



Statement of the National Human Rights Commission of Thailand

No. 2/2563

Concerning 2020 Human Rights Situation in Thailand by Human Rights Watch

On 13 January 2020, Human Rights Watch publicized its 30th annual review of human rights practices around the world for the year 2020, which includes the human rights situation in Thailand during the course of 2019.

The National Human Rights Commission of Thailand (NHRCT) has considered the report according to its duties and powers prescribed in Section 247 (4) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and Section 26 (4) together with Section 44 of the Organic Act on the National Human Rights Commission B.E. 2560 (2017) and found that several claims presented in the report were previously mentioned in the 2018 report which the NHRCT had examined, found them to be incorrect or unfair, and already given an explanation as stated in the Explanation of the National Human Rights Commission of Thailand No. 1/2561 dated 18 April 2018¹. They are claims relating to the lack of accountability in 2010 violent incidents and financial compensation to the victims of security officials' unlawful acts in the southern border provinces. The NHRCT reaffirms its explanation on the aforementioned issues and wishes to provide facts and further information on the other claims which were found to be incorrect or unfair for a proper understanding of the situation as follows:

1. Preamble and Legacy of Military Rule and Impunity for Human Rights Violations

A claim that the general election on 24 March 2019 was held under severe restrictions on civil and political rights. Prime Minister General Prayut Chan-ocha started his second term in July showing the same disregard for human rights that characterized the previous five years of military rule.

¹For details, please see <http://www.nhrc.or.th/getattachment/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/คำชี้แจงคณะกรรมการสิทธิมนุษยชนแห่งชาติ-ที่-๑-๒๕๖๑/คำชี้แจง-1-2561.pdf.aspx>

The holding of general election and subsequent forming of the government were carried out in accordance with the provisions of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and other related laws, such as the Organic Act on Political Parties B.E. 2560 (2017) and the Organic Act on the Election of Members of the House of Representatives B.E. 2560 (2017). Before the promulgation of the Royal Decree on the General Election of Members of the House of Representatives B.E. 2562 (2019) on 23 January 2019, the Chief of the National Council for Peace and Order (NCPO) had issued the Order No. 22/2561 dated 11 December 2018 revoking several NCPO chief's Orders, thus allowing people and political parties to carry out political activities since 11 December 2018. In addition, after the election the NCPO Chief Order No. 9/2562 was issued on 9 July 2019 to revoke several NCPO announcements and NCPO Chief orders that were no longer necessary.

2. Military Detention, Torture, Military Courts and Enforced Disappearances

A claim that torture has long been a problem in Thailand, but the penal code still does not recognize torture as a criminal offence. Thailand signed the International Convention for the Protection of All Persons from Enforced Disappearance in January 2012 but never ratified the treaty. The penal code still does not recognize enforced disappearance as a criminal offence.

Although the Thai Penal Code does not recognize torture and enforced disappearance as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance as criminal offences, it has specific provisions which can be applied to prosecute a person committing a crime involving torture or enforced disappearance. Such provisions include Section 289 (5) on offence against life (murdering a person by acts of torture or cruelty), Sections 295 and 296 on offence against body (causing injury to the other person's body or mind by acts of torture or cruelty), Section 310 on offence against liberty (depriving liberty of a person by detaining, confining or by any other means) and Section 157 on malfeasance in office (malfeasance or dereliction of duty committed by an official).

In an effort to improve the law and put it in conformity with the aforementioned Conventions, the government had proposed a bill called the Draft Prevention and Suppression of Torture and Enforced Disappearance Act B.E. which specifies torture and enforced disappearance as criminal offences in accordance with the two Conventions to the National Legislative Assembly, but the bill was not passed into a law due

to the termination of the National Legislative Assembly's term. The bill was sent back to the Cabinet and a public hearing was held to comply with Section 77 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and the Act on the Drafting and Evaluation of Legislation B.E. 2562 (2019). At present, the public hearing has been completed and relevant government agencies are taking necessary steps before re-submitting the bill to the Cabinet.

3. Human Right Defenders

3.1 A claim that despite entreaties from civil society advocates, the government did not take concrete action to end strategic lawsuits against public participation (SLAPP) used by government agencies and private companies to intimidate and silence those rights activists and advocates.

As regards human rights defenders, the Office of the Judiciary has undertaken to amend relevant provisions of the Criminal Procedure Code, namely Sections 161/1 and 165/2, to prevent strategic lawsuit against public participation (SLAPP). Section 161/1 allows the court to exercise its discretion to dismiss the case filed by a private complainant if it deems the act is done in bad faith or facts have been distorted to cause undue troubles to the defendant, while Section 165/2 allows the defendant to submit to the court important facts or matters of law to prove that the case lacks merit, including submission of witnesses, documentary or physical evidence to substantiate the defendant's claim. The two amendments were published in the Royal Gazette on 22 March 2019 and on 19 February 2019 respectively. The Office of the Attorney General also exercises its power under Section 21 of the Public Prosecution Organ and Public Prosecutors Act B.E. 2553 (2010), whereby a public prosecutor may refer to the Attorney General his/her opinion for non-prosecution of a criminal case if he/she deems the prosecution will be of no use to the public. This provision applies *mutatis mutandis* in case of non-filing or withdrawal of a petition, appeal or final appeal.

3.2 A claim that the government has not revamped the National Human Rights Commission of Thailand, even after the resignation of two prominent human rights advocates meant the commission has not had a quorum since July.

On the resignation of Human Rights Commissioners which left the NHRCT with less than half the number of members required to constitute a quorum, resulting in the suspension of performance of its duties, the matter has successfully been resolved. Since 31 July 2019, the Chairperson of the National Human Rights Commission sent urgent notifications to the President of the Supreme Court and the President of the Supreme

Administrative Court on a number of occasions, requesting their joint action according to Section 60, paragraph three, in conjunction with Section 22 of the Organic Act on National Human Rights Commission B.E. 2560 (2017). Finally, on 1 November 2019 the President of the Supreme Court and the President of the Supreme Administrative Court jointly appointed 4 substitute Human Rights Commissioners. This has enabled the NHRCT to resume meetings and performance of its duties in protecting and promoting human rights, including the consideration of the investigation reports. During 1 November 2019 and 8 May 2020, the NHRCT has cleared all the backlog of a total of 248 investigation reports.

3.3 A claim that the Global Alliance of National Human Rights Institutions (GANHRI) rates the commission as substandard because of its selection process for commissioners and its lack of political independence.

The GANHRI gave three reasons for downgrading the NHRCT's status in 2018: (1) the lack of statutory provisions for participation of civil society in the selection and appointment process of Human Rights Commissioners; (2) the lack of provisions in the enabling law protecting Commissioners from legal liability for acts undertaken in good faith in their official capacity; and (3) the delay in the preparation of investigation reports on political demonstrations in 2010 and 2013. Nowhere is the lack of political independence cited as a reason whatsoever. Nevertheless, the current NHRCT has made efforts to amend the enabling law on the first two issues raised by GANHRI by engaging with all concerned parties. As a result, the provisions of the Organic Act on National Human Rights Commission B.E. 2560 (2017) relating to the selection process and functional immunity of Commissioners was brought in conformity with GANHRI's recommendations. On the third issue regarding the delay in the preparation of political demonstration reports, the NHRCT has adopted working guidelines that would enable it to respond to crucial human rights situations in the country in a timely manner. Having addressed all the three issues, the NHRCT has submitted to GANHRI an application for its re-accreditation, which is currently in the process of consideration.

4. Refugees, Asylum Seekers, and Migrant Worker

A claim that Thailand is not a party to the 1951 Refugee Convention or its 1967 protocol. Thai authorities continued to treat asylum seekers, including those recognized as refugees by the UN High Commissioner for Refugees, as illegal migrants subject to arrest and deportation. The government refused to let the UNHCR conduct refugee status determinations for Lao Hmong, ethnic Rohingya and Uighurs, and other people from Myanmar and North Korea held in indefinite immigration detention.

In 2019, there was no deportation of any asylum seeker recognized by UNHCR as refugee through official channels. As for the determination of refugee status, it is the primary responsibility of a state. UNHCR may conduct refugee status determination under its mandate when a state is not a party to the Refugee Convention and/or does not have a fair and efficient asylum procedure in place². Besides, the government has recently issued the Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562 (2019) which will come into effect after 180 days following the date of its publication in the Royal Gazette (i.e. on 22 June 2020). The Regulation provides for the establishment of a “Protected Person Screening Committee” which has the duties and powers to determine criteria, conduct the screening and grant “protected person status” to aliens who enter into the Kingdom and are unable or unwilling to return to their country of origin due to a reasonable ground that they would suffer danger of persecution in accordance with human rights principles. Those granted protected person status will not be repatriated and are allowed to stay temporarily in the Kingdom with access to appropriate healthcare and education (in case of children with protected person status).

The National Human Rights Commission of Thailand

8 May 2020

² From the UNHCR’s letter dated 25th March 2020