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# ADVANCE UNEDITED VERSION

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## Human Rights Committee

### **Concluding observations on the second periodic report of Thailand\***

1. The Committee considered the second periodic report submitted by Thailand (CCPR/C/THA/2) at its 3349th and 3350th meetings (see CCPR/C/SR.3349 and 3350), held on 13 and 14 March 2017. At its 3364th meeting, held on 23 March 2017, it adopted the present concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the second period report of Thailand, albeit 6 years late, and the information contained therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high level and large delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee appreciates the written replies (CCPR/C/THA/Q/2/Add.1) to the list of issues (CCPR/C/THA/Q/2), which were supplemented by the oral and written responses provided by the delegation.

#### **B. Positive aspects**

3. The Committee welcomes the following policy, institutional and legislative measures taken by the State party:

(a) The Coordination Committee set up by the Ministry of Justice in March 2016 to follow up the implementation of the National Human Rights Commission of Thailand (NHRCT) recommendations by relevant agencies

(b) The Gender Equality Act (2015);

(c) The Justice Fund Act (2015); and

(d) The Third National Human Rights Plan (2014-2018).

4. The Committee also welcomes the ratification of the following international instruments by the State party:

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\* Adopted by the Committee at its 119th session (6 - 29 March 2017)

- (a) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2016;
- (b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2012;
- (c) The Convention on the Rights of Persons with Disabilities, in 2008; and
- (d) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2007.

## **C. Principal matters of concern and recommendations**

### **Interpretative declarations and derogations on the Covenant and State of emergency**

5. The Committee notes the withdrawal of the interpretative declarations concerning articles 6(5) and 9(3) of the Covenant; however it also notes that the State party still maintains its interpretative declarations concerning articles 1(1) and 20. The Committee regrets that derogations from articles 12(1), 14(5), 19 and 21, as a result of the Declaration of Martial Law of 2014 do not seem to comply with the rationale and the scope of the provisions established by article 4 of the Covenant and General Comment No. 29 (2011). The Committee is concerned that while those derogations raise many concerns about their compatibility with the Covenant they have not been lifted, and continue to be applied, partly by virtue of the Emergency Decree 2005 (in the Southern Border Provinces) and the Martial Law (in 31 provinces) (art. 2 and 4).

**6. The State party should consider revoking its derogations from articles 12(1), 14(5), 19 and 21, with a view to ensuring the full and effective application of the Covenant. In any case, the State party should ensure that any derogation is fully compatible with the provisions of article 4 of the Covenant as interpreted in General Comment No. 29 on derogations during a state of emergency.**

### **Constitutional and legal framework**

7. The Committee is concerned about certain provisions of the interim Constitution of 2014, such as section 44, 47 and 48, and National Council for Peace and Order (NCPO) Orders issued under section 44, which limit access to effective remedies and may lead to immunity of the NCPO for serious human rights violations. It is particularly concerned about Section 44, which has often been used to issue orders restricting rights under the Covenant. It is also concerned about section 279 of the new draft Constitution which would continue to provide immunity to the NCPO for its acts, announcements and orders (art. 2).

**8. The State party should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48 in the light of its obligations under the Covenant and make sure that all measures to be adopted under the new draft Constitution, including section 279 will be consistent with its obligations under the Covenant, including the obligation to provide effective remedies to victims of human rights violations.**

### **National human rights institution**

9. While acknowledging the important work of the NHRCT, the Committee regrets that it was downgraded to “B” status by the accreditation committee of the General Alliance of National Human Rights Institutions (GANHRI). The Committee is concerned about the transparency of the selection process of members of the NHRCT (art. 2).

10. **The State party should ensure that the NHRCT is able to carry out its mandate effectively and independently, and in full conformity with the Paris Principles (General Assembly resolution 48/134, annex).**

#### **Non-discrimination**

11. While welcoming the Gender Equality Act (2015) and its efforts to prevent and address discrimination on the basis of gender and sexual orientation, the Committee notes with concern that section 17 allows for exceptions to gender discrimination on grounds of religion and national security. It is also further concerned about reports of discrimination and violence against LGBTI, indigenous and stateless people, and about reports of restrictions on travel on migrants who have regularised their status (arts. 2, 3, 12 and 26).

**12. The State party should ensure full protection against discrimination, and in particular consider amending the Gender Equality Act to eliminate any limitation on the protection against gender discrimination. The State party should intensify measures to ensure that LGBTI, indigenous and stateless people and migrants do not suffer from discrimination and violence.**

#### **Violence against women**

13. The Committee is concerned about reports of high rates of domestic violence against women, which are largely underreported, as they are considered a private affair, and about the risk of impunity for perpetrators arising from the possibility of ending criminal proceedings upon settlement by the parties which may put victims under pressure not to pursue their rights (arts. 2, 3, 6, 7 and 26).

**14. The State party should redouble its efforts to prevent and address all forms of violence against women, including by:**

(a) **Encouraging reporting of such cases, establishing an effective complaints mechanism and ensuring that cases of violence against women are thoroughly investigated, perpetrators prosecuted and, if convicted, punished with appropriate sanctions; and that victims have access to effective remedies and means of protection;**

(b) **Amending provisions allowing termination of criminal proceedings upon settlement by the parties to ensure their compatibility with the Covenant; and**

(c) **Continuing to carry out awareness-raising campaigns to sensitize the population about the unacceptability of violence against women and increase the training and capacity building of police forces, prosecutors and judges.**

#### **Equal rights of men and women**

15. The Committee is concerned about the prevalence of gender biases and stereotypes and the limited participation of women in political life and the private and public sector, including the police (arts. 2, 3 and 26).

**16. The State party should strengthen its efforts to increase the participation of women, particularly in high-level and managerial positions in political life and private and public sector, if necessary, through temporary special measures, to give full effect to the provisions of the Covenant; and continue strengthening the measures to raise awareness and eliminate gender biases and stereotypes.**

#### **Death Penalty**

17. While welcoming the de facto moratorium on executions, the Committee reiterates its concern that domestic law punishes with the death penalty crimes such as crimes relating to corruption, bribery and drugs that do not meet the threshold of the “most serious crimes”

within the meaning of article 6(2) of the Covenant. The Committee is also concerned about the large number of cases in which the death penalty has been imposed (arts. 6 and 7).

**18. The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State should take all measures necessary, including legislative action, to ensure that the death penalty is limited to the most serious crimes involving intentional acts of killing.**

**Extra-judicial killings, enforced disappearances and torture**

19. The Committee remains concerned, that the State party's criminal legislation does not adequately ensure that acts of torture and enforced disappearance, as stated in the Covenant and other internationally established standards, are fully criminalized. The Committee regrets the delay in enacting the draft Act on Prevention and Suppression of Torture and Enforced Disappearance (arts. 2, 6, 7, 9, 10 and 16).

**20. The State party should ensure that legislation fully complies with the Covenant, in particular by prohibiting torture and enforced disappearances in accordance with the Covenant and international standards. The State party should expeditiously enact law on the prevention and suppression of torture and enforced disappearances**

21. The Committee is particularly concerned about reports of torture and other ill-treatment, extra-judicial executions and enforced disappearances, against inter alia, human rights defenders, including in the context of the Southern Border Provinces. The Committee remains concerned about widespread impunity for those crimes; and the slow progress in investigating such cases, including with regard to the cases of the shooting of civilians during the political violence of 2010, the enforced disappearances of Sompchai Neelapaijit and Porlajee "Billy" Rakchongchaeroen and the torture endured by Kritsuda Khunasen (arts. 2, 6, 7, 9, 10 and 16).

**22. The State party should:**

(a) **Ensure that cases are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, including torture, enforced disappearances and extra-judicial killings, including in the context of the Southern Border Provinces. Ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;**

(b) **Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of the investigations;**

(c) **Ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition;**

(d) **Amend the Martial Law Act, Emergency Decree and Order 3/2015 to ensure that they comply with all the provisions of Covenant, including with the guarantees against detention incommunicado enumerated in the Committee's general comment No. 35(2014); and criteria with a view to lifting the Martial Law and Emergency Decree in the provinces currently under them without undue delay**

(e) **Setting up promptly an independent mechanism for the prevention and suppression of torture and enforced disappearances;**

(f) **Reinforce the training of law enforcement officials and military personnel on full respect for human rights, including appropriate use of force and on**

**the eradication of torture and ill-treatment; and ensure that all training materials are in line with the Covenant and the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials.**

#### **Trafficking and forced labour**

23. While taking note of the significant efforts undertaken to address trafficking and forced labour, the Committee remains concerned that trafficking in persons and forced labour remain and give rise to significant problems, particularly regarding sexual exploitation, fishing, agriculture and domestic work. It is concerned about reports on child labour and the exploitation of vulnerable people, such as irregular migrants and indigenous peoples. It is further concerned about reports of victims of trafficking being deported without effective screening for their protection needs and about the premature collection of their testimonies in order to facilitate prompt deportation (art. 7, 8 and 24).

**24. The State party should strengthen its efforts to effectively combat trafficking in persons and forced labour, inter alia, by: (a) strengthening preventive measures; (b) increasing victim identification, systematically investigating allegations and complaints; and prosecuting and punishing those responsible; and (c) providing victims effective protection, assistance and remedies to victims, including strengthening its screening and testimony collections processes.**

#### **Right to liberty and security of persons and humane treatment of persons deprived of their liberty**

25. The Committee is concerned about reports of the arbitrary detention of hundreds of individuals exercising their right to assembly and/or expression for “attitude adjustments” after the 2014 coup and that such individuals were reportedly often detained without charge, held incommunicado at undisclosed places of detention for periods of up to seven days, with no judicial oversight or safeguards to ill-treatment and without access to a lawyer. It is further concerned that upon release, detainees were reportedly compelled to sign a written agreement not to travel abroad, and refrain from expressing political views and that failure to comply involved the risk of up to two years of imprisonment. Finally, the Committee is concerned about the practice of detaining without charge and without habeas corpus criminal suspects for lengthy periods of time, which can reach 30 days in cases before civilian courts and 84 days in cases before military courts. (arts. 7, 9, 10, 12, 14 19 and 21)

**26. The State party should immediately release all victims of arbitrary detention and provide them with full reparation. It should also bring its legislation and practices into compliance with article 9 of the Covenant, taking into account the Committee’s general comment No. 35 (2014) on liberty and security of persons.**

#### **Rights of aliens**

27. While welcoming the State party’s important efforts at hosting refugees and its decision to establish a screening mechanism for asylum seekers, the Committee is concerned about reports of deportations and forcible returns without review or adequate assessment of protection needs of, refugees, asylum-seekers and other people in need of international protection, including Uighur and Rohingya people; and insufficient guarantees against non-refoulement (arts. 6, 7 and 13).

**28. The State party should ensure, in law and practice people in need of international protection are not returned to a country where there are substantial grounds for believing there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant. It should also ensure the speedy establishment of a screening mechanism and that all persons applying for international protection are given access to a fair and effective procedure to make individualized determinations of**

**their right to protection needs against non-refoulement under the Covenant, including the provision of legal aid where the interests of justice so require.**

29. The Committee is concerned about reports indicating the detention of undocumented migrants, asylum-seekers and refugees, for lengthy periods and without contact with their embassy, counsel or civil society organisations. It notes the efforts of the State party to improve the conditions in Immigration Detention Centres; however, it is concerned about reports of overcrowded cells, lack of adequate health services, poor sanitation facilities, inadequate food and water, and incidents of violence. It is also concerned about reports of children being detained and separated from their relatives; without access to school and placed in cells with adult detainees with risk of physical and sexual abuse (arts. 2, 6, 9, 10, 24 and 26).

**30. The State party should:**

**(a) Refrain from detaining refugees, asylum seekers and migrants and implement alternatives to detention, including before deportation; and in those cases where the individual is detained, ensure that the detention is based in the individual circumstances, reasonable, necessary and proportionate and reassessed as it extends in time; and ensure effective access to judicial review;**

**(b) Ensure that children are not deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking account their best interests as a primary concern, and keeping them segregated from adult detainees who are not their family members; and**

**(c) Ensure the living conditions in Immigration Detention Centres are in compliance with the Covenant.**

**Right to a fair trial and military courts**

31. While taking note of Order 55/2016, which transfers jurisdiction for offences committed by civilians on 12 September 2016 and thereafter from military to civilian courts, the Committee remains concerned about reports of hundreds of ongoing cases and arrest warrants against civilians that remain to be adjudicated before the military jurisdiction; as well as civilians who were convicted by military courts and did not enjoy the right of appeal. It is also concerned about reports that all guarantees provided for by article 14 are not implemented during trials by the military courts (art. 14).

**32. The State party should ensure that all trials under military courts are exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14 of the Covenant and Committee's general comment No. 32 (2007). It should take the necessary measures to accept transfer requests from military courts for by offences committed prior to 12 September 2016, transfer all such pending cases to civilian courts and provide the opportunity for appeal in civilian courts of cases involving civilians already adjudicated under military jurisdiction.**

**Conditions of detention**

33. The Committee remains concerned about the high levels of overcrowding and poor conditions of detention in many places of detention, including: poor sanitation and hygiene conditions, lack of access to health care, lack of adequate food and water and the stigmatisation of certain detainees. It also concerned about reports of excessive use of restraining devices, such as shackles, and sexual harassment (arts 7 and 10).

**34. The State party should continue to strengthen its efforts to improve conditions of detention by taking practical measures to reduce overcrowding, particularly by promoting alternatives to detention. It should also increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions**

**of detention in all of the country's prisons are compatible with the United Nations Standard Minimum Rules for the treatment of Prisoners (the Nelson Mandela Rules).**

#### **Freedom of expression**

35. The Committee is concerned about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the State party's legislation, including in the Criminal Code; the Computer Crimes Act (2007), Order. 3/2015; and the restrictions imposed through section 44 of the interim Constitution. It is also concerned about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the above mentioned legislation, and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the Constitutional referendum in 2016 (art. 19 and 25).

**36. The State party should take all necessary measures in order to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the Covenant. Any restriction should comply with the strict requirements of article 19(3), as further developed in the Committee's general comment No. 34 (2011); including the strict tests of necessity and proportionality. It should also consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation. The State party should also refrain from using its criminal provisions, including the Computer Crimes Act, Sedition Act and other regulations as tools to suppress the expression of critical and dissenting opinions. It should take all measures to end prosecutions against those charged for exercising their freedom of opinion and expression during the constitutional referendum, and provide appropriate training to judges, prosecutors, and law enforcement personnel regarding protection of freedom of expression and opinion.**

#### **Lèse majesté**

37. The Committee is concerned that criticism and dissention regarding the royal family is punishable with a sentence of three to fifteen years imprisonment; and about reports of a sharp increase in the number of people detained and prosecuted for this crime since the military coup and about extreme sentencing practices, which result in some cases in dozens of years of imprisonment (article 19).

**38. The State party should review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant. Pursuant to its general comment No. 34 (2011), the Committee reiterates that the imprisonment of persons for exercising their freedom of expression violates article 19.**

#### **Peaceful Assembly**

39. The Committee is concerned about the excessive restrictions imposed on the freedom of peaceful assembly since the military coup of 2014, in particular the strict banning of any public gathering of more than five people and political gatherings of more than four people. It is also concerned about the provisions of the Public Assembly Act (2015) that establish criminal penalties for failing to provide prior notification to authorities regarding the organisation of peaceful assemblies. The Committee is particularly concerned about the arrest of hundreds of people for having organised or taken part in peaceful gatherings (article 21).

**40. The state party should effectively guarantee and protect the exercise of the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from**

**imposing detention on individuals exercising their rights who do not present a serious risk to national security or public safety.**

#### **Statelessness**

41. While acknowledging the progress made by the State party since the adoption of the Civil Registration Act of 2008, its regulations on birth and late registration of children, and its engagements to eliminate statelessness by 2024, the Committee is still concerned about the high numbers of stateless people, in particular among indigenous peoples and ethnic minorities, with detrimental impacts on access to basic services such as education for children, and an increased vulnerability to criminal networks of trafficking and prostitution (art. 2, 24, 26 and 27).

**42. The State party should strengthen its efforts to reduce statelessness, and in particular:**

**(a) Ensure that rural and isolated populations are informed on and have access to the procedures relating to the acquisition of nationality;**

**(b) Ensure the promotion and protection of rights of stateless persons and in particular provide primary education to children and protection against trafficking.)**

#### **Rights of persons belonging to minorities and indigenous peoples**

43. The Committee regrets the lack of protection for persons belonging to indigenous communities in the Constitution and remains concerned about the stereotypes and bias they suffer. It is also concerned by the discrimination they endure, including with regard to citizenship, access to basic services or land rights, and in particular by the impact of the decrees 64/2014 and 66/2014 which have reportedly resulted in the eviction of several communities from their lands. It is also concerned about the lack of consultation and participation in decisions affecting them. (arts. 2, 25, 26 and 27)

**44. The State party should guarantee the full enjoyment of the rights of persons belonging to minorities, as well as indigenous peoples, including the protection against discrimination regarding citizenship, access to basic services and land rights. It should ensure that prior consultations are held with a view to obtaining their free, prior and informed consent regarding decisions that affect them, in particular with regard to their land rights.**

### **D. Dissemination and follow-up**

45. The State party should widely disseminate the Covenant, its two Optional Protocols, its second periodic report, and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

46. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 8 (Constitution and legal framework), 22 (Extra-judicial killings, enforced disappearances and torture) and 34 (Conditions of detention) above.

47. The Committee requests the State party to provide in its next periodic report, due for submission on 29 March 2021, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, in preparing its next periodic report, to broadly consult civil society and non-

governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's response to the list of issues will then constitute the third periodic report to be submitted under article 40 of the Covenant.

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