

# THAILAND

## **Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/THA/Q/2)**

For the Review of the Second Periodic Report of Thailand  
(CCPR/C/THA/2)  
At the 119<sup>th</sup> session of the Human Rights Committee  
(Geneva – March 2017)

Submitted by: *Migrant Working Group (MWG)*

*Thailand, 31 January 2017*

**With the support of :**





## **I. Introduction**

### **a. Joining organisations**

Migrant Working Group Thailand (MWG) is a network of non-governmental organizations working on health, education and migrant workers' rights. The Migrant Working Group Thailand aims to be a forum for exchange of information amongst migrant workers network, analyze problems, set agendas and conduct campaign and advocacy activities with state sector, academic sector and civil society sector for migrant workers' fundamental rights in order that they can have a better quality of life. This report has been prepared with information collected from members of the Migrant Working Group during December 2016.

### **b. Contact details**

Mr. Adisorn Kerdmongkol, coordinator  
Migrant Working Group  
109 Suthisarnwinichai Road, Samsennok  
Huaykwang, Bangkok 10310  
Email: [adisorn.keadmongkol@gmail.com](mailto:adisorn.keadmongkol@gmail.com)

## **C. An overview of situation concerning migrant workers**

1. The flow of migrant workers into Thailand has begun since more than 20 years ago, though the policy to address migrant worker issues has only started to take shape since 1992. Two major laws governing migrant workers are the 2008 Alien Working Act and the 1979 Immigration Act. Migrant workers who are allowed by the RTG to work in Thailand can be divided into three groups;
  - a. Irregular migrant workers, who according to the government policy are allowed to stay temporarily in Thailand and have been issued with documents that recognize their residency and work. However, such workers have to undergo nationality verification afterward in order to obtain travel documents from their countries of origin, work permits and visas.
  - b. Labour permitted to work in Thailand by the virtue of bilateral agreements (MOU) between Thailand and its neighbours including Myanmar, Laos, Cambodia and Vietnam.
  - c. Migrant workers who have undergone nationality verification process and obtained travel documents from their countries of origin, permits, and visas to allow them to stay within a period of time
2. According to a nationwide census in 2010, it was estimated that there were 3.3 million non-Thai populations in Thailand. But according to labour registration data of the Ministry of Labour as of December 2016, there were total 2,681,391 migrant workers who have registered themselves including 897,828 workers who have undergone nationality verification and has been issued with valid travel documents, 392,749 workers inducted by virtue of bilateral agreements between Thailand and its neighbours including Myanmar, Laos and Cambodia, 1,325, 126 workers (including workers at the sea fisheries and seafood processing sector) allowed to temporarily stay and work in Thailand to complete National Verification and 65, 688 workers allowed to work at the border areas. Since 2015, Thailand has begun to manage migrant workers from Vietnam and has adopted procedure to register

## **THAILAND – Joint Civil Society Report**

migrant workers from Vietnam. There are 1,569 Vietnamese workers allowed to stay and work.

3. Even though the present policy looks open and more lenient to the migrant workers, however, in effect it negates the gains made in securing rights of migrant workers. Under the policy, migrant workers who had undergone nationality verification and had been issued with either passports or other travel documents from the countries of origin, once they report themselves to the authorities according to the cabinet resolution, they would receive documents for the non-Thai persons or the pink cards for their use instead of their passports and work permits. This would reduce the status of migrant workers to those who have been allowed to temporarily stay pending the deportation and allowed to work temporarily. Such policy would simply do away with all the efforts which have long been made to enhance the legal statuses of the migrant workers. The attempt since 2004 to bring them out of the registration cycle and to enable them to be treated as legal migrant workers would be stalled by the policy.
4. Meanwhile, the policy would affect the rights of the migrant workers who have already been legalized. They would be deprived of their right to travel in Thailand and to travel back to their countries of origin just like any legal migrants are able to do. This measure would also detrimentally impact on their access to social security fund, the workmen's compensation fund and their right to live and work in Thailand legally.
5. In addition, the policy reflects a failure in the process to legalize the migrant workers based on cooperation with the countries of origin, the initiative of which would be beneficial to the workers, to Thailand and the countries of origin which has been hailed as a success in the management of migrant labour. It clearly shows how Thailand lacks clear direction or plan to manage the whole system of migrant labour workers in a long run.

### **Recommendations**

6. RTG should develop effective and sustainable migrant worker management policies, with consideration on a balance between sustainable national development and respect for human rights of migrants. Such policy should be developed by means of consultation with concerned stakeholders and result in long term strategies.
7. RTG should regulate services by brokers assisting migrants and employers and de-link the migrant registration from employers to increase transparency, deter corruption and control costs

## II. Civil Society Replies to the Issues identified in the LOI

### Constitution and legal framework within the Covenant is implemented (art.2)

#### **Non-discrimination and equality (arts. 2, Para 1; 3; 26 and 27)**

**Issue 5:** *In the light of the Committee’s previous recommendations (see CCPR/CO/84/THA, para. 23), please clarify how the State party upholds migrant workers’ rights and how it ensures that migrant workers are not discriminated against in law and in practice. In addition, please provide information on the number of complaints received during the period under review by the Office of the Ombudsman and the Office of the National Human Rights Commission and indicate whether there have been any investigations, prosecutions and sanctions in connection with allegations of violations of migrant workers’ rights by their employers.*

#### **Reply / Comments from Civil Society**

##### **Migrant Workers Access to Workmen’s Compensation Fund**

##### Law on Compensation relating to workplace accident and injury

8. **The The Workmen’s Compensation Act B.E.2518 (A.D.1975)** provides protection to employees or their dependents (including migrant workers). The important details of the law are:
- a. Under the Law, an employee is entitled to compensation if he/she suffers from harm, illnesses, death or disappearance related to work.
  - b. The law establishes a “Workmen Compensation Fund (WCF)” to be managed by the Social Security Office (SSO).
  - c. “Compensation” under the law is a generic term covering all the expenses an employer has to provide for their employee in four categories including compensation, indemnity, medical expenses, expenses of industrial rehabilitation and funeral expenses.
  - d. Under the law, every employer employing more than one employee have to make a contribution to fund at an annual rate provided by the WCF with respect to each person employed by it.
  - e. Therefore, when an employee in the workplace of an employer who makes contributions to the Fund, suffers any harm or illness or dies or disappears as a result of the work, compensation is provided under the WCF.
  - f. **Employers in some industries are exempted under the law, such as the fishery and agricultural sector.** In case a worker from these industry suffer from workplace injury or accident, it is the employer who is directly responsible for paying compensation to the concerned employee.
  - g. **Further, domestic workers are also excluded from the purview of the Act.** The definition of the “employee” under the Act is: *“a person agreeing to work for an employer in return for wages irrespective of designation but excluding an employee who is employed for domestic work which does not involve in business”*
  - h. The Social Security Office has the responsibility to investigate whether or not, an employer has paid the necessary contribution to the WCF and submitted the necessary documents such as the list of employees under its employment.

## THAILAND – Joint Civil Society Report

- i. If the employer fails to pay contribution within the prescribed period, the employer has to make an additional payment or employer is liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Thai Baht or to both.

### Practice of Social Security Office

9. As per the guideline Circular no. Ro Sor 0711/Wor 751 dated 25, issued by the Social Security Office (SSO), a migrant worker who wants to access the WCF is required to produce passport or an alien person document, a work permit and proof of payment of taxes. This rule has the effect of excluding:
  - Undocumented migrant worker who does not have a work permit in Thailand,
  - Undocumented migrant workers who are registered in Thailand and carry temporary documents issued by Thai authorities
10. In case a migrant worker belonging to the above categories suffers workplace injury or accident, the SSO directs the employer to accept responsibility of providing compensation. In practice, the amount of compensation is decided in a mediation /negotiation proceeding between employer and employee. In many cases representatives from SSO participate in such proceedings. Since the employee or migrant worker has the least power, mostly the amount of compensation that is agreed upon is not to the advantage of the migrant worker. Moreover, in many cases the mediation agreement is not executed and the employer simply refuse to pay the compensation.

### Court Ruling upholding the rights of Migrant Workers to access WCF

11. Migrant workers challenged the constitutionality of the above guideline of the Social Security Office in a petition filed before the Administrative Courts. The Supreme Administrative Court issued the final decision on the matter on 9th September 2015, the Supreme Administrative Court held that the objective of the Workmen's Compensation Fund had been established as a fund and guarantee for the provision of compensation to the employee on behalf of the employer who is supposed to pay contributions to the Fund. The Court held that the protection was intended to cover **all employees without any discrimination or categorization of the employees. It further overturned the ruling of the lower court that had upheld the regulation of the SSO** requiring a migrant worker to submit their personal income tax form as well as show evidence proving that their employer has paid contributions to the Worker Compensation Fund not less than the minimum wage. The case details are presented in Annexure 1.

### SSO office continues to discriminate against migrant workers in practice

12. Despite the above Court decision, the rights of migrant workers to access WCF continues to be subjected to their ability to submit personal documents such as passports and work permits. In case the migrant cannot provide the required documents, the SSO shifts the responsibility of paying compensation to the employer.

**Recommendation**

13. The government should review, amend and revoke law and practice that prevents migrant workers to access the SSO's Workmen's Compensation Fund

***Migrant workers' rights to form labour union and actively participate in such unions***

14. Article 4 of the Interim Constitution of Thailand stipulates that “subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.”
15. The freedom of association to form and join an organization to promote and protect one's interest is a fundamental right that is recognized in the core human rights treaties and ILO Conventions. However, the Labour Relation Act B.E. 2518 (1975) is in violation of these principles as:
  - a. Section 88 of the law provides that only employees having Thai nationality can form a union.
  - b. Section 101 states that in order to be eligible for election as members of union committee or sub-committee, a person must be not less than 20 years of age and must have Thai nationality by birth.
16. Further, the Order of the Department of Labour, governing Qualification of an Advisor and a Registration Method, dated 29 August 1991, formulated after a military coup by the National Peace Keeping Council (NPKC) authorized the Director-General of the Department of Labour to prescribe the qualification of an advisor to a labour negotiation/ collective bargaining to be a Thai national and must be at least 25 years old.
17. The business sector is also opposed to migrant workers being allowed to form trade unions. This was evident through several comments made by the representatives of the [Joint Standing Committee on Commerce, Industry and Banking](#) (JSCCIB) who strongly opposed the Royal Thai Government (RTG)'s ratification of ILO Conventions 87 and 98 (on right to freedom of association and collective bargaining)<sup>1</sup>, but at the same time requesting RTG to facilitate the increased employment of migrant workers.<sup>2</sup>
18. While migrant workers may apply for membership of trade union founded by Thai workers, this barely happens since a few Thais work in the sector heavily populated by migrant workers. Migrant workers also face language and cultural barriers. Accordingly, most of migrant workers in Thailand lack access to the mechanism of democratic trade union, which systemically advocates and represent the members to

---

<sup>1</sup> [http://www.ditp.go.th/contents\\_attach/89286/89286.pdf](http://www.ditp.go.th/contents_attach/89286/89286.pdf)

<sup>2</sup> <http://www.mcot.net/site/content?id=5406db82be0470a8408b456a;>

<http://www.sakhonline.com/news/?p=19317;> <http://www.thaichamber.org/scripts/detail.asp?nNEWSID=6947>

## THAILAND – Joint Civil Society Report

improve benefits and working conditions, and take the issues to the street as evident in many wildcat strikes of the migrant workers in the past years.<sup>3</sup>

19. The limitation and lack of freedom of association under the Labor Relations Act (LRA), including the prohibition of fulltime and subcontracted workers to freely associate in the same trade union recognized by LRA, has increased employer leverage during labor dispute, namely lockout and strike, which the employers can freely employ subcontracted workers while union are on strike or being locked out. The employers have recently brought in migrant workers to work during the lockout as well, such as the cases of TA Automotive<sup>4</sup> and Sanko Gosei<sup>5</sup>, increasing the tension between Thai and migrant workers in industrial zones.
20. Weak freedom of association and right to collective bargaining has lead the weak recognition and respect of workers' rights for all workers in Thailand. Thai labour movement have long identified the problems and have campaigned for RTG to ratify ILO Conventions 87 and 98 since 1992. In 2006, Thai Labour Solidarity Committee (TLSC) petitioned to RTG to ratify the aforementioned conventions, with the intention to make right to freedom of association and collective bargaining inclusive for all workers in Thailand, which will legally allow migrant workers to freely associate and establish trade union.<sup>6</sup> However, RTG strongly opposed the petition, citing the national security as the main reason of opposition.<sup>7</sup> The use of “national security” as the “excuse” to prevent migrant workers from enjoying international core labour standard still remains to these days as seen in the comment of JSCCIB representatives, who opposed the ratification of ILO Conventions 87 and 98 citing concern on national security, but at the same time requesting RTG to facilitate more usage of migrant workers.

### Recommendations:

#### 21. The State Party should:

- a. Speed up the amendment of Labour Relations Act (LRA) and State Enterprise Labour Relations Act (SELRA) to ensure that the newly amended labour laws align with, and effectively promote freedom of association (ILO Convention 87) and right to collective bargaining (ILO Convention 98) to the groups of following workers; Civil servants and public sector workers, Private school and university teachers, Agricultural and informal sector workers, Subcontracted and agency workers and Migrant workers
- b. To ensure that all workers are protected against acts of anti-union discrimination, including the use of short-term contract, subcontracted and agency workers to weaken trade union power, discriminately lock out or preventing union leaders from entering workplace, use of civil and criminal defamation lawsuits on union leaders, use of

---

<sup>3</sup> 2011, strike of 1000 Burmese nationality workers in Petchaboon Province, <http://prachatai.com/journal/2011/04/34283>; 2015, strike of 300 Burmese workers in Nakhon Ratchasiman Province. <http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9580000113542>; 2016, strike of 137 Burmese workers in Ratchaburi Province <http://www.now26.tv/view/83530>; 2011, strike of 600 Burmese workers in Ratchaburi; 2015, strike of 500 Cambodian workers in Chonburi

<sup>4</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302068)

<sup>5</sup> <http://prachatai.com/journal/2015/10/61922>

<sup>6</sup> <http://www.prachatai.com/journal/2006/12/11092>

<sup>7</sup> <http://prachatai.com/journal/2006/12/10994>



## THAILAND – Joint Civil Society Report

physical and psychological abuses and enforce the protection of trade union activities at all time , since many workers have been dismissed (per the complaint) during their drive to establish trade union.

- c. To ensure and enforce the employer to bargain with the workers in good faith, in regards of right to collective bargaining, since RTG admitted that LRA has no such obligation to enforce the employer.
- d. To eliminate the prohibition of strike in state owned enterprise sector.
- e. To ensure appropriate time frame and effective enforcement in legal procedure of labor right violation cases (due to the allegation that the labor court spend years before making the decision and the employers often ignore the ruling without impunity) and to ensure compensation be paid to affected workers in the appropriate time frame.
- f. In reference to joint sign to PM Prayut Chan-o-cha on letter for Andy Hall<sup>8</sup>, dated 10 December 2016, 110 civil society organizations urged Thailand to ratify and implement ILO Core Labor Conventions, particularly No. 87 and No. 98.

### *Migrant Workers Rights to Access to Remedy under Damages for Injured Persons, Compensation and Expense for Defendants in Criminal Cases, Act B.E.2554 (2001)*<sup>9</sup>

22. The 2001 Damages Act, regarding Damages for injured persons and Compensation and Expense for accused in criminal cases, was promulgated in accordance with the 1997 Constitution of the Kingdom of Thailand which confirm the right of a party aggrieved from the action of another party to access to remedies which shall be provided by the state when convicted party could not provide such remedies and/or there is no other resolution. The law is applied universally to protect persons, regardless of their race, nationality, religion, language, or other status. As such, the law encompasses migrant workers in Thailand. If the injured person or defendants meet the relevant criteria are eligible to apply for compensation or damages from the Rights and Liberties Protection Department. Applications for compensation are reviewed and awarded/denied by the Compensation Committee.
23. Since the enforcement of the Act in 2001, migrant workers have been able to access to the compensation<sup>10</sup>.
24. However, the Compensation Committee issued their new decision to prohibit the undocumented migrants to access the fund in May 2015. The Compensation Committee outlining the decree as the committee was agreed that the undocumented applicant of compensation fund is not involved in the accused crime and met with criteria for the legal definition of the victim. Nevertheless, the committee refused to provide the compensation to the victim due to irregular status, and exercised the legal authorization to prohibit the

---

<sup>8</sup> [http://hrn.or.jp/eng/wp-content/uploads/2017/01/Joint-Sign-on-Letter-for-Andy-Hall-FINAL\\_SENT.pdf](http://hrn.or.jp/eng/wp-content/uploads/2017/01/Joint-Sign-on-Letter-for-Andy-Hall-FINAL_SENT.pdf)

<sup>9</sup> Translation of the ACT including list annexed to the Damages of the Injured Person and Compensations and expenses for the Accused in the Criminal Case Act B.E.2544 (2001)

[http://www.krisdika.go.th/wps/wcm/connect/1a299b004e2b72bf987cfa798fdc4669/DAMAGES+FOR+THE+INJURED+PERSON+AND+COMPENSATIONS+AND+EXPENSES+FOR+THE+ACCUSED+IN+THE+CRIMINAL+CASE+ACT,+B.E.+2544+\(2001\).pdf?MOD=AJPERES&CACHEID=1a299b004e2b72bf987cfa798fdc4669](http://www.krisdika.go.th/wps/wcm/connect/1a299b004e2b72bf987cfa798fdc4669/DAMAGES+FOR+THE+INJURED+PERSON+AND+COMPENSATIONS+AND+EXPENSES+FOR+THE+ACCUSED+IN+THE+CRIMINAL+CASE+ACT,+B.E.+2544+(2001).pdf?MOD=AJPERES&CACHEID=1a299b004e2b72bf987cfa798fdc4669)

<sup>10</sup> See case studies at page 19-English version

<https://issuu.com/hrdfoundation/docs/6e637fdc3cd81d/30?ff=true&e=8095058%2F12144173>

## THAILAND – Joint Civil Society Report

payment of remedy to persons without regular entry status. The Compensation Committee's decision is in clear breach of the Constitution of the Kingdom of Thailand, the Universal Declaration of Human Rights (UDHR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Article 2 of the International Covenant on Civil and Political Rights (ICCPR).

25. Access to remedy by victim of sexual violence: 9 March 2016, Ms.B (alias), 13 years old, is a Burmese girl submitted the application to the Committee on Determination of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case (Committee) and inquired the damages as she was an injured person under offences against offences relating to sexual violence committed by the other person. In August 2016, the Committee made the decision and denied Ms.B to access to the damages by given the reason that though the girl is an injured person according to Section 3 of the Act<sup>11</sup>. Regarding to the fact that she entered into Thailand illegally, therefore, the girl is not eligible to access to the damages.
26. Access to remedy in case of Offense against Life: Ms.Sasikarn Phongpaotanandorn, a wife of Mr.Thuwa (Burmese nationality), filed the application to the Committee to seek for the damages in case of Mr.Thuwa who was murdered on 7 March 2014. In August 2016, the Committee made the decision and refused to provide Ms.Sasikarn access to the damages by given the reason that although Mr.Thuwa was an injured person according to Section 3 of the Act. Considering that he entered into Thailand illegally, therefore, the wife of Mr.Thuwa is not eligible to access to the damages. November 2016, Ms.Sasikarn appealed the Committee decision by given the reason that Mr.Thuwa has the passport issued by the Burmese Government. However, when the applicant submitted the application to the Committee, the applicant was unable to provide the copy of passport as the passport was destroyed when the perpetrator committed murdered to Mr.Thuwa. In the appeal, Ms.Sasikarn was also mentioned that although the injured person came to Thailand illegally, the Committee should not deny the injured person access to damages, rights to compensation, as the Committee decision is deemed to discriminate against the foreigner and it contradicts to the ICCPR Art.2.

### Recommendations

27. The state has its responsibility to secure the Right to Remedy. It shall enforce policy and regulations to resolve the false implementation of Law, against Access to Justice and the Rule of Law, cause by the high authorities or law enforcers.
28. RTG should review, revise and revoke any decision of Compensation Committee which is found to discriminate against migrant workers depriving them of the right to have access to the damages for injured persons and compensation and expenses for the accused in criminal cases.

---

<sup>11</sup> Art 3 of Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act, B.E. 2544 (2001) stated that "Injured person" means a person whose life, body or, mind has been injured due to a criminal offence committed by the other persons where he or she has not been involved in the commission of such criminal offence..

**Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, para. 3; 6 and 7)**

**Issue 11:** Please report on measures taken to define and criminalize the offence of torture and enforced disappearance in accordance with international standards. Please also provide information on: (a) Reports of the unlawful use of force and violations of the right to life by State agents, in particular in the form of enforced disappearance, torture and extrajudicial killings, including during the state of emergency in the southern border provinces; (b) Steps taken to establish an independent external monitoring mechanism to investigate allegations of unlawful acts committed by law enforcement officials; (c) Measures taken to conduct a prompt and effective investigation into the case of Kritsuda Khunasen, who was allegedly subjected to enforced detention and torture in May 2014 and was released on 24 June 2014 by the military; (d) Measures taken to ensure that law enforcement officials act in a manner consistent with articles 6 and 7 of the Covenant; and (e) Measures taken to prevent human rights violations committed by State agents, to promptly and impartially investigate such violations, to bring the perpetrators to justice and to provide adequate remedies to victims.

29. Migrant workers and victims of trafficking face violations of the rights in a number of ways such as;
- a. The law authorizes officials to carry out the arrests and deportations of undocumented migrant workers prior to their having access to judicial review and remedies even though the migrant workers are victims and entitled to remedies from legal and justice process. Thus many Many irregular migrant workers are too scared to complain fearing their deportation as per the Immigration Act.
  - b. Given the lack of interpreters friendly to the migrant workers, they often find it challenging to communicate with Thai officials in a language they do not understand.
  - c. State agencies are not required to provide information about due and legal rights in the languages understood by the workers.
  - d. Allegations of torture during detention of migrant workers have been received by civil society organizations (Case of migrant workers accused of murdering foreign tourists on Koh Tao, South of Thailand<sup>12</sup>, two youth suspected of murder in Chianmai province and 4 migrant workers working in fishing boats were suspected of murdering a young girl in Ranong Province southern part of Thailand<sup>13</sup>). According to the defense lawyer, the accused had complained of being tortured while being held in custody. Further, the lawyer stated that the accused did not have access to legal counsel during the arrest and interrogation by the police, had no access to interpreter they trusted, etc.
30. Though such information has been revealed in public, the RTG tends to stay indifferent and is not inclined toward investigating the probable corrupt practice of its own officials. As a result, even documented migrant workers have the fear and lack confidence and dare not complain with state officials and justice mechanisms. The migrant workers are also vulnerable to become victims of criminal offences.

**Recommendation**

31. An appropriate mechanism should be created to specifically enable migrant works to file complaints in accordance with the law such as interpreters available at key entry point,

<sup>12</sup> <https://www.amnesty.org/en/latest/news/2015/12/thailand-torture-claims-in-koh-tao-murder-case-must-be-investigated/>

<sup>13</sup> More details of the case <http://www.ahrchk.org/ruleoflawasia.net/news.php?id=AHRC-FPR-006-2016>

## THAILAND – Joint Civil Society Report

amnesty granted to stay temporarily to access the rights protection mechanism, legal proceeding in the migrant friendly language and other interventions.

32. When migrant workers enter the judicial process, especially when they are accused of crimes, interpreters and lawyers should be provided. The accused should be informed of charges and ground of the arrest in a language they can understand. Interpretation services should be provided at no cost when migrants lodge complaints to exercise their rights or when they are accused of offences.

### Prohibition of slavery and forced labour (art. 8)

**Issue 16:** *With reference to the information provided in the State party's report (see CCPR/C/THA/2, paras. 64-65), please provide updated information, disaggregated by age, sex and ethnicity of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences that have been imposed in cases of human trafficking since the State party's initial report was considered. Please provide information on the measures taken to ensure effective implementation of the Act on Human Trafficking Prevention and Suppression (2008), in particular to strengthen and effectively enforce appropriate mechanisms aimed at the prevention and early identification of cases of human trafficking and at referring, assisting and supporting victims of trafficking. Please describe the impact of the Human Trafficking Prevention and Suppression Committee and the Human Trafficking Prevention and Suppression Coordinating and Supervisory Committee.*

### Reply / Comments from Civil Society

33. Thailand has prioritized the issue of trafficking in persons as a national agenda since it has been downgraded to a sub-standard ranking in the Trafficking In Persons report by the US State Department for two consecutive years in 2014-2015. It was attributed among other things to failure in prosecution and other constraints including the definition of “exploitation” in the Anti-Trafficking in Persons Act B.E 2551 which failed to cover all forms of trafficking in persons or flaws and very limited time in the screening of trafficking survivors. As a result, a number of trafficking survivors have been unable to have access to all their rights in the justice process. Particularly in the past year, the trafficking of forced labour in fisheries and trafficking in persons against the Rohingyas have become controversial and it has led to an intense effort to crack down on the trafficking rings. Nevertheless, after such suppression, there have still been no court verdicts that clearly penalize the perpetrators and provide for remedies to the survivors of trafficking in persons in such sector.
34. According to the report on the prevention and suppression of trafficking in persons in Thailand of 2015, the Royal Thai Police revealed that the number of case pending the investigation was 317 compared to 280 in 2014, it was a 13% increase. 547 suspects were implicated in those cases, compared to 412 in 2014, or a 33% increase. The number of trafficking survivors was 720, compared to 595 in 2014, or a 21% increase. As to the statistics about the cases on trafficking in persons decided by the Court in 2015, 65% of defendants in those cases have been sentenced to five years in jail and more. The rest 35% has been sentenced to over ten years of imprisonment.
35. Nevertheless, even though the number of legal cases has increased, but access to justice process of the trafficking survivors was still a challenge.

**The request to become co-plaintiff on the offence of trafficking in persons**

36. A request to become co-plaintiff in a criminal proceeding is a right of the injured parties who want to be a part of the justice process to ensure that they would be properly remediated. The offence against the Anti-Trafficking in Persons Act B.E 2551 is a criminal offence and an offence committed against the injured parties inflicting direct harm on them including their life, body, liberty, and health. According to Section 30 of the Criminal Procedure Code coupled with Section 2(4), it provides for the right of the injured party to file a petition to become a co-plaintiff and therefore survivors of trafficking offence should also be entitled to such right. Nevertheless, there have been at least three cases on trafficking in persons with legal help provided by civil society organization including the provision of attorneys. The attorneys authorized by the injured parties have filed a petition asking to become a co-plaintiff, but the Court has only granted for being a co-plaintiff in other criminal offences, i.e., the offence against liberty, but the offence of trafficking in persons. The Courts claimed that the violation of the Anti-Trafficking in Persons Act is an act against the state and therefore the injured parties cannot be a party in the justice process.

**Advance witness examination**

37. According to Section 31 of the Anti-Trafficking in Persons Act and Section 237 bis of the Criminal Procedure Code, the competent official is able to conduct advance witness examination prior to the indictment if it is reasonably believed that the witnesses might have to travel outside the Kingdom or have no permanent addresses or live in places far from the court of jurisdiction, or if there is a reason to believe that the tampering with evidence is about to happen, directly or indirectly, or if there are difficulties to bring the witnesses to give evidence in the Court later. Therefore, the competent official has often conducted the witness examination of the survivors of trafficking in persons as soon as possible in advance before the indictment without taking into account the investigation report and the readiness of the survivors. The witness examination has thus been conducted without a clear direction and the questioning by the public prosecutor cannot be made efficiently given the incomplete investigation. It has made it impossible to acquire sufficient evidence to incriminate all the perpetrators within the duration of time. Moreover, by conducting the advance witness examination prior to indictment, it would deprive the injured parties of their right to have a lawyer during the witness examination. Without a good understanding of the process, the evidence given by the injured parties which could be pivotally important to the litigation, carries less weight and becomes less credible and would affect the overall proceeding.

**The transfer of the case**

38. On 13 June 2015, the Office of the Court of Justice has announced the establishment of the Specialized Court on Trafficking in Person to try trafficking in persons cases along with the establishment of the Department of Trafficking in Persons Litigation. The Trafficking In Persons Procedure Code has also been promulgated to provide for guidelines of the effective and prompt criminal proceeding relating to trafficking in persons. Meanwhile, the attorneys representing the clients requesting to be co-plaintiffs in the case have asked the Supreme

Court to have the case transferred and tried by the Specialized Court on Trafficking in Person invoking Section 26 of the Criminal Procedure Code. They argued that the witnesses became so terrified to give evidence in the Court and the defense attorneys have made the gesture to threaten the witnesses and their attorneys. As a result the witnesses became so fearful and not confident to give evidence in the Court. The Supreme Court, however, dismissed the request citing that the argument of the attorneys including the possible unrest and disruption of the proceeding or any impact on the material interest of the state as provided for in Section 26 of the Criminal Procedure Code was not convincing. The Supreme Court therefore refused to have the case transferred from the Provincial Court of Trang to the Specialized Court on Trafficking in Person and dismissed the request of the co-plaintiffs' attorneys.

### **The screening of survivors of trafficking in persons and the forms of exploitation according to the Anti-Trafficking in Persons Act**

39. There is no clear definition of the injured party according to the Act. But there are guidelines to determine who would be treated as survivors of trafficking in persons through the preliminary screening of survivors conducted by a multidisciplinary team consisted of the inquiry official, the official from the Ministry of Social Development and Human Security, social worker, psychologist, interpreter, etc. Despite an agreement of the screening procedure of the survivors of trafficking in persons, there have still been inconsistent opinions among members of the multidisciplinary team. Even though the inquiry official has the arbitrary power, but in practicality, the inquiry official has not been able to arbitrate anything, since they tend to think it is the official from the Ministry of Social Development and Human Security who has the arbitrary power since they are the competent official according to the Anti-Trafficking in Persons Act. Or in some cases, some inquiry official might not understand the forms of exploitation according to the Act and have wrongly determined that some survivors were not survivors of trafficking in persons, even though the multidisciplinary team had already made the decision that they were the survivors of trafficking in persons. It has thus delayed the possibility to gain trust and cooperation from the persons who might be survivors of trafficking in persons and it has made some fail to receive the assistance. In addition, an interpreter can be key to the survivors screening. But the authorities might not be able to provide competent interpreters. In some cases, some survivors who can speak Thai are asked to interpret for their fellow survivors.
40. There are constraints as to the interpretation of the forms of exploitation, since according to the Anti-Trafficking in Persons Act, there are eight forms of exploitation including prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent. Technically, the law enforcement official has to interpret the provision strictly. But there could be other forms of action which could be tantamount to being an act of trafficking in persons, particularly forced labour including debt bondage and the withholding of passport, among others. The official are thus unable to determine that the workers are survivors of trafficking in persons such as the Rohingya survivors. Previously, the authorities would not treat the Rohingyas as survivors of

## THAILAND – Joint Civil Society Report

trafficking in persons. But with legal help provided to the Rohingyas by CSOs, it has become clearer that some groups of the Rohingyas could be survivors of trafficking in persons as they had been subject to forced labour and extortion. With the investigation carried out on trafficking rings, it has led to hundreds of arrests against the perpetrators in the past year.

### Cooperation with CSOs

41. Even though government agencies have made Memorandum of Understandings with various CSOs working on the prevention and suppression of trafficking in persons, but there has not been concrete cooperation. No clear action plans have been laid down to spell out the roles of the CSOs in term of the provision of assistance to the survivors of trafficking in persons. Most cooperation has taken place informally and in the form of listening to input from the CSOs rather than any joint operation at the rescue of the survivors.

### Recommendations

42. RTG should seek more cooperation from CSOs in the prevention and suppression of trafficking in persons, particularly the organizations providing legal assistance to survivors of trafficking in persons. Insofar, the organizations providing such legal assistance have not received enough cooperation from the Ministry of Social Development and Human Security. Therefore, the state agencies should make an attempt to cooperate with the CSOs to provide capacity building to expert lawyers who can work on trafficking in persons cases and to the attorneys working on the cases.
43. The authorities should develop an effective screening process of the survivors of trafficking in persons and develop a contingency plan in cases there are a lot of persons to interview.
44. The trafficking in person prosecution should proceed with the injured-party-centered-approach. It should emphasize on ensuring that the injured parties would enjoy their rights to the fullest and give second priority to criminalizing the perpetrators.
45. The law enforcement officials must receive proper training in order to understand the definitions and components of the trafficking in persons offence to ensure an efficient proceeding.
46. RTG should review and provide for a flexible definition of “exploitation” to ensure that it covers all forms of exploitation.

### **Freedoms of expression and association and right to peaceful assembly (arts. 9, 17, 19, 21, 22 and 25)**

**Issue 18:** *In the light of the Committee’s previous recommendations (see CCPR/CO/84/THA, para. 18), please indicate the number of criminal proceedings brought forward during the period under review against human rights defenders, journalists and other civil society actors for defamation (arts. 326-328 of the Criminal Code). Please indicate the measures taken to ensure that the Computer Crimes Act is not used to repress freedom of expression, in particular in cases of alleged defamation. Please also explain what legal and institutional safeguards are in place to protect users of e-mail and social media from government surveillance, which may arbitrarily interfere with their right to privacy.*

## THAILAND – Joint Civil Society Report

### Reply / Comments from Civil Society

47. The ILO Committee on Freedom of Association (CFA) has examined the complaint of IndustriALL Global Union against Royal Thai Government (RTG) regarding its failure to protect right to freedom of association and collective bargaining in the country.<sup>14</sup> Cases in the complaint involved the uses of defamation and libel lawsuits to intimidate and deteriorate the work of trade unionists, usually leading to the dismissal or huge fine, and eventually leading to weakening or collapse of the unions. The case included Stanley case (No.999), TA Automotive case (No.993) and Ricoh case (No.1006).

#### Recommendations

48. The Government should review the legislation relating to defamation to ensure that the freedom of expression of trade union leaders and members is effectively protected. The relevant legislation includes the penal code that criminalizes defamation and the Computer Crime Act.
49. The government should actively and effectively implement the UN Declaration on Human Rights Defenders.

---

<sup>14</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMP\\_LAINT\\_TEXT\\_ID:3302068](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMP_LAINT_TEXT_ID:3302068)



**Annexure: 1**

***Case studies: Irregular migrant workers who have been granted permission to temporarily stay in Thailand by having been documented and registered in the TR 38/1or carries the temporary card issued by Thai government)***

**1. Case of Ms. Nangnoom Maisang**

Ms Nangnoom is a migrant worker in the construction sector. She suffered permanent disability in the course of her work. In July 2006, she filed a complaint to the Social Security Office for compensation from the WCF. However, the SSO cited the Circular number RS0711/W751 and ordered her employer to provide compensation to her for disability on the ground that the Circular, which was effective at that time, stipulated that an employer must provide compensation to the employee when an employee does not have a valid immigration document and work permit. When Ms Nangnoom had been working at the time, she was registered under the migrant worker registration scheme and had been issued only the TorRor 38/1, thus she was not entitled to the WCF, when the TorRor 38/1 was the only document the Thai government issued for migrant workers. Ms Namgnoom has filed a complaint to the Labour Court, on the ground that the SSO has a discriminative practice.

The State Enterprises Worker’s Relations Confederation (SERC) issued a letter to the ILO to investigate the case whether it is against the ILO Convention No. 19, which Thailand has ratified. Subsequently, the ILO indicated that the order for Ms Nangnoom to receive the compensation from the employer is discrimination against the worker.<sup>15</sup>

**30 March 2016** The Supreme Court deemed that Nang Noom was an employee per the

---

<sup>15</sup> *ILO Committee of Experts Report on Thailand/C19*

In February 2010, the ILO’s CoE released a three page finding on its consideration of SERC’s C19 complaint, as part of its reporting to the 99<sup>th</sup> Session of the International Labour Conference (ILC). The report concludes (Pg 715) that:

“The Committee notes with deep concern the situation of some 2 million workers from Myanmar, many of whom are described by the SERC as being in “a social zone of lawlessness” where they are not protected by the laws of Thailand or Myanmar... The Committee considers that in a situation where equal treatment of migrant workers may be jeopardized on a mass scale leading to exploitation and suffering, the bona fide application of the Convention [C19] would require member States to deploy special and urgent efforts commensurate with the gravity of the situation ... With regard to the situation in law, the Committee observes that, while the WCA grants foreign workers the right to equality of treatment, the SSO circular RS0711/W751 subjects the exercise of this right to fulfillment of certain conditions, which in the current situation effectively deprives migrant workers of protection by the WCF enjoyed by the Thai workers... *The Committee asks the Government to review the policy of the SSO ... in the light of the above guiding principles and safeguards established by international law for the promotion of equal treatment of foreign workers. Taking into account the gravity of the situation, the Committee asks the Government to instruct the SSO to take positive and urgent measures lifting restrictive conditions and facilitating access of migrant workers to the WCF irrespective of their nationality. ....*”

## THAILAND – Joint Civil Society Report

definition set forth in the Workmen's Compensation Fund Act. Even though she was an irregular migrant worker, but she was well registered and was issued with personal documents per the civil registration procedural law. Thus, she was entitled to the protection provided by the WCF Act and was entitled to the compensation from the Fund

(see the court decision <http://hrdfoundation.org/wp-content/uploads/2016/04/31-03-2016-HRDF-press-release-Supreme-Court-decision-case-of-migrant-workers-access-to-workmen-compensation-fund-ENG.pdf> )

**2. Mr.Sai Kein**, a migrant worker from Myanmar. Mr.Kein work as worker in production line feeding synthetic fiber into a spinning machine. 11 May 2015, while working on the machine, Mr.Kein left hand was cut from his wrist upward leaving just his left thumb. He had to stop working and received treatment for 45 days, after which he applied for work-related injury compensation from SSO. 30 December 2015, the SSO issued a directive stated that Mr.Kein had suffered work related injury from working for his employer and thus he was eligible to have compensation from his employer. Mr.Kein disagreed with the SSO order and filed an appeal against the case to the WCF committee by arguing that that he is a migrant worker registered with Thai authorities and carried passport and work permit issued by the office of employment, Ministry of Labour. He also worked for an employer who ran business required by the Ministry of Labour to pay contribution to the WCF. However the WCF committee made the decision on 18 November 2016 which denied the worker access compensation from WCF per the Workmen Compensation Fund Act B.E.2537 (1994) as the Committee found that the worker had work permit but the work permit indicated that Mr.Kein was still employed by the previous employer

**29 December 2016** Mr.Sai Kein, brought the case to the Labour Court of Samut Sakhon against the SSO based in Nakhon Pathom Province and the Workmen's Compensation Fund Committee as defendant number 1 and 2. In the lawsuit he not only asked the Court to annul the directive of the WCF committee but the directive of the WCF Committee was deemed to be discriminatory treatment against the migrant worker with regard to their access to the WCF different from how the Thai workers are treated. Therefore, it could be a breach to the International Labour Organisation's 1926 Convention C019 - Equality of Treatment (Accident Compensation) to which Thailand has become a state party since 1968,

The Labour Court of Samut Sakhon has accepted the complaint from Mr. SaiKein and set 14 March 2017 for a hearing on mediation, taking evidence and prosecution witness examination at the Central Labour Court (for more detail please see at:

<http://hrdfoundation.org/wp-content/uploads/2016/12/29-12-2016-Lawsuit-on-WCF-Eng.pdf> )