

## EXECUTIVE SUMMARY

The 2015 Thailand Human Rights Situation Assessment Report,  
conducted by the National Human Rights Commission of Thailand (NHRCT)

The duty for making annual report for human rights situation assessment in Thailand with proposing to the Parliament and Cabinet and allowing public accessibility is one of the duties entrusted to the National Human Rights Commission of Thailand (NHRCT), within provisions of Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Section 257 (8) and the National Human Rights Commission Act, B.E. 2542 (1999), Section 15 (6). The Report on human rights situations occurred in Thailand on annual basis highlights both progressive and retrogressive human rights impacts and incidents assessed under standards and values of the Constitution, other domestic laws, international human rights treaties ratified by Thai State, relevant international standards and pledges given by Thai Government to international community. For the standardization of human rights situation assessment frame, NHRCT undertakes certain criteria and standards as: (i) principles and provisions in Constitution of the Kingdom of Thailand, B.E. 2550 (2007) and Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014) including other domestic laws; and (ii) rights entitled and guaranteed under seven international human rights treaties, including international standards and pledges given by Thai Government to international community.

The Report for Human Rights Situation Assessment in Thailand in 2015 shall be presented into three main parts as follows:

## 1. CIVIL AND POLITICAL RIGHTS

NHRCT assesses overall situations and finds that most of incidents adjacent to the transitional period with political reform, ruled by the National Council for Peace and Order (NCPO), since 22<sup>nd</sup> May 2014. And although the NCPO-led Government has made tireless efforts to solve conflicts with reconciliation and political reform through the design of measures and plans for country development and the draft Constitution of the Kingdom of Thailand, B.E. ...., but with unavoidable difficulties and complexities of circumstances, NHRCT witnesses facts implying to the continual infringement within various dimensions. NHRCT has five principal findings with observations as follows:

**1.1 Right to Fair Trial:** The Government has spent efforts to enact and amend a number of laws ensuring people to be able to access to justice and public helps, e.g. the Justice Fund Act, B.E. 2558 (2015), the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001), the Correction Act, B.E. ...., the Criminal Procedure Code and the Penal Code, etc. In the meantime, some complainants alleged that their rights were abused by public officers under judicial process and legal proceedings, e.g. rights entitled to accused, injured persons and prisoners and right to access to judiciary. Moreover, there were huge human rights concerns for the exercise of powers of military officers towards some incidents, e.g. one happened with Siriwich Sereethiwatch or “Cha New” – member of the New Democracy Movement during travelling to Rachabhakti Park and one with the 1<sup>st</sup> Year Anniversary with Commemoration to the Overruling of NCPO in front of the Bangkok Art and Culture Center, etc.

**1.2 Torture and Enforced Disappearance:** These were torture cases with allegations to actions taken by public officers, covering the cordon, searching, arrest, subpoenas, custody and interrogation, including acts against prisoners. For the enforced disappearance, though the Cabinet adopted a Resolution, dated 24<sup>th</sup> May 2016 with agreements to the ratification of International Convention for the Protection of All Persons from Enforced Disappearance (CPPED or CED) and to the draft Prevention and Suppression of Torture and Enforced Disappearances Act B.E. ...., but there is none of significant action in progress, particularly with the following-up of those forcibly disappeared. Thus the Government shall consider to accelerate the review of draft Act and to improve or amend all existing domestic laws as well as to enforce them in spirit of the Convention, including to provide and enrich knowledge on such laws in accuracy and consistency to all government officers and frontline workers.

**1.3 Capital Punishment:** There are two main dissenting opinions on capital punishment in Thai society, as one supporting the utmost abolition and one retaining the death penalty either with or without moratorium and now they are still under contentious dialogues. In 2015, there were 86 prisoners completely granted capital punishment, nonetheless since 2010 the punishment has been under moratorium. NHRCT has proposed policy recommendations to the Government with reiteration of legal revision for capital punishment and more undertaking of human rights-based approach in relevant contexts. This also highlighted the making of more understandings, changing of attitudes and developing of alternative measures with avoidance or abolition of capital punishment.

**1.4 Freedom of Expression:** A number of prolonged incidents with expression of opinions and of political stands through media and political assembly caused unavoidably social disorders with rights infringements of the public, a number of laws were regularly reinforced with the limit and derogation of rights and freedom of expression. They were mainly used for prevention of offensive manners or causes of injury and damages and then affecting to the expression of both individual and collective opinions. People's gatherings were being formed by those affected from policies, measures and other projects implemented by either public or private sectors. NHRCT issued a report with policy recommendations for the draft Public Assembly Act, B.E. ...., making more focusing on significance of freedom of expression for developing and strengthening of monitoring mechanisms and ensuring of transparency that would be safeguards for human rights entitlement and exercise. The Commission opined that the Government shall not exercise security laws in manners of public gathering laws or any other laws controlling or derogating rights, on the other hand, it shall facilitate ways delivered for freedom of expression in appropriate manners instead. And in any cases with necessity for rights derogation due to reasons with national security or restoring of public order, public health and morality, laws and actions taken shall be cautiously monitored and supervised under certain objectives and with legitimacy. These actions are required to strictly deserve with laws in proportionality, specificity on case-by-case basis, direct connection and interpretation, and foreseeable results to such rights exercised. Notwithstanding, these might not limit the exercise of rights to deliver news and information for public interest in general.

**1.5 Situations in the Deep South:** In 2015, unrests in the Deep South compared within those occurred in the past 12 years were apparently reduced, but in any single incident happened still created high impacts to rights and liberties and caused the death and injury of persons. The right to fair trial, rights of children and rights of women were still the most concerns and possible causes for human rights violations, e.g. the controlling and interrogation of national security threat-suspected persons, the searching of premises and whereabouts harbored for those national security threat-suspected persons, the testing of DNA samplings collected from children under suspicion with relationship to security threat-suspected persons, etc.

## 2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Most situations and concerns on economic, social and cultural rights in 2015 would more or less relate to the undertaking of liberalism-responsive economic development policies, the running of mega project developments without people's participation and the overlooking of impacts occurred. They all caused the social and economic disparities with emergence of public gatherings and resistances of groups of individuals and communities affected. They were struggling for protection of their collective or community rights through different means including to sue public authorities and entrepreneurs. NHRCT has seven principal findings and observations as follows:

**2.1 Energy Management:** The Government tried to convince and facilitate communities and private sectors to build biomass-power plants for generating renewable energy. The technology, compared with other energy-generating technologies, is apparently proved with the low-cost raw materials consumed while there are doubts and concerns on pollution and waste management that causes the resistance from people living in projects' areas and criticism on inappropriateness of locations and landscapes and ambiguities of pollution management plans. There was a case lodged to the court with appealing for the abolition of Resolution of National Environmental Committee, dated 10<sup>th</sup> June 2015 and the Natural

Resources and Environment Ministerial Announcement, No.7 that allow all size of rubbish and trash-power plants undertaking only the Code of Practice (CoP) with exemption for the Environmental Impact Assessment (EIA).

**2.2 Mining:** The Department of Primary Industries and Mines had announced the Policy on Survey and Gold Mining Operation in twelve provinces that led to the resistance of people staying in target areas, as there are plenty of problems and challenges so far from the implementing of mining policies and these all are still in consistent with increasingly severe impacts. NHRCT has been receiving a number of complaints grouped into 5 main concerns with allegations, as: (i) the lack or overlooking of people and communities' participation in policy and decision making processes; (ii) the arbitrary permission made with concession granted from public authorities; (iii) the impacts from existing operated mining; (iv) the rehabilitation and remedial for those affected areas; and (v) the life threat and abusive acts caused from resistance of mining. Moreover, some mining laws are also out of date and incompatible with current economic, social and environmental contexts while there is none of preventive and dispute resettlement mechanism.

**2.3 Natural Resources, Lands and Forests Management:** A number of communities were affected from the NCPO's Orders No.64/2557 and No. 66/2557 due to the exercise of government officers' powers with eviction and demolition of properties and belongings of those dwelling and earning for life in forest areas, while there was none of clear demarcation with propriety rights on such areas or even still be with land disputes because of inconsistency and incoherence of government's policies in each period of time. NHRCT investigated such cases and recommended the Cabinet and Government to have more checking and balancing of powers exercised and more accountabilities taken for the community rights entitlement and safeguard, especially to make more rooms for people's participation; to avoid impacts and damages to those underprivileged, poor and landless whom residing or using such plots of lands before Orders announced or came into force; and to conduct proper and due processes for evidences proof with dispute resettlements.

**2.4 Special Economic Zones Development:** The Policy for Establishing Special Economic Zones on Border Areas meandering Thailand's Neighboring Countries in ASEAN, in accordance with the Announcements of the Committee on Special Economic Zone Development Policies, No.1, dated 19<sup>th</sup> January 2015 and No.2 dated 24<sup>th</sup> April 2015, in ten areas, supplementing with an Order of NCPO's Chair, No.17/2558, entitled the Land Acquisition for Special Economic Zones Development with the exemption of Ministerial Regulations on Land Exploitation with City Zoning Plan caused the large land confiscation to be under public properties with severe impacts to countrywide communities. NHRCT investigated the using of land and public resources under the investment plan with land confiscation and acquisition and remedial provided and found that there were irregularities with incoherence of facts.

**2.5 Right to Education:** For the differentiation and opportunity with educational accessibility, NHRCT found that all children and youth in Thailand increasingly accessing to educational opportunities but there were some yet inaccessible to basic education. A number of students continuing tertiary education were also decreased more than half of those enrolling in education system at the beginning, while there was an increase of drop-out rate for those enrolling in basic education, especially in-between the secondary and high educations. A number of those enrolling with completion in vocational education were also reduced. And for the quality of basic education according to three indicators, it addressed that on a side of educational achievement (O-NET PISA), the average mark was merely

low or unsatisfactory; on a side of general aptitude test (GAT), the average mark was lower than those in the past; and on a side of aptitude on literacy and computation of population aging from 6 years old, it addressed that 91.1 percent of all children and youth were groups of children and youth aging 14-24 years old owning both literacy and computation skills. There were limits and challenges of educational management with centralization in general, while there were irregularities with educational qualities and accessibilities for the local administration. The centralized education was criticized for non-responding to needs and contexts of cultural and ethnic diversities.

**2.6 Right to Health:** Thailand is now approaching to the aging society with more vulnerability for its healthcare management systems, comprising the national healthcare scheme; the social security scheme; and the government officers' welfare scheme. The Government thus tries to create more healthcare management systems with the investment and contribution from both private sectors and individual insured. Meanwhile, the Government also makes efforts to issue various measures leveraging qualities of public health with universal coverage and services strengthened to ensure that all residing in Thailand accessible to healthcare schemes, particularly the adoption of Cabinet Resolution, dated 20<sup>th</sup> April 2015, for restoring basic rights to healthcare for ethnic minorities and their descendants migrating to Thailand and persons facing difficulties on personal statuses and rights. NHRCT noted that there were differentiation and disparity among three healthcare schemes, while people living in remote area and groups with disadvantaged still could not access to any of healthcare systems, e.g. persons with disabilities, migrant workers and their dependent, etc.

**2.7 Right to Work:** The Government created various measures for promoting and protecting right to work, e.g. to ensure the minimum wage with work safety and accessibility to healthcare schemes, including to solve problems and to eliminate human trafficking threats with increase of efficiency for labor inspecting measures for the aims to protect all workers under laws and social assurances. Notwithstanding, there are groups of workers found inaccessible to labor protection, as: domestic helpers and overseas workers, etc. In the matter of minimum wage, there is a request with acceleration that recently increased but such wage is still lower than those in some ASEAN countries. In the matter of freedom of assembly and setting-up of trade unions, the Government clearly stands for ratifying International Labor Organization (ILO) Conventions No.87 and 98 that encouraging freedom of assembly with labor protection and exercise of right to gathering with collective bargaining.

### 3. GROUPS WITH MARGINALIZATION AND VULNERABILITY

In general, groups with marginalization and vulnerability are facing human rights infringements either from anyone's actions taken with multi-discrimination and their intersectional attributions. And although the Government has made significant efforts to issue and regulate laws and policies with actions for progressive realization and protection of rights of groups with marginalization and vulnerability, but the constraints and limits with interpretation of laws and policies into practices are still found particularly with irregularities and incoherence of laws and policies that caused impacts to communities and people on the ground. NHRCT has principal findings with observations for the rights promotion and protection of five groups as follows:



**3.1 Children:** The Government increasingly undertook various measures for promoting and protecting rights of children, as: an incentive measure guaranteeing the growth of children with quality and support through individual monthly subsidy, 400 THB for 12 months, given to new born babies; a proactive measure with budget allocation for taking care with protection and remedial provided and setting-up of a center for helping children facing or with vulnerability to violence; the amendment of Penal Code, particularly in parts of sexual offences and pornography; the regular monitoring of child labor forces with marking for minimum age for agricultural and fishery labor through multi-disciplinary approach; and the following-up of implementation and interpretation of National Action Plans for Elimination of the Use of Child Labor in Worst Forms, No.1 (2009-2016) and No.2 (2015-2020). Nevertheless, the NHRCT still found increasing number of children aging 5-17 years old being child labors contacting to harm and violence with inaccessibility to public healthcare services. Moreover, there was a tendency of increase migrant children. NHRCT had proposed policy recommendations to the Government covering the making of measures and guidance for protecting children at risk and children on the move; the encouraging for healthcare accessibility; the making of comprehensive data segregation of migrant children; and the adopting and enforcing measures for eliminating statelessness with universal birth registration for new born babies and identity proofs for migrant children, regardless their nationality background.

**3.2 Women and Gender Equity:** The Government announced the Gender Equity Act, B.E. 2558 (2015) and regulated the Women Development Plan in National Social and Economic Development Plan, No.11 (2013-2016), the Gender Statistical Disparity Segregation Plan, No.1 (2014-2015) and the Women Situation Report in 2015 in reflection to 12 critical areas under the Beijing Declaration and Platform for Action. And although the overall gender disparity with gap would be reduced, but there were concerns and observations in some dimensions, e.g. number of female older persons higher than male older persons (5,100,000>4,000,000); female underprivileged higher than male underprivileged (64,000>49,000); female employee lower than male employee (17,500,000 < 20,900,000); women working in informal sector higher than men working in informal sector (10,600,000>5,500,000); ratio of working population (male=80.7 and female=64.3); and ratio of female parliamentarians, especially during 2014-2015 that are the lowest in 10 years. Moreover, the violation against women was also increased, in comparison with 2014 too. NHRCT recommends the Government to regulate appropriate measures with affirmative actions to promote women's participation and to bridge the gaps with disparity, e.g. the applying of gender quota system with political parties; the organizing of workshops and training programs for the role of women in decision making process; the regulating of policies mechanisms and measures for solving problems with efficiency and supporting injured women to access to justice, etc.

**3.3 Person with Disabilities:** The Government issued various laws and measures for promoting and protecting rights of persons with disabilities; covering the Education Management for Persons with Disabilities Act, B.E. 2551 (2008); and Additional Amendment B.E. 2556 (2013) the Act for Promoting and Developing Quality of Life of Persons with Disabilities, B.E. 2550 (2007) and Additional Amendment B.E. 25567 (2013) and ministerial regulations for setting-up of (i) quota system with employed positions for persons with disabilities in both state and private sectors; (ii) calculation with amount of financial contribution to the Fund for Promoting and Developing Quality of Life of Persons with Disabilities, B.E. 2554 (2011); and alternative approaches with incentives for promoting and protecting rights of persons with disabilities, including the Plan for Quality of Life of Persons with Disabilities Development, No.4 (2012-2016). The Government also removed declarations in Convention on the Rights of Persons with Disabilities (CRPD), in alignment with its pledges to the first Universal Periodic

Review (UPR), pertaining to the interpretation of rights to birth registration, right to be named and right to nationality of children with disabilities. Anyhow, There are the limits and constraints with implementation, as: (i) for the right to education, some were still denied with access to education, where most of schools were still less prepared in both their human resources and physical readiness, for accommodating persons with disabilities; (ii) for the right to movement with freedom or social harmonization and right to information, there were very few universal designed facilities corresponding to capacities and limits of each condition of disability; (iii) for the right to occupation and employment, most of employers and entrepreneurs were not get preparation for having working positions for persons with disabilities, thus they merely opted to pay financial contribution to the Fund rather than to employ persons with disabilities. In the meantime, most of persons with disabilities also had very limited skills, knowledge and competencies; and (iv) for the right to health, all three healthcare schemes regulated corresponded to rights and benefits of each disability with inequality. NHRCT recommends the Government to regulate and undertake proactive measures in human rights-based approach and to consistently and vigorously monitor their implementation, including to issue identity cards and data segregation for persons with disability and without any discriminatory act; to prepare all schools and educational institutions, particularly their human resources and facilities; to develop the domicile- or community-based employment for persons with disabilities residing in such areas; to monitor and inspect universal designs with infrastructure and to promote participation of all persons with disabilities in all levels.

**3.4 The Older Persons:** The Government has been promoting rights entitlement of the older persons, particularly those in line with the Older Persons Act, B.E. 2546 (2003), especially for economic and social development with appropriate surroundings and life betterment, nonetheless there are very less progressive realization of rights with few accessibility to their rights, lack of government and civil society mechanisms for promoting rights of the older persons; and loopholes of laws and regulations with limits to rights of the older persons, particularly for opts and opportunities for employment or to get support and development from the Government. Besides, the system reform corresponding to aging society in Thailand was still unclear, especially on economic concerns. Most of organizations disregarded the actions with implementation and the policies and action plans were uncertain and incoherent. And on the matter of income securing schemes for the older persons, the Government undertook affirmative action with the Policy with universal life subsistent subsidy on step-up basis (600-1,000 THB/month) for all Thai nationals aging from 60 years old upwards, notwithstanding, these amounts were criticized with insufficiency for current betterment, they were marked on one third of poverty line of the country and lack of sustainability since this was only a policy not yet a law. The social mindset was also blanketed and seeing the older persons as social burdens than the enrichment of wisdoms and knowledge, while 85 percent of older population owning necessary competency for the country development but without the support for re-correcting of social attitudes. The Government and Thai society thus are required to have more awareness with various measures corresponding to the aging society in Thailand, especially to promote and entitle social and economic rights with development and appropriate surroundings for life betterment of the older persons, comprising, the strengthening of Policy with universal life subsistent subsidy for the older persons with more appropriateness and sufficiency corresponding to actual expenses and sustainability. NHRCT recommends that the Government shall (i) issue and adopt laws and regulations promoting life qualities and occupations for the older persons responding to their rights and participation in the Older Persons' Fund management and interpreting all work into the National Action Plan for the Older

Persons, No.2, the National Economic and Social Plan, No.12 and the Sustainable Development Goals (SDGs) with making of policies supporting mechanisms and resources with rights entitlement to the older persons under the Older Persons Act, B.E. 2546 2003); (ii) issue laws and by-laws corresponding to basic retirement for Thai nationals aging from 60 years old onwards; (iii) create measures and mechanisms promoting the changes of public attitudes against the older persons with more rooms for participation; and (iv) support the work and implementation of working groups and international mechanisms pertaining to the development of United Nations Convention on the Rights of Older Persons.

**3.5 Ethnic and Tribal Groups and Indigenous Peoples:** The main challenges identified from the assessment of human rights situation of ethnic and tribal groups and indigenous peoples in Thailand are the lack of clear focal point; lack of master plan made with integration of all action plans; incoherence of laws, policies and regulations and with obsolescence; lack of rooms for participation of various parties and lack of experienced persons engaged. These all caused the mismanagement of data and without updated. In the meantime, the challenges with possible violation were also addressed, e.g. the lack of land tenures and titles with possible acquisition and loss of ethnic, tribal and indigenous lands, arable areas and dwellings with the proprietary rights violation and derogation; the lack of clear and systematic data-base with incoherence of policies on development and on natural resources conservation; the lack of personal legal status and individual integrity within legal recognition. These come from the limits and natures of their dispersed settlement with ethnic diversities meandering on border lines and areas. In some groups, they have been practicing nomadic lifestyle for generations with irregular access to household and personal registrations under Thai laws, so their legal statuses are undocumented or even documented but within the contentious database and ambiguity. And in some cases, relevant government officers were alleged to engage with bribery and taking advantages for the claim and consideration of personal legal statuses. NHRCT found some groups even registered under Thai laws but inaccessible to basic public services with rights infringement, especially right to education, right to health and freedom of movement. NHRCT assessed and highlighted principal findings with rights infringement for ethnic and tribal groups and would like to make policy recommendations to the Government as: (i) to accelerate and leverage working processes for the proof of personal legal status though more cooperation made with civil society for surveying and solving of the delay of identity screening and registration processes; to organized workshops for providing knowledge and understandings to registrars and relevant district officers for household registration; and to precede the consideration of legal status of any individuals surveyed under the Cabinet Resolution with Strategies for Solving of Personal Legal Statuses and Rights of Persons, B.E. 2548 (2005); (ii) to accelerate and leverage working processes for land dispute resettlement though more cooperation made with civil society for surveying and solving of these problems; (iii) to regulate certain criteria and guidance for interpretation and consideration on grounds of national security threats, with reconsideration of those being nationalized with a proof of continual residing in Thailand for certain period of time to be able to take part in local administration in some cases; (iv) to encourage groups of children facing personal legal status problems to be able to enroll and access to education with public budget supported and appropriate measures with affirmative action made including the promotion of learning and teaching methodologies with Mother-Tongue Based and Multi-Lingual Based (MTB/MLE) educations; and (v) to adopt measures identifying ethnic, tribal and indigenous identities and backgrounds and to accelerate the consideration of the draft Act on Council of Ethnic and Tribal Groups and Indigenous Peoples in Thailand, B.E. ....