b8b1e0b887e0b8aae0b8b7e0b8ade0b8a3e0b989e0b8ade0b887e0b980e0b8a3e0b8b5e0b8a2e0b899-e0b8ade0b8b2e0b894e0b8b4e0b8a5-e0b8aa.pdf>
2. Muslim Attorney Center on torture (2557-2558) Report on the Human Rights Situation from the use of special laws in the Southern provinces <http://th.macmuslim.com/?p=1025>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures

1. **Recommendation 1 is based on:** Committee on the Elimination of All Forms of Racial Discrimination (15 November 2012). *Concluding observations of the International Convention on the Elimination of All Forms of Racial Discrimination to Thailand*. “assess the need for the special laws and establish an continuously independent mechanism to monitor their enforcement”
2. **Recommendation 2 is based on:** Committee on the Elimination of All Forms of Racial Discrimination (15 November 2012). *Concluding observations of the International Convention on the Elimination of All Forms of Racial Discrimination to Thailand*. “The committee urges the state party to take concrete measures to eradicate the practice of identity checks and arrests based on racial profiling in the application of the special laws in the southern border provinces.”
3. **Recommendation 3 is based on:** Human Rights Committee (8 July 2005). *Concluding observations of the Human Rights Committee International covenant on civil and political rights*. “Continue efforts to train police officers, members of military and prison officers to scrupulously respect applicable international standards.”
4. Recommendation 4: [N/A]
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** Human Rights Committee (8 July 2005). *Concluding observations of the Human Rights Committee International covenant on civil and political rights, Thailand*. “Actively pursue idea of establishing independent civilian body to investigate complaints filed against law enforcement officials”
7. **Recommendation 7 is based on:** Human Rights Council (2015). *Concluding observations of the Human Rights Committee on Economic, Social, and Cultural Rights*.
8. **Recommendation 8 is based on:** Committee on the Elimination of All Forms of Racial Discrimination (15 November 2012). *Concluding observations of the International Convention on the Elimination of All Forms of Racial Discrimination to Thailand*. “Thoroughly investigate all allegations of human rights violations and prosecute those found responsible.”
9. Recommendation 9: [N/A]
10. Recommendation 10: [N/A]
11. Recommendation 11: [N/A]

# LAND RIGHTS IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

The key issue of land rights has become increasingly apparent in Thailand. Since 2008, there has been a significant increase in the number of farmers and impoverished people losing their land, particularly due to high debt. This has also been accompanied by an increasing number of cases of small-scale farmers facing unjust land rents. Laws, policies, and the inaction of the State, particularly with regard to the overlapping declaration of land ownership of the State, the expansion of agricultural land (based on agriculture and trade policies), the lack of clear boundary lines of State land, and landless communities' inability to access and own land due to land concentration and high costs are major factors that have led to encroachment of State land and forestlands.

During Thailand's 2011 UPR, none of the States made any recommendation on land rights. In its National Report ahead of the 2011 review, the Government reported that it placed importance on assisting low-income and small-scale farmers to get out of poverty through various policies, including through the issuance of community land title deeds.

Since the military coup on 22 May 2014, the Government has introduced new measures, which have further restricted peoples' livelihoods, allowed the Government greater powers over land management, and restricted deprived communities' rights to defend their land. The National Human Rights Commission of Thailand (NHRCT) reported receiving complaints from people who had been affected by Government operations to combat forest encroachment in accordance with the orders of the National Council for Peace and Order (NCPO), and that those forced to leave their homes did not receive adequate remedies.

## Major Challenges related to Land Rights

- Lack of sufficient evidence with most rural people, including indigenous peoples and ethnic minorities, to prove ownership of the land.** Land title deeds or Certificate of Utilization (Nor Sor 3 Khor: N.S.3.K, N.S) are required documents to demonstrate proof of land ownership/land usage. Without those documents, people are at risk of having the land, which they have traditionally used, expropriated.
- Legal actions against communities living in areas designated as forestlands.** NCPO Orders no. 64/2014 and 66/2014 under the Forestry Master Plan, the 10th Internal Security Operation Command (ISOC) Action Plan, National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act, and NCPO Order 4/2014 allow authorities to arrest and prosecute people for illegal logging and encroachment of land, as well as confiscate their lands, and destroy their crops.
- Criminalization of participation in peaceful public protests against land expropriations.** Martial law and Article 44 of the Interim Constitution, the 2015 Public Assembly Act, NCPO Order 3/2015, and NCPO Announcement No. 7/2014 can be used to restrict freedom of expression and assembly and other basic rights, making it difficult for affected people to seek justice.
- Harsh reprisals against land rights defenders.** Human rights defenders helping marginalized communities defend their land rights have been subjected to constant intimidation, threats and even killings, and enforced disappearances.
- Absence of or inadequate public consultation and impact assessments conducted ahead of development projects.** Despite provisions in the 2008 Land Development Act to ensure consultations with affected persons as a condition for development projects related to land, agriculture, economic, natural resources purposes, the opinions of local people are rarely taken into account.

## Challenges

### Lack of sufficient evidence with most rural people, including indigenous peoples and ethnic minorities, to prove ownership of the land:

Land title deeds or Certificate of Utilization (Nor Sor 3 Khor: N.S.3.K, N.S) are required documents to demonstrate proof of land ownership/land usage. Without those documents, people are at risk of having the land, which they have traditionally used, expropriated.

There are 800,000 people dwelling in restricted State lands while fifty individuals, accounting for 10% of the population, own 90% of private land.

**The Struggle of Indigenous Sea Gypsies to protect their ancestral land in Phuket:** Indigenous sea gypsies (popularly known as Moken) have long been struggling resist eviction from their ancestral territory, occupying highly prized lands in Phuket whose title deeds are owned by several businessmen. In February 2013, a Phuket court ordered seven sea gypsy households to vacate their homes. However, the Department of Special Investigations (DSI) has found that the community has occupied these lands for at least 100 years through DNA analysis of burial grounds, though they lacked any formal title deeds. In November 2014, the Ministry of Justice recommended the Department of Lands to consider revoking the title deeds of 11 rai of land held by several businessmen where the Moken community lives, while the ownership of the other 10 rai in the same area was still pending investigation. Currently, there are about 1,042 sea gypsies living in about 210 homes in the community, who are poor villagers who mostly work as fishermen.

In early January 2016, sea gypsies living on the Rawai beach in Phuket have been facing land evictions by real estate developer owning land title deeds over the ancestral lands of these communities. On 28 January 2016, Thailand's Deputy Prime Minister ordered authorities to investigate the land title deeds of land developers and determine whether they were legally acquired after they engaged in a dispute with the sea gypsy community the day before, during which about 100 men allegedly hired by the real estate developer, Baron World Trade Company, blocked access to the sea gypsies on the Rawai beach with boulders culminating to a scuffle between the two sides, leaving several people injured.

In February 2016, a group of 30 sea gypsies addressed an official petition to the Deputy PM, seeking his support to settle the land dispute with the real estate developer. The sea gypsy leaders called on the Land Department to revoke the land title deeds issued to the real estate developer, which overlap on 19 rai of their ancestral land on the Rawai beach. As of today, no settlement has been reached.

## Cases, Facts, Comments

**Forced evictions, arrests and prosecutions for illegal logging as a result of the implementation of the Government's forest policies:**

The implementation of the Government's forest conservation policy, in particular NCPO Orders No. 64/2014 and 66/2014 (under the Forestry Master Plan), as well as the 10th ISOC Action Plan, has resulted in the destruction of crops, forced evictions, and the arrest and prosecution of people for illegal logging.

An ISOC report revealed that authorities arrested and prosecuted 1,013 people under NCPO Orders no. 64/2014 and 66/2014 for illegal logging and encroachment of land, and confiscated 5,000 rai of land, including communal lands between June 2014 and February 2015. Majority of those arrested were impoverished, marginalized, and landless people.

Six villages in Buriram province were also subjected to forced evictions without alternative land provided.

At least another 173 communities in nine provinces in upper northern Thailand were reportedly affected due to implementation of the 10th ISOC Action Plan. Authorities have threatened to take legal action against communities living in the restricted forestry areas in the northern provinces.

**Killings, enforced disappearances and other reprisals against of land rights defenders, particularly targeting those based in the community:**

Land rights defenders continue to face judicial harassment, intimidation, destruction of property and crops, and threats of eviction, and in the worst cases, killings and enforced disappearances.

From November 2012 to February 2015, at least four land rights defenders were killed and one forcibly disappeared, while many others were intimidated and threatened.

**Killings:** Those killed include members of the community-based land rights organization Southern Peasants Federation of Thailand (SPFT): Pranee Boonrat and Montha Chukaew (on 19 November 2012), and Chai Bunthonglek (on 11 February 2015). Somsuk Kohlang, a leader of southern landless communities and land rights activist in Krabi province was also killed (on 3 December 2014).

A joint communication from eight UN Special Procedures, including the Special Rapporteur on the situation of human rights defenders, submitted to the State of Thailand on 19 February 2015, documents the killings of Pitan Thongpanang, Somsuk Kohkrang, and Chai Bunthonglek; the attempted killing of Suwit Jeh-Soh and his family; the temporary incommunicado detention of Pianrat Boonrit; and threats made against environmental and land rights defenders and community members for their involvement in peaceful protests. Thailand has responded to the communication with information on progress made in criminal investigations in those cases in April 2015.

**Enforced Disappearance:** Karen rights activist, Porlajee "Billy" Rakchongcharoen was apprehended and held in custody by the Chief of Kaeng Krachan National Park, in Petchaburi, on 17 April 2014. He has not been seen since. At the time of his "disappearance", he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011.

**Intimidation and Threats:** A military officer threatened Vaewrin Buangern with enforced disappearance when the Khon Rak Ban Haeng (KRBH) Conservation Group that she coordinated participated in the walk for land reform on 9 November 2014.

**Absence of or inadequate public consultation and impact assessments conducted ahead of development projects:**

The Land Development Act B.E. 2551 (2008) sets out conditions for development projects related to land, agriculture, economic, and natural resources purposes. Article 15.3.3 provides for consultation with affected persons. The 2003 Royal Decree on Guidelines and Procedures on Good Governance provides for public hearings to be arranged prior to the operation of any project.

Despite provisions in the law, exploitation of natural resources, including large-scale projects, lacks participatory mechanisms and consultations with necessary access to information for individuals and communities affected by the projects. Even when consultations are conducted, in practice, the opinions of local communities are usually not taken into account.

Moreover, authorities disrupt activities of community-based human rights defenders such as submitting petitions or organizing public information sharing events, especially in relation to opposing development projects for environmental or land rights.

The 2007 Constitution (no longer in effect) contained provisions for the public to be consulted for activities that might affect the environment and natural resources of the community. However, the Interim Constitution has no clause relating to public consultations.

## Recommendations

1. Reform land laws to ensure that land reform fully recognizes customary/collective land tenure rights, including those of indigenous peoples and ethnic minorities, to ensure that people who do not have sufficient evidence and/or written documentation are not subjected to arbitrary land expropriations and continue the issuance of community land title deeds.
2. Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands, territories and resources, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.
3. Review or suspend the operation of NCPO Orders 64/2014 and 66/2014 in the areas designated in the Forestry Master Plan, as well as other laws that permit the compulsory acquisition of land, and establish a process that respect indigenous peoples' right to Free, Prior and Informed Consent (FPIC) and other communities' land rights, and allow them to participate in the decision-making related to forest conservation and sustainable resource management.
4. Ensure that people living in Special Economic Zones and in other areas slated for development are not arbitrarily deprived of their lands and livelihoods and that adequate public consultations and social, environmental impact assessments are conducted prior to the start of development projects.
5. Ensure that people who have been evicted for reasons of forest encroachment or for development projects are able to return to their land or are provided with adequate compensation, and that in the future, expropriation of land is only permitted in cases of necessary, proportionate, well construed public interest, with strong procedural safeguards.
6. Allow people, including farmers, to organize and peacefully protest against evictions and land expropriations, and ensure that they are not arbitrarily arrested for such activities under Announcement 7/2014, Article 12 of NCPO Order 3/2015, the 2015 Peaceful Assembly Act, or other restrictions limiting the right to freedom of opinion and expression and the right of peaceful assembly, including Article 44 of the Interim Constitution.
7. Ensure the protection of human rights defenders assisting communities in protecting their land rights, and launch credible and independent investigations into the deaths and enforced disappearances of land rights defenders.



# LAND RIGHTS IN THAILAND

## Major Challenges related to Land Rights

1. Martial law and Article 44 of the Interim Constitution, the 2015 Public Assembly Act, NCPO Order 3/2015, and NCPO Announcement No. 7/2014 can be used to restrict freedom of expression: FOCUS submission
2. "Land Development Act 2008. Government Gazette. 125:12. 5 February 2008. Pp 106-115. [http://www.idd.go.th/files/FilesFolders/Documents/9ce7a715-54f1-4dae-9a20-8b998b8fb954\\_\\_O.pdf](http://www.idd.go.th/files/FilesFolders/Documents/9ce7a715-54f1-4dae-9a20-8b998b8fb954__O.pdf)

## Challenges and Cases

1. Land Watch Working Group (21 September 2015). Thai NGOs Coalition: Stakeholder Submission To the United Nations Universal Periodic Review Thailand. p3. Available at: <http://focusweb.org/sites/www.focusweb.org/files/UPR%202%20cycle%20review%20.pdf>
2. Cultural Survival, Network of Indigenous Peoples in Thailand (NIPT), Asia Indigenous Peoples Pact (AIPP) (21 September 2015). Observations on the State of Human Rights of Indigenous Peoples in Thailand in Light of the UN Declaration on the Rights of Indigenous Peoples. Joint Submission Prepared for 2nd cycle of Universal Periodic Review of Thailand 25th session of the Human Rights Council. Available at: [https://www.culturalsurvival.org/sites/default/files/media/thailandupr-sep2015-final\\_0.pdf](https://www.culturalsurvival.org/sites/default/files/media/thailandupr-sep2015-final_0.pdf)
3. UN Committee on Economic, Social and Cultural Rights, 55th session, 19 June 2015, Concluding observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2
4. NHRC (13 August 2015). NHRC asked the NCPO to end policies violating Community Rights. Available at: [http://www.nhrc.or.th/2012/wb/th/news\\_detail.php?nid=4373&parent\\_id=1&type=new](http://www.nhrc.or.th/2012/wb/th/news_detail.php?nid=4373&parent_id=1&type=new)
5. Land Watch Working Group (21 September 2015). Thai NGOs Coalition: Stakeholder Submission To the United Nations Universal Periodic Review Thailand. p3. Available at: <http://focusweb.org/sites/www.focusweb.org/files/UPR%202%20cycle%20review%20.pdf>; Isra News (18 August 2015). NCPO Orders to confiscate forest. Available at: <http://www.isranews.org/thaireform-other-news/item/40702-landwatch.html>
6. OHCHR (11 March 2015). United Nations Human Rights Office concerned by the situation of human rights in relation to land in Thailand. Available at: <http://bangkok.ohchr.org/files/ROB%20Press%20Statement%20150311.pdf>
7. Cross Cultural Foundation (CrCF) (21 September 2015). Cross Cultural Foundation (CrCF) and its partners' submission to the Universal Period Review.
8. OHCHR (11 March 2015). United Nations Human Rights Office concerned by the situation of human rights in relation to land in Thailand. Available at: <http://bangkok.ohchr.org/files/ROB%20Press%20Statement%20150311.pdf>
9. Protection International (30 September 2015). Surat Thani Peasants Commemorate Defenders Who Died to Defend Land Rights. A Statement by the Southern Peasant Federation of Thailand.; FIDH (11 February 2016). Thailand: End Impunity and Ensure Justice for Community under Attack.
10. NHRCT (21 September 2015). Paper by the National Human Rights Commission of Thailand Submitted to the UN Human Rights Council under the Second Cycle of the UPR. Available at: [http://www.nhrc.or.th/webdoc/UPR\\_2nd\\_english.pdf](http://www.nhrc.or.th/webdoc/UPR_2nd_english.pdf)
11. Land Watch Working Group (21 September 2015). Thai NGOs Coalition: Stakeholder Submission To the United Nations Universal Periodic Review Thailand. p3. Available at: <http://focusweb.org/sites/www.focusweb.org/files/UPR%202%20cycle%20review%20.pdf>
12. "Land Development Act 2008. Government Gazette. 125:12. 5 February 2008. Pp 106-115. [http://www.idd.go.th/files/FilesFolders/Documents/9ce7a715-54f1-4dae-9a20-8b998b8fb954\\_\\_O.pdf](http://www.idd.go.th/files/FilesFolders/Documents/9ce7a715-54f1-4dae-9a20-8b998b8fb954__O.pdf)
13. UN Committee on Economic, Social and Cultural Rights, 55th session, 19 June 2015, Concluding observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2.
14. NHRCT (21 September 2015). Paper by the National Human Rights Commission of Thailand Submitted to the UN Human Rights Council under the Second Cycle of the UPR. Available at: [http://www.nhrc.or.th/webdoc/UPR\\_2nd\\_english.pdf](http://www.nhrc.or.th/webdoc/UPR_2nd_english.pdf)
15. Joint Submission by Frontline Defenders and Protection International to Thailand UPR Session 25- April 2016, 21 September 2016.

## Recommendations

The following recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures.

1. Recommendation 1: [N/A]
2. Recommendation 2 is based on: Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies (2010).
3. Recommendation 3 is based on: Human Rights Committee (8 July 2005) International Covenant on Civil and Political Rights: Concluding Observations of the Human Rights Committee. "Guarantee full enjoyment of rights of persons belonging to minorities that are set out in ic-cpr, in particular with respect to use of land and natural resources, through effective consultations with local communities"
4. Recommendation 4: [N/A]
5. Recommendation 5: [N/A]
6. Recommendation 6: [N/A]
7. Recommendation 7: [N/A]

# NATURAL RESOURCES MANAGEMENT AND HUMAN RIGHTS (DAM)

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1st UPR in 2011, Thailand did not receive any recommendations on water or natural resources management. Water management can involve the construction of dams or weirs to produce electricity or to use as irrigation, and to support industries. These developments can improve people's quality of life and raise Thailand's economic competitiveness at the regional and international levels. However, water and natural resources management can also have negative effects. The construction of more than 40 major dams in Thailand in the last 50 years has faced significant opposition from local communities. This is because the development of a significant number of dam projects in many parts of the country have negatively impacted the watershed ecosystem and the lives of members of local communities, through the decline of revenue, the decay of natural foods, increased food insecurity, and changes in peoples' lifestyles that rely on the abundance of natural resources. While most new dam constructions have been halted, affected communities are still fighting to have the dams permanently decommissioned so that their lost livelihoods can be restored.

## International & National Legal Frameworks

**The 2007 Constitution** (no longer in effect) provided safeguards for the protection of local communities from development and dam projects (Section 56 guaranteed public access to information; Sections 58, 59, 60, 67, 87 guaranteed public participation; Section 67 provided for impact assessments; Section 85 guaranteed environmental protection; and Sections 33, 41, 42 protected people's property and dwelling rights). However, the 2014 Interim Constitution, which came into effect following the May 2014 coup, does not outline any such provisions. While Thailand has a number of national laws that protect individuals' rights in the context of development projects and resource management, many of these laws are not adequately enforced or their practical implementation remains ineffective.

**The 1992 Rio Declaration on Environment and Development** defines the rights of the people to be involved in the development of their economies, and the responsibilities of human beings to safeguard the common environment. The declaration builds upon the basic ideas concerning the attitudes of individuals and nations towards the environment and development, first identified at the United Nations Conference on the Human Environment (1972). The Rio Declaration states that long term economic progress is only ensured if it is linked with the protection of the environment.

**The 2011 UN Guiding Principles on Business & Human Rights:** In June 2011, in an unprecedented step, the UN Human Rights Council unanimously endorsed in its Resolution 17/4 a new set of global guiding principles for business designed to ensure that companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur (A/HRC/RES17/4). The Guiding Principles for Business and Human Rights establish an authoritative global standard on the respective roles of businesses and governments in helping ensure they implement the UN "Protect, Respect and Remedy" Framework in order to better manage business and human rights challenges.

- 1. Public Participation & Access to Information:** Principle 10 of the Rio Declaration on Environment and Development stipulates that individuals should have "appropriate access to information concerning the environment that is held by public authorities [...] and the opportunity to participate in decision-making processes." In Thailand, the 1997 Official Information Act allows people wide access to information, and the 2003 Royal Decree on Guidelines and Procedures on Good Governance provides for public hearings to be arranged prior to the operation of any project.
- 2. Environmental Impact Assessments (EIA):** Principle 17 of the Rio Declaration states that environmental impact assessments should be undertaken for proposed activities likely to have a significant adverse impact on the environment. Principles 17-21 of the UN Guiding Principles on Business and Human Rights outline parameters for due diligence and recommends businesses to integrate findings from the impact assessments and take appropriate action. In Thailand, the 1992 Enhancement and Conservation of National Environmental Quality Act confers the power to notify the type and size of projects or activities requiring EIAs to the Minister of Natural Resources and Environment (with the approval of National Environment Board).
- 3. Environmental Protection:** Principle 4 of the Rio Declaration states that environmental protection should constitute "an integral part of the development process" and Principle 13 stipulates that States develop national law for "victims of pollution and other environmental damage." In Thailand, the 1992 Enhancement and Conservation of National Environmental Quality Act states that a person has the right to sue for damages related to pollution or environmental changes caused by State projects.
- 4. Land Confiscation, Compensation, and Resettlement:** Principle 10 of the Rio Declaration provides for "effective access to judicial and administrative proceedings, including redress and remedy." In Thailand, the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedure allows affected individuals to seek redress of grievances resulting from an act or omission by administrative agencies or State officials. However, NCPO Orders no. 64/2014 and 66/2014 under the Forestry Master Plan, the 10th Internal Security Operation Command (ISOC) Action Plan, the National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act, and NCPO Order no. 4/2014 allow authorities to arrest and prosecute people for encroachment of land, as well as confiscate their lands.
- 5. Role of Communities in Environmental Management and Development:** Principle 22 of the Rio Declaration puts indigenous communities and other local communities at the forefront of environmental management and development because of their knowledge and traditional practices, stipulating "States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

**Negative impact of decisions made without community involvement:**

Policies on natural resources management projects are generally developed by the State and business, who are not dependent on the resources for their livelihoods. Development aims to increase economic growth and people's quality of life. However, often development projects have negative effects on the local communities.

In many development projects, very few stakeholders are involved and feedback from local communities using the natural resources is often not taken into account.

In addition, information related to both the potential positive and negative impacts of the project, is rarely disseminated to stakeholders prior to the commencement of the project.

In regards to the construction of dams and reservoirs, several projects have already been completed, while some are still in progress. The construction of large dams, such as the Pak Mun Dam has changed the ecosystem of the Mun River, significantly decreasing the number and type of fish species migrating from the Mekong River. Mun River fishing communities in 10 northeastern provinces have been affected by drastic reductions in fish populations and are now faced with food insecurity.

This situation has been ongoing for over 26 years. However, no measures have been taken to solve the problem.

The affected communities are demanding the Pak Mun Dam be decommissioned, to restore the river and their lost livelihoods.

**Solutions not implemented:**

Academic research on development projects, containing clear facts and empirical data from related field agencies and human rights organizations, give clear recommendations and solutions on collective management of projects. Such recommendations include: cancelling the project, and seeking alternatives that would cause minimal impact on the local ecosystem and communities. However, these have not been implemented and in many cases, compensation has yet to be provided to locals.

In some areas of the country, small reservoirs for local use have been constructed. However, such activities or projects have altered the water quality in the reservoirs and no one was held responsible.

For example, water from the landfill construction near the Lam Phoak Reservoir, Surin province, flows into the reservoir causing water pollution and renders it inconsumable. Moreover, the watershed forest has been disturbed by development projects such as the new city plan and the development of local industries.

**Recommendations**

1. Adopt a human-rights based approach in development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC), in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights to Thailand.
2. Ensure local communities, including indigenous peoples and ethnic minorities, play a vital role in the environmental management and development of their land, as their knowledge and local wisdom is essential and must be considered in decision-making processes.
3. Review and assess the social and environmental impacts of development and construction projects based on human rights principles, including seeking alternatives to manage water in ways that minimally alter ecosystems, or affect the quality of life in the community.
4. Ensure that the findings of social and environmental impact assessments or academic studies of the potential project are taken into account at the decision-making stage, and that the project does not go ahead if the results of the study indicate that the project would negatively impact the community and/or the environment.
5. Seriously review the positive and negative impacts of Thailand's various resources management policies, including both for small to large projects, to review the impacts of those policies as lessons learned for the implementation of future projects.
6. Eliminate gaps in legislation regulating environmental protection and dam projects, and ensure that the Principles of the Rio Declaration are incorporated.
7. Establish a clear legal framework for sustainable development as it impacts on natural resources, in particular water and the environment, that would make the realization of human rights a prerequisite for sustainability.
8. Ensure the new Constitution contains provisions guaranteeing public access to information, public participation, impact assessments, environmental protection, and people's property and dwelling rights.
9. Develop and implement a national program to enact the UN Guiding Principles on Business and Human Rights.
10. Create conditions enabling communities affected by dam and other development projects to access both judicial and non-judicial mechanisms of redress and legal assistance.
11. Immediately decommission dams negatively affecting local communities and restore rivers to reestablish local communities' livelihoods.

# NATURAL RESOURCES MANAGEMENT AND HUMAN RIGHTS (DAM)

## International and National Legal Framework

1. Constitution of the Kingdom of Thailand (2007). Government Gazette 124:47.  
[http://www.oic.go.th/content/act/con\\_law2550.pdf](http://www.oic.go.th/content/act/con_law2550.pdf)
2. Rio Declaration on Environment and Development (1992). United Nations.  
<https://mail.google.com/mail/u/0/#inbox/15363828050b4a82?projector=1>
3. UN Guiding Principles on Business and Human Rights (2011). United Nations Office of the High Commissioner of Human Rights.  
[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Challenges and Cases

1. Monitoring and Evaluation of Environmental Programs, River Moon Protection Network  
<http://efis.onep.go.th/generaldata/DataProj.aspx?projid=5020003>
2. Closing Pakmoon Dam before due lest Ubon locals face severe drought conflicts, Manager Online  
<http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9580000118584>
3. Tanittat Pukaew, “Surin- Srichapoom Locals Demand Justice with the Local Rights Sub Committee and Presented Sustainable Resolutions”  
<http://www.tnews.co.th/html/contents/69169/> ที่นิวส์

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. **Recommendation 1 is based on:** Committee on Economic, Social, and Cultural Rights (2015). Concluding Observations on the International Covenant on Economic, Social, and Cultural Rights.
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. Recommendation 4: [N/A]
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** Rio Declaration on Environment and Development (1992)
7. Recommendation 7: [N/A]
8. Recommendation 8: [N/A]
9. **Recommendation 9 is based on:** UN Guiding Principles on Business and Human Rights (2011)
10. Recommendation 10: [N/A]
11. Recommendation 11: [N/A]

# MINING, PETROLEUM, ENVIRONMENT AND HUMAN RIGHTS

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1st UPR in 2011, Thailand did not receive any recommendations related to mining and petroleum projects. Thailand has used mining and petroleum activities to boost the Thai economy for the past 30 years, the exploitation of mineral resources creating economic prosperity. However, this economic prosperity often comes at the expense of the environment and the livelihoods of local communities. Many people in rural Thailand still rely on land, water, and other natural resources to sustain their livelihoods and carry out agricultural activities.

Mining and petroleum extraction operations destroy the ecological balance and contribute to global warming. In addition, mining causes the release of toxins into the soil, polluting water resources. In 2012, Thailand signed the ASEAN Human Rights Declaration, which states, under Article 28(f), “Everyone has the right to a sufficient standard of living for himself or herself and his or her family including: [...] the right to a safe, clean and sustainable environment”.

## International & National Legal Frameworks

**The 2007 Constitution** (no longer in effect) provided safeguards for the protection of local communities from large-scale projects (Section 56 guaranteed public access to information; Sections 58, 59, 60, 67, 87 guaranteed public participation; Section 66 outlined local communities’ right to participate in the management and exploitation of natural resources; Section 67 provided for impact assessments; Section 85 guaranteed environmental protection; and Sections 33, 41, 42 protected people’s property and dwelling rights). However, the 2014 Interim Constitution, which came into effect following the May 2014 coup, does not outline any such provisions. While Thailand has a number of national laws that protect individuals’ rights in the context of development projects and resource management, many of these laws are not adequately enforced or their practical implementation remains ineffective.

**Currently, there are two main laws in effect in Thailand regulating mining and petroleum extraction: the 1967 Minerals Act and the 1971 Petroleum Act.** Both laws provide some degree of protection for parties that incur damages as a result of mining or extraction operations. Most mining projects in Thailand require environmental and health impact assessments under the 1992 Enhancement and Conservation of National Environmental Quality Act and the 2007 National Health Act. However, the new Mining Bill, proposed by the Department of Primary Industry and Mines (DPIM) in 2014, removes the obligation to conduct Environmental Impact Assessments (EIA) and Environmental Health Impact Assessments (EHIA) prior to the granting of mining concessions. The bill would also allow mining companies to operate in protected forest areas.

**The 1992 Rio Declaration on Environment and Development** defines the rights of the people to be involved in the development of their economies, and the responsibilities of human beings to safeguard the common environment. The declaration builds upon the basic ideas concerning the attitudes of individuals and nations towards the environment and development, first identified at the United Nations Conference on the Human Environment (1972). The Rio Declaration states that long-term economic progress is only ensured if it is linked with the protection of the environment.

**The 2011 UN Guiding Principles on Business & Human Rights:** In June 2011, in an unprecedented step, the UN Human Rights Council unanimously endorsed in its Resolution 17/4 a new set of global guiding principles for business designed to ensure that companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur (A/HRC/RES17/4). The Guiding Principles for Business and Human Rights establish an authoritative global standard on the respective roles of businesses and governments in helping ensure they implement the UN “Protect, Respect and Remedy” Framework in order to better manage business and human rights challenges

- 1. Public Participation & Access to Information:** Principle 10 of the Rio Declaration on Environment and Development stipulates that individuals should have “appropriate access to information concerning the environment that is held by public authorities [...] and the opportunity to participate in decision-making processes.” In Thailand, the 1997 Official Information Act allows people wide access to information, and the 2003 Royal Decree on Guidelines and Procedures on Good Governance provides for public hearings to be arranged prior to the operation of any project.
- 2. Environmental Impact Assessments (EIA):** Principle 17 of the Rio Declaration states that environmental impact assessments should be undertaken for proposed activities likely to have a significant adverse impact on the environment. Principles 17-21 of the UN Guiding Principles on Business and Human Rights outline parameters for due diligence and recommends businesses to integrate findings from the impact assessments and take appropriate action. In Thailand, the 1992 Enhancement and Conservation of National Environmental Quality Act confers the power to notify the type and size of projects or activities requiring EIAs to the Minister of Natural Resources and Environment (with the approval of National Environment Board). Thailand’s 2007 National Health Act allows an individual or a group of people to request and participate in the assessment of a health impact resulting from a public policy.
- 3. Environmental Protection:** Principle 4 of the Rio Declaration states that environmental protection should constitute “an integral part of the development process” and Principle 13 stipulates that States develop national law for “victims of pollution and other environmental damage.” In Thailand, the 1992 Enhancement and Conservation of National Environmental Quality Act states that a person has the right to sue for damages related to pollution or environmental changes caused by State projects.
- 4. Land Confiscation, Compensation, and Resettlement:** Principle 10 of the Rio Declaration provides for “effective access to judicial and administrative proceedings, including redress and remedy.” In Thailand, the 1999 Act on Establishment of Administrative Courts and Administrative Court Procedure allows affected individuals to seek redress of grievances resulting from an act or omission by administrative agencies or State officials. However, NCPO Orders no. 64/2014 and 66/2014 under the Forestry Master Plan, the 10th Internal Security Operation Command (ISOC) Action Plan, the National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act, and NCPO Order no. 4/2014 allow authorities to arrest and prosecute people for encroachment of land, as well as confiscate their lands.

5. **Role of Communities in Environmental Management and Development:** Principle 22 of the Rio Declaration puts indigenous communities and other local communities at the forefront of environmental management and development because of their knowledge and traditional practices, stipulating “States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

## Challenges

## Cases, Facts, Comments

### Government pushes ahead with new controversial legislation

Since the 22 May 2014 coup, the government has tried to push a Mining Bill and a Petroleum Bill through to the National Legislative Assembly (NLA). Members of the public that would be affected by the mining operations were not consulted and did not have access to decision-making processes.

On 21 October 2014, the Cabinet approved the Mining Bill, and on 8 December 2015, the Cabinet approved the Petroleum Bill. Both the Mining and Petroleum Bills reduce local people’s involvement in any assessments that would be conducted prior to the beginning of operations. The status of both bills is unknown at this stage.

### Threats and harassment:

Members of environmental conservation groups opposing mining projects and demanding community participation in decision-making processes have experienced an increase in threats, harassment, and surveillance since the May 2014 coup.

On 17 August 2015, after several days of threats, local military and police officials travelled to Ban Haeng village, Lampang province, in an attempt to intimidate and prevent members of the Khon Rak Ban Haeng (KRBH) Conservation Group (opposing a mining project in Lampang province due to environmental concerns) from submitting a petition on the effects of a mining project to the provincial authorities. In spite of this, KRBH members travelled to Lampang city to submit the petition.

On 11 September 2015, authorities in Udon Thani province sent a letter informing the Udon Thani Environmental Conservation Group (Anurak Udon Thani) that a village public hearing would be held inside a military camp. On 15 September 2015, 20 community-based human rights defenders from the group gathered at the Playa Suthorn Thamachada Military Camp and submitted a complaint letter, stating that they would not attend the public hearing in the military camp. There were approximately 60 military officials in front of the military camp, and another 100-200 inside the camp.

### Companies file charges against local communities:

Private companies have used Strategic Lawsuits Against Public Participation (SLAPP) against community-based human rights leaders defending local communities in a bid to intimidate and pressure them to cease their activities.

Between 2011 and 2015, gold mining company Tungkhum Co Ltd (which operates a mine affecting 6 villages in Loei province) filed numerous legal cases against Khon Rak Ban Kerd (KRBK) community leaders. In 2014, Tungkhum Co Ltd filed defamation suits against KRBK members Mr. Surapan Rujichaiwat and Ms. Porntip Hongchai, respectively for writing a post on social media and giving an interview to the media on the negative effects of the gold mine. In December 2014, after a series of negotiations, Tungkhum Co Ltd agreed to withdraw all legal cases against KRBK members, provided the company could transport gold ore out of the gold mine. Tungkhum Co Ltd withdrew all but one case. However, in 2015, Tungkhum Co Ltd filed another 4 additional cases against KRBK members.

### Use of special security laws:

State authorities have used special security laws, such as National Council for Peace and Order (NCPO) No. 3/2015, Section 44 of the 2014 Interim Constitution, and the 2015 Public Assembly Act to restrict freedom of assembly rights for individuals opposing mining and petroleum projects.

On 20 August 2014, military officials detained 11 activists from the Partnership and Energy Reform under special security laws. The 11 activists were involved in carrying out a peaceful walk calling for public discussions and to encourage citizens to be actively involved in decisions about energy development. The activists were detained for 3 days at Military Circle 42, Senanarong Army Camp, Songkhla province.

On 16 February 2016, authorities in Loei province used the Public Assembly Act to prevent members of the KRBK group from attending a meeting on the use of forest areas for gold mining operations in Wangsaphung district, Loei province.

## Recommendations

1. Suspend the reform of natural resource management legislation, including the Mining Bill, until the return of a democratically elected representative legislative structure, and ensure participatory mechanisms for community groups and civil society in the new legislation.
2. Cease the arrest and intimidation of individuals opposing mining and petroleum projects under special security laws, such as NCPO Order No. 3/2015, Section 44 of the 2014 Interim Constitution, and the 2015 Public Assembly Act, and repeal or amend these laws to ensure they are consistent with international standards.
3. Adopt a human-rights based approach in development (and other) projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent (FPIC), in line with the 2015 concluding observations of the Committee on Economic, Social and Cultural Rights.
4. Eliminate gaps in laws regulating environmental protection and mining sectors to ensure that the full rights of local communities are protected, in line with the Rio Declaration on Environment and Development.
5. Ensure the new Constitution includes provisions on the rights for urban and rural residents to own and possess land and property, and to earn a livelihood.
6. Develop and implement a national program to enact the UN Guiding Principles on Business and Human Rights.
7. Protect human rights defenders and create a legal environment to support their activities, and issue a standing invitation to the Special Rapporteur on the situation of human rights defenders.
8. Create conditions enabling citizens of remote rural settlements to access both judicial and non-judicial mechanisms of redress and legal assistance.
9. In implementing the afore-mentioned recommendations, seek technical assistance from the international community to apply the International Union for Conservation of Nature World Heritage Advice Note on Environmental Assessment, to make recommendations on mining and petroleum operations.

# MINING, PETROLEUM, ENVIRONMENT AND HUMAN RIGHTS

## International and National Legal Framework

1. Constitution of the Kingdom of Thailand (2007). Government Gazette 124:47.  
[http://www.oic.go.th/content/act/con\\_law2550.pdf](http://www.oic.go.th/content/act/con_law2550.pdf)
2. Mining Act (2007).  
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3. Rio Declaration on Environment and Development (1992). United Nations.  
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4. UN Guiding Principles on Business and Human Rights (2011). United Nations Office of the High Commissioner of Human Rights.  
[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Challenges and Cases

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2. Mining Act 8 December 2015, Ilaw.  
<http://ilaw.or.th/sites/default/files/compare%20mining%20bill.pdf>
3. Manual for Participation in EIA process. Environmental Network Thailand. March 2557  
<http://www.tei.or.th/tai/2014-Book-EIA.pdf>
4. Udon conservation group's meeting against Potesh mining, Isra News, 6 May 2013  
<http://www.isranews.org/community-newsประชานิยม-ประชาคม/item/20963-pcnyp030513.html>
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10. Meeting moved after locals surveillance, Thai PBS, Citizen reporter <http://www.citizenthaipbs.net/node/7906>
11. Thailand's 1997 Constitution <http://gad.kku.ac.th/main/th/wp-content/uploads/2013/10/2-3-2540.pdf>
12. Thailand's 2007 Constitution, Government Gazette 124:47, 24 August 2007  
<http://www.mua.go.th/users/he-commission/doc/law/Constitution2550.pdf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. **Recommendation 3 is based on:** Committee on Economic, Social, and Cultural Rights (2015). Concluding Observations on Economic, Social, and Cultural Rights.
4. **Recommendation 4 is based on:** Rio Declaration on Environment and Development (1992).
5. Recommendation 5: [N/A]
6. Recommendation 6: [N/A]
7. Recommendation 7: [N/A]
8. Recommendation 8: [N/A]
9. Recommendation 9: [N/A]

# THE ADVERSE IMPACT OF BILATERAL AND REGIONAL TRADE AGREEMENTS ON PUBLIC HEALTH

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its first UPR cycle in 2011, Thailand received and accepted 8 recommendations on the right to health (made by Brunei, Cuba, Indonesia, Finland, Saudi Arabia, Slovenia, and Sri Lanka), on issues such as capacities of health systems and institutions, and access to health services, but did not receive any recommendation specifically addressing the potential implications of bilateral and regional trade agreements affecting the right to health, especially access to lifesaving medicines. The implications of these trade agreements have already affected or will affect access to lifesaving medicines for people in developed and developing countries. A great number of civil society organizations and non-government organizations worldwide are concerned about the adverse impact of these trade agreements. Protests against these trade agreement negotiations occurred in different parts of the world like in India, Thailand, Malaysia, and the European Union (EU). The bilateral and regional trade agreements in question which affect Thailand include: free trade agreements (FTAs) between Thailand and the USA & the EU, the Trans-Pacific Partnership Agreement (TPPA), and the Regional Comprehensive Economic Partnership (RCEP) between ASEAN and six countries (ASEAN+6) including Japan, South Korea, India, Australia, New Zealand, and China.

## The Rights most commonly violated

- Right to health
- Right to participation in public processes
- Right to information

## Bilateral and regional trade agreements which affect Thailand include:

1. Free Trade Agreement (FTA) between Thailand and the USA
2. Free Trade Agreement (FTA) between Thailand and the EU
3. Trans-Pacific Partnership Agreement (TPPA),
4. Regional Comprehensive Economic Partnership (RCEP) between ASEAN and six countries (ASEAN+6) including Japan, South Korea, India, Australia, New Zealand, and China.

## Challenges

### Threats of bilateral and regional trade agreement negotiations affect access to lifesaving medicines at affordable prices.

These agreements are threatening to fundamentally & permanently undermine access to affordable medicines for millions of people. New HIV, AIDS & TB medicines, Hepatitis C treatments, cancer medicines, essential medicines, lifesaving medicines for many chronic diseases are all under threat.

### Background on the FTAs, TPPA & RCEP Negotiations

In June 2004 and March 2013, Thailand started free trade agreement (FTA) negotiations with the USA and the EU respectively. But due to the 2006 and 2014 coups, the US and the EU governments suspended the negotiations. However, the past and current governments have shown their interest to continue and to join other regional trade agreement negotiations including the Trans-Pacific Partnership Agreement (TPPA) and the Regional Comprehensive Economic Partnership (RCEP).

In these trade agreement negotiations, the US and EU negotiators have consistently tried to introduce stricter provisions of intellectual property (IP) than the World Trade Organization (WTO)'s IP standards that would undermine the right to health for people living in developing countries, particularly their access to lifesaving medicines at affordable prices.

The proposed IP texts of Japan and South Korea are similar to the IP provisions which the USA and EU demanded in their FTAs with developing countries in the RCEP negotiation.

### The undermining effect on competition of generic medicines

Intellectual property (IP) rules, which are more stringent than the **WTO's TRIPs (Trade Related Aspect of Intellectual Property Rights) Agreement**, are known as **TRIPs plus provisions**. These provisions include: data exclusivity, patent term extension, patent linkage, extension of patentability criteria, border measures, third-party liability, etc. The implications of these TRIPs plus provisions will allow the pharmaceutical industry to **extend patent protection** for more than 20 years, **undermining the competition of generic medicines** that play a vital role in lowering prices of medicines and **limit the use of public health safeguards** under TRIPs Agreement.

The TRIPs plus provisions also violate the **Doha Declaration on TRIPs Agreement and Public Health** that reiterates the right of the countries to make use of TRIPs public health safeguards to protect access to essential medicines for their people and emphasize the importance of public health before trade benefits

### If accepted, these Agreements will COST LIVES

As a result, if the TRIPs plus provisions are accepted in the trade agreements, prices of lifesaving medicines will be exorbitant and millions of people in developing countries will die due to lack of access to treatment, or become bankrupt or heavily indebted.

Based on at least two academic studies in Thailand on the impact of the EU and US FTAs, Thailand's spending on medicines will increase over 80,000 million Baht per year if it accepts the FTAs that have condition of data exclusivity for 5 years.

An example of the adverse impact of FTAs is the US-Jordan FTA. After signing the agreement, prices of medicines in Jordan increased 20% after 2002 and its national medicine budget increased from US\$ 6.3 million to US\$ 22 million. There was no competition in the generic pharmaceutical industry in 2002–2006.

## Cases, Facts, Comments

Limitations to the use of public health safeguards to address health challenges.

**Thailand will NO longer be a Role Model in ensuring Access to Affordable Medicines, SAVING millions of Lives**

**Thailand was globally recognized and admired for its use of the flexibility measures under the TRIPs Agreement and Doha Declaration to address a lack of affordable medicines to treat AIDS, cardiovascular diseases, and cancers.**

Since 1999, people living with HIV have advocated with NGOs and the Thai Ministry of Public Health. As a result, in 2006 and 2007, the Thai government agreed to enforce public health safeguards, known as **compulsory licensing**, which was in compliance with its Patent Act and the WTO's TRIPs Agreement. Prices of anti-retroviral medicines, due to compulsory licensing, were reduced to between 82–94% and over 90% in medicines for cardiovascular diseases (CVDs) and cancers. The government was able to save approximately 6,000 million Baht in 2008-2011 and expand the health benefit package to cover other diseases.

The impact of Thailand's compulsory licensing also resulted in the worldwide price reduction of a number of original anti-retroviral drugs. Other developing countries like India and Indonesia followed Thailand's footsteps in issuing compulsory licensing on HIV/AIDS and cancer drugs. However, public health safeguards, such as the flexibility measures in the TRIPs Agreement, will no longer be enforced if a trade agreement with TRIPs plus provisions is agreed.

**However, the lack of awareness among state agencies of the rights and needs of persons with disabilities results in a poor access to social services and public spaces.**

The developing world's access to lifesaving medicines is at risk.

**Public health of the developing world is also under threat due to bilateral and regional trade agreement negotiations.** India is negotiating with the EU on an FTA and with ASEAN+6 countries under the RCEP. There have been efforts by the EU, Japan, and South Korea to introduce TRIPs plus provisions in the negotiations.

India has been admired as the "Pharmacy of the Developing World" with 70% of generic anti-retroviral drugs supplied to developing countries produced in India. Thailand has imported anti-retroviral drugs and medicines for CVDs and cancer treatment under their compulsory licensing policy that helped save the lives of millions of people living with HIV, as well as other patients.

If India agrees and signs the FTA with the EU with TRIPs-plus provisions and/or cannot resist Japan's and South Korea's proposal on inclusion of TRIPs plus provisions in the RCEP Agreement, India will no longer be able to supply generic medicines at affordable prices to save the lives of patients in other countries.

The Investor-State Dispute Settlement in trade agreement negotiations limits the use of public policies to promote the right to health.

**Investor-State Dispute Settlement (ISDS) is also another major concern as it would have direct negative impacts on the rights to health.** Many FTA and regional trade agreement negotiations included an arbitration clause for ISDS that can be invoked only by private investors against host States for alleged violation of the investor's benefits, even when the States have laws and policies promoting health and public interest.

The inclusion of ISDS would limit policy space and the ability of the State to protect and fulfill its own peoples' right to health, as the investors can file lawsuits against the State to an arbitrator outside the country which would require its government to revoke policies and/or pay enormous compensation.

An example is the case of a multinational pharmaceutical corporation, Eli Lilly, which is suing the Canadian government for US\$ 500 million as the Canadian court applied strict patentability criteria and overturned two patents on atomoxetine (ADHD) and olanzapine (schizophrenia and bi-polar).

Thailand's universal coverage scheme is being threatened.

**Thailand had great success in the promotion of the right to health with the enactment of the National Health Security Act B.E. 2545, which was a result of a nationwide signature campaign that proposed a draft health insurance law to the Parliament. However, trade agreements with TRIPs plus provisions and ISDS are threatening Thailand's Universal Coverage Scheme, which is a fruitful outcome of the National Health Security Act and has been globally recognized as a best practice that can provide quality healthcare services to over 80% of its citizens at no cost.**

The Universal Coverage Scheme will be at risk and will become unsustainable if the prices of essential medicines are exorbitant due to the implications as a result of the TRIPs plus provisions.

Thousands of people living with HIV have accessed treatment with anti-retroviral drugs at no cost due to the Universal Coverage Scheme (UCS) and the compulsory licensing policy; it is estimated that every 300 million Baht increased accessibility to 10,000 ARV patients. Without the UCS, it would not be possible for thousands of people living with HIV to access treatment at no cost, and more people living with HIV would die if they did not have access to lifesaving medicines under the UCS.

## Recommendations

1. Ensure that bilateral and regional trade agreements do not contain TRIPs plus provisions and investor-state dispute settlement (ISDS) provisions, and that regional agreements do not have a negative impact on the right to health, in line with the 2006 concluding observations on the Committee on the Rights of the Child to Thailand.
2. Refrain from initiating or re-opening any FTA negotiations until the country returns to democracy and has an elected government, and refrain from introducing or enacting legislation to comply with TRIPs plus provisions and ISDS.
3. Incorporate mechanisms stated in Article 190 in the 2007 Constitution into the new Constitution in order to ensure transparency and participation of people in bilateral and regional trade agreement negotiations.
4. Conduct and produce reports on Environmental, Social and Health Impact Assessments, and Regulatory Impact Assessments for the framework and negotiation of trade agreements and other trade and investment related agreements.
5. Conduct impact assessments on marginalized groups, small and medium-sized enterprises for the frameworks and negotiations of FTA and other trade and investment related agreements, in line with the 2012 concluding observations on the Committee on the Rights of the Child to Thailand.
6. Commit to public ensuring participation, including public consultations and public hearings, on trade agreements affecting health and allow the frameworks for bilateral and regional trade agreement negotiations to be scrutinized and approved by the Parliament, in line with the 2013 Report of the Special Rapporteur on the human right to safe drinking water and sanitation.
7. Commit to periodical submission or revelation of negotiating text of bilateral and regional trade agreements and other trade and investment related agreements to the Parliament and civil society, especially human rights organizations, and allow representatives from the general public and civil society to observe the negotiations.
8. Commit to holding a deliberative referendum, in the case of sensitive issues or for actions that will have severe impacts on human rights especially on issues related to Intellectual Property Rights, Investment and Investor State Dispute Settlement (ISDS).
9. Use public health safeguards under the WTO's TRIPs Agreement and the Doha Declaration to promote access to affordable medicines and rights to health, and also withdraw TRIPs plus provisions and ISDS out of the trade agreement negotiations.

# THE ADVERSE IMPACT OF BILATERAL AND REGIONAL TRADE AGREEMENTS ON PUBLIC HEALTH

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 8 Recommendations were received on Right to Health. 8 recommendations on the Right to Health were accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1W1WZe6>.

### Accepted Recommendations on Right to Health:

1. Saudi Arabia: "Continue to develop the capacities of institutions working with persons with disabilities, including educational and health institutions"
2. Brunei: "Continue with its efforts to promote and protect the right to work, the right to health and the right to education of its people in order to maintain an adequate standard of living for all"
3. Cuba: "Continue its on-going positive efforts for the promotion and protection of economic, social and cultural rights, and especially the priority given to health and education"
4. Sri Lanka: "Continue improving the health security system to further minimize discrepancies and to provide equitable access"
5. Saudi Arabia: "Continue to develop the health system so as to strengthen the enjoyment of the right to health in all segments of society"
6. Slovenia: "Address the problems of maternal mortality and child malnutrition in remote areas of the country"
7. Indonesia: "Strengthen law enforcement in order to provide adequate protection, guarantee the minimum wage and work safety, and to ensure equal access to health services and justice for migrant workers"
8. Finland: "Apply a comprehensive sexual and reproductive health and rights approach to guarantee access of all sex workers, as well as their clients and clients' spouses and partners, to adequate health services and sexual education"

## Challenges and Cases

1. Oxfam (21 March 2007). All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines. Available at: <https://www.oxfam.org/sites/www.oxfam.org/files/all%20costs,%20no%20benefits.pdf>
2. Médecins Sans Frontières (2012). Trading Away Health: The Trans-Pacific Partnership Agreement (TPP). Available at: [http://www.doctorswithoutborders.org/sites/usa/files/Access\\_Briefing\\_TPP\\_ENG\\_2013.pdf](http://www.doctorswithoutborders.org/sites/usa/files/Access_Briefing_TPP_ENG_2013.pdf)
3. <https://www.ag.gov.au/tobaccoplainpackaging,%20http://www.twn.my/title2/health.info/2015/hi151002.htm>
4. Rungpry S., and Kelly, J., (July 2008). Asialaw IP Review. Compulsory Development Licensing in Thailand. Available at: [http://www.tilleke.com/sites/default/files/compulsory\\_licensing\\_developments\\_TH.pdf](http://www.tilleke.com/sites/default/files/compulsory_licensing_developments_TH.pdf)
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8. Global Affairs Canada (31 December 2015.) Eli Lilly and Company v. Government of Canada. Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/eli.aspx?lang=eng>
9. Kuanpoth, J. (4 March 2015). Thailand Must Stand Firm in Trade Deal Talks. Thailand Development Research Institute. <http://tdri.or.th/en/tdri-insight/thailand-must-stand-firm-in-trade-deal-talks/>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. **Recommendation 1 is based on:** Committee on the Rights of the Child (17 March 2006). Concluding observations, Thailand. “Ensure that regional and other free trade agreements do not have negative impact on enjoyment of right to health by children; more specifically, ensure that such agreements will not negatively impact availability of drugs and medicines for children”
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. Recommendation 4: [N/A]  
**Recommendation 5 is based on:** Committee on the Rights of the Child (17 February 2012). Concluding observations, Thailand. “Ensure that prior to the negotiation and conclusion of free trade agreements, human rights assessments, including child rights, are conducted and measures adopted to prevent violations.”
5. **Recommendation 6 is based on:** Human Rights Council (16 July 2013). Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. “Revise and strengthen, with the support of experts from organizations, including the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur, the procedure of public participation, including public hearings, particularly in the EIA process in order to protect procedural rights”
6. Recommendation 7: [N/A]
7. Recommendation 8: [N/A]
8. Recommendation 9: [N/A]

# SEXUAL & REPRODUCTIVE HEALTH AND RIGHTS: WOMEN AND YOUTH LIVING WITH HIV, FEMALE INJECTING DRUG USERS (IDUs), FEMALE SEX WORKERS, TRANSGENDER WOMEN & THE RIGHT TO SAFE ABORTION

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its first UPR in 2011, Thailand received and accepted 2 recommendations from Finland related to the sexual and reproductive health and rights pertaining to sex workers, stressing on the need to guarantee them access to health services and sex education, as well as the need to address the human rights challenges they are facing. Although the government has introduced policies to facilitate access to services for sex workers, such as allowing the reimbursement of VCCT check-up twice a year under the National Health Security Office's Programme, the enforcement in practice of these policies have been challenging with health care providers discriminating against sex workers and not fully understanding the criteria to provide the necessary care to them. In total, Thailand received 23 recommendations related to women's rights aiming at ending discrimination and violence against women, but none of the recommendations included the promotion and the protection of the rights of marginalized women such as women and youth living with HIV, female injecting drug users, and transgender women. These key-affected women still encounter discrimination, violence and violations of their sexual and reproductive health and rights. They face social stigma, rejection, due to their HIV-positive status, sexuality, gender identity and use of drugs, pushing them further at the margins of society and preventing them from accessing basic health, social and legal services.

## Remaining Challenges and Emerging Human Rights Issues

Thailand has been successful in decreasing HIV birth transmission rates to 2.02%, from 1990 to 2015, with the rate of HIV infections in pregnant women remaining static at 0.6%. Indeed, Thailand has an extremely high coverage of Prevention of mother-to-child transmission (PMTCT), with the mother-to-child-transmission (MTCT) rate decreasing from 2.7% in 2012 to 2.3% in 2013. Nearly all Thai pregnant women receive antenatal care from a clinical outlet and most (99.7%) are screened for HIV. 95% of HIV-positive pregnant women receive treatment to prevent transmission to their child, and virtually all (99.5%) of their infants receive antiretroviral prophylaxis.

However, certain challenges still remain for key-affected women who represent highly ostracized and stigmatized segments within Thai society:

- **Sex Workers and Injecting Drug Users (IDUs) casted as Criminals:** they are not only rejected socially but further marginalized through legal frameworks that have cast them as criminals. Criminal laws and discriminatory practices based on moral judgment, superstition, ancient beliefs, fear and misinformation, punish instead of protect. They drive at-risk communities underground, preventing them from accessing lifesaving treatment and prevention and heightening their risk for HIV and violence.
- **No HIV Prevention policies to prevent HIV transmission:** there are no policies nor measures to prevent the transmission of HIV in Thai society. This highly affects women, youth, and the spouses of HIV infected persons.
- **Lack of Access to Information on Reproductive Healthcare and Sex Education:** since most women do not have access to information on reproductive healthcare and sex education, the rate of teenage pregnancy has increased to 130,000 girls under the age of 20 in 2013.

## Rights commonly violated

- Right to life, liberty and security of person according to ICPD, Beijing Platform for Action and Universal Declaration of Human Rights (UDHR)
- Right to decide freely on reproductive health without discrimination (CEDAW, Beijing Platform for Action, UNGASS, ICPD, MDGs and SDGs)
- Right to marriage and family, right to family benefits
- Right to health
- Right to HIV/AIDS prevention
- Right to education and family planning, sex education and reproductive health
- Right to employment and decent work
- Right to economic development
- Right to live without violence due to gender
- Right to physical integrity

## Challenges

In Thailand, Women and Youth living with HIV are experiencing discrimination, violence and abuses when seeking services, including mandatory HIV testing for class registration, employment, registration for membership with the Bank for Agriculture and Agricultural Cooperatives Fund, and prenatal care at State-run clinics.

Women living with HIV are prohibited from seeking a new partner, childbearing, and are forced to undergo sterilization.

### Discrimination in schools based on HIV-positive Status:

On 28 August 2012, three students living with HIV from Nursing Sciences, Christian University, Nakhon Pathom, filed complaints with the National Human Rights Commission of Thailand (NHRCT) after the university rejected the students from the university on grounds that it had to prevent the risk of HIV transmission to its patients.

### Mandatory HIV testing to access services:

- The Bank for Agriculture and Agricultural Cooperatives (BAAC) requires blood test results as a membership condition. If a person is found to be HIV positive, BAAC can refuse them membership.
- Pregnant women and their partners are required to undergo blood tests to determine if they are HIV positive, without prior notice. Most women are unaware that they have the right to reject the blood test.

### Mandatory HIV Status Disclosure:

- Pregnant women are pressured to disclose their blood test results to partners. In some cases, persons living with HIV are forced to sign a sterilization agreement form in exchange for receiving medical services.

### Forced Sterilization to refrain from childbearing:

- Women living with HIV are prohibited from seeking a new partner and refrained from childbearing. Pregnant teenage girls living with HIV are forced to undergo sterilization or are implanted with birth control devices after child delivery, without prior notice and against their will.

### However, sterilization should only be provided with the full, free and informed consent of the individual:

- In June 2014, 7 UN Agencies (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and UNESCO) released an official Statement drawing on international human rights law, stating that sterilization without full, free and informed consent is frequently discriminatory and in violation of several other fundamental rights, including, the right to health, the right to privacy, the right to found a family, and the right to information.

### Forced sterilization, without free and informed consent may constitute torture:

Juan Méndez, the UN Special Rapporteur on torture in a report to the Human Rights Council in February 2013, considered that "Medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned."

## Cases, Facts, Comments

### WOMEN & YOUTH LIVING WITH HIV

## FEMALE INJECTING DRUG USERS (IDUs)

**Criminal Law: Enforcement of the 2002 Narcotic Addict Rehabilitation Act and the 1979 Narcotics Act**

Authorities are allowed to search suspects without a warrant and penalize those in possession of drugs.

While some projects have laid down suitable foundations for the establishment of rehabilitation centers for torture victims, none are meeting the needs of victims, due to those working in the centers lacking adequate training in torture rehabilitation.

In its 2014 concluding observations, the Committee against Torture raised concern about the absence of the provision of rehabilitation and redress to victims of physical and psychological consequences of torture, including appropriate medical and psychological care.

## TRANSGENDER WOMEN

**Service providers lack sensitivity and understanding of sexual differences.****Service providers lack information about female sex hormones and HIV medication.**

- Transgender women living with HIV or transgender women with sexual health issues are unable to receive healthcare at healthcare institutions.
- Transgender women living with HIV who need to be hospitalized are forced to reside with male patients. This is a violation of privacy, gender identity, and sexual orientation.
- Transgender women living with HIV who are taking female hormones do not receive information on the properties, side effects, or reaction of the anti-virus on the hormones they're taking when they visit State-run health clinics.

## FEMALE SEX WORKERS

**Criminal Law: The Prevention and Suppression of Prostitution Act 1996**

The routine practice of police entrapment is a serious assault on sex workers' human dignity and physical integrity. It also contravenes the UN Code of Conduct for Law Enforcement Officials, Article 2

The Prostitution Act is also a tool for corrupt authorities. There is a failure to protect sex workers from such abuses.

Sex workers have no access to protection, justice, compensation or labor complaints mechanisms for labor abuses.

Sex workers do not have access to healthcare or legal protection due to the stigmatization and discrimination they face.

**Police arrest sex workers under the 1996 Prevention and Suppression of Prostitute Act and the 2008 Human Trafficking Suppression and Prevention Act through violent raids, entrapment, and using condoms as evidence without differentiating between voluntarily workers and those who are forced or victims of human trafficking.****The right to consent to have sex as a fundamental human right: sexual consent is a deeply personal decision and police officers have no right to manipulate sex workers to arrest and charge them for the crime of underage prostitution:**

- Tip was a few months over 17 years and working as a waitress in a Karaoke Bar. Tip had not decided whether to do sex work or not. A polite man visited the bar a few nights in a row. He gave Tip a 500 Baht bonus each night (minimum wage is 300 Baht a day). Tip initially refused his invitations to go with him to a hotel. He was persistent and Tip finally agreed. He was a policeman and Tip was arrested. Tip had been coerced into committing the crime of underage prostitution. Police also committed crimes under the Prostitution Act (Sections 8 and 9).

**Corruption and Extortion of Sex Workers:** Whereas some people pay bribes to gain special treatment or benefits, sex workers in Thailand are forced to pay regular bribes to simply access protection of their basic rights (e.g. Right to Protection under the law, Right to Privacy, Right to Work, Right to Freedom of Movement, and Right to Sexual Autonomy).

- On 27 January 2015, sex workers arrested in a police raid in the NE Province of Udorn Thani testified that they paid a monthly bribe of 2,700 Baht each to authorities for protection and to be able to work free of harassment. In a similar raid on 16 December 2015 in Ubon Ratchathani, records were found showing "bribes paid to soldiers and police" of more than 100,000 baht a month from just 4 small karaoke bars where sex workers work.

**Violence and Murders:** Casted as criminals, sex worker communities and their workplaces are not protected under the law. Instead they are targets for punishment and sex workers are left afraid to report even the most serious crimes.

- In April 2015, sex worker Miss Samorn Klangdet was murdered. Her killer was arrested and later charged with a series of similar murders and rapes committed against sex workers over several years. Those who had survived his assaults did not dare to report to the police for fear of being dismissed, scorned or charged under the Prevention and Suppression of Prostitution Act.

## THE RIGHT TO SAFE ABORTION

**Criminal Law: Articles 301-305 of the Criminal Code prescribes penalties and conditions for abortions.**

Under these provisions of the Criminal Code, abortions are generally illegal. Articles 301 and 302 stipulate that a woman undergoing an abortion as well as the person performing the abortion can face prison terms and/or fines. Under Article 305, abortions are permitted if it is performed by a medical practitioner, and (a) is necessary for a women's health, or (b) the woman is pregnant as a result of a criminal offense.

Most health service providers do not follow the regulations from the Medical Council of Thailand on Safe Abortion as stipulated in Article 305 of the Criminal Code.

The criminalization of abortion imposes restrictions on a woman's right to health, as many women desiring abortions are left with no option but to resort to unsafe abortion practices. This is not in line with international standards as it is a violation of CEDAW, ICESCR, and CRC, to which Thailand is a State party.

- Between 300,000 and 400,000 abortions are estimated to occur each year, almost all are done 'underground.' The risk is due to a lack of information on sexual and reproductive health, counseling and safe abortion services.
- Medical practitioners can only perform abortions under certain circumstances, if a) it is necessary for the woman's health or b) the woman is pregnant as a result of a criminal offense.
- In 2009, there were 24 deaths out of 30,865 patients who received treatment for abortion complications in State health clinics.
- Teenage girls under the age of 19 cannot undergo abortion services at State-run health facilities unless they gain approval from their parents.

**In 2011, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health said that "States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality."**

**In 2006, the UN Committee on the Elimination of Discrimination against Women recommended that Thailand "strengthen the implementation of programmes and policies aimed at providing effective access for women to contraceptives and healthcare information and services with the aim of avoiding the need for women to resort to illegal abortions."**

## Recommendations

1. Abolish laws that obstruct access to information on reproductive health and HIV/AIDS prevention, including the 1996 Prevention and Suppression of Prostitute Act, the 1979 Narcotics Act, the 2002 Narcotic Addict Rehabilitation Act, and Articles 301-305 of the Criminal Code, criminalizing women who undergo abortions and those who perform abortions.
2. In line with the 2011 report of The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the state should ensure that legal and safe abortion services are available, accessible, and of good quality. It should also establish available and accessible clinics, train physicians and healthcare workers, enact licensing requirements, and ensure the availability of the latest and safest medicines and equipment.
3. Encourage and support initiatives to provide easily accessible information on the right to reproductive health; right to diverse gender identity; and safe abortion with drugs; information on the side effects of anti-virus drugs on transgender hormones; and correct understanding of the transmission of HIV, and provide training to education officials on HIV/AIDS and inclusive sex education, in line with the 2006 Concluding observations of the Committee on the Rights of the Child to Thailand.
4. Enact State policies and measures, with proper budget allocation, for initiatives to support the protection of women and teenage girls from HIV/AIDS infection, to protect HIV-positive women and teenage girls from discrimination, and education on reproductive health. Information about the risks and ways of transmissions should be disseminated according to the 2006 Concluding observations of the Committee on the Elimination of Discrimination against Women to Thailand. A budget should also be allocated to the support of the elimination of discrimination against persons living with HIV, sex workers and Injection Drugs Users (IDUs) and transgender women.
5. Compile data on gender and collect information on domestic violence, since this directly affects women living with HIV. Law enforcement officials should also be trained to deal with cases of domestic violence in line with the 2005 Concluding observations of the Human rights Committee on the International Covenant on Civil and Political Rights to Thailand. Policewomen should be available to conduct searches instead of policemen, in order to address the problems of women using drugs, and sex workers who are abused by their partners.
6. Repeal the Prevention and Suppression of Prostitution Act 1996 that acts as a fundamental barrier to honoring the right to justice, livelihood, safety and human dignity for all.
7. In collaboration with sex worker representatives, develop and implement strategies to apply labor protection and benefits for all sex workers, specifically the Labor Protection Act 1998, Social Security Act 1990 and Occupational Health and Safety Act 2011.

# SEXUAL & REPRODUCTIVE HEALTH AND RIGHTS: WOMEN AND YOUTH LIVING WITH HIV, FEMALE INJECTING DRUG USERS (IDUS), FEMALE SEX WORKERS, TRANSGENDER WOMEN, & THE RIGHT TO SAFE ABORTION

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 2 recommendations were received and accepted on sex workers.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1SEQglb>

1. Finland: Increase its efforts to address the human rights challenges faced by all sex workers
2. Finland: Apply a comprehensive sexual and reproductive health and rights approach to guarantee access of all sex workers, as well as their clients and clients' spouses and partners, to adequate health services and sexual education

List of conventions Thailand is party to: CEDAW, Beijing Platform for Action, United Nations General Assembly Special Session on HIV/AIDS (UNGASS), Political Declaration on HIV/AIDS, Program of Action of the International Conference on Population and Development (ICPD), MDGs and SDGs

## Remaining Challenges and Emerging Human Rights Issues

1. Chaiposri, P., Nilsoom K., Mahatumnhuchok, N., Sriplart, S., Srilumjeak, K. (2015). "The Surveillance of HIV Infection in the Bangkok Metropolitan Area 2014 Report." AIDS, Tuberculosis, and Sexually Transmitted Infections Control Division, pp17-42. [http://www.bangkok.go.th/upload/user/00000150/download/statistics/sentinel\\_2557.pdf](http://www.bangkok.go.th/upload/user/00000150/download/statistics/sentinel_2557.pdf)

## Challenges and Cases

1. Ministry of Education. Prohibiting AIDS students from Nursing course. 28 August 2012. <http://www.moe.go.th/moe/th/news/detail.php?NewsID=29406&Key=hotnews>
2. BAAC Membership (according to the interview with a leader of Network of Women Living with HIV in 2015)
3. [www.chiangmaicitylife.com/news/bottle-murderer-admits-to-more-atrocities-and-another-murder/](http://www.chiangmaicitylife.com/news/bottle-murderer-admits-to-more-atrocities-and-another-murder/)
4. MGR Online (2015, January 27th ) [www.manager.co.th/Local/ViewNews.aspx?NewsID=9580000010688](http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9580000010688)
5. Harm Reduction from Drug Use in Thailand." (September, 2011). Urban Health Research Initiative, British Columbia Centre for Excellence in HIV/AIDS, Thai AIDS Treatment Action Group (TTAG), Mitsampan Harm Reduction Center, Chulalongorn University Social Research Institute. [https://dl.dropboxusercontent.com/u/64663568/library/Reducing-drug-related-harm-in-Thailand\\_THAI.pdf](https://dl.dropboxusercontent.com/u/64663568/library/Reducing-drug-related-harm-in-Thailand_THAI.pdf)
6. Protection for Domestic Violence Victims Act B.E. 2550 (12 August 2007). Government Gazette 124/41. pp. 1-8. [http://elib.coj.go.th/Ebook/data/semi/semi14\\_4.pdf](http://elib.coj.go.th/Ebook/data/semi/semi14_4.pdf)
7. Abortion laws: Article 301 – Woman causing herself to be aborted shall be punished, Article 302 – Whoever, procures abortion for a woman with her consent, shall be punished, Article 303 – Whoever, procures abortion for a woman without her consent, shall be punished
8. Chaturachinda, K. (January 2014). Unsafe Abortion in Thailand: Roles of RTCOG. Thai Journal of Obstetrics and Gynaecology. Vol. 22, pp. 2-7. Available at: [http://www.rtcog.or.th/html/photo/journalfile\\_648442.pdf](http://www.rtcog.or.th/html/photo/journalfile_648442.pdf)
9. The Medical Council Thailand TMC, (2005). Council Regulations on the Guidelines of Abortion: Section 305 of the 2005 Criminal Code Act. [http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/abortion\\_regulation\\_in\\_Thai.pdf](http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/abortion_regulation_in_Thai.pdf)
10. "Report on the Surveillance of Abortion." (2011, September). Bureau of Reproductive Health. Pp. 1-4.
11. Saejeang, K. DR., (2013). "Situation on Reproductive Rights." Bureau of Reproductive Health. <http://law.or.th/sites/default/files/Slide%20De.Kittipong%20RH%20law%20situation.pdf>
12. "HIV Counseling and Testing Guidelines." (2013). Disease Control and Prevention Center, and the Ministry of Public Health. Pp204-205. <http://www.cqihiv.com/HCTGuidelineFinal.pdf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** Human Rights Council (3 August 2011). Report of The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UNGA. 66th session. UN Doc. A/66/254. “States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality.” And safe abortions “will not immediately be available upon decriminalization unless States create conditions under which they may be provided. These conditions include establishing available and accessible clinics; the provision of additional training for physicians and healthcare workers; enacting licensing requirements; and ensuring the availability of the latest and safest medicines and equipment”
3. **Recommendation 3 is based on:** Committee on the Rights of the Child (17 March 2006.) Concluding observations on the Convention on the Rights of the Child, Thailand. “include gender perspective in policies and programmes on hiv/aids; prevent and prohibit discrimination against children infected with and affected by hiv/aids, and ensure that these children have access to adequate social and health services; ensure access to child-sensitive and confidential hiv/aids counselling when required by child without parental consent; systematically include accurate and comprehensive information about hiv/aids and sex education, including condom promotion, in school and tertiary-level curricula, and provide training to teachers and other education officials on teaching about hiv/aids and sex education”
4. **Recommendation 4 is based on:** Committee on the Elimination of Discrimination against Women (3 February 2006). Concluding comments of the Convention on the Elimination of Discrimination against Women, Thailand. “step up efforts to prevent and combat hiv/aids and improve dissemination of information about risks and ways of transmission”
5. **Recommendation 5 is based on:** Human Rights Committee (8 July 2005). Concluding observations on the International Covenant on Civil and Political Rights, Thailand. “law enforcement officials, in particular police officers, should be provided with appropriate training to deal with cases of domestic violence”
6. Recommendation 6: [N/A]
7. Recommendation 7: [N/A]

# MIGRANT RIGHTS AND HUMAN TRAFFICKING

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1st UPR in 2011, Thailand received 25 recommendations on migrant rights and human trafficking. Regarding migrants rights, there has been progress in enforcing and complying with the recommendation made by New Zealand calling the Royal Thai Government (RTG) to strengthen "efforts to combat trafficking and abuses of labour rights, particularly against vulnerable migrants". This recommendation focuses on law enforcement and policy compliance resulting in improved labour protection, including guaranteed minimum wages, workplace safety, equal access to health services, and justice of labour migrants. In response, a registration system has been made available for migrant workers, including the enactment of a new legislation: the Occupational Safety, Health, and Environment Act B.E. 2554 (2011). However, on issues related to both, domestic and migrant workers, Thailand still faces the challenge of abiding to the human rights obligations under the international conventions it is a party of.

Regarding human trafficking, Thailand accepted the 13 recommendations related to Human Trafficking (made by Australia, Canada, France, Japan, Malaysia, Moldova, New Zealand, Nicaragua, Norway, Pakistan, Singapore, Sweden and Uruguay). Thailand is currently implementing the Policy, Strategy and Measure on the Prevention and Suppression of Human Trafficking (2011-2016), with specialised task forces established to draft and monitor implementation of the Plan of Action on Prevention of Human Trafficking and to enhance collaboration among related agencies. However, the human trafficking situation in Thailand remains in tier 3 in the latest US Trafficking in Persons (TIP) report. Regarding the recommendations made by Norway and Australia to "Accede to the Palermo Protocol" and to "Ratify the United Nations Convention against Transnational Organised Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air": the Royal Thai Government (RTG) has signed the two major Protocols on Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 17 Oct 2013. Based on these protocols, some clauses and amendments were introduced into Thai law. The RTG has adopted Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, focusing on explicitly explaining the terms of Trafficking in persons and Exploitation. However, in terms of implementation, fact-finding by the Human Rights and Development Foundation (HRDF) has indicated that there are a very small number of cases in which employers are prosecuted and mostly anti-money laundering measures against human traffickers are not imposed. Further, the Thai government has failed to address the human trafficking of ethnic Rohingya, Uighur and ethnic minorities. In fact, it has been reported that high-ranking officials were involved some cases of human trafficking.

However, it should be noted that Thailand has hosted international meetings on irregular migration in the Indian Ocean and has made efforts to crack down on networks of traffickers and officers complicit in illegal activities (human trafficking). On 26 March 2015, the National Legislative Assembly voted in favor of the amendments to the 2008 Anti-Human Trafficking Act, to remove civil liability for reporting suspected human trafficking offences or arresting suspects in order to ensure that fear of reprisal is never a barrier to an effective legal response. However, the next step for the amendment to come into effect is for it to be signed by His Majesty and subsequently published in the Royal Gazette.

Thailand has not signed the Convention of the Rights of Migrants Workers and Member of their Families (MWC) nor signed the ILO Work in Fishing Convention 1988, related to fishery workers who are victims of human trafficking. In Thailand, the fishing industry is covered under the Labour Protection Act, and there have been initiatives by ILO put into place intended to protect men working on fishing boats, especially migrants, to prevent them from being trafficked into slavery. However, in practice, the effectiveness of these initiatives is questionable as there are reported cases of human trafficking in the Thai fishing industry.

## Challenges

### Non-inclusive labour protection standards:

The categorization of types of labour under the Social Security Act B.E. 2533 (1990) has resulted in the unequal protection of migrant workers and has also led to discrimination against migrant workers and is not in line with the legislation's initial intent.

### Restrictions on the right to form an Union:

The amendment of the Labor Relations Act B.E. 2518 (1975) and the State Enterprise Labor Relations Act B.E. 2543 (2000) imposes restrictions on the rights of workers to form a union, due to the categorization of labour groups. In addition, the amendment process of the laws did not involve public consultations with affected parties.

## Cases, Facts, Comments

**Social Security:** Migrant workers are not entitled to all rights provided under the Social Security Fund. For instance, migrant workers cannot claim social security benefits for child allowance in the same way as Thai workers. Migrant workers are also not entitled to annual holidays (6 days per year), traditional holidays (13 days per year), paid sick leave (30 days per year), sterilization leave, education and training leave, or paid maternity leave (45 days per year), under the labor protection laws.

### Minimum wage and wage gap

Thailand has a law regulating minimum wage whereby an employer is required to pay a minimum wage of 10 USD per day regardless of the workers' nationality and immigration status. But in practicality, gaps can be found and migrant workers are not paid the minimum wage as provided for by the law. A number of employers also have the attitude that a migrant worker does not need be paid equally to their Thai counterparts and is deprived of their other fundamental rights.

**No access to health and education for children of migrant workers:** children of migrant workers do not have access to the right to education and health. There is also no policy granting rights to migrant workers' dependents.

### Unionization authorized for Thai citizen only:

The 1991 Labour Relations Act requires that a person to register a labour union has to be of Thai nationality and a migrant worker can only become a member. Currently, migrant workers in Thailand do not have the freedom to form unions, serve as the director of a union, be a sub-committee member, or an advisor to the union. They only have the right to be a member of union.

**Ineffectiveness of the Migrant registration program:**

The government's migrant registration program is ineffective and is not inclusive of all migrants or their family members. Thailand is also yet to make the policy permanent. In addition, illegal agents charge an extra fee for the registration of illegal immigrants.

**Lack of Monitoring Mechanism for labour rights protection:**

Currently, there is no monitoring mechanism to evaluate the State's performance on labor rights protection, including the definition of the duties of the State, the employer, workers, and civil society organizations, which in turn leads to discrimination against different groups of workers by law enforcement officials.

**Human trafficking:**

Although Thailand is a State party to the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organization Crime, Thailand's definition and interpretation of "human trafficking" does not comply with the protocol, which has led to the problem of the implementation of the protocol and the enforcement of the Human Trafficking Suppression and Prevention Act B.E. 2551 (A.D. 2008).

Thailand has not signed the Convention of the Rights of Migrants Workers and Member of their Families (MWC) nor signed the ILO Work in Fishing Convention 1988, related to fishery workers.

**Deportation of Rohingya and other irregular sea migrants:**

At policy level, Thailand issued a short term policy to provide humanitarian assistance and temporary detaining of the arrival group of sea migrants. However, in practice, the policy is not contributing to victim center approach.

**Migrant Workers Rights to Access to Remedy under Damages for Injured Persons, Compensation and Expense for Defendants in Criminal Cases, Act B.E.2554 (2001)**

The 2001 Damages Act provides for the right of parties aggrieved by criminal action committed by another party to have access to remedies from the state if there is no other way to address the situation. The law was applied universally to protect to persons, regardless of their race, nationality, religion, language, or other status. As such, the law encompassed migrant workers in Thailand. Since the enforcement of the Act in 2001, migrant workers have been able access to the compensation. **However the Compensation Committee issued a new decree to prohibit the undocumented migrants to access the fund in May 2015.**

Migrant workers in Thailand are forced to pay high amounts to prove their citizenship status. The cost defined by the Myanmar government is 3,550 Baht, but in reality, Myanmar migrant workers have to pay up to 8000-16,000 Baht or more

The government has no standard policy on the treatment of migrant workers. For instance, the Certification of Registration Records of the Aliens Granted Residency in the Kingdom under Special Circumstances (Tor Ror 38/1) for migrants workers registered with the Ministry of Interior cannot be used for claiming social security rights from the Ministry of Labor.

Trafficked workers are routinely brought to Thailand, including trafficked children and women forced into sex work.

**Fishing Labour**

Thailand's fishing industry has also seen an increasing number of cases of migrants workers trafficked into slavery on Thai fishing boats. For example, Myanmar national, Mr. Tong was deceived by an agent and came to work in Thailand. However, in Thailand, Mr. Tong was forced to work in the fishing industry as a slave labour, where he faced constant physical assault on agents and was unpaid. He later escaped to Thailand's southern provinces and found work.

In 2015, the Thai government has implemented measures to ensure labour in fishing vessels and the fishing vessels are kept in a system subjected to accountability. However, the narrow and inflexible interpretation of the law has often led to the inquiry officials or public prosecutors decide to not prosecute cases of trafficking even though the workers have been lured by agents to work on fishing vessels and were obliged to work to service tends of thousand baht of debt they owed.

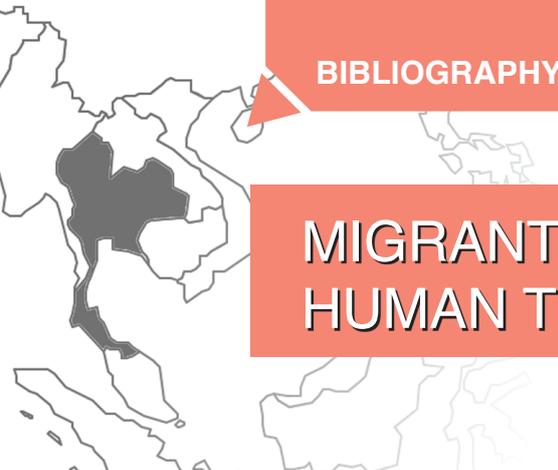
Thailand still continues deporting and indefinite detaining Rohingya and other irregular sea migrants/refugees. Therefore Thai Government should pay attention to the policy implementation to be consistence with the national legal framework and international legal obligations.

In May 2015, the Compensation Committee outlining the decree agreed that the undocumented applicant of compensation fund is not involved in the accused crime and met with criteria for the legal definition of the victim; however the committee decided not to award the compensation to the victim due to irregular status. The committee exercised the legal authorization to prohibit the payment of remedy to people without regular entry status.

The Compensation Committee is clearly breached the Constitution of the Kingdom of Thailand, The Universal Declaration for Human Rights (UDHR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and article 2 for the International Covenant on Civil and Political Rights (ICCPR)

## Recommendations

- Amend the Social Security Act B.E. 2533 (1990), particularly Sections 33, 39, 40 to have a standard of rights protection without discrimination, in line with the ILO Convention 87, 98 and ensure that the amendment of the law involves consultations with relevant stakeholders, including civil society actors.
- End the restriction on the right of migrant workers to assemble in order to form labour unions in accordance with the Labour Relations Act and recommendation can be advanced by removing the requisite Thai citizenship as necessary qualification for the founding of labour union or service as directors of labour union.
- Sign and become a member to the Convention on the Protection of the Rights of Migrants Workers and Member of their Families.
- Ensure Migrant workers and their dependents have the right to access social services, education and personal documents based on the principles of non-discrimination.
- Ensure the Section 4 and Section 6 of the Trafficking Victims Protection Act B.E. 2551 (2000) specifically defining the term "wrongful exploitation" complies with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and increase the role of labor inspectors in identifying victims of human trafficking and prevent abusive working conditions, in line with the recommendations made by the 2012 report of the Special Rapporteur on trafficking in persons, especially women and children.
- Sign and ratify the ILO Work in Fishing Convention 1988, related to fishery workers, and provide legal redress to migrants trafficked into slavery on Thai fishing boats.
- Accede to the Palermo Protocol and continue improving its implementation of policy and legal framework related to human trafficking especially victim screening for sea migrants including Rohingya.
- Ensure strict measures to investigate officials' misconduct and arbitrary abuse of power regarding migrant workers, and enforce measures to punish violators and provide remedies to migrants who are victims of abuse of power.
- Review, revise and revoke any decision of Compensation Committee which are found to discriminate against migrant workers depriving them of the right to have access to the damages for injured persons and compensation and expenses for the accused in criminal cases; and Support mechanisms that strengthen access to labour protection: provide interpretation service, and application forms in local language.
- Provide additional mechanisms to protect migrant workers and amend the system of employment termination to prevent abuse by employers, in line with the 2012 concluding recommendations of the International Convention on the Elimination of all Forms of Racial Discrimination to Thailand and the 2012 report of the Special Rapporteur on trafficking in persons, especially women and children cases in Thailand.
- Consider establishing a mechanism to receive complaints and for violations of labor rights issues, as well as seized of personal documents, according to the 2009 conclusions observations of the Human Rights Commission on the International Covenant on Civil and Political Rights to Thailand.



# MIGRANT RIGHTS AND HUMAN TRAFFICKING

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 25 Recommendations were received and accepted on Rights of Migrants and Human Trafficking. 21 recommendations were accepted and 4 recommendations were noted.

Recommendations are made available on UPR Info's database: <http://s.upr-info.org/1dYwEwl>

### Accepted Recommendations on Migrants and Human Trafficking

1. Vietnam: Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants
2. Indonesia: Strengthen law enforcement in order to provide adequate protection, guarantee the minimum wage and work safety, and to ensure equal access to health services and justice for migrant workers
3. Myanmar: Continue to focus its efforts on ensuring full protection of the human rights for all migrant and foreign workers, particularly to enhance their safety and welfare
4. Bangladesh: Continue its efforts to promote and protect rights of migrants
5. Nepal: Continue efforts in protecting the interests of migrant workers, including through appropriate legislative measures"
6. UK: Establish a long term policy for addressing migrant workers
7. New Zealand: Continue to strengthen its efforts to combat trafficking and abuses of labour rights, particularly against vulnerable migrants
8. Australia: Ratify the United Nations Convention against Transnational Organised Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air
9. Norway: Accede to the Palermo Protocol and continue improving its implementation of policy and legal framework related to human trafficking
10. Singapore: Continue with its on-going efforts to address its human trafficking situation which has implications beyond Thailand's borders
11. Malaysia: Continue cooperating closely with neighbouring countries in combating and suppressing trafficking in persons, particularly women and girls and in addressing the situation of irregular migrants, refugees and asylum-seekers
12. France: Step up the fight against trafficking to which some foreign populations have fallen victim and ensure that no measures which are contrary to human rights are taken against them
13. Pakistan: Continue its efforts in combating trafficking as well as in the rehabilitation of victims of trafficking
14. Japan: Take capacity-building measures to strengthen the response of law enforcement authorities on human trafficking, including, inter alia, through the increase of budget and the appropriate training of personnel
15. Nicaragua: Consolidate the enforcement of the law concerning human trafficking, particularly in cases of sexual and labour exploitation, which are two very sensitive issues in the country
16. Moldova: Increase efforts to effectively prevent trafficking in human beings for purposes of sexual exploitation and forced labour, including child prostitution
17. Uruguay: Adopt all necessary measures to tackle the root causes of the problems of child prostitution, sexual tourism, use of children in pornography and trafficking in women, stepping up its efforts to improve the economic situation
18. Sweden: Seriously address the issues of child pornography and human trafficking in girls and boys for sexual purposes, including by encouraging police and border forces to strengthen efforts at fighting these phenomena as well as seeking accountability where lack of state efforts at prosecution could amount to human rights violations
19. Brazil: Seriously address the issues of child pornography and human trafficking in girls and boys for sexual purposes, including by encouraging police and border forces to strengthen efforts at fighting these phenomena as well as seeking accountability where lack of state efforts at prosecution could amount to human rights violations
20. Canada: Strengthen the legal rights framework and enforcement of these rights for migrants, asylum seekers and victims of trafficking
21. New Zealand: Ensure migrants found at sea are afforded the full measures of protection they are entitled to under international law

### Noted Recommendations on Migrant and Human Trafficking:

1. Turkey: Consider becoming a party to the ICRMW
2. Philippines: Consider future accession to the ICRMW
3. Algeria: Examine the possibility of ratifying the ICRMW
4. Slovakia: Reverse current practices regarding the rights of refugees, asylum seekers and migrant workers

## Challenges and Cases

1. Occupational Safety, Health and Environment Act 2011 <http://www.fio.co.th/p/document/safetyfio/law5.pdf>
2. List of conventions Thailand is party to: <http://www.mfa.go.th/humanrights/human-rights-conventions>
3. Social Security Act 2010: [http://www.parliament.go.th/ewtadmin/ewt/elaw\\_parcy/download/article/article\\_20110922142826.pdf](http://www.parliament.go.th/ewtadmin/ewt/elaw_parcy/download/article/article_20110922142826.pdf)
4. 7 protected rights of workers: <http://www.personnel.psu.ac.th/word/9.90.pdf>
5. ILO Convention 87 and 98: <http://library.fes.de/pdf-files/bueros/thailand/07973.pdf>
6. Labour Relations Act: 14 February BE 2518 [http://eit.or.th/law\\_doc/labour\\_relation\\_2518.pdf](http://eit.or.th/law_doc/labour_relation_2518.pdf)
7. Labour and State Enterprises Act: BE 2543 23 March 2543 <http://yala.labour.go.th/attachments/category/26/3.pdf>
8. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime  
[https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf)

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. Recommendation 4: [N/A]
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** BE 2551 Act Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Government Gazette 125:29 [http://www.ecpat-thailand.org/th/1\\_2.pdf](http://www.ecpat-thailand.org/th/1_2.pdf); and Joy Ngozi Ezeilo (2 May 2012) Report of the Special Rapporteur on trafficking in persons, especially women and children. Mission to Thailand. “Strengthen the role of labour inspectors in identifying trafficked persons in workplaces and preventing exploitative working conditions. Inspectors should be fully involved in the multidisciplinary team in detecting trafficking cases and protecting the labour rights of all workers”
7. Recommendation 7: [N/A]
8. Recommendation 8: [N/A]
9. Recommendation 9: [N/A]
10. Recommendation 10: [N/A]
11. **Recommendation 11 is based on:** Joy Ngozi Ezeilo (2 May 2012) Report of the Special Rapporteur on trafficking in persons, especially women and children. Mission to Thailand. “Strengthen the role of labour inspectors in identifying trafficked persons in workplaces and preventing exploitative working conditions. Inspectors should be fully involved in the multidisciplinary team in detecting trafficking cases and protecting the labour rights of all workers”; and the Committee on the Elimination of All Forms of Racial Discrimination (15 November 2012), Concluding observations on the International Convention on the Elimination of All Forms of Racial Discrimination, Thailand “Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party explore the need for specific protections for migrant workers in addition to those provided for by the Labour Protection Act and revise the system for granting and terminating work permits so as to reduce migrant workers’ vulnerability to exploitation and abuse by their employers. The Committee also recommends that the State party assess the effectiveness of mechanisms in place to receive complaints of violation of labour rights and their accessibility by migrant workers.”
12. **Recommendation 12 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee International covenant on civil and political rights. “Migrant workers should be afforded full and effective access to social services, educational facilities and personal documents, in accordance with principle of non-discrimination consider establishing governmental mechanism to which migrant workers can report violations of their rights by their employers, including illegal withholding of their personal documents”

# THAILAND'S ASYLUM SEEKERS AND REFUGEES

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

Thailand is home to an estimated 130,000 asylum seekers and refugees, 90 percent of who are from neighboring Myanmar and have been living in temporary shelter along the Thailand-Myanmar border for more than two decades. An estimated 10,000 asylum seekers and refugees representing more than 40 nationalities live outside the camps in urban areas. Asylum seekers and refugees in Thailand have no legal status, face constant discrimination, struggle to access basic services, and are at risk of arbitrary arrest and detention, refoulement, and exploitation. Access to justice is limited and little relief is possible for human rights violations.

In its 2011 UPR, Thailand has accepted 6 of 11 recommendations concerning the rights of asylum seekers and refugees. These recommendations included considering ratifying the Refugee Convention and the Statelessness Convention (made by Brazil), respecting the principle of non-refoulement, meeting protection needs of vulnerable people (such as the Rohingya) and the access to asylum procedures (made by Canada). None of these recommendations have been implemented as several incidences of refoulement have been observed. Thailand did not make any efforts to sign the Refugee Convention and the Statelessness Convention nor develop any national legal frameworks. Protection of vulnerable groups and access to asylum procedures also remain a key concern of civil society. Thailand accepted recommendations to work with neighboring countries to combat people smuggling and trafficking (made by Malaysia) – While Thailand took positive steps towards legal reform aimed at combatting trafficking and chaired meetings on 'Irregular Migration' in 2015, efforts to ensure protection for survivors of trafficking and hold complicit government officials to account fell short.

## New Emerging Challenges

### Increasing number of Refugees from Myanmar:

After years of armed conflicts between the Myanmar army and ethnic opposition groups, eight ethnic armed groups signed the Nationwide Ceasefire Agreement (NCA) on 15 October 2015. Many other ethnic groups did not sign and fighting continues to rage in Kachin State and northern Shan State. Other ethnic areas in Myanmar continue to struggle with severe discrimination, underdevelopment, and a lack of accountability for past abuses.

Aung San Suu Kyi's National League for Democracy (NLD) won a landslide victory during Myanmar's general election held on 8 November 2015. While this is a positive shift in power, key ministries—including the Ministry of Home Affairs, Defense, and Border Affairs—will remain under the control of the military in addition to 25% of the seats in parliament.

### Order Of Ministry Of Interior No.1/2558 Subject Classes of Aliens Ineligible for Admission to the Kingdom of Thailand:

On 27 November 2015, the Ministry of Interior (MOI) issued a new order regarding classes of non-nationals ineligible for admission into Thailand and a policy to combat transnational crime when Thailand enter the ASEAN Economic Community (AEC). This policy bans migrants from returning to Thailand for varying periods of time if they are found to have overstayed or are without documentation.

Thailand continues to host more than 100,000 refugees from Myanmar in the nine camps along its border. However, under Thailand's current regime there have been more restrictions on refugee movement, increased military presence at the checkpoints, and close monitoring of NGO activities. Refugees in the camps also experienced a sharp decline in access to humanitarian aid and services due to shifting funding priorities for NGOs working in the camps. UNHCR developed a strategic road map for refugee voluntary repatriation and its operational plan, and the plan was presented and discussed with the refugee committees and other stakeholders. This heightened the anxiety and fear of many refugees about their possible forced return to Myanmar by the Thai Government.

The new order will likely increase arrests as most asylum seekers and refugees overstay their visas as a result of delayed RSD/RST proceedings.

## Ongoing Challenges

**Lack of Legal Status:** Thailand has not signed the 1951 Refugee Convention nor has it made any progress in developing national legal framework for refugees. The situation of asylum seekers and refugees in Thailand is governed largely by The Immigration Act of 1979 (the Immigration Act). The Immigration Act does not afford asylum seekers and refugees legal recognition; in effect, the State treats such populations as 'illegal aliens.' Without legal recognition or protection in Thailand, asylum seekers and refugees, including those pending recognition of their refugee status by UNHCR, face the risk of arbitrary arrest, detention, and refoulement. In some cases, the State cooperates with UNHCR to assist asylum seekers and refugees. Overall, the State's policies on asylum seekers and refugees are ad hoc and vary across populations.

**Arbitrary Detentions:** By virtue of being treated as illegal migrants under Thai law (Immigration Act B.E.2522), asylum seekers and refugees without valid visas are increasingly subject to arbitrary detention and placed in crowded Immigration Detention Centers (IDCs).

As of now Thailand has not taken any significant steps to develop and implement Alternatives to Detention.

For example, of the 100,000 asylum seekers and refugees from Myanmar living in protracted displacement in refugee camps along the Thailand-Myanmar border, around 40,000 have never had access to asylum mechanisms. Urban asylum seekers in Thailand must wait several years to be processed and recognized as a refugee by UNHCR.

Thailand does not support UNHCR in this process, which results in long wait times for refugees and puts refugees at risk of exploitation, arrest, detention, refoulement, trafficking.

In 2014, 254 individual urban refugee including 34 children were arrested in 108 incidents in Bangkok and Suan Phlu; while in 2013, 125 individuals were arrested in 58 incidents. Of those detained in 2014, 38 asylum seekers and refugees were successfully released after UNHCR intervened. From December 2013 to August 2015, Thai authorities detained 4,569 ethnic Rohingya, 2,598 Bangladeshi migrants and over 240 Uighur asylum seekers in different Immigration Detention Centers (IDCs), primarily in the south.

## Cases

**The Case of Children in Immigration Detention Centers (IDCs):** A 2014 study by Human Rights Watch related to the immigration detention of Children in Thailand revealed that detained children in Bangkok are often separated from their parents, typically for periods of more than a year and are at great risk of sexual abuse by adult detainees. The report also discovered that children in Immigration Detention Centres (IDCs) cannot enjoy basic services necessary for their development; many detained children suffer from stress, depression, fear, and alienation and cannot access education otherwise available to all children in Thailand under the 1999 National Education Act. Children in IDCs also lack access to justice when their rights are violated.

**Refoulement:** Thailand continues to reful asylum seekers and refugees without judicial oversight or a proper assessment of protection needs. Under the Immigration Act, officials must assess risks of deportation, circumstances in the home or receiving country, and inform a returnee of these findings. The Immigration Bureau deports some 200-300 detained migrants, including asylum seekers and refugees, every week without proper screening of their protection claims. Returnees hence are at risk of persecution, disappearance, or being trafficked.

In 2015, Thailand handed over about 109 male Uighur asylum seekers under its custody to China. Following claims by Chinese authorities that deportees are terrorism suspects, the Uighur asylum seekers were officially extradited to China under a Sino-Thai bilateral extradition agreement with no assessment of their protection needs. Those extradited face a great risk of persecution, torture or enforced disappearance upon return to China due to the ongoing conflict between the Chinese Government and ethnic Uighurs.

In November 2015, the United Nations voiced strong concerns over the deportation of two Chinese activists by the Thai Government and their risk of being tortured and ill-treated by the authorities once sent back to China. The UN urged Thailand to stop deporting dissidents.

Similar violations of the principle of non-refoulement occurred when Thailand deported members of the Lao Hmong community in 2009 and of the Khmer National Liberation Front in 2013.

**Lack of Legal Aid:** While the State provides some free legal aid services, such programs do not cover refugee and asylum seeker cases. Asylum seekers and refugees in Thailand depend on civil society organizations for legal assistance and enjoy few procedural guarantees, including basic due process safeguards against prolonged or indefinite detention.

Free interpreters provided by government officials, particularly those used during proceedings, typically lack the ability to communicate in both English and in the languages spoken among asylum seekers and refugees in Thailand. As a result, non-Thai speaking asylum seekers and refugees facing criminal charges for their 'illegal immigration' status are unable to effectively communicate with authorities and remain poorly informed of their rights.

**Lack of Access to Education:** Limited freedom of movement for asylum seekers and refugees on the Thailand-Myanmar border bars such individuals from enjoying the right to education by precluding physical access to public schools.

Asylum seekers and refugees, particularly those living in camps on the Thailand-Myanmar border, are largely unable to access Thai schools due to restrictions on freedom of movement. Most children of asylum seekers and refugees in Thailand attend community-run learning centers with unaccredited curricula that do not transfer into the public school system or advance to higher education in Thailand. Language and discriminatory treatment have been cited as further barriers to education. For urban refugees, many practical barriers such as discrimination, language barriers, lack of financials and a resistance from school administrators to accept refugee children also preclude refugee access to education.

**Lack of Access to Healthcare:** Asylum seekers and refugees in Thailand who cannot physically access government hospitals or endure discrimination by public healthcare providers are denied their right to enjoy the highest attainable standard of health.

Asylum seekers and refugees have access to affordable healthcare through Thailand's health security system. However, receiving care under the universal healthcare system is only applicable in certain government hospitals and typically under emergency care. As a result, civil society organizations have found that many refugees and asylum seekers, particularly those in urban areas, cannot access public healthcare services. In some cases, asylum seekers and refugees are rejected from the public healthcare providers. Discriminatory treatment also creates barriers for asylum seekers and refugees seeking access to healthcare.

**Denial of Right to Work:** Asylum seekers and refugees in Thailand are not permitted to work. As a result, most asylum seekers and refugees work in the informal labor sector, such as agricultural work, domestic work, and the fishing industry. Although Thailand's Labor Protection Act and other domestic labor laws apply equally to non-nationals, most informal employers are exempt and Thailand's enforcement mechanisms are generally limited.

Asylum seekers and refugees are often subject to abusive, exploitative, and dangerous work environments. Women in particular may find themselves at heightened risk to engage in survival sex and may be more vulnerable to human trafficking.

## Recommendations

- Develop and implement national legislation establishing asylum procedures and providing asylum seekers and refugees with legal status in line with international standards, as recommended by the Committee on the Rights of the Child to Thailand in its concluding observations in 2012.
- Intensify efforts to better respect the rights of asylum seekers and refugees while considering the ratification of the 1951 Convention Relating to the Status of Refugees and its Protocol, in line with the 2012 concluding observations of the Committee on the Rights of the Child to Thailand.
- End the arbitrary detention of asylum seekers and refugees, as recommended by the Committee on the Rights of the Child to Thailand in its concluding observations in 2012.
- Amend detention policies to ensure that when necessary, detention of asylum seekers and refugees is used only in exceptional circumstances, following an individualized assessment, and after all less invasive alternatives to detention have been exhausted.
- Develop and implement adequate safeguards to protect against refoulement under all circumstances, in line with the 2005 concluding observations of the Human Rights Committee on International Covenant on Civil and Political Rights to Thailand.
- Provide indigent asylum seekers and refugees access to free legal assistance in all criminal cases, refugee status determination hearings, and any official proceedings that may result in the deprivation of liberty.
- Remove all legal and practical barriers that prevent asylum seekers and refugees from accessing education in Thailand, in accordance with the 2006 concluding observations of the Committee on the Rights of the Child to Thailand.
- Ensure asylum seekers and refugees have greater access to the State's universal healthcare system, in accordance with the 2006 concluding observations of the Committee on the Rights of the Child to Thailand.
- Provide asylum seekers and refugees access to formal labor markets and apply laws to protect them against abuse and exploitation in the workplace.
- Respect the international standards of return; voluntariness, dignity and safety and ensure they are implemented for refugees on the Thailand and Myanmar border, in line with the 2005 concluding observations of the Human Rights Committee on International Covenant on Civil and Political Rights to Thailand.
- Strengthen measures to prosecute and punish trafficking while protecting human rights of witness and victims of trafficking, by providing places of refuge and opportunities to give evidence, in line with the 2005 concluding observations of the Human Rights Committee on International Covenant on Civil and Political Rights to Thailand.

# THAILAND'S ASYLUM SEEKERS AND REFUGEES

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 11 Recommendations were received on Refugees and Asylum Seekers. 6 recommendations were accepted, while 5 recommendations were noted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1DP81iB>

### Accepted Recommendations on Asylum Seekers and Refugees:

1. Malaysia: Continue cooperating closely with neighbouring countries in combating and suppressing trafficking in persons, particularly women and girls and in addressing the situation of irregular migrants, refugees and asylum-seekers
2. Brazil: Consider ratifying the conventions on refugees and on stateless persons and OP-CAT
3. Canada: Strengthen the legal rights framework and enforcement of these rights for migrants, asylum seekers and victims of trafficking
4. Canada: Ensure respect for the principle of non- refoulement with respect to asylum seekers and refugees, avoid a premature move to close camps on the Western border while conditions for voluntary, safe and dignified return do not exist, and meet the protection needs of vulnerable peoples, such as the Rohingya, in accordance with international law
5. Brazil: Refrain from the refoulement of asylum-seekers
6. Switzerland: Facilitate the access to asylum procedures in order to guarantee an international protection to asylum seekers

### Noted Recommendations on Asylum Seekers and Refugees:

7. France: Accede to the United Nations Convention on the Status of Refugees and the 1967 Protocol as well as to the 1954 Convention on the Status of Stateless Persons
8. Switzerland: Ratify the Convention on the Status of Refugees and its Optional Protocol
9. Slovakia: Reverse current practices regarding the rights of refugees, asylum seekers and migrant workers
10. Canada: Become a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol
11. Switzerland: Facilitate the access to UNHCR

## Challenges and Cases

1. Fortify Rights (September 2015). SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW: MYANMAR 23RD Session, November 2015. Available at: [http://www.fortifyrights.org/downloads/FR\\_UPR%20Submission\\_September\\_2015.pdf](http://www.fortifyrights.org/downloads/FR_UPR%20Submission_September_2015.pdf)
2. Order Of Ministry Of Interior No.1/2558 (2015) Subject Classes of Aliens Ineligible for Admission to the Kingdom of Thailand Available at: [http://bangkok.immigration.go.th/overstayorderE\\_1.2558.pdf](http://bangkok.immigration.go.th/overstayorderE_1.2558.pdf)
3. Burmapartnership (12 December 2012). Position on the Repatriation of Refugees from Burma Available at: <http://www.burmapartnership.org/2012/12/position-on-the-repatriation-of-refugees-from-burma/>
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5. National Education Act B.E. 2542 (1999) Available at: [http://planipolis.iiep.unesco.org/upload/Thailand/Thailand\\_Education\\_Act\\_1999.pdf](http://planipolis.iiep.unesco.org/upload/Thailand/Thailand_Education_Act_1999.pdf)
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9. UNHCR (20 November 2015). UN rights office 'deeply concerned' about Thailand's deportation of Chinese activists. Available at: [http://www.un.org/apps/news/story.asp?NewsID=52622#.VtF\\_W45N94U0](http://www.un.org/apps/news/story.asp?NewsID=52622#.VtF_W45N94U0)
10. UNHCR (28 December 2009). Deportation of Lao Hmong must stop: UN High Commissioner for Refugees Available at: <http://www.unhcr.org/4b38d1049.html>
11. The Phnom Penh Post (20 May 2014). KNLF asylum seeker interrogated in court. Available at: <http://www.phnompenhpost.com/national/knlf-asylum-seeker-interrogated-court>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

- 1. Recommendation 1 is based on:** Committee on the Elimination of Racial Discrimination (15 November 2012). Concluding observations on the first to third periodic reports of Thailand, adopted by the Committee at its eighty-first session CERD/C/THA/CO/1-3 Section C. Concerns and recommendations, “The Committee recommends that the State party adopt appropriate legislation and procedures for the protection of refugees and asylum seekers, in line with international human rights standards. The Committee also urges the State party to take measures to prevent any further expulsion of Rohingya as seeking asylum, and to give them access to the United Nations High Commissioner for Refugees and registration through the Provincial Admission Board mechanism. Furthermore, the Committee encourages the State party to pursue the universal periodic review commitment to review its position on the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto.”
- 2. Recommendation 2 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 Section H. Special protection measures, “In this regard, the Committee encourages the State party to seek technical assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR). The Committee also recommends that the State party ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and establish a national legal and institutional framework for protection of refugees.”
- 3. Recommendation 3 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 Section H. Special protection measures, “Furthermore, the Committee recommends that the State party treat the asylum - seekers and refugees according to their status and do not subject them to detention or deportations to a country where their lives might be in danger.”
- 4. Recommendation 4:** [N/A]
- 5. Recommendation 5 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. CCPR/CO/84/THA Section c. Principal subjects of concerns and recommendations “The State party should establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect.”
- 6. Recommendation 6:** [N/A]
- 7. Recommendation 7 is based on:** Committee On The Rights Of The Child: Forty- first session (17 March 2006). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/2 Section 2 General Principles “The State party prioritize social and health services and ensure equal opportunities to education for children belonging to the most vulnerable groups, including Muslim, immigrant and refugee children. The Committee further recommends that the State party carry out comprehensive public education campaigns to prevent and combat all forms of discrimination.”
- 8. Recommendation 8 is based on:** Committee On The Rights Of The Child: Forty- first session (17 March 2006). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/2 Section 2 General Principles “The State party prioritize social and health services and ensure equal opportunities to education for children belonging to the most vulnerable groups, including Muslim, immigrant and refugee children. The Committee further recommends that the State party carry out comprehensive public education campaigns to prevent and combat all forms of discrimination.”
- 9. Recommendation 9:** [N/A]
- 10. Recommendation 10 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. CCPR/CO/84/THA Section c. Principal subjects of concerns and recommendations “The State party should observe its obligation to respect fundamental principle of international law, principal of non-refoulement.”
- 11. Recommendation 11 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. CCPR/CO/84/THA Section c. Principal subjects of concerns and recommendations “The State party should continue and strengthen its measures to prosecute and punish trafficking and to adequately protect the human rights of all witnesses and victims of trafficking, in particular by securing their places of refuge and opportunities to give evidence.

# THE RIGHTS OF INDIGENOUS PEOPLES IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its first UPR in 2011, Thailand did not receive any recommendations specifically addressing the issues of indigenous peoples. There were some relevant recommendations such as: recognizing social and ethnic diversity in Thai society (made by Oman); strengthening the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants (made by Viet Nam); combating discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability (made by Uruguay); and redoubling efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision-making process, with more consideration given to women from minorities and persons with disabilities (made by the Republic of Korea). Although Thailand accepted these 4 recommendations, it has yet to make any real effort to fully implement them.

Indigenous peoples in Thailand have long faced severe discrimination by Thai society. These indigenous groups are concentrated in three geographic areas of Thailand: (1) fishing and hunter-gatherer groups in the south near the Malaysian border; (2) on the Korat plateau along the borders of Laos and Cambodia; and (3) in the northwestern highlands, where the largest population of indigenous peoples (more often known as "hill tribes") live. It is estimated that between 600,000 and 1.2 million indigenous peoples (approximately 1-2% of the total population of Thailand) live in Thailand.

Thailand voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Since then, indigenous peoples in the country, though not officially recognized in any State legislation, have come together as the Network of Indigenous Peoples in Thailand (NIPT) to organize campaign activities calling for their acceptance by the state and public, as well as recognition of their rights. As a result, strong discourse on indigenous identities and rights has been established since the formation of NIPT. It currently comprises of more than 38 ethnic groups and advocates for an "indigenous rights based approach" in the formulation and enforcement of government policies. The Thai government has adopted some laws and policies, which can be considered favorable to indigenous peoples to some extent. These include: the Amendment to the Nationality Act 2008, the Community Land Title Deeds Regulation 2010, the Cabinet Resolutions on the Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand 2010, and the a Ministerial Regulation on Rights of Community-based Organization and Non-Governmental Organization to Provide Basic Education in Learning Center, 2012. However, the enforcement of such laws and policies has been very poor with ambiguity for operations taken.

The ruling National Council for Peace and Order (NCPO) has made efforts to protect and promote human rights during the promulgation of the current Interim Constitution of 2014 and the ongoing Constitution drafting process; however the rights of community and indigenous peoples are not included in the draft Constitution. Nonetheless, recent laws such as NCPO Order No. 64/2014 to end deforestation and encroachment on forest reserves have deprived indigenous peoples of their rights. As a result, many indigenous communities in the north and northwest and sea gypsies in the south, in particular, are currently facing various land conflicts with ongoing case litigations. Indigenous activists and community members have been subjected to enforced disappearances and other intimidations for their legitimate actions to protect and enjoy their rights over lands and resources, among others.

## Challenges

### 1. Right to Identity and Participation in Decision Making (UNDRIP Articles 3, 18):

The Thai Constitution does not recognize indigenous peoples – let alone their rights as per the UNDRIP. As a result, their right to participate in the constitution drafting process, which would affect their rights, has not been respected while indigenous peoples and their rights are rendered invisible in the national laws and policies.

### 2. Rights to Lands, Territories and Resources, Traditional Livelihoods and Access to Justice (UNDRIP Articles 8, 10, 11, 19, 22, 25, 26, 28, 29, 38, 46):

The Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds 2010 does not provide legal recognition to traditional land tenure and resource management systems by indigenous peoples. It only allows communities to collectively manage and use State-owned land for their living while the State still retains its claim to ownership of these lands. The Cabinet Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies in Thailand also do not fully meet the aspirations of the indigenous peoples.

Indigenous peoples have been struggling with expulsion from or restrictions of access to their ancestral lands. Recent legal reforms and policies such as NCPO Order No. 64/2014 and the subsequent Forestry Master Plan have resulted in judicial actions against members of indigenous communities within protected forests. Indigenous leaders and activists opposing such injustices have faced harsh reprisals, including enforced disappearances and harassments.

Traditional knowledge of the indigenous peoples on the use of their lands and resources is also being challenged with adverse laws.

## Cases, Facts, Comments

In 2014, during the drafting of the current Interim Constitution of Thailand, indigenous peoples submitted proposals for specific legislation for the promotion of the rights of indigenous peoples, but these were not accepted. Indigenous peoples have continued lobbying for the National Legislative Assembly to consider the proposals for such legislation.

According to the Land Reform Network, more than 400 communities were still waiting to be granted community title deeds, indicating poor implementation of the regulation as of 2012, while only one community land title had been issued.

### Land Confiscation, Evictions and Criminalization of Traditional Livelihoods

In July 2014, three indigenous Pakayaw Karen families had their lands reclaimed by the Royal Forest Department in Thung Pa Ka village, northern Mae Hong Son province. The move followed the arrest of 39 Pakayaw Karens at the hands of the army in May 2015, for cutting down trees in the surrounding forest to use the timber to build their homes. They now face imprisonment for 1-7 years or fines ranging between 10,000-350,000 Baht. However, the conviction of the indigenous Karens is in violation of Order No. 66/2014, which states that poor people and those living in protected areas prior to the announcement of the Order will not be affected by the policy, and that the authorities will only apply strict measures to prevent further encroachment into protected areas.

Moreover, in October 2014, two indigenous Lisu communities had their land confiscated by forest officials in collaboration with military officers, who destroyed the communities' agricultural crops. After series of dialogues and negotiations one community received compensation as their land was returned to them, but the other community was allocated small plots of land for each household, which were not sufficient to address their basic needs resulting in further poverty and marginalization.

By December 2015, Order No. 64/2014 had affected nearly 1,800 families, mostly in the north and northeast, home to large indigenous and minority populations.

There are 681 cases filed against exercise of powers under Order No. 64/2014 towards local and indigenous communities. Among those, litigations on 168 cases involve judicial harassment.

More land confiscation and evictions have also continued in Isan, in the northeastern Lao-speaking region that has faced discrimination from the Thai administration in Bangkok since its incorporation into the modern state of Thailand.

#### Enforced Disappearance

In one particular instance that has garnered some international attention is the case of the missing Bang Klo village leader and Karen activist, Porlajee "Billy" Rakchongcharoen, who was apprehended and held in custody by the Chief of Kaeng Krachan National Park, in Petchaburi, on 17 April 2014. He has not been seen since. At the time of his "disappearance", he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011.

### 3. Right to Nationality & Access to Basic Services

(UNDRIP Articles 6, 21, 24, 33):

Indigenous peoples have been struggling for decades to secure citizenship in Thailand. Citizenship will help indigenous peoples ensure their rights to land, education, and freedom of movement.

Indigenous peoples are also facing oppression from government officials, many of whom still view indigenous peoples as foreign and dangerous. It is for these reasons that the plan to give indigenous people gain access to citizenship has slowed, and over 100,000 indigenous persons are estimated to be without citizenship. Resolving the citizenship issue will also help resolve many of the other problems faced by indigenous peoples in Thailand. The existing policy on the nationality verification process and implementation thereof have failed in many cases due to a lack of knowledge and understanding of both indigenous peoples and officials about the registration and verification systems.

There has been an ongoing program to register all people living in remote areas as citizens, who have proof that at least one parent was born in Thailand or was granted temporary legal status. The Thai government has also set up various mechanisms to grant temporary residential status. However, in rural areas, even though it is believed that at least 50% of people have a legitimate claim for citizenship, proof is very hard to obtain, and many lack the needed paperwork.

If a person in Thailand lacks citizenship, as stated earlier, freedom of movement is illegal, and thus, moving to a city -- which is on the rise in indigenous communities due to forced evictions or natural disasters in their homelands -- would be considered illegal. Fear of arrest is also constant. The lack of legal status is another huge contributing factor to the volume of human trafficking that occurs in Thailand, especially in areas where indigenous peoples live.

In some of the cases regarding the legal status of persons, investigated by the NHRCT, the recognition is found to conflict with their de facto evidence.

### 4. Right to Quality and Culturally Relevant Education

(UNDRIP Articles 14, 15):

From Thailand's review of their own human rights situation in first cycle of UPR, the government asserts that all children, including "non-Thais, those without a clear legal status, including ethnic groups... are ... entitled to 15 years of free education." However, they also acknowledge they still face "language, cultural and geographic barriers" where health and education is concerned.

Against such acknowledgement, the Thai government continues to implement a monolingual and monoculture system of education in national language and a majority religion/culture, despite the multilingual and multicultural nature of the State.

UNICEF and UNESCO's baseline studies on the situation of education in Thailand show high rates of dropout and out of school children, particularly from those from non-Thai, stateless, indigenous, and ethno-linguistic minorities. Based on similar experiences of other countries, educationists are proposing life skills learning in mother-tongue based/multilingual education, with decentralization of school management, to tackle such high dropout and out of school rates.

The Thai government adopted, in 2012, a Ministerial Regulation on Rights of Community-based Organization and Non-Governmental Organization to Provide Basic Education in Learning Center to improve community participation in education management, but the regulation does not guarantee financial support for its implementation.

### 5. Indigenous Women and Girls & Human Trafficking

(UNDRIP Articles 7, 17, 44):

Thailand remains a "source, transit and destination country" for human trafficking. The human trafficking situation remaining in tier 3 in the latest US Trafficking in Persons (TIP) report, meaning that the Royal Thai Government does not fully comply with the Trafficking Victims Protection Act's minimum standards and is making insufficient efforts to do so.

Human trafficking victims in Thailand are estimated to be in the tens of thousands, with Indigenous Peoples and ethnic minorities making up a disproportionate number of the victims of human trafficking.

Indigenous Peoples, especially women and girls, are a highly vulnerable population group because they have no official citizenship. Reports from UNESCO "assert that lack of legal status is the single greatest risk factor for trafficking or other exploitation of highlanders." Due to their lack of legal status and less access to quality education, many are lured into a situation involving indentured servitude and a debt too enormous to pay off. They are also less likely to report abuse to the authorities because of their lack of legal status -- making them an almost sought after target.

While the 2014 Trafficking in Persons Report done by the US State Department has affirmed that there have been small improvements, more still needs to be done to protect the victims of human trafficking in Thailand, which includes mass amounts of Indigenous Peoples from the hill tribes. Those without documentation, Thai language skills and remain knowledgeable about their rights will continue to be vulnerable and the problem will linger on.

## Recommendations

1. Ensure the establishment of a specific mechanism for full and effective participation of indigenous peoples in the ongoing country reforms and constitution drafting process and ensure indigenous peoples are recognized in the new Constitution as peoples with their own distinct identities and collective rights.
2. Accede to International Labour Organization Convention No. 169 and give positive consideration to indigenous peoples' proposals for separate legislation for the promotion and protection of the rights of indigenous peoples through the adoption of national legislation and policies, in line with the 2012 concluding observations of Committee on the Elimination of Racial Discrimination (CERD) to Thailand.
3. Review the relevant forestry laws and programs, including NCPO Order No. 64/2014 and the Forestry Master Plan, in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them, such as reforestation programs, and development and mining projects, while protecting the environment, in line with the 2012 concluding observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples. Ensure that any new law on mining or any other type of resource use complies with the above-mentioned rights of indigenous peoples.
4. Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands, territories and resources, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.
5. Accelerate the process of granting nationality and/or legal status to indigenous persons without citizenship, ensuring that indigenous communities and relevant officials are informed about the registration and verification processes, and implement special measures to reach individuals caught in a protection gap, including indigenous populations to fulfill the State's immediate human rights obligation of non-discrimination and equality. Ensure the birth of every indigenous child is formally registered in national systems, in line with the concluding observation of 2012 CERD to Thailand and recommendation of the Special Rapporteur on the human right to safe drinking water and sanitation.
6. Improve access to education with interventions targeted towards understanding and overcoming specific barriers faced by indigenous peoples and children in line with the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples. Adopt necessary laws and policies to provide adequate resources for the implementation of mother-tongue based/multilingual education (MTB/MLE) and for the enforcement of the Ministerial Regulation on Rights of Community-based Organization and Non-Governmental Organization to Provide Basic Education in Learning Center in order to ensure inclusive and equitable quality education and promote lifelong opportunities for all as provided by SDG4.
7. Ensure that security forces perform their duties strictly in accordance with the law, bringing security personnel guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations. On the other hand, ensure that due process is undertaken in relation to all indigenous people who enter the criminal justice system, as stated in the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
8. Take concrete steps and comprehensive measures to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.
9. Ensure effective grievance mechanisms that are accessible to indigenous women at the local and national levels, including resolution of all cases of Violence against Women and other human rights violations.

# THE RIGHTS OF INDIGENOUS PEOPLES IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, no recommendations were received specifically for the rights of indigenous peoples. Some relevant recommendations were received and accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1UkpK6O>

### Accepted Recommendations on ethnicity:

1. Oman: Continue to strengthen the general concept recognizing social and ethnic diversity in Thai society and protect fundamental rights.
  2. Vietnam: Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants
  3. Uruguay: Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability
  4. Republic of South Korea: Redouble its efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision- making process. Indeed, more consideration should be given to women, persons with disabilities and other minorities
- Human Rights Council (11 July 2013). Twenty Fourth session. Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, UN Doc. A/HRC/24/44/Add.3, p. 8, para 27. Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44_en.pdf)
  - ChaoKao Translates to mean 'wild' or 'uncivilized'. Network of Indigenous Peoples in Thailand, "Indigenous Peoples of Thailand." FOCUS 62 (December 2010). Accessed September 15, 2015. <http://www.hurights.or.jp/archives/focus/section2/2010/12/Indigenous-peoples-of-thailand.html>.
  - Erni, Christian, ed. The Concept of Indigenous People in Asia: A Resource Book. N.p.: n.p., 2008. p. 444.

## Challenges and Cases

1. International Group for Indigenous Affairs. (May 2010). "Community Land Title Laws passed in Thailand." [http://www.iwgia.org/news/search-news?news\\_id=128](http://www.iwgia.org/news/search-news?news_id=128)
2. Northern Development Foundation. "Baan Mae San: Community Title Deeds." <http://www.landjustice4thai.org/news.php?id=43>
3. Itipol Srisaowaluck. Law Department, Chulalongkorn University. "Community Land Rights: Community Title Deeds and Related Legislations." [http://www.lrcct.go.th/th/?wpfb\\_dl=1323](http://www.lrcct.go.th/th/?wpfb_dl=1323)
4. Phuketwan Tourism News. (3 July 2015). "Minorities, Refugees, and the Enduring Struggle in Thailand." <http://phuketwan.com/tourism/minorities-enduring-struggle-survival-thailand-22746/>
5. The Nation. (19 August 2014). "Community Land Titles: An Overdue reform needed to end 'encroachment'." <http://www.nationmultimedia.com/national/Govt-urged-to-push-community-title-deeds-for-landl-30186064.html>
6. [https://tlhr2014.wordpress.com/2015/09/22/landwatch\\_report/](https://tlhr2014.wordpress.com/2015/09/22/landwatch_report/)
7. Rattanakrangsri, Kittisak. Thailand. Compiled by International Work Group for Indigenous Affairs. N.p.: n.p., 2015. p. 284.
8. UN Office of the High Commissioner for Human Rights, comp. Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 - Thailand. Universal Periodic Review. N.p.: n.p., 2011. p. 7.
9. Minority Rights Groups International. The State of the World's Minorities and Indigenous Peoples 2015 - Thailand.
10. Office of the National Human Rights Commission of Thailand <[www.nhrc.or.th](http://www.nhrc.or.th)> (26 February 2016) (Thai language)
11. Thailand, comp. National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1\*. Universal Periodic Review. N.p.: n.p., 2011. p. 10.
12. UNICEF. (October 2003) "Ensuring the Rights of Indigenous Children." <http://www.unicef-irc.org/publications/pdf/digest11e.pdf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** Committee on the Elimination of Racial Discrimination. (15 November 2012). Concluding observations on the first to third periodic reports of Thailand, adopted by the committee at its eighty-first session (6-31 August 2012) Thailand, UN Doc. CERD/C/THA/CO/1-3, p.4 “moreover, referring to the state party’s support for the adoption of the united nations declaration on the rights of indigenous peoples, the committee encourages the state party to affirm in its legislation the rights of indigenous peoples, in line with the declaration, and also to consider acceding to international labour organization convention no . 169 (1991) on indigenous and tribal peoples in independent countries.”
3. **Recommendation 3 is based on:** Committee on the Elimination of Racial Discrimination. (15 November 2012). Concluding observations on the first to third periodic reports of Thailand, adopted by the committee at its eighty-first session (6-31 August 2012) Thailand, UN Doc CERD/C/THA/CO/1-3, p.4. “Notwithstanding Constitutional Court decision No. 33/2554 of November 2011, t he Committee urges the State party to review the relevant forestry laws in order to ensure respect for ethnic groups’ way of living, livelihood and culture , and their right to free and prior informed consent in decisions affecting them, while protecting the environment .”; and Human Rights Council (6 August 2015). Thirtieth Session. Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz. UN Doc. A/HRC/30/41. “When developing initiatives to improve the economic, social and cultural rights, pro-actively engage with indigenous women and girls and other members of indigenous communities on how best to meet their needs; apply the principle of free, prior and informed consent to the development of all laws, policies and programmes;”
4. Recommendation 4: [N/A]
5. **Recommendation 5 is based on:** Committee on the Elimination of Racial Discrimination. (15 November 2012). Concluding observations on the first to third periodic reports of Thailand, adopted by the committee at its eighty-first session (6-31 August 2012) Thailand, UN Doc CERD/C/THA/CO/1-3, p.5 “The Committee calls on the State party to strengthen efforts to protect and conserve ethnic languages and to allocate the necessary resources for the promotion of the teaching of ethnic languages in schools.”
6. **Recommendation 6 is based on:** Human Rights Council (6 August 2015). Thirtieth Session. Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz. UN Doc. A/HRC/30/41. “Improve access by indigenous peoples to education, with interventions targeted towards understanding and overcoming the specific barriers faced by girls;”
7. **Recommendation 7 is based on:** Human Rights Council (6 August 2015). Thirtieth Session. Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz. UN Doc. A/HRC/30/41. “
8. Recommendation 8 is based on: [N/A]
9. Recommendation 9 is based on: [N/A]

# THE RIGHTS OF THE CHILD IN THAILAND

## **Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

Thailand became a State Party to the Convention on the Rights of the Child (CRC) in 1991 and later became a party to all three of the Optional Protocols under the Convention. During Thailand's First UPR Cycle in 2011, the Royal Thai Government received 30 recommendations related to the rights of the child, of which it accepted 27 and noted 3. The government accepted recommendations aiming to improve the conditions of children living in the country, such as recommendations related to: prevention of domestic violence (made by Honduras); banning of corporal punishment (made by Uruguay and Slovenia); combating human trafficking (made by Australia, Malaysia, Moldova, Uruguay, Sweden); ending discriminatory practices towards children of minorities (made by Vietnam and Uruguay); preventing the use of children in armed conflicts (made by Uruguay and Honduras); and raising the age of criminal responsibility above 12 years old (made by Austria and Slovenia). However, what can be witnessed by the civil society actors working on a daily basis in supporting the realization of child rights in Thailand, is that the government – while accomplishing certain progress on a few issues (Thailand had ratified the UNOTC and the Third OPCP of the UNCRC) – has also neglected and failed to implement the majority of its first UPR cycle recommendations.

It has been reported and documented that children keep being victims of corporal punishment and domestic violence. Discriminatory practices against children - especially towards the most vulnerable, such as children of ethnic minorities and migrant children - are widespread and in some cases even institutionalized in Thailand. The ongoing failure to enforce existing laws and regulations and engaging justice mechanisms to hold perpetrators accountable, has fostered a culture in which children in communities across Thailand continue to suffer as a result of child rights abuses.

## Challenges

### **Age of Criminal Responsibility:**

Section 73 of the Penal Code determines the minimum age of criminal responsibility at 10 years. This is below the internationally accepted standard of 12 years – which is considered to be an absolute minimum to comply with.

### **Corporal Punishment:**

Corporal punishment continues to be widely practiced in Thailand. Under Article 1567, paragraph 2 of the Civil and Commercial Code, a person exercising parental authority (the natural guardian) has the right to “punish the child in a reasonable manner for disciplinary purposes”. The use of any form of corporal punishment or other cruel or degrading forms of punishment contravenes the right of children to be free from any form of violence.

### **Online sexual abuse and violence against children:**

Websites and online platforms containing child sexual abuse material have continually increased in number. Investigations into such material, arrests of offenders, and shutting down the websites and online platforms hosting the material are not easy and are very time consuming, since cooperation is needed from private corporations, such as website administrators, Internet service providers, and telecommunication service providers. These corporations can provide the information on offenders and offenses needed by law enforcement agencies to request court warrants.

### **Sexual Exploitation of Children:**

Sexual exploitation of children (SEC) persists in Thailand. Corruption and impunity of state actors involved in SEC play a significant role in the continuation of SEC. Also, victims of SEC face significant barriers to access to justice.

## Cases, Facts, Comments

During the first UPR cycle, Thailand agreed to raise the minimum age of criminal responsibility to at least 12 years, and subsequently amended Section 73 of the Penal Code raising the age from 7 years to 10 years. However, the Committee on the Rights of the Child stated in its General Comment on Children's Rights in Juvenile Justice: “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.” In its Concluding Observations on Thailand in 2012, the Committee reiterated that “10 years still remains below internationally acceptable standards” and recommended that Thailand raise the minimum.

In the first UPR cycle, Thailand accepted recommendations to abolish corporal punishment of children in all settings. The UN CRC Concluding Observations for Thailand had also recommended to: “to prohibit corporal punishment regardless of settings”. Additionally, Thailand had recommended Cape Verde through its second UPR in April 2013, to: “Consider prohibiting corporal punishment of children in all forms regardless of settings.” However, explicit prohibition of corporal punishment is yet to be enacted by Thailand.

Of the 685 Child Abuse Content URLs reported in 2015, 420 URLs (62%) were found to contain online child sexual abuse material and hosted on servers located in Thailand. Under the current law, only a few offenders (possessors, producers, distributors, sellers, abusers) have been arrested and such arrests have been infrequent due to legal gaps, inefficient law enforcement, scarcity of specialist investigators, and very limited awareness of the issue of child sexual abuse material among the various stakeholders in Thai society.

The Committee on the Rights of the Child and the U.S. State Department confirm that official corruption perpetuates SEC in Thailand. Barriers to access justice for victims of SEC include a realistic fear of retaliation due to several reasons such as offenders are released on bail; perpetrators abscond after released on bail; child victims are often forced to live in restrictive government shelters for years with few, if any, updates on progress of the criminal case, which deters reporting; the child's best interests are not considered in the justice process, nor is such consideration required by law.

**Stateless children:**

It has been estimated that Thailand has a stateless population of around two million people and in 2007, the government estimated that there were one million stateless children in the country. More recent statistics from the UNHCR estimated that the number of stateless persons in the country was around 500,000 (506,197) in 2011. It was also reported that, in 2011, almost one million people identified as ethnic minorities living in Thailand without birth certificates lack formal social protection. While some efforts appear to be made to address the high population of children among these stateless groups and their increased vulnerability to discrimination, violence and exploitation, it is reported that a large proportion of children remain unprotected.

Under the Nationality Act B.E. 2508, Section 7bis, a child born in Thailand does not acquire Thai nationality if the child's parents entered Thailand without permission under the current immigration laws. Section 7bis, paragraph 3 of the Nationality Act, amended by the National Act (No. 4) B.E. 2551 (2008) enables children born in Thailand without citizenship to reside in the Thai Kingdom under conditions stipulated in the Ministerial Regulation with due consideration given to the human rights of the child as well as principles of national security. However, the child is still "deemed to have entered and resided in the Thai Kingdom without permission under the law on immigration unless the Ministerial Regulation is formulated." Section 7 and Section 7bis of the Nationality Act contravene Thailand's obligations under Article 7 of the UN Convention on the Rights of the Child to ensure that all children born in Thailand have the right to acquire nationality.

**Special Reporting Procedures:**

Special Representative of the Secretary-General on Violence Against Children and UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography had not yet visited Thailand officially

Thailand had accepted recommendations to invite Special Rapporteurs under the first UPR cycle. The CRC Committee had also recommended Thailand to facilitate such visits. Thailand had extended a standing invitation, but still needs to schedule the visits.

**Education for Indigenous and Ethno-linguistic Minority Children:**

Indigenous and ethno-linguistic minority children do not have equity access of quality education due to the language use for instruction in schools; Thai only. Thai is taught in the same way as towards Thai native children, causing high dropout rates and low learning performance. School curricula do not include or reflect the indigenous identity of these children in a systematic way; resulting in loss of cultural and language heritage.

The National Education Act 1999 and its amendment in 2002 as well as the Ministerial declaration 2005 guarantee the right to education for all. However, practice does not reflect this equity access. Mother tongue should be used as a language of instruction in pre and primary education to ease the transition to teaching the national language; using mother tongue based bi- or multilingual education approach.

**Children under Special Security Laws:**

In response to resurgence of violence in the south of Thailand, the government has deployed armed forces and imposed special security laws, under which children have been subjected to administrative detention, conduct amounting to torture, and DNA testing. Children have also been recruited and used to participate in hostilities by non-state armed groups operating in southern Thailand.

The imposition of Martial Law and the Emergency Decree violate children's rights according to CRC's Optional Protocol on the Involvement of Children in Armed Conflict that Thailand had ratified in 2006. Also, during the first cycle of the UPR, Thailand refused to accept the recommendation to "End the recruitment of children and their participation in armed group."

## Recommendations

**Age of Criminal Responsibility:**

1. Amend Section 73 of Penal Code of Thailand and raise the minimum age of criminal responsibility to an internationally acceptable age and in no circumstances below the age of 12 years.

**Corporal Punishment:**

2. Amend section 1567 of the Civil and Commercial Code to explicitly prohibit any form of corporal punishment of children in the home and alternative care settings, including for disciplinary purposes;
3. Explicitly prohibit in law any form of corporal punishment or other cruel or degrading punishment of children in all settings;

**Online sexual abuse and violence against children:**

4. Amend legislation and change practices to minimize the burden and timeline for obtaining judicial approval to shut down websites hosting child sexual abuse material.

**Sexual Exploitation of Children:**

5. Improve enforcement of national laws on corruption. Establish a presumption of pre-trial detention for SEC offenders. Amend legislation to prioritize the child's best interests in all matters affecting the child. Improve the process of informing victims on the progress of their case. Investigate alternatives to long-term confinement in shelter.

**Special Reporting Procedures:**

6. Schedule at the earliest opportunity the requests to undertake official missions in Thailand by the Special Representative of the Secretary-General on Violence Against Children, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, and the Special Rapporteur on Trafficking in Persons, especially Women and Children; and extend to them the necessary cooperation and assistance to facilitate timely and effective country missions.

**Stateless children:**

7. Withdraw Thailand's reservation to Article 22 of the UN Convention on the Rights of the Child, and extend the full ambit of rights under the Convention to all unaccompanied and accompanied children seeking asylum in Thailand; b. Amend section 7 of the Nationality Act and section 7bis of the Nationality Act to ensure that all children born in Thailand are registered and granted citizenship in compliance with article 7 of the UN Convention on the Rights of the Child; c. Amend section 7bis paragraph 3 of the Nationality Act, to remove the words, 'deemed to have entered and resided in the Thai Kingdom without permission under the law on immigration unless the Ministerial Regulation is formulated'.
8. Enact Ministerial Regulations to ensure children born to stateless persons or undocumented migrants residing in Thailand are afforded their full rights under the Convention on the Rights of the Child and are not deemed as illegal migrants, subjected to arrest or detention under the Immigration Act, and that hospital birth registration forms do not include any discriminatory provisions regarding birth parents.

**Children under Special Security Laws:**

9. Amend Martial Law and the Emergency Decree to explicitly state that children under the age of 18 years cannot be arbitrarily detained under these laws. Children suspected of committing a security-related crime should be dealt with in accordance with the Juvenile and Family Court and Juvenile and Family Procedure Act, 2010.

**Education for Indigenous and Ethno-linguistic Minority Children:**

10. Ensure the implementation of the National Education Act B.E. 2542 section 24 paragraph one by providing bilingual education to indigenous and ethno-linguistic minority children including translation of materials and exams and budget allocation for hiring teachers who speak two languages in case needed especially in pre- and primary education.



## RIGHTS OF THE CHILD

### Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 30 recommendations were received on the Rights of the Child. 27 recommendations were accepted, while 3 recommendations were noted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1EEzKmA>

#### Accepted Recommendations on Rights of the Child:

1. Australia: Ratify the United Nations Convention against Transnational Organised Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air
2. Singapore: Continue to work closely with ASEAN to build on the mechanisms of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to promote and protect the rights of the peoples of ASEAN
3. Vietnam: Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants
4. Uruguay: Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability
5. Egypt: Pursue efforts to ensure gender equality and combat violence against women and children
6. Bangladesh: Continue to promote and protect the rights of women and children
7. Uruguay: Review the legislation and national public policies regarding the rights of the child in the light of the Convention on the Rights of the Child and its Optional Protocols
8. South Africa: Enhance policy for the protection of children's rights and strengthen mechanisms currently in place and promote and protect the rights of children
9. Honduras: Strengthen the systems of legal assistance and psycho-social protection so that they are adapted to the particular needs of minors and prevent them from becoming again victims of domestic violence
10. Republic of Korea: Implement more rigorously the existing mechanisms to protect and assist children living and/or working on the streets
11. Malaysia: Continue cooperating closely with neighbouring countries in combating and suppressing trafficking in persons, particularly women and girls and in addressing the situation of irregular migrants, refugees and asylum-seekers
12. Moldova: Increase efforts to effectively prevent trafficking in human beings for purposes of sexual exploitation and forced labour, including child prostitution
13. Uruguay: Adopt all necessary measures to tackle the root causes of the problems of child prostitution, sexual tourism, use of children in pornography and trafficking in women, stepping up its efforts to improve the economic situation
14. Sweden: Seriously address the issues of child pornography and human trafficking in girls and boys for sexual purposes, including by encouraging police and border forces to strengthen efforts at fighting these phenomena as well as seeking accountability where lack of state efforts at prosecution could amount to human rights violations
15. Lebanon: Further accelerate the reform of the justice system to ensure equal treatment for all citizens while continuing to pay specific attention to women and children
16. Austria: Consider developing a system of alternative sentencing to effectively reduce the number of women and children held in prison
17. Slovakia: Review its penitentiary policy to become more gender-sensitive and child-friendly, taking on board the interests of mother-prisoners and their minor children
18. Brazil: Consider raising (from 7 years old) the minimum age of criminal responsibility
19. Slovakia: Ensure separation of juvenile offenders from adult inmates
20. Slovenia: Ensure equal access to education, social security, health care and economic opportunities for women, including Muslim women and women entering early marriages
21. Slovenia: Address the problems of maternal mortality and child malnutrition in remote areas of the country
22. Sri Lanka: Continue enhancing the quality of the access to education, including equal access to education for all children
23. Uruguay: Adopt all necessary measures to eradicate the abuse and sexual exploitation of children, corporal punishment, and to combat the worst forms of child labour
24. Slovenia: Prohibit corporal punishment of children in all settings
25. Slovenia: Raise the minimum age of criminal responsibility to at least 12 years, as recommended by the CRC, and enforce compulsory segregation of juveniles from adults in detention
26. Austria: Raise the minimum age of criminal responsibility to at least 12 years, in line with the recommendations by the Committee on the Rights of the Child
27. Finland: Apply a comprehensive sexual and reproductive health and rights approach to guarantee access of all sex workers, as well as their clients and clients' spouses and partners, to adequate health services and sexual education

#### Noted Recommendations on Rights of the Child:

28. Uruguay: Adopt all necessary measures to eradicate the recruitment of children by armed groups
29. Honduras: End the recruitment of children and their participation in armed groups
30. Slovenia: Review security laws to ensure their conformity with the international human rights standards and in particular with regard to juvenile (alleged) offenders

## Challenges and Cases

1. Thailand Criminal Code B.E. 2499 (1956) Chapter 4 on Criminal Responsibility Section 73 “A child below 10 years of age, who commits a criminal offence, is not liable to punishment”  
Available at: <http://un-act.org/wp-content/uploads/2015/11/Criminal-Code-B.E.-2499-1956-THAI.pdf>
2. Committee on the Rights of the Child Forty-fourth session, Geneva, 15 January-2 February 2007 Child’s Right in Juvenile Justice  
Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>
3. Thailand Civil and Commercial Code B.E. 2535 (1992) Article 1567, paragraph 2 “punish the child in a reasonable manner for disciplinary purposes” Available at: [http://library2.parliament.go.th/library/content\\_law/15.pdf](http://library2.parliament.go.th/library/content_law/15.pdf)
4. UNHCR Global Appeal Update 2015 Thailand (2015). Number of stateless reside in Thailand  
Available at: <http://www.unhcr.org/5461e60b17.html>
5. Nationality Act B.E. 2508 (1965)  
Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82873/109378/F2029485846/THA82873%202%20Eng.pdf>
6. Immigration Act B.E.2522 (1979) Section 7. bis. A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was:
  - (1) the person having been given leniency for temporary residence in Kingdom as a special case;
  - (2) the person having been permitted to stay temporarily in the Kingdom;
  - (3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration.  
Available at: [http://www.immigration.go.th/nov2004/en/doc/Immigration\\_Act.pdf](http://www.immigration.go.th/nov2004/en/doc/Immigration_Act.pdf)
7. National Education Act B.E. 2542 (1999) Available at: [http://planipolis.iiep.unesco.org/upload/Thailand/Thailand\\_Education\\_Act\\_1999.pdf](http://planipolis.iiep.unesco.org/upload/Thailand/Thailand_Education_Act_1999.pdf)
8. 2015 Trafficking in Persons Report (2015). Available at: <http://www.state.gov/documents/organization/243562.pdf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. **Recommendation 1 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “Raise the minimum age of criminal responsibility to an internationally acceptable age and in no circumstances below the age of 12 years.”
2. **Recommendation 2 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “Prohibit explicitly by law corporal punishment of children in the home and alternative care settings, including for disciplinary purposes.”
3. **Recommendation 3 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “The introduction of an explicit national legal ban on all forms of violence against children in all settings.”
4. **Recommendation 4 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “The Committee recommends that the State party take measures to ensure that children’s right to privacy is respected at all times, especially in the mass media. It recommends that the State party enact legislation to protect the identities of children from being reported in all forms of media and establish effective monitoring mechanisms to ensure compliance. It also recommends that the State party continue sensitizing mass media professionals on children’s rights and promote the involvement of children in decisions and production of children’s programmes.”
5. **Recommendation 5 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “The Committee urges the State party to strengthen its efforts to combat corruption at all levels and sectors, including by developing and implementing a vigorous anti-corruption policy, carrying out anti-corruption campaigns and strengthening institutional capacities to effectively detect, investigate and prosecute cases of corruption.”
6. Recommendation 6: [N/A]
7. **Recommendation 7 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (17 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 44 of the Convention CRC/C/THA/CO/3-4 “The Committee urges the State party to further review and enact legislation in order to ensure that all children who are at risk of becoming stateless, including children belonging to the disadvantaged groups mentioned in paragraph 41, are provided with access to Thai nationality. The Committee recommends that the State party consider ratifying the 1954 Convention relating to the Status of Stateless Persons and its 1967 Optional Protocol, and the 1961 Convention on the Reduction of Statelessness.”
8. Recommendation 8: [N/A]
9. **Recommendation 9 is based on:** Committee On The Rights Of The Child: Fifty- ninth session (21 February 2012). Concluding Observations: Thailand Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict CRC/C/OPAC/THA/CO/1 Section VI. Protection, recovery and reintegration, “The Committee calls upon the State party to review its security - related laws with a view to prohibiting criminal or administrative proceedings against children under the age of 18 as well as prohibiting their detention in military detention centres. It recommends that all children under the age of 18 be handled by the juvenile justice system in all circumstances.”
10. **Recommendation 10 is based on:** Committee on the Elimination of Racial Discrimination (15 November 2012). Concluding observations on the first to third periodic reports of Thailand, adopted by the Committee at its eighty-first session CERD/C/THA/CO/1-3 Section C. Concerns and recommendations, “The Committee calls on the State party to strengthen efforts to protect and conserve ethnic languages and to allocate the necessary resources for the promotion of the teaching of ethnic languages in schools.”

# WOMEN'S RIGHTS

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1st UPR in 2011, Thailand received and accepted a total of 23 recommendations on women's rights, and some progress has been made in terms of implementation. For instance, in July 2012, Thailand withdrew its reservation to Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which guarantees women's rights in all matters related to marriage and family relations, such as the right to choose a spouse and to enter into marriage, the rights and responsibilities during marriage and the rights and responsibilities of parents in matters related to children, the rights to freely and responsibly decide on the number of children, the rights and responsibilities in regards to guardianship and adoption of children, the personal rights as husband and wife, including the right to choose a family name and profession, and rights in respect to property. The state has also drafted measures to protect women and children from violence and there were efforts to empower and train women in politics and public participations. In addition, The Thailand Institute of Justice (TIJ) has joined hands with UN Women to launch campaigns which raise awareness on sexual violence and promote gender equality. However, from the 23 recommendations, some issues remain unaddressed. Regarding the Gender Equality Act, although section 3 on the exception of the definition of gender discrimination has been removed, there are certain exemptions existing in the area of national security or religious practices specified in section 17, paragraph 2. This can be used as an excuse for discriminatory practice, which is against the March 2015 law.

## Summary of Challenges

The reason recommendations from the 1st UPR Cycle have not been fully implemented is because national leaders do not pay sufficient attention to gender equality and empowerment of women's rights. Women and girls still face social prejudice and various forms of discrimination. Although most laws and policies prohibit discrimination, there are exemptions under section 17 which allows loopholes for interpretation by the Secretariat of the National Committee on Gender Equality Group. It is questionable whether the work of the Committee will lead to transformative changes in gender equality. Even though sexual harassment, domestic violence, and human and child trafficking are still serious issues, the government does not value the importance of budget allocation to enhance gender equality, women's economic rights, and women's participation in decision-making processes. Women continue to be affected by economic and social development activities.

The key challenges for the government are:

1. Enforcement of laws on gender equality and elimination of discrimination against women
2. Access to justice for women victims of violence
3. Temporary special measures to ensure women's participation in social, economic and political decision-making processes
4. Implementation of Women's Development Plan and allocation of budget to promote gender equality and empower women and girls.

## Challenges

### Law enforcement on gender equality to eliminate discrimination against women:

This is to protect and prevent unjust discrimination based on gender which is in line with international human rights instruments to which Thailand is a party of. Nonetheless, section 17, paragraph 2 of the Gender Equality Act is contradictory since it allows exceptions on the basis of national security and religion (meaning that discrimination is lawful if claimed necessary for national security or religion). Moreover, it depends on the discretion of the National Committee on Gender Equality Group, comprised of representative from various ministries, external qualified persons, as well as experienced individuals from private organizations, who interpret the exceptions and decide whether the Committee will comply with the human rights principles.

There are concerns over the extent to which the government will continually arrange meetings for the committee to set policies in order for implementation to be carried out by various ministries with sufficient allocated budget to support the Gender Equality Promotion Fund.

### Access to justice for women victims of violence:

The 1st Cycle UPR Recommendations were ineffectively implemented. The recommendations include the promotion and protection of access to justice for women victims of violence. Despite the law on the Protection of Victims of Domestic Violence Act B.E. 2550 (2007) under the CEDAW, the act is mainly used as a conciliation tool which values family matters more than the rights of women, especially in the case of women who murder their husbands as a resort to domestic violence (*Battered Woman Syndrome*).

In 2014, the Committee Against Torture (CAT) proposed recommendations to the government in section 16 (d) to address sexual abuse, domestic violence and human trafficking against women, especially Muslim women in the deep south of Thailand. Although Thailand has amended the Anti-Human Trafficking Act B.E. 2558 (2015), remedy and compensation provided to trafficking victims are not effective since there is no support from the Anti-Human Trafficking Fund under the Anti-Human Trafficking Act to work on prosecution.

## Cases, Facts, Comments

The exemption under section 17 paragraph 2 of the Gender Equality Act B.E. 2558 (2015) is a main challenge to the interpretation of the law which is not in line with international human rights principles and CEDAW. For instance, Muslim women in the deep south and indigenous women still face domestic violence. Force marriages are still prevalent. Women have no rights in respect to property. Due to the lack of legal recognition, indigenous women and stateless youths risk becoming victims of human trafficking. Indigenous and refugee women, women victims of human trafficking, Battered Woman Syndrome, nuns and women human rights defenders are still facing unjust discrimination, violence and threats. Therefore, the exemption under section 17 paragraph 2 of the Gender Equality Act B.E. 2558 (2015) can be seen as a loophole to justify discrimination against women, in particular marginalized women.

Due to social attitudes which values family life more than women's rights, women who murder their husbands in response to domestic violence are subject to pay up to 500,000 Baht for bail. Many of them are put under custody during investigation despite child caring responsibilities. Some have been asked to confess to intentional killing to reduce penalties. Women have no money to pay for bail or to hire qualified lawyers who understand the issue of domestic violence and gender sensitivity. These are examples of barriers to access justice for women.

### Data provided by the provincial hospital in Yala is as follows:

In 2014, there were 231 cases of abuse. There were 9 cases of rape. There were few cases of sexual harassment found in court proceedings. Moreover, there is a lack of effective mechanism to protect victims. A victim returned home from a year overseas only to acknowledge failure of government agencies in punishing her perpetrators. Some cases spent more 10 years on justice proceedings without financial remedy or legal support by any government agency. In addition, some victims faced negative attitudes from officials.

### The implementation of temporary special measures for women's participation in social, economic and political decision-making process:

The government did not implement the 1st Cycle UPR recommendations on the adoption of temporary special measures on gender equality in all areas, especially women's participation in social, economic, and political decision-making processes. The Thai government did not provide legal mechanisms to ensure equal participation of women in the B.E. 2559 (2016) Draft Constitution decision-making process. There is no special measure to protect indigenous and tribal women, trafficking victims, refugees and migrant women, disabled women, women living with HIV, and Muslim women in the deep south who are facing political conflict, as well as the battered woman syndrome group. Women should be included in decision-making processes in order to achieve equality, according to Sustainable Development Goals (SDGs) no. 5 on gender equality and empowerment for women and girls.

In 2013, women occupied only 16 percent of parliamentary seats while there were less than one third of women members in various national committees through appointments, especially during the period of reform. The government has no temporary special measure to enhance gender equality which should be guaranteed under the constitution, including rules and regulations. This leads to a lack of women's participation at the decision-making level, including gender proportion designation. The government did not emphasize the promotion of women's political participation. The constitution does not define a proportionate number of women representatives. The WeMove organization has been advocating for a proportionate number of women in decision-making process at all levels.

Women migrants, particularly those in the textile industry are increasingly laid off. There are continuous outsourcing which affects women who are breadwinners in their families. They resort to sex work for extra income. Pregnant women are also laid off. There is no state policy or special measures protecting the rights of these women.

### Implementation of Women's Development Plan and allocation of budget to promote gender equality and empowerment of women and girls.

The Thai government did not actively implement recommendations received from the 1st Cycle UPR Recommendations to strengthen the human rights mechanism and human rights plan according to CEDAW which aims to adopt Gender Responsive Budgeting (GRB) and Financing for gender equality and women's empowerment commitments as a guideline to set up strategic budgeting and planning for economic, social and cultural rights protection, equal access to education, social security, healthcare and equal economic opportunity for all. This is to guarantee gender equality, especially for Muslim women, indigenous and tribal women, trafficking victims, refugee and migrant women, disabled women, women living with HIV, the battered woman syndrome group, and rural women who are affected by unfair development plans. This also allows women to participate in strategic gender planning with good governance so that women in the civil society will have an opportunity to participate in decision-making processes and implementation monitoring.

The government did not emphasize strategic planning for women and sustainable development for gender responsive financing as provided by CEDAW. The government did not take responsibility on the effects caused by unfair development plans and human rights violations by both domestic and transnational companies to women and girls. There is a need for the protection of the environment from metal toxins which contaminate the water supply. In the case of a goldmine at Khaoluang sub-district, Wangsapoong district, a group of 12 women Kon Ruk Baan Kerd was sued by a goldmine company. The government failed to fulfill its state party's obligations. The government must consider the problems that rural women are facing, including women's role as the head of household for economic activities, especially equal and fair resource management and government administration. The government must consider the 'Gender Responsive Budgeting' principle which is an international principle for sustainable development.

## Recommendations

The Thai government did not fully implement the recommendations received from the 1st UPR Cycle; this obstructs the process of gender equality and the protection of women's rights. Therefore, the Thai government should adopt temporary special measures to create genuine equality and protect the rights of women and girls under the CEDAW. As a result, the government should accelerate the following implementations:

1. Enact the Gender Equality Act to be aligned with CEDAW and revoke the exemption in section 17, paragraph 2 of the Gender Equality Act B.E. 2558 (2015). This recommendation complies with the 2006 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) to Thailand.
2. Urge the National Committee on Gender Equality to fully take action under its authority and coordinate with various ministries. This will guarantee the issuance of policies and measures to promote women's rights and eliminate discrimination against women.
3. Issue the regulations to adopt the alternative punitive measure which reduces the number of female prisoners based on the Bangkok Rules.
4. Reform the judicial process by considering the issue of women's rights violations and allocate budget to projects that promote women's and girls' access to justice. Enact the Protection of victims of Domestic Violence Act B.E. 2550 (2007) to ensure that victimized women and girls are promptly treated and protected and prosecute offenders. This recommendation complies with the 2006 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) to Thailand and the 2014 recommendation of Committee against Torture (CAT).
5. Implement temporary special measures to ensure proportionate gender ratio in all dimensions to promote women's participation in socio-economic and political decision-making processes. The government should amend the related laws to change the gender ratio in Tambon Administrative Organization (TAO) to 50:50. Furthermore, there should be at least one third of women in the list of election candidates. The political parties must comply with these regulations. This recommendation complies with the 2006 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) to Thailand.
6. Organize training sessions to raise awareness and highlight the importance of women's participation in all levels of decision-making processes, including at the international level, and to create enabling, encouraging, and supportive conditions for such participation. Moreover, the data storage system on women's participation in political and public issues should be developed. This recommendation complies with the 2006 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) to Thailand.
7. Ensure that the Women's Development Plan under the CEDAW is being implemented in practice, in both local and national levels. In addition, ensure the participation of civil society.
8. Establish an independent organization which is funded by the government to promote gender equality and protect the rights of women and girls.
9. The government should establish an effective policy and legal framework against domestic violence. The public agencies, especially police officers, should be specially trained on domestic violence cases. This recommendation complies with the 2005 concluding observations of the Human Rights Committee to Thailand.

## WOMEN'S RIGHTS

**Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

For Thailand 1st UPR in 2011, 23 recommendations were received on women's rights.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1URcc1A>

1. Australia: Ratify the United Nations Convention against Transnational Organised Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air
  2. Canada: Review the Gender Equality Bill and remove exceptions therein which would allow for discrimination against women, consistent with CEDAW
  3. Brazil: Expedite the drafting and the adoption of the gender equality bill
  4. Singapore: Continue to work closely with ASEAN to build on the mechanisms of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to promote and protect the rights of the peoples of ASEAN
  5. Vietnam: Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants
  6. Republic of Korea: Redouble its efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision-making process. Indeed, more consideration should be given to women, persons with disabilities and other minorities
  7. Moldova: Adopt and implement temporary special measures in order to accelerate the realization of women's de facto equality with men in all areas, particularly with regard to women's participation in decision-making and access to economic opportunities
  8. Uruguay: Adopt all necessary measures to eradicate and eliminate practices and customs which discriminate against women, including stereotypes which undermine their social and legal condition and hinder, at the same time, the implementation of commitments to the CEDAW
  9. Moldova: Bring about a change in attitudes with a view to eliminating persistent stereotypical attitudes about the roles and responsibilities of women and men in the family and in society
  10. Slovenia: Take measures towards modifying those social, cultural and traditional attitudes that are permissive of violence against women
  11. Moldova: Take steps towards modifying those social, cultural and traditional attitudes that were permissive of violence against women
  12. Egypt: Pursue efforts to ensure gender equality and combat violence against women and children
  13. Bangladesh: Continue to promote and protect the rights of women and children
  14. Argentina: Continue intensifying the efforts to prevent, punish and eradicate all forms of violence against women
  15. Algeria: Pursue measures aiming at protecting women and addressing the issue of violence against them
  16. Malaysia: Continue cooperating closely with neighbouring countries in combating and suppressing trafficking in persons, particularly women and girls and in addressing the situation of irregular migrants, refugees and asylum-seekers
  17. Uruguay: Adopt all necessary measures to tackle the root causes of the problems of child prostitution, sexual tourism, use of children in pornography and trafficking in women, stepping up its efforts to improve the economic situation
  18. Lebanon: Further accelerate the reform of the justice system to ensure equal treatment for all citizens while continuing to pay specific attention to women and children
  19. Austria: Consider developing a system of alternative sentencing to effectively reduce the number of women and children held in prison
  20. Slovakia: Review its penitentiary policy to become more gender-sensitive and child-friendly, taking on board the interests of mother-prisoners and their minor children
  21. Slovenia: Ensure equal access to education, social security, health care and economic opportunities for women, including Muslim women and women entering early marriages
  22. Slovenia: Address the problems of maternal mortality and child malnutrition in remote areas of the country
  23. Finland: Apply a comprehensive sexual and reproductive health and rights approach to guarantee access of all sex workers, as well as their clients and clients' spouses and partners, to adequate health services and sexual education
- Press Release: Thailand withdraws its reservation to Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women  
Available at: <http://www.mfa.go.th/main/en/media-center/14/25491-Thailand-withdraws-its-reservation-to-Article-16-o.html>
  - Gender Equality Act B.E. 2558 (2015). Available at: [http://library2.parliament.go.th/giventake/content\\_nla2557/law18-130358-17.pdf](http://library2.parliament.go.th/giventake/content_nla2557/law18-130358-17.pdf)

## Challenges and Cases

1. Protection of victims of Domestic Violence Act B.E. 2550 (2007). Available at: [http://library2.parliament.go.th/giventake/content\\_law/law140850-1.pdf](http://library2.parliament.go.th/giventake/content_law/law140850-1.pdf)
2. Prevention and Suppression of Human Trafficking (No. 2) Act B.E. 2558 (2015). Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/100444/120480/F-1952294104/THA100444%20Tha.pdf>
3. Women's Agenda for Peace (PAW) called for safe space for women in the South (2015). Available at: <http://www.deepsouthwatch.org/dsj/7810>
4. Ratio of Women in Parliament (2015). Available at: <http://www.measwatch.org/writing/5382>
5. Draft Constitution of Thailand as of 29 January 2016. Available at: [http://www.parliament.go.th/ewtcommittee/ewt/draftconstitution2/download/article/article\\_20160130212136.pdf](http://www.parliament.go.th/ewtcommittee/ewt/draftconstitution2/download/article/article_20160130212136.pdf)

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. **Recommendation 1 is based on:** Committee on the Elimination of Discrimination against Women. Concluding comments of the Committee on the Elimination of Discrimination against women, Thirty-fourth session 16 January-3 February 2006. "Systematically review all legislation so as to achieve full compliance with provisions of CEDAW. CEDAW points out that it is obligation of State to ensure that CEDAW becomes fully applicable in domestic legal system."
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. **Recommendation 4 is based on:** Committee against Torture (2014).
5. **Recommendation 5 is based on:** Committee on the Elimination of Discrimination against Women (2006). Concluding comments of the Committee on the Elimination of Discrimination against women. "Implement training and awareness-raising programmes to highlight importance of women's participation in decision-making at all levels, including at international level, and to create enabling, encouraging and supportive conditions for such participation."
6. **Recommendation 6 is based on:** Committee on the Elimination of Discrimination against Women (2006). "Develop more systematic data collection on women's participation in political and public life."
7. Recommendation 7: [N/A]
8. Recommendation 8: [N/A]
9. **Recommendation 9 is based on:** Human Rights Committee (2005). Concluding observations of the Human Rights Committee on the International Covenant on Civil and Political Rights. "Adopt necessary policy and legal frameworks to effectively combat domestic violence" "Law enforcement officials, in particular police officers, should be provided with appropriate training to deal with cases of domestic violence"

# SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION (SOGIE) RIGHTS IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

In 2011, during Thailand's First UPR, no recommendation was formulated to the Thai Government on SOGIE issues. Nevertheless, the advocacy and collaborations between the State, international organizations, and civil society on LGBTI rights have gained much progress in the protection of their rights and equality. Some of these accomplishments are exemplified by the progress in transgender military drafting procedures, regulations allowing intersex individuals to change gender titles, and rights to wear uniforms based on chosen genders in some Universities. Not to mention, the progressive collaboration between the education system, the United Nations, and civil society in producing a report based on discrimination in the workplace and bullying LGBTI youth among other issues.

The 2007 Constitution held the highest provisions in protecting LGBTI individuals under Article 30, corresponding to the Article's intentions. The military coup in 2014 revoked the constitution and there has yet to be any guarantees that the new Constitution will provide SOGIE protection.

## The Rights most commonly violated

- Right to Access to Education for LGBTI Youth
- Right to Equal protection
- Right to Freedom from discrimination
- Right to Freedom from arbitrary arrest
- Right to Access to justice
- Right to Family Rights
- Right to Access to Public Spaces
- Right to Liberty and Security of the Individual
- Right to Standard of Mental and Physical Health
- Right to Freedom of Peaceful Assembly and Association.

## Challenges

### 1. LGBTI Youth

The Thai government has ratified the 1992 UN Convention on the Rights of the Child which guarantees that all children would receive the rights to education and would be protected from violations of their human dignity in the education system as established in Article 28 of the convention. The State implemented the Child Protection Law of 2003 as a result to add assurance of its ratifications under Thai law. However, these laws do not reflect on nor provide protection on issues of SOGIE and intersex youth. As a result, LGBTI youth fall under emotional and physical abuse through the state policies, school regulations, educational materials, their environment, and administration such as teachers, or their peers.

### 2. Family Rights

There are no laws or policies that protect or provide social services for the LGBTI community regarding family rights, such as same-sex marriage, adoption of children, and legal access to assisted reproductive technologies.

## Cases, Facts, Comments

### Case 1: The negative portrayals of LGBTI people in secondary school health education textbooks:

such as labeling them deviants and advising that sexual deviants should keep their abnormality a secret that their acquaintances should keep a distance from them and not enter into a relationship with sexual deviants. These negative portrayals of LGBTI people leads to an unsafe educational environment for young LGBTI persons.

### Case 2: Teasing and bullying behavior by teachers or school personnel:

These behaviors include sarcastic remarks in class, staring, cutting grades without a valid reason. For instance, in 2015 there were more than 10 schools such as Piriyalai school Satree Nontaburi school, Stree Angtong school, Stree Sri Suriyotai School, Maree Wittaya Kabinburee School, Porncharean College Prayasuriyan Therawittiya school have a principle to punishment, deduct the morality score, if they figure out the student express difference the biological gender.

### Case 3: Suicide

At an undisclosed private school in Samphran district of Nakhonpathom province, a fourteen-year old student committed suicide after the headmaster and 3 homeroom teachers berated the youth. Fortunately, she was resuscitated by doctors. The youth was also harassed by a female teacher in front of class for being transgender after being caught wearing women's undergarments. Aside from this, another female teacher, previously the child's homeroom teacher in 6th grade also berated her. The headmaster, who was a woman, hit the child on the head due to low grades and not attending remedial classes. More so, the headmaster also threatened the child to stop her behavior, or she would be undressed during morning assembly.

### Case 4: Sexual Harassment against gay, lesbian, and transsexual students

Gay or transsexual students still face numerous forms of harassment, such as molestation or forced intercourse to shame the person. While female students who identify as lesbian, or tom (more masculine) are the least accepted group of students, to the extent that some schools would have groups that hate toms, and would normally harass them in front of toilets that some of these students don't dare use the toilets all day. Based on statistics, middle school students face more verbal harassment than their high school counterparts, but the rest is not so much distinguishable.

### Civil Code Section 1148: Marriage between a man and woman

Marriage in Thailand can only be made legal as stated by the Civil Code Section 1448 "A marriage can take place only when a man and woman have completed their seventeenth year of age..." Man and Woman, recognized by gender assigned at birth.

### Case 2

In July 2015, there was a case of a foreign gay couple who received surrogacy service from a Thai surrogate mother. However, after the baby had been delivered, the surrogate mother refused to give the couple their child's custodial rights because she did not believe that a same-sex couple could take care of the child. The Protection of Children Born from Assisted Reproductive Technologies Act of 2015 also prohibits same-sex couples to utilize reproductive technology services. The Act is evidence of existing discrimination against the LGBTIs and disrespect of equal rights for all.

### Case 3

In September 2012, there was a case of a lesbian couple who had been in a relationship for 8 years. One day, one of the partners fell sick and needed to be taken to an emergency room in a private hospital, but the other partner did not have the right to sign consent forms for treatment. This caused her partner to pass away the following week. She said that if her partner had received immediate treatment, her life could have been saved. Moreover, the patient could not have the treatment paid by the Civil Servants' Medical Benefit Scheme even though her partner was a civil servant.

### 3. Gender Identity of the Individual

The state has no laws that protect gender identity. The results are discrimination towards transgender persons in the judicial system, customs and re-entry into the country, access to health, education, and employment for example. These cause much difficulty in having a normal life for those whose gender identities differ from their identified ones. As an example, a person travelling into the country is questioned by customs officials because their passport details do not match their gender identity.

#### Case 1: Natchacha Kong-Udom

Natcha, a transgender student, joined a demonstration on civil and political rights in September 2014, during which she raised the junta-banned three-finger salutation, adopted as a sign of resistance to military rule, in front of a cinema; she was arrested and brought to Pathumwan Police Station and later to the Army Sports Center. After the incident, she participated in an event titled "One Year After the Coup" on May 22, 2015 leading to an arrest warrant being issued for her, and her being taken into custody again on June 24, 2015. A bail request was submitted but the court ruled to have her incarcerated in a men's facility although a request was also submitted to the military court for her to be kept in custody at a women's facility. This request was turned down on the grounds that she was born male and no laws allow transgender people to have their legal sex changed. While in prison, she was verbally abused, constant threats were made by male inmates and she was also subjected to continuous body searches by male officers who her to appear in front of them naked. This is only one of numerous examples of how a transgender woman suspect in custody would be treated as a "male" inmate in Thailand.

#### Case 2: Prevention from taking exams and partaking in ceremonies

Thai students have to wear either 'male' or 'female' school uniforms based on their birth gender. Some universities also have regulations for students to dress according to birth genders and take exams. In January 2016, Woraniitha Chiewchan, a transgender man student studying Law at Chiang Mai University received a letter from the ceremony administration denying him his request to partake in graduation ceremony dressed as a male. The letter he received stated that his request goes against rules and regulations for graduation, which were deemed a long abided tradition. It also stated that the regulations were to honor the presiding chairman of the ceremony, while bestowing the person with utmost protection. Furthermore, the committee ruled that the denial to dress according to one's chosen gender is not under any circumstance a violation of the person's rights.

### 4. Discrimination and Challenges in the Workplace

Although Thailand had enacted legislations to provide gender equality under the Gender Equality Law of 2015, there are still other laws which overlook discrimination from all levels of employment. This situation prevails despite other laws deemed equal in practice to the Gender Equality law, such as Article 15 of the Labour Protection Act of 2008. The article stipulates equal treatment between male and female employees. Furthermore, the Ministry of Labour's regulations in 2014 provided standards for the workplace on social responsibilities of Thai businesses that prohibits all forms of discrimination based on subjective perspectives on gender.

#### Case 1: Kath Khangpiboon

One tangible example of such discrimination was seen with the dismissal of Kath Khangpiboon, a 28-year-old transgender lecturer at the Faculty of Social Administration at Thammasat University. She was notified that she would not be given a regular lecturer post after lecturing at the university for 10 months, for questionable reasons.

#### Case 2: Petition to the National Human Rights Commission of Thailand (NHRCT)

Another case happened in July 2015. A Thai transgender woman who had been working for an international organization for 15 months was dismissed from her position on unjustified claims of her underperformance. Before the dismissal, she had been discriminated against due to her gender identity and there had been no policies regarding safe and friendly spaces for transgender in the organization. Reference from National Human Rights Commission Documentation: Petition No. 433/2558 of the Nation Human Right Commission.

#### Case 3: Discrimination of a transgender woman from a teaching internship

In May 2012, an undergraduate transgender woman student applied for a teaching internship for Art at Suan Kularp Academy, a well-known all male academy in Bangkok. Soon after, the academy issued a denial of acceptance letter, sending the said intern back to her University. The letter stated its reasons as so that "the intern may complete the internship at other establishments according to appropriate characteristics of an intern."

### 5. Discrimination in the Health System

LGBTI people still face stigma and discrimination when going through the healthcare system. Public or private health care services do not match all the needs of individuals resulting from gender and sexual diversity, notwithstanding Article 30 in the 2007 constitution that forbade discrimination on these grounds.

Gaps have been identified particularly in sexual health and mental health services. Issues such as inappropriate ward placements have also been noted in general health care; public health insurance plans do not cover gender transitioning treatments, and same-sex partners of employees that have family health care plans through their work are not covered by such plans unlike heterosexually married partners. The lack of knowledge, skills and prejudiced attitudes of some health care providers toward LGBTI persons also represents a barrier to health and well-being.

Many LGBTI individuals while seeking health care services have faced discrimination in the form of unequal standards of health care given to LGBTI persons, including provision of inappropriate advice, the disclosure of sensitive and private health information, refusal to provide treatment, placing of transgender persons in hospital wards not in accordance with their gender identity, and the perception by healthcare professionals that LGBT persons are mentally unstable.

#### Case 1: Legal Protection of intersex people

In October 2014, a 5-year old intersex child born with both male and female sexual organs in Loei province. Due to this condition, the child could not stand and relieve him/herself as other boys and was teased by his/her friends. It was revealed that the child had received medical examinations which proved that the child was 100% male but had to undergo gender reassignment surgery to be "normal." In this case, the doctor's diagnosis is seen as a violation of the child's right to choose his/her own gender identity and physical characteristics. The issue of being forced to choose a gender among the intersex community remains a human rights violation that the state has yet to address.

#### Case 2: from the book "Violated Lives: Narratives from LGBTIQs and International Human Rights Law"

It tells the story of Nada Chaiyakit who had to recover surgery in a male ward after requesting to be relocated to a female ward as she had just undergone sexual reassignment surgery; the request received denial. This treatment gravely disturbed Nada as she had to share a ward with males. Even the use of toilets or relieving herself became an issue of dispute with the doctor or nurses assigned to Nada. Since that incident, Nada has always been reluctant to receive any medical care, unless it was completely necessary. This reflects on the lack of sensitivity within administrators of healthcare and the lack of legislature towards the treatment of transgender persons.

## Recommendations

The Thai State must:

1. Collaborate with civil society in recommending and rectifying laws and policies, along with their implementations to support and protect LGBTI rights.
2. Raise public awareness and recognize SOGIE rights under the constitution to protect and uphold equality and dignity for LGBTI persons.
3. Develop and enforce clear anti-bullying policies covering students of all genders, emphasizing management of bullying perpetrators in a manner involving no discrimination on the basis of the sex, sexual orientation or gender expression of either perpetrators or victims.
4. Make amendments to the Civil and Commercial Code, Book 4, Article 1448 to enable rights to marriage equality.
5. Enact legislation to ensure gender recognition and create gender sensitivity within all contexts and segments of society.
6. Enact an anti-discrimination law and a monitoring body specifically for employment discrimination, and penalize perpetrators of such violations.
7. Enact policies to provide health care providers gender sensitivity information to ensure proper services. It must also include the transitioning process under its health policies which fall under social services.

# SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION (SOGIE) RIGHTS IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, no recommendations were received specifically for the rights of SOGIE.

## Challenges and Cases

1. Thailand Gender Equality Act B.E. 2558 (2015) Available at: <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act>
2. Gay couple from U.S. in Thai custody battle over surrogate baby (2015). Reuters. Available at: <http://uk.reuters.com/article/uk-thailand-usa-baby-idUKKCN0PX13F20150724>
3. Anti-junta trans student activist released on bail after being sent to male prison (2015). Prachatai Available at: <http://prachatai.org/english/node/5224>
4. A Dream Deferred: A Look at Transgender Discrimination in Thailand (2015). Available at: <http://pulitzercenter.org/reporting/dream-deferred-look-transgender-discrimination-thailand>
5. Being LGBT in Asia: Thailand Country Report (2014). USAID, UNDP. Available at: [http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv\\_aids/rbap-hhd-2014-blia-thailand-country-report.pdf](http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-thailand-country-report.pdf)
6. A fourteen-year old student harassed by teachers committed suicide (2012). MCOT News. Available at: <http://www.mcot.net/site/content?id=50220d150b01dac4090020d9#.VubcZJx97WI>
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8. Labor Protection Act B.E. 2551 (2008) Available at: [http://www.labour.go.th/en/attachments/article/19/Labour\\_Protection\\_Act\\_BE2008.pdf](http://www.labour.go.th/en/attachments/article/19/Labour_Protection_Act_BE2008.pdf)
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10. Suriyasarn, B. (2015). Gender identity and sexual orientation in Thailand: Promoting Rights, Diversity and Equality in the World of Work (PRIDE) Project. Bangkok: ILO.
11. Constitution of the Kingdom of Thailand B.E. 2550 (2007) Part 2 Equality Section 30 All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Available at: [http://library2.parliament.go.th/giventake/content\\_cons50/cons2550e-kd.pdf](http://library2.parliament.go.th/giventake/content_cons50/cons2550e-kd.pdf)
12. Petition to the National Human Rights Commission of Thailand (NHRCT) Reference from National Human Rights Commission Documentation: Petition No. 433/2558 of the Nation Human Right Commission
13. Boonprasert, J. (2011). Violated Lives: Narratives from LGBTIQs and International Human Rights Law

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** Human Rights Committee on International Covenant on Civil and Political Rights (27 April 2015). Concluding observations on the second periodic report of Cambodia CCPR/C/KHM/CO/2 “[...] It should also conduct public awareness-raising activities to combat the social stigmatization of lesbian, gay, bisexual and transgender persons.”
3. Recommendation 3: [N/A]
4. **Recommendation 4 is based on:** Human Rights Committee on International Covenant on Civil and Political Rights (27 April 2015). Concluding observations on the second periodic report of Cambodia CCPR/C/KHM/CO/2 “The State party should repeal provisions that discriminate on the basis of sex, age and income with regard to marriage.”
5. **Recommendation 5 is based on:** Human Rights Committee on International Covenant on Civil and Political Rights (27 April 2015). Concluding observations on the second periodic report of Cambodia CCPR/C/KHM/CO/2 “The State party should reinforce its measures to ensure equality between women and men in all spheres, including by more effective implementation of the relevant legislation and policies.”
6. **Recommendation 6 is based on:** Human Rights Committee on International Covenant on Civil and Political Rights (27 April 2015). Concluding observations on the second periodic report of Cambodia CCPR/C/KHM/CO/2 “The State party should review its legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited.”
7. Recommendation 7: [N/A]

# THE RIGHTS OF PERSONS WITH DISABILITIES

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its first UPR Cycle, Thailand received and accepted two recommendations on the rights of persons with disabilities. As such, Saudi Arabia recommended that the state "Continue(s) to develop the capacities of institutions working with persons with disabilities, including educational and health institutions." South Korea recommended that the state "Redouble(s) its efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision-making process. Indeed, more consideration should be given to women, persons with disabilities and other minorities." As a result, the Persons with Disabilities Empowerment Act of 2007 was amended in 2013 to include provisions on monitoring of the access by persons with disabilities to their rights, establishment of service centres for persons with disabilities, increasing the role of persons with disabilities organisations, developing disability-friendly environment and providing services on sign language interpreters and assistants for persons with disabilities. Nonetheless, in practice, persons living with Disabilities are still facing discrimination and difficulties in accessing social services, and children with disabilities do not have equal access to education.

## National Legal Framework

The 2007 Constitution (no longer in place since the 2014 Coup) contains anti-discrimination provisions based on physical or health conditions and guarantees accessibility to social welfare and services for persons with disabilities. The Persons with Disabilities' Quality of Life Promotion Act B.E. 2550 (2007) is a comprehensive rights-based law for persons with disabilities and contains an antidiscrimination component. This Act established the National Commission for Promotion and Development of Disabled Persons' Life Quality and also established an Office to implement recommendations of the Commission, and a fund to be managed by the Office for the rehabilitation of disabled persons. The Persons with Disabilities Education Act B.E 2551 (2008), promotes fairness of access to education and vocational training for all disadvantaged groups. The Declaration on Rights for People with Disabilities in Thailand (3 December 1998), approved and signed by the former Prime Minister, is a pledge made by the people of Thailand to persons with disabilities. It is now used as a reference in the provision of services for people with disabilities.

## Remaining Challenges and Emerging Human Rights Issues

Although there are specific legislations which directly support and protect persons with disabilities, including the Persons with Disabilities Empowerment Act BE 2550 (2007) and its BE 2556 (2013) amendment, the Education Act for Persons with Disabilities, B.E. 2551 (2008) and its B.E. 2556 (2013) amendment, as well as the Convention on the Rights of Persons with Disabilities which Thailand is a signatory and a party of, the rights of persons with disabilities in Thailand are not fully respected in practice. This disconnection between the supportive legislation and the lack of enforcement on the ground is due to the fact that the rights of persons with disabilities are not mainstreamed through all line ministries to ensure their equal access to social justice, health services, education, and public service. Instead, the Ministry of Social Development and Human Security is the principal Ministry responsible for policies, programmes and services related to people with disabilities, and shall be working in coordination with the Ministry of Public Health, the Ministry of Education and the Ministry of Labour. However, with the bureaucratic system in Thailand operating in a silo structure, it is very challenging to mainstream the socio-economic and rights-related issues pertaining to persons with disabilities across all ministries. Additionally, there is a variety of disabled people which require different and complicated needs.

### Rights of Persons with Disabilities and Caretakers guaranteed by the abovementioned laws:

• Identification Cards for disabled people	• Right to Access Health Care	• Right to education	• Right to employment
• Right to access media	• Allowances for disabilities	• Loans	• Right to Participation
• Translating Services	• Legal assistance	• Caretaker support	• Rights of caretakers

### Disabilities Thailand:

Over the past 10 years (BE 2550-2559; 2007-2016), with the Persons with Disabilities Empowerment Act BE 2550, and the Convention on the Rights of Persons with Disabilities, Disabilities Thailand, a national NGO, has played a key role in influencing policies related to persons with disabilities. It was founded by the gathering of leaders with disabilities since BE 2526 (1983), together with the Sub-committee on Persons with Disabilities of the parliament (Senate, Legislative assembly, and National Reform Committee). It is a network which advocates for policy and legislation reforms related to persons with disabilities by applying an inclusive approach to its work following the principles of a Rights-based Society and Society for All to allow for an 'Inclusive Society' in which persons with disabilities are treated as equal and given an equal voice. The inclusive civil society movement is called the 'National Disabled People Assembly'.

The 'National Disabled People Assembly' provides a platform for persons with disabilities to discuss the challenges facing their community and to strategize on effective advocacy strategies which could bring about change in persons with disabilities' lives. The Assembly has identified the following 4 challenges:

## Ongoing Challenges

### Discrimination against Persons with Disabilities

The Constitution and the Persons with Disabilities Empowerment Act BE 2550 (2007) articles 15, 16, and 17 prohibit discrimination on the basis of disabilities. However, the problem of discrimination towards disabled people still exists throughout the Thai society.

However, beliefs and prejudices constitute barriers when health-care workers cannot see past the disability, teachers do not see the value in teaching children with disabilities, employers discriminate against people with disabilities, and family members have low expectations of their relatives with disabilities. The sub-committee against discrimination towards disabled people and its related judicial mechanisms remain ineffective in addressing the structural barriers persons with disabilities.

### Accessibility to social services and public environment:

The laws related to the access of disabled people to public environment, such as buildings, transportation, media and telecommunications, technology and communications, facilities, and public services, are the following 4 laws:

1. Building facilities for disabled or handicapped people and older persons BE 2548 (2005), Ministry of Interior;
2. Conditions and guidelines for access to information, communication, telecommunications, technology, equipment for communications, and public services for disabled people BE 2554 (2011), Ministry of Information and Communication Technology;
3. Indicators for equipment and facilities or services in buildings or public services for disabled people to access BE 2555 (2012), Ministry of Social Development and Human Security;
4. Equipment and facilities in public, vehicles or transportation for disabled people to access, BE 2556 (2013), Ministry of Transport.

## Cases, Facts, Comments

**Employment & Education:** persons with disabilities are prevented from competitive exams in some careers, and are rejected in some education institutions, preventing them from specializing in a specific career. Persons with disabilities are not able to access public services.

**Non-supportive judicial system:** Many persons with disabilities find that the judicial system works against them. Indeed, in some instances, discrimination against disabled people in juristic acts and transactions is perpetrated by the state agencies themselves. Furthermore, going through the judicial system is costly and time consuming or the help received is not worth the loss incurred in the judicial process. As such, over 90% of the people in the National Disabilities Assembly choose not to go through the complaint process. They do not trust the non-discrimination mechanism of the state and choose to succumb to injustice. More than half of the disabled people never received information or are not aware of the mechanism and the process for assistance when they are discriminated against.

Lack of accessibility: Built environments (including public accommodations) transport systems and information are often inaccessible. The lack of access to transport is a frequent reason for a person with a disability being discouraged from seeking work or prevented from accessing health care.

All the four legislations are related to the respective ministries including: the Ministry of Transport, the Ministry of Interior, Ministry of Social Development and Human Security and the Ministry of Information and Communication Technology, but these Ministries are not able to enforce the laws efficiently, especially in cases where law enforcement and state agencies do not follow the laws in practice. This is due to the lack of public awareness and understanding among the related agencies in complying and implementing the four laws, as well as the lack of penalties and coherent standards, resulting in very few accessibility for disabled people at only 12,218 places out of 43,024 places or 28.4% in public spaces. (Source: First follow up on the cabinet, 30 September BE 2555 (2012), National Office for Empowerment)

However, the lack of awareness among state agencies of the rights and needs of persons with disabilities results in a poor access to social services and public spaces.

**Lack of provision of services:** People with disabilities are particularly vulnerable to deficiencies in services such as health care, rehabilitation, or support and assistance.

**Problems with service delivery:** Issues such as poor coordination among services, inadequate staffing, staff competencies, and training affect the quality and adequacy of services for persons with disabilities.

**Fund for Empowerment of Persons with Disabilities (FEPD): Funding is an important aspect for the realization of the rights of persons with disabilities**

**They experience higher rates of poverty:** Households with a person with a disability have higher rates of poverty than households without disabled members. As a group and across settings, people with disabilities have worse living conditions and fewer assets. Poverty may lead to disability, through malnutrition, poor health care, and dangerous working or living conditions. Disability may lead to poverty through lost earnings, due to lack of employment or underemployment, and through the additional costs of living with disability, such as extra medical, housing, and transport costs. Since April 2011, disabled people in Thailand can receive a small pension of 500 baht per month, which is inefficient to support their basic needs.

**Inadequate funding:** Resources allocated to implementing policies and plans are often inadequate. Currently, the Department of Empowerment of Persons with Disabilities (DEP) possesses 260 million USD (as of February 2016) and is inclined to spend 56 million USD per year. Employers and business owners who do not hire disabled people as the quota requires must pay a fine to the fund. As such, in the past 4-5 years, the DEP has used the fund as loans to support different programs, averaging to 17 million USD. This shows the inefficiency of the fund in providing the loans while possessing the necessary funds.

Due to the inflexibility of the process and the limits on the number and expertise of the fund from various sectors especially vocational development, debt management, information and finance, as well as government conduct regulations, finding proactive resolutions becomes challenging. The use of the fund is thus limited, both in work and measuring results according to the needs of the persons with disabilities to be empowered, employed, and sustainably independent.

**Setting up a Disabilities Service Center as a mechanism to realizing rights**

A central Disabilities Service Center is an important mechanism to ensure the rights are effectively promoted and protected by allowing disabled people to access the different services including health, education, vocation, technology and information. It is also important to help the organizations register with the disabilities services with sufficient income as a social enterprise.

In 2013, there were amendments to the 2007 Persons with Disabilities Empowerment Act to include provisions on monitoring of the access by persons with disabilities to their rights, establishment of service centres for persons with disabilities, increasing the role of persons with disabilities organisations, developing disability-friendly environment and providing services on sign language interpreters and assistants for persons with disabilities. Persons with disabilities are able to register at the Disabilities Service Center to manage services for their community living far away to be able to access services conveniently and quickly. It is supported by the budget from the fund but currently there are fewer than 55 Disabilities Service Centers managed by organizations working for persons with disabilities throughout Thailand, whereas there are 760 local or state Disabilities Service Center (as of 15 February 2016).

## Recommendations

### Anti-Discrimination & Access to remedy:

- Review and revise existing legislation and policies for consistency with the Convention on the Rights of Persons with Disabilities (CRPD); review and revise compliance and enforcement mechanisms.
- Ratify the Optional Protocol on the Rights of Persons with Disabilities to guarantee rights to disabled people in line with the 2012 concluding observations on the Committee on the Rights of the Child.
- Review mainstream and disability-specific policies, systems, and services to identify gaps and barriers and to plan actions to overcome them.
- Firmly prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds; and raise the status of the 'subcommittee' on non-discrimination towards persons with disabilities to a 'committee' on eliminating discrimination against persons with disabilities.
- Implement communication campaigns to increase public knowledge and understanding of disability.
- Establish channels for people with disabilities and third parties to lodge complaints on human rights issues and laws that are not implemented or enforced.
- Review the situation of children with disabilities in terms of their access to education services and give effective priority to the development of inclusive education over the placement of children in specialized institutions, as recommended by the Committee on the Rights of the Child in its 2012 concluding observations to Thailand.

### Access to Social Services & Public Environment:

- Enforce all four legislations related to the rights of persons with disabilities to access services and accessibility to public environment efficiently by setting up penalties for cases which do not comply.
- Introduce measures to ensure that people with disabilities are protected from poverty and benefit adequately from mainstream poverty alleviation programmes.
- Issue the Accessibility for All Act (AAA) which combines physical environment (buildings), transportation, news information, communication, technology and facilities, along with other services to provide adequate, equal, and thorough assistance for the work of all related agencies.
- Establish a National Standard to design buildings, transportation, news, information, communications, electronic services as a guarantee for all groups to access including people with disabilities.

### Adequate funding:

- Allocate adequate resources to existing publicly-funded services and appropriately fund the implementation of the national disability strategy and plan of action.
- Conduct a comprehensive assessment of budget needs and establish clear allocations for those areas that progressively address the inequalities and disparities in indicators such as gender, disability, health, education, standard of living and geographical location related to children's rights, as recommended by the Committee on the Rights of the Child in its 2012 concluding observations to Thailand.
- Improve the efficiency and transparency of services to manage funding for support and development of persons with disabilities.

### Disability Center:

- Support the establishment and development of the Disabilities Service Center to be managed by persons with disabilities by strengthening and supporting organizations working on disabilities to achieve a certain standard; and support the development of knowledge, improve personnel, develop the organizational capacity and budgeting, as well as improve the services for effectiveness and research and development.

# RIGHTS OF PERSONS WITH DISABILITIES

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 2 recommendations were received on Persons with Disabilities.

2 recommendations were accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1U2ZD5c>

### Accepted recommendations:

1. Saudi Arabia: "Continue to develop the capacities of institutions working with persons with disabilities, including educational and health institutions"
2. Republic of Korea: "Redouble its efforts to place greater attention on establishing a legal framework to ensure equal access to women's participation in the decision-making process. Indeed, more consideration should be given to women, persons with disabilities and other minorities"

## Challenges and Cases

1. Persons with Disabilities Empowerment Act B.E. 2550 (2007). Available at: <http://nep.go.th/sites/default/files/files/law/197.pdf>
2. Education Act for Persons with Disabilities B.E. 2551 (2008). Available at: <http://nep.go.th/sites/default/files/files/law/38.pdf>
3. Ministerial Regulation on facilities in buildings for disabled, deformed and elderly B.E. 2548 (2003). Available at: <http://www.asa.or.th/download/03media/04law/cba/mr/mr48-58e.pdf>
4. Ministerial Regulation on access to information, communication, telecommunication, for disabled people B.E. 2554 (2011). Available at: <http://nep.go.th/sites/default/files/files/law/173.pdf>
5. Ministerial Regulation on providing necessary tools to facilitate accessibility to buildings or other public services for people with disabilities B.E. 2555 (2012). Available at: <http://nep.go.th/sites/default/files/files/law/194.pdf>
6. Ministerial Regulation on providing necessary tools to facilitate accessibility to buildings, public services and public transportation for people with disabilities B.E. 2556 (2013). Available at: <http://nep.go.th/sites/default/files/files/law/195.pdf>
7. Evaluation of Cabinet Resolution on 30 September 2013 (Department of Empowerment of Persons with Disabilities (DEP) under the Ministry of Social Development and Human Security) Available at: <http://nep.go.th/th/services/%E0%B9%80%E0%B8%AD%E0%B8%81%E0%B8%AA%E0%B8%B2%E0%B8%A3%E0%B8%94%E0%B8%B2%E0%B8%A7%E0%B8%99%E0%B9%8C%E0%B9%82%E0%B8%AB%E0%B8%A5%E0%B8%94-%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%95%E0%B8%B4%E0%B8%94%E0%B8%95%E0%B8%B2%0%B8%A1%E0%B8%9C%E0%B8%A5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%94%E0%B8%B3%E0%B9%80%E0%B8%99%E0%B8%B4%E0%B8%99%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%95%E0%B8%B2%E0%B8%A1%E0%B8%A1%E0%B8%95%E0%B8%B4%E0%B8%84%E0%B8%93%E0%B8%B0%E0%B8%A3%E0%B8%B1%E0%B8%90%E0%B8%A1%E0%B8%99%E0%B8%95%E0%B8%A3%E0%B8%B5-%E0%B8%84%E0%B8%A3%E0%B8%B1%E0%B9%89%E0%B8%87%E0%B8%97%E0%B8%B5%E0%B9%88-1>
8. Establishment of Disabilities Service Center. Available at: <http://click.senate.go.th/?p=10059>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

### Anti-Discrimination & Access to remedy

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** The Committee on the Rights of the Child (16 January – 3 February 2012). Concluding Observations of the Rights of the Child, Thailand. “The Committee urges the State party to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.”
3. Recommendation 3: [N/A]
4. Recommendation 4: [N/A]
5. Recommendation 5: [N/A]
6. Recommendation 6: [N/A]
7. **Recommendation 7 is based on:** Committee on the Rights of the Child (16 January – 3 February 2012). Concluding Observations of the Committee on the Rights of the Child, Thailand. “Carry out comprehensive public education campaigns to prevent and combat all forms of discrimination”

### Access to Social Services & Public Environment

8. **Recommendation 8 is based on:** Committee on Economic, Social and Cultural Rights (2013). Concluding Observations on the Initial and Second Periodic Reports of Djibouti. “The Committee recommends that the State party adopt legislation that incorporates the provisions of the Convention on the Rights of Persons with Disabilities and provides for administrative and legal remedies in the event of violations of these rights. The Committee also recommends that the State party collect information and produce statistical data on the exercise of economic, social and cultural rights by persons with disabilities and develop a national plan for their economic and social inclusion accordingly. Furthermore, the Committee calls on the State party to increase its efforts to make public services accessible to them.”
9. Recommendation 9: [N/A]
10. Recommendation 10: [N/A]
11. Recommendation 11: [N/A]

### Adequate Funding

12. Recommendation 12: [N/A]
13. **Recommendation 13 is based on:** Committee on the Rights of the Child (16 January – 3 February 2012). Concluding Observations of the Committee on the Rights of the Child, Thailand. “Conduct a comprehensive assessment of budget needs and establish clear allocations for those areas that progressively address the inequalities and disparities in indicators such as gender, disability, health, education, standard of living and geographical location related to children’s rights;”
14. Recommendation 14: [N/A]

### Disability Center

15. Recommendation 15: [N/A]

# RIGHTS OF THE ELDERLY

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During Thailand's 1st UPR Cycle in 2011, there was no recommendation concerning the rights of the elderly. However, Thailand has enacted related laws to which the rights of the elderly are stipulated in, namely the Declaration on Thailand's Older Persons, B.E. 2542 (1999) and the Elderly Persons Act, B.E. 2546 (2003), Section 11, to comply with the International Covenant on Economics, Social and Cultural Rights (ICESCR) and the Madrid International Plan of Action on Ageing (MIPAA) of the United Nations which was adopted at the 2nd World Assembly on Ageing held in Madrid, Spain, in April 2002. Although the cabinet of Thailand has agreed to adopt the rights of vulnerable groups in this plan, the rights of the elderly were not mentioned in the State Report of Thailand's 1st UPR. Instead, they appeared in the 2014 Annual Human Rights Report presented by the National Human Rights Commission of Thailand (NHRCT). The said report showed that Thailand is rapidly entering the ageing society: by 2040 it will reach 20 percent, resulting in challenges for the enjoyment of rights of the elderly.

## Major problems related to the rights of the elderly include:

- The elderly are unknowledgeable about their legal rights as prescribed by laws and state policies, and therefore cannot access justice.
- Lack of integration of laws, policies, mechanisms, resources and state procedures which will affect the plan of action for promoting participation in the country and life quality development.
- There is no sufficient and proper awareness and understanding of elderly rights among different sectors which affects the formulation of state policies and participation of the elderly.
- The rights of the elderly stipulated in the old-person-related Declarations and Agreements of the United Nations and ASEAN are still obscure.

## Challenges

### 1. The promotion of the elderly rights according to the provisions of the Older Persons Act, B.E. 2546 (2003),

covering 4 issues including the economy, health, society and environment has not yet been implemented properly. As a result, the majority of the elderly lose their opportunities to access their entitled rights. The number of old people in Thailand stands at more than 10 million in 2014 (According to the 2015 ESCAP population data sheet).

### 2. The reform of the economic preparation system for entering the ageing society in Thailand, such as the income, health, social and environmental security in accordance with recommendations proposed by the Reform Committees under the National Reform Council (2014) is obscure in terms of national reform mechanism.

## Cases, Facts, Comments

- The elderly are satisfied with their accessibility to the entitled benefits and ageing care services of the government. However, provisions of laws regarding elderly rights are not really inclusive, except old-age allowances.
- Some loopholes in relevant laws restrict the rights of the elderly to access jobs within their capacities or those which the government supports. For example, the Civil Service Act identifies the retirement age for civil servants at the age of 60 years and for workers at 55 years in the private business sector, according to the Labour and Social Security Act.
- The ageing population in Thailand has rapidly increased, completely entering the ageing society which accounts for 20 percent of the total population. They will be valuable resources for development in the next 10 years.
- The structure of the National Commission on the Elderly appointed by virtue of the 2nd National Plan for the Older Persons under the supervision of the Ministry of Social Development and Human Security and many other relevant public organizations, as well as the Senior Citizen Association of Thailand as stipulated in the Older Persons Act, B.E. 2546 (2003) do not enable the unity of works and the integration of policies to the action plan. Due to the decentralized administration of the Senior Citizen Association of Thailand, access to the Older Persons Fund's Services becomes difficult and relevant organizations for old people cannot cooperate.

	<ul style="list-style-type: none"> <li>In 2015, the National Reform Committee did not make any clear reform plan to prepare for the ageing society of Thailand.</li> <li>In 2014, the Law Reform Commission of Thailand proposed the idea of enacting laws on the promotion of life quality and occupational opportunities for older persons focusing on the elderly rights coverage expansion and decentralization of the Older Persons Fund to be under the supervision of the National Legislative Assembly (NLA) and the Cabinet. Nevertheless, the proposal has had no progress.</li> </ul>
<p><b>3. The right to income security for old people, in particular government officials, employees of the informal sector, and freelance workers with a total number of more than 24 million, cannot access the right to income security.</b></p>	<ul style="list-style-type: none"> <li>At present, the government has launched the Universal Coverage of Old-Age Allowance Scheme by which any person at the age of not less than 60 years is eligible, upon the registration-based approach, to receive a monthly paid allowance at the rate of the Public Pension Tested System, ranging from 600 Baht to 1,000 Baht. However, such amount of money is not enough for today's cost of living and impermanent. The old-age allowance is worth only one third of the country's poverty line.</li> <li>There is no supportive and enabling law enacted for upgrading the said scheme to become the basic state pension for people as a whole.</li> <li>The government promotes people in all sectors to engage in savings, through the Government Pension Fund (GPF) or the social security system with saving contribution plus the contribution paid by employers for formal workers, or through the National Saving Fund (NSF) for all informal workers, and the pension system of schools and state enterprises, etc. However, disparities in pension systems still remains.</li> </ul>
<p><b>4. Older people are seen as a social burden, rather than a source of power, by most people in the Thai society and the mass media</b></p>	<ul style="list-style-type: none"> <li>News reported to the public by the mass media mostly presents the image of old people as a dependent and assistance-needy-group.</li> <li>There is evidence showing that 80 percent of the total ageing population is a valuable resource for the country's development. Meanwhile, 13 percent of them are restricted to homebound activities and the other 1 percent is dependent on their families' care.</li> </ul>
<p><b>5. Human rights mechanism and/or agreements and international declarations on the elderly are obscure,</b> such as the ASEAN Human Right Declaration under AICHR and the UN Convention which should act as a mechanism for encouraging the Thai government to keep working on enactment of the laws, formulating policies, designing mechanisms, planning, conducting progress reports and implementing assessments for elderly programmes.</p>	<ul style="list-style-type: none"> <li>The UN Open-ended Working Group on Ageing is a platform of the UN Member States to exchange information and propel the adoption of the International Covenant on Older Persons. The Foundation for Older Persons' Development, in collaboration with Help Age International, the National Human Rights Commission, the Ministry of Foreign Affairs and the Ministry of Social Development and Human Security asked the Thai government to continually provide support for propelling the adoption of said Covenant.</li> <li>The ASEAN Intergovernmental Commission on Human Rights - AICHR) is the mechanism for human rights promotion and protection among ASEAN member countries. Regarding the rights of the elderly, the Kuala Lumpur Declaration on Ageing: Empowering Older Persons in ASEAN is a charter used for promoting and protecting the rights of older persons in Thailand and neighboring countries.</li> </ul>

## Recommendations

- Ensure the Ministry of Social Development and Human Security defines policies to reinforce the formulation of necessary mechanisms and supply of resources for the promotion of the rights of the elderly, and implement the Older Persons Act, B.E. 2546 (2003) in collaboration with civil society actors.
- Include the goals, policies, and the 2nd National Plan for Older Persons into the 12th National Economic and Social Development Plan and the Sustainable Development Goals (SDGs), with a commitment to "Leave no one behind." Integrate the policies for the elderly from 6 Ministries (Ministry of Social Development and Human Security, Ministry of Public Health, Ministry of Interior, Ministry of Labour, Ministry of Culture, Ministry of Tourism and Sports) with 2 agencies (Thai Health Promotion Foundation and the National Health Security Office), to urge implementation in practice through state and civil society mechanisms.
- Follow up on the enactment of the Bill on Promotion of Quality of Life and Occupation of Older Persons, submitted by the Law Reform Commission of Thailand (based on the 2003 Older Persons Act) to ensure its relevance in the current changing environment.
- The Ministry of Social Development and Human Security should enable policies and supply resources to promote the value of older persons' participation in the country's development.
- Formulate policies and campaigns to encourage positive perceptions of the elderly, particularly in response to society's mindset which negatively views older persons as burdens, in line with the 2011 outcomes documents of the UNESCAP Sub-regional Meeting on Enhancing Long-Term Care and Social Participation of Older Persons in East and North-East Asia.
- Utilize the National Pension Scheme to ensure income security for the elderly. The Ministry of Finance should formulate policies to facilitate campaigns and enact by-laws to support the present government's National Pension Commission Bill and the National Pension Bill submitted by civil society to the newly elected government. Ensure the laws are enforced and guarantee the realization of the National Pension Scheme.
- Provide more opportunities for older persons to apply their capacities, specialties and experiences creatively for the benefit of society, including employment or part-time and voluntary jobs, including private or small and medium enterprises; and continue supporting NGOs or public agencies which provide employment opportunities for older persons, as recommended by the 2011 outcomes documents of the UNESCAP Sub-regional Meeting on Enhancing Long-Term Care and Social Participation of Older Persons in East and North-East Asia.
- Support the adoption of the International Declaration on Older Persons while continuing its commitments to policy-making, implementation and reporting.



## RIGHTS OF THE ELDERLY

### Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, no recommendations were received on the Rights of the Elderly.

#### Laws relevant to the rights of the elderly:

1. Declaration of Thai Senior Citizen B.E. 2542 (1999). Available at: [http://www.thaicentarian.mahidol.ac.th/TECIC/index.php?option=com\\_content&view=article&id=50:2009-05-27-07-45-52&catid=39:policy&Itemid=60](http://www.thaicentarian.mahidol.ac.th/TECIC/index.php?option=com_content&view=article&id=50:2009-05-27-07-45-52&catid=39:policy&Itemid=60)
2. Elderly Act B.E. 2546 (2003) Article 11. Available at: <http://www.olderfund.opp.go.th/uploads/content/download/516e0e112b403.pdf>

### Challenges and Cases

1. Project on Promoting to older person rights and income security in Thailand support by European Union. Available at: <https://europa.eu/eyd2015/en/european-union/stories/week-50-seniors-know-their-rights-and-fulfil-their-dreams-thailand>
2. Thailand's Population in the Future. Available at: <http://www.ipsr.mahidol.ac.th/IPSr/AnnualConference/ConferenceII/Article/Article02.htm>
3. Thailand Population older adults – Age 60+ 15.8% or a total of 67 million population. Available at: <http://www.unescap.org/sites/default/files/SPPS%20PS%20data%20sheet%202015%20final%20online.pdf>
4. Report of the Committee on system Reformation Accommodating Ageing Population in Thailand (National Reform Council) 25 August 2015. Available at: [http://www.parliament.go.th/ewtadmin/ewt/parliament\\_parcy/download/parcy/057.pdf](http://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/parcy/057.pdf)
5. Pension Eligibility for Age Pension. Available at: [https://www.m-society.go.th/ewt\\_news.php?nid=15283](https://www.m-society.go.th/ewt_news.php?nid=15283)
6. Thailand's Pension System. Available at: <https://www.facebook.com/pension4all/>, <http://thaitgri.org/>, <http://fopdev.or.th/>
7. Thai PBS Broadcasting on issues of Older Persons. Available at: <http://program.thaipbs.or.th/Varathailand>
8. UN Open End Working Group on ageing  
Available at: <http://social.un.org/ageing-working-group/index.shtml>  
Available at: <http://www.ohchr.org/EN/Issues/OlderPersons/Pages/OlderPersonsIndex.aspx>  
<http://www.helpage.org/newsroom/latest-news/un-openended-working-group-on-ageing-the-convention-debate-continues/>
9. Kuala Lumpur Declaration on Ageing: Empowering Older Persons in Asean Available at: [http://www.asean.org/storage/images/2015/November/27th-summit/ASCC\\_documents/Kuala%20Lumpur%20Declaration%20on%20Ageing%20-%20Empowering%20Older%20Persons%20in%20ASEANAdopted.pdf](http://www.asean.org/storage/images/2015/November/27th-summit/ASCC_documents/Kuala%20Lumpur%20Declaration%20on%20Ageing%20-%20Empowering%20Older%20Persons%20in%20ASEANAdopted.pdf)

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. **Recommendation 4 is based on:** Concluding observations on the second to fourth periodic reports of Viet Nam (Example from Vietnam).  
“The Committee recommends that the State party revise the eligibility criteria for the social allowance for older persons so that those in need are not excluded. It also recommends that the State party increase the amount of social allowance so as to enable an adequate standard of living for the recipients. Additionally, in the light of the ageing population in the State party, the Committee recommends that the State party adopt measures to respond to the specific needs of older persons, including measures to ensure income security in old age, through both contributory and non-contributory schemes, the delivery of adequate and affordable health-care services and the conduct of awareness-raising activities on the rights of older persons.”
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** Outcome Document of the ESCAP Subregional Meeting on Enhancing Long-Term Care and Social Participation of Older Persons in East and North-East Asia, (3-4 November 2011). Incheon, Republic of Korea.  
“The Meeting recognized that there were negative views about ageing and the elderly in the societies of the East and North-East Asian subregion, as if older persons were a burden to the society. However, the Meeting reviewed the positive contributions, including social, cultural, economic and political contributions, that older persons have been making, and recommend all relevant stakeholders to promote positive images of ageing, including the recognition that the elders are assets to our societies.”
7. **Recommendation 7 is based on:** Outcome Document of the ESCAP Subregional Meeting on Enhancing Long-Term Care and Social Participation of Older Persons in East and North-East Asia, (3-4 November 2011). Incheon, Republic of Korea  
“Older persons possess a wealth of skills and capabilities resulting from their rich professional and personal experiences. Increasing opportunities for older persons to effectively utilize their capabilities and expertise will benefit the society as well as the individual older persons in their continued social participation. Such opportunities may be gainful employment (full-time or part-time), or other engagements including ad hoc work and volunteering. Possible workplaces for older persons include private enterprises, including small and medium enterprises, schools, and communal and public facilities, or abroad for skills transfer projects.”

# FREEDOM OF OPINION AND EXPRESSION & FREEDOM OF ASSEMBLY AND ASSOCIATION

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 1<sup>st</sup> UPR in 2011, Thailand received 19 recommendations calling for the improvement of the situation related to freedom of opinion and expression, including 4 recommendations which addressed the situation related to freedom of assembly and association. In total, 7 recommendations on freedom of opinion and expression were accepted, while 12 recommendations, including the ones on freedom of assembly and association, were noted. Of the 7 recommendations that were accepted (made by New Zealand, Norway, Hungary, and Switzerland), 3 were recommendations to invite the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. While Thailand issued a standing invitation to all UN special procedures in November 2011, requests for a country visit by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have remained pending since 2012 and 2013 respectively. The remaining 4 accepted recommendations have not been implemented. These broadly involved ensuring legislation is consistent with international human rights law, and supporting positive human rights outcomes in the area of freedom of expression (New Zealand), strengthening efforts to ensure adequate legal counseling in cases concerning violations of *lèse-majesté* and the 2007 Computer Crimes Act, as well as ensuring these proceedings are public and transparent (Norway).

In regards to the 4 recommendations which also addressed freedom of association and peaceful assembly (made by Canada, Indonesia and Switzerland), calling for legislative review and/or reform, none of these recommendations were accepted and therefore were not implemented.

The situation of freedom of opinion and expression and freedom of assembly and association has markedly worsened in Thailand since its first UPR cycle, especially with the imposition of martial law on 20 May 2014 and the National Council for Peace and Order (NCPO)'s seizure of power in a coup d'état on 22 May 2014. Subsequent announcements and orders imposed by the NCPO further limited peoples' rights and liberties; holding individuals in custody without charge for up to 7 days, and allowing military courts jurisdiction over certain civilian cases (including *lèse-majesté* and public assembly cases).

## Challenges

## Cases, Facts, Comments

### FREEDOM OF OPINION AND EXPRESSION

#### The use of special security laws to detain individuals without charge

After the May 2014 coup, the NCPO summoned or "invited" hundreds of individuals to report for their criticism or activism against the coup or policies of the junta. Under the Martial Law (1914) (until its revocation on 1 April 2015) and NCPO Order no. 3/2015, the military could hold individuals who were summoned incommunicado in undisclosed locations for up to 7 days.

From May 2014 to December 2015, at least 829 individuals were summoned by the NCPO through various means. Among these, at least 476 were summoned via nationwide television broadcasts. Some individuals were summoned more than once. At least 20 individuals reported receiving ill treatment while being held, and at least 24 individuals were charged with *lèse-majesté* after being held under special security laws.

Mr. Pravit Rojanaphruk, a former senior journalist from the Nation (Bangkok-based English newspaper) who had regularly expressed criticism toward the *lèse-majesté* law and other political issues was summoned to report to the NCPO twice. According to Mr. Pravit, he was interrogated 6 hours during his second summons.

#### Lèse-majesté Law: Article 112 of the Criminal Code

**Application of the *lèse-majesté* law:** Amid Thailand's ongoing political turmoil, individuals have increasingly used *lèse-majesté* complaints to attack political opponents. Since the May 2014 military coup, courts have typically imposed heavy jail terms for those found guilty of defaming, insulting, or threatening the King, the Queen, the Heir to the throne, or the Regent.

Thailand accepted recommendations in its first UPR cycle to ensure that its legislation is consistent with international human rights law pertaining to freedom of expression (made by New Zealand), and to ensure public and transparent proceedings in cases concerning violations of the *lèse-majesté* legislation and the 2007 Computer Crimes Act (made by Norway). However, from January 2012 to December 2015, at least 36 new *lèse-majesté* cases were filed before the court. Among these, at least 30 cases had been filed to the court after the coup, of which 20 were filed to a military court.

#### Arbitrary Detention under *lèse-majesté*:

Individuals have increasingly been subjected to arbitrary detention under the *lèse-majesté* law.

**Lack of due process in trials involving *lèse-majesté* violators:** Through the use of NCPO Order no. 3/2015, authorities have consistently failed to guarantee the principle of equality of all persons before the courts, the right to a fair and public hearing, and the right to bail, in cases involving alleged *lèse-majesté* violators, in contradiction to Article 14 (fair trial rights) and Article 9 (right to liberty and security of a person, including the right to bail) of the ICCPR, to which Thailand is a State party. The increase in the number of *lèse-majesté* cases and the number of closed trials indicate that Thailand has not worked positively on the noted recommendations.

From May 2014 to December 2015, at least 62 individuals were accused or charged under the *lèse-majesté* law. On 31 March 2015, the Bangkok Military Court sentenced Mr. Thiansutham Suthijitseranee to 50 years in prison for posting messages deemed to be *lèse-majesté* on Facebook. Later, on 7 August 2015, the Bangkok Military Court also sentenced Mr. Pongsak Sriboonpeng to 60 years in prison for posting 6 messages on Facebook. Both sentences were halved due to their guilty plea. As for civilian courts, on 20 January 2016, Bangkok Ratchadaphisek Criminal Court sentenced Mr. Piya Chulakittiphan to 9 years in prison for posting 1 message on Facebook. The court later reduced his sentence to 6 years.

Communication JUA 08/12/2014 Case no: THA 13/2014 transmitted to the Special Rapporteur on the situation of Human Rights Defenders, documented the arbitrary arrest and detention of, and charges against 21 individuals under *lèse-majesté* for exercising their rights to freedom of opinion and expression. The UN Working Group on Arbitrary Detention (WGAD) has issued 3 opinions (in 2012, 2014, and 2015 respectively) deeming that *lèse-majesté* detainees Somyot Prueksakasemsuk, Paitawat Saraiyaem, and Pornthip Munkong, had been arbitrarily detained.

Among 36 cases that had been filed to the court between January 2012 and December 2015, at least 12 cases were announced closed to the public throughout the proceeding. All 12 cases were filed to the court after the 2014 coup.

### Criminal Code Articles 326 (defamation) and 328 (libel) & Articles 14 and 15 of the 2007 Computer Crimes Act

Criminal Code Articles 326 and 328, and the Computer Crimes Act are inconsistent with international human rights standards, and have been used to limit the right to freedom of opinion and expression.

Article 14(1) of the Computer Crimes Act, which is the most commonly used, relates to offences that involve the *"import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public."*

On 16 December 2013, the Thai Navy filed a complaint, later resulting in charges under Article 14(1) of the Computer Crimes Act and Articles 326 and 328 of the Criminal Code, against Phuketwan journalists Mr. Alan Morison and Ms. Chutima Sidasathian. The charges were brought against the two journalists for posting parts of a Reuters article on their website alleging that Thai naval forces were involved in the trafficking of Rohingya boat people in Southern Thailand. The charges were later dismissed.

Communication JAL 09/09/2015 Case no: THA 8/2015 transmitted to the Special Rapporteur on the situation of Human Rights Defenders, documented the indictment of human rights defender, Mr. Andy Hall, based on false accusations. On 24 August 2015, the Bangkok South Criminal Court indicted Mr. Hall under Article 14(1) of the Computer Crimes Act and Article 328 of the Criminal Code. The charges carry a maximum of 7 years' imprisonment. The indictment followed a complaint filed against Mr. Hall by the Thai pineapple processing company Natural Fruit for his contribution to a publication documenting labor rights abuses committed by Natural Fruit.

## FREEDOM OF ASSEMBLY AND ASSOCIATION

### Laws that limit freedom of assembly and association:

#### NCPO Announcement no. 7/2014, NCPO Order no. 3/2015, and the 2015 Public Assembly Act

- **NCPO Announcement no. 7/2014 (issued on 22 May 2014)** bans public gatherings of more than 5 people. Penalties include up to 1 year in prison and/or a fine of up to 20,000 Baht.
- **NCPO Order no. 3/2015 (issued on 1 April 2015)** bans political gatherings of 5 persons and above. Penalties include up to 6 months in prison and/or a fine of up to 10,000 Baht.
- **2015 Public Assembly Act** (promulgated by the National Legislative Assembly (NLA) on 14 July 2015) requires organizers of any public assembly to seek permission from the police in advance. Under this law, police have the authority to set conditions, as well as use force to crack down on assemblies. The definition and responsibility of the "organizer" according to this law remain vague. Violators of the law can face prison terms of up to 6 months and/or a fine of up to 10,000 Baht.

Since May 2014, at least 50 individuals have been charged in court for defying NCPO Announcement no. 7/2014 and NCPO Order no. 3/2015, prohibiting political gatherings. 48 of these individuals were charged in a military court.

Communication JUA 16/07/2015 Case no: THA 7/2015 transmitted to the Special Rapporteur on the situation of Human Rights Defenders, documented the arbitrary detention, prosecution, and trial before a military court of 14 students belonging to the Neo Democracy Movement (NDM) for breaching NCPO Order no. 3/2015 and Article 116 of the Criminal Code (sedition) due to their participation in a series of peaceful protests.

Provisions of the Public Assembly Act have been invoked to restrict the right to freedom of peaceful assembly and association. On 26 August 2015, military authorities prevented an environmental youth camp from taking place in Wang Saphung district, Loei province, and warned that the event would be illegal under the Public Assembly Act.

### Threats, Intimidation & Arbitrary Detentions

After the May 2014 coup, the NCPO used various approaches to threaten or raise fear among social activists, journalists, and ordinary people who had taken part in peaceful protests against the coup or the junta's policies. These included: filing criminal charges under Article 116 of the Criminal Code (sedition), arbitrary arrests and charges under NCPO orders and announcements (namely NCPO Announcement no. 7/2014 and NCPO Order no. 3/2015), abductions, attempted killings and killings, and threats against human rights defenders.

Communication JUA 19/02/2015 Case no: THA 2/2015 transmitted to the Special Rapporteur on the situation of Human Rights Defenders, documents the killings of Mr. Pitan Thongpanang, Mr. Somsuk Kohkrang, and Mr. Chai Bunthonglek; the attempted killing of Mr. Suwit Jeh-Soh and his family; the temporary incommunicado detention of Mr. Pianrat Boonrit; and threats made against environmental and land rights defenders and community members for their involvement in peaceful protests.

Communication JAL 07/07/2015 Case no: THA 6/2015 transmitted to the Special Rapporteur on the situation of Human Rights Defenders, documented threats and intimidation against human rights lawyer Ms. Sirikan ("June") Charoensiri, who was charged on 9 February 2016 with refusing to comply with a competent official and concealing evidence. Ms. Sirikan had been representing 14 students from NDM who had been arrested for participating in peaceful protests.

Mr. Sirawith Seritawat, a student of Thammasat University, who had taken part in protests against the coup and the junta, was abducted from a side street on 20 January 2016 near his campus at night by a group of men in military uniform. Mr. Sirawith indicated that he had been blindfolded and beaten while being interrogated by soldiers. Afterwards, the men drove him around in circles in a car before dropping him off at a police station. Prior to this incident, his house was also searched.

## Recommendations to the Government of Thailand

1. Sign and ratify the ICCPR-OP and the ICESCR-OP and arrange a country visit for the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
2. Hold broad-based public consultations in order to amend Article 112 of the Criminal Code (*lèse-majesté*) and the 2007 Computer Crimes Act to ensure the prohibited acts are unambiguous and sanctions are proportionate to the act committed, as recommended by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his 2012 report to the Human Rights Council and the Committee on Economic, Social and Cultural Rights in its 2015 concluding observations to Thailand.
3. Immediately end the harassment of, and drop charges against human rights defenders and investigate all reported instances of intimidation, harassment, and attacks, as recommended by the Human Rights Committee in its 2005 concluding observations to Thailand and the Special Rapporteur on the situation of human rights defenders in his observations on communications in 2016.
4. Repeal NCPO Order no. 3/2015 and ensure that all civilians, including those who have been accused of *lèse-majesté*, are tried before civilian courts and are granted the right to fair trial, including a transparent, public trial, and the right to bail, in line with Thailand's obligations as a State party to the ICCPR.
5. Review the compatibility of restrictive legislation with international obligations in terms of human rights law, as recommended by the Special Rapporteur on the situation of human rights defenders in his observations on communications in 2016. Such restrictive legislation includes NCPO Announcement no. 7/2014; NCPO Order no. 3/2015; the 2015 Public Assembly Act; the 2007 Computer Crimes Act; Article 116 of the Criminal Code (sedition); Articles 326 (defamation) and 328 (libel) of the Criminal Code; and NCPO Announcement no. 97/2014, and ensure that all new legislation, including any laws regulating the internet or access to information, comply with international human rights standards protecting freedom of expression and assembly.
6. Take adequate measures to prevent further restrictions on freedom of expression, in particular, threats to and harassment of media personnel and journalists, including incommunicado detentions, and ensure that such cases are investigated promptly and that suitable action is taken against all responsible individuals, as recommended by the Human Rights Committee in its 2005 concluding observations to Thailand.
7. Ensure that the right to freedom of opinion and expression is respected, as recommended by the Special Rapporteur on the situation of human rights defenders in his observations on communications in 2016, and provide an open space for academics, activists, journalists, and/or ordinary people who hold different opinions to express their opinions freely in a peaceful manner and work positively to stop the phenomena of fear.
8. Ensure a safe environment that allows and promotes the rights of all people to freely associate and assemble without undue hindrances, as recommended by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his observations on communications in 2013 and 2015.
9. Guarantee the effective protection of all rights enshrined in the ICCPR, as recommended by the Human Rights Committee in its 2005 concluding observations to Thailand.

# FREEDOM OF OPINION AND EXPRESSION & FREEDOM OF ASSEMBLY AND ASSOCIATION

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 19 Recommendations were received on Freedom of Opinion and Expression (FoE), including 4 which also addressed Freedom of Assembly and Association (FAA). 7 recommendations on FoE were accepted, while 12 recommendations, including the ones on FAA, were noted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1p7ofO2>.

### Accepted Recommendations on FoE:

1. New Zealand: Maintain its prioritisation of the reconciliation processes required to support positive human rights outcomes in the areas of personal liberty, including freedom of expression and freedom from reprisal and extra judicial punishment (88.60);
2. Norway: Consider favourably the request for visits also by other mandate holders, including the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (89.23);
3. Switzerland: Extend an invitation to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (89.24);
4. Hungary: Invite the Special Rapporteur on freedom of expression, which could also promote the harmonization of the provisions of the Computer Crimes Act and their implementation in line with international human rights standards (89.25);
5. New Zealand: Ensure that its legislation is consistent with international human rights law pertaining to freedom of expression (89.54);
6. Norway: Ensure public and transparent proceedings in cases concerning violations of the lèse-majesté legislation and the 2007 Computer Crimes Act (89.55);
7. Norway: Strengthen efforts to ensure adequate legal counselling for all persons charged for violations of the lèse-majesté legislation and the 2007 Computer Crimes Act (89.56);

### Noted Recommendations on FoE:

8. Brazil: Consider repealing criminal laws in favour of appropriate civil laws regarding freedom of expression, in accordance with relevant international human rights standards (89.50);
9. United Kingdom: Work with the Special Rapporteur on Freedom of Expression on reviewing the lèse-majesté and Computer Crimes laws to ensure that they cannot be exploited (89.51);
10. France: Reconsider the lèse-majesté and Computer Crime laws in the framework of a public debate open to everyone and transparent, in order to bring them into line with the provisions of the International Covenant on Civil and Political Rights (89.52);
11. France: Reconsider criminal convictions handed down on the basis of lèse-majesté and the Computer Crimes laws when the conditions of a fair and equitable trial as defined by the international human rights law have not been met (89.53);
12. Norway: Undertake a thorough review of the relevant laws to safeguard the basic rights to freedom of opinion and expression (89.57);
13. Slovenia: Consider repealing the lèse-majesté law so as to expand the freedom of opinion and expression to include full freedom of expression in relation to the monarchy (89.58);
14. Sweden: Address the issue of possible infringements of the right to freedom of expression, not least by evaluating the current legislation and its consequences in the form of high rates of convictions (89.59);
15. Spain: Lift all restrictions on the media which violate the constitutionally recognized right to the freedom of expression and establish a calendar for the revision of norms such as the Emergency Decree of the Public Administration in Emergency Situations, the 2007 Computer Crimes Act and article 112 of the Penal Code which defines the crime of lèse-majesté tied to the concept of national security (89.60);

### 4 Noted Recommendations on FoE and FAA:

16. Indonesia: Continue to carry out comprehensive reviews and studies of the relevant laws in order to ensure the fulfilment of the right to freedom of opinion and expression and the right to peaceful assembly, in accordance with the relevant international human rights instruments to which Thailand is a party (89.61);
17. Switzerland: Reconsider decrees and laws in force which limit freedoms of expression and assembly (such as Article 112 of the Penal Code and the Computer Crimes Act (2007) (89.62);
18. Canada: Engage in a review of special security laws, with a view to amending legislation and regulations which restrict or deny freedoms of expression, association and peaceful assembly that are inconsistent with obligations under international law, including the Internal Security Act, the Computer Crimes Act, the Emergency Decree, the Official Information Act, and lèse-majesté provisions (89.63);
19. Switzerland: Ensure, through legislative reforms, that protection and promotion of laws of freedom of expression as well as of peaceful assembly and association are guaranteed for all inhabitants of the country (89.64).

## Challenges and Cases

1. iLaw (23 December 2015). Review of the situations in 2015: Justice Made to Order, Freedom Still Out of Stock. Available at: <http://freedom.ilaw.or.th/en/report/review-situations-2015-justice-made-order-freedom-still-out-stock>; iLaw (2015). 2014 Freedom of expression, Situation Summary Report.
2. Nation (23 September 2015). How my attitude was 'adjusted' by the NCPO. Available at: <http://www.nationmultimedia.com/politics/How-my-attitude-was-adjusted-by-the-NCPO-30269362.html>
3. Article 112 of the Criminal Code states that: "Whoever defames, insults or threatens the King, the Queen, the Heir to the throne or the Regent shall be punished with imprisonment of 3 to 15 years."
4. iLaw (2015). Latest Statistic. Available at: <http://freedom.ilaw.or.th/en> [Accessed on 3 March 2016].
5. FIDH (February 2016). 36 and Counting, Lèse-majesté imprisonment under Thailand's military junta. Available at: [https://www.fidh.org/IMG/pdf/fidh\\_thailand\\_report\\_lese\\_majeste.pdf](https://www.fidh.org/IMG/pdf/fidh_thailand_report_lese_majeste.pdf)
6. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JUA 08/12/2014 Case no: THA 13/2014.

## Challenges and Cases

7. Human Rights Council (23 November 2012). Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27-31 August 2012 - No. 35/2012 (Thailand). UN Doc. A/HRC/WGAD/2012/35.; Human Rights Council (22 January 2015). Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17– 21 November 2014 - No.41/2014 (Thailand). UN Doc. A/HRC/WGAD/2014.; Human Rights Council (15 January 2016). Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November– 4 December 2015 – Opinion No.43/2015 (Thailand). UN Doc. A/HRC/WGAD/2015.
8. FIDH (February 2016). 36 and Counting, Lèse-majesté imprisonment under Thailand's military junta. Available at: [https://www.fidh.org/IMG/pdf/fidh\\_thailand\\_report\\_lèse\\_majeste.pdf](https://www.fidh.org/IMG/pdf/fidh_thailand_report_lèse_majeste.pdf)
9. Article 326 (defamation) of the Criminal Code states that: "Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation, and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both."
10. Article 328 (libel) of the Criminal Code states that: "If the offence of defamation be committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or an other recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht."
11. Article 14 of the 2007 Computer Crimes Act states that: "If any person commits any offence of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both: (1) that involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public."
12. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JAL 09/09/2015 Case no: THA 8/2015.
13. OHCHR (14 July 2015). United Nations Human Rights Office urges Thailand to drop charges against Phuketwan journalists. Available at: <http://bangkok.ohchr.org/files/ROB%20Press%20Statement%20140715.pdf>; iLaw (2015). [Case #554] Thai Royal Navy vs Phuketwan news agency. Available at: <http://freedom.ilaw.or.th/yii/index.php/lawsuit/554> [Accessed on 3 March 2016].
14. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JUA 16/07/2015 Case no: THA 7/2015.
15. Prachatai (27 August 2015). Thai military forbids youth camp in Loei ore mine area. Available at: <https://prachatai.org/english/node/5425>
16. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JAL 07/07/2015 Case no: THA 6/2015.
17. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JUA 19/02/2015 Case no: THA 2/2015.
18. Human Rights Watch (22 January 2016). Thailand: Investigate Army Abduction of Student Activist. Available at: <https://www.hrw.org/news/2016/01/22/thailand-investigate-army-abduction-student-activist>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** Human Rights Council (4 June 2012). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/20/17. Paragraph 20, "On 10 October 2011, the Special Rapporteur urged the Government of Thailand to hold broad-based public consultations to amend its criminal laws on lèse majesté primarily section 112 of the Thai penal code and the 2007 Computer Crimes Act, which provides for imprisonment of up to fifteen years and five years respectively."; Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 35, "The Committee draws the attention of the State party to its general comment no. 21 (2009) on the right of everyone to take part in cultural life and recommends that it amend its legislation with a view to ensuring clarity and unambiguity regarding the prohibited acts and that any sanctions are strictly proportionate to the harm caused."
3. **Recommendation 3 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. Paragraph 19, "The State party must take measures to immediately halt and protect against harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families."; Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Paragraph 377, "The Special Rapporteur urges the Government of Thailand to immediately end its harassment against human rights lawyer Ms. Sirikan "June" Charoensiri."
4. Recommendation 4: [N/A]
5. **Recommendation 5 is based on:** Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Paragraph 375, "[T]he Special Rapporteur urges the Government to review the compatibility of restrictive legislation with the States' international obligations in terms of human rights law."
6. **Recommendation 6 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 18, "The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status."
7. **Recommendation 7 is based on:** Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Paragraph 373, "[The Special Rapporteur] urges the Government to ensure that the right to freedom of opinion and expression is respected within the country."
8. **Recommendation 8 is based on:** Human Rights Council (10 June 2013). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum, Observations on communications transmitted to Governments and replies received. UN Doc. A/HRC/26/29/Add.1. Paragraph 450, "The Special Rapporteur recommends that the authorities put in place an enabling and safe environment that is conducive to the free expression of civil society allowing individuals to exercise their legitimate right to freedom of peaceful assembly and association without undue hindrances."; Human Rights Council (10 June 2015). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum, Observations on communications transmitted to Governments and replies received. UN Doc. A/HRC/29/25/Add.3. Paragraph 363, "[The Special Rapporteur] urges that a positive environment allowing and promoting the rights of all people to freely associate and assemble is essential in the context of exploitation of natural resources to ensure a fair, transparent and accountable process that benefits all the parties involved (A/HRC/29/25, paragraph 67)."

# PRIVACY, SURVEILLANCE, AND DATA PROTECTION IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During the previous UPR cycle in 2011, there was no mention of the right to privacy, surveillance, and data protection in the National Report submitted by Thailand. Issues raised on the right to privacy by stakeholders were in relation to the rights of child victims, and early marriage of girls. There were many recommendations by Members States on the need to ensure that legislation was consistent with international human rights law, particularly in relation to the Internal Security Act, the Computer-related Crime Act, the Emergency Decree, the Official Information Act, and lèse-majesté provisions. Some of those recommendations were accepted and others simply noted but many calling for legal reform were rejected. Although there were several unsuccessful attempts to revise the Computer-related Crime Act under different governments since 2011, with the latest one initiated in early 2015 by the current military government, none of these revised drafts were considered in line with the provisions of the International Covenant on Civil and Political Rights (ICCPR) as recommended and the legislation process under military regime is clearly not transparent.

Since the coup in 2014, there are series of Announcements and Orders from National Council for Peace and Order (NCPO) on media and information control, occasionally with facilitations from National Broadcasting and Telecommunications Commission (NBTC), that worsen the situation of the right to privacy, particularly ones that demand internet service providers (ISPs) to filter content and monitor social media use of internet users. Apart from communication privacy, the individual privacy of both dissidents and human rights defenders are also being violated systemically. Body and personal electronic device searches are now newly-well-established method of operation after an arrest.

## Challenges

## Cases, Facts, Comments

### No oversight mechanism in existing legislation on social media monitoring and communication surveillance

- NCPO Announcement No. 12 and 26 give power to the Permanent Secretary of Ministry of Information and Communication Technology (MICT) to monitor computer traffic data and online activities and to suspend any content that may questionable, possibly illegal, or against the operation of NCPO. While NCPO Announcement No. 17 put duty to internet service providers to monitor and suspend content that may affect national security or public moral. There is no oversight mechanism mentioned in any of these Announcements.
- Article 44, a special security measure, of the interim Constitution of 2014 provides the Prime Minister with extensive unregulated and unchecked powers over the three branches of the government.
- Article 9 (2) of Martial law provides the military authority the power “to inspect message, letter, telegraph, package, parcel or others transmitting”. Deep south provinces of Thailand have been under the Martial law for more than 12 years.
- For the rest of the country, even under civilian government in normal situation, under Article 31 of *Telecommunication Business Act B.E. 2544 (2011)*, for the benefit of national security, or for the prevention of disaster that may case public harms, or for public interest, the government can request the National Telecommunications Commission to provide it access to the telecommunication network. This request does not require judicial authorization as the telecommunications licensees have an obligation to comply with the order of the Commission.

### “Cyber Martial Law”: Cybersecurity Bill will give wide ranging powers to National Cybersecurity Committee (NCSC) without safeguards

- Cybersecurity Bill was proposed by MICT to the Cabinet on January 2014.
- It would allow for mass surveillance of online activities and would permit for the extensive surveillance powers currently awarded and performed under NCPO Announcements No. 12, 17, and 26, to become law. Major flaw in the Bill is that there are no check and balance mechanism.
- Article 33 and 34 in the current draft, the NCSC can order state agencies, private bodies, and individuals to take certain actions or refrain from taking action “upon the occurrence of an emergency or danger as a result of cyber threat that may affect national security.”. This is similar to the current powers under the Martial Law and raises concerns for the protection of privacy of individuals.
- Article 35 (3) of the Bill provides that the officials entrusted by the Secretary under this Act, have the power to “to gain access to information on communications, either by post, telegram, telephone, fax, computer, any tool or instrument for electronic media communication or telecommunications, for the benefit of the operation for the maintenance of Cybersecurity.”
- The Bill does not provide for the judicial authorization of these powers but merely notes that the powers under section 35(3) would be specified by the Rules issues by the Council of Ministers (which means there will be no review from the Parliament).
- One further worrying proposal is that NBTC will cease to be an independent regulator and will come under the National Committee for Digital for Economy and Society chaired by Prime Minister, which in turn could negatively affect policies on media and telecommunication operators licensing, content restrictions, and protection of personal data transmitted over communication networks.

### Self-censorship: Effect from social media monitoring

- One of leading political activists, Sombat Boonngamanong, admitted during a panel discussion at Thammasat University on 18 February 2016 that he refrained from speaking very critically on certain political issues in public space because the fear of military. It is common now that NCPO will send troops to observe and record what panelists and participants speak.

<b>Development of surveillance capacity – “Single Gateway”, etc.</b>	<ul style="list-style-type: none"> <li>• In the same week of the coup, Permanent-Secretary of MICT announced a “National Single Gateway” plan which will “make it easier to block websites and defend against cyberattacks”. In September 2015, the MICT was ordered at a Cabinet meeting to establish this gateway. This poses a serious threat to the enjoyment of fundamental rights and freedoms online. This is because the state would have the capability to intercept internet session information over time, to control (block or permit) information flows coming through Thailand, it would permit them to identify users’ internet activities habits, and therefore the users themselves. This will also allow officers to block websites without cooperation from internet service providers (which would have required court order).</li> <li>• On 15 December 2014, Ministry of ICT issued an order No. 163/2557, referring to NCPO Announcement No. 26, to appoint a working group (comprised of military and civilian officials) to test a circumvention equipment to bypass Secure Sockets Layer (SSL) web encryption, a standard security technology for establishing an encrypted link between a server and a client. The working group is to work with internet service providers and gateways to test the online surveillance. A report from TelecomAsia suggested that it may involve the use of fake SSL certificates and targeting Facebook users. On 22 January 2015, it was reported that local ISPs were asked by the MICT to install in their data centers an interception equipment that can reveal username and passwords of Facebook users.</li> <li>• In September 2012, Hacking Team, an Italian company, representatives met officers from Thai government agencies. Six months later, National Security Council specifically asked Hacking Team if their product could target LINE, WeChat, and WhatsApp. In April 2014, email exchanges confirmed that Hacking Team product could be used for all of them. In July 2015, documents showing email exchanges revealed that a Hacking Team product, the Remote Control System Galileo, had been ordered and was to be delivered to Thailand. The Galileo system has the ability to bypass encryption, take control of a user’s device, and to monitor all activities conducted on the device, poses significant threats to the right to privacy.</li> <li>• On 15 December 2014, Ministry of ICT issued an order No. 163/2557, referring to NCPO Announcement No. 26, to appoint a working group (of which two-thirds are military officials) to test a circumvention equipment to bypass Secure Sockets Layer (SSL) web encryption, a standard security technology for establishing a secured link between a server and a client. The working group is to work with internet service providers and IIG to test the online surveillance. A report from TelecomAsia, with information from a virtual private network operator using the services provided for by CAT Telecom, suggested that it may involve the use of fake SSL certificates and targeting Facebook users. On 22 January 2015, it was reported that local ISPs were asked by the Ministry of ICT to install in their data centers an interception equipment that can reveal username and passwords of Facebook users.</li> </ul>
<b>Unlawful searches and other measures violating the right to privacy</b>	<ul style="list-style-type: none"> <li>• Following the military coup in 2014, political activists, lawyers, and journalists were increasingly subjected to searches in their homes and offices and seizures of their computer under the extensive and unregulated powers provided to the authorities under the Martial law in ways that unlawfully interfered with their right to privacy. Based on documentation from iLaw released in 17 June 2014, in the two months following the coup, 183 homes and business in Bangkok but also across the country were searched.</li> <li>• Confiscation of computer and communication devices of people who were arrested, both in their homes or offices or on the site of demonstration, became common. State officers also demanded passwords of email and social media accounts from these people after their arrest.</li> <li>• On 25 May 2014, troops raided the house of Somyot Prueksakasemsuk, a labor and political activist and a magazine editor who was accused of Section 112 of the Criminal Code, and imprisoned without bail since 2011. Officers arrested Sukanya and Panitan, Somyot’s wife and son, and confiscated two laptop computers belonging to them. No charges were brought against either Sukanya or Panitan.</li> <li>• On the night of 26 June 2015 (00:30 27 June), police officers tried to search, without warrant, a car belonging to a lawyer of Thai Lawyers for Human Rights. The car was parked in front of Military court as the lawyer assisted her clients (New Democracy Movement activists who were arrested that evening). After obtaining a warrant in the next afternoon (15:05 27 June) the officers searched laptop computers, tablets and mobile. During the search, two polices snapped some mobile phones away from the searching spot before returning it around 12 minutes later – those devices were not sealed yet by forensic officers. This raise a serious question of admissibility of the evidence.</li> </ul>
<b>Weak data protection bill</b>	<ul style="list-style-type: none"> <li>• The current draft of Personal Data Protection Bill from the Council of the State in 2015 has broad and vaguely defined exemptions to data protection, which will leave significant loopholes; and it failed to define the role and responsibilities of data processor and data controllers.</li> </ul>
<b>Non-independent data protection authority</b>	<ul style="list-style-type: none"> <li>• The Personal Data Protection Bill also fail to establish an independent data protection authority.</li> <li>• Personal Data Protection Committee proposed by the Bill will be composed of part time individuals under the supervision of Ministry of Digital for Economy and Society and depending, for its functions and secretariat, on the Office of National Cybersecurity Committee.</li> <li>• As their goals and missions are different, it is clear that in many circumstance, the operations of Cybersecurity Committee and Personal Data Protection Committee may be conflicting each other.</li> </ul>

## Recommendations

1. Ensure that its communication surveillance laws, policies, and practices adhere to international human rights law and standards and respect the right to privacy:
  - a) Ensure that all interception activities are only carried out on the basis of judicial authorization and communications interception regime complies with the principles of legality, proportionality and necessity regardless of the nationality or location of individuals whose communications are intercepted;
  - b) Strengthen effective oversight over the surveillance practices of its state security and intelligence agencies;
  - c) Review all bills related to communication and media currently pending and in particular the Computer-related Crime Bill and Cybersecurity Bill, to ensure they comply with national and international human rights obligations, and in particular the principles of necessity, proportionality, judicial authorization, and oversight in relations to communication surveillance and electronic device search;
  - d) Investigate reported unlawful communications surveillance and monitoring activities by state agencies, and take necessary measures to ensure access to redress in case of violations; and
  - e) Revoke mandatory SIM card registration policy established by the Announcement of National Broadcasting and Telecommunications Commission on the pre-paid SIM card compulsory registration of 2015.
2. Ensure that its laws, policies, and practices related to the collection, the preservation, and the use of forensic evidence, in particular the electronic evidence, adhere to national and international human rights standards and respect the right to privacy and to ensure these procedures produce reliable and admissible evidence that lead to right to a fair trial.
3. Adopt a comprehensive data protection law that complies with international human rights standards and establishes an independent data protection authority:
  - a) Ensure that data processing of personal data is conducted in compliance with national and international standards and obligations, particularly with regards to the processing of sensitive personal information, and any violations are investigated and redress provided to victims; and
  - b) Ensure that the data protection authority will be independent, has sufficient power, and has necessary resource to be able in practice to protect the right to privacy in a timely fashion.

# ADMINISTRATION OF JUSTICE & MILITARY COURTS

## **Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

Following 22 May 2014, the Thai military, using the name 'the National Council for Peace and Order' (NCPO), implemented a new institutional and legal framework which severely limits the exercise of human rights within the country. The NCPO, progressively replaced civilian power with military rule by: implementing martial law throughout the country; staging a coup on 22 May 2014; dissolving the civilian government; suspending the 2007 Constitution (except for the Chapter that deals with the Monarchy) and replacing it with an interim constitution that gives the military ultimate power over the country; and extending the jurisdiction of military courts to civilians for certain offences.

The NCPO's promised 'roadmap' to democracy has been plagued by delays and general elections are unlikely to take place until 2017. As part of this roadmap, a new constitution is being drafted. Thailand's current draft codifies the military regime's regressive stance towards human rights protection. Its chapter on rights and liberties (Chapter 3) contains an option to derogate from all human rights guarantees in the interest of 'national security' and furthermore declares all actions of the NCPO constitutionally legal and enforceable, enshrining impunity into a constitutional text.

Thailand's commitment made during its First Cycle, to "amend its laws to be more in alignment with international human rights instruments," remains unfulfilled. Following the first UPR Cycle, Thailand pledged to "amend its laws to be more in alignment with international human rights instruments," including the Convention Against Torture (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), to which it pledged to become a party. Whilst Thailand has now ratified the CAT, it has yet to amend its domestic law accordingly. Thailand signed the ICPPED on 9 January 2012 but it has not ratified it yet. Thailand has yet to ratify several of the core international human rights treaties.

## **Challenges**

## **Cases, Facts, Comments**

**Introduction of 2014 Interim Constitution which limits human rights and the rule of law:** On 22 July 2014, the NCPO promulgated an Interim Constitution giving the head of the NCPO sweeping, unchecked powers, violating the fundamental pillars of rule of law and human rights, including equality, accountability, and predictability of the law.

Article 44 of the Interim Constitution gives the head of the NCPO unfettered power to introduce any order deemed necessary for the maintenance of national security. As of March 2016, the NCPO has used Article 44 to issue 56 orders, many of which have impacted negatively on human rights including: prohibiting the gathering of more than 5 persons for political purposes (NCPO Order no. 3/2015); power to detain persons for up to 7 days without charge (Order no. 3/2015); and expediting the acquisition of land in Special Economic Zones (Order no. 17/2015).

Article 47 of the Interim Constitution enshrines the legality of and constitutionality of all NCPO orders and announcements, while Article 48 shields the NCPO from prosecution by declaring all actions performed under the coup legal and immune from challenge.

**Prosecution of civilians in military courts:** Since the May 2014 coup, NCPO orders (NCPO Order no. 37/2014, 38/2014, and 50/2014) have expanded the jurisdiction of military courts to a number of offences, including: offences against the monarchy (*lèse-majesté*), offences against national security (Articles 113-118 of the Criminal Code), offences against NCPO announcements and orders, and the usage or possession of firearms, ammunitions or explosives (the 1947 Firearms, Ammunition, Explosives, Firework and Imitation Weapons Act).

According to the Judge Advocate General's Office (JAG), between 22 May 2014 and 30 September 2015, 1,629 civilians were prosecuted in military courts throughout Thailand, including 208 people in Bangkok alone.

While civilian criminal procedures should apply in Thailand's military courts where there exist no military laws, rules and regulations, in practice procedural irregularities abound. Thai civilian courts are formally independent from the executive.

The Thai Military Court system is not independent from the executive. The Military Court is under the Ministry of Defense and Military Court judges are appointed by and remain under the orders of their commanders.

#### **Arbitrary arrest and detention under special security laws and NCPO orders:**

After the lifting of martial law from most provinces on 1 April 2015, the NCPO invoked Article 44 of the Interim Constitution to issue NCPO Order no. 3/2015. Under NCPO Order no. 3/2015, Martial Law, and the 1955 Military Court Act, the military has the power to administratively detain people in military facilities for up to 7 days without charge and carry out warrantless searches. NCPO Order no. 3/2015 was later augmented by NCPO Order no. 5/2015, which also allowed appointed "peace and order maintenance officers" these same powers.

Thailand's martial law (imposed nationwide on 20 May 2014) provides the military with superior powers over civil authorities, including the power to administratively detain individuals for up to 7 days without charge and without requiring that they be brought before a court.

Civilians in military detention in Thailand are at risk of serious abuse. Of particular concern is the establishment of a facility (Nakhon Chaisri) in the 11th Army Circle military base, which justifies incarceration on the basis of a vaguely worded "national security" directive, issued by the Ministry of Justice on 8 September 2015. The deaths in late 2015 of two detainees (Suriyan "Mor Yong" Sucharitpolwong and Police Major Prakrom Warunprapa) at the Nakhon Chaisri temporary remand facility do not appear to have been effectively and impartially investigated. Detainee Adem Karadag, also known as Bilal Mohammed, accused of the 17 August 2015 Erawan Shrine bombing has alleged that he was tortured while being held at the Nakhon Chaisri facility.

## Recommendations

1. Repeal or amend the interim Constitution consistent with Thailand's international human rights obligations, including as a matter of priority articles 44, 47 and 48 and take all necessary steps to ensure the reinstatement of a constitution that protects and promotes human rights;
2. End the prosecution of civilians in military courts, transfer all cases of civilians facing proceedings before military courts to civilian courts, order a retrial in civilian courts for all civilians convicted of an offence in military courts, and amend the martial law and the Military Court Act to prohibit the prosecution of civilians in military courts;
3. Amend or, where appropriate, repeal, all laws and NCPO orders and announcements, including as a matter of priority the Head of the NCPO Orders No. 3/2015 and No. 5/2015 issued under Article 44 of the interim Constitution, which prevent the effective realization of human rights, including freedom of expression and assembly;
4. Lift martial law and all other emergency rule measures, particularly article 44 of the interim Constitution and orders issued under that article, that are in place throughout Thailand and replace them, when necessary, with measures compliant with international human rights standards;
5. Apply procedures for arrest and detention that adhere to international human rights law and standards, including the requirement that all detained persons must be brought before a judge promptly, together with the right to challenge the lawfulness of the detention, including the conditions of detention;
6. Ratify and implement into national law all international human rights treaties to which Thailand is not yet a party;
7. Amend domestic legislation to ensure that it is consistent with Thailand's obligations, including, in particular, under the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance; and
8. Implement commitments made during the First UPR Cycle to accept visit requests of the Special Procedures of the HRC, including the SRT and the WGEID, and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions.

# ADMINISTRATION OF JUSTICE & MILITARY COURTS

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 18 Recommendations were received on the Administration of Justice and Military Courts. 8 recommendations were accepted, while 10 recommendations were noted.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1U2MnMX>.

### Accepted Recommendations on Administration of Justice & Military Courts:

1. Qatar: Strengthen efforts to find a solution to the unrest in the southern border areas and ensure that justice is achieved for all sides (88.55);
2. Oman: Continue to develop the judicial system in order to ensure respect for, and protection of citizens' rights (88.62);
3. Lebanon: Further accelerate the reform of the justice system to ensure equal treatment for all citizens while continuing to pay specific attention to women and children (88.63);
4. Qatar: Accelerate the reform of the judicial system in order to ensure good governance and equality of treatment of people from different social classes (88.64);
5. Malaysia: Continue monitoring and assessing closely the implementation of the Master Plan for the Administration of Justice, and the Strategic Plan for Development of Justice Process in the Southern Border Provinces of Thailand (88.65);
6. Sweden: Address the issue of impunity in certain cases and for certain parts of Thai society, not least by strengthening the independence of the Office of Prosecutor and the independence of the judiciary (88.69);
7. United Kingdom: Ensure the rights of victims and families to justice and an effective remedy in law and ensure that the Truth and Reconciliation Commission be granted sufficient powers to complete its job effectively (88.71);
8. New Zealand: Ensure that its legislation is consistent with international human rights law pertaining to freedom of expression (89.54);

### Noted Recommendations on Administration of Justice & Military Courts:

1. Uruguay: Ratify or accede as appropriate to the Rome Statute of the International Criminal Court, OP-CAT and ICCPR-OP1 and ICCPR-OP2 (89.2);
  2. Brazil: Consider ratifying the Rome Statute (89.5);
  3. Japan: Sign and ratify the Rome Statute of the International Criminal Court at an early stage (89.13);
  4. Austria: Ratify the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide (89.14);
  5. Hungary: Ratify the Rome Statute (89.17);
  6. Switzerland: Repeal section 17 of the Emergency Decree (89.19);
  7. Canada: Abolish provisions in the Martial Law Act and section 17 of the Emergency Decree which grant immunity for criminal and civil prosecution to State officials (89.20);
  8. Brazil: Consider reviewing security laws to ensure their conformity with international human rights standards (89.21);
  9. Slovenia: Review security laws to ensure their conformity with the international human rights standards and in particular with regard to juvenile (alleged) offenders (89.49);
  10. Brazil: Consider repealing criminal laws in favour of appropriate civil laws regarding freedom of expression, in accordance with relevant international human rights standards (89.50).
- Voluntary pledges made in first UPR, see: Human Rights Council (8 December 2011). Report of the Working Group on the Universal Periodic Review, Thailand. Paragraph 93, "Thailand will amend its laws to be more in alignment with international human rights instruments, which includes ensuring that criminal laws are aligned with the Convention against Torture and the Convention for the Protection of All Persons from Enforced Disappearance and improving the laws to better protect women and children."; Paragraph 94, "Thailand will issue a standing invitation to all the special procedures of the Human Rights Council."; Paragraph 95, "Thailand will accelerate efforts to reform the justice system and strengthen law enforcement."
  - Chapter 3, Section 25, of the draft Constitution states that: "As for the rights and liberties of Thai people, in addition to the rights and duties as guaranteed specifically by the provisions of the Constitution, a person shall enjoy the rights and liberties to do any matter which is not prohibited or restricted by the Constitution or law and such rights and liberties shall be protected by the Constitution in so far as the exercise of such right or liberty does not affect or endanger the security of the State or public order or good morals and does not violate the rights or liberties of others."; Article 270 of the Provisional Clauses section of the draft Constitution states that: "(1) All announcements, orders, and actions by the National Council for Peace and Order (NCPO) or the chief of the NCPO, (including their implementation), which are enforced before the declaration of this Constitution or those that have been issued under Section 257, Paragraph 2, whether they are announcements, orders, or actions, which have been enforced in line with legislative, administrative, or judicial power under the Constitution would be considered as constitutional. Cancellation or amendment of those announcements, orders, or actions, will have to be done through the adoption of Acts. Cancellation and amendments of administrative orders, announcements, or actions, would only be allowed through the orders of the Prime Minister or the decisions of the Cabinet on a case-by-case basis. (2) Any components, which have been outlined in the Constitution of the Kingdom of Thailand (interim) B.E. 2557 and amendments (no. 1) to the Constitution of the Kingdom of Thailand (interim) B.E. 2557 are constitutional and lawful. Any actions related to the aforementioned components would be considered as constitutional and lawful." [Unofficial translation]. Available [in Thai] at: [http://www.constitutionnet.org/files/2016\\_draft\\_constitution\\_of\\_thailand.pdf](http://www.constitutionnet.org/files/2016_draft_constitution_of_thailand.pdf)

## Challenges and Cases

1. Article 44 of the 2014 Interim Constitution: "In the case where the Head of the National Council for Peace and Order deems necessary for the purpose of reforms in various fields, for the enhancement of unity and harmony among people in the country, or for the prevention, restraint, or suppression of any act which undermines public order or national security, the Throne, the national economy, or State affairs, irrespective of whether such act occurred inside or outside the Kingdom, the Head of the National Council for Peace and Order, with the approval of the National Council for Peace and Order, shall have power to order, restrain, or perform any act, whether such act has legislative, executive, or judicial force; the orders and the acts, including the performance in compliance with such orders, shall be deemed lawful and constitutional under this Constitution, and shall be final. When those have been carried out, a report shall be made to the President of the National Assembly and the Prime Minister for acknowledgement without delay." [Unofficial translation].
2. iLaw (March 2016). Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand. Available [in Thai] at: <http://www.ilaw.or.th/node/3679>
3. Article 47 of the 2014 Interim Constitution: "All announcements and orders of the National Council for Peace and Order or orders of the Head of the National Council for Peace and Order which had been announced or made between 22 May B.E. 2557 and until the date the Council of Ministers takes office under this Constitution, irrespective of their constitutional, legislative, executive or judicial force, including the performance in compliance therewith, irrespective of whether those acts have been performed before or after the date of entry into force of this Constitution, shall be considered lawful, constitutional and final. Those announcements and orders applicable on the date before the promulgation date of this Constitution shall continue to be in force until there are laws, rules, regulations, resolutions of the Council of Ministers, or orders, as the case may be, issued to amend or repeal them. In the case where the National Council for Peace and Order issues an order appointing any person to assume office or removing from office of any position mentioned in section 24 before the date this Constitution comes into force, the Prime Minister shall respectfully present to the King for appointing such person to assume office or removing such person from office." [Unofficial translation].
4. Article 48 of the 2014 Interim Constitution: "In regard to all acts which are performed on account of the seizure and control of State governing power on 22 May B.E. 2557 by the Head and the National Council for Peace and Order, including all acts of persons incidental to such performance or of persons entrusted by the Head or the National Council for Peace and Order or of persons ordered by persons entrusted by the Head or the National Council for Peace and Order, which have been done for the benefit of the abovementioned performances, irrespective of whether such acts were performed to have constitutional, legislative, executive, or judicial force, including punishments and other official administrative acts, and irrespective of whether the persons performed such acts as a principal, an accomplice, an instigator or a commission agent and whether those acts have been done on, before or after the aforesaid date, if those acts constitute offences under the laws, the persons who commit those acts shall be entirely discharged from such offences and liabilities." [Unofficial translation].
5. iLaw (29 October 2015). Military Court in Thailand under NCPO regime. Available at: <http://freedom.ilaw.or.th/en/blog/military-court-thailand-under-ncpo-regime>
6. TLHR (13 November 2015). Civilian trial in military courts. Available at: <https://tlhr2014.wordpress.com/2015/11/13/civilian-trial-in-military-courts/>
7. TLHR (2 February 2015). Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014-15 January 2015). Available at <http://humanrightsinasean.info/system/files/documents/TLHR%20report-Civilians%20in%20Military%20court.pdf>
8. Human Rights Council (22 February 2016). Report of the Special Rapporteur on the situation of human rights defenders, Observations on communications transmitted to the Governments and replies received. UN Doc. A/HRC/31/55/Add.1. Communication JUA 16/07/2015 Case no: THA 7/2015.
9. The Ministry of Justice issued directive 'Regulation no. 314/2015' on 8 September 2015, announcing the establishment of a temporary detention facility Nakhon Chaisri, inside the 11th Army Circle military base in Bangkok. Available [in Thai] at: <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/E/215/7.PDF>
10. ICJ/HRW (24 November 2015). Joint Letter to Permanent Mission of Thailand to the UN. Available at: [https://www.hrw.org/sq/node/283803#\\_ftnref7](https://www.hrw.org/sq/node/283803#_ftnref7)
11. Reuters (15 February 2015). Chinese Uighur was tortured into confessing role in Bangkok bomb: lawyer. Available at: <http://www.reuters.com/article/us-thailand-blast-idUSKCN0VO0ID>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. **Recommendation 2 is based on:** UN General Assembly (7 August 2013). Report of the Special Rapporteur on the independence of judges and lawyers. UN Doc. A/68/ 285. Paragraph 98, "As a specialized jurisdiction aimed at serving the particular disciplinary needs of the military, the *ratione materiae* jurisdiction of military tribunals should be limited to criminal offences of a strictly military nature, in other words to offences that by their own nature relate exclusively to legally protected interests of military order, such as desertion, insubordination or abandonment of post or command."; Paragraph 100, "Military tribunals, when they exist, should only try military personnel accused of military offences or breaches of military discipline."; Paragraph 102, "The trial of civilians in military courts should be limited strictly to exceptional cases concerning civilians assimilated to military personnel by virtue of their function and/or geographical presence who have allegedly perpetrated an offence outside the territory of the State and where regular courts, whether local or those of the State of origin, are unable to undertake the trial."
3. **Recommendation 3 is based on:** UN General Assembly (7 August 2013). Report of the Special Rapporteur on the independence of judges and lawyers. UN Doc. A/68/ 285. Paragraph 110, "All persons convicted by a military tribunal have the right to have their conviction and sentence reviewed by a higher civilian tribunal. States should determine the modalities by which such review is to be carried out, as well as which court should be responsible."
4. **Recommendation 4 is based on:** UN General Assembly (7 August 2013). Report of the Special Rapporteur on the independence of judges and lawyers. UN Doc. A/68/ 285. Paragraph 103, "The burden of proving the existence of such exceptional circumstances rests with the State. Such reasons must be substantiated in each specific case, since it is not sufficient for the national legislation to allocate certain categories of offence to military tribunals in abstracto. Such exceptional cases should be expressly provided for by the law."
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** UN General Assembly (7 August 2013). Report of the Special Rapporteur on the independence of judges and lawyers. UN Doc. A/68/ 285. Paragraph 105, "In all cases before military tribunals, the State must take all necessary measures to ensure that the proceedings are in full conformity with international human rights law and standards and with the requirements for ensuring fair trial and due process guarantees, in particular those set out in articles 9 and 14 of the International Covenant on Civil and Political Rights."; Paragraph 107, "Military tribunals and the proceedings before them should, in all circumstances, respect and apply the principles of international law relating to a fair trial. Any restrictions to fair trial requirements and due process guarantees must be provided for by the law, justified by objective reasons, be proportional and never undermine the overall right to a fair trial."
7. Recommendation 7: [N/A]
8. Recommendation 8: [N/A]
9. Recommendation 9: [N/A]
10. Recommendation 10: [N/A]

# TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT

## **Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

Thailand became a State party to the Convention against Torture (UNCAT) in 2007 and stated its intention to ratify its Optional Protocol (OP-CAT) by 2015 during the Committee Against Torture (CAT)'s first review of Thailand in 2014. The Optional Protocol calls for the establishment of an independent body (a 'National Preventive Mechanism') to visit all places of detention alongside independent international bodies. During Thailand's first UPR in 2011, Thailand received 6 recommendations on torture and other cruel, inhuman or degrading treatment or punishment. The government accepted 2 recommendations: to include a definition of torture in the Criminal Code according to Article 1 of the UNCAT (made by Austria) and to enact legislation criminalizing torture and amend all relevant laws to fully comply with the UNCAT (made by Canada). These recommendations have not been implemented. A draft Prevention and Suppression of Torture and Enforced Disappearance Act was presented to the Cabinet on 12 January 2015; however, the legislative process of legislation has been slow and as of March 2016, the draft Act still appears to be far from complete. The government noted 3 of the 4 recommendations to ratify OP-CAT, only accepting the recommendation (made by Brazil) to "consider ratifying".

Meanwhile cases of deaths in custody, torture, arbitrary detention, and enforced disappearances continue to be reported. Thailand has yet to ratify OP-CAT. Currently, there is no mechanism to monitor human rights violations, support victims in submitting complaints or to investigate these complaints. Research into these practices in the protracted conflict in Southern Thailand has shown that the practice of torture and other ill-treatment is both widespread and systematic in the context of counter-insurgency operations. There is an on-going failure on the part of the authorities to investigate torture allegations and prosecute suspected perpetrators. In addition, there is an urgent need to promote understanding of the absolute prohibition of torture and other ill-treatment and put in place safeguards, preventive and investigative mechanisms, as well as ensure understanding of the respective duties of security service personnel, the judiciary, lawyers, forensic doctors, health personnel and psychologists to strengthen reporting, documentation and effective provision of redress to torture survivors and their families.

## **Challenges**

## **Cases, Facts, Comments**

### **Criminalising Torture**

Presented to the Cabinet on 12 January 2015, the draft Prevention and Suppression of Torture and Enforced Disappearance Act was still under consideration by the Cabinet as of March 2016. The authorities must ensure that the final draft Act brings about full domestic compliance with the provisions of UNCAT and the International Convention for the Protection of All Persons from Enforced Disappearance (CED). In its current form, the draft Act defines the crime of torture according to UNCAT. However, the committee that would be in charge of investigating complaints, as well as designating and changing prosecutors in cases of torture would be headed by the Minister of Justice and have many high-ranking civil servants as its members. This committee would therefore fail to meet the requirement of impartiality of investigations as stipulated by Article 12 of UNCAT.

### **Torture Investigations and Impunity**

Authorities' continued failure to promptly, independently, impartially and effectively investigate torture allegations highlights the absence of an impartial oversight mechanism with full functional capacity and powers. Authorities have allowed suspected perpetrators to remain on active duty without subjecting them to any disciplinary measures. Provisions in special laws and NCPO Orders providing immunity from prosecution have further compounded a climate of impunity. Independent bodies have failed to deliver redress. While the National Anti-Corruption Commission (NACC) receives some complaints on torture, it is functionally a "graveyard" where torture investigations are metaphorically buried. Courts are also failing in their duty to investigate allegations of torture, including in cases of court inquests into deaths in custody.

### **Deaths in Custody**

There have been a number of deaths in custody in suspicious circumstances since the May 2014 coup, including in military detention facilities in Bangkok. Deaths in custody also continue to be reported in Ingkayuth Camp, the main interrogation facility for security suspects in the Deep South. In most cases of torture allegations and deaths in custody there is no independent investigation. Two high-profile suspects (Suriyan "Mor Yong" Sucharitpolwong and Police Major Prakrom Warunprapa) died in late 2015 at the Nakhorn Chaisri temporary remand facility in the 11th Army Circle Military Barracks, established in September 2015. Cases of deaths in custody in prison have been documented, such the Redshirt demonstrator accused of killing a Yellowshirt activist, Surakrit Chaimongkol, who died in Bangkok Remand Prison on 28 August 2014.

**Shackling, Ill-treatment and Prison Conditions**

Article 14 of the 1936 Correction Act provides that instruments of restraint can be used in cases where prisoners pose a serious risk to their own or others' lives or they are likely to attempt to escape, but cannot be used as a form of punishment. Following a ruling by the Supreme Administrative Court in July 2015, the Corrections Department may hold convicts on death row in permanent shackles. The use of shackling has been documented in both criminal prisons and institutes where drug addicts are detained for rehabilitation.

**Non-Refoulement**

Authorities have continued to forcibly return individuals to countries where they are at real risk of serious human rights violations or abuses, including torture and other ill-treatment, in violation of the principle of non-refoulement. Asylum seekers report being denied access to screening procedures and the United Nations High Commissioner for Refugees (UNHCR). The government has both forcibly expelled and pushed back migrants and asylum seekers, in particular Rohingya from Myanmar arriving by boat, in violation of the principle of non-refoulement.

**Detention under Special Security Laws**

Special laws, including NCPO Order 3/2015, the Martial Law Act, and the Emergency Decree have facilitated the detention of individuals without access to judicial oversight or any other safeguards provided by Thai law, for periods of between 7 and 37 days, facilitating systematic torture and ill-treatment by military personnel. In practice, the location of detention of many detainees is not disclosed. Most of the cases of torture and ill-treatment documented in the South took place chiefly during detentions under these laws. Under the Measure for Suppressing Narcotic Offenders Act, authorised officers may hold individuals in secret for 3 days. CAT has expressed concern (in its June 2014 Concluding observations on the initial report of Thailand) over the special laws' enlarged executive powers of administrative detention without adequate judicial supervision, and the weakening of fundamental safeguards for persons deprived of their liberty as a result of the special laws.

**Lack of Rehabilitation**

There is a lack of facilities for the psychological and physical rehabilitation of survivors of torture. Preliminary findings of a study into the effects of torture in Southern Thailand suggest that individuals experienced significant psychological distress resulting from torture experiences and that this distress also tended to persist over many years.

## Recommendations

**Criminalizing Torture**

1. Support the enactment of the draft Prevention and Suppression of Torture and Enforced Disappearance Act that is in full compliance with UNCAT and CED, including a definition of the crime of torture according to Article 1(1) of UNCAT, and the provisions of: non-refoulement (Article 3 of UNCAT); punishments commensurate with the gravity of the crime (Article 4(2) of UNCAT), universal jurisdiction (Articles 5-9 of UNCAT), independent investigations (Articles 12-13 of UNCAT); no admissibility for statements obtained by torture (Article 15 of UNCAT), and prevention of cruel, inhuman or degrading treatment or punishment (Article 16 of UNCAT).

**Investigation of Torture Allegations and Ending Impunity**

2. Ensure that the draft Prevention and Suppression of Torture and Enforced Disappearance Act provides for an independent, professional and effective body to criminally investigate allegations of torture, deaths in custody and enforced disappearance.
3. Ratify OP-CAT and establish National Preventive Mechanisms to conduct visits, including unannounced visits, to all places of detention.
4. Review the role of the NACC and the Public Sector Anti-Corruption Commission (PACC) – in investigations of torture and disappearances, and ensure its independence and that it is able to achieve substantive results.
5. Support both government agencies and CSOs to follow up and implement CAT's 2014 concluding observations, including on investigation, rehabilitation, and redress for all torture victims.

**Non-Refoulement**

6. Pass the draft Prevention and Suppression of Torture and Enforced Disappearance Act and ensure it complies with the principle of non-refoulement.
7. Immediately end all unlawful returns and investigate recent cases of refoulement.

**Deaths in Custody**

8. Support CSOs/NGOs in monitoring detention facilities run by the army and/or the police, both under special laws and under normal criminal procedures, to document and report human rights violations, including torture and other ill-treatment and provide legal and other aid to persons deprived of liberty.

**Detention under Special Security Laws**

9. Review and amend all special laws that allow authorities to detain individuals for more than 48 hours before judicial review, and ensure that individuals are allowed to contact their family and are given access to lawyers and independent medical counsel without delay.
10. Bring all detainees, regardless of the circumstances, promptly before an independent court.
11. Ensure that suspects cannot be held incommunicado or in unofficial places of detention, and that the detention locations are always disclosed and authorized.

**Shackling**

12. End the shackling of death-row prisoners and as a form of punishment, and other conditions of detention that amount to cruel, inhuman and degrading treatment.

**Lack of Rehabilitation**

13. Support the establishment of independent torture rehabilitation centres for torture victims in the Deep South and also at the national level, as well as an independent psychological health unit for Deep South detainees.
14. Ensure that victims, families, legal counsel, CSOs and NGOs can report incidents of torture or other ill-treatment without receiving threats or other forms of intimidation.
15. Increase awareness of the Istanbul Protocol among forensic doctors, psychologists, police, army, lawyers, prosecutors and the judiciary and provide training on the provisions of this Protocol.

## TORTURE

**Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

For Thailand 1st UPR in 2011, 6 Recommendations were received on Torture and other Cruel, Inhuman and Degrading Treatment. 3 recommendations were accepted, while 3 recommendations were noted.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1YAp5i1>.

**Accepted Recommendations on Torture and other Cruel, Inhuman and Degrading Treatment:**

1. Austria: Include a definition of torture into the Criminal Code, in line with article 1 of the Convention against Torture (CAT) (88.3);
2. Canada: Enact legislation criminalizing torture and amend all relevant laws to fully comply with the obligations under CAT (88.4);
3. Brazil: Consider ratifying the conventions on refugees and on stateless persons and OP-CAT (89.5).

**Noted Recommendations on Torture and other Cruel, Inhuman and Degrading Treatment:**

4. Uruguay: Ratify or accede as appropriate to the Rome Statute of the International Criminal Court, OP-CAT and ICCPR-OP1 and ICCPR-OP2 (89.2);
  5. Spain: Sign and ratify ICCPR-OP1, ICCPR-OP2, OP-ICESCR and OP-CAT (89.3);
  6. Austria: Ratify the Optional Protocols to ICCPR and CAT (89.4).
- Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1.
  - ICJ/TLHR (21 September 2015). Submission of the International Commission of Jurists & Thai Lawyers for Human Rights to the Universal Periodic Review of Thailand.

**Challenges and Cases**

1. Prachatai (20 January 2015). Torture and enforced disappearance in Thailand: the attempt during the junta government to pass a bill. Available at: <http://prachatai.org/english/node/4693>
2. CrCF (21 September 2015). Cross Cultural foundation and its partners' submission to the Universal Period Review of Thailand.
3. ICJ/HRW (24 November 2015). Joint Letter to Permanent Mission of Thailand to the UN. Available at: [https://www.hrw.org/sq/node/283803#\\_ftnref7](https://www.hrw.org/sq/node/283803#_ftnref7)
4. Khaosod English (29 August 2014). Redshirt Suspect Dies In Prison, Mother Suspects Foul Play. Available at: <http://www.khaosodenglish.com/detail.php?newsid=1409314127&section=00>
5. Amnesty International (2014). Thailand, Submission to the United Nations Committee against Torture. Available at: [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT\\_CAT\\_NGO\\_THA\\_17106\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT_CAT_NGO_THA_17106_E.pdf)
6. Amnesty International (21 September 2015). Amnesty International Submission to the UN Universal Periodic Review.
7. Amnesty International (21 September 2015). Amnesty International Submission to the UN Universal Periodic Review.
8. Amnesty International (21 September 2015). Amnesty International Submission to the UN Universal Periodic Review.
9. Duayjai, HAP, CrCF (January 2016). Torture and ill treatment in The Deep South Documented in 2014-2015. Available at: <https://voicefromthais.files.wordpress.com/2016/02/torture-report-english-as-of-10-feb-2016-released-version.pdf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

- 1. Recommendation 1 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 9, “Recalling the Committee’s general comment No. 2 (2008) on implementation of article 2 by States parties, the Committee urges the State party to revise its legislation without delay, in order to: (a) To adopt a definition of torture that covers all the elements contained in article 1 of the Convention; (b) To include torture as a separate and specific crime in its legislation and ensure that penalties for the crime of torture are commensurate with the gravity of the crime, as required by article 4, paragraph 2, of the Convention; (c) To ensure that acts amounting to torture are not subject to any statute of limitation.”
- 2. Recommendation 2 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 10, “The Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and to prosecute and punish those responsible with penalties that are commensurate with the gravity of their acts. [...]”
- 3. Recommendation 3 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 24, “The State party should: (a) Ensure the effective monitoring and inspection of all places of detention through regular and unannounced visits by independent national and international monitors, including non-governmental organizations, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment; (b) Make the recommendations of the monitors public and follow up on the outcome of such systematic monitoring; (c) Collect information on the place, time and periodicity of visits, including unannounced visits, to places of deprivation of liberty, and on the findings and the follow-up to the outcome of such visits; (d) Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism.”
- 4. Recommendation 4:** [N/A]
- 5. Recommendation 5 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 10, “The Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and to prosecute and punish those responsible with penalties that are commensurate with the gravity of their acts. [...]” Paragraph 27, “The State party should take the necessary steps to ensure that victims of torture and ill-treatment receive redress, including fair and adequate compensation and the means for as full rehabilitation as possible. The Committee draws the State party’s attention to its general comment

# ENFORCED DISAPPEARANCES IN THAILAND

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

During its 2011 UPR, the Thai government accepted 6 recommendations to sign and/or ratify the International Convention to Protect all Persons from Enforced Disappearance (CED) (made by Austria, France, Japan, Nicaragua, Spain, and Uruguay), including the recommendation made by France to investigate all allegations of forced disappearances. During the Committee Against Torture (CAT)'s review of Thailand in June 2014, the CAT recommended the government to "take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance."

Little progress has been made since Thailand's 2011 UPR and the 2014 CAT review. On 9 January 2012, the Royal Thai Government signed the International Convention on the Protection of All Persons from Enforced Disappearance (CED), as part of its voluntary pledges made during its first UPR. However, the convention cannot enter into force for Thailand since the government has not yet ratified it. In January 2015, the draft Prevention and Suppression of Torture and Enforced Disappearance Act was presented to the Cabinet. However, as of today, the draft Act has yet to be passed by the National Legislative Assembly (NLA).

## Major Challenges related to Enforced Disappearance cases

Between 1980 and 2014, the UN Working Group on Enforced or Involuntary Disappearances (WGEID), transmitted 89 cases of enforced disappearance to Thailand – the third highest number of cases in ASEAN after the Philippines and Indonesia. Eighty-one of them (91%) have remained unresolved. The lack of legal framework for the act of enforced disappearance results in a failure to prosecute those responsible for enforced disappearance.

Major challenges are:

1. **There is still no legislation criminalizing enforced disappearance:** No legal action can be undertaken to accelerate the process to investigate information and it remains a challenge for victims and their families to access to justice.
2. The **government has failed to provide remedies**, both judicial and non-judicial, to victims and their families: The Act for the Granting of Compensation to Aggrieved Parties and the Accused in Criminal Cases B.E. 2544 (2001) does not cover victims of enforced disappearance, and with no specific law criminalizing the act, there is a lack of effective "redress" and "compensation" in Thailand.
3. **Investigations into allegations of enforced disappearance** are rarely conducted and those that are conducted lack independence and transparency.
4. **Perpetrators are not held accountable** for their crimes: The legal vacuum regarding enforced disappearances results in cases of enforced disappearance continuing to take place with impunity.

## Challenges

## Cases, Facts, Comments

### THE CASE OF SOMCHAI NEELAPAIJIT

The investigation into the disappearance of Somchai Neelapaijit highlights several major problems, including: poor use of forensic evidence, failure to follow and develop leads, unduly restrictive interpretation of national and international law, and a lack of political will to resolve a case, thus illustrating the culture of impunity in Thailand.

The case of Somchai Neelapaijit, a human rights lawyer, who was pulled from his car in Bangkok and taken away by five police officers on 12 March 2004, is the only case of enforced disappearance that has been brought to the Thai Criminal Court. His fate and whereabouts remain unknown.

#### Judicial Proceedings:

In April 2004, the Criminal Court in Bangkok issued arrest warrants for five police officers allegedly involved in Somchai's abduction. In January 2006, four police officers were acquitted and one was convicted of the minor crime of coercion, but, in March 2011, the Court of Appeal in Bangkok overturned his conviction.

On 29 December 2015, the Supreme Court ruled that Somchai's family could not act as a co-plaintiff in bringing the case, as there was no concrete evidence that Somchai was dead or seriously injured. The court also acquitted five police officers charged with the robbery and coercion upholding the appellate court's ruling.

#### Special Investigation:

In 2005, the Department of Special Investigation (DSI), under the Ministry of Justice, also opened an investigation into Somchai's disappearance and is still investigating the case.

#### UN Working Group on Enforced or Involuntary Disappearances (WGEID):

On 30 June 2011, the WGEID requested an invitation to undertake a visit to Thailand. No positive response yet has been received from the Government in spite of reminders sent.

Ten years after his disappearance, on 11 March 2014, and in its August 2014 report, the WGEID called on the Royal Thai Government to establish the truth and hold criminally responsible the perpetrators of the disappearance of human rights defender Somchai Neelapaijit.

### THE CASE OF PORLAJEE “BILLY” RAKCHONGCHAROEN

The case of Porlajee “Billy” Rakchongcharoen displays Thai authorities’ failure to credibly investigate cases of enforced disappearance.

Karen human rights activist, Porlajee “Billy” Rakchongcharoen was last seen on 17 April 2014 in the custody of Kaeng Krachan National Park officials in Petchaburi province. Park officials admitted that they had detained Billy for “illegal possession of wild honey” but had released him the same day. At the time of his “disappearance”, he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers’ homes and property in the National Park in 2010 and 2011.

#### Judicial Proceedings:

On 24 April 2014, Billy’s wife, Phinnapha Phrueksaphan, filed a habeas corpus petition at the Petchaburi Provincial Court seeking an inquiry into the lawfulness of her husband’s detention.

On 17 July 2014, following a six-day habeas corpus inquiry, the Court concluded that it could not be established that Billy was still in detention when he had disappeared. Subsequent appeal of this decision to the Appeal Court also failed to shed any light on Billy’s fate or whereabouts.

On 2 September 2015, the Supreme Court upheld the decisions of the Appeals and Lower Courts dismissing the case against the former chief of the National Park, Chaiwat Limlikhit-aksorn. The Court ruled that there was no credible evidence against Chaiwat and his associates (Supreme Court case No. 7237/2515).

#### Special Investigation:

The Department of Special Investigation (DSI) is currently considering whether to open a special investigation into Billy’s disappearance or not following a request from his wife on 6 August 2015. The request was made citing lack of progress in police investigation. The DSI has reportedly collected witness testimonies and taken the Park office vehicles for examination after finding bloodstains on the carpet of one of the cars after Billy’s disappearance. The DSI has put 100,000 Baht as a reward for clues to his disappearance.

#### National Human Rights Commission of Thailand (NHRCT):

On 14 January 2016, the Sub-Committee on Civil Rights of the NHRCT held a review progress meeting on the case attended by the concerned officials of the Royal Thai Police, the DSI and the Office of Public Sector Anti-Corruption Commission (PACC) in response to a request from Billy’s wife. As per the briefing of the meeting, the Police found the testimonies of the Park officials involved in Billy’s detention were ‘inconsistent’. The Police has also put 100,000 Baht cash reward to persons who can provide useful information on the case. PACC has also gathered witness testimonies on the case after it accepted the case file for consideration and is now investigating the forensic evidence of blood stain in Chaiwat’s car. PACC will submit the case file to the prosecutor in March 2016, who will decide whether to file charges of malfeasance in office against the Park officials involved in Billy’s detention. The NHRCT, in the briefing, indicated inadequacy of legal framework for accountability in cases of enforced disappearances in Thailand.

There are still many cases of unsolved disappearances in Thailand, as per official United Nations reports.

#### As of today, the UN Working Group on Enforced or Involuntary

**Disappearances (WGEID)** has transmitted 89 cases of enforced disappearance to Thailand. In its August 2014 report, the Working Group indicated that 81 cases were still outstanding, with only 2 cases clarified by the Royal Thai Government.

On 6 January 2016, the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, urged the Royal Thai Government to take decisive and sustained efforts to investigate the whereabouts of at least 82 people listed as disappeared, including Mr. Somchai Neelapaijit. He also called on the government to criminalize enforced disappearance in its legislation, in line with international standards.

## Recommendations

The following recommendations are proposed on recommendations made by the Committee Against Torture in its *Concluding observations on the initial report of Thailand* in June 2014.

1. Immediately ratify the International Convention to Protect all Person from Enforced Disappearance (CED) and adopt legislation that criminalizes enforced disappearances in line with international standards and provides appropriate penalties for the grave nature of the crime.
2. Ensure that all allegations of enforced disappearance are promptly, effectively, and impartially investigated (including through the immediate filing of first information reports, involvement of independent forensic experts, provision of witness protection, respect for the rights of the relatives), and ensure that suspects are prosecuted and those found guilty punished with sanctions proportionate to the nature of their crimes.
3. End impunity for the crime of enforced disappearance by ensuring that amnesty laws or similar measures – whether legal, administrative, or judicial in nature – cannot be used to exempt perpetrators of disappearances from criminal proceedings.
4. Ensure that those who have suffered harm as the result of an enforced disappearance are provided with access to truth about the fate of the disappeared person, justice, remedies, and adequate reparations.
5. Allow the UN Working on Group on Enforced or Involuntary Disappearance to visit Thailand and clarify any outstanding cases of enforced disappearance in Thailand.

# ENFORCED DISAPPEARANCES

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 6 Recommendations were received on Enforced Disappearances. 6 recommendations were accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1UnULqe>.

### Accepted Recommendations on Enforced Disappearances:

1. Uruguay: Ratify or accede as appropriate to the CED (89.2);
  2. Spain: Sign and ratify CED (89.3);
  3. Austria: Ratify CED (89.4);
  4. France: Ratify the CED and investigate all allegations of forced disappearances (89.11);
  5. Nicaragua: Sign and ratify promptly the CED (89.12);
  6. Japan: Sign and ratify CED at an early stage (89.13).
- Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1.
  - ICJ/TLHR (21 September 2015). Submission of the International Commission of Jurists & Thai Lawyers for Human Rights to the Universal Periodic Review of Thailand.

## Challenges and Cases

1. ICJ (March 2014). Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand. Available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>
2. ICJ (March 2014). Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand. Available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>
3. ICJ (21 May 2014). Thailand: effective investigation of enforced disappearance of Somchai Neelapaijit needed after Supreme Court ruling. Available at: <http://www.icj.org/thailand-effective-investigation-of-enforced-disappearance-of-somchai-neelapaijit-needed-after-supreme-court-ruling/>
4. Bangkok Post (29 December 2015). Court upholds acquittals in missing lawyer Somchai case. Available at: <http://www.bangkokpost.com/archive/court-upholds-acquittals-in-missing-lawyer-somchai-case/810152>
5. ICJ (March 2014). Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand. Available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>
6. ICJ (28 April 2014). Thai authorities must urgently investigate Billyloads/2014/09/Thai. Available at: <http://www.icj.org/thai-authorities-must-urgently-investigate-billys-disappearance/>; ICJ (17 July 2014). Thailand: "Disappearance" of Billy demands special investigation. Available at: <http://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/>; ICJ (16 September 2014). Thailand: enforced disappearances. Available at: <http://www.icj.org/thailand-enforced-disappearances/>; ICJ (16 April 2015). Thailand: strengthen efforts to solve the apparent enforced disappearance of "Billy". Available at: <http://www.icj.org/thailand-strengthen-efforts-to-solve-the-apparent-enforced-disappearance-of-billy/>
7. ICJ/TLHR (21 September 2015). Submission of the International Commission of Jurists & Thai Lawyers for Human Rights to the Universal Periodic Review of Thailand.
8. ICJ (6 August 2015). Thailand: launch special investigation into enforced disappearance of "Billy". Available at: <http://www.icj.org/thailand-launch-special-investigation-into-enforced-disappearance-of-billy/>
9. OHCHR (6 January 2016). Zeid urges Thailand to fully investigate enforced disappearances. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16924&LangID=E#sthash.sV1X33x9.dpuf>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

- Recommendation 1 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 14, “The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, in particular by: a) Taking legal measures to ensure that enforced disappearance is a specific crime in Thai domestic law, with penalties that take into account the grave nature of such disappearances; [...] e) Accelerating the process for ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.”
- Recommendation 2 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 14, “The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, in particular by: [...] b) Ensuring that all cases of enforced disappearance are thoroughly, promptly and effectively investigated, suspects are prosecuted and those found guilty are punished with sanctions proportionate to the gravity of their crimes, even when no body or human remains are found [...]”
- Recommendation 3 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 14, “The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance [...]”
- Recommendation 4 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 14, “The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, in particular by: [...] c) Ensuring that any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person as well as to fair and adequate compensation, including any necessary psychological, social and financial support [...]”
- Recommendation 5 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 14, “The State party should take all the necessary measures to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, in particular by: [...] d) Adopting measures to clarify the outstanding cases of enforced disappearance and facilitating the request by the Working Group on Enforced or Involuntary Disappearances to visit the country (A/HRC/22/45, para. 471) [...]”

# DEATH PENALTY IN THAILAND

## **Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

Thailand did not accept any of the 10 recommendations made by other States (made by Argentina, Brazil, France, Hungary, Nicaragua, Slovakia, Slovenia, Spain, Switzerland, Turkey) with regard to the death penalty, nor did accept the 6 recommendations that called for the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), which aims at the abolition of the death penalty.

However, Thailand made progress on the implementation of its voluntary pledges, related to its 2011 UPR, through the amendment of its national laws: in 2012, Thailand withdrew its interpretive declarations to Article 6(5) and Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) regarding the abolition of death penalty for persons below 18 years of age and the obligation to promptly bring arrested or detained persons on a criminal charge before a judge.

Thailand has a *de facto* moratorium on the death penalty, having not executed anyone since 2009. France, Slovakia, Spain, and Switzerland each made a recommendation related to establishing a moratorium on the death penalty during Thailand's 2011 UPR. Since then, Thailand has continued its unofficial moratorium on the death penalty but has abstained from voting on a moratorium on the use of the death penalty at the United Nations General Assembly (UNGA), during the UNGA votes on 20 December 2012 and on 18 December 2014. Despite more than 6 years without executions, Thailand has failed to make real progress towards the total abolition of the death penalty,

It should be noted that figures show a steady decline in the number of prisoners under death sentence. On 11 April 2011, there were 759 prisoners (676 men and 83 women) under death sentence. By 31 December 2015, the number had progressively decreased to 413 (363 men and 50 women). This 42% decrease is mostly attributed to commutations of death sentences on special occasions.

Despite a reduction of the number of prisoners facing capital punishment, courts across Thailand have continued to impose death sentences. Between January 2012 and December 2014, at least 211 people were sentenced to death. Although official figures are not publicly available, at least 40 death sentences were imposed in 2011, at least 106 in 2012, at least 50 in 2013, and at least 55 in 2014.

## **Challenges**

### **Number of capital crimes increases:**

In Thailand's 2011 UPR, 2 of the 16 recommendations on the death penalty (made by Hungary and Turkey) were related to removing the death penalty for non-violent offenses and/or drug trafficking offenses. Since then, there has been no effort to reduce the number of crimes subject to the death penalty. Instead of reducing the number of offenses that are defined as capital crimes, lawmakers introduced (or proposed the introduction of) laws that expand the offenses that can be punished by death.

The Criminal Code prescribes the death penalty under 55 different articles for various criminal offenses, including: premeditated murder; rape resulting in death; kidnapping; terrorism; espionage; treason; economic crimes; and drug-related offenses.

On 13 February 2015, the Act Regarding Offenses Relating to Air Travel came into effect. The law prescribes the death penalty for those found guilty of acts involving lethal force, which cause the closure of an airport or damage airport facilities or aircraft.

On 9 July 2015, amendments to the 1999 Anti-Corruption Law came into effect. The amendments, approved by the National Legislative Assembly (NLA), extended capital punishment to foreigners working for foreign governments and international organizations convicted of bribery.

## **Cases, Facts, Comments**

**Death penalty for drug-related offenses:**

The existence of legislation that makes drug-related offenses punishable by death is inconsistent with Thailand's legal obligations under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which states that in countries that have not abolished the death penalty, death sentences "may be imposed only for the most serious crimes." The United Nations Human Rights Committee has repeatedly stressed that capital punishment for drug-related offenses does not comply with Article 6 of the ICCPR.

Drug-related offenses represent a disproportionate share of the crimes for which a death sentence is imposed. 37% of the men and 80% of the women who were under death sentences as of 31 May 2015 had been found guilty of drug-related offenses.

**Lack of political will blocks progress towards abolition:**

Thailand has repeatedly stated its intention to consider abolishing capital punishment. However, many official statements have made the abolition of the death penalty contingent on the support of public opinion.

Thailand's third National Human Rights Plan (2014-2018) repeated the possibility of abolition included in the two previous human rights plans. In its summary, the third plan states that one of its aims is to "change capital punishment to life imprisonment through parliamentary deliberation in light of the continued effort to upgrade Thailand's internal human rights laws to be consistent with international standards."

However, Thai officials have expediently claimed that the country is not ready for abolition because they claim public opinion overwhelmingly supports capital punishment. This notion is reflected by the words of Thailand's Justice Minister Mr. Paiboon Koomchaya, who, on 14 July 2015, said that Thailand could not yet abolish capital punishment because it was "deeply-rooted in the mind and attitude of Thai people."

**Failure to adequately inform the public on issues surrounding the death penalty:**

Successive Thai governments have failed to provide the public with relevant information to have an informed opinion on the issues related to the death penalty.

From January to March 2014, Mahidol University and the Ministry of Justice's Department of Rights and Liberties Protection conducted a survey of 1,073 people in five different regions of Thailand and in Bangkok on the death penalty. The poll found that 68.7% of respondents were in favor of the death penalty, 22.1% were in favor of abolition, and 9.2% were unsure. In an online survey conducted by the same university in 2014, 88% of the 1,301 respondents said they were in favor of the death penalty, 9% were in favor of abolition, and 3% were unsure.

However, the study was conducted without providing respondents with sufficient analysis and unbiased information regarding key aspects of the application of the death penalty. For example, the survey listed a number of arguments in favor of the death penalty that would lead respondents to believe that capital punishment is an effective deterrent against crime and that abolition would lead to an increase in violent crimes.

**Recommendations**

1. Sign and ratify the Second Optional Protocol to the ICCPR, and aim to abolish the death penalty before the next UPR cycle.
2. Immediately establish an official moratorium on executions and vote in favor of any subsequent UN General Assembly resolutions that call for a moratorium on executions.
3. Remove the penalty of capital punishment for all drug-related offenses, and significantly reduce the number of criminal offenses punishable by death, as recommended by the Human Rights Committee in its 2005 concluding observations to Thailand.
4. Immediately commute all death sentences to prison terms.
5. Abandon the plan to replace capital punishment with life imprisonment.

## DEATH PENALTY

**Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

For Thailand 1st UPR in 2011, 10 Recommendations on the Death Penalty and 6 Recommendations on the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), which aims at the abolition of the death penalty.

All 16 recommendations were noted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1UnU68i>.

**Noted Recommendations on the Death Penalty and the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), which aims at the abolition of the death penalty:**

1. Hungary: Remove non-violent offenses from the categories subject to capital punishment (89.26);
  2. Turkey: Enact legislation abolishing the death penalty as foreseen in the national human rights action plan and in any case review its imposition for offences related to drug trafficking (89.27);
  3. France: Commute death sentences and establish as soon as possible a moratorium on executions with a view to the definitive abolition of the death penalty (89.28);
  4. Slovakia: Impose an immediate moratorium on the death penalty with a view of a complete abolition of capital punishment as outlined in the National Human Rights Action Plan (89.29);
  5. Spain: Revert to the de facto moratorium of the death penalty, and foster the necessary public debate on this issue, as a previous step for the definitive abolishment of the death penalty (89.30);
  6. Switzerland: Establish a moratorium on all the executions and, eventually, abolish death penalty (89.31);
  7. Slovenia: Review the imposition of the death penalty (89.32);
  8. Brazil: Consider abolishing the death penalty (89.33);
  9. Argentina: Consider the abolition of the death penalty (89.34);
  10. Nicaragua: Abolish totally the death penalty even in cases of serious offenses (89.35)
  11. Argentina: Study the possibility of ratifying the International Convention on the Protection of All Persons from Enforced Disappearance (CED); the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2); the Optional Protocol to the Convention against Torture (OP-CAT); the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1); the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD) (89.1);
  12. Uruguay: Ratify or accede as appropriate to the Rome Statute of the International Criminal Court, OP-CAT and ICCPR-OP1 and ICCPR- OP2 (89.2);
  13. Spain: Sign and ratify ICCPR-OP1, ICCPR-OP2, OP-ICESCR and OP- CAT (89.3);
  14. Austria: Ratify the Optional Protocols to ICCPR and CAT (89.4);
  15. Hungary: Consider acceding to the two Optional Protocols to the ICCPR (89.6);
  16. Switzerland: Ratify the ICCPR-OP2 (89.7).
- Ministry of Foreign Affairs (29 August 2012). Press Releases: Thailand withdraws its interpretative declarations to Article 6(5) and Article 9(3) of the International Covenant on Civil and Political Rights.  
Available at: <http://www.mfa.go.th/main/en/media-center/14/27088-Thailand-withdraws-its-interpretative-declarations.html>
  - Thailand has not executed anyone since 24 August 2009, when two men convicted of drug trafficking, Bundit Jaroenwanit and Jirawat Poompreuk, were put to death by lethal injection at Bang Khwang Prison, Nonthaburi province.
  - UNGA (20 December 2012). 67th session. 60th plenary meeting. UN Doc. A/67/PV.60.; UNGA (18 December 2014). 69th session. 73rd plenary meeting. UN Doc. A/69/PV.73.
  - FIDH/UCL (21 September 2015). Joint submission prepared by the International Federation for Human Rights (FIDH) and the Union for Civil Liberty (UCL).
  - Death sentences in 2011, 2012, 2013, 2014: Amnesty International (2012). Death Sentences and Executions 2011.  
Available at: [http://www.amnestyusa.org/sites/default/files/ai\\_global\\_dp\\_2011\\_stats\\_report-act500012012en.pdf](http://www.amnestyusa.org/sites/default/files/ai_global_dp_2011_stats_report-act500012012en.pdf);  
Amnesty International (2013). Death Sentences and Executions 2012.  
Available at: <http://www.amnestyusa.org/sites/default/files/worlddpreport2012.pdf>;  
Amnesty International (2014). Death Sentences and Executions 2013.  
Available at: <http://www.amnestyusa.org/sites/default/files/act500012014en.pdf>;  
Amnesty International (2015). Death Sentences and Executions 2014.  
Available at: [http://www.amnestyusa.org/pdfs/DeathSentencesAndExecutions2014\\_EN.pdf](http://www.amnestyusa.org/pdfs/DeathSentencesAndExecutions2014_EN.pdf)

## Challenges and Cases

1. Death Penalty Worldwide (19 July 2015). Thailand. Available at: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=thailand>
2. [No online English version of the 2015 Act Regarding Offenses Relating to Air Travel.]
3. [No online English version of the 1999 Anti-Corruption Law.]
4. FIDH/UCL (21 September 2015). Joint submission prepared by the International Federation for Human Rights (FIDH) and the Union for Civil Liberty (UCL).
5. Article 6, paragraph 2 of the ICCPR stipulates that: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."
6. Ministry of Justice, Rights and Liberties Protection Department (2014). The Summary of Thailand's 3rd National Human Rights Plan. Available at: <http://www.mfa.go.th/humanrights/images/the%20summary%20of%20thailands%203rd%20national%20human%20rights%20plan%202014-2018.pdf>
7. Khaosod English (14 July 2015). Thai Minister Asks French Diplomat to Extradite Lese Majeste Suspects. Available at: <http://www.khaosodenglish.com/detail.php?newsid=1436851966>
8. Bangkok Post (9 August 2014). Country 'not ready' to end death penalty. Available at: <http://www.bangkokpost.com/print/425802/>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. **Recommendation 3 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 14, "The State party should review the imposition of the death penalty for offences related to drug trafficking in order to reduce the categories of crime punishable by death."
4. Recommendation 4: [N/A]

# INSTITUTIONAL REFORMS: DRAFT CONSTITUTION & THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

## *Brief Assessment of the Implementation of 1st Cycle UPR Recommendations*

*During its 1st UPR in 2011, Thailand received no recommendations calling for amendments to its Constitution. The political situation in Thailand has drastically changed since its 1st UPR as a result of the 22 May 2014 coup. On 22 July 2014, the NCPO suspended the 2007 Constitution and replaced it with the Interim Constitution, which mandated the Constitution Drafting Committee (CDC) to draft a new constitution. The National Reform Steering Assembly dismissed the first draft of the Constitution in September 2015. The new CDC is currently discussing the second draft Constitution.*

*Thailand received 2 recommendations (made by Nepal and Egypt) related to strengthening National Human Rights Institutions (NHRIs)/ infrastructure. Thailand accepted both recommendations but has failed to implement them. The National Human Rights Commission of Thailand (NHRCT) has been criticized for its lack of independence, the selection and recruitment of personnel, and the carrying out of its duties on human rights promotion and protection. As a result, in 2015, the NHRCT had its status downgraded, from 'A' to 'B', by the Sub-Committee on Accreditation of International Coordinating Committee of National Human Rights Institutions (ICC-SCA). In addition, since the 22 May 2014 military coup and the entering into force of the 2014 Interim Constitution, the NHRCT has only been able to fulfill its mandate under the 1999 National Human Rights Commission Act to the extent that it does not contradict the Interim Constitution.*

## Main Challenges regarding the draft Constitution

### **1) The Economic, Social and Cultural Rights moved from 'Rights and Liberties' section to 'Duties of State' section**

Certain Economic, Social and Cultural (ESC) rights (rights of children; rights of the elderly; rights of persons with disabilities; the right to public health and free education; consumer rights; the rights of traditional communities), were enshrined in the 1997 and 2007 Constitutions, protecting the basic rights under the 'Rights and Liberties of Thai citizens' section. However, in the current draft Constitution, ESC rights such as the right to education, right to health, right to public participation in the management of natural resources, and the right to information are prescribed in the 'Duties of State' section.

### **2) The unbalanced power of the Constitutional Court**

The draft Constitution provides the Constitutional Court with virtually unlimited power, allowing it the power to examine petitions filed directly by individuals, without screening by the Prosecutor General or the Ombudsman (under Article 46). It can also, under Article 207, interpret cases based on the vague notion of "constitutional practice in the democratic regime of government with the King as Head of State".

### **3) The supremacy of military power**

Article 270 of the draft Constitution gives constitutionality and legality to any announcement, order, and action issued or committed by the NCPO after its enforcement. Any announcement, order, or action issued or committed by NCPO can be abolished only through the enactment of an Act. This grants immunity to the NCPO.

## Main Challenges facing the NHRCT

### **1) Selection and appointment process**

The Paris Principles require a clear, transparent, merit-based and participatory selection and appointment process, to ensure independence, effectiveness, and public legitimacy of NHRIs. According to Section 1(B) of the Paris Principles, the composition of an NHRI should be established according to a procedure that ensures a pluralist representation of civil society involved in the promotion and protection of human rights, and include representatives from NGOs responsible for human rights and efforts to combat racial discrimination, trade unions, concerned associations such as lawyer associations, doctors, journalists, and scientists.

The selection process under Chapter 6 of the draft Constitution mentions the need to include representative(s) from civil society organizations working on human rights, however it does not outline the structure or composition of the selection committee.

## Main Challenges facing the NHRCT

In the Committee Against Torture (CAT)'s Concluding observations on the initial report of Thailand in June 2014, the Committee recommended Thailand consider reviving the procedure for selecting NHRCT commissioners (established under the 1997 Constitution) with a view to increasing the number of commissioners and that it allow for the participation of representatives of non-governmental human rights organizations.

In June 2015, in its Concluding observations on the combined initial and second periodic reports of Thailand, the Committee on Economic, Social and Cultural Rights (CESCR) raised concern over the fact that the institutional shortcomings of the NHRCT, identified by the ICC, including in relation to its independence and the selection process for Commissioners, had not been fully overcome.

### 2) Functional immunity and independence

According to the ICC's Sub-Committee on Accreditation Report (November 2015), NHRIs should be granted functional immunity provided by law to protect the commissioners from legal liability for their work under their mandate. However, the SCA has noted "external parties may seek to influence the independent operation of a NHRi by initiating, or by threatening to initiate legal proceedings against a member."

### 3) Addressing grave human rights violations in timely manner

According to the ICC's Sub-Committee on Accreditation Report (November 2015), the NHRCT has not addressed serious human rights violations in a timely manner. For example, the investigations and report of the 2010 violent demonstrations and civil unrest, which resulted in a significant number of deaths and injuries allegedly committed by law enforcement officials, were completed 3 years after the incident. Similarly, the NHRCT released its investigation report on the violent July 2013-May 2014 demonstrations in November 2015.

### 4) Lack of action regarding NHRCT findings

In the CAT's Concluding observations on the initial report of Thailand in June 2014, the Committee raised concern over the fact that the authorities had not followed-up on the findings and recommendations made by the NHRCT, and about reports that persons deprived of their liberty do not file complaints with the NHRCT when they visit detention places, reportedly out of fear of retaliation by prison officials.

### 5) Restricted mandate of the NHRCT in the draft Constitution

The draft Constitution restricts the NHRCT's mandate compared with the previous constitutions. Under Article 200 of the 1997 Constitution and Article 257 of the 2007 Constitution, the NHRCT had the power to call witnesses and evidence from government officials and individuals. Individuals or organizations that failed to comply could be liable to criminal prosecution. In addition, under Article 257 of the 2007 Constitution, the NHRCT was granted an additional mandate to refer human rights violation cases and opinions to the Constitutional Court or the Administrative Court, as well as to file lawsuits on behalf of injured persons to the Court of Justice. However, these clauses have been removed in the draft Constitution.

## Recommendations

### On the draft Constitution:

1. Allow democratic elections to take place without delay, in order to return democracy to Thai people, and instate a Constitution through the process of referendum that protects all rights and is in line with international standards.
2. Allow a public consultation process for the draft Constitution and ensure that all voices can be heard without fear of repercussions or reprisals.
3. Ensure a checks and balances system for the Constitutional Court.
5. Carefully review Articles 243 and 244(4) of the draft Constitution in order to eliminate the vagueness of Article 243, stating that NHRCT should conduct its duties by considering the happiness of Thai people and national interest, as well as Article 244(4), stating that NHRCT has a mandate to 'correct' the information about human rights situation in the country.
6. Ensure functional immunity for the NHRCT by establishing a law that includes a clear and unequivocal provision to protect NHRCT members from legal liability for acts undertaken in good faith in their official capacity, in line with Paris Principles B.3 and the General Observation 2.3 on 'Guarantee of functional immunity' of the ICC Sub-Committee on Accreditation (ICC-SCA).

### On the NHRCT:

4. Take all necessary legislative and other measures to ensure that the NHRCT is able to effectively execute its mandate in accordance with the Paris Principles, by ensuring it has the necessary resources, strengthening the roles of the NHRCT to carry out its duties independently, and guaranteeing the independence and pluralism of its composition, by considering the revision of the procedure for selecting NHRCT commissioners, in line with the concluding observations on Thailand of the Human Rights Committee, the CAT, and the CESCR in 2005, 2014, and 2015 respectively, and with the Paris Principle B.1, the SCA's General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.
7. Allow the NHRCT the full mandate to investigate and release regular and detailed reports on grave human rights violations in a timely manner, in line with Paris Principles A.3 and the SCA's General Observations 1.6. 'Recommendations by NHRIs', and 2.6 'NHRIs during the situation of a coup or a state of emergency'.
8. Seriously implement recommendations made by the NHRCT and ensure they are given full and serious follow-up, in line with the concluding observations on Thailand of the Human Rights Committee and the CESCR in 2005 and 2015 respectively.

# INSTITUTIONAL REFORMS

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, no Recommendations were received on Constitutional amendments and 2 Recommendations were received and accepted on strengthening National Human Rights Institutions (NHRIs)/infrastructure.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1UnSSKp>.

### Accepted Recommendations on strengthening National Human Rights Institutions (NHRIs)/infrastructure :

1. Nepal: Continue to work to strengthen national human rights and democratic institutions (88.7);
  2. Egypt: Consolidate and strengthen its national human rights infrastructure (88.8).
- Bangkok Post (28 January 2016). Thai rights agency downgraded by international body. Available at: <http://www.bangkokpost.com/news/general/843412/thai-rights-agency-downgraded-by-international-body>

## Challenges and Cases

1. 'Rights and Liberties of the Thai People' outlined in Chapter 3 of the 1997 Constitution. Available at: [http://www.oic.go.th/content\\_eng/relate\\_law/kingdom.pdf](http://www.oic.go.th/content_eng/relate_law/kingdom.pdf), and Chapter 3 of the 2007 Constitution. Available at: [https://www.unodc.org/tldb/pdf/Thailand\\_const\\_2007.pdf](https://www.unodc.org/tldb/pdf/Thailand_const_2007.pdf); OHCHR Regional Office for South-East Asia (2015). Technical Note on the National Human Rights Commission of Thailand in the draft 2015 constitution. Available at: <http://bangkok.ohchr.org/files/OHCHR%20on%20NHRI%20150327.pdf>
2. Draft Constitution. Available [in Thai] at: [http://www.constitutionnet.org/files/2016\\_draft\\_constitution\\_of\\_thailand.pdf](http://www.constitutionnet.org/files/2016_draft_constitution_of_thailand.pdf)
3. Section 1(B) of the Paris Principles states that: "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)."
4. Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 25, "The State party should ensure that the NHRCT effectively executes its mandate in accordance with the principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex), in particular by strengthening the roles of the NHRCT to carry out unannounced visits to detention facilities, during which they are able to take confidential statements from detainees; implementing the recommendations made by the NHRCT and guaranteeing the independence and pluralism of its composition. In that regard, the Committee recommends that the State party consider reviving the previous procedure for selecting commissioners to the NHRCT with a view to increasing the number of commissioners and that it allow for the participation of representatives of non-governmental human rights organizations."
5. Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7, "The Committee is concerned that the institutional shortcomings of the National Human Rights Commission of Thailand (NHRCT), identified by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), including in relation to its independence and the selection process for Commissioners, have still not been fully overcome (art. 2)."
6. ICC Sub-Committee on Accreditation (16-20 November 2015). Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA). Available at: <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>
7. Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 25, "The Committee is nonetheless concerned at reports that the authorities have not followed up on the findings and recommendations made by the NHRCT, and about reports that persons deprived of their liberty do not file complaints with the NHRCT when they visit detention places, reportedly out of fear of retaliation by prison officials (art. 2)."
8. Article 200 of the 1997 Constitution states: "[...]The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law." Available at: [http://www.oic.go.th/content\\_eng/relate\\_law/kingdom.pdf](http://www.oic.go.th/content_eng/relate_law/kingdom.pdf). Article 257 of the 2007 Constitution states: "The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law." Available at: [https://www.unodc.org/tldb/pdf/Thailand\\_const\\_2007.pdf](https://www.unodc.org/tldb/pdf/Thailand_const_2007.pdf)

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. Recommendation 3: [N/A]
4. **Recommendation 4 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 9, “[...] [The State party] should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134).”; Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 25, “[...] the Committee recommends that the State party consider reviving the previous procedure for selecting commissioners to the NHRCT with a view to increasing the number of commissioners and that it allow for the participation of representatives of non- governmental human rights organizations.”; Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7, “The Committee recommends that the State party take all necessary legislative and other measures, including following up on the recommendations made by the ICC, to ensure that the NHRCT is a fully independent institution with the necessary resources to fulfil its mandate in conformity with the Paris Principles. It further recommends that the State party create the necessary conditions for the NHRCT to fully exercise its mandate in relation to economic, social and cultural rights and protect victims of violations of these rights.”
5. Recommendation 5: [N/A]
6. Recommendation 6: [N/A]
7. Recommendation 7: [N/A]
8. **Recommendation 8 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 9, “The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. [...]”; Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7, “The Committee recommends that the State party take all necessary legislative and other measures, including following up on the recommendations made by the ICC [...]”

# HUMAN RIGHTS EDUCATION AND TRAINING & ADHERENCE TO INTERNATIONAL LEGAL INSTRUMENTS

## **Brief Assessment of the Implementation of 1st Cycle UPR Recommendations**

During its first UPR Cycle in 2011, the Royal Thai Government accepted 3 recommendations on Human Rights Education and Training from the Philippines, Egypt, and Chad. To inform UPR Info's Mid-Term Implementation Assessment of Thailand's 1st cycle UPR recommendations, the National Human Rights Commission of Thailand (NHRCT) indicated that Human rights education and training has been regularly organised for government officials, especially for law enforcement officers, the youth and the general public. Regarding the ratification of international instruments, Thailand received 11 recommendations including calling on the ratification of international conventions on Human Trafficking, Enforced Disappearances, the Rights of Migrants Workers, Refugees, the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD) and the International Bill of Human Rights. An assessment of the implementation of these recommendations is provided in the section below.

The Royal Thai Government also accepted 2 recommendations (from Nepal and Egypt) related to strengthening the National Human Rights Commission. The Committee on Economic, Social and Cultural Rights also recommended that member states comply with the recommendations of the International Coordinating Committee of National Human Rights Institutions (ICC). This will ensure that the National Human Rights Commission is independent and able to take action under its authority in compliance with the Paris Principles with sufficient resources. However, in 2015, the NHCRT had its status downgraded, from 'A' to 'B', by the Sub-Committee on Accreditation of International Coordinating Committee of National Human Rights Institutions (ICC-SCA).

The Royal Thai Government accepted the 4 recommendations (made by Finland, Hungary, Spain and New Zealand) to invite all special rapporteurs to visit Thailand. The Thai Government has issued a standing invitation to all special procedures and specific invitation to some UN special rapporteurs. However, between 2013 and 2015, out of 21 special rapporteur requests to visit Thailand, only one special rapporteur on water visited Thailand from 1-8 February 2013.

## **Adherence to International Legal Instruments**

### **Human Trafficking**

Thailand accepted the 13 recommendations received in 2011 related to Human Trafficking (made by Australia, Canada, France, Japan, Malaysia, Moldova, New Zealand, Nicaragua, Norway, Pakistan, Singapore, Sweden and Uruguay). Thailand is currently implementing the Policy, Strategy and Measure on the Prevention and Suppression of Human Trafficking (2011-2016), with specialised task forces established to draft and monitor implementation of the Plan of Action on Prevention of Human Trafficking and to enhance collaboration among related agencies. However, the human trafficking situation in Thailand remains in tier 3 in the latest US Trafficking in Persons (TIP) report.

Regarding the recommendations made by Norway and Australia to "Accede to the Palermo Protocol" and to "Ratify the United Nations Convention against Transnational Organized Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air": the Royal Thai Government (RTG) has signed the two major Protocols on Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 17 Oct 2013. Based on these protocols, some clauses and amendments were introduced into Thai law. The RTG has adopted Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, focusing on explicitly explaining the terms of Trafficking in persons and Exploitation. However, in terms of implementation, fact-finding by HRDF has indicated that there are a very small number of cases in which employers are prosecuted and mostly anti-money laundering measures against human traffickers are not imposed. Further, the Thai government has failed to address the human trafficking of ethnic Rohingya, Uighur and ethnic minorities. In fact, it has been reported that high-ranking officials were involved some cases of human trafficking.

However, it should be noted that Thailand has hosted international meetings on irregular migration in the Indian Ocean and has made efforts to crack down on networks of traffickers and officers complicit in illegal activities (human trafficking). On 26 March 2015, the National Legislative Assembly voted in favor of the amendments to the 2008 Anti-Human Trafficking Act, to remove civil liability for reporting suspected human trafficking offences or arresting suspects in order to ensure that fear of reprisal is never a barrier to an effective legal response. However, the next step for the amendment to come into effect is for it to be signed by His Majesty and subsequently published in the Royal Gazette.

### **Convention on the Protection of the Rights of Migrants Workers and Member of their Families (MWC)**

Thailand has not signed the Convention nor signed the ILO Work in Fishing Convention 1988, related to fishery workers who are victims of human trafficking. In Thailand, the fishing industry is covered under the Labour Protection Act, and there have been initiatives by ILO put into place intended to protect men working on fishing boats, especially migrants. However, there are questions regarding the effectiveness of these initiatives.

### **The 1951 Convention relating to the Status of Refugees and its Protocol**

Thailand has received 4 recommendations (made by Brazil, Canada, France and Switzerland) on becoming a party to the 1951 Convention relating to the Status of Refugees during its first UPR. Since then Thailand has not yet ratified the Convention although it has been estimated that the country is home to 130,000 asylum seekers and refugees, 90 percent of who are from neighboring Myanmar and have been living in temporary shelter along the Thailand-Myanmar border for more than two decades. Many children and women refugees remain unprotected, with new babies born in prison and imprisoned under the charge of illegal entry.

### **Convention for the Protection of all Persons from Enforced Disappearance (CED)**

Thailand accepted the 6 recommendations to sign and/or ratify the International Convention to Protect all Persons from Enforced Disappearance (CED) (made by Austria, France, Japan, Nicaragua, Spain, and Uruguay). On 9 January 2012, the Royal Thai Government signed the International Convention on the Protection of All Persons from Enforced Disappearance (CED), as part of its voluntary pledges made during its first UPR. In February 2014, Thailand established a national committee to consider ratifying the CED. However, as of today, the Convention cannot enter into force for Thailand since the government has not yet ratified it.

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

Regarding the 2 recommendations made by Austria and Canada to include a definition of torture into the Criminal Code, the Government has made an effort to incorporate the definition of "torture" into its domestic laws by amending the Criminal Code and Criminal Procedure Code to be in line with CAT, and make torture a specific criminal offence. However, it should be noted that the definition of torture in the draft amendment of the Criminal Code may not be in full conformity with Article 1 of the Convention and should be reviewed. Furthermore, the draft Prevention and Suppression of Torture and Enforced Disappearance Act was presented to the Cabinet on 12 January 2015, but the legislative process of legislation has been slow and as of March 2016, the draft Act still appears to be far from complete.

### **Gender Equality Act**

No recommendation was received on LGBTI rights during Thailand's 1st UPR in 2011, but it should be noted the efforts of Thailand to enact the Gender Equality Act in 2015. However, the rights of LGBTI have not been equally respected, with LGBTI individuals and children being victims of discrimination and bullying in schools and suffering from rejection within families.

## The National Human Rights Commission of Thailand (NHRCT)

The NHRCT has been criticized for its lack of independence, the selection and recruitment of personnel, and the carrying out of its duties on human rights promotion and protection. As a result, in 2015, the NHRCT had its status downgraded, from 'A' to 'B', by the Sub-Committee on Accreditation of International Coordinating Committee of National Human Rights Institutions (ICC-SCA). In addition, since the 22 May 2014 military coup and the entering into force of the 2014 Interim Constitution, the NHRCT has only been able to fulfill its mandate under the 1999 National Human Rights Commission Act to the extent that it does not contradict the Interim Constitution.

## Human Rights Education and Training

To inform UPR Info's Mid-Term Implementation Assessment of Thailand's 1st cycle UPR recommendations, the National Human Rights Commission of Thailand (NHRCT) indicated that the Department of Rights and Liberties Protection (DRLP), Ministry of Justice, has organized a series of seminars and trainings to promote awareness and understanding about human rights among different target groups both in Bangkok and in other parts of the country, including seminars to enhance knowledge about Thailand's human rights obligations for judicial officers, prosecutors and administrative officials; trainings for government officials to increase their awareness of human rights when performing their duties and to encourage implementation of the Second National Human Rights Plan by relevant agencies; and seminars to promote knowledge about the rights in the judicial process and the rights to remedy among the local media to improve people's access to justice. The government has also developed Human rights-sensitising tools in the forms of calendars, posters, exhibition sets, short documentaries, and radio spots in both Bahasa Melayu and Thai to disseminate information about human rights principles and basic laws for police officers and military personnel in the Southern Border Provinces.

However, the government should not only provide trainings to authorities but it should also reach out to local communities in all regions of Thailand and provide human rights education and training to the most marginalized of society to ensure no one is left behind and all communities can effectively contribute to the sustainable development of Thailand. Nevertheless, although trainings were given to officials at all levels, it seems that the enforcement of human rights principles and standards on the ground are not respected, with officials not sufficiently trained.

**Thailand does not formally recognize the existing educational structures, policies and community-based service provision in the South, in ethnic areas nor provide universal and free basic education to all children born in Thailand** – making it difficult to ensure human rights education and training to all children and citizen on an equal basis. For instance, in the South, Ponoh Islamic school and Tadika Islamic education center are perceived as haven for terrorists, such as the closing of Yehad Wittaya School, the court seizing Wakaf mortmain property, and the arrest of Tadika teachers. Moreover, parents in the three Southernmost provinces prefer sending their children to private religious schools over public religious schools. The government does not accredit Malay students who graduated abroad, which prevents many capable and educated people from being employed. In the South, schools are campaigned as safe zones where students and teachers are protected from violence. In addition, disabled children still lack learning opportunities and the government cannot solve this issue in a comprehensive manner. The children of displaced workers do not receive continuing education while young migrant workers, stateless children and refugee children do not receive quality education. With only a primary level education, they cannot apply for work positions. Furthermore, there are no bilingual classes for indigenous peoples to preserve their tribal culture and language. Home school education is not promoted.

## Invitations to UN Special Rapporteurs

The Royal Thai Government accepted the 4 recommendations (made by Finland, Hungary, Spain and New Zealand) to invite all special rapporteurs to visit Thailand. The Thai Government has issued a standing invitation to all special procedures and specific invitation to some UN special rapporteurs. The UN Special Rapporteur on the right to safe drinking water and sanitation, Catarina Albuquerque, visited Thailand from 1-8 February 2013 and Thailand has also extended an invitation to Mr. Juan Mendez, the UN Special Rapporteur on torture, who was scheduled to visit the country from 4 to 18 August 2014. However, following the military coup, the Thai Foreign Affairs Ministry informed the UN that the Special Rapporteur's visit would be postponed; and, as of today, it has not been rescheduled.

## Recommendations

1. Ratify the International Convention on the Protection of All Persons from Enforced Disappearance (CED), the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), the Optional Protocol to the Convention against Torture (OP-CAT), the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD).
2. Develop and implement plans and strategies to raise awareness about human rights, including at the local and community levels, and provide human rights training and education for all on an equal basis, including the most marginalized communities living in the South and indigenous peoples, to ensure no one is left behind and all communities can effectively contribute to the sustainable development of Thailand.
3. Collaborate with civil society to widely promote human rights education to all professional groups working with and for children to be adequately and systematically trained on children's rights, in particular judges, lawyers, the police and the army, health, education and social welfare personnel and personnel working in all forms of alternative care at national, provincial and local level, in line with the 2012 concluding observations of the Committee on the Rights of the Child to Thailand.
4. Referring to Thailand's support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, encourage Thailand to affirm in its legislation the rights of indigenous peoples, in line with the declaration, and also to consider acceding to international labour organization convention no. 169 (1991) on indigenous and tribal peoples in independent countries, in line with the 2012 concluding observations on the Convention on the Elimination of all Forms of Racial Discrimination (CERD) to Thailand.
5. Take all necessary legislative and other measures to ensure that the NHRCT is able to effectively execute its mandate in accordance with the Paris Principles, by ensuring it has the necessary resources, strengthening the roles of the NHRCT to carry out its duties independently, and guaranteeing the independence and pluralism of its composition, by considering the revision of the procedure for selecting NHRCT commissioners, in line with the concluding observations on Thailand of the Human Rights Committee, the CAT, and the CESCR in 2005, 2014, and 2015 respectively, and with the Paris Principle B.1, the SCA's General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.
6. Ensure the draft constitution recognizes the human rights principles based on international laws and ensure domestic laws comply with Thailand's international obligations.
7. Comply with its commitment to implement the 4 recommendations to invite all Special Rapporteurs and allow them to visit Thailand promptly.

# HUMAN RIGHTS EDUCATION & ADHERENCE TO INTERNATIONAL LEGAL INSTRUMENTS

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 3 recommendations were received and accepted on Human Rights Education and Training. 25 recommendations were received on International instruments, including 10 which were accepted and 15 which were noted. 2 recommendations were received on strengthening human rights institutions, and 4 recommendations were received on inviting rapporteurs.

Recommendations are available on UPR Info's database: <http://s.upr-info.org/1Rar8d4>, <http://s.upr-info.org/1Rar8d4>, <http://s.upr-info.org/1Rar8d4>

### Accepted Recommendations on Human Rights Education and Training:

1. Philippines: Continue to promote human rights education, training and capacity building
2. Egypt: Develop and implement plans and strategies to raise awareness about human rights, including at the local and community levels, and provide human rights training and education for Government officials in particular law enforcement officials
3. Chad: Call on the international community for technical assistance to improve human rights awareness and understanding throughout the population

### Accepted Recommendations on International instruments:

1. Australia: Ratify the United Nations Convention against Transnational Organised Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and Against the Smuggling of Migrants by Land, Sea and Air
2. Norway: Accede to the Palermo Protocol and continue improving its implementation of policy and legal framework related to human trafficking
3. Argentina: Study the possibility of ratifying the International Convention on the Protection of All Persons from Enforced Disappearance (CED), the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), the Optional Protocol to the Convention against Torture (OP- CAT), the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD)
4. Uruguay: Ratify or accede as appropriate to the CED
5. Spain: Sign and ratify CED
6. Austria: Ratify CED
7. Brazil: Consider ratifying the conventions on refugees and on stateless persons and OP-CAT
8. France: Ratify the CED and investigate all allegations of forced disappearances
9. Nicaragua: Sign and ratify promptly the CED
10. Japan: Sign and ratify CED at an early stage

### Noted Recommendations on International Instruments:

1. Uruguay: Ratify or accede as appropriate to the Rome Statute of the International Criminal Court, OP-CAT and ICCPR-OP1 and ICCPR- OP2
2. Spain: Sign and ratify ICCPR-OP1, ICCPR-OP2, OP-ICESCR and OP- CAT
3. Austria: Ratify the Optional Protocols to ICCPR and CAT
4. Brazil: Consider ratifying the Rome Statute
5. Hungary: Consider acceding to the two Optional Protocols to the ICCPR
6. Switzerland: Ratify the ICCPR-OP2
7. Turkey: Consider becoming a party to the ICRMW
8. Philippines: Consider future accession to the ICRMW
9. Algeria: Examine the possibility of ratifying the ICRMW
10. Japan: Sign and ratify the Rome Statute of the International Criminal Court at an early stage
11. Austria: Ratify the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide
12. France: Accede to the United Nations Convention on the Status of Refugees and the 1967 Protocol as well as to the 1954 Convention on the Status of Stateless Persons
13. Switzerland: Ratify the Convention on the Status of Refugees and its Optional Protocol
14. Hungary: Ratify the Rome Statute
15. Canada: Become a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol

### Accepted recommendations on strengthening human rights institutions:

1. Nepal: Continue to work to strengthen national human rights and democratic institutions
2. Egypt: Consolidate and strengthen its national human rights infrastructure

### Accepted recommendation on inviting special rapporteurs:

1. Finland: Issue a standing invitation to all special procedures
2. New Zealand: Issue a standing invitation to all special procedures' mandate holders
3. Spain: Issue a standing invitation to all Special Procedures, and establish a calendar
4. Hungary: Invite the Special Rapporteur on freedom of expression, which could also promote the harmonization of the provisions of the Computer Crimes Act and their implementation in line with international human rights standards

## Challenges and Cases

1. Human Trafficking Situation in Thailand (BE 2557) part 1 <https://www.gotoknow.org/posts/583378>
2. International Labour Organization (2007) Ratifications of C188 - Work in Fishing Convention (No. 188) [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312333](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312333)
3. Voice TV (5 February 2558) Protest against Dissolution <http://news.voicetv.co.th/thailand/163386.html>
4. Example, religious schools pay term fee, 300 students registered, free public schools but only 98 students register
5. [http://spinternet.ohchr.org/\\_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en](http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en)
6. Equality and Human Rights Commission Human Rights Report: Fulfilling the Paris Principles. [http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/human\\_rights\\_report.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/human_rights_report.pdf)

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. Recommendation 1: [N/A]
2. Recommendation 2: [N/A]
3. **Recommendation 3 is based on:** Committee on the Rights of the Child (21 February 2012). Concluding Observations on the Optional Protocol of the Convention on the Rights of the Child, Thailand. "The Committee recommends that the State party allocate adequate and targeted resources for multidisciplinary training programmes developed through a participatory process involving communities and other stakeholders on all areas covered by the Optional Protocol. Such training should be provided to all relevant professional groups, ministries and institutions working with and for children. The Committee further urges the State party to ensure systematic evaluation of all training programmes on the Optional Protocol with a view to enhancing their impact and relevance."; Concluding Observations on the Optional Protocol: Committee on the Rights of the Child, Thailand. (17 February 2012). "The Committee recommends that all professional groups working with and for children be adequately and systematically trained on children's rights, in particular judges, lawyers, the police and the army, health, education and social welfare personnel and personnel working in all forms of alternative care at national, provincial and local levels."
4. **Recommendation 4 is based on:** Committee on the Elimination of Racial Discrimination (15 November 2012) Concluding Observations of the Convention on the Elimination of Racial Discrimination Thailand. "Moreover, referring to the state party's support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the committee encourages the state party to affirm in its legislation the rights of indigenous peoples, in line with the declaration, and also to consider acceding to International Labour Organization Convention No. 169 (1991) on Indigenous and Tribal Peoples in Independent Countries"
5. **Recommendation 5 is based on:** Human Rights Committee (2015). Concluding Observations of the Committee on Civil and Political Rights Thailand; Convention Against Torture (2014); Committee on Economic, Social, and Cultural Rights (2015)
6. Recommendation 6: [N/A]
7. Recommendation 7: [N/A]

# ASSESSMENT OF THAILAND'S HUMAN RIGHTS SITUATION BY THE NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND (NHRCT)

## *Brief Assessment of the Implementation of 1st Cycle UPR Recommendations*

*During its first UPR in October 2011, Thailand received 2 recommendations (from Nepal and Egypt) related to strengthening national human rights and democratic institutions / infrastructures. Thailand accepted both recommendations but has failed to implement them. The NHRCT has been criticized for its lack of independence, the selection and recruitment of personnel, and the carrying out of its duties on human rights promotion and protection. As a result, in 2015, the NHRCT had its status downgraded, from 'A' to 'B', by the Sub-Committee on Accreditation of International Coordinating Committee of National Human Rights Institutions (ICC-SCA).*

*The current mandate of the NHRCT is outlined in the 1999 National Human Rights Commission Act. Under the 2007 Constitution, the NHRCT was granted additional powers and duties to refer human rights violation cases and opinions to the Constitutional Court or the Administrative Court, as well as to file lawsuits on behalf of injured persons to the Court of Justice. However, the ICC had raised concerns over the selection process of commissioners under the 2007 Constitution. Since the 22 May 2014 military coup – recently known as the National Council of Peace and Order (NCPO) – and the entering into force of the 2014 Interim Constitution, the NHRCT has only been able to fulfill its mandate under the National Human Rights Commission Act to the extent that it does not contradict the Interim Constitution.*

*In Thailand's 2014 UPR Mid-term report, the Thai Ministry of Foreign Affairs identified challenges in Thailand's efforts to promote and protect human rights. The report indicated that there was a need for "awareness rising among all relevant [government] agencies to implement the recommendations and pledges, including on the promotion of the role of the National Human Rights Commission and civil society organizations to monitor and follow-up on the Government's endeavors in this regard."*

## Assessment of the Human Rights Situation

From 2005 to 2014, with the continued political turmoil and civil unrest in Thailand, the NHRCT witnessed various human rights violations, such as restrictions on social movements and demonstrations. It also received and investigated a number of complaints related to the enjoyment of economic, social and cultural rights, such as the right to an adequate standard of living, right to health, right to education, and right to work. The NHRCT observed that the government had – under the Interim Constitution – made efforts, through the enactment of laws and policies, to solve prolonged problems related to the promotion of gender equity and equal opportunity; affirmative action for the elderly persons and persons with disabilities; social inclusion; and the education system to promote social and cultural pluralism. However, the government was unable to solve these problems through sustainable practices.

The NHRCT has identified the following challenges under the current military government: (1) the centralization of power and decisions made only within the State apparatuses or by central authorities; (2) the implementation of policies that allow greater power over various sectors, particularly the economy, society, culture, education, and politics; and (3) the restrictions placed on news and information and people's participation in decision and policymaking processes.

The NHRCT's Human Rights Evaluation Reports revealed that during 2012-2014, there were several government and private sector large-scale development projects creating serious problems related to natural resources and environmental management, which had negatively affected the rights of local communities. Various vulnerable groups, such as indigenous peoples and ethnic groups; persons with disabilities; elderly persons; women; children, had difficulty accessing fundamental human rights and public welfare. They also had limited ability to access participation and decision-making mechanisms, affecting the possibility of obtaining sustainable management policies that would respond to their needs. The NHRCT also witnessed other types of human rights violations, such as unlawful detentions; excessive use of force by the authorities; and incidents of torture and enforced disappearances of human rights defenders, particularly in the border provinces and forest areas.

## Emerging Challenges

- 1. Before the May 2014 Coup: the NHRCT's duties undertaken with competency and independence:** During the Committee Against Torture (CAT)'s Concluding observations on the initial report of Thailand in June 2014, the Committee noted that the NHRCT had broad competences to receive and investigate complaints of human rights violations; undertake the monitoring of places of detention; examine laws which contradicted human rights principles and to subsequently submit those cases to the court for deliberation and ruling. The Committee raised concern over the fact that the authorities had not followed-up on the findings and recommendations made by the NHRCT, and about reports that persons deprived of their liberty do not file complaints with the NHRCT when they visit detention places, reportedly out of fear of retaliation by prison officials. In June 2015, in its Concluding observations on the combined initial and second periodic reports of Thailand, the Committee on Economic, Social and Cultural Rights (CESCR) raised concern over the fact that the institutional shortcomings of the NHRCT, identified by the ICC, including in relation to its independence and the selection process for Commissioners, had not been fully overcome.
- 2. Enforcement of the Martial Law (1914), the subpoena of individuals under NCPO Orders and Announcements, and the extension of the period of legal detention to 7 days:** The NHRCT observed that the situation in the country after the May 2014 coup did not fulfill the criteria of a "state of emergency", which would threaten national security. Thus, the enforcement of the Martial Law and other special security laws with broad restrictions or which allow a derogation from fundamental rights of the public is inappropriate and considered an excessive use of power in contravention with several human rights instruments to which Thailand is a State party, particularly the International Covenant on Civil and Political Rights (ICCPR). The NHRCT determines that the subpoenaing of individuals under NCPO Orders and Announcements, and the extension of the period of legal detention to 7 days could be considered as an excessive and inappropriate use of power, against Article 9, paragraph 1 of the ICCPR on the right to liberty and security of person.
- 3. Arrest of suspicious persons under criminal cases or alleged acts of torture towards persons detained under the Martial Law (1914):** The NHRCT stresses that under Article 9, paragraph 3 of the ICCPR, persons arrested or detained on criminal charges shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Although the Martial Law allows authorities to arrest any suspicious persons, irrespective of whether there is sufficient ground or reason, torture practices conducted by relevant officers constitute violations of human rights and are contrary to Thailand's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- 4. Exercise of judicial powers against ordinary persons in military courts:** The NHRCT emphasizes that further efforts need to be made in line with Article 14 of ICCPR on the entitlement of the rights to fair trial with appropriate safeguards, to allow fair court proceedings. Many individuals charged for crimes that might "affect national security" or "affect public moral" have been subjected to closed-door trials, often in military courts, and in the absence of an appeal process.
- 5. Freedom of expression and assembly, freedom of media and academic criticism limited:** Amidst the process of the restoration of peace and order and the revitalization of a democratic ruling system by the government, freedom of expression has been widely abused. The authorities have justified the limits placed on freedom of expression as necessary in order to protect national security. However, in reality, these measures have been used to eliminate or silence opponents. Critics are often charged under Article 112 of the Criminal Code (*lèse-majesté*), the Computer Crimes Act, and three security laws (the Martial Law, the Royal Emergency Decree, and the Security Act), as well as the Printing Registration Act, and the Film and Video Act. Facts and evidence are often distorted in order to bring allegations against government critics.

## Recommendations

1. Take all necessary legislative and other measures to ensure that the NHRCT is able to effectively execute its mandate in accordance with the Paris Principles, by ensuring it has the necessary resources, strengthening the roles of the NHRCT to carry out its duties independently, and guaranteeing the independence and pluralism of its composition, by considering the revision of the procedure for selecting NHRCT commissioners, as recommended by the Human Rights Committee, the CAT, and the CESCR in their concluding observations on Thailand in 2005, 2014, and 2015 respectively.
2. Seriously implement of the recommendations made by the NHRCT and ensure they are given full and serious follow-up, as recommended by the Human Rights Committee and the CESCR in their concluding observations on Thailand in 2005 and 2015 respectively.
3. Comply with Thailand's obligations under the ICCPR, in particular its Article 9, by putting an end to the arbitrary detention of government critics, and Article 14 by guaranteeing all the provisions to guarantee the right to fair trial, and sign and ratify the ICCPR-OP.
4. Adhere to the absolute prohibition of torture and ensure that the detention of persons under the Martial Law (1914) does not contradict core principles and rights outlined in the CAT, as recommended by the CAT in its concluding observations in 2014.
5. Ensure that civilians are tried in civilian courts in line with international standards, in particular, Principle No. 5 (Jurisdiction of military courts to try civilians) of the Principles Governing the Administration of Justice through Military Tribunals.
6. Stand firm on principles of freedom of expression and freedom of assembly and take adequate measures to prevent the further restrictions on these rights, as recommended by the Human Rights Committee in its concluding observations in 2005, and in accordance with Thailand's obligations under Articles 19 and 21 of the ICCPR.
7. Revoke the enactment of special security laws, taking appropriate measures to ensure that security officers perform their duties strictly in accordance with the law, bringing those found guilty of wrongdoings to justice and providing prompt and sufficient remedies to victims of human rights violations.

# THAILAND'S HUMAN RIGHTS SITUATION BY THE NHRCT

## Brief Assessment of the Implementation of 1st Cycle UPR Recommendations

For Thailand 1st UPR in 2011, 2 Recommendations on strengthening National Human Rights Institutions (NHRIs)/infrastructure were received and accepted. Recommendations are available on UPR Info's database: <http://s.upr-info.org/1UnSSKp>.

### Accepted Recommendations on strengthening National Human Rights Institutions (NHRIs)/infrastructure:

1. Nepal: Continue to work to strengthen national human rights and democratic institutions (88.7);
  2. Egypt: Consolidate and strengthen its national human rights infrastructure (88.8).
- Article 257, paragraphs 2, 3, 4 of the 2007 Constitution, state: "The National Human Rights Commission has the powers and duties as follows: [...] (2) to present the matter together with opinion to the Constitutional Court as provided by the organic law on procedure of Constitutional Court in the case where the Commission agrees with the complainant that the provisions of certain law affect human rights and are constitutionality of which is at question; (3) to present the matter together with opinion to the Administrative Court as provided by Act on Establishment of Administrative Court and Administrative Court Procedure in the case where the Commission agrees with the complainant that the regulations, order, or other administrative acts affect human rights and the constitutionality or illegality of which is at question; (4) to submit a case to the Courts of Justice, on behalf of the aggrieved person after receiving a request and having considered it appropriate to submit the case for correcting the problem of violation of human rights in general as provided by law."
  - OHCHR Regional Office for South-East Asia (2015). Technical Note on the National Human Rights Commission of Thailand in the draft 2015 Constitution. <http://bangkok.ohchr.org/files/OHCHR%20on%20NHR%20150327.pdf>
  - Ministry of Foreign Affairs (2014). Thailand National Mid-Term Report. Available at: [www.upr-info.org/sites/default/files/document/thailand/session\\_12\\_-\\_october\\_2011/thailand\\_mid-term\\_report\\_2014.pdf](http://www.upr-info.org/sites/default/files/document/thailand/session_12_-_october_2011/thailand_mid-term_report_2014.pdf)
  - Office of the National Human Rights Commission of Thailand. 2012-2014 Human Rights Evaluation Reports of the National Human Rights Commission of Thailand. Available [in Thai] at: [www.nhrc.or.th](http://www.nhrc.or.th)

## Challenges and Cases

1. Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 25.
2. Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7.
3. Article 9, paragraph 1 of the ICCPR stipulates that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."
4. Article 9, paragraph 3 of the ICCPR stipulates that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."
5. Under the International Standard Principles Governing the Administration of Justice through Military Tribunals, particularly, Principle No. 5 (Jurisdiction of military courts to try civilians): "Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts."
6. Article 14, paragraphs 1, 2, 3 of the ICCPR state: "(1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay."

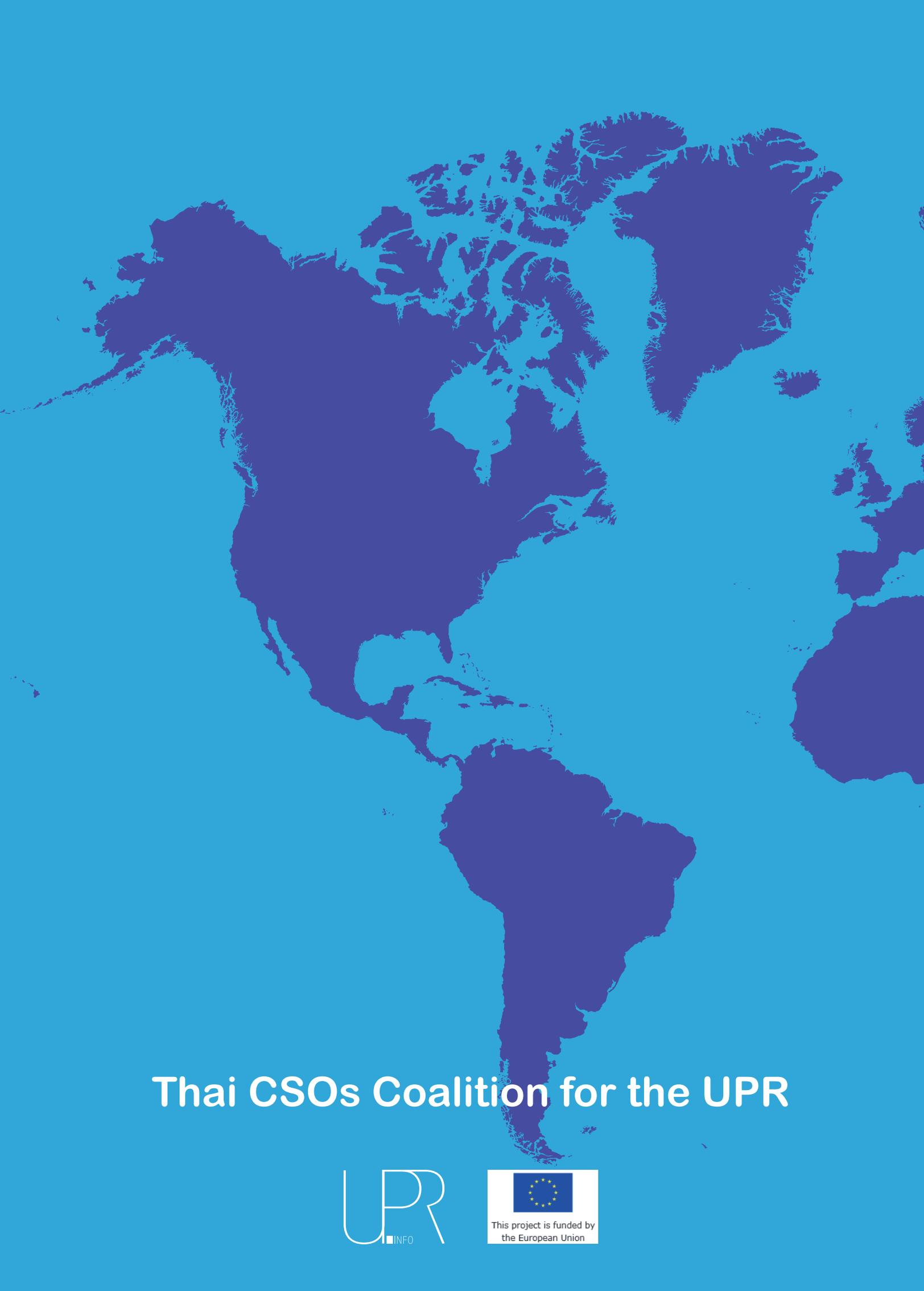
## Challenges and Cases

7. Paragraph 4 of the ICCPR's General Comment No.13 on Article 14 (Administration of Justice), notes: "the existence, in many countries, of military or special tribunals which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14".
8. *ilaw* (23 December 2015). Review of the situations in 2015: Justice Made to Order, Freedom Still Out of Stock. Available at: <http://freedom.ilaw.or.th/en/report/review-situations-2015-justice-made-order-freedom-still-out-stock>

## Recommendations

The recommendations are proposed based on recommendations previously made by UN treaty bodies and special procedures:

1. **Recommendation 1 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 9, "The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. It should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134)."; Committee Against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 25, "The State party should ensure that the NHRCT effectively executes its mandate in accordance with the principles relating to the status of national institutions (the Paris Principles) (General Assembly resolution 48/134, annex), in particular by strengthening the roles of the NHRCT to carry out unannounced visits to detention facilities, during which they are able to take confidential statements from detainees; implementing the recommendations made by the NHRCT and guaranteeing the independence and pluralism of its composition. In that regard, the Committee recommends that the State party consider reviving the previous procedure for selecting commissioners to the NHRCT with a view to increasing the number of commissioners and that it allow for the participation of representatives of non-governmental human rights organizations."; Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7, "The Committee recommends that the State party take all necessary legislative and other measures, including following up on the recommendations made by the ICC, to ensure that the NHRCT is a fully independent institution with the necessary resources to fulfil its mandate in conformity with the Paris Principles. It further recommends that the State party create the necessary conditions for the NHRCT to fully exercise its mandate in relation to economic, social and cultural rights and protect victims of violations of these rights."
2. **Recommendation 2 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 9, "The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. It should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134)."; Committee on Economic, Social and Cultural Rights (19 June 2015). Concluding observations on the combined initial and second periodic reports of Thailand. UN Doc. E/C.12/THA/CO/1-2. Paragraph 7, "The Committee recommends that the State party take all necessary legislative and other measures, including following up on the recommendations made by the ICC, to ensure that the NHRCT is a fully independent institution with the necessary resources to fulfil its mandate in conformity with the Paris Principles. It further recommends that the State party create the necessary conditions for the NHRCT to fully exercise its mandate in relation to economic, social and cultural rights and protect victims of violations of these rights."
3. Recommendation 3: [N/A]
4. **Recommendation 4 is based on:** Committee against Torture (20 June 2014). Concluding observations on the initial report of Thailand. UN Doc. CAT/C/THA/CO/1. Paragraph 4, "The Committee is deeply concerned at the declaration of martial law throughout Thailand, since its recent dialogue with the State party. It emphasizes that the State party should adhere strictly to the absolute prohibition of torture and ensure that the application of martial law does not, under any circumstances, contradict the rights guaranteed in the Convention."
5. Recommendation 5: [N/A]
6. **Recommendation 6 is based on:** Human Rights Committee (8 July 2005). Concluding observations of the Human Rights Committee, Thailand. UN Doc. CCPR/CO/84/THA. Paragraph 18, "The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status."
7. Recommendation 7: [N/A]



# Thai CSOs Coalition for the UPR

