

## Parallel Report



### Parallel Report: Convention on Economic, Social and Cultural Rights (CESCR)

Submission to the Committee on Economic, Social and Cultural Rights

Submitted by the Justice for Peace Foundation

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This submission does not cover the full range of Economic, Social and Cultural Rights in Thailand. This should not be interpreted to mean that JPF does not prioritize those issues. However, as JPF is aware that other organizations have focused in detail on other issues of serious concern, we have chosen to focus on issues not covered in detail in other submissions.

## Introduction

1. **We are pleased to hear the submission of the Report on Economic, Social and Cultural Rights by the Royal Thai Government to the UN Committee on Economic, Social and Cultural Rights. Nevertheless, we are disappointed for the delay in its submission and the fact that the report was completed without extensive public consultation. Therefore, the report lacks public participation and the involvement of civil society which may have ensured that the recommendations are useful with regards to ESCR issues in Thailand.**
2. Although Section 82(1) of the 2007 Constitution of the Kingdom of Thailand obliges the state to act in compliance with the international human rights treaties to which Thailand is a party, the provisions have not been incorporated into Thailand's domestic laws. In addition, justice authorities including the police, public prosecutor and the Court have often not received training to raise their awareness about the content of the international human rights treaties to which Thailand is a party. As a result, the personnel are often found to barely have any understanding about the international instruments. Even though attorneys have invoked such international obligations in human rights cases, the public prosecutor and the Court have not been aware of it. Thus, the implementation of the international obligations has not been effectively fulfilled as far as the trials of human rights cases in Thailand are concerned.

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

3. The *NHRCT* has still failed to provide effective protection and promotion of human rights in Thailand as per the recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee (SCA) of National Institutions for the Promotion and Protection of Human Rights- ICC made on 30 December 2014. The SCA distributed a report of the assessment of the *NHRCT* which contains a resolution made by the SCA in late October 2014 and a recommendation was made to the ICC to downgrade the *NHRCT* from A to B given a lack of diversity in the member selection process and the lack of participation by civil society, its delayed response to emerging rights violations, and its lack of independence and impartiality as some *NHRCT* officials have expressed bias while carrying out their duties.<sup>1</sup>
4. The protection mandate of the *NHRCT* has not been fulfilled since there is not enough monitoring in terms of human rights violation and no strong action has come from the *NHRCT* to deal with cases of rights violations in the country. For example, since the 22 May 2014 coup, the *NHRCT* has shown neither shown interest nor opposed the arrest and bringing of civilians before the military court for expressing dissident views.

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<sup>1</sup> <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>, page 32-35.

5. The *NHRCT* is still far from being a pluralistic body since most of the commissioners are retired government officers and no representatives from civil society organizations or marginalized groups are present in the commission. In practice, commissioners divide their work according to their professional background. For example, in the area of the justice system, the chairperson of the sub-committee is a retired high ranking police officer. This prevents the victims whose rights have been violated by police officers from filing complaints about their cases.
6. It is a regulation set by the *NHRCT* that only the victim can file the complaint on her/his behalf. This obstructs human rights organizations from assisting victims in filing complaints. This creates problem since a lot of marginalized people such as the Malay Muslim in the southernmost provinces have to spend around 3,000 to 10,000 Bath (around 92 to 308 USD) in hiring a lawyer to file a complaint.<sup>2</sup>
7. Moreover, at present there are many human rights defenders and women human rights defenders who have been killed or have become victims of enforced disappearance, or have been threatened, who have not received any assistance from any government agencies. The *NHRCT* itself, despite having a direct responsibility to provide protection to the people, does not have any policies for protecting human rights defenders and has not seriously implemented any guidelines in support of the protection of their rights.<sup>3</sup>
8. After the coup in Thailand, a committee was set up to draft a new constitution. On 30 January 2015, the Drafting Committee proposed to merge the *NHRCT* with the Office of the Ombudsman with a new name of "*the Ombudsman and Human Rights Defender*". Such an attempt shall compromise the role and capacity of the national human rights institution in Thailand and will therefore cause greater regression of the protection and promotion of human rights. In addition, it shall further prevent groups vulnerable to human rights violation in Thailand including ethnic minority groups, migrant workers and the poor, from effectively having the right to seek remedies to their situation.

#### **Recommendations**

1. **Reconsider the proposal to merge the National Human Rights Commission of Thailand (NHRCT) with the office of the Ombudsman and ensure that the new body is an effective NHRI compliant with the Paris Principles.**
2. **The Constitution Drafting Committee, the National Reform Council, the Cabinet and the National Council for Peace and Order should adopt the recommendations of the Office of the United Nations High Commissioner for Human Rights Regional Office for South-East Asia on "*Technical Note on the National Human Rights Commission of Thailand in the draft 2015 constitution.*"<sup>4</sup>**

<sup>2</sup> The Asian NGO Network on National Human Rights Institutions (ANNI), *2014 ANNI Report on the Performance and establishment of National Human Rights Institutions in Asia*, page 44.

<sup>3</sup> Ibid.

<sup>4</sup> <http://bangkok.ohchr.org/files/OHCHR%20on%20NHRI%20150327.pdf>

## General Provisions of the Covenant

### Articles 1-2 : The rights to land and national resources

9. According to the *Land Institute Foundation* regarding occupation of land in various regions of Thailand, of 321 million rai<sup>5</sup> of land, 183 million are classified as public land, or 57.26% of the total area. The rest, 138 million rai are privately owned, or 42.74% which have been issued with 31.4 land documents (land title deeds, Nor Sor 3 Kor, Nor Sor 3, pre-emption certificate) covering 127 million rai. 90% of the land documents are in possession of only 50 individuals and legal persons. Up to 48 million rai of land have been left barren and unutilized causing, at a minimum, the economic loss of 127,384.03 million baht. Basically, the land has been hoarded and grabbed for speculation purpose by big investors and left unused.
10. There are at least 811,892 families of small scale and landless farmers. There are at least 1.5 million families who have to rent the land that they till. A number of small scale farmers have gradually lost ownership of their land due to different reasons including being subjected to forced eviction, being expelled following losing lawsuits filed by landlords, etc. Such inequalities in land ownership has led to a rise in land disputes between the state and investors versus poor people. Land disputes in the Courts have been on the rise as a result. Due to unfair treatment by state mechanisms and in the justice process, most farmers have lost their cases and their land causing them to become more entrenched in the cycle of debt, broken families and communities.<sup>6</sup>

### Ethnic groups in various parts of the country still have impeded access to utilize their local resources including:

11. **Land issues of villagers in Budo Sungai Padi** The Department of National Parks, Wildlife and Plant Conservation has invoked the 1965 National Forest Reserve Act and the 1999 Royal Decree to declare Budo Sungai Padi a National Park covering the southern Thai provinces of Pattani, Yala and Narathiwat. The declared National Park area overlaps with the land which has traditionally been used as a residential and farming area by the local villagers. As a result, they are prevented from cutting down old and expired rubber trees and performing re-plantation even though a cabinet resolution was given on 14 October 2008 to allow them to cut old rubber trees and plant new trees on not more than 4% of the area in order to avoid environmental impact. Also, the Land Department has been instructed to accelerate its effort to survey the land and to issue land title deeds as well as to verify the right to ownership of local villagers.<sup>7</sup> But until now, none of the agencies have carried out the

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<sup>5</sup> 2.53 rai = approximately 1 acre.

<sup>6</sup> <http://tcijthai.com/tcijthainews/view.php?id=4698>

<sup>7</sup> **Subject: Solutions to land dispute in the three Southern Border Provinces in the Budo Sungai Padi National Park**

The cabinet agreed as proposed by the Center for Combating Poverty and for Rural Development Based on Self-sufficiency Economy as follows;

1. It was agreed to allow the cutting of old and expired rubber trees for re-plantation on no more than 4% of the land in dispute to avoid environmental impact. Also, a taskforce shall be set up composed of the District Chief Officers, representatives from the National Park, the Bureau for the Management of Conservation Area 4, Office of the Rubber Replanting Aid Fund and local communities to review the process.

duties as provided for in the cabinet resolution. The NHRCT has made recommendations to the cabinet and concerned agencies to urge them to speed up the protection of the rights of the people as provided for in the Constitution and to implement the cabinet resolution dated 14 October 2008.<sup>8</sup>

12. **The case of Kaeng Krachan National Park** Officials of the Kaeng Krachan National Park and military officials have moved in to evict, burn down and remove dozens of houses of traditional and ethnic Karen in Ban Bang Kloy Bon and Ban Jai Phaen Din during June 2010 – July 2011 causing massive grievances to the ethnic community. The resettlement land provided by the Kaeng Krachan National Park was insufficient and not suitable for growing food due to the poor quality of its soil mixed with gravel. The villagers have filed a case with the Administrative Court asking for compensation for the damage and the right to return to live and till their original land. The case is pending in the Administrative Court.
13. The villagers have also complained to the **Subcommittee on Human Rights regarding land issues under the NHRCT**. After investigation, the NHRCT has found, based on the information from the Center for the Development and Support of the Hill-tribe Peoples, that the ethnic Karen of Ban Bang Kloy Bon and Ban Jai Phaen Din have been living there for a long time. They have mainly grown food and collected forest produce to earn their living. A census was conducted in the area in

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2. It was agreed that concerned agencies shall expedite efforts to solve problems concerning land title deeds of the affected people in Bachao District, Narathiwat. The information has been reviewed and compiled as follows;

- 2.1 The Land Department shall expedite the process to verify and issue land title deeds including land surveys of the land excluded from the National Park and Forest Reserve including 994 plots covering 4,116 rai held by 745 individuals.

- 2.2 An effort shall be made to verify the right to land of villagers who live in the land declared as the National Park (outside the Forest Reserve) including 795 individuals, or 1,108 plots or 4,942 rai and land inside the Forest Reserve including 322 plots covering 2,439 rai. The land data has been compiled and mapped. The district authorities shall establish a committee to verify their ownership rights at the district level. Its representation shall include individuals from all concerned groups which would help to collect land data to solve the land problems. The data shall be used as a database for the verification of their rights to land. If it could be established that the occupation of the land happened prior to the declaration of the Forest Reserve in 1965 and the National Park in 1999, and that the utilization of the land has been ongoing, an effort shall be immediately made to exclude the land from either the Forest Reserve or the National Park.

- 2.3 An effort shall be made to accelerate the solving of the problems using a similar solution for Bachao District in the Budo Sungai Padi National Park including in eight districts whose problems have not been resolved. The Geo-Informatics and Space Technology Development Agency (Public Organization – GISTDA) shall supply satellite images to the Subcommittee to solve land dispute in order to expand their problem solving to cover the entire area of the SBPs.

The Department of Mineral Resources and the Forest Industry Organization shall be requested to give their help as well.

Source: [Spokesman Office, Office of the Secretary General of the Prime Minister, the Office of the Prime Minister](http://www.eppo.go.th/admin/cab/cab-2551-10-14.html) :

<http://www.eppo.go.th/admin/cab/cab-2551-10-14.html>

<sup>8</sup> In meeting minutes no. 154 / 2557 dated 29 May 2014, "Community Rights and the Rights to Land Management," the Department of National Parks, Wildlife and Plant Conservation is alleged to have failed to act in compliance with the cabinet resolutions regarding the rights verification and the solving of land dispute according to the NHRCT.

1983 and civil registration for hill tribe peoples have been issued to them since April 1988 covering 71 families or 367 residents.<sup>9</sup>

14. The NHRCT's Subcommittee is thus of the opinion and have made as recommendations to the government that any attempt to restrict the rights and freedoms of the Karen has to be carried out as provided for by law and as necessary without causing any infringement on fundamental rights. The Subcommittee recommends that the Department of National Parks, Wildlife and Plant Conservation set up an inquiry committee to investigate the alleged forced evictions which have resulted in the destruction and burning of houses belonging to the Karen in Ban Bang Kloy Bon and Ban Jai Phaen Din and any attempt to make arrests, threats, and persecute the villagers in Ban Bang Kloy Bon and Ban Jai Phaen Din must cease. The Subcommittee also recommends to the government that the Department of National Parks, Wildlife and Plant Conservation shall set up a committee to propose remedies to the affected Karen who suffered from forced eviction within sixty days after receiving the report.<sup>10</sup>

**Recommendation**

**The Thai Government should respect the rights of Indigenous people and adopt the recommendations of the NHRCT to guarantee the rights of Indigenous people to access land and national resources.**

**Article 2: Non-Discrimination**

15. In the past decade, the restiveness in Thailand's Southern Border Provinces (SBPs) has become much more acute. Though peace dialogue has been initiated by the previous governments to reconcile with dissidents, the violence and loss of life including by innocent people such as children and women have continued unabated. The civil society groups working on women's causes have made attempts in earnest to urge the RTG to adopt and apply UNSC Resolution no. 1325 in order to promote the roles of women in conflict resolution and to ensure transparency and public participation at every step of the peace-making efforts, but they have met with many obstacles. The RTG continues to treat problems in the SBPs as domestic issues and does not find it necessary to adopt the UNSC Resolution. In addition, due to skirmishes along the borders with countries whereby the armed forces continue to fight the government forces, a number of ethnic groups have fled for their life to seek refuge in "*temporary shelters*" along the Thailand's border. It has resulted in these women being unable to access their rights and numerous legal protections.

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<sup>9</sup> The NHRCT's Subcommittee is of the opinion that the settlement of the Karen villagers in Ban Bang Kloy Bon and Ban Jai Phaen Din has been made based on their right as an indigenous community. Further, they have been living there since before the declaration of the Kaeng Krachan National Park using the land for residential and farming purposes. They have been traditionally living in different clusters as an indigenous community which deserves protection from the state and they must be accorded with the right to participate with the state authorities to ensure the management, maintenance and utilization of natural resources and the environment. Therefore, they are entitled to have the right to live and utilize the land in dispute as per the cabinet resolution dated 30 June 1998 concerning the resolution of land and forest issues and the cabinet resolution dated 3 August 2010 concerning the policy to restore the livelihood of the Karen; Ibid.

<sup>10</sup> <http://www.prachatai.com/journal/2014/10/55802>

## Ethnic Malay Muslim women in areas of armed conflict.

16. From 2004 to 2013, a total of 22,979 people were reported as physically affected by violence in the southernmost provinces; 7,567 people have died since 2004 (more than 6,000 deaths are directly attributed to the violent conflict). In addition to those injured, 533 were reported as disabled. Around 55 persons have gone missing (disappeared) since 2004. To date, of the 21,254 violent events reported between 2004 and end of 2013, guns (44 per cent) and bombs (21 per cent) were the most common weapons used. Another 15 per cent of violent events involved arson and knives.<sup>11</sup>
17. In the Southern Border Provinces (SBPs), women's political participation and decision making are restricted by factors concerning the religion, culture and tradition as well as local values which underpin the belief that women are supposed to act as wives and mothers. The current restiveness has resulted in a growing number of widowed women having to assume leadership of their families. Also, there has been a rise in the number of women having access to education. Still, women's roles have still been impeded and no effort has been made to promote their leaderships in society and to facilitate the making of their own decisions regarding issues at local levels.
18. Despite the government's demilitarization policy, a number of people are worried about its replacement by local militia since they lack training on legal principles and international human rights principles. There have been reports of human rights violations committed by the local militia. In addition, article 17 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) invoked in the area provides impunity to the officials making them liable to neither civil nor criminal proceedings.
19. Possession of firearms in the SBPs is still widespread. According to the Pattani Office of Provincial Authority, there are well over 30,000 firearms registered in the area including pistols and shotguns, As for the Narathiwat Office of Provincial Authority, it is reported that there are around 45,000 firearms in the possession of private owners, excluding many firearms being used by armed forces including the military, police and administrative officials who are allowed to possess firearms without having to seek permission from the provincial registrars. Apart from this, there are firearms in use by "civilian armed forces" including the Village Defense Volunteers (CRB, ORB and OSM) and other special militia. All these forces have been founded by the police, military and administrative officials to act in tandem with the normal forces.<sup>12</sup>

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<sup>11</sup> The Deep South Relief and Reconciliation (DSRR) Foundation and Rugiagli Initiative (tRI), HEALING UNDER FIRE: THE CASE OF SOUTHERN THAILAND, Bangkok, 2014, page 44.

<sup>12</sup> Firearms in the South: A tool to promote peace of civil war. Deep South Watch <http://www.deepsouthwatch.org/en/node/66>

20. There were complaints from the Malay Muslim people in the deep south to the SBPAC's *Damrong Tham Center (Justice Center)* that some security officials deployed in the SBPs have had sexual relationships with local Malay Muslim women. In some cases, the officials married the women but in some cases, the relationships remain out of wedlock. When the forces were transferred back to their homes, the contacts were terminated and the women and their babies were left to their own devices without any support and having to endure shame. Insofar, none of the concerned agencies have adopted any measures to address the needs of these vulnerable women and children.

### **Women from Myanmar (Burma) in temporary shelters and war refugees.**

21. Thailand has not signed the UN Refugee Convention, but has laws governing refugees. Despite efforts by the RTG and the UN High Commissioner for Refugees (UNHCR) to register all refugees and asylum seekers, due to many factors, the registration has, however, not been completed. Thus, these people are still regarded as undocumented migrants.
22. Migrant women from Myanmar have taken refuge in temporary shelters which have been operated for more than 25 years under the supervision of the RTG and civil society in Thailand (NGOs), international organizations and the UNHCR as well as the refugee committee in each of the shelters. In each shelter, a unique justice system is adopted. The Camp Committee administrates justice affairs in the camp invoking laws from different sources including Burmese laws and local ordinances. There are certain criminal offences prescribed by the Thai state as "*offences absolutely under the jurisdiction of the Court*"<sup>13</sup> including non-compoundable rape, physical assault, murder, and sexual offence against minors. Nevertheless, Burmese women in the temporary shelters are concerned about their lack of knowledge about their rights including the right to have legal representation, interpretation, financial assistance and protection. Particularly, in such temporary shelters, no proper facilities are provided for holding suspects or offenders in custody. Thus, fearing reprisal from the perpetrators, many women dare not complain or ask for help.<sup>14</sup> In addition, a number of women who have fled from rape and sexual assault committed by the Burmese troops to resettle in the temporary shelters often find themselves unable to access justice and the right to rehabilitation.<sup>15</sup>
23. The temporary shelters are overcrowded and the residents are not allowed to go outside to seek education or to do any work. Since Thailand has not signed the UN Refugee Convention, it has resulted in the assistance provided for the asylum seekers in Thailand to fail to meet international standards.

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<sup>13</sup> *Women's Access to Justice: Identifying Obstacles and Need for Change Thailand*, International Commission of Jurists and Justice for Peace Foundation, Geneva 2012, page 49.

<sup>14</sup> Ibid.

<sup>15</sup> A report of the meeting to review the Beijing Declaration, 28 September 2014 at the Girl Guides Association, Bangkok, organized by the Foundation for Women, Social Agenda Taskforce, with support from UN Women



## Recommendations

- 1) The RTG must adopt and apply UNSC Resolution no. 1325 in armed conflict areas to promote the roles and decision-making of women in the peace making process. A National Action Plan on Women Peace and Security must be mulled to provide protection for women and girls in armed conflict areas and to ensure that women have a role in developing the plan.
- 2) More representation of women in the Committees or Taskforces set up by the state to develop and make decisions concerning policy issues should be encouraged. More women officials including police, community leaders and commanding officials must be deployed to give instructions and to make decisions in various areas.
- 3) The government, SBPAC and the Camp Committees must make an effort to create mutual understanding among religious and community leaders to make them understand religious principles and the human rights of women in order to eradicate biases and stereotypes about women.
- 4) An effort should be made to amend the law to ensure transparency and accountability of the development of budget plans for the procurement of firearms by security forces either through the Parliament or public participation.
- 5) Regular training should be provided for military and civilian forces to make them understand the rules of engagement and international humanitarian and human rights laws to which Thailand is a state party. It should help those who possess arms understand and respect human rights principles.
- 6) Regarding married /non-married sexual relationships between the security forces and local Malay Muslim women, their superior officials have to closely monitor the situation. If these forces have been relocated and they have failed to provide sustaining support for the women's families, their in charge agencies must impose disciplinary actions against them and legal actions must be launched to protect the interests of the women and children.
- 7) Regular training should be provided for personnel in the temporary shelters including the Camp Committee, security guards, and community leaders to ensure that they understand the rights and ensure access to justice of women. Financial and human resources must also be provided including interpreters, legal counsels, and others to assist the victims to seek justice through the Thai justice process and to improve the camp' facilities to ensure the execution of orders and to hold the offenders in custody.<sup>1</sup>
- 8) The RTG should consider signing the 1951 UN Refugee Convention and its 1967 Protocol to make possible mechanisms for the protection and care of asylum seekers and migrants as per international standards.

### Article. 3 Gender Equality

24. Even though Thailand signed the Convention to End All Forms of Discrimination Against Women (CEDAW) in 1995, the National Legislative Assembly (NLA) only enacted the Bill on Gender Equality on 9 January 2015. Still, the law poses many challenges and fails to provide genuine safeguards to ensure gender equality. For example, Section 17(2) of the Act allows gender based discrimination if it is done so for safety and wellbeing, if it serves religious principles or national security.<sup>16</sup> Therefore, religion, national security or safety can be cited as grounds to permit gender based discrimination in Thailand.

### Women and Buddhism: The case of Bhikkhunis (female monks)

25. Even though the 2007 Constitution of the Kingdom of Thailand fully provides for freedom of religion and the practice of one's own beliefs and religion and Article 4 of the 2014 Interim Constitution also provides that, *"all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution,"* women are still not allowed to ordain as Bhikkhunis since the Sangha Supreme Council continues to prohibit the Thai Sangha from performing the ordination of women as either Bhikkhunis or Samaneris<sup>17</sup> claiming that the lineage of Bhikkhunis vanished from Thailand a long time ago. The Sangha Supreme Council also states that *"the Dhamma Vinaya(moral code) has nothing to do with human rights"*<sup>18</sup> and the Constitution already allows women and men to practice the teachings as they so wish.

Thus, Bhikkhunis in Thailand are not bestowed with rights as accorded to their male counterparts. Even in the ID cards and passports of Bhikkhunis, no indication can be made about the ordination status, even though it is not illegal to be ordained as a Bhikkhuni.

<b><u>Recommendations</u></b>
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<sup>16</sup> [http://www.senate.go.th/bill/bk\\_data/53-3.pdf](http://www.senate.go.th/bill/bk_data/53-3.pdf)

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/A/018/17.PDF>

Section 17 "It is prohibited for any state agency, private organization or any individual to provide for a policy, rule, regulation, announcement, measure, project or guideline which constitutes gender discrimination.

*Nevertheless, if the act as mentioned in (1) is intended for removing obstacles or to enable a person to exercise his or her rights and freedom as other people, or for protecting the wellbeing and safety, or for serving religious purpose or for national security, it shall not be construed as a gender discrimination."*

<sup>17</sup> Thai women have been taught that they could not be ordained to be Bhikkhunis since the Bhikkhunis disappeared a long time ago. However, in the early 2000s, a new religious opportunity for women was made possible in Thailand with the first ordination of a Theravada Buddhist nun in Sri Lanka. Since then, many Thai women have followed the path to full ordination from Sri Lanka to Thailand. The historical event set the path for viewing gender in a process of constant change and challenging the conservative Thai Buddhist clergy.

<sup>18</sup> <http://www.thairath.co.th/content/469487>

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| 1) | <b>The Sangha Act (no.2) B.E. 2535 should be amended to recognize the status of Bhikkhunis in Buddhism.</b> |
| 2) | <b>Buddhist women should be allowed to express themselves and be part of the problem-solving efforts.</b>   |

### Access to justice of the ethnic Malay and Muslim women in the SBPs

26. Amidst the restive situation, breadwinners of families in the South, particularly men, are afraid to go out and work. Women have to bear greater responsibilities to raise their families in addition to child rearing. In addition, due to a lack of enforcement of **the Act on the Use of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun B.E. 2489**, it is difficult for women to have access to justice, particularly women in rural areas and women who have a low level of education. It is hard for them to invoke their rights in terms of divorce, requests for family and child support, or to deal with domestic violence or sexual violence.<sup>19</sup>
27. The justice system in the SBPs is rather complicated due to the adoption of both multicultural jurisprudence and a multicultural justice system, although it may seem to render a lack of legal decisiveness. There is also a lack of strict enforcement of the Islamic Law on family and inheritance matters.<sup>20</sup> The current justice system is a combination of the "*Datoh Yutitham*," or *Justice Datoh*, and the resolution of disputes concerning family and inheritance matters by the Provincial Islamic Committee plus the informal customary justice system managed by the community. The decisions made either by the *Datoh Yutitham* or the Provincial Islamic Committee are more or less based on personal discretion and lack both certainty and standards as far as the adjudication is concerned.
28. The Senate Special Standing Committee has also found that many women in the SBPs have their marriages registered using Islamic Law by declaring them to the Provincial Islamic Committee or local religious leaders. As all members of the Provincial Islamic Committee are male, it makes it hard for women to give their accounts of sexual violence or domestic violence and to make those men understand their situations.<sup>21</sup>
29. **The informal justice system** or the folklore rule / community rule (*Hukum Pakat*) is one in which all the community rules are issued by community leaders strictly invoking religious tenets or traditional culture with punitive clauses. Such rules have elicited fear among women.<sup>22</sup> For example, if an underage girl and boy are found to have spent time together by themselves, they shall be forced to marry. In case a woman or a girl has become a victim of rape or sexual violence, they are often forced

<sup>19</sup> *A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces*, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, pp. 88-89, March 2013.

<sup>20</sup> *Women's Access to Justice : Identifying Obstacles and Need for Change Thailand*, International Commission of Jurists and Justice for Peace Foundation, Geneva 2012, page 45.

<sup>21</sup> Ibid.

<sup>22</sup> ICJ & JPF report, Ibid., page 50.

to compromise by marrying the perpetrators. There are reports of women being subjected to further sexual violence after the forced marriages. Or if a woman or a girl is found to have dressed not correctly according to the religious teachings, they shall be subjected to punishment including being flogged, physically abused, having their hair cut short, or being fined.<sup>23</sup>

30. At present, more than 70% of students in higher education institutions are women. Still, their opportunities to obtain a job are slim. Malay Muslim women often find themselves deprived of the chances to develop and empower themselves. They are often blamed by their spouses or society for going outside the home to obtain training or attend seminars for empowerment.<sup>24</sup>

### **Recommendations**

- 1) **Concerned state agencies should seek consultation with religious leaders to allow women to become members of the Provincial Islamic Committee and the local bodies. It shall enable women to become part of the conflict resolution process to address domestic violence and sexual violence; proper representation of women in the committee must be guaranteed.**
- 2) **Administrative organizations, the Central Islamic Committee and the Provincial Islamic Committee should find ways to address the misuse of community folk rules which have led to the infringement of women's human rights and to prevent women from being subjected to acts of torture and other ill-treatment. The Thai authorities must make it succinctly clear that officials in the justice process are mandated to prevent, investigate and prosecute any act which could be construed as a grave offence of sexual harassment.<sup>25</sup>**
- 3) **Justice departments must ensure the protection of women and girls who are victims of sexual violence and give them proper protection based on respect of their value and human dignity. Also, women activists must be accorded with assistance in their attempt to put an end to sexual violence.**
- 4) **Provide training on women's human rights and human rights according to the Islamic teaching for the Provincial Islamic Committee, religious and community leaders and women and girls in the SBPs.**

### **Article 5: Human Rights Defenders**

31. In the past nineteen years (1995-2014), at least 36 Human Rights Defenders working to protect community rights and the rights of ethnic minorities have become victims of assassination and enforced disappearance. The investigations have often faced difficulties and their families have found it difficult to have access to justice as

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<sup>23</sup> JPF interview of Malay Muslim women during the seminar "Access to Justice of Women in the Southern Border Provinces" organized by the "Subcommittee on operational strategies regarding human rights in the Southern Border Provinces", the National Human Rights Commission, 8-10 September 2014.

<sup>24</sup> A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, March 2013, page 88.

<sup>25</sup> ICJ & JPF report, Ibid., page 75.

provided for by law since most perpetrators are local influential people or they are involved with state officials. In many cases, the police and public prosecutors have decided to give up and no one has been brought to justice. The relatives are prevented from getting to know the truth and having access to justice or remedies. For example, the murder of *Monk Supot Suvajo*, a conservationist monk, who was killed on 17 June 1995, and the abduction of Lawyer *Somchai Neelapaijit*, a human rights lawyer who was representing some Malay Muslims alleged to be offenders in the SBPs, which both remain unresolved. Somchai was allegedly abducted by police officials and was a victim of enforced disappearance on 12 March 2004. Or the case of *Mr. Pholachi Rakchongcharoen, aka "Billy"*, a community right activist of the Karen community who was apprehended and held in custody by the Chief Officer of Kaeng Krachan National Park in Petchaburi on 17 April 2014 and until now his whereabouts and fate are unknown.

Women Human Rights Defenders who work on women's rights in southern Thailand have faced threats, intimidation and dehumanization committed against them by some community and religious leaders.

#### **Recommendations**

- 1. The RTG should adopt the UN Declaration on Human Rights Defenders to protect the right to defend human rights.**
- 2. Ensure that in all cases of human rights defenders who were killed or disappeared there is: (i) a prompt, through and independent investigation and prosecution of the accused; (ii) an establishment of the truth; and (iii) provision of reparations to the victim(s).**

#### **Article 6: The right to work**

##### **32. Right to work as teachers in conflict areas in Thailand's deep south:**

The highly volatile and violent nature of conflict in the SBPs has made it difficult for teachers to work at their fullest potential. They have become a soft target of unknown armed groups. In the past decade, there have been many casualties among teachers. According to the Southern Border Provinces Police Operation Center (SBPPOC), from 2004 until now, 146 teachers have been killed and 140 injured. According to the Federation of Teachers in the Three Southern Border Provinces, from 2004 until now, there are 179 teachers who have been killed.<sup>26</sup> Some of them were shot down while teaching in front of their students. A number of them were ambushed while on their way to school. Apart from teachers, schools have also become a target of attack by unknown armed groups. According to the Southern Border Provinces Education Operation Center, Ministry of Education, from 2004 until August 2014, 204 schools have been subjected to arson attacks.

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<sup>26</sup> [http://www.isranews.org/isranews-news/item/34423-teach\\_34423.html](http://www.isranews.org/isranews-news/item/34423-teach_34423.html)

Even though the government, particularly security forces, has enhanced the protection of teachers and schools by installing military bases inside school compounds and providing forces to protect teachers while they make the journey between their homes and schools, many teachers have still become victims of attacks. Their situation has become even more vulnerable.

- 33. Public health personnel: In the conflict prone area of the SBPs, public health personnel are subject to intimidation and attacks.** From January 2004- May 2014, 33 public health personnel were killed and 29 injured, 28 community-based health centers have been subject to arson and bombing attacks.<sup>27</sup> On 9 July 2014, two students nurse of the Sirindhorn Public Health College, Yala, were gunned down in front of the Somdej Phra Yupparat Yaha Hospital, Yala.<sup>28</sup>

The intimidation of public health personnel has negatively impacted the availability of human resources. Many have requested to be transferred. Many tambon (sub district)-based hospitals or village-based health centers, which are close to the people, have had to be shut down due to a lack of personnel. Otherwise, they have reduced their opening hours to ensure the safety of their staff.<sup>29</sup>

#### **Recommendations**

- 1) The government should ensure people of the impartiality and neutrality of teachers and public health personnel in conflict-affected areas.**
- 2) No military bases should be located close to schools, health centers or hospitals.**
- 3) The Ministry of Education and Ministry of Public Health should have an emergency action plan to provide for safety of schools and health centers and their staff by promoting the roles of local people in the maintenance and protection and people should be encouraged to express their opinions regarding the management of education or public health services that fit their Muslim way of life.**
- 4) As for the murders of teachers and public health personnel, the perpetrators must be brought to justice and their affected families should be provided with appropriate remedies and rehabilitation.**

#### **Article 10: Protection of family, women and children**

- 34. People in the SBPs have found it difficult to access health services and there has been misinformation spread in local communities. There is also a lack of knowledge about reproductive health. All of these have impeded access to necessary health services causing impacts on the health of people, particularly women and children. It was found that children there have low I.Q. and that there**

<sup>27</sup> <http://www.deepsouthwatch.org/node/5780>

<sup>28</sup> [www.isaranews.org/.../item31143-yaha\\_31143.html](http://www.isaranews.org/.../item31143-yaha_31143.html)

<sup>29</sup> *A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces*, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, March 2013, page 51.

is high rate of maternal mortality. Owing to problems in prenatal care and child delivery, many babies are born with a birth weight less than 2,500 grams. There is also a spread of HIV/AIDS and a lack of access to treatment. Children have no access to necessary vaccination and other treatments. Rehabilitation of drug users has not met international standards, etc.<sup>30</sup>

35. **Female circumcision** exists widely among Malay Muslim girls in the SBPs. Most newborn girls receive circumcision when being delivered by local midwives (*Toe Bidae*) or even gynecologists in state hospitals<sup>31</sup>, mostly right after the delivery or seven days after. Some receive it when they are two or three years old. Several girls show signs of infection of the circumcision.<sup>32</sup>
36. Most ethnic Malay Muslim women in the SBPs barely have knowledge of sex education, family health, reproductive health and proper Islamic teaching about reproductive health. Thus, they have no right to reproductive health. Some women have refused to have their children delivered in hospitals and a number of them do not have postnatal care and treatment or have cervical cancer or STI screening as they fear it is against their religious teaching since the doctors or involved staff are male.
37. Out of wedlock pregnancy / unwanted pregnancy / teen pregnancy is a major issue in the SBPs given the changes in social values of the teenagers. Also, given the strict imposition of the religious code and a lack of counseling about maternity and child health problems and reproductive health, many girls and women cannot find good solutions to their problems.

### **Maternal and child health in armed conflict in the Deep South**

38. **The maternal mortality rate (MMR) fluctuated between 2003 and 2011, but remained higher than the national indicator** (at fewer than 18 per 100,000 live births). In 2012, the record MMR in the southern provinces<sup>33</sup> was 30.5 per 100,000 live births.<sup>34</sup> Intra- partum and post partum hemorrhaging were the major cause of maternal deaths.<sup>35</sup>
39. **The infant mortality rate (IMR) in the conflict-affected areas is higher than in the non-conflict areas.** The rise in IMR has been observed in Pattani Province since 2005, following the resurgence of violence. The major causes of early infant death (occurring within the first 28 days of life) in 2011 were congenital abnormalities and obstetric complications, include velamentous umbilical cord, antepartum

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<sup>30</sup> A report on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, the Senate Special Standing Committee on the monitoring and follow up of the solution and restoration of traditional cultures in the Southern Border Provinces, March 2013, page 103.

<sup>31</sup> <http://www.theguardian.com/global-development/2015/apr/01/thailand-muslim-south-authorities-blind-eye-fgm-who?CMP>

<sup>32</sup> JPF interview Malay Muslim women during the seminar "Access to Justice of Women in the Southern Border Provinces" organized by the Subcommittee on operational strategies regarding human rights in the Southern Border Provinces, the National Human Rights Commission, 8-10 September 2014.

<sup>33</sup> The Southern Border Provinces are comprised of Yala, Pattani and Narathiwat.

<sup>34</sup> Central health Promotion Region 12, The Statistical Report 2006-2012 : *Maternal mortality rates*. Yala Center of Health Promotion Region 12.

<sup>35</sup> Department of Health Promotion, *Cause of Maternal Deaths : Reported from Saiyairak Project*. Available at [www.saiyairakhospital.com/newdemo/admin/user\\_department\\_report.html](http://www.saiyairakhospital.com/newdemo/admin/user_department_report.html) [accessed on 30 May 2013].

haemorrhaging and intrauterine asphyxia, while infections diseases are the most common cause of late infancy death.<sup>36</sup>

40. The pneumonia incidence rate was estimated at 1,541 per 100,000 population. The morbidity rates of measles ranged between 20 and 40 per 100,000 population from 2009 to 2012. Two cases of pertussis have been reported: one in Yala in 2010 and one in Songkla in 2011. In addition, 97 cases of diphtheria, with 27 per cent fatality rate, were recorded from 2007 to 2012.<sup>37</sup> Of all provinces in Thailand, the Deep South has the worst situation of vaccine-preventable diseases.
41. The coverage of the recommended vaccine immunization among children in Thailand was more than 80 per cent in 2006<sup>38</sup> and 2010.<sup>39</sup> However, **the accessibility of vaccine immunization among children in the deep south has been worsening.** The health surveys in 2006 and 2010 reported that the coverage was lower than 60 per cent in Pattani, Yala and Narathiwat provinces. This led to the outbreak of several vaccine-preventable diseases during 2007-2012.<sup>40</sup> The low coverage of immunization was associated with the intensity of armed violence. Residents of areas with a high intensity of violent conflict had a 2.4 times higher risk to have incomplete immunization in comparison with residents in the non-conflict areas of the South.<sup>41</sup>

### Nutritional status

42. The nutritional problems among children younger than 5 years require special attention. The prevalence of under nutrition in 2011 was 1.5-2 times higher than that on the national level<sup>42</sup> and above the World Health Organization's threshold for public health concern (underweight  $\geq$  10 per cent, stunting  $\geq$  20 per cent, wasting  $\geq$  5 per cent).<sup>43</sup>

### Drug addiction

43. The Ministry of Social Development and Human Security reported that 5.5 per cent of children in Thailand sought treatment for drug addiction in 2012.<sup>44</sup> Estimates from a survey in southern Thailand in 2004 placed the prevalence of illicit substance use among high school students in 2002 -2004 at 5-7 per cent. The prevalence of illicit substance use among youth in the five southernmost provinces ranged from 80 to 380 per every 100,000 population, two times higher than the national estimate.<sup>45</sup>

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<sup>36</sup>The deep South Relief and Reconciliation[DSRR] Foundation and the Rugiagli Initiative[tRI], **Healing Under Fire** The Case of Southern Thailand, Bangkok, page 36.

<sup>37</sup> Department of Disease Control, *Annual Epidemiological Surveillance Report*, Nonthaburi: Ministry of Public Health, 2007-2012.

<sup>38</sup> National Statistical office and UNICEF, *Multiple Indicators Cluster Survey December 2005-February 2006*, Bangkok: UNICEF Thailand Country Office, 2006.

<sup>39</sup> Department of Disease Control, *National Survey Vaccine Coverage 2010*, Nonthaburi: Ministry of Public Health, 2010.

<sup>40</sup> Bureau of Epidemiology, Ministry of Public health. *Annual report of Infectious disease 2007-2012*. Bangkok : Government of Thailand 2013. Available from [www.boe.moph.go.th/Annual/Total\\_Annual.html](http://www.boe.moph.go.th/Annual/Total_Annual.html).

<sup>41</sup> Jeharsae, R., *Effects of Armed Violence on Growth and Development of 1-to 5-years old Children in Southern Thailand*, Songkhla: Prince of Songkhla University, 2011.

<sup>42</sup> R. Jeharsae et al., 'Dual Dietary Intake Problems Among Under -Five Year Olds Children Living in the Armed Conflict Area of Southern Thailand', *J Med Assoc Thai*, 2011, 94:8.

<sup>43</sup> De Onis, M. and Blossner, M., *WHO Global Database on Child Growth and Malnutrition*, Geneva: world Health Organization, 1997.

<sup>44</sup> The Ministry of Social Development and Human Security, 'Child Watch, 2010- 2012; Bangkok' The Ministry of Social Development and Human Security, 2012.

<sup>45</sup> Assanangkornchai, S. et al., 'Substance Used Among High School Students in Southern Thailand: Trends over three years (2002 - 2004); Drug and Alcohol Dependence', No.86,2007,pp. 167-174.



### Recommendations

- 1) State agencies have to combine efforts to develop a strategic plan to promote the health of the people and develop a database of communicable disease surveillance which can be retrieved for timely use. Also, collaboration should be undertaken to promote health proactively at the provincial, district, village and community levels appropriate to the health problems of the people. An effort should be made to address health problems of mothers and children, reproductive health, and preventable disease control using vaccination, which is a major problem in the SBPs.
- 2) An effort should be made with regards to the prevention and treatment of HIV/AIDS and its prevalence in the Muslim community in the central area and in the SBPs. Apart from supporting access to treatment among people living with HIV/AIDS and condom-based prevention, concerned agencies should engage themselves in community education efforts using Islam and local culture as a means to spread information in the SBPs. It should help to prevent and address the prevalence of HIV/AIDS and create mutual understanding among religious and community leaders so that they accept the PHAs and AIDS patients who should receive mental counseling to give them moral support and to enhance their social reintegration.
- 3) An effort should be made to provide sex education and reproductive health based on the proper religious teaching among the Malay and Muslim women in the SBPs to enable them to look after themselves and their children effectively and safely.
- 4) The state and religious organizations should set up organizations to provide counseling to women and girls on teen pregnancy or issues concerning reproductive health. It should be made safe and confidential so that the women and girls feel ok about seeking services.

### Articles 13-14: Right to Education

44. Security agencies in the SBPs have become suspicious that the Pondok Schools and Tadika Schools<sup>46</sup> are a breeding ground of insurgency and extremism. As a result, the government has decided to not provide sufficient resources to support the educational system and to develop the quality of life of the students.

### Recommendations

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<sup>46</sup> Tadika schools are the primary schools run by and located in mosques. It is estimated that there are 1,343 tadika in the three southernmost provinces. Pondok schools are a trademark institution and represent the Islamic character of the region. The curriculum of Pondok school revolves solely around religious education. Joseph Chinyong Liow, "Islam, Education, and Reform in Southern Thailand : Tradition and Transformation", pages 52-53.

- 1) The state should support educational opportunities among local people and an emphasis should be placed on skills training along with religious study.
- 2) Financial resources should be allocated to support educational activities in the Mosque-based schools (Tadika) which provide basic Islamic teaching for Muslim children. Staff empowerment should be supported along with the procurement of teaching aids and the renovation of buildings and the maintenance of sanitation.

### **Article 15: Cultural Rights**

**Multicultural laws in the SBPs:** The majority of the population in the SBPs is comprised of ethnically Malay Muslims. As a result, the *Act of the Islamic Law on Inheritance and Family Litigation B.E. 2489* has been imposed among the Muslim population. The law has given rise to a number of problems concerning access to justice including the following:

45. Islamic Law is only to be invoked in civil proceedings regarding family and inheritance litigations that has been raised in the Court. Thus the Islamic Law is only binding on matters concerning the Court, but not other agencies. For example, the administrative officials, land officials or government revenue officials would not accept the invocation of Islamic Law on matters concerning marriage, termination of marriage, inheritance division, etc.<sup>47</sup> Also, it is not common for Muslims to bring cases concerning family matters to the Court due to a variety of limitations, i.e., their lack of language skills, their lack of knowledge about Islamic Law, their lack of financial resources. As a result, the Malay Muslims often bring any disputes concerning family and inheritance matters to either the local or provincial religious leaders to decide. This has thus complicated access to justice even further since neither the local nor provincial religious leaders have the mandate to give any instruction to the land officials or officials in other state agencies.
46. The decisions made by the *Datoh Yutitham* based on Islamic Law are taken as final and no appeal can be made by the parties. Should the *Datoh Yutitham* make any wrong decision regarding the interpretation of Islamic Law, it would have rendered irreparable damage to the parties.
47. When the Islamic Law concerning family and inheritance matters is applied to terminate a matrimonial relationship, in most cases, the female spouses are often treated unfairly in terms of the division of matrimonial assets<sup>48</sup> and inheritance, which have often not been managed according to the intent of Islam, particularly as regards child support claims.

### **Recommendations**

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<sup>47</sup> Piangporn Wisetsin, "Islamic Law and Inheritance Management: The case study of the Provincial Court of Satun", a personal report presented in the training of the "Judges of Lower Court" year 10, Judicial Training Institute, Office of the Court of Justice, 2012, page 33.

<sup>48</sup> Ibid.

- 1) Suspend the adoption of the revised Islamic Law on family and inheritance litigation until its content is revised to truly reflect women's rights in Islam. Also, the single-tier justice system must be replaced by a multi-tier system to address the issues of wrong decisions made by the *Datoh Yutitham*.**
- 2) Genuine public consultations must be held among women regarding access to justice and the use of the Islamic Law on family and inheritance matters.**
- 3) Ensure that content of the Bill is in compliance with international human rights principles and gender equality and helps to enhance access to justice for all Muslim women.**