

**A Universal Periodic Review of Thailand**  
**For the 12<sup>th</sup> Session of Universal Periodic Review on October 2-14, 2011**

**Jointly Submitted by**  
**Civil Society and Human Rights Coalition of Thailand (CHRC – Thailand)**  
March 14, 2011  
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**Introduction**

1. The newly formed “**Civil Society and Human Rights Coalition of Thailand (CHRC)**” is a coalition of NGOs, Civil Society Groups from the Royal Kingdom of Thailand. The CHRC respectfully sets forth a joint submission for the Universal Periodic Review process for Thailand. The CHRC monitor human rights situation in Thailand on a regular basis.
2. More than 300 participants from 50 community groups/ organizations covering all key target groups and a broad geographical coverage participated in the preparing of this submission. The list of groups and organizations in the CHRC are in Attachment A.

**Process**

3. The consultation and drafting process started in early December 2009. A series of workshops were conducted in the region from June 2010 onward, involving human rights advocates, lawyers, community leaders, development NGOs, social workers, academic, journalists, professional and concerned individuals.

**Background on Thailand Democracy, Human Rights and Development in brief**

4. The Royal Thai Government (RTG) has ratified and acceded to 7 Human Rights instruments: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Eradication of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention on the Eradication of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of Persons with Disabilities (CRPD). Thailand signed the Rome Statute of International Criminal Court (ICC) in 2000 but has since taken no action to ratify the treaty. Many domestic laws in Thailand, however, have not been amended to reflect the obligations set out in the international human rights treaties. For example, there is no definition of torture or crime of torture in Thai criminal law. Many provisions under the *Martial Law Act* and the *Emergency Decree* do not follow international standards of fair trial.
5. The 1997 Constitution was the first constitution to include human rights provisions, albeit limited, for individuals. After the military coup d’etat in September 2006, the 1997 constitution was abolished and replaced by an interim one in 2006 and then the 2007 Constitution. The 2007 Constitution seems better in enumerating human rights but still remains problematic on several points.
6. Since the beginning, Thailand has not been successful in submitting most periodic reports to relevant treaty bodies on time from. Only the reports to CEDAW, CRC and initial report on ICCPR had been submitted.
7. A report to the Human Rights Committee (ICCPR) was submitted in July 2006. However, the General Comments and Recommendations made by the Human Rights Committee at the 2307 session (Document CCPR/C/SR/2293-2307 of July 28, 2006) have not been implemented by the Government.
8. Although UDHR has been well perceived by Thai national laws, some provisions of the international human rights treaties have not yet been reflected in domestic laws. This includes the questions on torture, arbitrary arrest and detention, rights of the detainees, extra-judicial execution, and all forms of discrimination.
9. Thailand has not yet invited the special procedural mandate holders such as the Special Rapporteur or Human Rights Working Group to visit Thailand. Only the Special Representative of the Secretary General on the Human Rights Defenders, Ms. Hina Jilani, was able to visit Thailand in May 2003, but did not receive enough attention from the Government. Ms. Jilani’s report was submitted to the Commission on Human Rights in March 2004 whereas the Government ignored it.

## **Human Rights Promotion and Protection on the Ground**

10. The 1997-Constitution provided a broader definition for Human Rights for the first time. However, there were problems in guarantee such rights. The 2006-coup d'état replaced it with the 2007-Constitution. Though Human Rights is better defined, many obstacles remain.

11. The Second National Human Rights Action Plan (NHRAP) covering 2009-2013 was adopted by the cabinet in October 2009. The Prime Minister Abhisit Vejjajiva launched the National Action Plan on July 19, 2010 to engage all ministerial departments in this campaign. However, it is not clear how the Action Plan will be enacted and implemented accordingly.

12. The Government submitted its Pledge and Commitment for the candidacy of the Human Rights Council since February 2010. After the successful election on May 12, 2010, the Government joined the Human Rights Council. This Human Rights initiative is a progressive move.

## **Basic Structure and Mechanism for Human Rights**

13. The National Human Rights Commission (NHRC) of Thailand was established under the 1997-Constitution and the National Human Rights Commission Act (1999). The selection process of members of NHRC was opened to the participation of Civil Society to ensure the credibility and accountability of the commissioners. However, the 2007-Constitution excluded Civil Society from the Selection Committee. Such lack of transparency affected the performance of the current Commission. Thai civil society has been questioning whether the current NHRC complies with the Paris Principle (1991-UN Guidelines for the establishment of the National Human Rights Institutions that guarantee its Independence, Efficiency, Credibility, Accessibility and Resource). CHRC demanded that the Constitution should be amended on the Selection of the NHRC to ensure full participation of Civil Society.

14. As part of the bureaucratic reform, the Department of Rights and Liberty Protection (DRLP) was established under the Ministry of Justice to be responsible for promoting Rights, Liberty and Justice Administration.

## **Human Rights Concern on the Ground:**

### **Violence and Rights to Life, Safety, Freedom from Extortion, Intimidation, Abuse or Exploitation**

#### **15. Violence in Deep South of Thailand**

Since the eruption of violence in Deep South in January 2004 ignited by the arson raid over the military camp in Joh I-rong district of Narathivas, a large number of insurgent suspects have been arrested. Later, a Human Rights lawyer, Somchai Neelaphaijit, who was defending the suspects was abducted and disappeared on March 12, 2004. Violence intensified after the massacres at Kruese Mosque in Pattani and Saba-Yoi in Songkhla on April 28, 2004. Situation became worst<sup>i</sup> when 78 demonstrators were found dead during the truck transportation while 8 died from gun shots on October 25, 2004 after a crackdown at Takbai. Later, 59 suspects were charged in court. It should be noted that Human Rights policy was not taken seriously in Deep South while the recommendation from the National Reconciliation Commission (NRC) led by former Prime Minister Anand Panyarachun, was not well accepted and implemented.

16. Later, the then Prime Minister General Surayuth Chulanond (October 2006-January 2008) withdrew the charge against the 59 suspects and expressed regret over the involvement of State officials in the violence. Tension had been declined. The death toll was over 4,000 during January 2004 to December 2010.

### **Extra-Judicial Executions and Arbitrary Killings**

17. The Government campaign on Drug War in early 2003 caused over 2,500 deaths. An official investigation<sup>ii</sup> summarized that the Government leadership sent wrong signal to the law enforcement and security officers therefore the tragic consequences. The report pointed out that almost half of the victims are innocent. So far, there was no due process to look into detail over the cases especially those who are responsible over the brutal act. Culture of Impunity is widespread.

CHRC call on the Government to set up an independent body to investigate over those atrocities and bring justice to the victims.

### **Torture in custody and inhuman treatment**

18. Thailand ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and entry in to force on November 1, 2007. Thailand made an interpretative declaration and

reservations in Articles 1, 4 and 5 as well as the first paragraph of Article 30. But police's abuse of power in custodies has not reduced. Some detention centers are overcrowded, some prisoners are still under shackled. However, officials sometime allow the inmates to beat the new comers.

CHRC strongly urged the RTG to work out a comprehensive measure to stop the use of torture as a tool for forced confession. CHRC also urged the Government to withdraw the reservation of Articles 1, 4, 5 and 30. In addition, RTG should ratify Optional Protocol to allow the Prevention Committee to visit the detention centers so as to improve the facilities, practice and to offer recommendations for judicial reform.

CHRC found that over 90 women and children are still detained at the Immigration Detention Center in a very crowded room. Most of them were treated as illegal immigrants while some of them were seeking a refugee status from the UNHCR.

## **Judicial Administration**

### **Human Rights in Criminal Justice**

19. Law enforcement is still a major problem in the criminal justice system, opening loopholes for abuse of power, misconduct, unfair treatment and individual rights violation. Such violation is clearly identified in the ICCPR and the Convention against Torture and other cruel, inhuman or degrading treatment or punishment as well as the provision on Human Rights as defined by the Constitution, Articles 29 and 32.

### **Rights to Fair Trial: Law enforcement in Deep South**

20. Human Rights in Criminal Justice of individuals are being violated by the imposition of national security laws namely the Martial Law Act, Administrative Decree on State of Emergency and the National Security Act by allowing Searching, Arresting, Detaining of persons without the court warrant. Persons can be detained in any places other than the prisons up to 37 days (7 days under the Martial Law and 30 days under the Administrative Decree). Several reports the possibility of detainees being tortured during that period, e.g., the case of Imam Yapa Kaseng who died in custody, and 85 people died from suffocation under custodian in Takbai case. The National Security Law prevents the suspects from access to fair trial, or to be in front of the court; they are not allowed to meet any lawyer or legal advisor; to be informed of their charge or allegation; to be trial in public; or to be on bail. Besides, it is possible to be detained up to 84 days if they are charged with serious crime according to the Criminal Code, which contradicts the international standard.

### **State Crime and Impunity**

21. Both political suppressions in 1992 and 2009-2010 invoked law and deployed arms to disperse civic demonstration. In 1992, the military crackdown caused over 40 disappearances; but no credible investigation thus far to redress. Similarly, the crackdown in 2009-2010 did not have any clear measure to deal with the State officers. On human trafficking, nothing has been done to the wrong-doers, i.e., companies, middlemen as well as corrupt State officials.

**Witness protection Scheme and the redress of the victims** in criminal cases is seriously needed.

### **Enforced and Involuntary Disappearances**

22. Enforced Disappearance, so far, is not much interested by the RTG even though the violation is obstructive to judicial procedure at the high level. The outstanding 48 cases of May 1992 disappearances, Trade Union Leader, Thanong Poti-arn (June 1991), Somchai Neelaphajit (March 2004) the case was delayed. Recently, the final verdict at Appeal Court on March 11, 2011 absolved the State of any criminal responsibility in the enforced disappearance of Somchai Neelapaijit. Kamol Laosopaphant (October 2008) including more than 30 cases from the Northeastern province of Kalasin and a number of cases from the deep south provinces. The fate of the victims of all cases was unknown.

CHRC calls upon the Government to ratify the International Convention on the Protection of All Persons from Enforced Disappearances and to make domestic laws available in conformity with the convention in order to provide a comprehensive and efficient protection of persons from enforced disappearances.

### **23. Legal assistance in Deep South**

Documents gathered from the Budgetary Bureau indicate that the budgetary allocation to the police, prosecutors, court, Correction Department under Ministry of Justice seems to be imbalance and inappropriate.

Legal Aid received very little attention from the State. For instances, in 2011, the National Police Office got 75% of the budget while Ministry of Justice only 17%, Prosecutor 6%, Court 2%, National Human Rights Commission 0.2% while the Law Council of Thailand (legal aid provider) got only 0.06% from the total budget allocated for justice facilitation of THB100 billion (or USD3.2 million).

CHRC requests the State to allocate more resources to support an effective and efficient legal aid scheme which is accessible for needy suspects in criminal cases. The suspects and defendants, especially those in critical situation such as Deep South and those in locked in political or environmental conflicts with the State, should have the rights to choose their own legal advisors.

#### **24. National Security Laws affecting the rights and civil liberty:**

Suppressive laws including Martial Law Act B.E. 2457 (1914), Administrative Decree on the State of Emergency B.E. 2548 (2005) and the National Security Act B.E. 2551 (2008) had been enacted quite regularly during the unrest in the last 3-4 years. People felt distressed and impatient over the performances of the officials and Government. Imposition of these special decrees has accelerated violence both in the South and other main cities as well as Bangkok where the multi-color shirts, landless farmers, and those affected by the mega-projects staged their demonstrations against the Government.

CCHR recommended the RTG to repeal all these existing laws since the criminal code is enough.

#### **Civil and Political Rights**

##### **25. Death Penalty**

Death Penalty is still the ultimate sentence in Thai Laws. The Government did not support the Moratorium of Death Penalty at the UN General Assembly in 2008. Last year, execution was made despite global concern over Death Penalty as the worst form of inhuman treatment and degradation.

CHRC strongly urges the Government to review its stance and take a supportive role in illegalizing the death penalty and find appropriate measures to abolish it finally.

##### **26. Freedom of Expression**

Censorship of literatures, publications, texts, films, and other media is another worst form of such violations while the *Lese Majeste* law has been used as a tool to punish political dissents.

CHRC urges the Government to review and examine the root causes of problems rather than mere censoring. The Government has to ensure that freedom of expression is one of the key fundamental freedoms in a democratic society base on Human Rights Principle and the Rule of Law.

#### **Freedom to Communication/ Freedom of the Press**

27. The closure of a huge number of websites and community radio stations has been criticized as violation of freedom to communication. Arresting of the Web-Masters and owners by quoting special law and rushing the legal/ judicial process without respecting the rights to access a fair trial is unacceptable. Some criminal cases related to freedom to communication and expression have been frozen with no progress while the suspects were detained for a long period of time and inaccessible to fair trial including the release on bail and medical check-up.

#### **Freedom of Peaceful Assembly**

##### **28. Peaceful Assembly**

The bloody crackdown on demonstration led by People Alliance for Democracy (PAD) in front of the parliament on October 7, 2008 by the security forces caused several death and casualty. The National Anti-Corruption Commission (NACC) investigated the case and indicated that the Prime Minister (Somchai Wongasawatm, October-December 2009), Deputy Prime Minister (General Chavalit Yongchaiyuth) and Police Chief (Pol.Gen. Patcharawas Wongsuwan) were responsible for the tragic act. So far, there is no progress on the prosecuting of the case.

29. Demonstration and violence attacks led by the United Front for Democracy anti Dictatorship (UDD) during the ASEAN Summit in April 2009 in Pattaya and other places including Bangkok Metropolitan. The Prime Minister and his fellow ministers were also under attacked. It revealed a weak security measure to the leadership as well as the society as a whole.

30. Political conflicts and violence in March – May 2010 in Bangkok<sup>iii</sup> and other provinces between the demonstrators and the security forces spread the fearful atmosphere all over the society. The truth of what

really happened on April 10 and May 19, 2010 needed to be revealed since it caused the death of more than 90 lives during those 3 months. The Government has obligation to ensure people's safety even though the unidentified non-state actor armed groups were involved. So far, there is no such credible report on particular incidents.

31. After dispersing the (red shirt) demonstration at Ratchaprasong intersection on May 19, 2010, a widespread unrest took place in Bangkok and other provinces such as Chiangmai, Ubon, Udorn, Maharakam, Sakol Nakhon, and Mukdaharn. The act of terror threatened life of all, fire were set to destroy government buildings and private properties while explosive weapons and devices, grenades, and the machine guns spread all over. Security forces, police in particular, failed to prevent such violence.

32. In 2009 a 'pride' parade was blocked in Chiang Mai by 'Red Shirt' protesters, who physically confined lesbian, gay and transgender activists for a few hours, under the threat of violence. Police were present, but did not free the activists or allow the peaceful parade to proceed.

33. Police and Security Forces took a harsh measure against the laid-off workers from Triumph Company by applying a high frequencies radio wave loud-speaker (L-RAD) to attack the demonstrators causing the ear damage and casualty.

34. Authority in Samut Prakarn province banned the celebration of Mon National Day with no clear reason. Such cultural insensitivity violates cultural rights and freedom of expression.

## **All forms of Discrimination**

### **Discrimination against Women**

35. Thailand appears in a positive light on the global stage: having national women's machinery, progressive laws and policies on women, and nice statistics on women's achievements. But discrimination and violation of women's human rights has intensified and become even more complex.<sup>iv</sup>

36. Since both women and gender are cross-cutting issues, there is a need for a core agency to coordinate the multiple efforts to mobilize the State structure. However, the current national women's machinery is a setback from the previous one: having been put under the Ministry of Social Development and Human Security (MSDHS), it has no authority to ensure synergy in implementing laws and policies effectively.

37. MSDHS has recently authored "Gender Equality Bill" whereby 'discrimination or violation of women's human rights' is not allowed except when it is for public interest, religious and academic reasons. The draft bill has been approved by the Council of State, but at the parliamentary deliberation, the government must remove those three exceptions to meet its commitment to CEDAW.<sup>v</sup>

38. Meanwhile, the government should take serious attempt to pass the "Reproductive Health Bill" drafted by the Ministry of Health.

39. An independent mechanism should be set up within the Prime Minister's Office to mainstream gender into the budgetary process and to monitor development policies because human rights violations are partly the result of gender bias. This independent mechanism should also take responsibility for the training of personnel and politicians in the various sections of the State structure to ensure that women have equal participation in public decision-making. Currently, women in public decision making positions at the national and local levels are below 20%.<sup>vi</sup> At the local level, women represent only 4.5% of Subdistrict Administrative Office Chiefs and 6.4% of Village Heads.<sup>vii</sup> The government therefore should promote gender equality attitude in politic and decision making process.

## **Racial discrimination against the Indigenous Peoples, and Ethnic Minorities**

### **Indigenous Peoples and Ethnic Minorities<sup>viii</sup>**

40. Their invisible status invites discrimination: being seen as threats to national security, blunders of forests and natural resources, and drug traffickers. Even though recently the State grants legal status to some ten thousand ethnic persons, a large number of stateless people still face the same but heavier problems<sup>ix</sup>.

41. On October 1, 2004, the Department of National Parks, Wildlife and Plants, Ministry of Natural Resource and Environment, declared a model to assess the value of certain environmental loss due to clearing the forest that happened under the Act for Promotion and Conservation of Environment, 1992.<sup>x</sup> This has already happened in 2009 when 15 villagers of the provinces of Trang and Patthalung were arrested and the court imposed excessive fine for this penalty.

42. The mega project on dam construction in Upper North and West, e.g., Salawin Dam, will severely affect the livelihood of communities in Sob Moey district, Mae Hong Son province. They are ethnic groups with displaced status. Some, especially children and women, have fallen prey to human traffic.

### **Stateless People**

43. Between 2005-2010, the Government amended the law on Thai Citizenship (B.E. 2008) by adding Article 23 to return Thai citizenship<sup>xi</sup> to those ethnic minorities who lost their Thai citizenship under the 13<sup>th</sup> Decree of the coup on December 13, 1972. But there are still 480,000 people with invisible status, among this 66,000 are school children. Thai State has withdrawn the reservation on Child Right Clause 7 in 2010. But in practice, the law has not been amended to grant Thai citizenship to children whose parents are refugee or themselves refugees. Thai State still considers them threats to national security.<sup>xii</sup> When ethnic minorities have no official documents, they have no access to public services in terms of health care, education, mobility and occupying land for livelihood. They are high risk group facing suppression, extortion, exploitation, oppression, and arrest by police and forestry officials. The justice process does not protect them.

### **Rohingya**

44. Rohingya entered Thailand in periodical waves, totally there are several thousands. It has been a problem for many years but no progress in redressing. Myanmar and Bangladesh refused to receive this group; they end up stateless. Nobody is responsible for them.

### **Refugee: caused by Conflicts, War or Economic reasons**

45. During the past few years, a large number of refugees cross borders and some entered from the Andaman coast in the South. They are Lao-Hmong, Rohingya, Karen, etc. Thousands of them fled from wars at home. Some search for a safer place to survive. The State officials could not handle these refugees and many times pushed them out of the country. This is a violation of the non-refoulement principle.

CHRC urges the Government to ratify the Convention on the Status of Refugee 1948.

46. At the end of 2008, the Royal Thai Army has sent 4,500 Hmong back to Lao PDR. Among them 158 already gained the status of refugee and many seek shelter.

47. One year later, the Thai Government forced exit 166 Karen refugees on December 25, 2009. These people fled the cross firing between Myanmar Government and ethnic minorities in eastern part of Myanmar. Among them 120 were children and women, who sought shelter in Valley Village, Phob Phra district, Tak province. It is the same site where the Government forced out at least 360 Burmese refugees (December 8, 2009) and 650 people (November 17, 2009) and 2,500 people (November 10)

### **Discrimination against peoples with disabilities**

Equal Opportunity in employment and access to public services

48. The State has a passive perspective on the handicapped treating them as helpless or sick people. But they also have their rights to choose their own lifestyle. The State should honor their human rights like others in accordance with its ratification of the Convention on the Rights of People with Disabilities (CRPD) on July 2008.

49. Rights to work and equal opportunity are important for handicapped people. The State should guarantee their rights to access to public services by supporting various mechanism and instruments. This includes physical buildings, public transportation, as well as airport, public bus, toilets, department stores, schools, and universities, There are still some limitation and obstacles such as the paveway and facilities that are not suitable for physically challenged persons.

### **Discrimination and the sexual orientation**

Discrimination based on sexual orientation and gender identity

50. The laws and policies of the government of Thailand do not expressly discriminate on the basis of sexual orientation or gender identity. They discriminate by omission.

51. Key concerns: There is no support from the State on the draft legislation to recognize the changed "sex" of transsexuals on personal documents. No legal recognition of same sex relationships resulting in a wide range of discrimination against homosexual couples. Thai military policies state mental illness as the reason for discharging transgender individuals from military services. Subsequently this causes difficulties

for them in getting employment. LGBT presence in television and films is often subject to arbitrary banning and censorship. No real efforts to include sex education in schools to help counter discriminatory social attitudes on issues of sexual orientation and gender identity. As a marginalized group, LGBT people do not receive adequate provision of physical and mental health care services by government and private health sectors. Thailand has failed to support LGBT rights through various UN resolutions and statements.

52. Recommendations:

- a) Enact a general anti-discrimination law, to implement the requirements of the ICCPR and the Constitution, followed by concrete programs of enforcement, public education and sex education on diversity issues, aimed at reaching full recognition of the equal rights of lesbians, gay men, bisexuals and transgendered individuals in education, employment and participation in public, economic, social, cultural and all other areas of life.
- b) Enact a law and implement necessary policies for the full recognition of the changed “sex” for transsexuals for all purposes.
- c) Enact a law to recognize same-sex relationships on equal basis with opposite-sex relationships.
- d) Advise all media outlet that arbitrary banning and censorship based on sexual orientation and gender identity is unconstitutional.
- e) Provide funds for the study of health care needs of and improve health care services for LGBT communities.
- f) Proactively support equality rights for lesbians, gay men, bisexuals and transgendered individuals (a) in its domestic laws and policies, (b) in its work within the Association of South East Asian Nations and (c) at the United Nations.

## **Rights of specific sectors, marginalized sectors and vulnerable groups**

### **Child Rights**<sup>xiii</sup>

53. According the civilian registration record of the Central Registration Office, Department of Governance, Ministry of Interior in December 2009, the total population of children and youth (below 25) is 22.92 million (male 51.14%, and female 48.86%), and constitutes one third of the whole population structure, similar to other countries in the world.

54. The problem is built into the administration structure. There are dozens of committees, sub-committees, task forces, etc., responsible to work on child and youth issues at the national level. But there is no plan/strategy to coordinate or understand the real problems. The UN recommendations to make “World Fit for Children” has been implemented since 2000 but thus far, there is no concrete result.

55. According to one research study, there are over 660,000 children and youth found addicted to drug. Each year, about 50,000 children and youth committed crimes and have gone through the criminal court process. Children and youth rights are violated when emergency law was declared for security reason during political rallies in cities and political unrest in Deep South. In this circumstance, special measures to treat children and youth in dispute are ignored.

56. There are 100,000 children and youth affected by HIV/AIDS. Teenager newly acquired HIV are about 80,000. A large number of children affected by unrest in Deep South and impact of Tsunami could not access to services. Many specific cases of violating children’s rights to privacy in the mass media that the State has no appropriate measure to deal with such problems.

57. Children under specific difficult situation, such as stateless children, children of migrant workers, children affected by the trauma of political unrest in Deep South, need concrete and clear measures in terms of laws, rules, policies and guidelines to ensure that they receive fair treatment without discrimination. Special attention must be paid to children and youth who are accused of committing criminal offences related to political rallies and political unrest in Deep South. They should be trialed under the principles of international laws and the universal agreement on human rights.

58. As a signatory of the UN Convention on the Rights of the Child, treaties on women, labour and human trafficking, the committees responsible for each treaty and international laws at different levels must monitor and pay attention to reporting process to various treaties at all levels so that there are practical consequences. A representative may be appointed to report on a specific situation, especially on protecting children from all forms of cruelty<sup>xiv</sup>. Specific groups such as stateless children, children without nationality and children traumatized by political unrest in Deep South need special measures to deal with their specific problems.

## **Thai Labors, Migrant Workers and those involved in Informal Sector**

59. The National Statistic Office reported that in 2007 the number of employment was 37.1 million which 13.8 million were from formal sector (37.3%) and 23.3 million were from informal sector (62.7%). Within 23.3 million from informal sector, 11.09 million were the women workers. When compare with the figures of 2005, informal sector had increase almost 700,000 within 2 years. Moreover, the number of migrant workers is now 2-3 millions which the majority is coming from Burma, Lao PDR and Cambodia.

60. Right to organize and form the union is still problematic for the workers. Without the union, collective bargaining cannot be used to protect their legitimate rights. RTG should ratify the ILO Convention 87 and 98 which are protecting all workers including migrant workers the rights to unionize and peaceful assembly, non-discrimination, and free from intervention by any state agencies.

61. Ministerial Regulation on the Protection of Home Workers B.E. 2547 (2004) and the Ministerial Regulation on the Protection of Agricultural Workers B.E. 2548 (2005) are not effective enough since there is no enforcement mechanism. There is no job security and the fair wage. Some jobs are at risk and health hazardous with a longer work hours than the labor standard. The worker couldn't access to the Social Security Fund and other relevant public services.

62. Home Workers Protection Act B.E. 2553 had already been published in Royal Gazette on November 16, 2010 and is to be effective on May 16, 2011. Although this Act provide the protection on the wage that shouldn't go lower than the Labor Protection Act as well as the responsibility of the hirer (employer) on health and safety of the work, but the Act failed to address the promotional aspect as proposed by the informal sector networks. The definition on "Home based work" was confined to industrial sector only but ignoring the "Contract Farming" in agriculture sector which is actually another form of "Home-based work." Those involved in the Contract Farming, therefore, cannot be protected by this new Act.

63. Social Security Act B.E. 2553 (2010) Article 40 is the only channel for those involved in the informal sector to access Social Security System as those involved in informal sector are not being treated as "employee" according to the Labor Protection Act B.E. 2541 (1998). The expansion of the article 40 is needed to fulfill the right to social security

64. Child Care Center should be set up in the industrial area and communities. Legislation and sufficient budget allocation is needed. Participation in the Child Care Center management of the worker's organizations and community is essential.

65. Children of the workers in the Informal Sector always spent their free me to assist their families for such production. The State should set up the plan to ensure the work safety and children development in this particular Informal Sector.

66. Migrant Workers and the Families who are holding valid passport and got the work permit (WP 38) almost a million. Another 1.5 million had no such documents and their rights are being violated in various forms such as employment, sexual abuse, inaccessible to labor laws, and fall the victims of human trafficking. Therefore, the State need to have the comprehensive policy to solve the problems such as non-resident status, employment, health insurance, accessible to basic rights and children development and protection.

67. To set up the Human Rights Protection measures for the Migrant Workers in informal sector (e.g. domestic helpers, agricultural/ construction sectors) especially on health care and prevent human trafficking.

68. The State to review the Free Trade Agreement and improve the policy to promote quality of life, community and the cultural life rather than making profit alone.

## **Economic, Social and Cultural Rights**

69. Right to access to health

- a) Access to medicine, qualifies medical service and health information of all peoples including the migrants workers, stateless, refugees and indigenious people/ ethnic minorities, LGBT and the Peoples Living with HIV.
- b) Impact from FTA and Privatization of health service affected health care program seriously.
- c) Occupational Health and Industrial Hazardous is critical. Establishment of such Occupational Health Care Institute is a concrete step to build up capacity to cope with the newly emerged occupational diseases.
- d) All Mega Projects need prior study on Health Impact Assessment (HIA) along with Environmental Impact Assessment (EIA), Social Impact Assessment (SIA) and Human Rights Impact Assessment.



- e) Health Security should provide to Migrant Workers, Stateless persons and members of their families.

### **Protection of Human Rights Defenders**

70. During the last 10 Years since 2001, almost 30 Thai Human Rights Defenders were brutally executed or forced disappeared. Most of the cases couldn't brought the perpetrators to justice even some of them were government officials, security officers or powerful politicians. At present, 5 cases related to Human Rights Defenders are under the mandate of Department of Special Investigation (DSI), Ministry of justice since the cases are quite complicated and linked to those officials. Those cases include Charoen Wat-aksorn (environmentalist from Prachuab Kirikhant), Phra Supoj Suvajo (an environmentalist Buddhist monk from Chiangmai), Somchai Neelaphajit (Human Rights lawyer), Kamol Laosopaphant (an anti-corruption advocate from Khon Kaen). There was no progress but draw back due to the distortion of the cases and evidence since most of the cases had closely link to some powerful personalities.

71. Mrs. Pikul Phromchand, one of the victim relative-turn-Human Rights Defender<sup>xv</sup>, Due to this serious case involved with many police officers in the province, she is now under risk due to her active role in filing the case against the police head and the security officers in the province which involve more than 20 cases related to abduction and execution. The Witness Protection Scheme provided by the DSI is needed to be improved to safe lives of those who are in danger<sup>xvi</sup>. Social workers and Human Rights Advocates who dealt with sensitive cases or border conflicts and humanitarian work also faced intimidation similar to those who are defending the rights of those marginalized groups.

72. Other Human Rights Defenders are being threatened by the libel suit. This is another form of harassment and intimidation. They faced great difficulty with such act. Some others including journalists are being hunted by the gunmen of those influential persons.

73. So far, the Government still didn't have concrete plan to protect Human Rights Defenders in response to the declaration and the recommendations of the Special Representative of the Secretary General on Human Rights Defender, Ms. Hina Jilani, who visited Thailand in May 2003.

### **Efficiency and Basic Structure of National Human Rights Commission (NHRC)**

74. NHRC was established by the Constitution 1997 and the National Human Rights Commission Act B.E. 2542 (1999) and started its function in July 2001. Thousands of complaints had been received each year. However, NHRC had limited capacity to handle the cases. However, NHRC had recommended the Government for further action but seldom got positive response especially on the problems caused by the wrong-doing of their officials. Constitution 2007 had expanded the mandate of NHRC to file complaints on behalf of the victims in court if such serious violation was found. So far, there is no such progress.

75. Selection Process and Committee of NHRC is problematic. The Constitution 1997 provided a broad scale of participation from various sectors including civil society and academic community in the Selection Committee while the Constitution 2007 limited the participation of the civil society and academic community. Besides, current NHRC had been seen as a bureaucratic institution rather than an independence body with credible, effective, accessible, accountable and resourceful as guided by the Paris Principle on NHRIs.

76. CHRC strongly recommends that the RTG take up an initial role to amend the constitution regarding the Selection Process and Committee for NHRC Commissioners. RTG should also refrain from influencing or controlling of NHRC through budget and resource allocation to make sure NHRC can work independently. It is also recommended that the independent monitoring mechanism of the NHRC is to be in place.

### **Collaboration between the State and the National Human Rights Institution, Civil Society and Human Rights Organizations in developing the Human Rights mechanism at various levels**

77. Previous Governments didn't response positively to the reports and recommendations from the National Human Rights Commission. However, even the current Government just acknowledged but didn't take much active role in response to substantive recommendations made by the NHRC and civil society. The effort to improve Human Rights, justice and quality of life are still unsatisfactory. The state agencies and officials didn't take Human Rights as a prime concern by integrating into their policy and practical work plan.

78. So far, Ministry of Justice and Ministry of Foreign Affairs seek collaboration with Human Rights NGOs on some particular issues. However, collaboration needs to be strengthened at both policy and implementation levels.

79. Bearing in mind that Thailand's Human Rights Commitment and Pledges made before the Human Rights Council Election 2010 highlighted that *"As a member of Human Rights Council in the period 2010-2013, Thailand is committed to advancing the cause of Human Rights at the national, regional and international levels."*

#### **RTG and the role in the establishment of ASEAN Human Rights Mechanism**

80. Thailand played a vital role in the drafting process of the ASEAN Charter and the formation of ASEAN Inter-governmental Commission on Human Rights (AICHR) based on ASEAN Charter. However, it is not clear how RTG support its representative to be able to function effectively in promoting and protecting Human Rights in the region as it was highly expected by ASEAN Community.

CHRC strongly urges the RTG to pay much more attention to support these newly establish mechanism which is complimentary and supplementary to other existing Human Rights mechanism.

#### **State and Obligation in response to Human Rights Mechanism and UN Human Rights Council**

81. Thailand was elected as a new member of the Human Rights Council on May 12, 2010. And the permanent representative was elected as the Chair of the Council from June 2010-June 2011. That's a positive move of Thailand toward a better Human Rights-based society

CHRC urges the RTG to invite Special Rapporteurs/ Representatives and Thematic Working Groups to visit Thailand as an important step toward a full realization of Human Rights. The mandate holders should be able to meet and visit communities, NGOs, civil society, media and the officials freely in order to gather useful, update and accurate information so that relevant recommendations can be made.

#### **Achievement and Realization of Objectives:**

82. RTG had shown the willingness to promote Human Rights. Policies also put in place when the cabinet (October 2009) approved the 5-year National Human Rights Action Plan (NHRAP) covering 2010-2014. There is no clear mechanism for such implementation. Therefore, CHRC proposed that the RTG set up an effective mechanism to transform policies and Action Plan into real practice. All officials in law enforcement and security should be trained and well informed to respect, protect and fulfill Human Rights.

#### **State Commitment and concern on Human Rights**

83. State Policy in accordance with the Constitution 2007 stated clearly the responsibility in promoting and protecting Human Rights as well to act in response to the wills of the Constitution and in line with the International Human Rights obligation.

#### **Capacity Building and Technical Assistance**

84. CHRC calls on the concern agencies to join an effort to develop indicator of the Human Rights status and work together for judicial reform both at local, national, regional and international levels. Capacity Building is needed both the State and Civil Society sector to ensure efficiency and fruitful achievement in the realization of Human Rights.

#### **Recommendations:**

1. Judicial Reform and Improvement of Administration of Justice based on Human Rights principle. to ensure that every individuals understand and treasure essence and meaning of Human Rights and Dignity.
2. RTG should ratify the Rome Statute of the International Criminal Court (ICC); and all relevant human rights conventions especially the Convention on the Rights of the Migrant Workers and members of their Families; Convention for the Protection of all Persons from Enforced Disappearances, Convention on Refugees; Optional Protocol of the Convention Against Torture (CAT); Withdrawal of reservation in article 6, 9 of CEDAW, CRC and to ratify ILO Convention article 87, 98
3. RTG should guarantee the rights to peaceful assembly. The state has obligation to ensure non-violence action from all parties. Therefore, RTG need to train officials to apply Human Rights and Peaceful approach.
4. RTG to set up an Action Plan, Measurement in the promotion and protection of Human Rights Defenders to enable them to act independently, free from fear and intimidation and work with Civil Society.
5. RTG to open a platform in cooperation with Civil Society and Human Rights Organizations in the follow up, monitor and implementation of Human Rights tasks. Such Joint Working Committee can be a progress move for further promotion and protection of Human Rights.

## Attachment A - List of Supporting Organizations

The report endorsed, either in part or in whole, by the following organizations:

Action Network for Migrants (with 17 member organizations)  
AIDS Net Esarn Foundation  
Alden House  
Alliance Anti Traffic (AAT)  
Anjaree Lesbian Group  
Anti Human Trafficking Networks  
Arom Pongpa-ngan Foundation (APF)  
Association for Career Advancement of the Blind Thailand  
Campaign Committee for Human Rights (CCHR)  
Campaign for Popular Democracy (CPD)  
Campaign for Popular Media Reform (CPMR)  
Center for the Protection of Children's Rights Foundation (CPCR)  
Cross Cultural Foundation (CrCF)  
ECPAT Foundation  
Foundation for AIDS Rights (FAR)  
Foundation for Human Rights on Sexual Orientation and Gender Identity  
Foundation for Labour and Employment Promotion (FLEP)  
Foundation for Women (FFW)  
Friends of Highland Peoples  
Friends of Peoples  
Friends of Women Foundation (FOW)  
Highland People Health Network (HPH)  
Highland Peoples Task-Force (HPT)  
Homenet Thailand  
Human Rights and Development Foundation (HRDF)  
Indigenous Peoples Network of Thailand (IPNT)  
Inter-Mountain Peoples on Education and Culture – Thailand (IMPECT)  
Labour Rights Promotion Network (LPN)  
M-Plus (Chiang Mai)  
Migrant Workers' Network  
Mirror Foundation  
NGO Coordinating Committee on Development (NGO-COD)  
Pattanak Foundation  
Peace and Human Rights Resource Center (PHRC)  
People's Network for Judicial Policy  
Rainbow Sky Association of Thailand  
Raks Thai Foundation  
Relatives Committee of May 1992 Heroes for Democracy  
Stella Maris  
Sustainable Development Foundation (SDF)  
Swing (Bangkok)  
Teerarat Kanjanauksorn Foundation  
Thai Drug User Network  
Thai Labour Solidarity Committee (TLSC) with 35 member organizations  
Thai Transgender Alliance  
The Council of Work and Environment Related Patent's Network of Thailand (WEPT)  
The Women's Network for the Advancement and Peace  
The Northeastern Women's Network  
Union for Civil Liberty (UCL)  
Workers' Network  
Women's Action and Resource Initiative (WARI)

Women's Rights Development Center (WORD)

Women Network Reshaping Thailand (WREST) with 26 Women's Network\*

\*WREST members:

- Action Aid Thailand
- ASHOKA Innovations for the Public
- Assembly of NGOs for the Protection and Conservation of Environment and Natural Resources
- Association for the Promotion of the Status of Women (APSW)
- EMPOWER Foundation
- Foundation for Consumers (FFC)
- Foundation for Promotion Women Empowerment
- Foundation for Women (FFW)
- Foundation for Women, Law and Rural Development (FORWARD)
- Friends of Women Foundation (FOW)
- Gender and Development Research Institute (GDRI)
- Girl Guides Association of Thailand (GGAT)
- International Federation of Business and Professional Women (IFBPW)
- Social and Human Resource Development Institute (SHRDI)
- Sustainable Development Foundation (SDF)
- Teerarat Kanjanaaksorn Foundation (TKF)
- Thai Women Watch Association (TW2)
- The Deep South Women Overcoming Violence Network
- Women's Action and Resource Initiative (WARI)
- Women and Youth Studies Programme (WYSP), Thammasat University
- Women Law Association of Thailand (WLAT)
- Women Workers Unity Group (WWUG)
- Women's Health Advocacy Foundation (WHAF)
- Women's Studies Center (WSC), Faculty of Social Sciences, Chiang Mai University
- ZONTA International Bangkok 5
- ZONTA International Bangkok 17

Contact Address: **Civil Society and Human Rights Coalition – Thailand (CHRC)**  
c/o Campaign Committee on Human Rights  
Email: [campaign4hr@gmail.com](mailto:campaign4hr@gmail.com) or [verawongse@gmail.com](mailto:verawongse@gmail.com)  
Website: [www.media4hr.org](http://www.media4hr.org) (to be active from March 20, 2011)

## ENDNOTES:

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<sup>i</sup> Several thousands of protesters gathered in front of Takbai Police Station in Narathivas to demand the release of the detainees but violent confrontation broke out. Thousands of demonstrators were arrested and thrown into military trucks. Bodies were piled up to fill the trucks which carried them for a distance to another military compound, Inkayuth Boriharn Camp, in Pattani.

<sup>ii</sup> A Special Committee was appointed investigate the massive deaths led by former Attorney General head, Kanit na Nakorn.

<sup>iii</sup> especially at Kok Wua intersection on Ratchadamnern Avenue, Silom, Vipawadee Rangsit, Rajdamri Road, Ratchaprasong intersection

<sup>iv</sup> Lampahai Intathep. 2008. 'Women and Children', Bangkok Post, Nov. 26, 2008, quoted in Thailand National Standard and Indicators on Gender Equality, 2009. Bangkok: Office of Women and Family Affairs, MSDHS, and Women and Youth Studies Program, Thammasat University, p.47

<sup>v</sup> Napamon Roongwitoo. 2011. "Planned law gives equality a beating", Bangkok Post, March 8, 2011; or

<http://www.bangkokpost.com/news/local/225370/planned-law-gives-equality-a-beating>

<sup>vi</sup> Report on Thailand Gender-disaggregated Statistics, 2008. Bangkok: UNDP, quoted by Darunee Tantiwiranond and Shashi Ranjan Pandey,

2008. Does Advocacy Matter? Women's Advocacy Campaigns in Thailand. Bangkok: Friedrich Ebert Stiftung; or <http://library.fes.de/pdf-files/bueros/thailand/07042.pdf>

<sup>vii</sup> Calculated based on data from Department of Local Administration, Ministry of Interior, 2010

<sup>viii</sup> Indigenous Peoples and ethnic minorities live everywhere but more so along the border of Thailand. Their human rights are violated when the State considers their legal status problematic. Some hold Laotian Refugee Card residing on the Thai-Lao border; many were born on Thai soil and have lived there ever since yet are not entitled for Thai nationality. For other minority groups such as Karen, Lahu, Hmong, etc., they still have limited access to such public services as education, health care, and basic infrastructure; their rights to travel and to work for a living are curtailed.

<sup>ix</sup> Often some State officials make use of their authority exploit the stateless people in complex forms such as extorting valuable things and sexual demand, etc. Since ethnic minorities lack education and job opportunity to empower themselves for better quality of life, they have no negotiating power vs local officials. Even though some ethnic youths have access to education to the university level, they still could not contribute much to their communities.

<sup>x</sup> The result is used to impose fine (THB 150,000 per rai, or USD 4,300 per 1,600 sq.m.) on those accused of being "encroachers and deforesters".

This law has been seriously enforced since 2008. The ethnic collectives are greatly worried because, from April 2010 onward, both over 10 million lowland and ethnic peoples living in the conservation zone lives would be charged and therefore a serious violation of their basic human rights would erupt.

<sup>xi</sup> This redress reflects positive attempts of the State to comply with the principle of universal human rights and to improve the management process to deal with stateless population.

<sup>xii</sup> Other reason is inefficiency of implementation due to gap in knowledge and understanding of responsible civil servants on new nationality policy, ethnic bias; thus breeds discrimination and complex corruption in the process of granting Thai citizenship. Such loopholes in the well-intended official process therefore allow bureaucrats to violate human rights of the ethnic minorities and indigenous peoples as well as violate the laws.

<sup>xiii</sup> Thailand is a signatory to the Child Right Convention, but retains two reservations, i.e., Clause 7: provide birth certificate to all children without any condition; and Clause 22: child rights as a refugee. Even though the 2007-Constitution clearly confirms child rights, and there have been series of laws to protect, promote and develop children and youth issued during the past decades, in practice, the rights of children and youth are widely violated and in various forms. Physical violation includes sexual abuse, domestic battery, and trafficking in women and children. On development aspect, a large number are deprived from quality education, partly because alternative education systems do not receive official recognition. Consequently, those involved in developing alternative education for children are not entitled for public support. Indirect violation happened in armed conflict zones, e.g., neglecting taking serious action to redress the traumatic impact on children and youth in Deep South, and in political rallies. Children born by foreign migrant workers automatically become stateless.

<sup>xiv</sup> Such violation has been widespread and there has not been effective assistance provided to the affected children and youth, nor penalizes the perpetrators. Thailand has become an important operation port of human trafficking with intricate networks of international criminal organizations.

<sup>xv</sup> Pikul Promchand was an aunty of Kiattisak Thitboonkrong, 16, a youth from Kalasin province. Kiattisak was arrested with the minor charge of stolen of bicycle spare parts. But he was found dead<sup>xv</sup> the next day after the police told the relative of the boy he had been released.

<sup>xvi</sup> Many of them are regards as Human Rights Defenders.