
THAILAND

Civil Society Report on the Implementation of the ICCPR (Contribution to the List of Issues)

REVIEW OF SITUATION AND NATIONAL LEGAL AND POLICY FRAMEWORK ON THE RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES IN THAILAND: IN RESPONSE TO INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

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PART I. BACKGROUND AND CONTEXT

Human Rights Situation of Thailand

1. During the past decade, Thailand was marred with political turmoil and civil unrest, while there were various violations found within transitional period of the politics, ruling systems and social movements and certainly relating to proposals and demands raised from these prolonged demonstrations, particularly for the Country Reform with concerns on solving of principal challenges, disparities, non-equity and unjust. These all are becoming structural problems with inter-linkages and complexities while also relating to the enjoyment of fundamental human rights entitled to individuals and communities, e.g. the right to appropriated minimum standard of livelihood, right to health, right to education and right to work, etc.
2. After the military overthrow of the Pheu Thai led-Government on 22nd May 2014, the National Administration has been put under the control of National Council for Peace and Order (NCPO) and the Government led by General Prayuth Chan-ocha, with the recent announcement of the 2014 interim Constitution (Constitution No.19). This Interim Constitution comprises principal provisions with linking-up to values and practices undertaken in the 2007 Constitution with more or least focusing on restoring of peace and order with revitalization of democratic ruling system and more people engagement. This Government has made efforts to create numerous interventions and instruments for solving these prolonged problems, especially to issue a number of laws and regulations with policies and measures applied, e.g. on the promotion of gender equity and equal opportunity; on the affirmative actions for older people and persons with disabilities; on the social inclusion and on the education management with promotion of social and cultural pluralism, nonetheless it still could not solve problems with sustainable practices.
3. Some challenges are being addressed as: the centralization of power and decisions made with only or within the state apparatuses or central authorities as well as the implementation of policies with manipulation of powers covering various dimensions, particularly, economy, society, culture, education and politics with the limits of accessibility of news and information and of people's participation in decision and policy making processes.
4. According to the 2014 Human Rights Evaluation Report of the National Human Rights Commission of Thailand (NHRCT), in 2014 there were several projects creating serious problems on natural resources and environmental management with the development of industries and mega projects. These projects were being run by both government and private sectors and without respect to individual and community or collective rights guaranteed under Constitution of the Kingdom of Thailand. In addition, there were various groups found with inaccessibility to fundamental human rights and public welfares or even could be able to access but with very limited and/or inadequate quality, e.g. the ethnic groups, persons with disabilities, marginalized people, older people, children and women. There were limits of rooms of such

vulnerable groups on side of “rights holders” for participation and decision-making mechanisms. These affected to the possibility of sustainable management responding to their actual needs and problems.¹

Situation of Tribal and Indigenous Peoples in Thailand

5. Within this Report, the terms “tribal and indigenous peoples” used are commonly referred to as: “hill tribes” (named in Thai as: Chao Khao) mostly found in the northern and western provinces; “indigenous fisher or sea gypsy communities” (named in Thai as: Chao Lay); small groups of the Korat plateau of the north-eastern and eastern provinces and groups of hunting and gathering survivors in the north (named in Thai as: Mlabi) and in the south (named in Thai as: Mani).

6. According to the Master Plan for Development of Ethnic Groups in Thailand, B.E. 2558-2560 (2015-2017), initiated and supervised by Ministry of Social Development and Human Security of Thailand, fifty-six ethnic groups are identified with continual manifestation and upholding of traditional practices with their folk wisdoms for generations in sixty-seven provinces, with around 6,100,000 population in total or approximately 9.68 percent of total population in Thailand. These ethnic groups shall be categorized into four groups upon their residential and arable areas, as: those residing in the highland areas²; those dwelling in the plain areas³; those locating in the coastal areas⁴; and those found in the forests⁵.

7. According to the National Statistic Bureau of Thailand in 2014, Thailand has a population of 64.8 million. They are totally Thai citizen, while non-Thai-citizen assumed to be more than 3 million. Tai ethnic group is a majority group, while the other groups can be officially called ethnic minority groups which also including tribal and indigenous peoples. Under these 3 million non-Thai citizen, apart from irregular migrants and stateless persons, some tribal and indigenous peoples are being inside with prolonged struggling for their right to legal status.

8. And under the scheme of Ministry of Interior with proof of Thai nationality, the array of officially-recorded migration relying on Thai immigration laws and regulations, during 1945-1987, can be enlisted in accordance with chronological arrivals and accordingly grating of legal status as: Vietnamese (1945-1946); Former Soldiers of Chinese National Army (1950-1961); Chinese first joining the group of former soldiers of Chinese National Army (1950-1961); Independent Chinese (1962-1978); Laotian (non-camp) (Post 1974); Tai ethnics from Koh Kong province of Cambodia (1974-1977); Nepalese fleeing Myanmar’s insurgencies and Burmese (pre March 1976); Burmese and highland ethnic groups from Myanmar and Laos (post March 1976); Cambodians, Tong Luang (Mlabi) and illegal migrant workers (post 1977); as well as Malaya Communist from Malaysia and Thai Lue (pre 1987).⁶ And within these numbers, some of them are also mixed with the ethnic highlanders, namely “Hill Tribe or Chao

¹ Office of the National Human Rights Commission of Thailand, 2014 Human Rights Evaluation Report of the National Human Rights Commission of Thailand, <www.nhrc.or.th/webdoc/annual-report-2014.pdf> (26 October 2015) (Thai language)

² These cover 9 hill tribes, as: Karen; Hmong or Maew; Mien or Yao; Akha or Ikor; Lahu or Muser; Lisu or Lisor; Lua or Thin; Kamu; and Mlabi or Thong Luang residing in the north and western of Thailand.

³ These cover 38 ethnic groups, as: Mon; Tai Lue; Tai Song Dam; Tai Yai; Tai Khoen; Tai Yong; Tai Hya; Tai Yuen; Phu Tai; Lao Krang; Lao Ngaw; Lao Kar; Lao Tee; Lao Wieng; Sak; Sere; Prang; Brue (Soe); Song; Sotawing; Iempeekong; Kula; Sauot (Saung); Kui (Saew); Yakul (Chao Bon); Yao; Yaew; Tai Kamer. Vietnam (Yuan), Yermeesor (Besu); Chong; Kasong; Malayukaleang and Lao Song (Tai Dam).

⁴ These cover 3 sea gypsy groups, as: Mokaen; Moklean; and Urakrawoew.

⁵ These cover 2 ethnic groups, as: Mlabi (Tong Luang) and Mani.

⁶ Department of Public Administration, Ministry of Interior <www.dopa.gov.th> (24 October 2015) (Thai language)

Khao” and only nine groups are recognized as the hill tribes under Thai law, as: the Karen, Hmong, Lahu, Mien, Lisu, Akha, Lua, Khamu, and Mlabri.⁷

9. The term of indigenous peoples had been officially introduced in Thailand upon the constructive movements and dialogues after the adoption of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 with voting from Thai Government. There were several movements depicting the diversity and politics of identities of Thai, non-Thai and documented persons with expression of different identities in Thai society. Nonetheless Thai Government has firmly announced that there is none of the so-called “indigenous peoples” in Thai society. They all are recognized as ethnic minority groups whom sometimes are presumed with prejudice as or fallen into the non-Thai ethnic groups or irregular migrants or undocumented persons.

10. The modern history of Thai policies in relation to tribal and indigenous peoples is dominated by the issues of national security, border integrity, and competition over land, forests and natural resources with public threats, particularly in relation to narcotic drugs smuggling. Several human rights reports also identify that these tribal and indigenous peoples are mainly facing two main problems as the lack of citizenship and the lack of land titling. The tribal and indigenous peoples in Thailand can’t be identified in any official system with their specific identities and practices while some are also mingled with other groups from either the bestowment of the different identity cards or the non-systematic and irregular registration. Several sources report that the total tribal population is approximately 948,173. Some possibly claim that they are original communities in their ancestral domain lands, especially the Karen in western provinces while the other ethnic groups found in the highland or forest areas are not recognized by laws and have been experiencing hardships. These groups are mostly suspected to cross an internationally-recognized state border. They cannot root and mingle in Thai society and by the end might be repatriated to their suspected motherlands.

11. According to the cases investigated by the NHRCT, some regarding the legal status recognition are found to conflict with their de facto evidences.⁸ So the present movement with reaffirming of indigenous identity is not focusing on the existing of official documents merely, but would undertaking the multi-disciplinary with proofs of cultural and social evidences, particularly with collective and/or individual self-identification.⁹

12. For the sake of Thai State’s response to tribal and indigenous peoples, principally apart from all relevant Human Rights Treaties undertaken, in practice, Thailand recognizes the protection of basic rights of all persons, including tribal and indigenous peoples regardless their nationalities or legal status. Likewise in Section 4 of the interim 2014 Constitution of the Kingdom of Thailand, it strongly affirms that Thailand believes in the principles of equity of every individual before the law and legal protection against all kinds of discrimination. By virtue of this Section, Thailand guarantees the legal protection of non-derogable rights under the International Covenant on Civil and Political Rights (ICCPR), particularly right to life, right

⁷ The Bureau of Registration Administration, Department of Provincial Administration, the Ministry of Interior Affairs, the General Regulation for Household Registration ,B.E.2535 (1992) and the General Regulation for Thai Nationality Bestowment,B.E.2543(2000) <www.dopa.gov.th> (24 October 2015) (Thai language)

⁸ Office of the National Human Rights Commission of Thailand <www.nhrc.or.th> (26 October 2015) (Thai language)

⁹ The UNDRIP identifies indigenous peoples as “peoples” with the right to self-determination:

Article 3 - Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 – Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

to humane treatment and right to freedom from slavery. And regarding the compliance with International Covenant on Economic, Social and Cultural Rights (ICESCR), Thai State also supports all people who wish to work while staying in Thailand, under the conditions that they must not have violated the 1979 Immigration Act and must not seek to be employed in a job endangering the national economy and integrity. Some tribal and indigenous peoples who could not get Thai nationality and do not fall under these restrictions can register as migrant workers under the Ministry of Labour.

13. In general, tribal and indigenous peoples can access health care services with equal treatment and non-discrimination. The protection of personal property is ensured to both all citizen and non-citizen. And also under the condition that the manifestation of the religion, beliefs, customs and cultures does not infringe upon the public order or social welfare, the Constitution and Thai Government fully protect the rights of tribal and indigenous peoples. Thai legal system also guarantees rights to marriage and to family's unification for all, while in 2003, the "Child Protection Act" was enacted in line with the Convention on the Rights of Child (CRC). As well as, the Ministry of Education has established Regulations to facilitate enrolment for students whom do not have Thai nationality legal documents. Under these procedures, in accordance with the 1999 National Education Act, non-Thai tribal and indigenous children at least can attain the compulsory level of education while they are staying in Thailand.

PART II. EXAMINATION OF THE NATIONAL LEGAL AND POLICY FRAMEWORK

14. And for the gist of inspection of national legal and policy framework with actions undertaken in the alignment of International Covenant on Civil and Political Rights (ICCPR) in Thailand, the good practices with challenges are being found as follows:

Identification and Recognition :

15. For the purpose to legalize tribal and indigenous peoples in Thailand, Thai Government has established various mechanisms with implementation, while there are problems of legalizing tribal and indigenous peoples as: the Government tried to address by granting temporary residential status – however the number reduced due to irregularity and misperception i.e. the tribal and indigenous peoples do not perceive how to do it, don't see the benefit and experience no benefit in reality. Besides, some conflicts in neighbouring countries, asylum claims and nationality verification process are also considered as main factors for this decrease. This system is also reported that too confusing and extremely restriction for tribal and indigenous peoples. The nationality verification process is proved that there are failures of the policy and implementation, since the lack of knowledge and understandings of both tribal and indigenous peoples themselves and officials relating to the registration and verification systems.

16. According to the 2008 Nationality Act, the right to obtain nationality still affirms "ius sanguinis" and denies "ius solis" principles, hence the children born in Thailand to irregularly tribal and indigenous peoples will be considered as "illegally entry to Thailand" and cause these identified could not access to all social security systems.

17. As regards the pursuance of several Human Rights Treaties, CRC, ICCPR and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Thai Government has solved problems of identification, particularly for children born to irregular migrants or undocumented persons, the Government has acted to ensure the recognition of legal identity of children born in Thailand with revision of current civil registration law to allow all children born in Thailand to be registered at birth. They will be automatically granted their birth delivery certificates by the hospital or medical care centre, and then their birth registration certificates will be bestowed by the local administrative authorities that could be used to identify themselves in the future. But in practices, many children might be left unregistered due to various reasons such as the denial of civil registrar due to their knowledge and understanding upon the revised law, the spectre of parent for being arrested upon the notification of the birth due to their illegal status, etc. And also as regards the human trafficking issues, the problem facing migration in Thailand is lack of effective enforcement targeting traffickers.

18. Thai Government realizes that the issue of undocumented persons, including irregularly tribal and indigenous peoples, needs to be resolved. As a result, a policy on management and regulation of the undocumented persons has been in place since 1996. However, due to the failure of the policy, coupled with the influx of irregular and illegal migration from neighbouring countries, Government first launched a new program in 2004 to register undocumented persons who illegally entered into the country. A temporary work permit was granted to registered migrants, if relevant indeed, who applied for it. There are several programs with efforts made afterwards with adjusting and applying to emerging and found issues.

19. And for the sake of enforcement with implementation of these by-laws and policies, the Ministry of Labour has assigned the Office of Alien Workers Administration to manage all documented migrants, while the Office of Illegal Migrant Workers Administration is responsible for the management of undocumented migrant workers, has been regulated by the 1978 Employment of Alien Workers Act. It stipulates all necessary conditions that migrants have to comply with in order to receive a work permit to work in Thailand. They must possess the necessary qualifications that employers need and employers must contribute a risk-based premium within different forms of mechanisms, as if, the Workmen's Compensation Fund, etc. The management of undocumented migrants is governed by the Cabinet Resolutions covering all undocumented migrants including some tribal and indigenous peoples. The Ministry of Labour acts as a coordinating agency to ensure the collaboration of all concerned agencies, as: the Ministry of Interior, Ministry of Public Health, Ministry of Defence and Royal Thai Police.

20. In 2004, the Government adopted the first Master Plan for Migrant Workers Management. This Plan stipulates that all illegal entries should be granted the temporary dwelling and work in Thailand. It aims to legalize illegal migrants and issue them work permit. In response to the challenges causes by illegal status, the Government's Policy to legalize the status has been started to operate within annual basis since June 2004 upwards. The Registration of illegal migrants would be organized while all migrants would obtain Tor Ror 38/1 cards and work permits. This Policy has been extended until now with the Registration Regulation, February 2007. The Master Plan also mentions that the status determination mechanism of all migrants, particularly for three nationalities-Cambodian, Laotian and Burmese- should be established to verify the nationality. And in case that some cannot return to their countries of origin, they will be addressed as "persons who have problem of legal status" and granted "Pink and White cards" in relations with the Strategy on the Management of Status Problem and Rights of

Persons. Some of tribal and indigenous peoples are now holding this kind of identity card.¹⁰ Currently after the clearing of chaos and misunderstanding pertaining to irregular migrant suppression under the ruling of the National Council for Peace and Order (NCPO), the registration system is now accelerated with improvement of “One-Stop-Service” for those residing as migrant workers.

21. And on January 18th, 2005, the Cabinet adopted the Strategies for the Management of Status and Rights of Persons. It is a concluding result from the meeting of the National Security Council chaired by the Prime Minister on January 18th, 2005, the status determination mechanism has been established to grant legal status to various groups of stateless persons, including irregularly tribal and indigenous peoples. The proper documents would be provided while all basic rights i.e. education and health care schemes would be guaranteed by virtue of the legal recognition. This has been applicable to every person appearing on Thai territory, who cannot return to his country of origin, or who has contributed or been useful to Thailand. The formation of automatic mechanisms to eradicate the problem of lack of legal status of persons has been initiated and developed from time to time.

22. In additional, within the contribution of the Cabinet’s Resolution, dated January 18th, 2005, the Government has adopted the regulations to facilitate enrolment for students who have no Thai nationality legal documents. As a result, non-citizen and undocumented children currently can receive the fundamental compulsory level of education while they are dwelling in Thailand.

23. Apart from such Cabinet’s Resolutions, there are laws and policies in the form of subsequent Cabinet’s Resolutions to interpret the concept to practices. These Strategies therefore constitute a clear and strong policy framework followed by the public sector in eradicating the problems of stateless persons and persons with no nationalities in a comprehensive manner, from: (i) the survey of problem of “statelessness”; (ii) the elimination of problem of statelessness in persons whose nationalities cannot be specified still; and (iii) the recognition of basic human rights.

24. During 2005-2008, Thailand developed concepts and strategies in recognizing the right in the status of persons by law, which are clear and can be referred, for use in the verification of the identities and status of such groups of persons. There was a drive to push the process of acknowledging (i) comprehensive recognition of the right in the status of persons by laws, from birth registration, residence registration and death registration; (ii) recognition of educational rights; (iii) recognition of the right of public health services; and (iv) robust enforcement of justice system.

25. Remarkably in 2010, the Cabinet adopted a Resolution, dated 3 August 2010 with Policies regarding to the Restoration of the Traditional Practices and Livelihoods of Karen people, the term of indigenous peoples somehow is not clearly pronounced under the Resolution, but their principal components of rights entitled for indigenous communities are spelt out covering the accessibility to usufruct areas; ethnic identity and culture; natural resource management; legal recognition; cultural manifestation with intangible heritages; and indigenous-based education with cultural pluralism undertaking. This Cabinet’s Resolution somehow is found with poor

¹⁰ The Cabinet’s Resolution, dated 27th April 2004, on Guidance on Systematic Management of Migrant Workers. This is regard as a policy mechanism which aims at solving the problems at their root causes, by allowing illegal immigrants (of Burmese, Laotian and Cambodian nationalities) to stay in Thailand temporarily while holding the status of illegal immigrants, and converting their status from being illegal immigrants to legal immigrants.

implementation, while there are massive efforts made with the replication of this Resolution for other tribal and indigenous groups.

Access to Justice :

26. The 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand provided guarantee on the equality of persons in receiving legal protection equally. They set as principle that any person whose right has been violated can cite these rights enshrined as grounds for defending his case in court. First, the right to be assumed innocent until proven guilty by law provides that a person has the right to access the justice system with ease and convenience, and in a swift and extensive manner. Next, the right to court trial procedure which is transparent, fair and swift, the right to be informed of the charge and details of the arrest, and the right to give or not to give a statement at the stage of inquiry. Other rights are the right to get proper treatment according to the justice process, the right to receive protection or assistance from the state, e.g. in arranging interpreters or lawyers, etc., as well as the right to be granted temporary release in criminal case. Some provisions also provide people's participation in law and justice development with guarantees of independence of judges and justices in conducting trials. Person whose rights have been violated is allowed to file a case to the Constitutional Court directly in the case that the provisions of the law oppose or contradict the Constitution.

27. On the shade of accessibility to justice, particularly with affirmative actions for tribal and indigenous peoples, the Criminal Procedure Code, Amendment B.E. 2551 (2008), the law amended to be in accordance with the 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand, by providing guarantee on the various rights and liberties as: (i) the arrangement of interpreters according to Section 13 of the Criminal Procedure Code, is an added measure of the original law which provides arrangement of interpreters, specifically for other languages and for hand language; (ii) the right to have adequate time and convenience in making preparation to defend a case and contact a lawyer of one's choice, some limitations are found in relation to juvenile and family cases, since there can be delays in the processing if the children concerned have legal counsellors. However, it is now a practice in majority cases, that a suspect or defendant be arranged for a private counselling session with his lawyer before giving a statement. And, there are also Police Regulations on Court Cases too; and (iii) the right against self-incrimination and forced confession, which generally applies to an affects suspects or defendants who do not have lawyers, or who have not been provided with legal counselling by their lawyers before giving their statement. When a lawyer is present to listen in during an inquiry, better protection can be achieved.

28. Anyhow on side of indigenous and tribal people's hardship with access to justice according to Thai law, it says that if emigrant's status or legal entry is terminated; they have to be immediately deported. This law has deprived the suspected tribal and indigenous peoples of their right to seek legal and financial redress from exploitation, while allowing abusive violators to get away with offence, as well as the illegal entry, they certainly fear to be arrested and prosecuted if they need to apply for the remedial and judiciary processes. The lawsuit acquisition would also be negatively affected to their work and life as well as there are amount of unexpected costs of seeking protection. And for the tribal and indigenous peoples' case, it requires appointing the competent lawyers, while the tribal and indigenous plaintiff could not afford for the expense and also there are a few numbers of pro bono lawyers. The Government also lacks of willingness to support civil cases. Most of cases consideration could not

terminated within the due process. They were queued up in the very long line, which possibly ended up with the problems of fair trial.

Participation, Consultation and Consent :

29. In practicability, the participation, consultation and consent of indigenous and tribal communities are exercise of community rights, particularly pertaining to the accessibility of natural resources through the exercise of community rights, the 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand recognize the right of communities to benefit from their community resources, providing that communities of people who have originally gathered as folk or local communities shall have the right and participation in the management, preservation, and utilization of natural resources and the environment of their communities in a balanced and sustainable manner. The law also stipulates that the management of local resources should be fundamentally based on the local religious beliefs, cultures and decent traditions, with the community people's compassion, sharing mutual reliance and assistance, which are the notions that correspond with the principles of "Sufficiency Economy" initiated by His Majesty the King. "Sufficiency" hereby means moderation and rationality with necessity to have a reasonably good immune system or self-protection mechanism as resilience against any possible effects caused by external and internal changes.

Land, territories and natural resources :

30. Thailand is aware of the significance and the rights of over 62 ethnic groups in the country, which constitute the Thai population. It became a State Party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2003, and has completed the preparation of the combined Country Report on Implementation of CERD, Number 1 (2004) and Number 2 (2005), which is being presented to the United Nations Committee on the Elimination of All Forms of Racial Discrimination. The rights of ethnic groups, hill tribes and highlanders regarding land, natural resources and property under Thai laws are not different from that of rights-upholding countries. The status of being indigenous or tribal peoples does not pose limitation to attaining the right to land, territories, natural resources and property.

31. Anyhow during the ruling of Government, appointed by the NCPO, since 22 May 2014, the NCPO issued an Order No.64/2557, dated 14th June 2014, with land seizure from those alleged to trespassing forest areas. Some communities have been evicted with removal and demotion of houses and properties, cutting-down of rubber trees and all plants with arrest and litigation towards all villagers. This Order unavoidably jeopardizes tribal and indigenous peoples. According to the NHRCT, there were 50 complaints filed, covering 30 provinces (from 76 provinces in total) with land seizure for reforestation in 8,340 hectares (50,000 rai). There is a case with exercise of NCPO's Order on land confiscation in 363.67 hectares (2,182 rai) in Mae Sot district, Tak province where affected 100 families earning for generations with agricultural practices since 1936.

Development :

32. For the development with individual education, Thai Government has currently created numerous interventions and instruments on the social inclusion and on the education management with promotion of social and cultural pluralism. There is currently the Ministerial Regulation on Community School, under the 1999 National Education Act, the Mother

Tongue-based/ Multi Lingual-based education curriculums have been initiated as pilot projects in schools with ethnic pluralism. All tribal and indigenous children gradually attain the quality and relevant compulsory level of education, while there is expectation for the extension of its coverage with countrywide services. The strong efforts are now being made with the educational reform under the NCPO-led Government.

33. Anyhow for the liberty of movement of tribal and indigenous peoples in case if they holding the status of aliens, their right to liberty of movement shall be subjected to the law on immigration. The right to liberty of movement of aliens is a conditional right. Thailand classifies tribal and indigenous peoples who are alien migrants under three categories, namely: (i) holding status of ‘legal alien immigrants’, and have ‘permanent residence’ right; (ii) holding status of ‘illegal alien immigrants’, but granted the right to reside temporarily in Thailand, by the Cabinet’s ruling according to Section 17 of the Immigration Act, B.E. 2522 (1979); and (iii) holding status of ‘illegal alien immigrants’.

Socio-Economic Rights :

34. The deprivations of irregularly tribal and indigenous peoples’ rights are still found, regardless their legal status, as: non-issuance of marriage certificate, tribal and indigenous peoples’ property confiscation including infringement of their rights to land and arable areas and refusal of tribal and indigenous children’s enrolment for basic education. According to reports of accessibility to rights to education of underprivileged children in Thailand, a number of schools still deny irregularly tribal and indigenous including undocumented children to be enrolled due to various reasons i.e. lack of knowledge and understanding about the adopted regulations, budget constraint and lack of facility and resources to deal with multi-cultural and bi-lingual classes.¹¹ As well as the matter of accessibility to health care schemes, most hospitals also face the same problems with schools, as: lack of personnel who can communicate with tribal and indigenous patients while they also could not hire any qualified persons to work as translators due to the restriction of type of work according to the 1979 Immigration Act, non-affordability for huge expenses of them, and ineffective management of migrant health insurance budget.¹²

35. For the sake of acquiring for effective remedies and humanitarian assistance, during many irregular problems still could not be solved, the Government adopted some Regulations on Universal Health Care Service. All tribal and indigenous peoples are provided the same protection as Thai people. So in general, they can access health care services without discrimination, including illegal entering and pregnant non-Thai or stateless women giving birth at hospital would be treated as the patients; they will not be arrested and deported for the time being. The signing of the Memorandum of Understanding (MOU) on Cooperation between Ministry of Public Health, Ministry of Labour and Royal Police has been created to be an interim safeguard for protecting the non-Thai or stateless patients, particularly irregular and illegal entry. They would be further provided appropriate treatments without arrestment and deportation for the health and humanitarian reasons.

¹¹ Indigenous Education Network and Network of Indigenous Peoples in Thailand, Alternative Report on the Situation of Access to Quality and Relevant Education for Indigenous Children and Youth in Thailand, <http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/THA/INT_CESCR_CSS_THA_20418_E.pdf> (20 November 2015)

¹² Office of the National Human Rights Commission of Thailand, 2014 Human Rights Evaluation Report of the National Human Rights Commission of Thailand, <www.nhrc.or.th/webdoc/annual-report-2014.pdf> (26 October 2015) (Thai language)

36. For the accessibility to public health services of those marginalized with legal status, there is a limit with accessibility to any public health premises for those lacking legal status (people holding identity cards, starting with number '0') in accordance with "the Fund for Entitlement of Fundamental Rights (Reinstating of Rights) on Public Health to People facing Problems of Legal Status and Rights, under the Cabinet's Resolution, on the date of 23rd March 2010" which strictly indicates that these people shall be able to access to only public health premises affiliating with Ministry of Public Health and within their domicile only.

37. Interestingly as regards the anti-human trafficking and prosecution of smugglers, the Act for Preventing and Suppressing Human Trafficking was adopted on June 5th, 2008. This Act auspiciously transplants the ideas of decriminalization and non-victimization within the law, henceforth, the affected victims of smuggling processes hereby will be protected and treated as witnesses without any offences. Some specific funds, i.e. Fund for Preventing and Suppressing Human Trafficking, have been allocated with the multidisciplinary interrogation mechanism. The smugglers, after found their substantive offences, will be penalized in accordance with Penal Code and some relevant laws, e.g. the 1999 Anti-Money Laundering Act.

Gender Equality and Multiple Discrimination :

38. The 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand provide guarantee on equality before the law for every person. Therefore, any action which causes or supports to cause feelings of hatred towards a nation, race or religion, which instigates consequential discrimination atrocity or violence shall not be permitted, particularly prohibits discriminatory practices on the grounds of differences in origin, race, religion, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or political view.

39. Thailand is highly aware of the significance of this issue, and shall not let peoples for different races in Thailand have conflict to the extent of developing into hatred against one another, which will undermine the love and unity among the people of the nation, which is key to the security of the people in a multi-cultural society – Thailand. Several governments have made utmost efforts to solve ongoing problem of conflict and violence in border provinces, particularly in the Deep South and Upper North. The lessons-learned from the past 10 years indicated that there is none of "single-size fits all" solution, rather than collective learning of every sector while also taking part in solving of problems.

Indigenous Children :

40. The 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand provide guarantee to protect equality in education, protect the rights of children, youth, women and family members, protect the rights of children and youth to fullest physical, mental and intellectual development. In Section 73 of the Criminal Code, revised by the Amendment Act of the Criminal Code (No.21), B.E. 2551 (2008), the age of children exempted from legal punishment for criminal offences increased from 7 to 10 years, which is regarded a development of child protection in Thai laws.

41. The Act on Promotion of National Child and Youth Development, B.E. 2550 (2007), Section 7 provides that every child and youth shall enjoy equal rights to birth registration, development, acceptance, protection and participation, as provided under this Act or other

relevant laws, without discrimination.¹³ And Thailand has, as of now, already withdrawn its Resolution to Article 7 on the Convention on the Rights of the Child, effective from 13th December 2010.

42. In regard to children who are from poor and deprived families, including those are affected by unrest situation or residing in remote areas with inaccessibility to education, His Majesty the King has established the Raja Prajanukrau Foundation under His Royal Patronage to provide assistance and care for these disadvantaged children, by offering scholarships and supporting them and their families with food and other basic necessities.

43. As part of the project to honour His Majesty the King on the occasion of His Birthday Anniversary on 5th December of each year, the Government regularly conducts a survey in view of granting legal status to the aforementioned groups of persons. The project activities including opening opportunities for late or overdue birth registration, adding names in house registration, and solving the problem for those persons whose names appear in the Central House Registration. And, as a proactive operation pertaining to birth registration specifically of persons under special circumstances such as in the ethnic conflict areas with hardships for accessibility to the registrar offices. The Ministry of Public Health has occasionally organized trainings for local midwives with scaling-up of their operational standards and services. All trained midwives would be authorized to certify births with certificate of delivery, while all obtained certificates shall be subsequently granted their birth registration certificates once from the registrar offices. In addition, the local community leaders, official appointed by the District Office, shall be able to verify births of children in their communities, in order to make sure that there would be none of statelessness in the long run.

Right to Education :

44. Thailand announced the National Education Act for the first time in 1999 with its amendments in 2002 and 2010, in alignment with its 1997 Constitution. This new law has brought about a number of changes both in ideas and practices as: (i) different sectors of civil society are allowed to organize education on their own, for example, home-school, community-owned school, and school set up by NGOs; (ii) educational decentralization; (iii) State's responsibility for free, equal, area-coverage, and quality education; (iv) recognition of all forms of education; (v) an integration of local and core curricula; (vi) adjustment of educational administrative structure; (vii) an establishment of educational quality assurance; (viii) requirement of teaching professional license; and (ix) setting up of several funds for educational promotion.

45. However, much of these new aspects have not been implemented. Basic education is not free of charge throughout the country. In addition, it took 15 years for the Ministry of Education (MoE) to pass the ministerial regulations allowing for community organized school since the enactment of the National Education Act in 1997.

46. In 2012, MoE started to launch its policy towards small school discontinuity and/or regrouping. According to the Basic Education Committee, there were 5,962 schools with less

¹³ Cooperation between the Department of Public Administration and the civil society to create clarity in the registration of births of persons who fled fighting from Myanmar in 9 shelter areas along border of Thailand and Myanmar, as can be seen from the Ministry of Interior's Memorandum dated 8th October 2009 to forge understanding about the issue of registering births and deaths for non-Thai persons who belong to the group that fled fighting from Myanmar and residing in the temporary shelters.

than 60 students.¹⁴ Supporters of this policy believe that regrouping of small schools would improve the quality of rural education to the same level with schools in urban sector with more efficiency and financially save. On the contrary, the people who oppose this policy of small school discontinuity and regrouping are concerned with the cost of traveling from home to school that the parents have to bear and the road accident risk for the students. Moreover, the opposition group points out that the students in several small schools perform much better than the medium-size and big schools. One of small school Directors said that small schools fall short of support in terms of personnel, budget as well as equipments, but the students' performance is up to the standard. The Alternative Education Council, with its members representing different groups of alternative education mostly from non-government sector, seriously criticizes such policy. First, the root-cause of the problem is because of inefficient administration when the government pays so much attention to education in urban areas while rural as well as remote area education has been overlooked and small schools are used as the scapegoat of this administrative inefficiency.¹⁵ Second, the policy on school discontinuity and regrouping is the breach of law of National Constitution 2007, article 49 and the National Education Act 1999, article 10 stating that it is the government's responsibility to provide basic education to cover all areas, but the policy is to take away the small schools from mostly marginal sector of communities.¹⁶

47. Thus, the Alternative Education Council and Community School Network offer its recommendations: (i) MoE is urged to decentralize education provision to local organizations; and (ii) MoE has to return the school back to the community and to discard the policy of school dissolution and regrouping.¹⁷ In fact, the government's policy on small school closure has produced positive effect unintentionally. A growing number of communities came to the second thought and felt that it was not right for the government to take away the schools their forefathers built long time ago. These communities are fighting to reclaim the schools back to manage on their own. There are success cases of community-owned schools where leaders, knowledgeable persons, and parents work well with school staff.¹⁸ Students who were sent to school elsewhere are coming back to their community school.

48. On 30 May 2013, about 200 parents and representatives from alternative education led by the Association of Alternative Education Council, Club of Community School Network including indigenous-responsive groups¹⁹ marched to the entrance of MoE in order to follow up the Minister's promise to set up a joint committee to find the proper solution for small schools and in the meanwhile to stop implementing small school closure in the country. The group offered 4 recommendations: (i) The State shall abandon educational monopoly, but encourage multi-stakeholders' engagement instead and at the same time, confines the State's roles to overseeing and follow-up; (ii) Unlock the core curriculum to be more flexible as well as to be responsive to the locality; (iii) Unlock the single standard measurement of school quality assurance, but to make it more sensitive to the different local contexts; and (iv) Unlock the hindrance to alternative education by setting up the Educational Development Institute as stated in Article 12 of the National Education Act of 1999²⁰.

¹⁴ www.naewna.com

¹⁵ Manager Online, 9 May 2013.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Potjana Kritkraiwan, *Roy Mue Ruam, Ruam Jai Pan, Fun Pen Jing*, ed., ActionAid Thailand, 2915 (in Thai).

¹⁹ These groups then were formed as the Indigenous Education Network (IEN) in December 2013.

²⁰ ASTV, Manager Online, 30 May 2013.

49. There was a response delivered with confirmation from the Secretary General of the Office of Basic Education Commission (OBEC) that throughout 2014, there would be no small school closure at all, except for a few schools without a student. In addition, the education Minister appointed the Committee of Alternative Education, Small School, and Community School in order to provide policy recommendations to MoE. However, on the 24 February 2015, the Association of Thai Alternative Education declared its withdrawal from the Committee of Alternative Education, Small School, and Community School with the blame on OBEC for no participatory attitude in its work and decision making. In addition, OBEC was accused of making no progress in terms of people's participation in education²¹.

50. And pertaining to the 2010 National Language Policy with efforts made to the drafting process of the national strategic plan, the structure of Strategic Plan following the National Language Policy has been designed to cover 6 major policies²², including local language policy covering Thai and other linguistic families. This Policy is in consonant with the UNESCO principles in relation to language, with the supports for: (i) mother tongue instruction as a means of improving educational quality by building upon the knowledge and experience of the learners and teachers; (ii) bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies; and (iii) language as an essential component of inter-cultural education in order to encourage understanding between different population groups and ensure respect for fundamental rights.²³ The implication of this National Language Policy, when it is announced, is to include mother tongue instruction into the school system as well as to promote Bilingual and/or Multilingual Education in school.

51. Education in Thailand is undergoing drastic changes to improve quality as well as educational opportunity, to achieve greater efficiency, and to create high performance manpower and competitiveness. And due to the assessment on right to education being addressed in the Concluding observations on the combined initial and second periodic reports of Thailand, adopted by the Committee on Economic, Social and Cultural Rights at its fifty-fifth session (1-19 June 2015), the Committee considered the initial and second periodic reports of Thailand on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/THA/1-2) at its 28th to 30th meetings (E/C.12/2015/SR.28, 29 and 30) held on 4 and 5 June 2015, and adopted, at its 50th meeting held on 19 June 2015.

52. The Committee notes the adoption in 2009 of the 15-year free education programme for all. However, the Committee is concerned at the overall low quality of education, the significant upper secondary school dropout rates and remaining obstacles in access to education for certain groups, including children with disabilities, ethnic groups and children living in remote rural areas, as well as for stateless children, children of asylum-seekers, refugees and migrants. The Committee is also concerned that despite pilot projects being carried out, access to bi-lingual education for ethnic groups remains limited in the State party (Arts. 13 and 14 of the ICESCR).

53. The Committee recommends that the State party step up its efforts to ensure that all children under its jurisdiction effectively have access to free basic primary education. The State party should also address the causes for school dropout and improve the overall quality of education, including by ensuring that teachers are well-trained and fully qualified. Moreover,

²¹ thaipublica.org/2015/02/education-crisis-1/

²² www.fatonline.com/index.php/news/detail/1055

²³ UNESCO, Education in a Multilingual World, UNESCO position paper, Place de Fontenoy, Paris, 2003.

the Committee encourages the State party to increase its efforts to provide bi-lingual education from the early years and continue to facilitate, including through allocating necessary resources, community-based education programmes in line with the cultures of ethnic groups.

Contact and Cooperation across borders :

54. The 2007 Constitution and 2014 Interim Constitution of the Kingdom of Thailand provide the protection of the rights of all people, regardless their holding nationalities, to enjoy liberty to profess a religion and to exercise religious rites according to their beliefs. This is considered a basic right of a human person, which is complete and absolute. Any act which is derogatory to such right and liberty shall not be allowed. This causes the currently ongoing projects on learning exchange to create platforms for meeting and discussion among diversified ethnic groups are promoted under the initiatives of state authorities, particularly the Ministry of Interior, Ministry of Culture, Ministry of Human Security and Social Development and some public organizations with aims to forge understanding, acceptance and recognition of the value of identities, cultures and ways of life of local communities, as well as to establish mutual trust, which will contribute to the cooperation in addressing the problems in order to bring peace and happiness back to their communities. There is also financial support provided to local networks and folk communities in order to strengthen their capacities to become strong local institutions and local learning centers for the communities. These institutions are the value and pride of tribal and indigenous communities and constitute the local wisdom well worth the serious and continuous promotion and support. The Indigenous Festival is annually organized with commemoration for the rights of indigenous peoples on the World Indigenous Peoples Day - date of 9th August in each year.

PART III. MAIN CONCLUSION AND RECOMMENDATIONS

55. In conclusion, during the ruling of Government, appointed by the NCPO, as well as the promulgation of Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) and the Constitutional Drafting Process, the Government has made vigorous efforts to promote and protect human rights with undertaking and maintaining of the Legal State and Rule of Law. But for the sake of restoration of peace and order during controlling of political conflict with jeopardous undertows, some specific laws with limit and deprivation of rights and liberty are also being used. These all shall be used with appropriateness and proportionality, corresponding to specific situations incurred. In the meantime, the rooms for people's participation shall be provided with more hearings of public opinions, particularly those individuals and communities affected by the State's policy implementation.

56. And for the challenges or problems in Thailand particularly for the rights of tribal and indigenous peoples acquired from all reports and findings, the root causes of their rights infringement are: (i) the failure to enforce the existing laws; (ii) the transformation of policies to implementation without periodic monitoring and evaluating process; (iii) the discrimination due to prejudices and with public ignorance and; (iv) the failure of the implementation of the government's policies, particularly for providing of maximum available resources with quality and relevant actions.

57. The recommendations within the first Universal Periodic Review (UPR) cycle on October 2011, Thailand received 183 recommendations, of which the Government accepted 134 and noted 49. 48 UN Member States formulated recommendations to Thailand on a range of human rights issues, including the 10 most addressed issues, as: (i) the non-ratification of international

instruments; (ii) justice system; (iii) rights of the child; (iv) women's rights; (v) freedom of opinion and expression; (vi) migration; (vii) death penalty; (viii) human trafficking; (ix) labour rights; and (x) refugees. In addition in its 2014 Mid-term Report²⁴, the Ministry of Foreign Affairs of Thailand identified challenges and indicated that there is a “need of awareness raising 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.”

58. Under the UPR recommendations and all relevant human rights monitoring reports, including the ICERD, the reference to the problems of human rights violations of tribal and indigenous peoples particularly in border provinces and forest areas including reports citing unlawful detention, excessive use of force by the authorities, incidents of torture and enforced disappearances of tribal and indigenous human rights defenders. The Thai Government is recommended to consider terminating the enactment of special security laws in the region, 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.

59. The delay in the granting of nationality and legal status to members of tribal and indigenous peoples residing in the country and its effects on their basic rights are also being current concerns with the obstacles faced by some ethnic children in receiving education and discriminatory practices by some state authorities. The Government shall accelerate the process of granting nationality/legal status, take actions against corrupt officials, make adjustments in budget appropriation to enable educational institutions to admit children with status problems, enhance knowledge and understanding of state authorities responsible for enforcement of laws that may affect the basic rights of tribal and indigenous peoples and undertaking review on their political rights.

60. In some cases with unavoidable mingling of tribal and indigenous peoples with irregular migrants due to the confusing of status verification, migrants whom experienced difficulties in accessing the nationality identification process, resulting in their exclusion from protection under the existing laws shall be addressed, with more or least solutions for lower wages, dangerous working conditions, and long working hours compounded with insufficient periods of rest or holidays, and exposure to exploitation by officials. The Government shall implement measures to ensure that all irregular migrants, especially those from neighbouring countries are able to access the nationality identification process and receive legal protection. The labour inspection procedures shall be reviewed to effectively prevent human trafficking for migrant exploitation.

61. In order to streamlining all relevant tribal and indigenous rights-responsive standards and statutes, ratified or acceded by Thai Government, the harmonization of domestic laws with those provisions shall be taken into account with enactment of relevant laws and regulations. All government agencies and state apparatuses are requested to bear in mind human rights principles and human dignity in performing their duties.

62. At the end, the NHRCT shall take its active and meaningful roles on monitoring and evaluating with carrying-out its human rights protection duties while considering the interest

²⁴ Ministry of Foreign Affairs of Thailand (2014), Thailand National Mid-Term Report, <www.upr-info.org/sites/default/files/document/thailand/session_12_-_october_2011/thailand_mid-term_report_2014.pdf> 10 December 2015)

of the public as the most important of its duties. Its work shall be firmly undertaken to be in line with international human rights standards. It shall pledge, with willingness, that it will continually strengthen networks of people, and will work closely with key stakeholders in all sectors in order to achieve its ultimate goal of strengthening society by institutionalizing human rights culture, particularly with strong discourse on rights of tribal and indigenous peoples.

