

Summary Record of the dialogue between the Human Rights Committee and the Official Delegation Of Thailand (Geneva, 19th – 20th July 2005)

This summary record underlines the concerns of the Human Rights Committee (HRC) raised during a dialogue with the Thai Delegation. This took place during the 84th session in Geneva on the 19th and 20th of July 2005.

The dialogue was focused on the list of issues¹ that had been prepared by the HRC, and submitted beforehand to the Delegation; the aim of which was to obtain complementary information to the initial report² of the State Party.

The Committee congratulated the large delegation and specified that it was the first time that there was a member of the government's opposition present in a delegation. He also noted the presence of a great number of NGOs and of members of the National Human Rights Commission, which showed the will of the State Party to cooperate with the civil society. The Thai Delegation was congratulated for the quality of its report and for the quality of its answers.

However, the HCR was worried about several points :

- ❑ the Thailand's dualist system, which undermines the guarantee of the Covenant rights;
- ❑ the state of emergency declared on the 19th July in three south provinces³ by a new Emergency Power Act⁴, which seems not to provide a sufficient guarantee of fundamental rights;
- ❑ the dispositions on death penalty and the death row phenomenon,
- ❑ the problem of stateless people;
- ❑ discrimination against minorities.

Constitutional and legal framework within which the Covenant is implemented (Art. 2)

Thailand adheres to dualist system. This raised concerns for the Committee because when Thailand becomes a party to an international treaty, it does not automatically become a part of Thai law.

Regarding the question of the direct invocation of the Covenant before the courts, the Thai Delegation provided the example of a 2005 case involving the imprisonment of a Cambodian citizen who was charged with human trafficking. She was sentenced to 50 years imprisonment by Thai Court for having committed offences under Sections 283 and 319(2) of the Thai Penal Code relating to sexual exploitation and indecent treatment of minors. In this case, the rights guaranteed by the Covenant, in particular Articles 2, 7 and 24, were protected by provisions of the Thai Penal Code.

Although Thailand has not ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, the Delegation stated that Thailand does plan to ratify it.

The Thai Delegation further reported that while from July 2001 to May 2005 the National Human Right Commission received 2,148 complaints, 1,309 have already been investigated, 559 are still in the investigation process, and 209 are in the process of gathering evidence.

Derogations (Art. 4, 6, 7, 8, 9)

¹ See the "List of Issues", UN document CCPR/C/84/L/THA.

² See Initial Report of Thailand, UN document CCPR/C/THA/2004/1.

³ Narathiwat, Pattani and Yala.

⁴ "Emergency Decree on Government Administration in States of Emergency, B.E 254", approved by the Thai Minister Council on 15th July 2005.

On 15th July 2005, the Thai Cabinet approved the new Administration in Emergency Situation Act, which replaces the 1952 Act. This new Act is a Royal Decree that was promulgated on the 16th July without the approbation of the Parliament, as provided in the Constitution. However, the Parliament will examine this decree in September.

The Committee expressed its concern about the state of emergency that Thailand declared on 19th July 2005 in three provinces of the south of the country. In response, the Delegation declared that the State will respect its obligations under article 4 of the Covenant.

Regarding the questions on the application of Martial Law in Thailand, the Delegation explained that military personnel has been empowered under the 1914 Martial Law Act to deal with the unrest in the Southern provinces of Thailand. The Delegation attributed the declaration of Martial Law to the fact that the police could not adequately handle the area of the three provinces. Still, the Delegation assured the Committee that no derogations of fundamental rights have taken place.

On the question of adopting anti-terrorism laws, the Delegation stated that Thailand does not have and specific anti-terrorism laws or specific anti-terrorism procedures. Acts of terrorism and offences related to terrorism, however, are proscribed under different Thai laws.

Non-discrimination and gender equality; rights of persons belonging to minorities (Art. 2(1), 3, 26, 27)

Section 4 of the Constitution of Thailand states that the human dignity of the people should be protected for Thai and non-Thai nationals. A few rights, however, are reserved only for Thai citizens. These include the right to vote and the right to hold immovable property. Civil rights are accorded to all persons in Thailand.

When questioned about gender discrimination, the Thai Delegation assured the Committee that unjust discrimination and treatment against women are prohibited by the Constitution. It was noted by the Delegation that divorce laws discriminate against women. In a situation of adultery, the man must provide that the women committed adultery just once, whereas the woman must prove that her husband supports and honors another woman than his wife.

Domestic violence is a criminal offense under Sections 295-298 of the Penal Code. Yet, domestic violence remains a problem in Thailand, which is why the Thai government has launched a four years campaign to raise social awareness of domestic violence.

Regarding measures taken by the Thai government to combat human trafficking and to protect HIV/AIDS victims, the Delegation explained that they are taking a proactive approach. The Prime Minister set up a trust fund geared at helping and rehabilitating victims of trafficking, and Thailand treats drug users and trafficked persons afflicted with HIV/AIDS as patients who need to receive care rather than criminals.

Rights to life; prevention of torture (Art. 6 and 7)

The Thai Penal Code prescribes the death penalty for murder and for some drug related offenses. When the Committee questioned what would constitute a large enough quantity of drugs to qualify one for the death penalty, the Delegation stated that fifteen or more pills is sufficient for qualification.

The Committee expressed many concerns about the killing of people by law enforcement officers. Indeed, the record indicates that there were 2,598 murders that were allegedly linked to drug trafficking by police. Despite claims by the government that a committee was

established to investigate these cases, the Delegation questioned the veracity of the investigation of these murders.

The Delegation was also concerned with the number of executions that have occurred over the last five years. As the King has the power to grant pardons, the number of executions changed from year to year. Special occasions can result in an en masse pardon.

Victims of human rights violations can seek judicial remedies by filing a complaint before the court. Unfortunately, Thailand did not have accurate statistics on the number of cases relating to violations of human rights.

Rights of liberty and security of persons; treatment of detainees; independence of the judiciary; right to a fair trial (Arts. 9, 10, 14)

The Committee was extremely concerned about Thailand's practice of shackling prisoners. Although the Delegation explained that it is imperative that shackling continues at least until adequate prison facilities are built, the Committee condemned this practice.

The Delegation insisted that Thailand has not and will never broadcast executions.

On the question of the treatment of terrorist suspects and drug addicts, the Delegation assured the Committee that they are afforded the same rights as other prisoners. The Government policy is to treat drug addicts as patients and not criminals, and to provide treatment and rehabilitation. In fact, some drug addicts were even given treatment, but this treatment, as the Delegation explained, depends on when the drug dealer was prosecuted for his crime.

As far as protecting human rights organisations and human rights defenders, the Delegation insisted that they are in the process of assisting human rights defenders.

Two cases were considered to deserve special investigation:

- The case of Mr. Charoen Wat-Akworn, an environmentalist and community leader, who was killed one year ago. Five suspects were arrested, and the authorities continued to gather more evidences so as to find the mastermind of his murder.
- The kidnapping of a human rights lawyer, Mr. Somchai Neelapaijit: four police officers were charged with the offence of deprivation of his liberty, and the Royal Thai Police Commissioner General was transferred to an inactive post. There is no substantial evidence to prove that the victim was dead. The authorities continue to gather further evidence.

On the question of monitoring judges, the Delegation answered that the Constitution contained sections that ensure the independence of the judges.

Freedom of movement; expulsion of aliens (Arts 12 and 13)

The long-term presence of displaced people, notably from Myanmar, raised social and security concerns. Thailand prefers voluntary repatriation of displaced persons. The Thai government created a three prong approach to address the problem of illegal immigrants. The Committee was extremely concerned with the process of registering and granting citizenship to the immigrants and their children. Thailand explained that the children of migrant workers who are registered will receive Thai citizenship.

Freedom of opinion and expression (Art. 19)

The Thai Delegation explained that the freedoms of expression, speech, writing, printing, and publishing, were guaranteed by the Constitution, and, as such, censorship is prohibited.

The Delegation also gave some information about the libel suit filed by Shin Corp., a private firm funded by the Prime Minister, against Ms. Supinya Klangnarong and the Thai

Post editors. It said that equality before law should always prevail and that this trial began by testimony of the witness of the plaintiff on July 19, 2005.

Freedom of association (Art. 22)

The Thai Constitution, the Labour Relations Act of 1975, and the 2000 State Enterprise Labour Relations Act guarantee the rights of the employers and employees to form associations and protect their interests. At present, the current Government is in the process of taking the following steps to further promote the right to freedom of association: revision of the two Acts of 1975 and 2000; research project to ratify International Labour Organisation Conventions; preparation for future bilateral and multilateral negotiations on free trade agreements.

Protection of Children (Art. 24)

The Delegation stated that forced child labour exploitation was a breach of law and a crime against human trafficking. It further explained that the Ministry of Labour issued an order to closely monitor any abuse of child labour. It set up local teams and check-points all over the country, and several regulations were strictly enforced.

Right to take part in public affairs (Art. 25)

The Constitution of 1997 extended the right to take part in public affairs. Section 105 (2) provides the right to vote to people over 18 years of age on the 1st of January the year of the election. Thai nationals residing abroad are now entitled to vote at Parliamentary elections.

Elections in Thailand are governed by the 1998 Law⁵ and supervised by the Election Commission, which is an independent agency, and which can conduct investigations and enquiries in some cases defined in the 1997 Constitution⁶.

Rights of minorities (Art. 27)

The Constitution of Thailand has provisions on the religious and cultural rights of minority groups⁷. The Delegation voiced the Government's resolve to better protect and promote the fundamental human rights of minorities, including members of hill tribes.

- ❑ Right to citizenship: The delegation explained that those who live in Thailand but were left out of the census are still eligible for Thai nationality, provided that they submit a petition⁸.
- ❑ Right to freedom of movement: Those who have Thai nationality and legal migrant status have the right to freedom of movement. Those who are not in these categories are in principle enabled to travel within their dwelling province. However, their children are allowed to move freely and to have access to education as a result of the Cabinet's resolution that was passed on 5th July 2005.
- ❑ Right to land ownership: In general, only Thai nationals are entitled to land ownership. The treatment of the Highlanders was questioned by the Committee, but the Delegation explained that the government endorsed several projects so hill people could continue to live in the same way as before.

Dissemination of information relating to the Covenant (Art. 2)

⁵ See the Organic Law on the 1998 Elections of Members of the House of Representatives and the Senates, amended in 1999 and 2000.

⁶ See Section 147 of the 1997 Constitution of the Kingdom of Thailand.

⁷ See Section 38 and Section 46 of the 1997 Constitution of the Kingdom of Thailand.

⁸ Under the Central Registration Regulations 1992 and 1996.

Regarding to the 1991 Cabinet's resolution, all public agencies with officers who may use weapons legally have to participate in educational training on human rights issues.

The Thai Delegation assured the Committee that the Ministry of Defense, the Courts of Justice, the Office of the Attorney General, The Rights and Liberties Protection Department, the Office of Justice Affairs and the Royal Thai Police receive education and special training on human rights as recognised in international instruments and national law.