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HUMAN RIGHTS COMMITTEE
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

Thailand

1. The Committee considered the initial report of Thailand (CCPR/C/THA/2004/1) at its 2293rd, 2294th and 2295th meetings (CCPR/C/SR.2293-2295), held on 19 and 20 July 2005, and adopted the following concluding observations at its 2307th meeting (CCPR/C/SR.2307), held on 28 July 2005.

A. Introduction

2. The Committee welcomes the high quality of the report submitted by the State party, while regretting that it was submitted with a delay of over six years. The Committee also notes with appreciation the written and oral information provided by the delegation in reply to the Committee's questions. It expresses its appreciation for the high-level and competent delegation of the State party and its openness in providing information.

B. Positive aspects

3. The Committee welcomes the promulgation, following the State party's ratification of the Covenant, of a new Constitution in 1997 which contains many of the rights and freedoms protected under the Covenant.

4. The Committee welcomes the establishment of:

a) the National Human Rights Commission as a mechanism to promote respect for human rights under Sections 199 and 200 of the Constitution;
b) the Department of the Rights and Liberties Protection under the Ministry of Justice;
c) the National Reconciliation Commission, seeking peaceful solutions to the situation in the Southern provinces; and
d) the National Child Protection Committee and provincial Child Protection Committees.

5. The Committee welcomes the enactment of the Child Protection Act B.E. 2546.

6. The Committee notes with appreciation the adoption of the National Plan of Action on Human Rights.

C Principal subjects of concern and recommendations

7. The Committee notes that some of the declarations made at the time of the accession by Thailand amount to reservations, and regrets their maintenance (art. 2).

The State party should consider the withdrawal of such declarations.

8. The Committee notes that the Covenant has not been fully incorporated into domestic law and that its provisions are not in practice invoked in courts of law, unless they have been specifically incorporated by legislation (art. 2).

The State party should guarantee the effective protection of all rights enshrined in the Covenant and ensure that they are fully respected and enjoyed by all.

9. While welcoming the important work of the National Human Rights Commission in the promotion and protection of human rights, the Committee is concerned that many of its recommendations to the relevant authorities have not been implemented. The Committee is also concerned about the lack of sufficient resources allocated to the Commission (art. 2).

The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. It should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities and in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134).

10. The Committee is concerned at the persistent allegations of serious human rights violations, including widespread instances of extra-judicial killings and ill-treatment by the police and members of armed forces, illustrated by incidents such as the Tak Bai incident in October 2004, the Krue Se Mosque incident on 28 April 2004 and the

extraordinarily large number of killings during the "War on Drugs" which began in February 2003. Human rights defenders, community leaders, demonstrators and other members of civil society continue to be targets of such actions, and any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a "culture of impunity". The Committee further notes with concern that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3 of the Covenant (arts. 2, 6, 7).

The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress. Furthermore, it should continue its efforts to train police agents, members of the military and prison officers to scrupulously respect applicable international standards. The State party should actively pursue the idea of instituting an independent civilian body to investigate complaints filed against law enforcement officials.

11. The Committee notes with concern that the provisions of the Civil Code are discriminatory against women with regard to grounds for divorce (arts. 3 and 26).

The State party should amend the provisions of the Civil Code governing grounds for divorce in line with articles 3 and 26 of the Covenant.

12. Notwithstanding the pending enactment of the Prevention of Domestic Violence Bill and the measures taken by the State party, including the "white ribbons" campaign, the Committee is concerned at reports of the high prevalence of domestic violence and the lack of specific legal provisions on domestic violence, including marital rape, in the State party's legislation (arts. 3, 7, 26).

The State party should adopt the necessary policy and legal framework to effectively combat domestic violence. It should establish crisis-centre hotlines and victim support centres equipped with medical, psychological and legal support, including shelters. Law enforcement officials, in particular police officers, should also be provided with appropriate training to deal with cases of domestic violence, and awareness-raising efforts should be continued to widely sensitize members of the public.

13. The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency, B.E. 2548, which came into immediate effect on 16 July 2005, and on the basis of which a state of emergency was declared in three southern provinces, does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant that may be made in emergencies and does not guarantee full implementation of article 4 of the Covenant. It is especially concerned that the Decree provides for officials enforcing the state of

emergency to be relieved of legal and disciplinary actions, thus exacerbating the problem of impunity. Any detention without external safeguards beyond 48 hours should be prohibited. (art. 4).

The State party should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2. In this regard, the Committee draws the attention of the State party to its General Comment No.29 and the obligations imposed upon the State party to inform other State parties as required by its paragraph 3.

14. The Committee notes with concern that death penalty is not restricted to the "most serious crimes" within the meaning of article 6, paragraph 2, and is applicable to drug-trafficking charges. The Committee regrets that, despite the amendment, in 2003, of the Penal Code, which prohibits imposition of death penalty on persons below 18 years of age, the State party has not yet withdrawn its declaration to the Covenant on article 6, paragraph 5 (art. 6).

The State party should review the imposition of the death penalty for offences related to drug trafficking, to reduce the categories of crime punishable by death. The State party should also consider the withdrawal of its declaration on article 6, paragraph 5.

15. The Committee is concerned about the persistent allegations of excessive use of force by law enforcement officials, as well as ill-treatment at the time of arrest and during police custody. The Committee is also concerned about reports on the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called "safe houses". It is also concerned at the impunity flowing from the fact that only a few of the investigations into cases of ill-treatment have resulted in prosecution, and if any, in conviction, and that adequate compensation to victims has not been provided (arts. 2, 7, 9).

The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and the place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families.

16. The Committee is concerned at the overcrowding and conditions of places of detention, particularly with regard to sanitation and access to health care and adequate

food. The Committee is also concerned that the right of detainees of access to lawyers and members of the family is not always observed in practice. The Committee considers the duration of detention before a person is brought before a judge to be incompatible with the requirements of the Covenant. The Committee deplores the continued shackling of death row prisoners and reports of prolonged solitary confinement. Pre-trial detainees frequently are not segregated from convicted prisoners. Furthermore, the Committee is concerned at the significant number of women in the prison population and the fact that juveniles are often held in adult cells (arts. 7, 10 and 24).

The State party should bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners as a matter of priority. The State party should guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly with regard to hygienic conditions, access to health care and adequate food. Detention should be viewed only as a last resort, and provision should be made for alternative measures. The use of shackling and long period of solitary confinement should be stopped immediately. Special protection should be provided for juveniles, including their compulsory segregation from adults.

17. While acknowledging the delegation's assurances that the Provincial Admission Board is in the process of establishment, the Committee notes with concern the lack of a systematic adjudication procedure for asylum-seekers. The Committee is also concerned that the relocation plan of March 2005 requires all Burmese refugees in the State party to move to the camps along the Burmese border and that those who do not comply will be considered illegal migrants and will face forcible deportation to Myanmar. Furthermore, the Committee is concerned about the deplorable situation of the Hmong people in the Petchabun Province, the majority of them being women and children, who are not considered refugees by the State party and are facing imminent deportation whereby they fear persecution. Finally, the Committee notes with concern that the current screening and expulsion procedures contain no provisions guaranteeing respect for the rights protected by the Covenant (arts. 7 & 13).

The State party should secure the establishment of a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where he or she would be at risk to torture or ill-treatment, including the right to judicial review with suspensive effects. The State party should observe its obligation to respect a fundamental principle of international law, the principle of *non-refoulement*.

18. The Committee is concerned about reports of intimidation and harassment against local and foreign journalists and media personnel as well as of defamation suits against them, originating at the highest political level. It is also concerned at the impact of the Emergency Decree on Government Administration in States of Emergency, B.E. 2548, which impose serious restrictions on media freedom (art. 19, para. 3).

The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and suitable action is taken against those responsible, regardless of rank or status.

19. While welcoming the aspiration of the State party to accept and foster a vibrant civil society, including many human rights organisations, the Committee is nevertheless concerned at the number of incidents against human rights defenders and community leaders, including intimidation and verbal and physical attacks, enforced disappearances and extra-judicial killings (arts. 19, 21 and 22).

The State party must take measures to immediately halt and protect against the harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families.

20. Notwithstanding the serious efforts undertaken by the State party to address the issue of trafficking in persons, including the establishment, in March 2005, of the National Committee on Prevention and Suppression of Human Trafficking, and while welcoming the planned enactment of the new law on human trafficking, the Committee remains concerned that Thailand is a major country of origin, transit and destination for trafficking in persons for purposes of sexual exploitation and forced labour. The Committee is also concerned that child prostitution remains widespread. The Committee notes with concern that certain groups are at a particularly higher risk of being sold, trafficked and exploited, which comprise of street children, orphans, stateless persons, migrants, persons belonging to ethnic minorities and refugee/asylum-seekers (arts. 8 and 24).

The State party should continue and strengthen its measures to prosecute and punish trafficking offences, and to afford adequate protection for the human rights of all witnesses and victims of trafficking, and in particular to secure their place of refuge and opportunity to give evidence. The State party should enact the Suppression of Human Trafficking Bill without delay.

21. The Committee is concerned about the significant proportion of children, often stateless or of or foreign nationality in the State party, who engage in labour, and as explained by the delegation, are often victims of trafficking (arts. 8 and 24).

The State party should strengthen the enforcement of the existing legislation and policies against child labour. Victims of trafficking must be afforded adequate protection. The State party should make every effort, including preventive measures, to ensure that children who engage in labour do not work under conditions harmful to them and that they continue to have access to education. The State party should take action to implement all policies and

legislation for the eradication of child labour, *inter alia*, through public awareness campaigns and education of the public on the protection of the rights of children.

22. Notwithstanding the corrective measures taken by the State party, most notably, through the Central Registration Regulations 1992 and 1996, to address the issue of statelessness among ethnic minorities including the Highlanders, the Committee remains concerned that a significant number of persons under its jurisdiction remain stateless, with negative consequences for their full enjoyment of Covenant rights, as well as the right to work and access to basic services including health care and education. The Committee is concerned that their statelessness renders them vulnerable to abuse and exploitation. The Committee is also concerned regarding low levels of birth registration, especially among Highlanders children. (arts. 2 and 24).

The State party should continue to implement measures to naturalise the stateless persons who were born in Thailand and are living under its jurisdiction. The State party should also review its policy regarding birth registration of children belonging to ethnic minority groups, including the Highlanders and asylum-seeking/refugee children, and ensure that all children born in the State party are issued with birth certificates.

23. The Committee is concerned about the lack of full protection of the rights of registered and unregistered migrant workers in Thailand, particularly with regard to liberty of movement, access to social services and education, and access to personal documents. The deplorable conditions in which migrants are obliged to live and work indicate serious violations of articles 8 and 26 of the Covenant. The Committee notes that ethnic minorities and migrants from Myanmar are particularly vulnerable to exploitation by employers as well as to deportation by the Thai authorities. The Committee is also concerned that a significant number of mainly Burmese migrant workers remain missing in the aftermath of the Tsunami in December 2004 and that others were not provided with the necessary humanitarian assistance due to their lack of legal status. (arts. 2, 8 and 26).

The State party must take measures to effectively implement the existing legislation providing for the rights of migrant workers. Migrant workers should be afforded full and effective access to social services, educational facilities and personal documents, in accordance with the principle of non-discrimination. The State party should consider establishing a governmental mechanism to which migrant workers can report violations of their rights by their employers, including illegal withholding of their personal documents. The Committee also recommends that humanitarian assistance is effectively provided to all victims of the Tsunami disaster without discrimination, regardless of their legal status.

24. The Committee expresses its concern about the structural discrimination by the State party against minority communities, including the Highlanders in particular, with regard to citizenship, land rights, freedom of movement and the protection of their

way of life. The Committee notes with concern the treatment by the law enforcement officials of the Highlanders, in particular the forced eviction and relocation in the context of the 1992 Master Plan on Community Development, Environment and Narcotic Crop Control in Highland Areas, gravely affecting their livelihood and way of life, as well as the reports of extra-judicial killings, harassment and confiscation of property in the context of the "War on Drugs" campaign. The Committee is also concerned about the construction of the Thai-Malaysian Gas Pipeline and other development projects which have been carried out with minimal consultation with the concerned communities. In addition, the Committee is concerned about violent suppression of peaceful demonstrations by law enforcement officers in contravention of articles 7, 19, 21 and 27 of the Covenant (arts. 2, 7, 19, 21 and 27).

The State party should guarantee the full enjoyment of the rights of persons belonging to minorities which are set out in the Covenant, in particular with respect to the use of land and natural resources, through effective consultations with local communities. The State party should respect the rights of persons belonging to minorities to the enjoyment of their own culture, the profession and practice of their own religion, and the use of their own language in community with other members of their group.

D. Dissemination of information about the Covenant (art. 2)

25. The second periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GU/Rev.1) and be submitted by 1 August 2009. The State party should pay particular attention to providing practical information on the implementation of legal standards existing in the country. The Committee requests that the text of the present concluding observations be published and disseminated throughout the country.

26. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 13, 15 and 21. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.