

Press Statement by the Thai CSO Coalition for the UPR

Recommendations by Civil Society concerning the Second Universal Periodic Review (UPR) of Thailand

Bangkok, 16 March 2016 – Today, the Thai CSO Coalition for the UPR (Universal Periodic Review) with members working on 22 issues calls on the Thai government to act in compliance with its obligations and commitments it has made during the first cycle of UPR in 2011 to respect, protect and promote human rights.

During the UPR Info's Pre-Session diplomatic dialogue held at the Embassy of Switzerland in Bangkok, representatives of the CSO coalition have provided concrete solutions to foreign diplomats in Thailand to ensure the recommendations UN Member States will make to the Thai government on 11 May 2016 during the overall review of its human rights record reflect local communities' needs, respect, protect and promote human rights – and bring about positive change for the years to come.

The UPR is a mechanism under the UN Human Rights Council (HRC) through which the international community will get a chance to assess how the Thai government has effectively implemented recommendations received from the previous review in 2011, and how it is currently protecting and promoting human rights. Without any exemption, the 193 UN Member States are required to submit a national report to the UN reflecting the human rights situation in their own countries. The review takes place every 4.5 years and civil society organizations in various countries are given the chance to provide information on the human rights situation on the ground, including concrete recommendations which would improve the livelihoods of people. The review of Thailand's human rights situation will be held on 11 May 2016, at the UN Human Rights Council in Geneva, Switzerland. The Thai CSO Coalition for the UPR has been engaging in the UPR process and stands ready to support the monitoring and ensure that the Thai government will accept all the recommendations and translate them into action to genuinely respect, protect and promote human rights.

Various human rights issues have been identified for the review in May including: the right to freedom of expression, the administration of justice, the right to life, torture, enforced disappearances, management of natural resources, women's rights, rights of the child, SOGIE rights, rights of indigenous peoples, statelessness, refugees, migrants, older persons, people living with HIV/AIDS, trafficking in persons, the human rights challenges in the Southern Border Provinces, etc.

Management of natural resources: Until now, the 'power to manage natural resources' has been monopolized by the government. Many existing laws and policies concerning natural resource management has rendered grave impacts on traditional way of life. After the 2014 coup, the National Council for Peace and Order (NCPO) has issued the NCPO Orders no. 64/2557 and 66/2557, followed by the forest master plan which empowers the state officers to forcibly evict communities from their land and to destroy their crops without providing them resettlement and remedies. In addition, the NCPO Orders no. 3, 4 and 9/2559 have been issued to suspend the enforcement of city and town planning law to pave the way for the Special Economic Zones, energy policy, petroleum exploration, and power plant project. More than 70 projects can now go ahead including the construction of dam and transportation infrastructure, etc., without having to wait for the approval of the Environmental Impact Assessment (EIA) reports. An attempt has also been made to push forward the new Mining Act, Water Resource Act and Petroleum Act. The procedural safeguards have been vastly trimmed down and public participation grossly deprived to push ahead large scale development projects invoking special laws which restrict the right to freedom of expression and peaceful public assembly to protect their natural resources. Martial Law, Section 44 of the Interim Constitution, the Head of NCPO Order no. 3/2558 on the maintenance of public order and national security and the Public Assembly Act are among the special laws being invoked to summon and detain for attitude adjustment the dissenters who want to exercise their rights peacefully. This is yet to mention harassment and intimidation by the state officers, military and police officers and such incidences have been on the rise including the intimidation by the military officers against the Lahu ethnic minority group or the use of brute force by investors to evict the sea gypsy from Rawai Beach, etc.

The Thai state is urged to suspend projects which cause impacts on the environment and community life and encourage the community to take part in the decision making process regarding natural resource management at the policy and local levels. Prior to its implementation, the community must have access to information concerning

the project which might affect the local area and the affected persons must be provided with protection, fair compensation and remedies from the state and the investors.

Civil and political rights: After the May 2014 Coup, the situation of civil and political rights has deteriorated as a result of the enforcement of laws which restrict people's rights and freedom. Arrests and prosecutions have been made against people who have expressed themselves peacefully and the human rights defenders. The other rights violation include torture, the use of death penalty, and enforced disappearance as well as other violations in the Deep South whereby the perpetrators have enjoyed impunity and have not been brought to justice.

After the coup, Martial Law and the NCPO Orders/Announcements have been invoked to restrict freedom of the press and public. Dissenters have been summoned and detained for attitude adjustment invoking this special power. Some of those who have been deprived of liberty recalled how they had been subjected to torture while in custody. Civilians are not tried in the Military Court. Libel cases, cases invoking Articles 112 and 116 of the Penal Code and the Computer Crime Act's Article 14 have been filed including at least 30 cases concerning Article 112 (lèse majesté cases). At least 50 persons who have expressed themselves peacefully have to face legal action for violating the NCPO Announcements.

The situation in the Deep South has gone worse. Unrest has been lingering on for more than 12 years and special laws have been enforced including Martial Law, the Emergency Decree on Government Administration in States of Emergency and the Internal Security Act. As a result, civilians have been arbitrarily arrested and deprived of liberty for up to 37 days without being brought to the Court. In addition, compulsory DNA testing has been imposed, and of late, a five month old baby was forced to undergo the DNA test. At least 54 persons have reported about systematic and extensive torture during 2014-2015 and five cases of enforced disappearance during 2011-2016.

The state must revoke or review the enforcement of laws which restrict people's rights and freedom and must open up the space for people to have a role in the peace making process in the Deep South. Human rights violators must be brought to justice to stem impunity. All the nine core human rights treaties must be signed and ratified and domestic laws must be amended in compliance with the treaties.

Vulnerable groups in society: The lack of legal status among the *indigenous peoples, minorities, stateless persons, and asylum seekers/refugees* has made them continue to face discrimination and being vulnerable to arrest, detention, refoulement and exploitation. They are also deprived of their access to fundamental rights, limited access to justice process and a slim chance to get remedies when their rights are infringed upon.

The state must recognize the rights of indigenous peoples in the Constitution and legalize them by enacting the Act on Indigenous Council through the National Legislative Assembly (NLA) to promote community right to self-determination, and to revoke the laws and policies which affect the way of life of indigenous and ethnic groups.

The state is obliged to act and proceed according to the asylum procedure and accord the asylum seekers and refugees with the status in compliance with international standards. The immigration detention policy must be addressed to ensure that the state shall detain asylum seekers and refugees only as necessary and other non-custodial measures shall be used to replace detention. The principle of non-refoulement must be respected and any repatriation must be implemented based on voluntariness, with dignity and safety.

Labour rights and trafficking in persons: Migrant workers have limited access to registration due to the expensive expenditures. As a result, they are deprived of their labour right according to the domestic laws in Thailand including the Labour Protection Act, Labour Relations Act, the Workmen's Compensation Fund Act, and the Social Security Fund Act. They are barred from forming their own organizations. The Thai state must review the laws and explored guidelines which help the migrant workers to have access to their rights including social security, workmen's compensation, health insurance, the right to freedom of association, and collective bargaining. Interpreters should be provided in public service facilities. Definition of trafficking in persons in the Anti-Trafficking in Persons Act should be broadened to include debt bonded labour. In addition, the state should sign core Conventions including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the ILO Conventions no. 87 and 98.

The Rights of the Child: The Thai government has continually provided for the protection and promotion of the rights of the child. Concerns are, however, abound regarding corporal punishment which has to be addressed by amending the Civil and Commercial Code's Article 1567 to ban corporal punishment on a child in all circumstances. The exemption of a child younger than 12 years from criminal liability can be done by amending Article 73 of the Penal Code to increase the minimum age of criminal liability from ten to 12 years in compliance with international standards including the recommendation of the UN Committee on the Rights of the Child.

The Rights of Persons with Disabilities: The persons with disabilities continue to face discrimination including discrimination in workplaces depriving them of the accessible environment and facilities. The state should effectively enforce the four laws to protect the rights of the persons with disabilities to ensure transparent and to promote good governance as well as to accelerate the effort to establish and develop service centers operated by organizations working with the persons with disabilities.

The Rights of the Elderly: older persons continue to be deprived of their knowledge and access to the rights and benefits they are entitled to. According to the 2003 Act on Older Persons, the government pledges to consolidate the policies of six major Ministries and two agencies and to act in accordance with the ASEAN Charter as declared in Kuala Lumpur for "Empowering Older Persons in ASEAN" and to support the development of the International Declaration for Older Persons.

Women's rights: The Gender Equality Act has come into force since 8 March 2015, though its main provision to eradicate discrimination against women per Article 17 paragraph 2 contains exemptions for the enforcement including any acts pertaining to national security and religious principles. It provides for the interpretation and enforcement of the law inconsistent with human rights principles. The Thai government is strongly urged to revoke Article 17 paragraph 2 of the Act.

Sexual Orientation, Gender identity and Expression (SOGIE) Rights: With the suspension of the 2007 Constitution, the provisions to provide for protection for the LGBTI (Lesbian, Gay, Bisexuals, Transgender, and Intersex) individuals has been done away as well. Therefore, the Thai state should ensure that the new Constitution contains safeguards against discriminations based on gender and sexuality by allowing LGBTs to participate in the legislation and development of policy to protect the rights of LGBTIs including the protection against abuse and discrimination in educational institutions, the right to be recognized as a transgender, and the recognition of gay marriage.

The Rights of Sex Workers: The Thai state continues to enforce the 1996 Prevention and Suppression of Prostitution Act which deprives sex workers of their access to fundamental rights provided for by the Labour Protection Act. This has led also to a lack of respect for their human dignity, being labelled, being subjected to rights violation and discrimination. In addition, the 2008 Anti-Trafficking in Persons Act treats sex workers as a victim of human trafficking and intends to use the law for punitive purpose rather than to protect the rights of sex workers. Therefore, the Thai state should revoke the 1996 Prevention and Suppression of Prostitution Act and rescind clauses in the 2008 Anti-Trafficking in Persons Act's Article 4 on "exploitation from prostitution".

The Rights of Injection Drug Users (IDUs): People who inject drugs continue to bear the brunt from the enforcement of the 1979 Narcotics Act and the 2002 Narcotic Addict Rehabilitation Act which provide for punishment of IDUs or forcing them to receive rehabilitation. For women who inject drugs, they receive no protection when subjected to sexual molestation by government officers, or when offered to have sex in exchange with release. In addition, women who inject drugs and face domestic violence are not protected by the 2007 Protection of Victims of Domestic Violence as they shall be first prosecuted by the 1979 Narcotics Act. The Thai state is urged to amend both the 1979 Narcotics Act and the 2002 Narcotic Addict Rehabilitation Act to genuinely provide for the rights of drug users. Thailand boasts the highest number of **women prisoners** in ASEAN. Statistically, 80% of the women are convicted in drug-related charges since Thailand's judicial proceedings lack gender sensitivity. The state is urged to restructure the procedure and to adopt non-custodial punishment in lieu of imprisonment in order to reduce the number of women prisoners per the Bangkok Rule.

The Rights of Women and Girls living with HIV/AIDS: Women and girls are not among the priority groups in the HIV/AIDS prevention effort of the state. In addition, women living with HIV/AIDS are often urged to have blood test during prenatal care and to disclose the result to their spouses. They are also encouraged to find a new spouse or to

not have a child or to have sterilization. Though Thailand has been lauded for its success in the prevention of mother-to-child transmission, it should also ensure sufficient funding for prevention program for women and to support the eradication of discrimination based on HIV/AIDS toward women and girls.

The Right to Safe Abortion: Article 305 of the Penal Code legalized abortion performed by a medical practitioner under 2 conditions: only if it (a) is necessary for a women’s health, or (b) the woman is pregnant as a result of a criminal offense. However, access to such service is impeded by biases of the service providers making women not having the access to safe abortion. In addition, the Penal Code’s Articles 301 and 302 contain clauses to criminalize and punish women who undergo abortion, as well as the person who performs the abortion. The Thai state is urged to revoke the Penal Code’s Articles 301 and 302.

For more detail on the Human Rights Situation in Thailand and Recommendations proposed by the Thai CSO Coalition for the UPR, please access the **UPR Advocacy Factsheets on the Human Rights Situation in Thailand:**

English Version: http://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_thailand2016-en.pdf

Thai Version: http://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_thailand2016-th.pdf

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