

No. 56101/304



The Permanent Mission of the Kingdom of Thailand to the United Nations presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honour to refer to the latter's letter dated 25 January 2019 inviting Member States to provide OHCHR with further information regarding measures taken to prevent and address acts of intimidation and reprisal as suggested by some Member States and civil society organisations during the interactive dialogue of the annual report of the Secretary-General on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" at the Human Rights Council on 19 September 2018.

In this connection, the Permanent Mission of Thailand to the United Nations has further the honour to transmit the information to OHCHR for the latter's perusal as attached herewith. The information has also been sent to reprisals@ohchr.org.

The Permanent Mission of the Kingdom of Thailand to the United Nations avails itself of this opportunity to renew the Office of the United Nations High Commissioner for Human Rights of its highest consideration.

Permanent Mission of the Kingdom of Thailand
to the United Nations, New York.
25 March B.E. 2562 (2019)



The Office of the United Nations High Commissioner for Human Rights,
NEW YORK.

Thailand's policies, measures and practices to prevent, address, investigate and reports on acts of intimidation and reprisals for those who seek to cooperate or have cooperated with the UN, its representatives and mechanism in the field of human rights

- a) **What is the legal and policy framework at the national level to ensure the right to participation at the international level, including unhindered access to and communication with the international bodies, in particular the UN?**
- b) **What measures have been taken by your Government at the national level to ensure national investigations and accountability on allegations of intimidation and reprisals?**

The Thai constitution recognizes the significant contribution of human rights defenders to the promotion and protection of human rights, the rights to participation at the international level of human rights defenders, civil society organizations (CSOs), ethnic groups or any individuals (hereinafter collectively referred to as 'the CSOs'). These rights have been protected and promoted to the large extent in the Thai Constitution and included in the plans, policies and legislations as follows:

(1) Principles and framework guiding government policies and actions:

- **The 2017 Constitution**, promulgated on 6 April 2017, reaffirms and builds on the ground rules, constantly recognized since the 1997 Constitution, for a system more conducive for people to exercise their rights and liberties, including the rights to freedom of expression and opinion covering the unhindered access and communication with any international bodies, insofar as such acts do not affect or endanger national security or public order or good morals and do not violate the rights and liberties of other persons. In the absence of a relevant stand-alone legislation, Section 25 of the Constitution specifically allows "any person, whose rights or liberties protected under the Constitution are violated, can invoke the provisions of the Constitution to exercise his or her right to bring a lawsuit or to defend himself or herself in the Court."

- The Constitution also prompted the issuances of **the National Reform Plans**, as announced on 6 April 2018, and **the 20-year National Strategies (2018-2037)**, as promulgated on 13 October 2018, which provide systematic and comprehensive frameworks and directions for government agencies to respect, protect and promote human rights of people through the exercise of official powers in an impartial and transparent manner and ensure appropriate redress and accountability for any wrongful or dishonest exercise of official powers.

- Human rights defenders are included in the draft 4th National Human Rights Plan (2019 – 2023) to ensure that they will be safeguarded against intimidation, reprisals or any unlawful acts. The draft National Action Plan on Business and Human Rights has also designated human rights defenders as one (1) of the four (4) priority areas; namely, labour, land, environment and natural resources, human rights defenders and cross-border investment and multi-national enterprises.

(2) Applicable laws: The combination of laws providing safe and enabling environment for the CSOs to conduct their work freely include:

- A criminal offense on wrongful exercise of duties under **Section 157 of the Criminal Code** contains broad preventive and punitive effects to any wrongful and dishonestly exercises of official functions of powers, such as malicious accusations or prosecutions. This offense can also be investigated by the Office of National Anti-Corruption Commission (NACC) which can refer, if the disciplinary fault or criminal act is found, the case for consideration of disciplinary punishment to their superiors and/or to a public prosecutor to proceed.

- For those whose rights may have been affected by the unlawful administrative orders, for example, travels bans, punitive registrations or restrictions on the receipt of funding, they can seek a full

review of decisions and redress through an administrative appeal process in accordance with the Administrative Procedure Act B.E. 2539 (1996). Once the reviews have been exhausted, the injured persons may appeal to the administrative court under the Act on Establishment of Administrative Court and Administrative Court Procedure B.E. 2542 (1999).

- As an effort of the Court of Justice to establish an overarching tool to **protect the right to freedom of expression against Strategic Litigation against Public Participation (SLAPP)**, a new **Section 161/1 of the Criminal Procedure Code** has taken effect on 20 March 2019 to provide the court with the power to dismiss any criminal case at the filing stage of the lawsuit if it appears to the court that the cause of action stems from (1) ill intention to harass (2) to take advantage over a person (3) to gain any unlawful benefits or (4) to achieve any corrupt underlying objectives. In parallel, the Court of Justice has also proposed a new **Section 165/2 of the Criminal Procedure Code**, which came to effect on 20 February 2019, to allow the accused to present legal and evidentiary arguments during the preliminary examination of the Court where they previously could not do so. Section 165/2 also enables the Court to play a more active role by having the power to summon witnesses and evidence proposed by the accused as the Court's witnesses.

- **Under Section 21 of the Public Prosecutor Organ and Public Prosecutors Act B.E. 2553 (2010)**, the Public Prosecutor has the power to refer the opinion to the Attorney General to issue an order of non-prosecution if he/she finds that a criminal prosecution has no use to the general public or affects the nation's safety or security or impairs significant interest of the State.

- **The Justice Fund Act B.E. 2558 (2015)** was established to provide legal aid to individuals, including the accused and those who have suffered from trials or those whose human rights have been infringed. The Fund covers assistance in terms of bail, procurement of lawyers, court's fees and other expenses relating to the trial.

- **The Witness Protection Act B.E. 2546 (2003)** provides the protection of witnesses in criminal cases for the safety of witnesses or individuals who are closely related to witnesses and at risk of being threatened or harassed as a result of becoming or being a witness. The Government is currently amending the Witness Protection Act to enhance legal framework and measures on witness safeguard and protection to cover those who have been intimidated or threatened even before any criminal proceedings are initiated.

- In 2017 Thailand enacted the **Organic Act on the National Human Rights Commission B.E. 2560 (2017)** to strengthen the National Human Rights Commission (NHRC) in monitoring human rights violations and promoting human rights in the country in accordance with the Principles relating to the Status of National Institutions (the Paris Principles). The Act gives NHRC the power to investigate and request or order government officials or anyone to present information, clarify, and provide documents and evidence (Section 33-38). The NHRC can also submit recommendations related to human rights issues or problems to the Cabinet for further action. Those who refuse to cooperate may face criminal sanctions and penalties for up to 6-month imprisonment, a fine up to 10,000 baht, or both (Section 59).

(3) Related samples activities/initiatives:

- In 2016, the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice - in collaboration with CSOs and the OHCHR Regional Office in Bangkok - published the "Handbook to Protect Human Rights Defenders". The Handbook has been distributed to the general public, particularly to human rights defenders working in field operations. The Government has also cooperated with all stakeholders and partners to develop details of the handbook to ensure its practicality.

- RLPD conducted a workshop on human rights defender protection framework, with a view to categorizing the security status of human rights defenders and proposing a suitable level of protection to safeguard each group against harm. RLPD has also conducted field trips to monitor the

situation of human rights defenders in various provinces with relevant organizations, including OHCHR.

- Since 2015, RLPD has been conducting trainings on human rights standards for law enforcement officials, including military personnel working in the Southern Border Provinces.

- Thailand has taken a holistic approach to address the root causes of human rights violations in all dimensions, including the rights of particularly contentious rights such as those pertaining to land rights and tenure, environment, labour, anti-discrimination, ethnic minorities and disadvantaged groups and freedom of expression and association through close collaboration with CSOs as well as the tripartite cooperation among relevant government agencies, CSOs, and international organizations. For example, Thailand has established the **National Land Policy Committee** to solve problems of securing land rights or tenure for those who are landless and have limited means. From 2015 – Jan 2019, 136 areas in 57 provinces with a total area of 470,942 rai (75,350 hectares) were granted. Furthermore, on 7 March 2019, the National Legislative Assembly passed the two historic legislation on the **National Parks Act B.E....** and the **Wildlife Conservation and Protection Act B.E. ...**, providing for the first time opportunities for local or ethnic communities to secure land tenure and to continue their traditional way of life in the national parks through legal mechanisms.

d) How has your Government provided assistance to members of civil society for their cooperation with the UN? Have any measures been taken to improve the security and safety of those who cooperate with regional and international organizations?

- In addition to the above-mentioned measures, Thailand has constantly encouraged and involved CSOs to work with or to participate in the decision-making process of government agencies and under the mode of tripartite cooperation which includes international organizations. For example, the Ministry of Social Development and Human Security and the Southern Border Provinces Administrative Centre (SBPAC) have initiated the establishment of the ‘Coordination Centre for Women and Children Affairs in the SBPs’, in partnership with UN Women and UNICEF, as a coordinating platform for government agencies and CSOs to move forward the child protection agenda and to support the implementation of the Strategic Plan for Children, Women and Families in the SBPs B.E. 2562-2564 (2019-2021). In addition, the Thai CSOs network on business and human rights have attended and participated in several panels and events during the 2018 UN Forum on Business and Human Rights on 26-28 November 2018 in Geneva. The Thai delegation, headed by the Director-General of the RLPD, has accepted the invitation by the CSOs network to discuss about the draft National Action Plan on Business and Human Rights of Thailand. The said meeting was constructive and fruitful. The dialogue was also attended by Mr. Surya Deva, the then vice-chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Thai NHRCs and delegates from EU and the UK.

- In addition, Thai authorities have shown openness in accepting technical visits of and meeting with a number of special procedures and in arranging them to meet with relevant agencies and CSOs in Thailand. The most recent visits were by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinions and expression (December 2018), Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association (December 2018), Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders (December 2018), Ms. Victoria Tauli-Corpuz, Special Rapporteur on the right of indigenous peoples (December 2018), Mr. Saad Alfarargi, Special Rapporteur on the right to development (December 2018) and Ms. Yanhee Lee, Special Rapporteur on the situation of human rights in Myanmar (January 2019).
