

**Submission of the National Human Rights Commission of Thailand
on Thailand's implementation of
the International Covenant on Economic, Social and Cultural Rights**

1. Thailand has developed a five-year national development plan as a framework for the country's development efforts since 1961. The Eighth National Economic and Development Plan, which was implemented from 1997-2001, marked a major shift in Thailand's development strategy from putting too much emphasis on economic growth to placing people at the centre of development with participation of all sectors of society in the development process. The Plan advocated for an integrated approach to create a more balanced development, the concept which continues to form the basis of the current Eleventh National Economic and Social Plan (2012-2016).

2. The Constitution of the Kingdom of Thailand of 2007, which had been in force from August 2007 until May 2015, guaranteed the rights of the people in relation to the development process. Sections 66 and 67 of the Constitution stipulated that individuals who form a community have the right to take part in the management, conservation and exploitation of natural resources and the environment. They have the right to express their views and opinions on the implementation of a project or activity that might seriously impact on the environment and natural resources in the locality or on the health of people living in the community so that the people can live in a healthy environment and enjoy a good quality of life. The Constitution also guaranteed the right of the people to file a lawsuit against a public agency if it did not comply with these provisions.

3. Despite the centrality of people in the development process spelled out in the national development plan and the constitutional guarantee of the rights of the people to take part in the management of natural resources and the environment that might affect their community, Thailand is faced with increasingly serious problems arising from an imbalanced and inequitable development that have impinged on various rights recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The high priority given to economic growth and industrial development, especially investment in natural resources-based industries, has cast negative impacts on the way of life of the people who rely on local resources for their living. Many industries have caused environmental problems that affect the fundamental rights of the people, including the right to an adequate standard of living and the right to the enjoyment of highest attainable standard of health as stipulated in Articles 11 and 12 of the ICESCR. The fact that many development projects are implemented without having regard to the views of the local people is not in the spirit of the 1986 UN Declaration on the Right to Development, which reaffirms that the people should have a meaningful participation in development to ensure that they will benefit from it and are enabled to access different rights recognized in the ICESCR.

4. One major development project that has grave impacts on the rights of the people is the *Map Ta Phut* Industrial Estate case. In 2007, the National Human Rights Commission of Thailand (NHRCT) received a complaint from a network of people living in the area near *Map Ta Phut* Estate stating that industrial plants in the Estate had caused serious environment pollution which created health problems for many people in the nearby area. The impact of the pollution was first detected in 1994 and the problem continued well into 2007 when a new constitution was enacted with provisions

guaranteeing the people's right to take part in the management of natural resources and the environment that might affect the well-being of the people in the local community as mentioned in paragraph 2 above.

5. *Map Ta Phut* Industrial Estate was established in 1988 in the eastern province of *Rayong* in accordance with the government policy to develop the country's eastern coastal areas as outlined in the Fifth National Economic and Development Plan (1982-1986). Three years after its establishment, the government modified the town plan which resulted in the expansion of the industrial and warehouse zones to include the areas around the Estate. In 1994, people living near the Estate started to experience problems in the air and water quality as well as some illnesses which they believed were caused by the air and water pollution and hazardous wastes released by industrial plants in *Map Ta Phut* Estate into the local environment. An incident which clearly shows the seriousness of the problem is a case where an average of about 40 teachers and students of a school in *Map Ta Phut* area were reported to suffer badly from headache believed to be caused by acrid smell in a day. They also experienced other symptoms including sore throat, irritation in the nose, chest pain, suffocation and rash. The situation was so bad that the school had to be moved to a new location. Apart from health problems, people in some communities were faced with water shortage as limited water supply had to be apportioned for industrial uses.

6. In 2005, the Pollution Control Department conducted a survey of volatile organic compounds (VOCs) in the *Map Ta Phut* Estate and found that the concentration of as many as 19 carcinogenic substances exceeded the level of air quality monitoring of the US Environmental Protection Agency. The survey also found that the concentration of heavy metals with carcinogenic effects in the soil and water was higher than the threshold limits and that the Estate did not have proper disposal of hazardous wastes commensurate with the increasing number of industrial plants. There was also a study conducted by independent experts at the request of people in the affected area who believed their health problems were caused by the accumulation of hazardous substances in their body. The study revealed that there was a significantly high level of concentration of cells with DNA abnormality in the samples. Although the study could not specify what substances the samples took in to create such abnormality, it could indicate that the samples in the study received certain toxic substances that had destructive effects on the DNA in their cells. Given the result of the study, the Network of People in the Eastern Region then filed a lawsuit against government agencies concerned at *Rayong* Administrative Court and requested the Court to issue an order to the National Environment Board to declare the *Map Ta Phut* locality and nearby areas to be a pollution control zone so that appropriate measures could be taken to address the problem. On 3 March 2012, the Court ordered the relevant agencies to comply with the complainant's request within 60 days.

7. The new Constitution came into force in August 2007. However, the process for approval of development projects that may have serious effects on a community has not been carried out in accordance with the relevant provisions of the new Constitution. On 25 August 2009, the Cabinet approved new 76 development projects without a study on health and environment impacts on the local community as required by Section 67 paragraph 2 of the 2007 Constitution. The approval of such projects would lead to the construction of new industrial plants in *Map Ta Phut* Estate while the problem of environmental pollution in *Map Ta Phut* and nearby areas have not yet been resolved with any concrete results. This has led environment al groups and the people living in the affected areas to file another lawsuit against government authorities at the Central Administrative

Court to seek a court order to suspend the implementation of all newly approved projects. The Court issued such order on 29 September 2009.

8. In an effort to address the problem, the Thai government decided to establish in November 2009 a Four-party Committee composed of representatives of the authorities concerned, the private sector, the affected people and the academia. The Four-party Committee discussed guidelines for the implementation of Section 67 paragraph 2 of the 2007 Constitution and submitted a proposal to the government in June 2010 on four relating issues: (1) the 18 types of development project that might have serious environmental and/or health impacts on the community and need to comply with the requirements of Section 67 paragraph 2, (2) the criteria and guidelines for the preparation of an environment impact assessment report, (3) the guidelines for organizing a public hearing with participation of the people in the community and other stakeholders, and (4) the establishment of an independent environment and health organization to provide technical inputs and opinions to be taken into account before a project is approved. The government agreed to all the proposed issues except on the types of project that need to comply with Section 67 paragraph 2 of the Constitution. The government referred the matter to the Ministry of Natural Resources and the Environment to consider the proposal and it turned out that the Ministry issued an announcement requiring only 11 out of the proposed 18 types of development project that need to comply with Section 67 paragraph 2 of the Constitution. As a consequence, the Network of People in the Eastern Region filed a complaint with several agencies and organizations including the NHRCT to request the government to review the announcement to include all 18 types of development project as proposed by the Four-party Committee since the proposal had been studied with the help of academic professionals in relevant fields and had been put to several public hearings to obtain views from various stakeholders.

9. After the issuance of the Ministry of Natural Resources and the Environment announcement on the types of project that need to comply with Section 67 paragraph 2 of the 2007 Constitution on 31 August 2010, the Central Administrative Court continued consideration of the case filed by environmental groups and *Map Ta Phut* residents referred to in paragraph 7 above. On 2 September 2010, the Court revoked the suspension order of 29 September 2009 and ruled that 2 out of 76 projects had not complied with the provisions of Section 67 paragraph 2, meaning that other 74 approved projects could proceed with implementation.

10. The *Map Ta Phut* case shows that the Thai government has not complied with its obligations to respect and protect the right of the people to live in an environment not harmful to their health as well as the right to take part in public affairs that impact on their well-being. The government has not fulfilled its obligation to promote people's access to and enjoyment of these rights which are recognized both in the ICESCR and the Thai Constitution of 2007. It also reflects the government's policy of attaching too much importance to economic development without due regard to possible negative impacts on the health and well-being of the people who is supposed to be the major beneficiary of development as stated in the Declaration on the Right to Development. The government's approval of 76 development projects to be implemented in *Map Ta Phut* Industrial Estate which could affect the way of life and health of the local people without conducting an environment and health impact assessment can be regarded as an act that violates human rights. Moreover, after the court issued an order to suspend the implementation of 76 projects in September 2009, the government had made serious efforts to push for their implementation by having the Ministry of Natural Resources and the Environment to review the types of projects

required to comply with Section 67 paragraph 2 of the Constitution proposed by the Four-party Committee. The Ministry then issued an announcement of 31 August 2010 requiring as many as seven types of projects that need to undertake environment and health impact assessment fewer than those proposed by the Four-party Committee. This has resulted in almost all of the projects, which were suspended earlier by the court order, to proceed further with implementation as the Court used the announcement of 31 August 2010 as a basis for considering the case. The NHRCT is concerned that the types of projects in the August 2010 announcement may not cover all types of industrial undertakings and economic development activities that may impact on the environment and natural resources, thus increasing the risk of the people to harmful effects of such activities and at the same time impinging on their right to live in a healthy and safe environment.

11. When it was quite clear in 1994 that residents of *Map Ta Phut* and nearby areas suffered from environmental pollution, the government did not make serious efforts to redress the situation and protect the right of the people to live in an environment not harmful to their health. The problem continued for several years as can be seen from the result of air quality survey in *Map Ta Phut* conducted by the Pollution Control Department in 2005 and the study by independent experts in 2006 revealing DNA abnormality in the sample population. The local residents thus had to resort to the Court for protection which resulted in a court order to the government to declare *Map Ta Phut* and nearby areas a pollution control zone in 2009. The government had also failed to fulfill its obligation to facilitate people's access and enjoyment of their rights in practice. The fact that no guidelines had been developed to guarantee meaningful participation of the people in the implementation of a project or activities that might have negative impacts on the local community in accordance with Section 67 paragraph 2 of the 2007 Constitution can be regarded as an omission of act which prevented the people from exercising their right to take part in the conduct of public affairs. In case where a consultation with the local community was held, the authorities did not provide the people with technical information such as the impacts of the use of chemical substances in the manufacturing process and the contamination of hazardous wastes on the environment as well as related legal issues to ensure that they had adequate knowledge and understanding to have an effective participation in such consultation.

12. After making an inquiry into the case, the NHRCT submitted a recommendation to the government to amend the announcement of the Ministry of Natural Resources and the Environment to include all the types of project or development activities required to comply with Section 67 paragraph 2 of the Constitution as proposed by the Four-party Committee and that the types of project should be reviewed every two years. It also recommended that a study be conducted on the carrying capacity of the *Map Ta Phut* area in every aspect and that new industrial undertakings that might create pollution be suspended in the meantime. On the protection side, the government should adopt a clear policy and regulations to make the business sector more responsible and exercise due diligence with regard to human rights. It should undertake necessary measures to ensure that good governance principles are observed in the conduct of an environmental and health impact assessment, punish industrial operators that do not comply with the terms or conditions specified in the impact assessment, and develop clear compensation and remedial measures in cases where industrial operations have caused harmful effects on the way of life or health of the people.

13. The NHRCT has also recommended that the government undertake other measures to promote people's access and enjoyment of the rights recognized by the law in practice. These include enactment of legislation that lays down clear rules and procedures on the people's participation in

the conduct of public affairs and provides for the establishment of an independent environment and health organization to provide opinions on development projects or activities that might have adverse effects on a community in accordance with Section 67 paragraph 2 of the Constitution. The government should adopt a development policy that attaches greater importance to improving the well-being of the people and regards people as active participant in the development process in accordance with the spirit of the Declaration on the Right to Development. When planning the use of land and designating industrial zones, the government should seek to achieve the two objectives of promoting economic development and protecting the environment in a more balanced manner, using such tool as strategic environmental assessment in the planning process.

14. In response to its recommendations, the NHRCT has been informed of the actions the government has taken to implement those recommendations which include a preliminary study on the carrying capacity of *Map Ta Phut* area, a revision of the action plan to resolve the problems in *Map Ta Phut* in a comprehensive manner with participation of all those concerned so as to respect people's rights guaranteed in Section 67 of the 2007 Constitution, and the setting up of a mechanism at provincial level to oversee and monitor efforts to resolve the problems in the affected area. It is also considering the use of strategic environmental assessment in policy making and project planning process. The NHRCT welcomes the afore-mentioned actions taken by relevant government agencies and will follow up on the progress made and its impact on the situation in *Map Ta Phut*.

15. Regarding the NHRCT recommendation on the establishment of an independent organization on environment and health, a bill was proposed by the government department concerned. With the dissolution of the Parliament in December 2013 and the revocation of the 2007 Constitution by the announcement of the National Council for Peace and Order on 22 May 2014, the consideration of the bill has been suspended until the coming into force of the new constitution, which is now in the drafting process. As for the recommendation on the revision of the announcement of 31 August 2010 to include 7 types of project that might have adverse impact on a community as proposed by the Four-party Committee which had been left out from the announcement, the Ministry of Natural Resources and the Environment gave the reason for exclusion of only one type of project, i.e. projects that are to be implemented in areas designated as world heritage site registered in accordance with relevant international conventions, historical sites in accordance with domestic laws, conservation forests, wetlands of international importance and Class 1 watershed areas, since these projects are already required to make an environmental impact assessment under another announcement. The Ministry, however, has not indicated any intention to review the need to include the other remaining 6 project types in the August 2010 announcement. If it deems that there is no such need, it should provide a clear explanation to the public so the people are assured that their health and the environment in their locality will not be affected should those projects are approved and implemented.

16. Problems arising from industrial plants that release hazardous substances to the environment, causing pollution that affects the way of life and health of the people in nearby areas are not found in *Map Ta Phut* locality alone. There are many other cases where large industrial undertakings cast negative impact on people living in the area in many similar ways to those of *Map Ta Phut*. The current NHRCT has received up to the present 373 complaints since it assumed office in June 2009, an average of about 60 out of over 600 complaints it receives in a year, or about 10 percent of all the complaints received. Major cases of concern include oil drilling in the northeastern provinces of *Khon Kaen*, *Kalasin* and *Udon Thani*, the construction of a deep sea port at *Pak Bara* in the southern

province of *Satun*, Potash mining in the northeastern provinces of *Chaiyaphume* and *Udon Thani* and gold mining in the northern and northeastern provinces of *Pichit* and *Loei*. On the gold mining case, people who had suffered serious health problems believed to be caused by the contamination of heavy metals in the soil and water sources around the gold mine areas filed a lawsuit at an administrative court in late 2010 seeking a court order to revoke the patent permit issued to the gold mine operators. The fact that the problems have not yet been resolved with any concrete results shows that the Thai government attaches importance to economic and industrial development over improvement in the well-being of the people.

17. The NHRCT is of the view that the government should implement a development policy that is in line with the Declaration on the Right to Development and the National Economic and Social Development Plan. It should respect the rights of the people and promote their meaningful participation in the development process to ensure that they are the beneficiary of the fruits of development. At the same time, the government should accelerate its efforts in addressing the negative effects of certain industries on the rights of the people to live in an environment not harmful to their health. It should adopt measures to regulate industrial operations to ensure that they comply strictly with the laws and apply the Guiding Principles on Business and Human Rights for implementing the UN “Protect, Respect and Remedy” Framework to protect the rights guaranteed both in Thai domestic laws and in the ICESCR.

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