



## 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)

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## I. Introduction

### a. Joining organisations

This joint report is prepared by Community Resource Centre, FORUM-ASIA and Protection International.

### b. Methodology

The report is based on research done in the field, legal assistance work, and direct interviews with community based organisations and groups. Information on individual cases is disclosed here with prior consent from the individuals mentioned. Collection of information and cross checking of data has been carried out mutually by the three organisations. The secondary data is retrieved from different sources including from local NGOs and media.

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

### a. Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

#### ISSUE 3

After the 2006 Constitution was annulled following the May 2014 coup, the 1999 Organic Law on the National Human Rights Commission was also abolished. The draft Organic Law on the National Human Rights Commission is currently being discussed in the junta-appointed National Legislative Assembly (NLA). Section 43 in the draft Organic Law indicates that “the Office of the National Human Rights Commission shall, upon the Commission’s approval, submit an estimated annual budget to the President of the National Assembly to allow the cabinet to appropriate enough budgets for independent administration of the Commission in an annual appropriations bill or supplementary appropriations bill, as the case may be.” While the provision on the budget of the Commission does not appear to be in line with customary practices, there are several provisions that are not in compliance with the Paris Principles and jeopardize the independence of the Commission. These include:

1. The composition of selection committee under Section 10 in the draft Organic Law on the National Human Rights Commission is much less robust compared to the 1999 Organic Law on the National Human Rights Commission.
2. Section 34 (4) in the draft Organic Law designated the role of the National Human Rights Commission of Thailand to “To examine, provide explanations and report accurate facts in case of inaccurate or unfair reporting of human rights situations in Thailand to the Commission”. Generally, the mandate of the National Human Rights Commission should not include a task to rebut or counter the so-called inaccurate or unfair reporting of human rights situation in that respective country. This particular mandate will force NHRCT to defend the government’s arguments whilst NHRCT should act as an independent body.
3. Section 49 in the draft Organic Law defined criteria for admissibility of petitions for consideration by the Commission. These criteria were not mentioned in 1999 Organic Law on the National Human Rights Commission. Section 49 has raised concerns among community-based human rights defenders that the National Human Rights Commission would be more difficult to access under these criteria.
4. Section 53 stated that “During the examination of human rights violation, if the Commission deems that mediation is possible, it may mediate between persons or agencies involved to reach an agreement to remedy the human rights violation. If the parties agree to compromise and resolve the matter and the Commission considers the agreement is within the scope of human rights protection, the Commission shall prepare a written agreement for the parties and settle the matter.” The role of NHRCT as mediator is contradictory to the core mandate of NHRCT stated in Section 34 especially the mandate to receive petition and investigate concerning human rights violations.

#### RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

- Ensure the new Organic Law on NHRCT fully complies with the principles relating to the status of national institutions (the Paris Principles).
- Review the draft organic law on NHRCT to empower the Commission to conduct independent, transparent and inclusive investigations of all allegations of human rights violations.
- NHRCT should promote human rights education to ensure that Thai people are aware of their rights and are able to access remedies.
- NHRCT should establish branch offices in other regions and provinces of the country.

## **ISSUE 4**

Implementation of Article 44 of April 2015 replacing martial law (declared on May 20, 2014), Article 48 of the Interim Constitution and Order No. 3/2015 (2558) makes it impossible for the judicial system to adjudicate cases in an open and impartial manner. In the current political climate, police investigations into crimes committed against HRDs are frequently delayed or remain incomplete. In addition the increasing use of defamation provisions in the Criminal Code and the Computer Crime Act against HRDs is alarming. Such actions prevent HRDs from reporting on human rights violations. As a result, those responsible for acts of harassment, physical attacks and even killings of HRDs are rarely brought to justice.

### CASES: SPFT (South Peasants Federation of Thailand)

*2010 to 2016:* SPFT – Klong Sai Pattana is a community formed by SPFT members (South Peasants Federation of Thailand). Out of the four extrajudicial execution cases and other cases of armed attacks suffered by residents of the community, only two have been brought to justice and one case dismissed due to lack of evidence. The last resident who was shot in April 2016 miraculously survived. No one has been charged for this crime yet. This is the only case currently under trial, at the court of first instance in Surat Thani province. Find below an account of shooting aggressions against the community:

*2010:* Mr Somporn Pattanaphum, HRD and SPFT affiliate, was shot and killed.

*2012:* Ms Montha Chukaew and Ms Pranee Boonrat were shot dead while riding a motorcycle to the local market, 800 meters from the Klong Sai Pattana Community.

*11 February 2015:* murder of Mr Chai Bunthonglek, another land rights activist member of Klong Sai Pattana, Chaiburi District, Surat Thani Province, by an unknown man. Three suspects were identified. Although the police indicted three suspects, the Public Prosecutor filed charges against one person only, the alleged driver, on the basis that there was insufficient evidence to bring charges against the other two suspects. Furthermore, the authorities have granted protection to the family of the murdered HRD but refused to grant protection for other members of SPFT who applied for witness protection for the period of the investigation.

*8 April 2016:* human rights defender Mr Supoj Kalasong was seriously injured outside Klong Sai Pattana community as a result of gunshots fired by an unidentified man. The police found a total of 12 bullets, eight of which impacted his body. The hearing of Supoj Kalasong's case took place from December 14<sup>th</sup> to 16<sup>th</sup> 2016 at the Weangsa Provincial Court, Surat Thani Province. Supoj Kalasong is a land rights defender from Klong Sai Pattana community, one of the six communities that form the South Peasants' Federation of Thailand (SPFT). Supoj is the key witness in the criminal case of murdered human rights defender Mr Chai Bunthonglek.

No one has been punished for these killings, because of lack of proper investigation or reportedly due to insufficient evidence obtained by the police. Way too often, lack of evidence is invoked to dismiss such cases of disappeared or killed activists. In addition to the fact that those responsible for the killings have not been brought to justice, no effective protection measure has been taken by local authorities to respond to the direct threat against other SPFT Klong Sai Pattana community members.

### **Witness Protection**

State institutions, such as the Department of Special Investigation and Witness Protection Office (set up by the Witness Protection Act 2003) fail to take necessary actions to protect HRDs and to investigate attacks against them. The weakness of the witness protection mechanism has contributed to the increasing vulnerability of those who speak out against human rights abuses.

In October 2014, the Ministry of Justice set up a Working Group to develop measures for the protection of HRDs at risk. However, no results were presented to date. Another project, the Justice Fund, which was established in 2006

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and run by the Rights and Liberties Protection Department of the Ministry of Justice, is mandated to provide financial assistance during legal proceedings. The Fund granted assistance to just 20% of those who were eligible, as the bureaucratic process to apply makes it very difficult to access.

Mr Surapan Rujichaiwat applied for support from the Justice Fund to pay for his bail in the 2014 defamation case against him. However his application was rejected and in 2015 he had to negotiate at length with Loei provincial officials of the Ministry of Justice before he could be allowed to apply for support in the defamation and the Computer Crime Act against him.

In the SPFT Supoj trial (attempted murder, April 2016), witnesses that requested protection have not received assistance to date (with the exception of the victim and his wife).

### RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

- Address the issue of impunity as priority, and in particular strengthen forensic investigation techniques, which should be guaranteed by independent and autonomous teams of experts, especially when State agents are involved in such violations.
- Establish an independent civilian body to investigate complaints filed against law enforcement officials.
- Review and improve the witness protection mechanisms and its accessibility.

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

#### ISSUE 11a

HRDs have reported being threatened directly by high-ranking military officers and also indirectly via rumours of plots to disappear land rights activists. In Thailand more than 500 incidents of violence against environmental defenders were registered over the period 2011-2016. Protection International recorded over 59 killings of environmental and land rights activists in Thailand over the past two decades. No one has been held accountable in any of these killings.

Thailand made several commitments to address enforced disappearances. As promised, the Thai government signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in January 2012. To date, it has still not been ratified and no visible progress has been made towards ratification. Moreover, the draft law on the suppression of Torture and Enforced Disappearance currently under review<sup>1</sup> presents serious shortages. The definitions of the crimes, victims and perpetrators are not in line with international standards. There is no notion of torture by state actors or non-state actors. Cruel inhuman and degrading treatment should also explicitly be defined as a crime. Omission to act, consent, acquiescence, authorisation and support of the State should also be criminalised. Negligence and conditions of detentions should be covered, as these can amount to torture. Non satisfactory definition of who a victim is (recognising that family members are also victims). The right to know the truth is pivotal and should be enshrined in the act. In terms of prevention, there are no provisions for education and training police personnel, prosecutors and other relevant actors, no provisions for protection of judges, lawyers, prosecutors, witnesses and victims, no provision for training extremes in forensic investigations of torture (in accordance with Istanbul protocol). There is a complete lack of provisions for an independent body empowered to visit places of

<sup>1</sup> The draft (already reviewed by the Office of the Council of States and endorsed by the Cabinet) is currently under the consideration of the National Legislative Assembly.

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detention, also in the view of the fact that the NHRC lacks legal authority to gain immediate access to places of detention.

### CASES

*16 April 2016:* Den Kamlae, a prominent 65-year-old land rights activist who was fighting for legal title to land his community occupied in Phu Khieo Wildlife Sanctuary, went missing in in Chaiyaphum province.

*17 April 2014:* The most recent incident of suspected enforced disappearance of a HRD concerns Mr Porlajee Rakchongcharoen known as “Billy”. He left his village, Pa Deng, on 15 April 2014. The local authorities stated that on 17 April 2014, Billy was temporarily arrested on charges of illegal possession of wild honey. But authorities claim he was released shortly afterwards. However, he has not been seen since. At the time of his disappearance, he was assisting ethnic Karen villagers to file a lawsuit against the authorities in relation to the destruction of the homes of 20 families in Kaeng Krachan National Park in 2011. To date, no progress has been made in the investigation of his disappearance. On 1 September 2015, the Supreme Court of Thailand dismissed the petition to hold an emergency trial to find him. The petition was filed by his wife Pinnapa Prueksaphan, after two lower courts dismissed her request. On 30 January 2017, the Department of Special Investigation (DSI) revealed that it will not investigate the enforced disappearance of Porlajee ‘Billy’ Rakchongcharoen. The decision of the DSI is a further setback for efforts to bring justice to Billy’s family

*10 September 2011:* Two years prior to Billy’s disappearance, HRD and associate of Billy, Mr Tassanakamol Aobaom, was killed on 10 September 2011.

*28 July 2011:* HRD and environmentalist Mr Thongnak Sawekjinda was shot dead at his home in Muang District, Samutsakorn Province. Thongnak Sawekjinda, along with twelve other prominent HRDs and community leaders, was involved in publicizing both the environmental and health risks associated with coal mining factories operating in the Tambon Thasai community. It is believed that his murder is related to his human rights work, in particular to the complaint he had lodged with the court concerning violations of the rights of the Tambon Thasai community by five coal mining factories. To date, the investigation has not produced any results, while one of the suspects was killed in 2012.

SPFT cases (see above issue 4 for details)

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*2010:* Mr Somporn Pattanaphum

*2012:* Ms Montha Chukaew and Ms Pranee Boonrat

*11 February 2015:* Mr Chai Bunthonglek

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Other cases of land and environmental rights defenders killed between 2002 and 2016

**Mr Suthep Thongkham, 52 years old**

Member of the Nong Haen Tambon Administration Organization (TAO) leading the effort to oppose illegal disposal of chemically tainted waste and sewage in Moo 14, Tambon Nong Haen, Phanom Sarakham District, Chachoengsao. He was shot dead on 7 December 2012.

**Phra Bundit Supanthito, 48 years old**

Abbot of Wat Pah Taw Si Siad, Tambon Ban Tad, Muang District, Udonthani who had had land dispute with rich investors and conflict with the temple lay leader. He was shot dead after coming back from his morning alms round on 1 March 2015.

**Mr Pithan Thongpanang, 45 years old**

A key activist against mining in Tambon Krung Ching, Nakhin Si Thammarat. He was shot dead on 30 November 2014.

**Mr Boonsong Kerdrueang, 46 years old**

Local politician and conservation activist against mining in Tambon Krugn Ching, Nakhon Si Thammarat who was shot dead on 4 December 2014, four days after the killing of Pithan Thongpanang

**Mr Payao Panrote, 52 years old**

A villager helping to guard against encroachment of the forest reserve in the last watershed forest of Soi Huay Kruad, a large patch of evergreen forest in Thung Tako District, Chumphon. In March 2016, he found that local villagers were colluding with park rangers to encroach the forest on Tako Mountain. He brought the information to the press and it led to a legal dispute between him, the villagers and officers. He was shot dead on 8 May 2016.

**RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND**

- Immediately conduct an impartial, transparent, and independent inquiry into all cases of torture, summary killings and enforced disappearance of HRDs and community activists, and prosecute those responsible.
- Provide prompt, fair, and adequate compensation for family members of the victims of enforced disappearance, torture and killings.
- Ratify all international human rights treaties to which Thailand is not yet a party, including the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), and enact necessary national legislation to enforce these treaties
- As a matter of priority, review the draft act on torture and enforced disappearances to ensure that it is in line with the UN Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the ICCPED, including a definition of the crime of torture according to Article 1(1) of the CAT, non-refoulement (Article 3); punishments commensurate with the gravity of the crime (Art. 4(2) of CAT), universal jurisdiction (Articles 5-9 of the CAT), independent investigations (Articles 12-13 of CAT); no admissibility for statements obtained by torture (Article 15 of the CAT) and prevention of cruel, inhuman or degrading treatment or punishment (Article 16 of the CAT).

**ISSUE 14**

Since the May 2014 military coup there has been a clear increase in the number and severity of cases of harassment, reprisals and attacks against HRDs and political activists. HRDs are working in a context of militarization, enshrined impunity and lack of accountability on the part of authorities. Judicial harassment is an increasing trend in Thailand. Of particular concern is the dire situation of community-based HRDs, women HRDs, and young pro-democracy HRDs. The current military government led by the National Council for Peace and Order (NCPO) has introduced several new legislation and executive orders to restrict and criminalise the work of HRDs, political activists and community leaders. Those who actively express their dissent against the junta as well as individuals or groups who advocate for those whose rights have been violated by the army risk facing direct reprisals in Thailand. The Article 44 of the Interim

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Constitution, currently in force, gives the NCPO sweeping powers without any legal accountability.<sup>2</sup> Laws that are constantly being used against human right defenders and community leaders include, but are not limited to, Article 112 (lèse-majesté), Article 116 (sedition), Article 326 and Article 328 (criminal defamation) of Thailand's Criminal Code, Section 14 of the Computer Crime Act, The Public Assembly Act 2015, Referendum Act 2016, NCPO Order 7/2014, NCPO Order 3/2015 and NCPO Order 13/2016. These laws give law enforcement authorities broad discretionary powers to justify, often arbitrary, arrest and detention of those who oppose or criticise the current military government.

Under NCPO Order 13/2016, military is granted the authority to arrest, investigate and detain any person without any judicial or legislative oversight mechanism.<sup>3</sup> Besides the NCPO order, the military can summon or even detain individuals without any clear charges for “attitude adjustment”. Since the 2014 coup, at least 1,340 people including human right defenders, political activists and community leaders have been summoned for questioning and detained for “attitude adjustment”.<sup>4</sup> For instance, prominent journalist and junta critic, Pravit Rojanaphruk, was summoned and detained for attitude adjustment and was not allowed to receive visitors or to have access to a lawyer. This action has no legal justification and is in violation of Article 7 of the ICCPR.

Harassment, intimidation and attacks against human rights defenders and political activists often extend to their family members. Military and law enforcement officers often visit, unannounced, residences of human rights defenders and political activists and interrogate their family members and relatives<sup>5</sup> In many cases these visits have no legitimate purpose but cause fear and insecurity for HRDs and their families including children. The state openly and covertly conducts physical and online surveillance on HRDs, activists. These include patrols by security forces passing the homes of HRDs, constant and intrusive contact from State authorities.

While the attacks against HRDs have increased significantly, protection mechanisms are non-existent or remain inadequate.<sup>6</sup> Domestic mechanisms such as the the National Human Rights Commission remain toothless and have failed to fulfil their mandates in providing a protection for human rights defenders.

There have been reports of armed individuals and groups hired to carry out physical attacks on HRDs, in particular, in the provinces of Loei, Phattalung and in the Khlong Sai Pattana community. Authorities have failed to take action to protect HRDs from non-state actors. Police investigations into crimes against HRDs are often delayed or remain incomplete. As a result, those responsible for attacks, killings and harassment against HRDs are rarely brought to justice, as in the case of the killings of members of the Southern Peasants' Federation of Thailand (SPFT).<sup>7</sup>

### **Protection mechanisms of HRDs, witness protection and the justice fund**

State institutions, such as the Department of Special Investigation and Witness Protection Office, set up by the Witness Protection Act 2003, fail to adequately protect HRDs and investigate attacks against them. Weak and inefficient witness protection mechanism has increased vulnerability of those who speak out against human rights abuses.

In October 2014, the Ministry of Justice set up a Working Group to develop measures to protect HRDs at risk. However, so far, no progress has been made. Additionally, the Justice Fund, established in 2006 and handled by the Rights and Liberties Protection Department of the Ministry of Justice, is designed to provide financial assistance during legal proceedings. The Fund granted assistance to just 20% of those who were eligible, as the bureaucratic process makes it difficult to access.

2 Thai Lawyers for Human Rights, Human Right Defenders under Thailand's Military Regime, available at <http://www.tlhr2014.com/th/?p=2368>

3 <http://www.prachatai.com/english/node/6120>

4 Thai Lawyers for Human Rights, Human Right Defenders under Thailand's Military Regime, available at <http://www.tlhr2014.com/th/?p=2368>

5 Thai Lawyers for Human Rights, Harassment against Target's family and relatives; NCPO's Practice Amounts to Human Rights Violation, available at <http://www.tlhr2014.com/th/?p=2899>

6 <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JPF-JusticePeaceFoundation-HumanRightsDefendersAnnex4-eng.pdf>

7 See above

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### CASES

*11 September 2015:* authorities in Udon Thani province sent a letter to WHRD Ms Manee Boonrawd to inform the Anurak Udon Thani Conservation Group that a village ‘public hearing’ would be held inside a military camp, in what was believed to be an attempt to intimidate community members who wanted to participate in such meetings. On 15 September 2015, 20 community-based HRDs from the Anurak Udon gathered in front of Playa Suthorn Thamachada Military Camp. There were approximately sixty security agents in front of the military camp, and another 100 and 200 more inside the camp. The HRDs submitted a complaint letter to the army, stating that they would not attend the ‘public hearing’ in the military camp.

*28 August 2015:* at a Khaoluang Subdistrict Council meeting, local authorities set up check-points, supposedly to look for ‘weapons and students’ amongst Dao Din meeting participants<sup>8</sup>. Since the coup d’etat, the Dao Din has conducted many public demonstrations calling for an end to military rule and respect for community rights, and civil and political rights. Prominent members of the Dao Din group have faced continuous monitoring by authorities, questioning in military camps, and detention by order of a Military Court.

*28 August 2015:* The Khon Rak Ban Kerd (KRBK) Conservation Group<sup>9</sup>, created by residents of six villages affected by gold mining in Loei province, were invited to Khaoluang Sub-district Administrative Council. However, police set up three checkpoints, guarded by over 300 police and army officers, on the way to the administration building. Only 23 villagers were permitted to attend the meeting, only after they were searched.

*3 February 2015:* the President of the SPFT-sister organisation, Southern Peasants’ Cooperative, Mr Pianrat Boonrit, was detained and held incommunicado for two days. He was released on 5 February on condition that he would mediate between the army and the Perm Sap Community to urge the community to leave the area, which has been a subject of dispute between the community and Thai Boonthong, a palm oil company. He was threatened with detention should he fail to fulfil this condition.

*29 December 2014:* the house of leader of the People’s Network to Protect Ton Sa Tor Watershed in Pattalung province, Mr Suwit Jeh-Soh, was attacked by unknown armed individuals. The attackers repeatedly shot at the front door of his house, while his family including his two children were inside. The attack is believed to be related to his activities as a community leader. No progress has been made in the investigation into the attack.

*9 November 2014:* Ms Waewrin Buangern, coordinator of Rak Baan Hang Conservation Group, was threatened with enforced disappearance after the group joined the Walk for Land Reform in Chiang Mai. On 11 November 2014, Ms Waewrin was summoned for attitude adjustment at Patoupah Special Military Training Facility, which she attended with 10 other villagers. During the attitude adjustment session, Ms Waewrin was reportedly told by a high-ranking

<sup>8</sup> Dao Din student group, which is comprised of nearly 20 members, aims to promote human rights-related laws among the public, through interaction with local communities and support for them in their struggle for the protection and realisation of economic and social rights.

<sup>9</sup> The Khon Rak Ban Kerd Group was established in 2008 by a group of villagers of Nanhongbong and 5 other villages in Loei province, northeastern Thailand, with the aim of monitoring and inspecting the impact of the nearby Phuthapfa gold mining site on the community’s environment, health and livelihood. The group opposes the adverse impact of the mining operation and the expansion of the mine operational area. In the conflict between the community and the company, the Army has been claiming to mediate the conflict with the company. However, military officials allegedly hold privileged connections with the company in question. Death threats and impunity for abuses are ongoing.

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military officer, “You know we can make anyone disappear.” Ms Waewrin Buangern is continuously monitored by local security authorities.

*15 May 2014:* at around 10 pm a group of over 300 unidentified armed men entered Nanongbong village, Khaoluang Sub-district, where many KRBK leaders reside and took about 40 villagers hostage, including two key leaders of the community. The villagers were held captive for about seven hours and finally released at about 4.30 am. They reported being assaulted and threatened. Two army officers, Poramate Pomak and Poramin Pomak were convicted on 31 May 2016 for unlawful detention, physical assault and illegal possession of weapons. Poramate Pomak was sentenced to 2 years and Poramin Pomak to 3 years in prison.

### RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

- Cease the persecution, surveillance and all other forms of harassment and intimidation of HRDs and implement measures to prevent violence and crimes against HRDs. Violations committed against HRDs must be fully investigated, promptly and impartially.
- Perpetrators must be held accountable and victims must have access to appropriate remedies.
- End arbitrary arrest and detention; lift all conditions imposed on individuals released from “attitude adjustment”; ensure that all detainees are brought promptly before an independent, civilian judicial authority; and drop conditions of release and any penalties resulting from a failure to report for such detention.
- Immediately release all HRDs held in pre-trial detention as a result of their peaceful and legitimate human rights work and drop the charges against them;
- Review and/or quash the conviction of, and release, all HRDs who have been sentenced on grounds of their human rights work and who remain in detention;
- Cooperate fully with UN Special Procedures, including the Special Rapporteur on the situation of HRDs, by responding to their urgent appeals and letters of allegations and accept the mandate holders' outstanding request to visit the country.

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

## ISSUE 17

In the lead up to the referendum on the draft constitution held on 7 August 2016, the military government enacted the repressive Referendum Act 2016, imposing severe restrictions on fundamental freedoms, in particular freedom of expression. The Referendum Act approved by National Legislative Assembly on 7 April 2016 stipulates that “anyone who disseminates text, images or sound, through newspapers, radio, TV, electronic media or other channels, that are either false or delivered in a violent, offensive, rude, inciting or threatening way, with the intention to influence voters to refrain from voting or voting in a certain way, or abstain from voting, shall be considered as a person who creates confusion in order to disrupt voting procedures”.<sup>10</sup> Those who violate the law could face imprisonment of up to 10 years, fines up to 200,000 baht and revocation of voting rights for a period up to 10 years. Furthermore, Article 63 prohibits publication of opinion polls or surveys related to the referendum seven days prior to 7 August until the end of voting day. Offenders face imprisonment of up to 3 months or 6,000 baht fine or both.

Restrictions imposed by the Referendum Act is compounded by regulations issued by the Elections Commission that in effect banned voter education prior to the referendum. In addition to the restrictions in the Referendum Act, Elections Commission regulations prohibit seminars or debates without the participation of a government agency, wearing shirts, pins, ribbons or any sign that influence voters, or selling such items for campaign purposes and campaigning to influence voters' decisions.<sup>11</sup>

10 Referendum Act 2016, Article 61.

11 EC Referendum don's and dont's

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The introduction of the Referendum Act and regulations issued by the Elections Commission in the lead up to the referendum further intensified the already existing restrictions on freedom of expression and other fundamental freedoms maintained through repressive NCPO orders, in particular NCPO Orders 3/2015 and 13/2016, the Public Assembly Act, and broad application of the Criminal Code. NCPO Order 3/2015 forbids political gatherings of more than four people<sup>12</sup> and Order 13/2016 authorises military to issue orders to prohibit information that is deemed to be intentionally distorted to cause public misunderstanding threatening national security or public order.<sup>13</sup> This order also allows military to detain and interrogate civilians in military camps without access to lawyers or other safeguards against abuse for up to seven days. Similarly, criminal provisions on sedition in Article 116 of the Criminal Code and the Public Assembly Act 2015 are used against critics of the new Constitution. These restrictions were frequently and arbitrarily deployed against dissenters and critics of the new draft constitution along with the Referendum Act and Elections Commission regulations. Several activists, including many from the student-led New Democracy Movement that advocated for the “no” vote on the draft constitution were arrested and face criminal charges for defying these restrictions.<sup>1415</sup>

These laws which limit fundamental freedoms and basic human rights were enacted without any representation of the will of the people. Such laws are also vague, creating uncertainty about what can be discussed and gives officials arbitrary decision making power. Furthermore, laws that seek to prevent discussion and debate are incompatible with Thailand’s obligations under international human rights law. These laws violate legally binding provisions stipulated in Articles 9, 17, and 19 of the ICCPR.

After the referendum on August 7, the public approved the Constitution that will reinforce military rule in Thailand. The new Constitution gives the state more power to restrict fundamental freedoms including the right to freedom of expression. The constitutional provisions on freedom of expression contradict Article 19(2) of the Covenant. Restrictions on freedom of expression defined in the Constitution goes beyond the permissible limits stipulated in Article 19(3) of the ICCPR and General Comment 31 of the Human Rights Committee.<sup>16</sup>

The new Constitution also weakens prospects of electoral democracy in the country. According to Article 269 of the new Constitution, 244 out of 250 members of the Senate will be selected by the NCPO from lists submitted by the Election Commission and the NCPO-appointed senator selection committee, while the remaining 6 seats will be reserved for the Permanent Secretary of Defence, Supreme Commander in Chief, the Commander in Chief of the Royal Thai Air Force, the Commander in Chief of the Royal Thai Navy, the Commander in Chief of the Royal Thai Airforce and the Commissioner General of the Royal Thai Police.<sup>17</sup> The appointed Senators will serve for a five-year transition period. After the five-year transition, the Senate will comprise of 200 appointed members who cannot be members of a political party.

Besides the Senate, the Prime Minister (PM) may be a person who is not an elected Member of Parliament (MP). If during the five-year transition period, the MPs in the House of Representatives fail to elect a Prime Minister from the lists of eligible candidates nominated by political parties, and if a joint session of both houses of Parliament is demanded by at least 50% of the MPS, then such a joint session can decide to elect a Prime Minister who is not a member of any political party sitting in Parliament by an affirmative vote of two-thirds of the total number of MPs and senators.<sup>18</sup>

The provisions stated above are clearly not in line with Article 25 of the ICCPR. Citizens of Thailand should have the right and opportunity, without any unreasonable restriction, to take part in the conduct of public affairs directly or

12 NCPO Order 3/2015, Article 12.

13 NCPO Order 3/2015, Article 5.

14 NCPO Order 3/2015, Article 12 and NCPO Order 3/2015, Article 5

15 NCPO Order 3/2015, Article 5.

16 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN DOC CCPR/C/21/Rev.1/Add.13,26 May 2004, para 6.

17 Article 269 of the Draft Constitution of the Kingdom of Thailand. This is the unofficial English-language translation provided by the Institute for Democracy and Electoral Assistance, the Office of the United Nations Resident Coordinator in Thailand and the International Commission of Jurists and it is available at [http://www.constitutionnet.org/files/thailand-draft-constitution\\_englishtranslation\\_june\\_2016.pdf](http://www.constitutionnet.org/files/thailand-draft-constitution_englishtranslation_june_2016.pdf)

18 Ibid, Article 272 & FIDH, Roadblock to Democracy; Military Repression and Thailand’s draft constitution, August 2016, p 19.

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through freely chosen representatives as well as to vote and to be elected. The new Constitution is an unfortunate step backward in achieving full and sustainable democracy.

### RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

- Drop all charges against HRDs and political activists under the Referendum Act and NCPO orders for criticising the draft Constitution.
- Repeal or review all sections of the Referendum Act that contravene Thailand's international obligations.
- Amend the draft constitution to ensure full compliance with Thailand's international human rights obligations, and principles of democracy and the rule of law.

## ISSUE 18

The Computer Crime act (2007) and criminal defamation (Art 326-328 of the Criminal Code) have been repeatedly used by state-supported business interests to target HRDs with malicious prosecutions. Constant surveillance of communication means of targeted HRDs put them at higher risk of prosecution in connection to their use of social media and the internet for advocacy purposes. The new Computer Crime Act passed by the National Legislative Assembly adds to concerns. On 24 January 2017 the new Computer Crime Act was published in the royal gazette. The law will be effective 120 days after the publication.

The use of the Computer Crimes Act and defamation suits against HRDs is alarming as they prevent HRDs from investigating and reporting on human rights violations. Significantly, challenges in accessing adequate legal support in cases related to the Computer Crimes Act put community-based HRDs at higher risk of prosecution in connection to their use of social media and the Internet for public advocacy.

Digital surveillance (*ie* phone tapping and mobile phone tracking) seem to have become common practice in Thailand. In some cases HRDs had email and social media accounts hacked and monitored, corrupted, and mobile phones tapped. In some cases, it has been established that military was conducting such illegal surveillance.

There are daily reports of close monitoring and surveillance by authorities. Their disruption or attendance of events, often by plainclothes officers, also constitute a means of intimidation against HRDs. Close physical surveillance also affects cooperation between HRDs. Below is a selection of recent cases where military, police or political authorities have carried out surveillance, intimidation or threats of legal action against HRDs.

### CASES

*February 2017:* the Royal Thai Army charged Ms Pornpen Khongkachonkiet, Ms Anchana Heemmina and Mr Somchai Homlaor with criminal defamation and Computer Crime Act violations for reporting on torture in the Deep South. The 3 HRDs must present themselves to the inquiry officer on the 9 February 2017 at 10:00 AM to submit the case to the public prosecutor.

*20 August 2015:* Tungkhum Co. Ltd (TKL) filed four additional cases against community-based HRDs from the KRBK. In one of the cases TKL accused Mr Surapan Rujichaiwat of violating the Computer Crimes Act and of defamation following a post on social media calling for an investigation into the activities of TKL. Mr Surapan was eventually acquitted by Mae Sot Provincial Court on 10 March 2016. Yet it is a clear judicial harassment case against HRDs.

*11 November 2014:* military and police officers interrupted a private meeting between Ms Sor Rattanamanee Polkla, a human rights lawyer from the Community Resource Centre (CRC), and members of local communities in Udon Thani Province. They were discussing a case related to the environmental impact of the construction of the Xayaburi hydroelectric dam on the Lower Mekong River, which could result in the forced eviction of over 200,000 people. The

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military observed the meeting and forced the lawyer to sign a letter obliging her to seek permission for further meetings.

*Between 2011 and 2015:* numerous legal cases were filed against KRBK community leaders by the gold mining company Tungkhum Co. Ltd (TKL), which operates a mine affecting six villages in Loei province. Prior to 2015, TKL filed nine lawsuits against 33 villagers on charges including trespassing, loss of property and defamation. In 2014 TKL filed a defamation suit in Phuket provincial court against Mr Surapan Rujichaiwat, and Ms Porntip Hongchai, two leaders of the KRBK. After negotiations in December 2014, mediated by the Provincial Army, TKL agreed to withdraw all legal cases against KRBK members if the KRBK would allow the company to transport gold ore out of the gold mine. TKL withdrew all but one case remaining at Public Prosecutor's Office. Six KRBK members face a serious defamation suit for hanging a banner at their village entrance that read "This village doesn't want mining".

*15 August 2014:* TKL filed criminal defamation suits against 2 community-based HRDs and KRBK group leaders, Mr Surapan Rujichaiwat and Ms Porntip Hongchai for allegedly damaging the reputation of the company by giving interviews to TV stations in May 2014. Khon Rak Ban Kerd (KRBK) group had alleged that TKL was behind an incident of 15 May 2014 where unidentified armed men assaulted villagers, burned tents and huts in mining areas, and attempted to pass the blame on to the villagers. On 15 August 2014, TKL sued them for defamation claiming that their statements during the interviews had damaged the reputation of TKL.

*2013 to 2016:* Prominent migrant and labour rights defender and researcher Mr Andy Hall charged with defamation for Finnwatch's report 'Cheap Has a High Price' which he co-authored.

*3 October 2016:* Criminal complaints are filed by the military (2nd Infantry Division, of the 8th Infantry Regiment) against citizen journalist Mr Sarayuth Ritthipin and community and land rights defender Mr Chadet Kaewsin. The case relates to a complaint of 3 October 2016 for two allegations, *i.e.* libel offence and bringing into a computer system false or forged information under Thailand's Computer Crimes Act. They had been summoned on 17 October 2016 from the Chum Phae Police Station in Khon Kaen for libel and computer-related violations against government authorities.

### **RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND**

- Reform or repeal laws and decrees that restrict the exercise of fundamental freedoms.
- Amend Article 326 and 328 of Thailand's Criminal Code with a view to decriminalize defamation and libel.
- Take measures to ensure that the Computer Crimes Act is not used to repress freedom of expression, in particular in cases of alleged defamation.
- Use due diligence to ensure rights-restricting laws are not targeted and arbitrarily applied against human rights defenders and political activists.
- Guarantee the right to privacy of Internet users.
- Close investigations or drop charges against human rights defenders and others relating to their peaceful exercise of rights and freedoms guaranteed by international law;
- Create, through laws and practice, an enabling environment where human rights defenders could carry out their legitimate work without fear of retaliation.

### **ISSUE 19**

Between May 2014 and September 2016, more than 1800 civilians have been tried in military courts. These include, at least 523 political activists and human rights defenders who have been charged under *lèse-majesté*, sedition,

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criminal defamation, Computer Crime Act or military decrees banning freedom of expression and public gatherings<sup>19</sup>. NCPO orders 7/2014 and 3/2015 have been frequently used to arrest and detain activists who speak against military rule. On 12 September 2016, NCPO revoked orders 37/2014, 38/2014 and 50/2014 that allowed for civilians to be tried in military courts for national security offenses (including sedition and lèse-majesté). However, the revocation was not retroactive and did not affect individuals who have been sentenced already or still have pending cases in military courts. In Thailand, trials before military courts violate the rights to a fair and public hearing by a competent, impartial and independent tribunal. Rights to a legal representation and appeal are also denied. This represents a clear violation of article 14 of the ICCPR that guarantees fair trial rights<sup>20</sup>.

After the coup in May 2014, the National Council for Peace and Order “invited” hundreds of activists to report for their criticism against the policies of the junta. Under Martial Law and Order 3/2015, the military was granted the powers to detain the summoned individuals without charge for up to 7 days in undisclosed locations. Between May 2014 and December 2015, at least 829 individuals were summoned through different means; about half of them via nationwide television broadcast. At least 20 summoned individuals reported being ill-treated while in detention and 24 were charged with lèse-majesté after being detained under special security laws<sup>21</sup>.

Several political activists and opposition leaders face criminal charges for violating NCPO Order 7/2014 (7/2557). 19 opposition leaders (red shirts) have been indicted for the violation of NCPO order no. 7/2014 (7/2557) on 16 December 2016. They were charged after they held the press conference for Referendum Watch Center in June 2016.<sup>22</sup> Another civilian, Preecha (undisclosed surname) was convicted by Military Court for violation of NCPO order no. 7/2014 (7/2557). Preecha was charged after he gave a flower bouquet to a protester who conducted the march against NCPO orders. He was sentenced for 3 months imprisonment and 4,000 baht fine with one year suspension.<sup>23</sup> On 23 May 2014, one day after the coup, 26 red shirt activists were arrested on allegations of planning to destroy government buildings in Khon Kaen (known as 'Khon Kaen' model). All of them were charged with defying NCPO order no.7/2014 along with other charges. 7 out of 26 have been released on bail because of health problems.<sup>24</sup>

The case of Ms Sirikan (“June”) Charoensiri is one of the most emblematic in the country and has received extensive media coverage. Prosecution of Ms Sirikan has added a chilling effect to the already repressive environment in which HRDs in Thailand work. Ms Sirikan is a lawyer who was representing fourteen activist students from the New Democracy Movement (NDM) who were arrested on 25 June 2015 for allegation of incitement to cause disturbance in the country under Section 116 of Criminal Code and for defying NCPO Order 3/2015<sup>25</sup>. On the same day, the police requested to conduct a search on Ms Sirikan’s car to seize the activists’ phones. Since the officials could not present a warrant, Ms Sirikan opposed the search. The police then impounded the car overnight. In February 2016, Ms Sirikan was charged for refusing to comply with an official order without reasonable cause under Sections 368 and 142 of the Criminal Code. Further, she was accused of filing a false police report, under Sections 172 and 174 of the Criminal Code. In May 2016, Ms Sirikan filed a police complaint against police officials for abuse, under Section 157 of the Criminal Code. The hearing of prosecution has been postponed multiple times and is now scheduled for 2 May 2017. In September 2016, Ms Sirikan was summoned to report to Bangkok’s Samranrat Municipality Police Station while she was out of the country to attend the 33<sup>rd</sup> session of UN Human Rights Council in Geneva. Upon her return, she postponed the reporting to 22<sup>nd</sup> October. She was then informed that she was being charged for being an accomplice of the NDM students since she was carrying the activists’ phones and refused to let the official search her car. This equates to a breach of Article 116 of the Criminal Code and a defiance of NCPO Order 3/2015. Since the incident took place in 2015, Ms Sirikan will face trial in a military court if indicted. She could face up to 15 years’ imprisonment<sup>26</sup>.

19 <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>

20 <https://www.hrw.org/news/2016/09/13/thailand-no-new-military-trials-civilians>

21 [https://www.upr-info.org/sites/default/files/general-document/pdf/upr\\_advocacy\\_factsheets\\_-\\_thailand2016-en.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_thailand2016-en.pdf)

22 <http://www.siamrath.co.th/n/>

23 <https://freedom.ilaw.or.th/>

24 <https://freedom.ilaw.or.th/en/case/590>

25 <https://freedom.ilaw.or.th/en/case/685>

26 <https://asianhrds.forum-asia.org/?p=19819>

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*February 2015:* Environmental conservation groups from the Dongmoon area in Kalasin and Namoon in Khon Kaen provinces oppose an APICO (Korat) Co. Ltd. petroleum project on the basis of livelihood, environmental and health concerns. Their rights to peaceful assembly and participation in public affairs, as well as their rights to disseminate information and submit petitions to the authorities have been restricted. In February 2015, over several weeks, police and military officials escorted company trucks from a military camp through the village of Namoon, Khon Kaen province. Villagers, who were peacefully protesting, were blocked by soldiers and barred from the road to enable the transport of drilling material. During the Minister of Energy's visit to the petroleum project on 10 August 2015, there was a heavy security presence barring community-based HRDs from accessing the road, as they intended to submit a petition to the Minister. On 23 August 2015, police disrupted the screening of a Thai Public Broadcasting Service documentary, freely available on Youtube, by community-based HRDs in Khok Khrua subdistrict, Kalasin province. The documentary focused on community opposition to the petroleum project.

Other examples of banning of public events related to human rights and democracy:

*28 September 2016:* Special Branch Police and officers from the Department Labour blocked the launch of an Amnesty International report on torture and ill-treatment in Thailand. Special Branch Police unit and officers from the Department of Labour claimed that the panelists did not have work permit in Thailand. It was the interpretation of the law to suppress academic freedom, freedom to observe and monitor human rights situation in Thailand.

*28 June 2014:* The National Reconciliation Committee organized a seminar presenting the case for potash mining in Udon Thani as part of the military's efforts to move Thailand forward economically. The Governor sent instructions to the district and sub-district level authorities to encourage people to come and listen to the seminar, which provided only pro-potash mining arguments. In response, a conservation group held a protest with 100 members outside the seminar at Rajabhat University in Udon Thani. The district headman used military walkie-talkies to instruct local law-enforcement officials to prevent any movement or action by the group.

*5 November 2014:* about 30 participants were harassed and intimidated at the conference "Human Rights and the Constitution" held in the Northeastern city of Khon Kaen. Two plainclothes police officers came around 9:50 am and asked organisers to clarify the conference's content. Members of the military joined them within minutes. At around midday, five more police officers and three soldiers came into the conference and proceeded to photocopy documents for further investigation.

### **RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND**

- Amend Article 112 of Thailand's Criminal Code to remove prison terms for offenses stemming from the legitimate exercise of the right to freedom of opinion and expression.
- Immediately and unconditionally release all individuals imprisoned under Article 112 for the mere exercise of their fundamental right to freedom of opinion and expression and establish a moratorium on prosecutions under this Article.
- Drop all cases under Orders No. 7/2014 and No. 3/2015 and article 116 of the Criminal Code against HRDs for peaceful assembly.
- Transfer all pending civilian cases in military courts to civilian courts and repeal decrees that allow the military to detain people up to seven days without judicial review.

### **ISSUE 20**

Article 12 of the NCPO Order No. 3/2558 (or 3/2015) is not compatible with the Covenant. Article 12 the order imposes a ban on political gatherings of five or more persons and prescribes up to 6 months in prison and/or a fine of up to

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10000 baht<sup>27</sup>. The 2015 Public Assembly Act<sup>28</sup> further restricts the right to free assembly and details the limitations imposed on gatherings. This law entered into force on 13 August 2015 and obliges demonstrators to seek permission from police 24 hours in advance of a rally. Protests within 150 meters of royal palaces, compounds of Government House, Parliament and courthouses are banned. Demonstrations are prohibited from 6pm to 6am and demonstrators are forbidden from obstructing entrances, generating disturbance at government offices, airports, seaports, train and bus stations, hospitals, schools, and embassies<sup>29</sup>.

The Public Assembly Act give authorities sweeping powers to ban public assemblies on extremely vague and arbitrary grounds. A public assembly that takes place without submitting an application for prior approval or a public assembly banned by the authorised body is regarded as unlawful and results in criminal liability. Restrictions stipulated in the Public Assembly Act contravenes Thailand's obligations to facilitate freedom of assembly and association in accordance with the article 21 of the ICCPR. The restrictions imposed by the Government of Thailand are disproportionate and run contrary to the essential foundations of a democratic society.

Disproportionately harsh penalties prescribed in the Public Assembly Act raise further concerns. Organisation of demonstrations that result in damage or disruption to the public transportation system, telecommunications, or public and economic infrastructure or failure to comply in any other way with instructions issued by the authorised body can result in a prison sentence of up to 10 years and fine of up to 200,000 THB. According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the organiser of a demonstration should not bear any responsibility for the unlawful behaviour of others. The provisions of the Act are in clear violation of accepted international human rights standards with respect to assembly and association.

While the Government of Thailand claims that restrictions on the right to assembly are only exercised in cases where public activities seek to reignite social divide and stir hatred and violence, reality tells a different story. Article 12 of Order 3/2015<sup>2258</sup>, Order 7/2014 and The Public Assembly Act have been repeatedly invoked to prevent activists from holding peaceful demonstrations and activities. Between May 2014 and April 2016, about 100 cases of political gathering bans have been recorded. Most of the individuals who were charged with defying orders 7/2014 and 3/2015 in that context were tried in military courts<sup>30</sup>.

The 14 student activists from New Democracy Movement, mentioned in the reply to Issue 19, who were charged with defying Order 3/2015 for their participation in a series of peaceful protests is one of the most documented cases. Another occurrence demonstrates how far military authorities are ready to go in order to restrict even the most passive activities organised by civil society organisations. On 26 August 2015, they banned an environmental youth camp in Wang Saphung district in Loei province on the basis that it would breach the Public Assembly Act<sup>31</sup>.

*15 August 2015:* a NDM member and HRD Mr Songtham Kaewpanpruk, was arrested at Don Mueang International Airport upon his arrival from Kuala Lumpur, Malaysia. He and 13 other NDM members face charges of violating NCPO Order 3/2015 for organising demonstrations gathering more than 5 people on 22 May 2015 to commemorate the first anniversary of the coup. Following Mr Kaewpanpruk's arrest, the other 13 NDM members facing the same charge are also at risk of arrest and arbitrary detention.

### RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND

- Immediately repeal NCPO Order 7/2014 and NCPO Order 3/2015 and lift all other restrictions that are inconsistent with Thailand's international legal obligations with regard to the right to freedom of peaceful assembly.
- Repeal or amend the Public Assembly Act 2015

27 [https://www.upr-info.org/sites/default/files/general-document/pdf/upr\\_advocacy\\_factsheets\\_-\\_thailand2016-en.pdf](https://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_thailand2016-en.pdf)

28 <http://lawdrafter.blogspot.sg/2015/08/translation-thai-public-assembly-act-of.html>

29 [https://www.fidh.org/IMG/pdf/fidh\\_report\\_thailand\\_roadblock\\_to\\_democracy.pdf](https://www.fidh.org/IMG/pdf/fidh_report_thailand_roadblock_to_democracy.pdf)

30 <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>

31 <http://www.prachatai.com/english/node/5425>

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- Close investigations or drop charges against human rights defenders and others relating to their peaceful exercise of rights and freedoms guaranteed by international law;
- Reform or repeal laws and decrees that unjustifiably restrict the exercise of such rights and freedoms;
- Ensure that human rights defenders and political activists are not targeted through the arbitrary application of the law;
- Engage in open and transparent dialogue with human rights defenders, community-based organizations, political activists, and the public and promote an environment in which all may safely exercise rights and freedoms without fear of retaliation.

### d. Rights of persons belonging to minorities (art. 27)

## ISSUE 28

Forced eviction and relocation of communities are risks that communities face, restricting their enjoyments of rights of people belonging to minorities or communities in particular with regards to natural resources, use of land and through effective consultation with local communities.

(See case above under item 18 of 3 October 2016) Chadet Kaewsin a land rights defender and para legal volunteer part of E-san Land Reform network who helps villagers of landless communities in E-san to gain access to legal services in order to defend their land rights. He is campaigning against the use of cabinet resolution on mapping of land location which will make his community lose their rights to land under the reforest policy launched by NCPO since July 2014. Sarayuth Rittipin is a land rights defender and a news reporter of E-san Land Reform News Agency. This news agency actively reports on the human rights campaigns of landless communities in E-san, Northeastern Thailand. The E-san community has been affected by continued land redistribution and relocation programs since 1963. The Forest Protection policy which was announced in 2014 by the junta government on the reclamation and restoration of protected areas nationwide has led to roughly 1800 families in E-san being accused of land encroachment.

Both Chadet and Sarayuth have been working tirelessly in the search for their comrade Mr. Den Kamlae, last seen on 16 April 2016.

The junta government continues to intimidate, arrest, and forcibly evict people in E-san. In this context, judicial harassment is seen as one of the strategies used to counter attack the peaceful and democratic actions of HRDs.

*2 February 2015:* Case of military pressing computer crime charge against a Lahu activist. A military officer in northern Thailand has sued a Lahu ethnic minority activist (Maitree Charoensuepkun, Lahu activist and citizen journalist) for posting a facebook video clip, saying that the clip defamed him and injured the honor of Thai military.

The military officer Cap Panomsak Kantang (Arunothai Military Post in Mana Subdistrict of Chiang Dao District) filed a complaint on 4 January 2015 under Article 14 of the 2007 Computer Crime Act (importation of illegal content) against Maitree for posting a facebook clip allegedly containing false and defamatory contents against him and the Thai military.

The clip was video record of a heated exchange between military officers and Lahu villagers of Kong Pak Ping Village, including Maitree, who on 1 January 2015 went to a local military post to ask the officers to identify soldiers who reportedly abused them physically.

In fact on 31 December 2014 at around 8:30 pm, five unidentified men some of whom were wearing military trousers and bulletproof vests had abused and threatened them by slapping their faces and pointed pistols at them as they

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were gathering around the fire. Eleven of them reportedly faced such abuse, including one elderly Lahu woman and three children.

If found guilty, the Lahu activist could face up to five years imprisonment and fined up to 100,000 baht or both.

Maitree has been an active media activist advocating for rights and development of Lahu community especially that of Lahu children. He once joined media training with Friends Without Border (FWB), a civil society group advocating of child rights, and Thai Public Broadcasting Service (Thai PBS).

### **RECOMMENDATIONS TO THE GOVERNMENT OF THAILAND**

- Ensure that community-based HRDs have effective access, on a non-discriminatory basis, to meaningful participation in the government of Thailand and in the conduct of public affairs, as provided by Article 8 UN Declaration on HRDs;
- Stop the current practice of public hearings in relation to development projects affecting local communities since, as implemented, they do not enable a proper public participation, including open, collective and participatory consultations with affected communities and community based HRDs on the framework and the extent of remedies and compensations mechanism.

***Annex:***

1. Protection International Submission to the UN Human Rights Committee (CCPR) 117<sup>th</sup> Session (20 June – 15 July 2016)