



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the second periodic report of Thailand\*

1. The Committee considered the second periodic report of Thailand (CCPR/C/THA/2) at its 3349th and 3350th meetings (see CCPR/C/SR.3349 and 3350), held on 13 and 14 March 2017. At its 3364th meeting, held on 23 March 2017, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the second period report of Thailand, albeit six years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level and large delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/THA/Q/2/Add.1) to the list of issues (CCPR/C/THA/Q/2), which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

(a) The establishment of the Coordination Committee by the Ministry of Justice in March 2016 to follow up on the implementation of the recommendations of the National Human Rights Commission of Thailand recommendations by relevant agencies;

(b) The adoption of Gender Equality Act (2015);

(c) The adoption of Justice Fund Act (2015);

(d) The adoption of Third National Human Rights Plan (2014-2018).

4. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2016;

(b) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2012;

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\* Adopted by the Committee at its 119th session (6-29 March 2017).



- (c) The Convention on the Rights of Persons with Disabilities, in 2008;
- (d) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2007.

## **C. Principal matters of concern and recommendations**

### **Interpretative declarations on and derogations from the Covenant during a state of emergency**

5. The Committee notes the withdrawal of the interpretative declarations concerning articles 6 (5) and 9 (3) of the Covenant. However it also notes that the State party still maintains its interpretative declarations concerning articles 1 (1) and 20. The Committee regrets that, as a result of the declaration of martial law in 2014, derogations from articles 12 (1), 14 (5), 19 and 21 do not seem to comply with the rationale and the scope of the provisions established by article 4 of the Covenant and general comment No. 29 (2011) on derogations from provisions of the Covenant during a state of emergency. The Committee is concerned that, while those derogations raise many concerns about their compatibility with the Covenant, they have not been lifted and continue to be applied, partly by virtue of the emergency decree of 2005 (in the southern border provinces) and martial law (in 31 provinces) (arts. 2 and 4).

**6. The State party should consider revoking its derogations from articles 12 (1), 14 (5), 19 and 21, with a view to ensuring the full and effective application of the Covenant. In any case, the State party should ensure that any derogation is fully compatible with the provisions of article 4 of the Covenant as interpreted in general comment No. 29.**

### **Constitutional and legal framework**

7. The Committee is concerned about certain provisions of the interim Constitution of 2014, such as those in sections 44, 47 and 48, and the order issued by the National Council for Peace and Order under section 44, which limit access to effective remedies and may lead to immunity of the National Council for Peace and Order for serious human rights violations. It is particularly concerned about section 44, which has often been used to issue orders restricting rights under the Covenant. It is also concerned about section 279 of the new draft Constitution, which would continue to provide immunity to the National Council for Peace and Order for its acts, announcements and orders (art. 2).

**8. The State party should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its obligations under the Covenant, and make sure that all measures to be adopted under the new draft Constitution, including section 279, will be consistent with its obligations under the Covenant, including the obligation to provide effective remedies to victims of human rights violations.**

### **National human rights institution**

9. While acknowledging the important work of the National Human Rights Commission of Thailand, the Committee regrets that it was downgraded to “B” status by the accreditation committee of the Global Alliance of National Human Rights Institutions. The Committee is concerned about the transparency of the process for selecting of members of the Commission (art. 2).

**10. The State party should ensure that the Commission is able to carry out its mandate effectively and independently, and in full conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### Non-discrimination

11. While welcoming the Gender Equality Act (2015) and the State party's efforts to prevent and address discrimination on the basis of gender and sexual orientation, the Committee notes with concern that section 17 of such Act allows for exceptions to gender discrimination on grounds of religion and national security. It is also concerned about reports of discrimination and violence against lesbian, gay, bisexual, transgender, intersex, indigenous and stateless people, and about reports of travel restrictions on migrants who have regularized their status (arts. 2-3, 12 and 26).

**12. The State party should ensure full protection against discrimination and in particular, consider amending the Gender Equality Act (2015) to eliminate any limitation on the protection against gender-based discrimination. The State party should intensify measures to ensure that lesbian, gay, bisexual, transgender, intersex, indigenous and stateless people and migrants do not suffer from discrimination and violence.**

### Violence against women

13. The Committee is concerned about reports of high rates of domestic violence against women, which is largely underreported, as it is considered a private affair, and about the risk of impunity for perpetrators arising from the possibility of ending criminal proceedings upon settlement by the parties, which may put victims under pressure not to pursue their rights (arts. 2-3, 6-7 and 26).

**14. The State party should redouble its efforts to prevent and address all forms of violence against women, including by:**

(a) **Encouraging the reporting of such violence, establishing an effective complaints mechanism and ensuring that cases of violence against women are thoroughly investigated, perpetrators prosecuted and, if convicted, punished with appropriate sanctions. Victims should have access to effective remedies and means of protection;**

(b) **Amending provisions allowing termination of criminal proceedings upon settlement by the parties to ensure their compatibility with the Covenant;**

(c) **Continuing to carry out awareness-raising campaigns to raise awareness among the population about the unacceptability of violence against women, and increase the training and capacity-building for police forces, prosecutors and judges.**

### Equal rights of men and women

15. The Committee is concerned about the prevalence of gender biases and stereotypes and about the limited participation of women in political life and in the private and public sectors, including the police force (arts. 2-3 and 26).

**16. The State party should strengthen its efforts to increase the participation of women, particularly in high-level and managerial positions, in political life and the private and public sectors, if necessary, through temporary special measures that give full effect to the provisions of the Covenant. The State party should also continue strengthening measures to raise awareness and eliminate gender biases and stereotypes.**

### Death penalty

17. While welcoming the de facto moratorium on executions, the Committee reiterates its concern that domestic law punishes with the death penalty crimes relating to corruption, bribery and drugs, which do not meet the threshold of the "most serious crimes" within the meaning of article 6 (2) of the Covenant. The Committee is also concerned about the large number of cases in which the death penalty has been imposed (arts. 6-7).

**18. The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, the State should take all measures**

necessary, including legislative action, to ensure that it is limited to the most serious crimes, such as acts carried out with the intention of killing.

#### **Extrajudicial killings, enforced disappearances and torture**

19. The Committee remains concerned that the State party's criminal legislation does not adequately ensure that acts of torture and enforced disappearance, as stated in the Covenant and other internationally established standards, are fully criminalized. The Committee regrets the delay in enacting the draft act on prevention and suppression of torture and enforced disappearance (arts. 2, 6-7, 9-10 and 16).

20. **The State party should ensure that legislation fully complies with the Covenant, in particular by prohibiting torture and enforced disappearance in accordance with the Covenant and international standards. The State party should expeditiously enact a law on the prevention and suppression of torture and enforced disappearances.**

21. The Committee is particularly concerned about reports of torture and other ill-treatment, extrajudicial executions and enforced disappearances against, inter alia, human rights defenders, including in the context of the southern border provinces. The Committee remains concerned about widespread impunity for those crimes and the slow progress in investigating such cases, including cases of the shooting of civilians during the political violence of 2010, the enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen and the torture endured by Kritsuda Khunasen (arts. 2, 6-7, 9-10 and 16).

22. **The State party should:**

(a) **Ensure that cases are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, including torture, enforced disappearances and extrajudicial killings, including in the context of the southern border provinces. It should also ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;**

(b) **Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;**

(c) **Ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition;**

(d) **Amend the Martial Law Act, Emergency Decree and Order 3/2015 to ensure that they comply with all the provisions of the Covenant, including with the guarantees against incommunicado detention enumerated in the Committee's general comment No. 35 (2014) on liberty and security of person. The State party should also amend criteria with a view to lifting the Martial Law and Emergency Decree in the provinces currently under them without undue delay;**

(e) **Promptly set up an independent mechanism for the prevention and suppression of torture and enforced disappearances;**

(f) **Reinforce the training of law enforcement officials and military personnel on full respect for human rights, including on the appropriate use of force and on the eradication of torture and ill-treatment, ensuring that all training materials are in line with the Covenant and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Trafficking and forced labour**

23. While taking note of the significant efforts undertaken to address trafficking and forced labour, the Committee remains concerned that trafficking in persons and forced labour remain and give rise to significant problems, particularly regarding sexual exploitation, fishing, agriculture and domestic work. It is concerned about reports on child labour and the exploitation of vulnerable people, such as irregular migrants and indigenous peoples. It is further concerned about reports of victims of trafficking being deported without being effectively screened for an assessment of their protection needs, and about

the premature collection of their testimonies in order to facilitate prompt deportation (arts. 7-8 and 24).

**24. The State party should strengthen its efforts to effectively combat trafficking in persons and forced labour, inter alia, by:**

- (a) **Strengthening preventive measures;**
- (b) **Increasing victim identification, systematically investigating allegations and complaints, and prosecuting and punishing those responsible;**
- (c) **Providing victims with effective protection, assistance and remedies and by strengthening its screening and testimony collections processes.**

**Right to liberty and security of the person and humane treatment of persons deprived of their liberty**

25. The Committee is concerned about reports of the arbitrary detention of hundreds of individuals exercising their right to assembly and/or freedom of expression for “attitude adjustments” after the 2014 coup, and that such individuals were reportedly often detained without charge and held incommunicado at undisclosed places of detention for periods of up to seven days, with no judicial oversight or safeguards against ill-treatment and without access to a lawyer. It is further concerned that upon release, detainees were reportedly compelled to sign a written agreement not to travel abroad and refrain from expressing political views, and that failure to comply involved the risk of up to two years of imprisonment. Finally, the Committee is concerned about the practice of detaining without charge and without habeas corpus criminal suspects for long periods of time, which can reach 30 days in cases before civilian courts and 84 days in cases before military courts (arts. 7, 9-10, 12, 14, 19 and 21).

**26. The State party should immediately release all victims of arbitrary detention and provide them with full reparation. It should also bring its legislation and practices into compliance with article 9 of the Covenant, taking into account the Committee’s general comment No. 35.**

**Rights of aliens**

27. While welcoming the State party’s important efforts at hosting refugees and its decision to establish a screening mechanism for asylum seekers, the Committee is concerned about reports of deportations and forcible returns without review or adequate assessment of the protection needs of refugees, asylum seekers and other people in need of international protection, including Uighur and Rohingya people, and insufficient guarantees against non-refoulement (arts. 6-7 and 13).

**28. The State party should ensure in law and practice that people in need of international protection are not returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant. It should also ensure the speedy establishment of a screening mechanism, and that all persons applying for international protection are given access to a fair and effective procedure that results in individualized determinations of their right to protection needs against non-refoulement under the Covenant, including the provision of legal aid where the interests of justice so require.**

29. The Committee is concerned about reports indicating that undocumented migrants, asylum seekers and refugees are detained for long periods and without contact with their embassies, counsel or civil society organizations. While the Committee notes the efforts of the State party to improve the conditions in immigration detention centres, it is concerned about reports of overcrowded cells, lack of adequate health services, poor sanitation facilities, inadequate food and water, and incidents of violence. It is also concerned about reports of children being detained and separated from their relatives without access to school and placed in cells with adult detainees, where they are at risk of physical and sexual abuse (arts. 2, 6, 9-10, 24 and 26).

**30. The State party should:**

(a) **Refrain from detaining refugees, asylum seekers and migrants and implement alternatives to detention, including before deportation. In cases where the individual is detained, the State party should ensure that the detention is based on individual circumstances that are reasonable, necessary and proportionate, and that the cases are reassessed over time. There should also be effective access to judicial review;**

(b) **Ensure that children are not deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary concern, and that they are segregated from adult detainees who are not their family members;**

(c) **Ensure that the living conditions in immigration detention centres are in compliance with the Covenant.**

#### **Right to a fair trial and military courts**

31. While taking note of Order 55/2016, which transfers jurisdiction for offences committed by civilians on 12 September 2016 and thereafter from military to civilian courts, the Committee remains concerned about reports of hundreds of ongoing cases and arrest warrants against civilians that remain to be adjudicated before the military jurisdiction, as well as civilians who were convicted by military courts and did not enjoy the right of appeal. It is also concerned about reports that all guarantees provided for by article 14 of the Covenant are not implemented during trials by the military courts (art. 14).

32. **The State party should ensure that all trials before military courts are exceptional and take place under conditions that genuinely afford the full guarantees stipulated in article 14 of the Covenant and Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. It should take the measures necessary to accept transfer requests from military courts for offences committed prior to 12 September 2016, transfer all such pending cases to civilian courts and provide the opportunity for appeal in civilian courts of cases involving civilians already adjudicated under military jurisdiction.**

#### **Conditions of detention**

33. The Committee remains concerned about the high levels of overcrowding and poor conditions in many places of detention, including poor sanitation and hygiene conditions, lack of access to health care, lack of adequate food and water and the stigmatization of certain detainees. It is also concerned about reports of excessive use of restraining devices, such as shackles, and sexual harassment (arts. 7 and 10).

34. **The State party should continue to strengthen its efforts to improve conditions of detention by taking practical measures to reduce overcrowding, particularly by promoting alternatives to detention. It should also increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions of detention in all of the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

#### **Freedom of expression**

35. The Committee is concerned about reports of the severe and arbitrary restrictions imposed on the right to freedom of opinion and expression in the State party's legislation, including in the Criminal Code, the Computer Crimes Act (2007), Order 3/2015, and the restrictions imposed through section 44 of the interim Constitution. It is also concerned about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the above-mentioned legislation, and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the Constitutional referendum in 2016 (arts. 19 and 25).

36. **The State party should take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19**

**of the Covenant. Any restriction should comply with the strict requirements of article 19 (3), as further developed in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, including the strict tests of necessity and proportionality. It should also consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation. The State party should also refrain from using its criminal provisions, including the Computer Crimes Act (2007), the Sedition Act and other regulations, as tools to suppress the expression of critical and dissenting opinions. It should take all measures to end prosecutions against those charged for exercising their freedom of opinion and expression during the constitutional referendum, and provide appropriate training to judges, prosecutors and law enforcement personnel regarding protection of freedom of expression and opinion.**

#### **Lese-majesty**

37. The Committee is concerned that criticism and dissention regarding the royal family is punishable with a sentence of 3-15 years' imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of lese-majesty since the military coup and about extreme sentencing practices, which result in dozens of years of imprisonment in some cases (art. 19).

**38. The State party should review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant. Pursuant to its general comment No. 34, the Committee reiterates that the imprisonment of persons for exercising their freedom of expression violates article 19.**

#### **Peaceful assembly**

39. The Committee is concerned about the excessive restrictions imposed on the freedom of peaceful assembly since the military coup of 2014, in particular the strict banning of any public gathering of more than five people and political gatherings of more than four people. It is also concerned about the provisions of the Public Assembly Act (2015) that establish criminal penalties for failing to provide prior notification to authorities regarding the organization of peaceful assemblies. The Committee is particularly concerned about the arrest of hundreds of people for having organized or taken part in peaceful gatherings (art. 21).

**40. The State party should effectively guarantee and protect the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety.**

#### **Statelessness**

41. While acknowledging the progress made by the State party since the adoption of the Civil Registration Act of 2008, its regulations on birth and late registration of children, and its commitments to eliminating statelessness by 2024, the Committee is still concerned about the high number of stateless people, in particular among indigenous peoples and ethnic minorities, which has a detrimental impact on access to basic services such as education for children and leads to an increased vulnerability to becoming involved in criminal trafficking and prostitution networks (arts. 2, 24 and 26-27).

**42. The State party should strengthen its efforts to reduce statelessness and, in particular:**

(a) **Ensure that rural and isolated populations are informed of and have access to the procedures relating to the acquisition of nationality;**

(b) **Ensure the promotion and protection of rights of stateless persons and provide primary education to children and protection against trafficking.**

**Rights of persons belonging to minorities and indigenous peoples**

43. The Committee regrets the lack of protection for persons belonging to indigenous communities in the Constitution and remains concerned about the stereotypes and bias they suffer. It is also concerned by the discrimination they endure, including with regard to citizenship, access to basic services or land rights and, in particular, by the impact of decrees 64/2014 and 66/2014 which have reportedly resulted in the eviction of several communities from their lands. It is also concerned about the lack of consultation and participation in decisions affecting them. (arts. 2 and 25- 27).

44. **The State party should guarantee the full enjoyment of the rights of persons belonging to minorities, as well as indigenous peoples, including the protection against discrimination regarding citizenship, access to basic services and land rights. It should ensure that prior consultations are held with a view to obtaining their free, prior and informed consent regarding decisions that affect them, in particular with regard to their land rights.**

**D. Dissemination and follow-up**

45. The State party should widely disseminate the Covenant, its two Optional Protocols, its second periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

46. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 8 (constitution and legal framework), 22 (extrajudicial killings, enforced disappearances and torture) and 34 (conditions of detention) above.

47. The Committee requests the State party to submit its next periodic report, by 29 March 2021, and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's response to the list of issues will then constitute the next periodic report to be submitted under article 40 of the Covenant.

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