

## Universal Periodic Review (UPR)

### UNCT, Thailand Submission

#### I. Background and Framework

##### A. Scope of international obligations

1. Thailand has a long-standing commitment to the promotion and protection of human rights. In 1948 it was one of the first Asian countries to endorse the Universal Declaration of Human Rights and to date it has ratified seven of the nine core international human rights treaties, including the Convention on the Rights of Persons with Disabilities (CPRD) in 2008. The UNCT welcomes Thailand's recent withdrawal of its reservation to Article 7 of the Convention on the Rights of the Child (birth registration and nationality) and its traditional openness to the protection needs of thousands of cross-border displaced and refugee children and persons.

2. Thailand is also signatory to the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954) and its first Protocol as well as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972). Thailand has also ratified fifteen international labour Conventions.

3. To maintain its overall commitments, the UNCT recommends that Thailand also ratify the following treaties: the International Convention on the Rights of All Migrant Workers and Members of Their Families; the International Convention on the Protection of All Persons from Enforced Disappearance; the Convention relating to the Status of Refugees and its 1967 Protocol; and the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

##### B. Cooperation with international human rights mechanisms

4. Thailand has regularly reported on the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), it has reported once to the International Covenant on Civil and Political Rights (ICCPR) and is due to report on International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Thailand does not have any standing invitations to any of the special procedures mandates.

5. Thailand is currently chairing the Human Rights Council (HRC, 2010-13) and has made a number of voluntary pledges and commitments on human rights that have been welcomed by various countries and civil society organizations. These include a commitment to "*engage constructively and work closely with HRC Special Procedures.*"<sup>1</sup> As chair of the HRC, Thailand has taken the lead in promoting reform of the Council.

6. The UNCT recommends that Thailand submit all overdue reports to the Treaty Bodies and ILO supervisory bodies.

##### C. Constitutional and legislative framework

7. The rights and liberties of people in Thailand are guaranteed by the third chapter of the 2007 Constitution. Challenges remain in timely enactment of enabling laws and mechanisms to ensure that everybody can enjoy those rights.

##### D. Institutional and human rights structure

8. Thailand has established various mechanisms to protect human rights, including an independent National Human Rights Commission (NHRC); a National Committee on Human Rights

Policy and Plan of Action; the Parliamentary Committee on Justice and Human Rights; the Parliamentary Committee on Vulnerable Groups; the Rights and Liberties Protection Department under the Ministry of Justice; the Office of International Peoples' Rights Protection under the Office of the Attorney General; the Administrative Court; the Constitutional Court; and the Ombudsman.

9. Thailand's NHRC was established under Section 199 and 200 of the 1997 Constitution as a mechanism to guarantee respect for human rights. The 2007 Constitution confirmed the importance of this institution and further empowered it to take cases directly to court, in its own name and on behalf of those whose rights have been violated. The NHRC needs to be further strengthened in both its internal capacity and its interaction with civil society.

10. The UNCT recommends that the selection process of the NHRC's commissioners be reviewed to increase transparency and allow wider participation of the civil society. The overall capacity of the Commission also needs to be strengthened.

#### **E. Policy measures**

11. The country has established many policies, plans and programmes to support the promotion and protection of human rights, including the Millennium Development Goals (MDGs). Issues of disparities and injustice are clearly addressed under the 11<sup>th</sup> National Economic and Social Development Plan. Key targets of the plan include: "Thai society is more peaceful and has good governance" and "all citizens are under social protection". One of the six strategies to realize this is to "promote a just society", with specific reference to social inclusion, people's empowerment to participate in social, economic and political life, and social cohesion.

### **II. Promotion and protection of human rights on the ground: achievements, best practices, challenges and constraints**

#### **A. Administration of justice, including impunity, and the rule of law**

12. Thailand has undertaken an ambitious process of improving the administration of justice. In this context, the UN is supporting a legal mapping to identify gaps that can affect the access to justice of the most vulnerable groups.

13. As in other contexts, challenges to the administration of justice in Thailand are also linked to potential impunity for military, police and security personnel. This has been highlighted by the absence of successful prosecutions of state officials in a number of high profile incidents, such as the deaths of 78 ethnic Malay Muslims in the Tak Bai incident of October 25, 2004; the disappearance of human rights lawyer Somchai Neelapaijit on 12 March 2004; the 2,819 extrajudicial killings that accompanied the 2003 "war on drugs"; and allegations in 2008 and 2009 that the Thai navy forced boats carrying Rohingya people from Myanmar and Bangladesh back to international waters, which resulted in casualties.

14. The UNCT recognizes the need for the Royal Thai Government (RTG) to guarantee peace, security and public order in view of the difficult political situation, and the ongoing violence in the Southern border provinces. It should however be noted that security legislation such as the Internal Security Act (ISA), Martial Law and the Emergency Decree have inevitably negative implications on the rule of law, including due process guarantees, in particular with regard to the Southern border provinces (where all three pieces of legislation are currently in force).

15. Thailand should be commended for initiating a reconciliation process soon after the large-scale demonstrations and subsequent clashes between the United Front for Democracy against Dictatorship (UDD) and the Government in April/May 2010, during which 92 people were killed

and almost 2,000 injured. A Truth and National Reconciliation Commission (TRC) has been established and investigations into the state's handling of the protests are ongoing. The independence and transparency of the investigation process is crucial for the findings to be regarded as legitimate and credible by all sides. The UN is supporting the work of the TRC in line with agencies' mandates and expertise.

16. The UNCT recommends that Thailand initiate an independent review of the administration of justice with regard to cases of alleged serious human rights violations involving military, police or security personnel, and that Thailand review security laws to ensure conformity with international human rights standards and obligations. The UNCT further recommends that the criminal justice system be reviewed to be more gender-sensitive and child-friendly, and that psycho-social protection and legal aid made available to all.

## **B. Freedom of expression**

17. Thailand is generally an open society with a vibrant civil society and media. However, the UNCT is concerned about continued restrictions on freedom of expression including the closing down of anti-government oriented media and websites; arrests of persons for the expression of opinions; and, in spite of government efforts to moderate it, strict enforcement of *lèse-majesté* laws.<sup>1</sup> Over the last few years, Thai authorities have reportedly closed down more than 100,000 websites for allegedly promoting anti-monarchy sentiments and posing threats to national security and a number of individuals have received lengthy prison sentences for breaching this law.

18. The UNCT recommends the repeal of criminal laws in favour of appropriate civil laws regarding freedom of expression, in accordance with relevant international human rights standards.

## **C. Women's human rights**

19. Thailand has made progress in fostering gender equality in recent years. This has included policy reform and the ratification of international conventions. Residual discrimination against women in civil, cultural, economic, political and social areas is mainly due to, as noted by the CEDAW Committee, strong stereotypical attitudes about the roles and responsibilities of women and men in the family and in society that undermine women's status. Women's political participation remains low at all levels, including in the House of Representatives, the Senate, local government councils as well as at international level. Thailand set ambitious MDG+ targets in this regard to be reached by 2006. However these targets have not yet been achieved. The CEDAW Committee has urged Thailand to adopt and implement temporary special measures to increase the number of women in decision-making positions.

20. Abortion is legal in Thailand only if performed by a physician for the sake of the woman's health or for a pregnancy due to a sexual crime. Access to safe abortion is therefore restricted, increasing the risk of women's lives from unsafe abortion. Unwanted pregnancies persist with a rising trend among teenage girls. The adolescent birth rate in Thailand has been increasing from 31.1 to 50.1 births per 1,000 women aged 15-19 years from 2000 to 2009.<sup>2</sup> Due to the physical and psychological trauma caused by unwanted pregnancy, adolescent mothers are unable to exercise and enjoy their equal rights to education, work and other economic, social and cultural rights.

21. The RTG adopted the Act on Protection of Domestic Violence Victims in December 2007. This was an important step to address, in particular, violence against women and girls. Domestic violence is under-reported because it is often considered a private matter and many women do not report cases due to shame, stigma and fear of re-victimization during legal proceedings. Effective monitoring mechanisms will be in place only when clear operational guidelines for

various agencies accountable for the implementation of the Act will be enacted and the capacities of professional staff amongst the protection and enforcement agencies enhanced. There is also a lack of comprehensive understanding and coordination among law enforcers and other implementing agencies. The UNCT has been working with the RTG to promote multi-sectoral coordination for effective implementation of the Act and to enhance victim and witness protection systems.

22. The upsurge in violence in Southern Thailand has also increased women's vulnerability to discrimination, abuse and violence<sup>3</sup>. Overall violence and insecurity in the region negatively impacts on women's and girls' access to social services. Although the regulation on government relief funds to compensate the victims of violence has been amended to allow women to access the fund, many women have limited access to matrimonial property after the death of husbands in accordance with the Muslim personal law.

23. The UNCT recommends the enactment of the Reproductive Health Protection Bill to ensure equal protection of the reproductive rights and health of women, especially among vulnerable populations. The UNCT also recommends that free legal aid and psycho-social protection to survivors is enhanced and the criminal justice system be more gender-sensitive and child-friendly to avoid re-victimization of women and children survivors of violence.

#### **D. Children's rights**

24. Thailand has increased the resources allocated to promote the wellbeing of children in line with its economic growth. However, investments in child protection have not kept pace with progress in other areas such as health and education. Despite ongoing efforts to develop laws, policies, regulations and services to protect children from violence, children across the country, particularly the children of ethnic and religious minorities, of migrant families and of the population who remain below the poverty line continue to face violations, such as sexual exploitation and abuse, detention as a first response, child labour, trafficking, corporal punishment, unnecessary institutionalization and violence in their homes, schools and community.

25. Currently, responsibilities are spread across a multitude of agencies and services delivered by local authorities and non-state providers, making coordination between sectors and levels difficult. As such, government responses to child protection issues need to be further strengthened and better coordinated. More efforts are also needed to ensure that children are able to continue in a family environment. Many children who suffer from domestic violence are currently taken away from their families and placed in an institution as a solution. More could be done to identify and prosecute perpetrators. Limited investment by the RTG in the prevention of abuse, violence, neglect and exploitation perpetuates a cycle of violence against children.

26. Universal birth registration codified by the 2008 Civil Registration Act is a significant achievement. However, there are implementation challenges in some parts of the country, with an estimated 40,000 newborn children not registered each year. This means that as many as 15% of births remain unregistered. Revised arrangements could be put in place to ensure that all newborn children are registered at birth, including through the issuance of birth certificates through the hospital system.

27. The UNCT commends Thailand for its demonstrated commitment to realizing the right to education for all children through various laws and regulations. In particular, the RTG should be commended for the launch in 2009 of a 15-year free education policy to enable children in Thailand to have equal access to quality education. However, translating this policy into reality remains a challenge at all levels. Only about 60 per cent of children attend some form of pre-primary education<sup>4</sup>. According to the Office of National Education Standards and Quality Assurance's report on the evaluation of early childhood centres, only 34 per cent meet the

minimum standard of good early childhood care provision<sup>5</sup>. The 2010 Global Education For All (EFA) monitoring report also indicates that about 620,000 children aged 6 to 11 years are out of school<sup>6</sup>. Low retention and transition rates indicate that almost half of the students do not finish the 12-year basic education cycle.<sup>7</sup> Furthermore, ensuring the right to an education for children with disabilities needs further emphasis. In principle, Government regulations allow migrant and/or stateless children to go to school, but in reality the education system does not provide adequate support to schools to this end.

28. In the Southern provinces ongoing violence is taking a high toll on children, in spite of the RTG's efforts to protect them. Children have been subject to the application of the Martial Law and Emergency Decree due to the special legal mechanism under the security laws and the absence of special regulations for juveniles. Physical abuse of children and psychological damage as a result of searches, home visits, questioning, arrests and detention have been reported. Children affected include those suspected of participating in or supporting any act that constitutes an emergency situation; and those whose family members have been suspected of participating in or supporting any aforementioned act.

29. The UNCT notes that there has been a decline in attacks against schools in 2010 as well as against students and teachers in the three Southern provinces. Military presence in schools, although being addressed by the government, remains a concern as schools should be 'zones of peace'. In addition, the well-being of children orphaned by the violence should be effectively monitored. There are reported cases of the cash assistance entitlement of children orphaned by the violence being denied if their father was involved in insurgent activity.

30. The UNCT recommends that security laws be reviewed to ensure their conformity with internationally accepted juvenile justice standards and the Convention on the Rights of the Child, that civil society organizations be part of the review process and that effective monitoring mechanisms established.

#### **E. Human rights at Work**

31. In December 2010, Thailand passed the Occupational Safety, Health and Environment Act. The Act is Thailand's first ever comprehensive legal framework governing the prevention of accidents, injuries and diseases at work.

32. In the same month, the RTG also announced that the Office of the Civil Service Commission had given green light to a new law allowing civil servants to form unions. The draft royal decree would then be submitted to the Cabinet for endorsement before promulgation. However, further steps should be taken to freedom of association and the right to organise. Migrant workers cannot set up trade unions of their own and they cannot stand for trade union office in organisations representing both Thai and migrant workers.

33. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) referred to the need to prioritize employment generation within the framework of a coherent economic and social policy. It further highlighted the need for specific initiatives with respect to vulnerable groups, including people with disabilities and migrant workers, and the need to implement appropriate measures to prevent abuse in the recruitment and exploitation of migrant workers in Thailand.

34. The Labour Relations Act imposes penal sanctions involving compulsory labour for participating in certain strikes and as a means of labour discipline in violation of the Abolition of Forced Labour Convention No. 105 to which Thailand is signatory. The State Employees Labour Relations Act (SELRA) prohibits state enterprise unions from affiliating with private sector unions and imposes a blanket ban on strike action in state enterprises.

## **F. HIV/AIDS and human rights**

35. Thailand has made significant progress in the fight against HIV/AIDS, including advances in the provision of antiretroviral treatment (ART) and increased access to services for the prevention of mother-to-child transmission of HIV. The incidence rate of new HIV infections fell by more than 25% between 2001 and 2009. Also 80% of the people in need have access to ART and 97% of pregnant women living with HIV have access to services to prevent mother-to-child transmission of HIV.<sup>8</sup> Thailand has also made brave steps by issuing compulsory licenses for AIDS drugs; these were re-extended in August 2010.<sup>9</sup>

36. The UNCT notes Thailand's commitment in February 2011 to attain the "Three Zeros" goal of UNAIDS, namely, Zero new HIV infections, Zero Discrimination, and Zero AIDS related Deaths. The UNCT underlines the key importance of an open and supportive environment with respect for human rights in reducing vulnerability to HIV/AIDS. Discrimination against and stigmatization of vulnerable groups such as injecting drug users, sex workers, men who have sex with men, and transgender people drives these communities underground. This inhibits the ability to reach these populations with prevention effort, and thus increase their vulnerability to HIV/AIDS.

37. The UNCT is therefore concerned about recent reports of a new wave of compulsory drug treatment for more than 30,000 people in Thailand. The risk of possible round-ups of people who use drugs from the community is that they will go underground and away from life-saving services, such as the HIV prevention services that are made available in Thailand. About 30-50% of the people who inject drugs in Thailand have HIV/AIDS.<sup>10</sup> Such an outcome would represent a major setback for the operationalization of the National Harm Reduction Policy recently approved by the RTG. There is clear evidence that voluntary and rights-based treatment for drug use and drug dependence is the most effective approach to prevent HIV transmission among drug users.

38. The UNCT recommends that drug treatment and rehabilitation be undertaken in the community as a first option, with the informed consent of the individual who is assessed as being drug dependent. In addition appropriate legal and medical processes should be followed.

## **G. Migrants' rights**

39. Thailand hosts over two million migrant workers from neighbouring countries. Significant steps have been taken to regularize their position and to access social services. However, challenges in ensuring the promotion and protection of migrants' rights are still significant. Irregular migrant workers can be subject to deception and human trafficking by means of debt bondage and physical abuse, particularly in fisheries, agriculture and as domestic helpers, as well as to expulsions. Nationality verification is a positive step towards ensuring documentation and regularization of their status. However, the current Nationality Verification Process is limited to migrant workers, thus leaving out families of migrant workers and their children. As such, this needs to be more inclusive and non-discriminatory.

40. Further steps could be taken to ensure migrant workers' rights to access social services. The Ministry of Public Health (MOPH)'s budget limitations and existing language barriers limit the ability of migrants and their families to seek and receive health support in Thai hospitals. Many children of migrants encounter challenges in accessing formal education, including children in Immigration Detention Centres (IDCs) who do not have access to proper facilities and formal education. Access to justice for migrant workers is limited and available legal aid is not accessible to the majority of migrant workers due to language barriers. There are numerous documented cases of violence against migrant women workers in and outside the workplace. Surveys show that women who constitute the majority in the informal (especially domestic) sector are very vulnerable to violations. The cases are seriously under-reported due to the fear of deportation.

41. The UNCT recommends reviewing the National Verification Process of Myanmar migrants by making it simpler, more affordable and transparent.

#### **H. Refugees and asylum seekers**

42. The UNCT commends Thailand for receiving refugees and displaced persons from neighbouring countries over the past several decades and continuing to assist around 100,000 displaced persons along its western border. However, asylum-seekers are sometimes detained and the UNCT encourages the adoption of alternatives to detention for the most vulnerable groups, who could best be placed under the care, and regulated reporting, of an appropriate government agency.

43. The UNCT recommends that Thailand refrain from the *refoulement* of asylum-seekers, refugees, migrants in refugee-like situations, asylum-seeking or refugee victims of trafficking, and asylum-seeking or refugee victims of smuggling, to places where their lives or freedom would be threatened. Furthermore, the UNCT urges Thailand to follow its public commitment in 2009 to stop forcing of boats carrying Rohingya into international waters, particularly in light of recent boat arrivals in 2011.

#### **I. Statelessness**

44. The UNCT welcomes the 2008 amendment to the Nationality Act. At the same time, the UNCT notes that full safeguards are not provided in terms of the prevention of statelessness. There are gaps in the acquisition of nationality under the Act: a father can pass on his Thai nationality to his child only if he is either married to the child's mother or has registered the child as his. There are also other gaps in the Act that could lead to statelessness or a heightened risk of statelessness. Drafting necessary regulations to ensure the effective implementation of the Act is therefore encouraged as well as efforts to identify and assess the number of stateless people in accordance with international standards in order to better assist them.

### **III. Key national priorities, initiatives and commitments**

45. The UNCT welcomes Thailand's commitments in the following areas, which could contribute to enhancing the promotion and protection of human rights in the country: 1) strengthening the implementation of the National Action Plan on Human Rights and the effectiveness of its monitoring mechanism and follow-up processes; 2) continuing active engagement and dialogue with civil society and encouraging public participation to enhance human rights and a democratic environment; 3) expediting efforts to the withdrawal of its reservations to CRC, CEDAW and ICCPR; 4) pursuing efforts to ratify the International Convention for the Protection of All Persons from Enforced Disappearance as well as relevant ILO Conventions, in particular the Convention No. 87 (Freedom of Association and Protection of the Right to Organize Convention), the Convention No. 98 (Right to Organize and Collective Bargaining Convention) and the Convention No. 111 (Discrimination [Employment and Occupation] Convention); and 5) cooperating closely with UN treaty bodies as well as intensifying efforts to implement the treaty bodies' recommendations and ensure the submission of the national reports under the human rights instruments to which Thailand is a party within the scheduled timeline.<sup>11</sup>

46. The UNCT will collaborate on the implementation of the 11<sup>th</sup> National Economic and Social Development plan under the new United Nations Partnership Framework (UNPAF 2012-16). Joint partnerships have been designed to work with government and non-government partners in the following relevant areas:

- Human rights and access to justice - to support Thailand in effectively implementing the recommendations of international human rights mechanisms, including the UPR, particularly in the areas of gender equality and access to justice of vulnerable people. National capacities will be strengthened to this extent and international experiences and best-practices shared.
- Social protection - to enhance Thailand's capacity in establishing a Welfare Society by 2017 and hence providing social protection to all, especially the most vulnerable groups. Analytical studies and policy options will be elaborated based on evidence and also experiences from other countries.
- Strategic information – to support national information systems able to inform policy development for disparities reduction. Support will be provided to the RTG's goal of establishing a unified, harmonized and well-coordinated national statistical information system that can provide consistent and reliable data on vulnerabilities. Capacities will be developed to critically use this information for policies targeted to effectively reduce disparities in the country.

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<sup>1</sup> Thailand's Human Rights Commitments and Pledges made on the occasion of the Human Rights Council Election 2010.

<sup>2</sup> MOPH's Annual Health Statistics 2009 [http://bps.ops.moph.go.th/Healthinformation/สถิติ52/2.1.2\\_52.pdf](http://bps.ops.moph.go.th/Healthinformation/สถิติ52/2.1.2_52.pdf)

<sup>3</sup> Angkhana Neelapaijit, "Roles and Challenges for Muslim Women in the Restive Southern Border Provinces of Thailand ", May 2010.

<sup>4</sup> Cheangkoon, Vitayakorn, Thailand Education Report 2008/2009: Role of Education for Economic and Social Development, Education Information Centre, Bangkok, 2010. The number of out of school for early childhood children is 1,127,629 children.

<sup>5</sup> Ibid

<sup>6</sup> UNESCO (2010) EFA global monitoring report 2010. Statistic Office: Toronto

<sup>7</sup> OEC (2010) Educational Statistic in Thailand Educational Statistic Centre, OEC: Bangkok

<sup>8</sup> UNAIDS Global Report 2010

<sup>9</sup> AVERTing HIV and AIDS (an international HIV and AIDS charity NGO), The history of HIV and AIDS in Thailand <<http://www.avert.org/thailand-aids-hiv.htm>>

<sup>10</sup> UNAIDS Global Report 2010

<sup>11</sup> Thailand's Human Rights Commitments and Pledges made on the occasion of the Human Rights Council Election 2010.