

## **Alternative Report on Thailand's Implementation in Compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the National Human Rights Commission of Thailand**

### **Legal reform to abide by commitments under CEDAW**

1. Progressive development in legal reform in Thailand has been evident since 2003.<sup>1</sup> One significant progress was the enforcement of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) which continued to provide guarantee for gender equality between men and women, and extended to provide for the protection of rights and access to the state's assistance and rehabilitation services for women who are victims of sexual violations. This Constitution emphasized on the State's commitments to comply with international laws. It is Thailand's first constitution which contains a provision specifically on having a law to establish an independent organization to improve and develop the legal system to abide by the Constitution. However, in the latest Draft Constitution which passed the referendum in August 2016, there is no provision that gives any "definition of discrimination, either directly or indirectly in the Constitution"<sup>2</sup>; and there is no provision on establishing an independent organization to improve and develop the legal system.

2. Thailand has enacted and amended several laws pertaining to families, on demanding for compensation from those who violate others' fiancées, and on filing divorce lawsuits, which has led to Thailand's withdrawal of its reservation on Article 16 of CEDAW.

Following amendments have also been made to the Criminal Code to:

1) Provide equal right for men and women to choose their post-marital surnames.<sup>3</sup> 2) Provide freedom for married or divorced women to choose their titles, Mrs. or Miss, to use at their will.<sup>4</sup> 3) Provide equal right for men and women to demand compensation from other persons who have sexual relations with, rape or attempt to rape their fiancées, and the same equal right to file lawsuits against and demand compensation from their spouses who commit adultery or have sexual relations with other persons on a regular basis, or who provide for or treat other persons as their spouses.<sup>5</sup> 4) Stipulate that acts of rape or sexual assault towards other persons including own spouses are criminal offences, and provide a broader definition of rape and sexual assault.<sup>6</sup>

3. Thailand has made improvements on the Criminal Procedure Code to protect human rights of women in the legal process, notably in reducing sentences for women prisoners who are pregnant or have delivered babies for less than three years, or in suspending the death penalty on pregnant women prisoners who face death sentences for three years until child delivery, and reducing their death sentences to life imprisonment after that so that the mothers can look after their babies.<sup>7</sup> This law intends to upgrade the standards on treatment of women prisoners to be in compliance with the CEDAW principles and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the

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<sup>1</sup> The CEDAW Committee set for Thailand to submit a Combined Report in 2010 of the overdue 6<sup>th</sup> Report (2003-2006) due in September 2006 and the overdue 7<sup>th</sup> Report (2007-2010) due in September 2010.

<sup>2</sup> A recommendation of the CEDAW Committee to Thailand, from the concluding observations on Thailand's 4<sup>th</sup> and 5<sup>th</sup> Reports on 20 January 2006 at UN Headquarters, New York, U.S.A.

<sup>3</sup> Person's Name Act (No.3) B.E.2548 (2005)

<sup>4</sup> Female Title Act B.E. 2551 (2008)

<sup>5</sup> Civil and Commercial Code Amendment Act (No.16) B.E.2550 (2007), Sections 1445-1446 and Sections 1516-1523 respectively

<sup>6</sup> Criminal Code Amendment Act (No.19) B.E.2550 (2007) Section 276 paragraphs 1 and 2 respectively

<sup>7</sup> Criminal Procedure Code Amendment Act (No.25) B.E.2550 (2007), Section 246; and No. 28 B.E.2551 (2008), Section 9

Bangkok Rules). Furthermore, there have been improvements in the criminal procedure to protect aggrieved women, i.e. a aggrieved woman can request a person to be present with her during interrogation, and due consideration for her safety shall be given in the selection of a safe and appropriate place for the aggrieved party to identify a suspect and in the process of cross examination of witnesses, which should be conducted without the presence of the aggrieved woman herself to avoid face-to-face encounter.

#### **Laws which are not in compliance with Thailand's obligations under CEDAW**

4. After the political change in Thailand in 2014, scrutiny of legislation in the National Legislative Assembly has not given sufficient importance to the recommendations pertaining to women issues from woman organizations and civil society organizations. Several laws which have been enacted and put into force are therefore not in compliance with CEDAW.

1) **Criminal Code Amendment Act (No.23) B.E.2558 (2015) Section 277** still condones sexual relations with child spouses under the age of 15, by maintaining the reservation clause, "which are not his/her own spouse". The law also gives room for the Court to permit a boy aged under 18 years who has sexual relations with a girl aged over 13 but under 15 years to marry the girl with her consent. This is despite consideration that for a girl to have sexual relations before the right reproductive age can affect her health.<sup>8</sup> Although an amendment has been made to include safety and welfare protection for children, this law is still not in compliance with CEDAW and also not in compliance with the Convention on the Rights of the Child (CRC).

#### **5. Recommendation**

The State should amend Section 277 of the Criminal Code to abolish the provision which would allow the Court to permit a boy aged under 18 years who has sexual relations with a girl aged over 13 but under 15 years to marry the girl with her consent.

2) **Domestic Violence Victim Protection Act, B.E. 2550 (2007)** contains certain definitions which do not cover sexual harassment, is not clear or ambiguous on family members, and allows for case settlement at every stage. If lawsuits do not proceed in court, the aggrieved party shall be denied assistance or remedy. Besides, the reconciliation officer in a case is given a significant role in trying to reach a settlement with emphasis on preserving the family as a unit, thus he/she can persuade the court to exercise judgment in dismissing the case rather than in hearing primarily what women need. Under Section 172 of the Juvenile and Family Court and the Juvenile and Family Court Procedure Act, B.E. 2553 (2010), aggrieved persons of domestic violence have the right to request court orders specifying measures or methods under existing laws to alleviate their sufferings, and they can request the Court to open hearings without delay and avoid face-to-face confrontation. However, very few domestic violence cases actually proceed to trials in court due to inadequate knowledge and understanding on the part of the law enforcement personnel concerned.

#### **6. Recommendation**

The State should amend the provision regarding "domestic violence" to include sexual violence and to cover domestic workers and family members in a broader sense than

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<sup>8</sup> See <http://www.matichon.co.th/news/283398> Thailand accepts the recommendation proposed by Timor Leste to abolish the legal provision that reduces the age of marriage to 13 years in cases of sexual violations towards children and allows aggrieved children of sexual violations to marry the persons who commit the violations.

just a family with father, mother and children as members. There should also be an additional provision on systematic coordination mechanisms among agencies concerned to ensure that victims can access to justice promptly, appropriately and efficiently, that the perpetrators get punished for their acts, and that there shall be an agency responsible for providing rehabilitation for the offenders in order not to repeat the same offences.

**3) Gender Equality Act B.E. 2558 (2015)** contains a definition of discrimination which includes both direct and indirect discrimination by government agencies, the private sector or individuals, whether it be from policies, rules, regulations, announcements, measures, projects or any practices. This law includes and focuses on protecting all persons of all sexes, women, men and those who manifest different gender other than his/her gender of origin, instead of focusing on protecting women and persons with sexual orientation and gender identity, which are vulnerable groups who are usually affected from acts of gender discrimination. It is of major concern that this law gives room for discrimination, by allowing exemptions for possible gender discriminatory practices for reasons of religious principles or national security, or with an objective to overcome obstacles or encourage all persons to exercise their rights and liberties equally, or to protect their welfare and safety.<sup>9</sup> Thailand was not prepared to adequately enforce the said law, thus holding back concrete results in the law enforcement implementation.

## 7. Recommendations

1) The government should urge various committees established under this law to fully operate under their mandates, especially the Gender Equality Promotion Committee which is the main mechanism in integrating the gender equality perspective into concerned ministries and other relevant state mechanisms. The government should also allocate sufficient budget for the Gender Equality Promotion Fund.

2) The State should amend this law by abolishing the clause on exemptions for discrimination on grounds of religious principles or national security, according to Section 17. Definitions on gender, gender status, gender orientation, violence from sexual cause and sexual assault should be added in the law in order that all law enforcement personnel at every level nationwide will have the same correct understanding and be able to perform their duties efficiently.

**4) Child Protection Act for Children Born From Medical Technology-Aided Fertility B.E. 2558 (2015)** evidently does not cover human rights protection for surrogate mothers. It contains a clause mentioning about criminal punishment on surrogate mothers. The law sets limitation by permitting only relatives of either spouse to become surrogate mothers. It does not provide clear criteria on qualities of persons who can be surrogate mothers.

## 8. Recommendations<sup>10</sup>

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<sup>9</sup> Gender Equality Act, B.E. 2558 (2015)

“Section 17 Execution of policies, rules, regulations, announcements, measures, projects or practices by any government agencies, non-governmental organizations or persons, which are considered as unjust gender discrimination shall not be allowed.

The implementation of such actions according to paragraph 1 in order to overcome obstacles or encourage all persons to exercise their rights and liberties equally, to protect their welfare and safety, to uphold religious principles and practices, or to ensure national security shall not be regarded by any means as unjust gender discrimination.

<sup>10</sup> *Suchada Taweessith*. 2557 (2014), Legal Status on Surrogate Mother, from the Workshop, Public Forum on “Surrogate Mothers Act: Technology-Aided Fertility and Gender Justice”. (page 7); referenced in the Memo on Opinions and Recommendations to the Legal Reform Committee on Draft Child Protection Act for Children Born From Medical Technology-Aided Fertility B.E. 2558 (2015)

1) The State should, in any case, consider abolishing the provision regarding criminal punishment on surrogate mothers.

2) The State should amend the definition of “medical technology-aided fertility” by deleting the phrase, “including artificial insemination”.

3) The State should review and amend the law to include a chapter on providing human rights protection for surrogate mothers, and undertake measures to let surrogate mothers access all-round information, especially regarding effects on their general health and reproductive health from surrogate pregnancies before accepting to do so, including in making own decisions to terminate such pregnancies. Under the amended law, agreements are to be made to provide compensation for surrogate mothers in cases of illnesses or disabilities or deaths from complications inflicted by surrogate pregnancies, as well as life insurance and health insurance. Surrogate mothers shall have the right to know and get true information about the couples who request the babies from their pregnancies. Hindrance or closure of such information shall be regarded as an offence.

4) The State should undertake rights protection measures to give children born from surrogate mothers the right to citizenship in the same domain as their parents who requested surrogate babies. This is to ensure that those children shall enjoy the right to nationality and shall not become stateless.

### **Issues of concern and recommendations**

#### **9. National mechanisms for women status enhancement**

The reform of the government’s bureaucratic system in 2002 resulted in moving the national mechanisms for women status enhancement from the Office of the Prime Minister which is the centre of power in the country’s administration to a department-level agency under the Ministry of Social Development and Human Security. This has lessened the power and status of such mechanisms in coordinating and bargaining with other related ministries. Besides, the composition of personnel working under these national mechanisms has significantly changed after the reform, with 80% of the personnel being officers who are responsible for women affairs operation from the Community Development Department and the Social Welfare Department combined.

Later in 2015, the government restructured agencies under the Ministry of Social Development and Human Security once again, this time resulting in the addition of more operation work<sup>11</sup> into the national mechanisms body. Both the bureaucratic reform and restructuring have not built sustainable strength for these core national mechanisms in women affairs which are responsible for driving policies, strategies and measures in promoting and coordinating with all sectors concerned for gender equality and women status enhancement. Instead, they have burdened these national mechanisms with more operational duties.

It is observed that throughout this period, Thailand has not brought policies and measures to systematically integrate the gender perspective into the mainstream implementation of all government agencies. Thailand has not taken into consideration the issues of concern pointed out by the CEDAW Committee given to Thailand in 2006, that the moving of the national mechanisms for women status advancement from the Office of the Prime Minister which is the country’s central administrative power may undermine the power and efficiency of such mechanisms in integrating gender equality perspective into the mainstream implementation of every government agency, as well as in coordinating

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<sup>11</sup> Work on social welfare, prevention and alleviation of child and women trafficking, women shelter homes, shelter homes by law according to Prevention and Suppression of Prostitution Act

among ministries.<sup>12</sup> Furthermore, it has not taken action on the CEDAW Committee's recommendation for Thailand to conduct an in-depth evaluation on efficiency of implementation by the national mechanisms for women status advancement, and other related mechanisms at agencies level, so that necessary organizational improvements could be made to ensure there would be strengthened national mechanisms put in place to drive forward the agenda of gender equality promotion before these national mechanisms were restructured in 2015.

## **10. Recommendations**

(1) The government should press on conducting an in-depth evaluation on efficiency of implementation by the national mechanisms for women status advancement and other mechanisms at agency level, i.e. Gender Equality Coordinating Centre, Master Plan on Gender Equality Promotion of each government agency, and Women Development Plan, within the period of the National Economic and Social Development Plan. This would lead to the restructuring of the national mechanisms as deemed necessary to ensure their efficiency in promoting gender equality.

(2) The government should press on with having the National Committee on Policies and Strategies for Women Status Enhancement which is the main mechanism on women<sup>13</sup> to be the main agency in setting overall women development policies and linking its work with the Gender Equality Promotion Committee, which should lead to the integration of gender equality perspective into agencies in all sectors. Also, the government should enact a law on establishing a National Council on Women's Potential Development with its mechanisms to operate at the community level.

(3) The government should intensively carry out the compilation and presentation of data classified by gender, age group and area in a systematic manner. These data shall be used in setting policies, measures and in following up progress of the implementation in compliance with the obligations under CEDAW.

(4) The government should intensify the continual strengthening of women groups in the civil society organizations, and encourage women from various groups to participate in the national mechanisms by giving suggestions on execution of policies and measures that respond to their needs and help solve their problems. The grouping for women participation should take into consideration ethnic diversities, different regions and groups according to problem situation.

(5) The State should adjust the implementation objectives of the Women's Status Development Fund to include women's potential development and protection of women's rights in various aspects. It should consider drafting a law to secure existence of such Fund and ensure its sustainable operation. Women and non-governmental organizations working in the field of human rights for women should be given access to the fund fully and extensively. In this way, the Fund will become an important mechanism in assisting women in difficult circumstances and deprived of opportunities in various aspects, enabling them to protect their own rights and at the same time producing concrete results in gender equality promotion.

## **11. Violence against women and girls**

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<sup>12</sup> Issues of Concern and Recommendations of the CEDAW Committee given to Thailand, from the concluding observations on Thailand's Implementation Reports Nos. 4 and 5, on 20 January 2006 at the UN Headquarters, New York, U.S.A., paragraphs 17-18

<sup>13</sup> According to the Ministerial Regulation of the Office of the Prime Minister on the Promotion and Coordination of Women's Affairs, B.E. 2551 (2008)

The situation still prevails that women and girls who are victims of violence in various forms both in the families and in their communities cannot fully access to justice, due to lack of mechanisms for systematic inter-agency coordination, inadequate budget, limited female interrogation officers, and some female interrogation officers lack knowledge, understanding and expertise in handling disputes on sensitive issues involving sexual matters. Even though amendment has been made to the Criminal Procedure Code to allow the aggrieved party in a sexual offence case to request the presence of another person during the interrogation,<sup>14</sup> an appropriate place with due consideration for the victim's safety in identifying the offender(s), and a witness examination without face-to-face encounter with the aggrieved party, there remains a difficulty since such request has to come from the aggrieved party and there are no operational guidelines clearly laid down for the law enforcement agencies to follow.<sup>15</sup>

#### **Problem with law on sexual assault**

It is found that presently there is no clear definition established. The Criminal Code, Section 278 uses the word 'obscene' ('*ar-na-jarn*' in Thai), making it rather difficult to gather evidence to prosecute. Punishment on offenders of such cases by law is maximum 10 years imprisonment. However, most cases of this nature are usually ruled as trivial and punishment terms usually suspended. Besides, government agencies have not seriously applied measures in response to the Cabinet Resolution on 16 June 2015 regarding measures to prevent and resolve sexual violation or sexual assault problems in their work in order to produce concrete results. The law also does not specify any punitive measures or sentences on the offenders of such cases.

#### **Problem with law on domestic violence**

It focuses on reconciliation and settlement with lack of personnel who have knowledge and proper understanding about the role of effective reconciliation. The main focus is to uphold the family unit status. Besides, the existing mechanisms cannot bring in offenders to really undergo rehabilitation. Therefore, the government attempted to resolve this domestic violence issue by drafting an Act on Family Members Welfare Protection, B.E. .... to replace other laws pertaining to domestic violence. But this draft law is, by key content, contradictory between promoting family integrity and eradicating domestic violence. It does not intend to protect aggrieved women in cases involving family relations. Besides, there may be problems in enforcing this draft law, particularly causing difficulty for the aggrieved parties to access the justice system since it contains criminal punishment provision.

### **12. Recommendations**

(1) The government should revise the definition in the Domestic Violence Act to cover all persons living in the same house even without being blood-related, e.g. domestic workers, persons with sexual orientation and gender identity. Additionally, the legal process in providing protection for the aggrieved persons have to start immediately, with or without complaints filed, as these offences are different from other types of cases.

(2) The government should take measures to enhance knowledge and understanding of law enforcement personnel, ensuring that they are sensitive towards the gender perspective. Also, mechanisms which are well-prepared and effective should be put in place in order to effectively provide protection for women and girls in accordance with CEDAW. For example, special subjects should be added in the curriculum of the Police Cadet Academy

<sup>14</sup> Criminal Procedure Code Amendment Act (No.28), B.E. 2551 (2008)

<sup>15</sup> Criminal Procedure Code, Section 133, paragraph 4 and Section 172, paragraph 3

to sensitize and prepare the students to be more sensitive in their work towards the gender perspective, to respect gender equality and women's rights.

(3) The government should strengthen the government agencies responsible for enforcing this law, especially the National Police Office, by considering to have female interrogation officers attached to the Central Investigative Bureau and putting in adequate trained personnel force to handle interrogation of cases which are sexually sensitive to investigate.

(4) The government should press for government agencies and local administrative organizations to start implementing the Cabinet Resolution dated 16 June 2015 on Prevention and Suppression of Sexual Violations in their respective offices seriously, strictly and completely, in order to serve justice for the aggrieved parties taking into account human rights principles.

(5) The government should press on with the amendment of the Criminal Code and Labour Protection Act, B.E. 2541 (1998), particularly in setting clear definition, forms and penal provision of "sexual assault".

(6) The government should withdraw the draft Act on Family Members Welfare Protection, B.E. .... until public hearing has been widely conducted.

### **13. Trafficking and exploitation against women and girls**

Thailand has amended the Anti-Human Trafficking Act in 2015, improving on procedures to lend more effectiveness to the trial procedure and increasing the sentence to execution. In prosecuting human trafficking cases, there are still problems in practice and in enforcing the law, due to the prevailing attitude of the officers concerned that the aggrieved persons have committed the offences, and due to lack of mechanisms in following up the case, which makes it take a long time. A Thai woman who is the victim in a human trafficking case, upon return to Thailand from a foreign country, has to take the burden of gathering evidence to prove the offence and follow up on the legal execution as well as the compensation for the damage from the offender. There has been an increasing number of victims from human trafficking on labour, especially massage labourers.<sup>16</sup> The Ministry of Labour still lacks measures to control and prevent labourers from being deceived by recruitment companies.

At present, even though the government gives permission to aggrieved persons and witnesses in human trafficking cases who are foreigners to work during trials, it is found that aggrieved persons who are aged under 18 years, under the care of the Ministry of Social Development and Human Security, are sent to shelter homes under the care of officers for indefinite days, without advance scheduled timetables for witness interrogations. These girls are deprived of opportunities to voluntary education and of their right to work, despite the government's permission in principle. Moreover, foreign women who are arrested in Thailand for sex work and found not to be victims of human trafficking after the classification process are still treated in an inappropriate manner. This is partly because there are no operational guidelines on accommodation arrangements for witness foreigners who are without proper identification documents.<sup>17</sup>

<sup>16</sup> Report on the State's Implementation in Accordance with CEDAW, compiled by the Women for Advancement and Peace Network, September 2016

<sup>17</sup> From a complaint case filed to the National Human Rights Commission of Thailand by relatives of a foreign woman arrested in a massage parlour in Thailand, stating that the woman was not released after the prostitution case trial ended. From initial investigation, it is found that after the trial ended and the woman paid the fine according to the court sentence, the interrogation officer detained her for witness, by sending her to the Immigration Bureau's detention centre for more than 20 days. Until later, the woman exercised her right to appeal to court for her release then she received witness protection.



#### **14. Recommendations**

(1) The government should press on with improving mechanisms to follow up trials on human trafficking cases in a more systematic way, by setting up a directly responsible agency to effectively oversee the human trafficking case from trials to legal execution. In this way, there is guarantee that influential human traffickers and beneficiaries including involved government officers will be punished by law.

(2) The government should exercise measures to exempt human trafficking witnesses especially illegal immigrants from being prosecuted for legal immigration or for taking up wrong types of job, and to ensure protection and appropriate accommodation for witnesses in sex work offences.

(3) The State should amend the Prevention and Suppression of Prostitution Act, B.E. 2539 (1996) not to prosecute the women, in order to prevent wrongful exploitation against them by certain state officials.

(4) The State should amend laws pertaining to human trafficking, altering the maximum sentence from execution to life imprisonment without reduction of years.<sup>18</sup>

#### **15. Women workers protection**

Women have less economic opportunities, less income and career stability than men, and women have to bear the burden of managing home economy. Women workers face higher risk of being laid off from work than men, especially in an economic situation when factories have to close down or move their production bases to another country. This is because they engage in jobs without any bargaining power in work places where proper welfare and benefits are not provided. Also, there are not enough state early childhood care centres that working mothers can depend on. Besides, women workers are missing out on opportunities to participate in related policy formulation by national labour organizations and in the Tripartite Committee. Women Workers Union members are barred and not supported to become members of the Committee.<sup>19</sup>

There are a great number of women workers outside the system who are not protected by the Labour Protection Law. These women cannot access state public health services for child delivery under the Universal Health Care Programme, do not get any welfare after child delivery nor the right to take maternity leave or to get compensation for loss of income during the time they have to feed their young infants. There was a law enacted in 2010, the Home Workers Protection Act, B.E.2553 (2010), but until today, this law has not been fully enforced due to lack of ministerial regulations to guide the operation. Besides, the Labour Protection Act does not provide protection for domestic workers who are mostly women. The State has set ministerial regulations regarding house work, yet domestic workers still do not enjoy the same protection as other general workers, in terms of leave days, remuneration and other welfare.

#### **16. Recommendations**

(1) The government should use special measures temporarily to set quota for women workers to participate in every stage of decision making, including participation in the Tripartite Committee.

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<sup>18</sup> The Anti-Human Trafficking Act, B.E. 2551 (2008) amended by the Anti-Human Trafficking Act (No. 2), B.E. 2558 (2015), Section 53/1 (2)

<sup>19</sup> Memorandum of Comments and Recommendations on Legislative Plan regarding Access to Justice for Women Workers in the Industrial Sector



(2) The State should amend the Labour Protection Act to cover domestic workers, to provide for appropriate maternity leave days as well as full compensation for loss of income for women workers, and paternity leave days for the male spouse.

(3) The government should use appropriate measures to encourage factories to set up Child Care Centres for women workers as a special service.

(4) The government should press for the enforcement of the Home Workers Protection Act, B.E.2553 (2010), to produce concrete results soonest, and take steps to ensure that house work employees can enjoy the right to access social security according to Section 33, equal to other general workers in the system.

### **Situation of specific groups of women**

#### **17. Muslim women in the three southern border provinces**

The conflict and unrest situation in the southern border provinces of Thailand which has prolonged for more than a decade has caused loss of so many lives, including women and children, and damage to the properties of the local people. Although in recent years, the Thai government attempted to open peace dialogue with the groups that have different views from the State, but violent incidents and loss of lives of innocent people including women and children still occurred, and shows no sign of ending. Besides, most Muslim women in the local area have no opportunities to know or express opinion on the dialogue process. There is no safe space for them. And there has not been any compilation of suggestions made by women in the groups which have different views from the State, as a way to participate in resolving the conflict openly and straightforwardly.

Muslim women in the southern border provinces have to encounter violence in various forms, both domestic and community violence. An informal report stated that there were several cases of sexual violations towards Muslim women by military officers, but such cases have hardly been brought to trial by the Military Court. The *Damrong Dhamma* Centre and the Southern Border Provinces Administrative Centre reported cases of some State security officers operating in the three southernmost provinces having relationships with local Muslim women and married them. However, when they were moved back to their home bases, they lost contact with their wives. The Muslim wives and children were left behind without their breadwinners, thus facing financial difficulty and also being branded and looked down upon by their respective communities.

A large number of Muslim women in the southern border provinces still cannot access the formal justice process. Most of them rely on religious justice mechanisms, such as Islamic Community Committees or Islamic Provincial Councils, the members of which are all men. These men usually rule the cases by adhering very strictly to the Islamic law. The women then shy away from telling their problems, what they had to face, e.g. domestic violence, divorce lawsuits, or forced marriages. They fear the community people's judgment, usually with prejudice against women, which stems from their beliefs to do with customs and practices. These women are not served with justice from the enforcement of Islamic law pertaining to family and inheritance. In cases when a marriage ends by any means such as when the husband died, most women do not get their fair share of the marriage property and the inheritance is not managed according to the spirit of Islam.<sup>20</sup> Women in the area also face problems with land ownership rights. Furthermore, Muslim women in the

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<sup>20</sup> *Piangpon Visessind*, *Islamic Law and Inheritance Management: A Case Study of Satun Provincial Court*, Office of the Justice Courts, 2012, page 34.

southern border provinces confirm that there are still practices of genital circumcision in Malayu Muslim girls.<sup>21</sup>

### **18. Recommendations**

(1) The government should consider applying the United Nations Security Council Resolution No.1325 (2000) on women, peace and security as operational guidelines as deemed appropriate, by encouraging women to participate in policy decision making and having seats for women in the committees set up by the State to manage conflict and to develop measures or mechanisms to ensure that women and girls are safe from violence during and after the conflict.

(2) The government should intensify measures to create understanding about the role of women among community leaders, religious leaders and state officials. This aims at providing protection to aggrieved women and children of domestic violence and sexual abuses, to set procedure for remedy and compensation during the transitional period of a conflict situation and to build efficient mechanisms for the protection of aggrieved parties.<sup>22</sup>

(3) In terms of the conflict between the domestic laws and Islamic family and inheritance law, concerned agencies in the justice system should pay more attention to women's rights to land ownership and revise relevant laws in order that the women can receive fairness in consistence with the CEDAW.

### **19. Women of ethnic groups**

Aggrieved women and girls of sexual violations still do not receive legal protection nor appropriate social services in terms of assistance and remedy. Especially in remote areas, to access to justice, one has to depend on leadership of men. When faced with violence and sexual violations, women are not able to stand up to protect their own rights. Most community leaders would prefer that perpetrators pay fines and cases are considered settled without filing lawsuits. In cases where the perpetrators are influential persons, it would be more difficult for the aggrieved party to access protection and remedy. Moreover, girls are encouraged to marry at young age by custom. In some areas, the tradition of kidnapping a girl for marriage is still in practice. Girls are thus being deprived of the right and access to education.<sup>23</sup>

Ethnic women face more difficulty in getting access to a person's legal status development process than men, causing difficulty for them to access the right to life and the state's public services, such as housing, transportation, education and public health. These women usually become victims to human traffickers who use legal loopholes with regard to women victims' ages to avoid harsh sentences for their offences.<sup>24</sup>

### **20. Recommendations**

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<sup>21</sup> Data from the Seminar, "Access to Justice for Women in the Southern Border Provinces" organized by the Sub-Committee on Human Rights Strategic Operation in the Southern Border Provinces under the National Human Rights Commission of Thailand, 8-10 September 2014. Most girls are circumcised at birth by local midwives, or by certain gynecologists at state hospitals who circumcise the babies after delivery. But some girls are circumcised when they are 2-3 years old, and many are infected after genital circumcision.

<sup>22</sup> Annual Report of the National Human Rights Commission of Thailand (2<sup>nd</sup> Commission), page 189

<sup>23</sup> Ethnic Women Human Rights Situation Report, produced by the Ethnic Women's Network of Thailand and the Women's Network for Progress and Peace

<sup>24</sup> The National Human Rights Commission of Thailand implemented the projects, "Access to Justice Promotion Project" and "Provision of Knowledge about CEDAW Project" for women in difficult circumstances, including local ethnic women in the North and Malayu Muslim women in the southern border provinces.

(1) The government should support ethnic women to group together and build a network, in order to enhance the knowledge in capacity development and to protect human rights for women.

(2) The government should encourage and support the change in certain customary practices which do not comply with CEDAW and violate basic human rights of girls and ethnic women. It should consider using special measures to enable ethnic women in remote areas to access appropriate, prompt and efficient legal protection, without being discriminated. The claim about ethnic beliefs and customs used as excuses by perpetrators to get away from being prosecuted for their wrongdoings should be immediately stopped.

(3) The government should support ethnic women to be able to access the person's legal status development process. The women who meet the criteria should get the priority of being considered urgently. This applies also to their right and access to state public services in education and public health, without prejudice on the part of state officials.

### **21. Women and girl migrants**

For undocumented women and girl migrant workers, justice in the workplace is not served. They are paid lower wages than the ones set by law. They are not able to access state welfare and public health services. Those aggrieved persons of sexual violations are not able to access the justice process for fear of being prosecuted on illegal immigration charge and sent out of the country. There are also many cases of women migrant workers being pregnant and neglected; they cannot get marriage registration.

### **22. Recommendations**

(1) The government should consider providing access to legal working status for girl and women migrant workers, in order that they can receive labour protection without discrimination.

(2) The government should prepare operational guidelines for police officers, so that they can provide assistance to the girl and women migrant workers who are victims of sexual violations to enable them to access legal protection, and can also make referrals for social remedy services.

### **23. Women prisoners**

Thailand has in place the Criminal Procedure Code which protects the rights of pregnant women prisoners and of the babies born from women prisoners with death sentences.<sup>25</sup> In the case of sentence reduction for any woman prisoner who is pregnant or delivers a child for less than three years from death sentence to life imprisonment, it is for the reason that the woman can care for the child. However, it is still difficult to put this into practice due to lack of factors, e.g. appropriate place for child care in a prison, operational guidelines for authorities concerned which take child rights into main consideration. Besides, according to the existing regulation of the Corrections Department to search and closely examine all women suspects and prisoners, officers have to conduct internal vagina examination on women prisoners, causing shame and undermining the prisoners' human dignity.<sup>26</sup>

### **24. Recommendations**

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<sup>25</sup> Section 247 Case of defendant facing death sentence, the sentence shall not be executed until the provision on amnesty in this Code has been followed. Any woman with death sentence, if pregnant at the time, shall be exempted from execution for three years after child delivery, and shall get sentence reduction from death sentence to life imprisonment, with exception if the child dies before the said period. During the exempted three-year period after delivery, the woman shall be provided with appropriate care for the child in a proper designated area in the prison.

<sup>26</sup> NHRCT Report on Investigation of Complaint No.454/2015

(1) The government should consider setting measures to find separate place for pregnant women prisoners' detention until their child delivery, and a place outside the prison for child care to protect the rights of the child and to ensure holistic development of a child, both physical and mental, in accordance with the Convention on the Rights of the Child and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). The emphasis is on providing access to women's right on reproductive health.<sup>27</sup>

(2) The government should speed up the procurement of 3D body scanners which use modern technology to show three-dimensional pictures for use in all prisons nationwide for body examination on women prisoners, instead of conventional method of internal examination.

## **25. Women with disabilities**

Women and children with disabilities have to face multiple discrimination, as they are both women and persons with disabilities. They are vulnerable and at higher risk of being sexually violated than women who are physically normal since they cannot defend themselves, and perhaps are unable to communicate or identify the perpetrators. This makes it difficult to bring the perpetrators to justice. A number of disabled women have been raped repeatedly, and the perpetrators are usually family members, relatives, or neighbours. It is found that cases of sexual violations towards disabled women or girls are hardly filed in court, the cause of which stems from the society's prejudice against disabled persons which does not give them much value, and the officers concerned do not attach importance to such cases.<sup>28</sup> The right to reproductive health of disabled women and girls is not usually protected in the right way. They are, for example, forced to undergo sterilization to prevent unwanted pregnancies from sexual violations, without any proactive measures to protect them from such violations, inflicted on them by the offenders using force or violence, or from being exploited against in various forms.<sup>29</sup> Besides, women and girls with disabilities, especially those living in rural areas, still do not get access to education extended to all.<sup>30</sup> Women with disabilities who deliver their children in hospitals are still discriminated against, and do not get the same kind of services.<sup>31</sup>

## **26. Recommendations**

(1) The State should set proactive measures and take action to protect women and girls with disabilities from being treated with violence, exploited against or sexually violated, including being forced to undergo sterilization for reason of preventing unwanted pregnancies from sexual violations.

(2) The State should have measures to guarantee access to education and development for women and girls with disabilities, which fit their conditions of disabilities, including access to public health services on equal and extensive basis.

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<sup>27</sup> Research Findings Report. Dr. *Napaporn Hawanond* and others in the Princess *Bha* Project, "*Kamlang Jai*", Recommendation on Reproductive Health

<sup>28</sup> Evaluation Report on Implementation by the State under CEDAW, produced by Women's Network for Progress and Peace

<sup>29</sup> Alternative Report on Implementation of the Convention on the Rights of Persons with Disabilities. National Human Rights Commission of Thailand, August 2015, page 31

<sup>30</sup> Evaluation Report on Implementation by the State under CEDAW, produced by Women's Network for Progress and Peace

<sup>31</sup> Alternative Report on Implementation of the Convention on the Rights of Persons with Disabilities. National Human Rights Commission of Thailand, August 2015, page 29

## **27. Women in Buddhism, case of women monks**

Thailand's Constitution and laws give freedom to the people, both men and women in professing any religion.<sup>32</sup> However, for Thai women who ordain into monkhood in the *Mahayana* sect, their status of monkhood is not officially endorsed and specified in the identification papers. Their status is thus vulnerable and prone to intimidation and even threats. They are not protected and are discriminated against in many forms. They cannot enjoy the right to study and propagate the Buddhist principles and teachings like male monks. This is therefore contradictory to the Constitution and human rights principles in compliance with the obligations under the International Convention on Civil and Political Rights (ICCPR) and the CEDAW.<sup>33</sup>

## **28. Recommendations**

(1) The State should review regulations of the government agencies that discriminate, limit the rights and liberties of women monks and girl novices in professing their religion.

(2) The government should press on improving the system of issuing identification papers which respect the monkhood of women monks. It should also open opportunities for women in Buddhism to openly express their views in solving problems and to participate in proposing relevant laws.

(3) The State should seek special measures to provide protection for the right to profess religion, and from any threats whatsoever. It should consider drafting a law to support practices and beliefs according to each one's religion.

## **29. Women human rights defenders**

Women human rights defenders face the same risks as other human rights defenders. But being a woman, one has to face more complicated problems and challenges. They are at risk of being victims from sexual assault and violence. Often times, they have to face challenges stemming from customs, traditions or culture, which may influence the society to hate them. Community and religious leaders, the society in general, or even family members may look at and brand them as those who threaten the religion, integrity or culture from the work that they do. Moreover, many women human rights defenders are intimidated and threatened, by being charged by influential persons including state officials.<sup>34</sup>

## **30. Recommendations**

(1) The State should set measures, guidelines and mechanisms to protect and guarantee safety and security for women human rights defenders. It should seriously enforce the Witness Protection Act in Criminal Cases, B.E. 2546 (2003) to grant the right to stand trial.

(2) The State should disseminate and translate the UN guidelines and measures to protect human rights defenders in order to adjust the attitude of state officials towards human rights defenders.<sup>35</sup>

## **31. Persons with sexual orientation and gender identity**

A person who has gender diversity or a person who manifests another gender different from the gender of birth is being clearly defined in the provision of the law for the first

<sup>32</sup> The National Council for Peace and Order No. 49/2559 dated 22 August 2016

<sup>33</sup> Data from the NHRCT Report on Investigation of Human Rights Violations, No.344/2015 dated 22 June 2015

<sup>34</sup> Complaint No. 413/2016 and No. 422/2016

<sup>35</sup> Annual Report of the NHRCT (2nd Commission), pp.188-189

time in the Gender Equality Act, B.E. 2558 (2015)<sup>36</sup> which intends to protect such persons from being discriminated against for reason of their gender identity. However, these persons still have to face prejudice from the society, degrading their human dignity, branding them and reinforcing their roles which do not meet the expectations of society. These social expectations come from teaching in the family, learning at school or through the media, which eventually form the thinking system and beliefs. These persons are thus discriminated against in a systematic manner by both the state and private sector, depriving them of the opportunity to receive adequate welfare from the state. There is no law that recognizes the gender status. Persons with sexual orientation and gender identity who are detained in detention centres are not treated appropriately and are at risk of being sexually violated, physically assaulted or even murdered in prisons. They are not able to take their medicine to adjust their hormone levels due to the prison regulation forbidding bringing any medicine into the prisons.<sup>37</sup>

Even though the government attempted to consider drafting laws pertaining to same sex marriage, the draft laws still lack true understanding about the problems and difficulties of this group of people, which differ from those of heterosexuals. They lack comprehensive data and real participation of diverse stakeholders on the issue. This may have resulted in those persons still being discriminated against, e.g. they cannot adopt children as with heterosexual couples, which is contradictory to the Constitution.

### **32. Recommendations**

(1) The State should review the constitution, laws, regulations including policies and guidelines, in order not to allow discrimination for reasons of sexual orientation and gender identity so that such persons are protected and can access basic rights and liberties, including equal and just social welfare.

(2) The government should press on educating the public and state agencies to have correct information and understanding about the persons with gender diversities, on the basis of human rights, which respect every gender condition and status. It then should integrate these into the state social services management to ensure equality at every level and in every stage. It should encourage persons with sexual orientation and gender identity to participate in the decision making of reviewing and improving laws and policies which affect their rights to gender diversities.

(3) The government should improve the core curriculum at primary and secondary levels which contain content that instigate disgust and hatred towards persons with sexual orientation and gender identity. Instead the curriculum should respect human rights and does not reinforce stereotypes. It should adjust the knowledge about health pertaining to sexual orientation and gender identity to comply with the World Health Organization information and knowledge, e.g. mental health, reproductive health, public health services and disease control.

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<sup>36</sup> Section 3 of this Act, “Unjust gender discrimination” means any act or no action which is considered divisive, blocking or limiting rights or benefits, either directly or indirectly, without legitimate ground for reason that the person is male or female by gender, or manifests another gender which differs from the gender of birth.

<sup>37</sup> The NHRCT Meets People Programme, organized during 27-29 July 2016 in *Chonburi* province.