

**Alternative Report on Thailand's Implementation  
of the International Covenant on Civil and Political Rights (ICCPR)  
Submitted to the Human Rights Committee  
By the National Human Rights Commission of Thailand  
29 April 2016**

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**Implementation of the Recommendations of the Human Rights Committee**

1. The Thai Government has implemented the recommendations given by the Human Rights Committee, based on Thailand's first report. Positive developments resulting therefrom include the following:

- Amendment of laws that lead to the withdrawal of the interpretative declarations of Article 6 paragraph 5 of the International Covenant on Civil and Political Rights (ICCPR) which states that death penalty shall not be imposed for crimes committed by persons below 18 years old and shall not be carried out on pregnant women; and of Article 9 paragraph 3 which states that anyone arrested or detained on a criminal charge shall be brought promptly before the court.

- Amendment of laws related to causes for divorce for the promotion of gender equality, leading to the withdrawal of reservation of Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- The enactment of the Anti-Trafficking in Persons Act and the Protection of Victims of Domestic Violence Act in 2008.

2. Agencies concerned have been organizing training courses on human rights for law enforcement officers, especially in the Deep South. The government has made efforts to bring conditions of places of detention to be in line with the United Nations minimum standards on treatment of prisoners to a certain extent. Use of shackles is restricted to some detainees as necessary. Dark room confinement has been abolished. Amendments of certain laws are being carried out in order to be in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. The abolition of capital punishment is incorporated in the Third National Human Rights Plan (2014-2018) which is regarded as a step towards the abolition of the death penalty in the future.

3. However, the National Human Rights Commission of Thailand (NHRCT) has observed that certain aspects of the government's implementation of the recommendations are not as yet comprehensive, have not achieved satisfactory results, or have not been as effective as should have been the case. This is due to the fact that the implementation thereof has not been efficiently conducted in accordance with the law. This is also attributable in part to a lack of understanding of operational knowledge on the part of the officers in charge. In addition, the implementation of certain recommendation is still plagued with substantive obstacles, including the implementation in line with Article 4 of the ICCPR, investigations into cases related to torture or excessive use of force by state officials, protection of individuals from being sent to a country where he/she may face danger; and anti-narcotics laws that still authorize officials to detain arrested persons for a period not exceeding 3 days, as well as detention pursuant to special laws such as the Martial Law Act of 1914. In addition, training courses offered on human rights knowledge are still plagued with the quality of the contents

and the continuity of the training programme provided. In addition, amendment of laws related to causes for divorce for the promotion of gender equality is still faced with practical difficulties in certain localities, for example in the case of Muslim women in the Deep South.

### **General Measures of Implementation of the ICCPR**

4. The National Council for Peace and Order (NCPO) took control of the country's administration in May 2014 and promulgated the Interim Constitution of the Kingdom of Thailand B.E. 2557 (2014), Section 44 of which authorizes the Head of the NCPO to exercise the legislative, executive and judicial powers in a manner that may not be in accordance with the rule of law. The NHRCT is of the opinion that conditions underlying the use of the said section should be for the purposes of national security. However, in practice such legal provisions have been applied in the issuance of orders that are not directly related to security as such. Application of the provisions therein should be subject to a definitively clear interpretation framework, which otherwise might be carried out in a manner not consistent with the provisions of the ICCPR. The NCPO has set forth a plan for the drafting of a new constitution, highlighting a political reform to be implemented prior to the holding of a general election – a step designed to democratize the country's political regime. The current Constitution Drafting Committee (CDC) has circulated the Draft Constitution among various sectors in order to hear their comments and opinions. With respect to human rights, the NHRCT is of the opinion that there exist no clear general provisions thereon as in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Certain rights and freedoms previously stipulated in the chapter on rights and freedoms have been relocated to be under that on the duties of the state. This represents a setback in the endorsement of the people's rights and could present problems whereby individuals may not have recourse to court measures in order to protect such rights. With respect to independent organizations, the NHRCT still exists as an independent organization with the power to examine into human rights violation cases, and propose measures for the resolution thereof or approaches to human rights protection to the cabinet and parliament, as well as improve laws, rules, regulations or any order to be in line with human rights principles. In this connection, the NHRCT has already presented its opinions regarding the Draft Constitution to the Constitution Drafting Committee (CDC), stating that the NHRCT should have the power and duty in submitting matters together with its opinions to the Constitutional Court and the Administrative Court, as well as filing lawsuits to Courts of Justice on behalf of injured persons as stipulated in the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

5. **Recommendation:** The CDC should re-consider the provisions in the Draft Constitution on rights and freedoms, stipulate a principle endorsing and protecting human dignity of all persons, and clearly underpin community rights as stipulated in the provisions of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). The Draft Constitution should also promote and protect various rights pursuant to international obligations and customary practices, including the people's political rights. In particular, the people should have the right to participate in various steps and procedures of the decision-making process related to matters that have bearing on their livelihood and the country's administration. This principle should not be restricted to the rights to election only.

### **Political Demonstrations in Thailand in 2010 and during the Period of 2013-2014**

6. During March – May 2010, the United Front of Democracy against Dictatorship (UDD) demonstrated against the government, and called for parliament dissolution and a general election. A negotiation was held between the government and the demonstrators to no avail. The demonstration escalated and became increasingly violent, fuelled by dissatisfaction and hate speeches delivered by certain core leaders consistently through the media. Negative information was deliberately disseminated to instigate the use of violence. The UDD enclosed and trespassed on parliament premises during a session and plotted a plan to move to the *Thaicom* Satellite Station. Accordingly, the government announced a state of emergency pursuant to the Royal Decree on Public Administration in a State of Emergency B.E. 2548 (2005) in order to curb the demonstration. In response, the demonstrators extended their demonstration area coverage and moved further to other areas. Violence broke out in many incidents. Eventually, the government decided to dispatch troops of soldiers to be engaged in the so-called area-enclosing and reclaiming operations, resulting in physical injuries and casualties. In addition, a series of other violent incidents erupted: e.g. the burning of a department store, bomb hurling at a television station and the burning of the provincial administrative offices in many provinces. Such violent incidents caused tremendous casualties and loss of property to the government, demonstrators and members of the public as well as the entire nation. The NHRCT has observed that the government failed to effectively control the situation and protect the lives and properties of the people. Certain groups of the demonstrators resorted to violence, and connived with the group of individuals using weapon against state officials. The demonstration also involved unjustifiable and excessive violation of others' right. However, in many incidents state officials also applied force excessively. As yet, no criminal and disciplinary sanction has been imposed on state officials or commanders in charge.

7. During the period of 2013-2014, demonstrations were staged by various political groups against the government. The demonstrators called for a reform. This was triggered by a move initiated by the political parties to promulgate an amnesty law, very much to the dissatisfaction of a great number of people. The fact that the government coalition parties and certain members of the Senate were expressly opposed to the ruling of the Constitutional Court that the motion lodged for an amendment to the then Draft Constitution regarding acquisition of the Senate was in violation of the provisions in the Constitution induced a great number of people to believe that the government had lost its justifications for the administration of the country. Therefore, demonstrations were subsequently staged, with the demonstrators requiring that the government resign, and a reform be implemented in preparation for a general election to be organized. The demonstrators comprised people from all walks of life, who marched on and enclosed major official offices. When the government dissolved parliament, and announced a general election, the demonstrators were opposed thereto and called for a reform prior to an election, as well as enclosed application places for the election of members of parliament. The government thus announced a state of emergency pursuant to the Royal Decree on Public Administration in a State of Emergency B.E. 2548 (2005) in Bangkok and certain areas of surrounding provinces. However, the demonstration continued with signs of potential clashes between government supporters and the opposing faction. War weapons were used against members of the public and on important premises on many occasions, leading to members of the public suffering death tolls and casualties and loss of property. Accordingly, the National Council for Peace and Order (NCPO) stepped in

to take control of the country on 22 May 2014, and announced that the Constitution of the Kingdom of Thailand B.E. 2550 (2007) be terminated, and the Interim Constitution of the Kingdom of Thailand B.E. 2557 (2014) be promulgated.

8. The NHRCT has received complaints relating to action or failure to act that constitutes human rights violation during both demonstrations. With respect to the demonstration in 2010, the initial stage started off peacefully, only to turn worse as the leaders were not able to control the situation in light of the increasing multitude of demonstrators. Parts of the demonstrators resort to actions not in line with the freedom of peaceful assembly endorsed in the Constitution. Instigations and provocative verbal tactics were applied to encourage violence among the demonstrators and burn property, culminating in vandalism and a state of turmoil. In addition, unidentified groups of individuals were mingled within in the demonstration, using weapons against the officials in many areas. This led to tremendous casualties, involving officials, demonstrators and members of the public. Meanwhile, the demonstration during the 2013-2014 period was characterized in the main by peaceful and unarmed demonstrators. However, certain actions did affect others' rights and freedoms: e.g. the obstruction of the holding of the general election, and the marching on and enclosure of government offices, causing officials not to be able to enter government premises to work. Accordingly, members of the public were not able to have access to the public service. However, the NHRCT has observed that no state officials have been subject to sanction on account of their causing damage to public interest during either of both demonstrations.

9. **Recommendation:** Based on examination of the complaints received regarding both demonstrations, the NHRCT hereby presents the following recommendations:

1) The government shall have to oversee that any demonstration is staged properly. In this connection, the government should first apply regular laws in coping with demonstrations while addressing political conflicts with political measures or processes. The government should also avoid applying special laws: i.e. the Martial Law Act of 1914, the Royal Decree on Public Administration in a State of Emergency of 2005, and the Internal Security Act of 2008. This is due to the fact that these laws are aimed at protecting the country against danger of a severe nature that has significant bearing on national security. Any such law should not be applied to a political demonstration of a general nature with the exception of a case in which any such demonstration has transformed into a crisis or a turmoil with significant bearing on the country's security, or which may lead to unrest of a critical degree.

2) The government has the duty to oversee and contain demonstrations effectively. A civilian agency equipped with personnel trained in the art of overseeing and contained demonstrations should be entrusted with this duty. It is advisable for the agency to avoid applying violence against demonstrators. Any such agency shall have to develop a clear operational plan and steps, and should employ adequate trained officials with specialized work skills and appropriate work equipment.

3) The government shall have to conduct inquiries and investigations into matters in order to acquire facts and bring offenders to justice, be they state officials, demonstrators or any person in legal trials, as well as develop a compensation, remedial and rehabilitative system for the benefit of those affected by the incidents, be it state officials, demonstrators and members of the general public.

4) The government should take measure to achieve a reform of the media in accordance with the spirit of the Constitution of the Kingdom of Thailand, taking into account the interests of the people as paramount. This point is of great importance as during political rallies certain political media disseminated provocative contents designed to cause hatred and antagonism among the population. Use of violence has also led to further divisiveness and violent situations. While the government and society at large shall have to recognize the rights and liberties of the media, they must be exercised within appropriate boundaries.<sup>1</sup>

10. Upon its rise to power in May 2014, the NCPO imposed the martial law and applied measures to curb the then situation characterized by conflict: e.g. prohibiting gatherings for activities with political purposes in order to minimize political instigation, inviting members of various political groups to report to the authorities for attitude adjustment; and requesting cooperation from parties concerned to refrain from organizing activities that may cause conflict to escalate. Certain individuals were detained for many days. In light of such situation, the NHRCT received complaints from their relatives and lawyers of certain individuals invited for attitude adjustment that they were not informed of the places of detention, and that they were not able to visit the individuals detained. Upon receiving such complaints, the NHRCT coordinated with agencies concerned in order to request that the relatives of these individuals may contact the detainees. In addition, the NHRCT has also received complaints regarding state officials detaining the organizers of activities on political or politically-sensitive issues: e.g. energy reform, gatherings of individuals affected by economic problems and environmental impacts. The NHRCT has also received complaints regarding certain detainees being tried in military courts. Furthermore, certain accused individuals were detained in special prisons set up in military camps, which presented a major obstacle for the accused individuals' access to lawyers and for visits by their relatives and friends.

11. The NHRCT is of the opinion that during the post-coup stage no public emergency has emerged in a manner threatening the survival of the nation as such. The enforcement of the Martial Law Act may not be in line with Article 4 of the Covenant. Inviting individuals to report themselves to the authorities by virtue of NCPO orders, and the enforcement of the Martial Law Act in the form of an extension of the detention period to 7 days without any charge being notified do not constitute an appropriate practice, and are not in line with Article 9 of the ICCPR. In detaining individuals, the authorities should also inform relatives of the places of detention. In case where a military court tries the offender accused of committing a security offence who is a civilian, the NHRCT is of the opinion that Thailand shall have to comply with the obligation under Article 14 of the ICCPR that guarantees the right to a fair trial: e.g. everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal, and the right to be presumed innocent until proved guilty according to law. In addition, parties concerned should bear in mind the international principle regarding the justice process for military courts which stipulates that military court should not, in principle, have the same jurisdiction as civilian courts. With respect to limitations on the freedom of expression, the government should take measures only as deemed necessary and

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<sup>1</sup> The contents under paragraphs 6-9 are summarized from the NHRCT report on the political demonstration staged by the UDD during 12 March - 19 May 2010, and the NHRCT report on the examination of the complaints and policy recommendations and proposals to amend laws No. 633-652/2558 of 3 August 2015.

strictly in accordance with the requirements set forth in Article 19 paragraph 3 of the ICCPR. The government should not prohibit such freedom completely, especially with special reference to the people's gatherings to call for the government's action in redressing economic problems. On 1 April 2015, the government lifted the martial law, and there was no further invitation for attitude adjustment by virtue of the said law. However, the NCPO has issued orders having provisions that authorize officials to apply the course of action similar to those under the martial law.

**12. Recommendation:** The government should apply the Martial Law Act only to situations threatening the survival of the nation strictly in accordance with Article 4 of the ICCPR, should inform the Secretary-General of the United Nations of its imposition, and take measures only to the extent strictly required by the exigencies of the situation requiring the imposition of the said martial law in accordance with Article 4 of the ICCPR. The government should not issue orders that have the same contents as the martial law. Additionally, a trial in which the offender is a civilian by the military court should only be implemented in a situation in which a civilian court is not in a position to perform the duty. In any such situation, the state shall have to ensure that any legal proceedings shall be implemented in a just manner and in line with the provisions of Article 14 of the ICCPR. In addition, the government should revise security laws such as martial law and the Royal Decree on Public Administration in a State of Emergency of 2005 that authorize the executive branch to take special measures in a state of emergency. Upon the imposition of any such law, the legislative branch should be authorized to revise the imposition thereof.

13. The NHRCT has received complaints from members of the public who have been affected by suppression operations and instructions to refrain from encroachment on forest resources pursuant to the NCPO's Order No.64/2557. This order does not take into account a right verification process for members of the public who were in possession of the forest areas prior to their being declared reserved land areas. Although the NCPO's Order No. 66/2557 stipulates that any operation of officials such as eviction, seizure, and dismantling of private property owned by members of the public residing on the land in question, shall not affect the poor people, it has been found in many cases that state officials took action without clarity in determining the nature of the acts or individuals against which or whom action must be taken in compliance with the said Order. When a mistake is made in any operation, an injured party does not receive a remedy adequately. In the case in which a member of the public is forced out of his/her land, the authorities do not normally provide or allocate a plot of land for such injured party. Furthermore, community leaders campaigning for justice to be done are summoned for attitude adjustment and detention in military barracks despite the fact that the enforcement of any such order affect the people's livelihood, and even though such requests for justice are not politically-oriented.

**14. Recommendation:** The promulgation of orders by the state shall have to be in accordance with lawful procedures on the basis of a participatory approach. Additionally, the government should encourage officials concerned to perform their duties in accordance with the spirit of the law. In enforcing the law, parties concerned should take into consideration human rights principles and human dignity. The government should develop measures to provide assistance to those affected by the implementation of any such order in terms of providing habitation and land for occupational purposes to individuals required to leave their

land as appropriate. The government should also ensure that injured parties affected by operations by state officials receive remedial assistance in a just manner.

### **Human Rights Situation in the Deep South**

15. During 2004 – 2015, many violent incidents broke out in the Deep South. The situation has continued with a total of 6,295 deaths and 11,399 injuries<sup>2</sup> involving both members of the public and state officials. The government has applied special security laws in order to control the situation in the affected region up to the present. Since the outbreak of the unrest in the Deep South in 2004, the NHRCT has received over 100 complaints relating to torture caused by state officials in the area. It has inquired into the complaints and found that some state officials have used physical torture on arrested persons or intimidated them in order to acquire information relating to unrest plots, or simply to punish suspects arbitrarily as the officials believe that these detainees have committed offences against national security. Most victims of torture are suspects of the Melayu ethnic group, and injured persons often face obstacles in accessing the justice process: e.g. obstacles in seeking evidence, intimidation by officers concerned, or probabilities of being filed counter-lawsuits by officers.

16. In 2014, cases of torture conducted by state officials lodged with the NHRCT exhibited a downward trend, but still existed. Torture and enforced disappearance remain although they may decrease at times. With respect to the Deep South, the NHRCT received 11 torture-related complaints in 2014; and 12 torture-related complaints in 2015. The NHRCT has therefore organized training courses for security officers in the region on the provisions and practices in line with the Convention against Torture on a continuous basis. Furthermore, the NHRCT has set up a human rights coordination centre in *Pattani* Province to support operations in the promotion and protection of human rights in the localities, and to facilitate the people's access to the NHRCT. As a result of its operations in the localities aimed at promoting knowledge among the authorities, the NHRCT has increasingly received cooperation from state agencies in protecting people's rights: e.g. permission is granted to authorize detainees to receive visitors as from the first day of his/her detention, as well as the government's efforts in setting out rules, practices and operational steps in order to prevent torture and enhance public confidence in the performance of duties by state officials.

17. **Recommendation:** The government should ensure that law enforcement is implemented in a just manner. A state official found to have committed an offence shall have to be punished with both disciplinary and criminal sanctions in order to discourage a culture of impunity. In addition, the government should re-consider the use of special security laws in the Deep South: they should be enforced only as necessary and for a limited period of time. The government should minimize the use of special laws mentioned earlier in any area in which the general situation has improved and replace them with the Internal Security Act of 2008, which stipulates that operations shall be in accordance with the Criminal Procedural Code. The government should also encourage officials to carry out their duties in strict compliance with the rules or steps stipulated. The government should consider becoming party to the Optional Protocol to the Convention against Torture (OPCAT) in order to develop an independent national mechanism for the inspection of places of detention or detention facilities – a step that serves as a measure in the prevention of torture. The government shall

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<sup>2</sup> For further information, see [www.deepsouthwatch.org](http://www.deepsouthwatch.org)

have to require a physical examination of persons prior to detention. Relatives and lawyers should be allowed to visit and provide legal advice to detainees from the first day of their detention. Additionally, an independent and streamlined grievance and investigation system should be put in place: a person filing a torture complaint shall have access to a medical examination conducted by a forensic physician immediately and be put under the care of another agency not allegedly involved in torture. Moreover, places of detention should be visited and inspected by independent agencies to ensure that they are in line with international standards.

18. The NHRCT investigated complaints regarding military officers' use of the power under the special security laws to set up checkpoints and take male members of the public aged 16-35 travelling through *Mai Kaen* District, *Pattani* Province, to gather personal records and specimen for DNA testing, using such methods as fingerprint collection, membrane grating in the oral cavity, and collecting specimen from physical and clothing examination. The NHRCT is of the opinion that such practice constitutes an infringement on the right to privacy, while putting up a checkpoint for the checking of travelers constitutes an infringement on the freedom of movement.

19. **Recommendation:** The government should review the DNA specimen collection methods, especially membrane grating in the oral cavity that constitutes a direct physical contact operation. This practice should be avoided in order to prevent any impact on the rights and liberties to the physical body. Any such operation should be conducted on a person accused of committing an offence, not on members of the public in general and is conditional on the accused's free and full consent. It should only be conducted by a physician or an expert and only as necessary using a method causing the least pain possible, and is conditional on the free and full consent of the accused.<sup>3</sup>

20. The NHRCT has received complaints that the remedial process for injured parties of incidents of violence in the Deep South is significantly delayed, inaccessible, and unjust, and is subject to limitations in relation to the rules and regulations in use including the requirement of a ruling by a tripartite committee in order to claim a remedy. In certain cases, it has been reported that the rulings of certain tripartite committee are regarded by those lodging complaints as unjust, preventing heirs of the injured parties from enjoying their rights to remedial arrangements. In addition, complaints have also been lodged regarding requests filed to the government for the payment of retrospective compensation money in lieu of life insurance to heirs of state officials who lost their lives or are required to leave the public service on account of their becoming persons with disabilities. The NHRCT is of the opinion that a remedy should not be limited to financial compensation but should be comprehensive, involving mental rehabilitation of the victims of violation caused either by the government and instigators of violence. In this connection, the NHRCT has submitted its policy recommendations to the government, which are currently being considered by agencies concerned.

21. **Recommendation:** The government should set clear criteria and standards in providing remedy to injured parties. Apart from financial compensation, the remedial scheme should

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<sup>3</sup> Report on the Performance of the NHRCT (2009-2014), p.276.



also include remedy of other types. In the case of remedial measures for those affected by violent incidents, the government should set out a procedure for appealing the rulings of the tripartite committee comprising the military, the police and administrative officials in order to ensure that injured parties have access to justice to the greatest extent possible.<sup>4</sup>

### **Rights in the Justice Process**

22. The NHRCT has visited places of detention across the country, including detention facilities for accused persons in police stations, prisons/penitentiary facilities, and detention facilities of the Immigration Bureau. During 2011-2012, the NHRCT Sub-Committee on Rights in the Justice Process visited 16 police stations and 17 prisons in various regions in order to examine conditions of those places of detentions, the findings of which will be utilized as information for the development of policy recommendations on human rights protection. The NHRCT has found that detained persons in Thailand are still faced with problems relating to access to various health services: e.g. problems related to the confirmation of the right to medical treatment; a lack of public health personnel – i.e. physicians, psychiatry-related personnel and psychologists; the physical conditions of health facilities in prisons which are not suited for effective functioning; a lack of standards in the screening process prior to detention; limited budget for health services allocated to the Department of Corrections; possibility of detainees escaping when sent out for medical treatment in off-prison health service facilities; and complicated procedures in accessing medical treatment. With respect to police stations, it has been found that most police stations have separate detention facilities for male and female detainees, and for juvenile and adult detainees. Detention facilities in most police stations are in good conditions with the exception of certain police stations where detention facilities for the accused are in rickety conditions or are not sufficiently clean. When accused persons fall ill, they have access to basic medical treatment using generic medical supplies. As detention of accused at police stations are of relatively short period, no cases involving grave illnesses have been found.

23. **Recommendation:** The government should integrate databases on detained persons so as to provide medical services efficiently, In order to encourage health personnel to work in prison facilities, the government should revise relevant regulations so that public health personnel working in prison facilities receive the same special benefits as those working in difficult remote areas even if they actually work in a prison located in Bangkok. The government should provide support in terms of knowledge enhancement and resources for health facilities development to effectively prevent the spread of diseases. In addition, a referral system should also be put in place for the sending detained persons for outside medical treatment: e.g. a special entry passage should be provided in order to separate them from other patients, which will facilitate the supervision of detained persons by corrections officers at off-prison medical treatment facilities.<sup>5</sup>

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<sup>4</sup> Report on the Performance of the NHRCT (2009-2014), p.269-271.

<sup>5</sup> The contents in this part are extracted from a report on the findings of a study of right-based access to healthcare service of detained persons in Thailand, conducted by the Sub-Committee on Civil and Political Rights in June 2015.

24. Based on these visits, it has also been found that most prisons are overcrowded. Some prisons are worn-out and so crowded that it is not possible to separate detained persons pending trials from prisoners with final court rulings. Almost all of the prisons visited are plagued with the problems of limited personnel and budget. The fact that prisons have more incarcerated individuals than their capacity does affect the functioning of the officials, causing them to painstakingly work beyond what is required of them by professional standards. This can readily induce work-based risks and has an impact on the efficiency in overseeing and rehabilitating the detained persons. All prisons visited provide food to the incarcerated individuals in accordance with nutritional principles. However, certain prisons still face the problem of inadequate supplies of drinking and consumption water, and also experience water shortages in the dry season – a situation that has an impact on the provision of healthcare for the detained persons. In addition, the NHRCT has also found problem relating to the issue of sexual orientation of detained persons and use of shackles. No definite zoning arrangements have not been made, which has led to numerous problems: e.g. sexual harassment. Prisoners of certain categories are shackled at all times for the reason that the prison facilities are not strong enough and in case where such prisoners are convicted of offences carrying higher penalty than that allowed for the prisons concerned. Such use of shackling is in violation of human dignity. The government should review the necessity of using shackling while taking into consideration international principles thereof. Disciplinary sanctions are carried out in accordance with the Corrections Act of 1936 and relevant ministerial regulations, starting from probation, a lifting of or a reduction in benefits or rewards, to solitary confinement, and a reduction in the number of days allowed as a form of a decrease in punishment.

25. **Recommendation:** The government should inform the public to create a right understanding with respect to the justice process that it is not developed for purpose of retribution, but to redress offenders' behavioral patterns so as to transform them into law-abiding members of society. The government should also accord importance to addressing prison overcrowdedness by applying a criminal justice policy designed to deviate convicts from the judicial process and punishment can be adjusted in accordance with offence committed in order to reduce the number of incarcerated individuals in prisons. Prisons will thus serve as places of detention for offenders of serious cases only. The government should promote restorative justice, whereby an offender is encouraged to take responsibility for the wrong committed through an act of compensation or a remedy directly provided to the injured party, and parties concerned shall collectively determine a restorative remedial plan to redress the offender's behavior. Under this scheme, the role of the family and community in controlling the offender's behavior shall be highlighted under the supervision of a probation officer or under the rulings or verdicts of the court. It also involves the development of rehabilitative physical and mental therapy such as cognitive behavioral therapy in order to develop positive and appropriate behaviors in lieu of delinquent behaviors. Simultaneously, the government should allocate a certain amount of budget and personnel to various prisons, as well as improve prison conditions to suit the number of detained persons and enable separate detention of different categories of detainees in accordance with international principles. It should also consider authorizing private sector to take responsibility of detainees during trial. The Department of Corrections should supervise and ensure that places of detention procure clean water for the purposes of drinking, consumption and utilization for incarcerated individuals. The Department should also avoid imposing constant use of

shackles on detainees to bring the practice in line with a ruling of the Central Administrative Court which sets forth a principle in this regard that it is the responsibility of the government to provide appropriate detention facilities, and the inconvenience caused by the inability to do so should not be imposed on the general public. The government should deliberate upon appropriate remuneration schemes for prison officers suited to their responsibilities and the degrees of risks they have to face in order to motivate them at work and enhance their operational efficiency. With respect to the gender issue, the government should provide separate detention zones for trans-genders from male prisoners during both daytime and nighttime. With respect to near-female incarcerated males, specific arrangements should be made as appropriate for the detention of such incarcerated person at night away from male inmates in order to prevent sexual harassment. The government should also implement the same policy in juvenile observation and protection centres.

### **Revision of the Use of Capital Punishment**

26. The NHRCT supports the government's efforts through the Rights and Liberties Protection Department under the Ministry of Justice for the inclusion of the abolition of capital punishment in the National Human Rights Plan. In this respect the government should reduce the number of legal provisions with capital punishment, classifying offences of a less severe criminal nature to carry the maximum sanction of life imprisonment and amend laws imposing death penalty as the mandatory punishment. Additionally, laws to be promulgated in the future should not impose death penalty as a punishment. Thailand's criminal law carries capital punishment as the maximum form of punishment, which will be applied to offenders of criminal offences of a serious or severe nature. Requests for royal pardon are granted on various occasions. According to information collected by various agencies concerned, it has been found that between 2004 and 2013 Thai authorities have not carried out capital punishment with the exception of two convicted narcotics-related offenders in 2008. However, even though capital punishment is imposed in narcotics-related cases, the commission of such crimes has not decreased in any concrete manner. Accordingly, it may be inferred that capital punishment does not prove truly effective in preventing and suppressing narcotics-related offences. To the contrary, other measures may be applied in lieu of capital punishment in redressing and controlling harmful behaviors.

**27. Recommendation:** The NHRCT encourages the government to educate and explain to Thai society that capital punishment bears no relation to a reduction in or prevention of crimes in any significant manner. In this respect, the government has the responsibility in redressing and controlling harmful behaviors in order to ensure safety to the public.

**28. Recommendation:** The government should take measures to minimize and lift capital punishment in an orchestrated and step-wise manner, revising legal provisions with capital punishment, and restricting the imposition of the said form of sanction only to cases of a severe nature pursuant to Article 6 of the ICCPR, especially with special reference to offences in which the offender does not aim to terminate the life of a person, or offences not constituting a lethal harm – a step that will eventually culminate in the abolishing of death penalty. Additionally, the state may consider lifting capital punishment as the sole means of sanction by amending laws such that the courts may apply their discretion in handing down other sanctions in lieu of the capital punishment. At the same time, the state should improve the country's justice system such that it is more efficient, streamlined and accurate, whereby

each case is dealt with in due course and the convicted are truly offenders who are subject to sanction commensurate to their offences as appropriate. Additionally, those subject to capital punishment should have their rights protected in accordance with international standards. When the justice process is administered efficiently, members of the public will consequently observe the law regardless of the degree of severity or level of sanction associated with any particular offence.<sup>6</sup>

### **Treatment of Migrants and Asylum Seekers**

29. Thailand has been affected by the migration of a great number of *Rohingyas* from Myanmar and Bangladesh. *Rohingyas* entered the country illegally and are subject to be repatriated to their countries of origin pursuant to Thai law. However, as many parties concerned are of the opinion that repatriating these persons could cause them to suffer danger, the government has thus allowed them to remain in the country temporarily and provide them with assistance in accordance with the humanitarian principle. According to inquiries conducted by the NHRCT, it has been found that *Rohingya* migrants may be divided into 3 groups: (1) asylum seekers (2) illegal immigrants, and (3) victims of human trafficking.

The problems of each group will need specific solutions. Based on its visits of the *Rohingyas* in detention facilities of the Immigration Bureau in both Bangkok and other provinces, the NHRCT has identified certain limitations: e.g. places of detention are small and quite crowded, making it not suitable for prolonged detention, and the provision of basic food and medical treatment are insufficient due to limited budget. In this connection, the NHRCT has made recommendations to the government including arrangements separate detention of men, women and for children, and a better coordination for medical treatment of detainees. The NHRCT is of the opinion that the *Rohingya* issue is a regional one. It supports the government's efforts in seeking cooperation with countries and international organizations concerned in order to resolve the issue of *Rohingya* migration in a sustainable manner. It welcomes the government's hosting of the Special Meeting on Irregular Migration in the Indian Ocean in Bangkok in May 2015. In addition, with respect to migrant children, the government should not regard this group of children as illegal immigrants as they do not intend to commit an offence, but they simply accompany their parents.

30. **Recommendation:** The government should deliberate upon amending immigration laws with an aim to differentiate immigrants' legal status, develop appropriate practices, and lift relevant criminal sanction. In addition, incarcerating various groups of immigrants should be a measure of last resort. In the short term, the Ministry of Foreign Affairs should consult with various countries and international organizations concerned in this respect. The government should develop a screening process in order to separate immigrants into 3 groups as discussed above, and organize a nationality verification process in conjunction with the embassies of the countries of origin. In a case in which it is impossible to identify the nationality of an immigrant or after an examination it is found that repatriating an immigrant could cause him/her harm, agencies concerned should coordinate with the United Nations High Commissioner for Refugees (UNHCR) for it to subsequently handle the matter and coordinate with parties

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<sup>6</sup> The contents under paragraphs 26-28 are extracted from the NHRCT's report No.129/2558 dated 24 March 2015, on policy recommendations and proposals for the amendment of laws pertaining to capital punishment and human rights principles.

concerned in relation to possible settlement arrangements in a third country<sup>7</sup>. With respect to overseeing immigrants in detention facilities of the Immigration Bureau, the government should contemplate upon easing the issue of overcrowdedness, and providing an appropriate medical treatment for ill detainees. Simultaneously, the government may contemplate upon other alternatives in lieu of detaining immigrants in detention facilities of the Immigration Bureau: e.g. releasing immigrants on bail with a financial collateral, or reporting themselves to agencies concerned as stipulated. In this connection, agencies concerned may engage international organizations, and private-sector charity organizations in order that any such entity may handle and provide assistance to immigrants thus released. This approach will redress the issue of overcrowdedness within detention facilities and reduce stress on the part of immigrants often subject to prolonged detention, who may accordingly cause problems to officers in charge.

31. In July 2015, the government repatriated *Uighur* men to their country of origin, while the women and children were sent to third countries. Many parties did not agree with the government's action in this matter. The NHRCT thus organized a meeting in conjunction with state agencies concerned, such as the Office of the National Security Council, and the Ministry of Foreign Affairs. In this connection, the NHRCT voiced its concern regarding the repatriation of these persons to their country of origin, as well as treatment of *Uighurs* during the repatriation process. The repatriation of *Uighurs* to the country of origin lacked an acceptable degree of operational clarity as no classification arrangements were put in place and the operation as a whole was not conducted in line with the principles established in international laws, especially the ICCPR and the CAT, and did not comply with the domestic laws on extradition. The individuals to be repatriated did not have a chance to oppose, or appeal, or request that the order is reviewed by the judicial authorities. Therefore, it is possible that such a repatriation operation would lead to danger faced by the individuals repatriated. In addition, with respect to the repatriation of *Hmongs* to Laos in 2011, the government stated that this operation was conducted on the basis of a bilateral agreement between Thailand and Laos, whereby the Lao government assured that the said group of *Hmongs* should live in safety and that their decent livelihood should be guaranteed. In this connection, the NHRCT is of the opinion that the said group of *Hmongs* should be treated in the same manner as other groups of refugees. For example, any repatriation practice should be conducted on a voluntary basis. With respect to Myanmar war-displaced persons it has been reported in the news that the Thai government is poised to close the camps set up for these displaced persons. In this connection, any repatriation shall have to be implemented on condition of preparedness and on a voluntary basis, and these persons shall only be repatriated in accordance with the non-*refoulement* principle.

32. **Recommendation:** Repatriation shall need to be implemented in accordance with the relevant international and internal laws. The government should develop a screening mechanism or process for irregular immigrants who do not possess any documents in order to separate refugees from other illegal immigrants in general. In a case in which a displaced person is to be repatriated to his/her country of origin or a third country the government

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<sup>7</sup> A report of the NHRCT's meeting (on protection and standards in human rights protection), No.26/2558 of 10 August 2015.

should develop measures to ensure safety for any such repatriated person. In the case of extradition, the government shall need to comply strictly with relevant laws on extradition.

### **Rights and Status of Stateless Persons, Persons with No Nationality, and Displaced Thais**

33. A certain number of stateless persons/persons with no nationality in Thailand are displaced Thais or ethnic Thais living in Myanmar and Cambodia in areas along the Thai borders which used to be part of Thailand's territories. Subsequent changes to the borders have resulted in certain parts of the previously Thai areas to belong to neighbouring countries, and Thais living there becoming their citizens automatically. Accordingly, children of these groups of people have not been accorded Thai nationality. Subsequently, parts of these groups of Thais migrated to Thailand, and requested their Thai nationality. They started campaigning for the cause over a period of 10 years. In the end, the parliament enacted the Nationality Act (No.5) of 2012 in January 2012. This Act will effectively accord Thai nationality to approximately 20,000 displaced Thais who used to live within Myanmar and Cambodian territories.

34. The NHRCT has received complaints from displaced Thais in *Trat* Province who have experiencing difficulties in reclaiming their Thai nationality. This has resulted in these displaced Thais to have lost numerous rights, including their rights to education, welfare, and freedom in practicing fisheries. Based on inquiries into facts it has been found that a group of displaced Thais have already submitted a request to have their Thai nationality accorded to them, the results of which have not been notified. The most affected group of displaced Thais involves those who have not been included in any survey: i.e. Thais whose parents have been registered in surveys, in accordance with the cabinet resolution but they themselves were not included in any such survey resulting in not being able to request the status of displaced Thais. Accordingly, the NHRCT has coordinated with various agencies concerned, and signed a memorandum of understanding for cooperation regarding the verification and certification of displaced Thais in January 2016 with the main purpose of alleviating problems for displaced Thais by submitting their requests for the verification and certification of their status as displaced Thais which is genuinely based on *bona fide* facts and evidence.

35. **Recommendation:** Agencies concerned should clarify matters with the displaced Thais in relation to the nationality reclaiming process pursuant to the Nationality Act (No. 5) of 2012, as well as facilitate and provide assistance in the proving and certifying their status as displaced Thais in order that this group of Thais are accorded their Thai nationality in a speedy manner. While these individuals have not been accorded Thai nationality, the government should put in place a policy designed to provide basic rights to this group of people, which include their rights to education, welfare and freedom to practice occupations as appropriate. The government should also open up career opportunities for them. Meanwhile, the government should also issue regulations to authorize persons pending processes for the provisions of nationality who wish to further continue their studies or who have completed their education to further continue their studies or practice occupations as appropriate.

36. The government has developed a policy for redressing the issue of stateless persons or persons with no nationality by according Thai nationality or a lawful resident status in

accordance with the 2005 National Strategy on Administration of Legal Status on the Rights of Persons. On 24 April 2012, the cabinet approved the comprehensive strategy for the holistic resolution of the illegal migrants. The said strategy divides illegal immigrants into 4 categories, 2 of which are stateless persons and persons with no nationality. The first group refers to approximately 500,000 members of minority groups and ethnic groups who have migrated into the country over a long period of time and are not in a position to return to their countries of origin. The government aims to expedite the determination of legal status and provide appropriate basic rights protection for this group of immigrants. The second group refers to illegal migrant workers of 3 nationalities (Myanmar, Laos, and Cambodia), including accompanied dependents/children previously allowed to remain in Thailand, and those recently registered. The second group involves a total of 2 million individuals. In this connection, the short term operational approach is to organize a new order for labour administration to achieve legal employment with an established basic rights protection system as appropriate supported by a community process as a problem-resolution mechanism. The long run approach involves the determination of policies on economic development and labour production in line with the changing population structure, and labour market demand as well as levels of preparedness on the foundation of technological application designed to minimize dependence on foreign migrant labour in a stepwise manner.<sup>8</sup> In addition, the state has promulgated the Citizen Registration Act (No. 2) of 2008, requiring that state agencies register all new-born children that are born in the country, including children without Thai nationality and abandoned children. The NHRCT is of the opinion that the comprehensive strategy for the holistic resolution of the illegal immigrants and the said Citizen Registration Act (No. 2) of 2008 will help reduce the number of stateless persons/persons with no nationality in Thailand, and ensure that the basic rights of stateless persons who are not entitled to Thai nationality are protected.

37. **Recommendation:** The government should expedite the process of according Thai nationality and a lawful resident status to illegal immigrants who are stateless persons/persons with no nationality pursuant to the said strategy in order that these groups of individuals would be entitled to rights accorded under the law. During the period pending the results of the status determination process, the government should develop measures to enable these individuals to have access to basic rights up to the point at which they acquire their nationality/statuses, the government should develop an approach to promote comprehensive birth registration, especially in relation to families in remote areas who might be faced with obstacles in accessing state agencies in charge of birth registration.

38. **Recommendation:** The government should determine that individuals who have not been accorded Thai nationality but were born in Thailand, or individuals who have been living in Thailand over a long period of time up to a point at which they have been assimilated to Thai society, be accorded the status of permanent residents, who are entitled to be accorded Thai nationality eventually.

39. The ASEAN Community Integration will comprehensively facilitate the peoples' international mobility within the region in a more free manner. At the same time, a greater

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<sup>8</sup> Office of the National Security Council, the Comprehensive Strategy for the Holistic Resolution of the Illegal Migrants pursuant to the Cabinet Resolution on 24 April 2012.

number of workers from neighbouring countries may enter Thailand illegally. These workers' children who are born in Thailand may be susceptible to becoming stateless children/children with no nationality if the embassies of the countries of origin where these workers are citizens refuse to accord the nationality to these children on account of their parents' failure to present their identification documents. Any such situation may result in the situation that these irregular workers' children are increasingly subject to be exploited in human trafficking, forced labour, forced beggars, or victims of torture. Additionally, arrests of and legal proceedings against foreign nationals and accompanying individuals who enter the country to work as workers or beggars based on human trafficking charges may well result in the separation between parents and their young children. As legal proceedings are time consuming, it is likely that the children are separated from their parents up to the point that they can be reunited only after special arrangements are put in place to prove their genetic relations.<sup>9</sup>

**40. Recommendation:** The government should develop measures to ensure that migrant workers from neighbouring countries have access to registration and nationality verification comprehensively in a simple, speedy and economical manner, which also covers workers' accompanying dependents. Simultaneously, the government should seek cooperation from neighboring countries in order to import foreign migrant workers illegally to satisfy labour demand within the country, and to minimize irregular labour migration. Non-existence of a functioning system to sustain labour migration could well worsen the labour migration issue. In addition, the government should conclude agreements with neighbouring countries in regard to the certification of the nationality of children who are born of foreign nationals coming from these neighbouring nations who enter Thailand either legally or illegally for the purposes of working in the country in order to prevent the problem of children with no nationality in Thailand. Moreover, the government should also seek cooperation from the neighbouring nations in registering births, nationality certification, and marriages of such persons.

**41. Recommendation:** Although children from neighbouring countries are entitled to have access to studying within Thailand's educational system, the government still does not allow or does not promote opportunities for parallel studies of languages and cultures of their countries of origin. Therefore the government should open up opportunities and authorize migrant children to study languages and cultures of their countries of origin in parallel to Thai language and culture. This should prove beneficial to migrant children remaining in Thailand, who will then be assimilated into Thai culture to lead a life of good quality, and who can also readily adjust themselves to the cultures of their countries of origin upon their return. This should serve as a process of cultural assimilation in accordance with the principles and objectives of the ASEAN Community Integration.

### **Human Trafficking**

**42.** The NHRCT commends and encourages the government's efforts in redressing human trafficking holistically: i.e. amendments of relevant laws, arrests of and legal proceedings

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<sup>9</sup> A summary of the public forum report on the defense and protection of human rights in relation to human trafficking: how human trafficking can affect children and women, held on 25 December 2015 at the Office of the NHRCT in Bangkok.



against a great number of offenders, including state officials involved in the commission of offenses, and the setting up of Fisheries Coordination Centers in various provinces. However, the NHRCT has found that the functioning of state officials concerned still does not comprehensively comply with the legal provisions, for example protection provided to witnesses and injured parties, and a lack of preventive measures, both of which have made parties concerned susceptible to human trafficking. In addition, with respect to the government's approach to problem resolution, the government seems to emphasize suppression in a piecemeal manner such as what happens in the fisheries sector, which only represents a temporary mobilization of resources in a discontinued manner.

43. Despite the fact that Thailand enacted the Anti-Trafficking in Persons Act in 2008, human trafficking remains a major problem in Thailand. In June 2014, the United States' State Department circulated the Trafficking in Persons Report that covers human trafficking situations in numerous countries including Thailand. This issue has then been taken up actively. The NCPO, after taking control of the country's administration in May 2014, has identified the resolution of the human trafficking issue as the national agenda. It has stepped up its efforts in expediting the functioning of all agencies concerned in an integrated manner, revised rules and regulations concerned, as well as taken strict action against offenders. Various measures have been developed to redress the issue in a speedy and concrete manner: e.g. a measure requiring employers to have their foreign migrant workers registered in accordance with labour laws so that they are protected lawfully, a measure for the enforcement of labour inspection in the fisheries sector; encouraging various agencies to step up efforts in relation to stringent law enforcement<sup>10</sup> - a step leading to arrests of offenders and state officials failing to perform their duties or are involved in human trafficking. Apart from human trafficking for the purposes of labour exploitation in the fisheries sector, it is likely that human trafficking also constitutes part of the *Rohingya* migration drive when graves of *Rohingyas* were found in May 2015. It is believed that these *Rohingyas* were human trafficking victims. The NCPO has accordingly developed measures for inquiring and investigating into the human trafficking issue. With respect to human trafficking victims, the government has provided protection in the form of asylum and work permission measures to such victims while residing in Thailand as witnesses in human tracking cases.

44. **Recommendation:** The government should accord importance to the suppression of human tracking consistently by undertaking legal proceedings in order to punish offenders, expediting court proceedings, overseeing closely the implementation of preventive and resolution measures designed to address the issue of human trafficking in the labour practice in the fisheries sector, as well as improving approaches to protect injured parties in order to enable them to have access to remedies effectively and efficiently. Protection in this connection shall have to be strictly observed in accordance with the Witness Protection in Criminal Cases Act of 2003, working in conjunction with the civil society sector, and encouraging injured parties to become joint plaintive as in other types of criminal case, especially pursuant to the Anti-Trafficking in persons Act of 2008.

## Human Rights Defenders

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<sup>10</sup> The Head of the NCPO's Order No. 68/2557, dated 17 June 2014.

45. Many areas in Thailand have been affected by the implementation of the government's policy designed to develop the country based on the use or exploitation of the country's natural resources. In the process, the government fails to protect the people in the localities affected by such an approach to economic development: e.g. the case of environmental impacts as a result of the industrialization process at *Map Ta Phut* in *Rayong* Province, the case of a gold mine, a natural gas exploration project, the construction of various deep-sea ports in the South, as well as the construction of a petrochemical industrial estate. The Constitution of the Kingdom of Thailand B.E. 2550 (2007) endorses the people's right in expressing their views on projects that have bearing on their communities. However, in practice members of the public still have not enjoyed the said right in the true sense of the word. The government often fails to disclose information. Opinion-sounding processes are often merely held perfunctorily. Additionally, the implementation of government and private-sector projects often cause environmental problems and health-related harms to members of the localities concerned, in which case the government often fails to find the causes thereof and solutions therefor. Members of the public in certain localities fall ill as a result of pollution caused by toxicants over many years, in which case the government has not managed to redress any condition therein. Furthermore, the Head of the NCPO's Order No. 9/2559 may well have some bearing on the environment and the people's health as it endorses the exclusion of environmental impact analyses in an attempt to enhance economic development, which would literally affect members of the public and could subsequently lead to conflicts.

46. The fact that the government ignores its duties and fails to redress problems promptly has induced members of the public to fight for their own rights, which eventually culminates in conflicts among members of the public, state agencies, and the private sector. Human rights defenders are faced with threats and intimidation, as well as enforced disappearance. There have been cases in which core leaders in campaigns for civil liberty are murdered: e.g. Mr. *Phithan Thongphanang* – a core leader in a campaign against a mine project in *Nakhon Si Thammarat* Province, Mr. *Somsukh Kohklang* – an activist for rights to land ownership in *Krabi* Province, Mr. *Pholaji Rakchongcharoen* – a human rights defender and core community leader in *Phetchaburi* Province, and Mr. *Chai Bunthonglek*, a core founding member of the *Khlong Sai Phattana* Community in *Surat Thani* Province. All of these have led to conflicts regarding the management of natural resources, the environment and poverty. The economic disparity has escalated further into new conflicts that will eventually affect the harmony, reconciliation, and peace of the entire nation. In addition, it has been found that the persons/officers involved in the commission of such offences have not been held accountable therefor.

47. **Recommendation:** The government shall have to make efforts to achieve a balance between economic and cultural aspect of the community on the basis of the management of natural resources and the environment within the community and economic considerations of an investment and industrial project. In addition, the government should also revise mega-projects that have effects on local people's livelihood, environment and health. The government may well determine clear compensation and remedial measures in cases in which the environment is destroyed to an extent that quality of life is affected: e.g. amendment of legal provisions and relevant criteria in order to develop details regulating the calculation of compensation, remedial financial arrangements and payment periods. The government shall

need to implement developmental policies in line with the obligations under Article 25 of the ICCPR. Additionally, the government shall have to provide protection to human right defenders in various respects such as the freedom of expression as well as rights to life and body. The government should also develop measures for the protection of human rights defenders, including lawyers. It is to be noted that if intimidation and threats actually occur, the state shall then take legal measures against offenders.

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