



Economic and Social Council

Committee on Economic, Social and Cultural Rights

Concluding observations on the combined initial and second periodic reports of Thailand *

The Committee on Economic, Social and Cultural Rights considered the initial and second periodic reports of Thailand on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/THA/1-2) at its 28th to 30th meetings (E/C.12/2015/SR.28-30), held on 4 and 5 June 2015, and adopted the following concluding observations at its 50th meeting, held on 19 June 2015.

A. Introduction

While regretting the considerably late submission, the Committee welcomes the initial and second periodic reports submitted by the State party, the supplementary information provided in the replies to the list of issues (E/C.12/THA/Q/1-2/Add.1), the State party's common core document (HRI/CORE/THA/2012) and the oral replies provided by the delegation. The Committee also welcomes the constructive dialogue held with the State party's large high-level delegation.

B. Positive aspects

The Committee welcomes the State party's ratification of the following instruments:

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

Convention on the Rights of Persons with Disabilities, in 2008;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2007.

The Committee also welcomes the State party's active role in the preparation and adoption of the ASEAN (Association of Southeast Asian Nations) Human Rights Declaration in 2012.

The Committee also welcomes the adoption of the following:

Gender Equality Act, in 2015;

Revised Labour Ministerial Regulation to Protect Labour in the Sea Fishing Industry, in 2014;

Anti-Trafficking in Persons Act, in 2008;

Cabinet Resolution on Education for Unregistered Persons, in 2005.

The Committee further welcomes the State party's efforts to promote the implementation of economic, social and cultural rights, which have included the adoption of the following:

Third National Human Rights Plan (2014-2018);

National Plan and Policy on the Prevention, Suppression and Combating of Domestic and Transnational Trafficking in Children and Women 2012-2016;

Eleventh National Economic and Social Development Plan (2012-2016);

Strategic Plan for the Improvement of Education in the Southern Border Provinces (2012-2016);

National Policy and Plan to Eliminate the Worst Forms of Child Labour for 2009-2014;

Comprehensive Strategy on Resolving the Problems of Irregular Migrants, in 2012.

C. Principal subjects of concern and recommendations

Domestic application of the Covenant

Noting the State party's dualist system of reception of international treaties, the Committee is concerned that the Covenant has still

not been given full effect in the State party's domestic law and, therefore, that not all Covenant rights can be invoked before the courts (art. 2).

The Committee recommends that the State party take all the steps necessary to guarantee the full effect of Covenant provisions in its domestic legal system, including through the courts. In the light of the ongoing constitutional reform, the Committee invites the State party to give direct constitutional recognition to the Covenant so as to guarantee its enforceability by the courts. It also recommends that the State party provide mandatory training to enable judges, lawyers and other relevant professionals to uphold economic, social and cultural rights. In this respect, the Committee draws attention to its general comment No. 9 (1998) on the domestic application of the Covenant.

National human rights institution

The Committee is concerned that the institutional shortcomings of the National Human Rights Commission of Thailand, identified by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, including in relation to its independence and the selection process for Commissioners, have still not been fully overcome (art. 2).

The Committee recommends that the State party take all necessary legislative and other measures, including following up on the recommendations made by the International Coordinating Committee, to ensure that the National Human Rights Commission of Thailand is a fully independent institution with the necessary resources to fulfil its mandate in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It also recommends that the State party create the conditions necessary for the Commission to fully exercise its mandate in relation to economic, social and cultural rights and protect victims of violations of these rights.

Corruption

The Committee is concerned at reports indicating widespread and pervasive corruption, despite measures taken by the State party, and its adverse impact on the enjoyment of economic, social and cultural rights (art. 2).

The Committee recommends that the State party:

Address, as a matter of priority, the underlying causes of corruption;

Enhance the effectiveness of the legal, structural and policy measures to combat corruption at all levels and in all sectors;

Ensure protection to victims of violations of economic, social and cultural rights caused by corruption, and to their lawyers, as well as to whistle-blowers and witnesses of corruption cases;

Implement awareness-raising campaigns about the detrimental impact of corruption on the allocation of the maximum amount of available resources for the fulfilment of economic, social and cultural rights;

Regularly evaluate the impact of the measures taken.

Rights of indigenous peoples

9. The Committee expresses concern at the lack of recognition of indigenous peoples by the State party (art. 1 (2)).

In the light of the ongoing constitutional reform, the Committee invites the State party to reconsider its position and give legal and political recognition to its indigenous peoples based on self-identification. The Committee recommends that the State party in particular guarantee the right of indigenous peoples to own, use, control and develop the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired. The Committee also encourages the State party to consider ratifying the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Land and natural resources

The Committee is concerned at the:

Denial of the traditional rights of ethnic minorities to their ancestral lands and natural resources and the concentration of landownership in the hands of a very small proportion of the population;

Information received that the implementation of its forest conservation policy, in particular orders No. 64/2557 and No. 66/2557 of 2014 of the National Council for Peace and Order, has resulted in the destruction of crops and forced evictions;

Adverse effects of economic activities connected with the exploitation of natural resources, including large-scale projects such as the Map Ta Phut Industrial Estate, on the enjoyment of economic, social and cultural rights by people living in the areas concerned and the lack of participatory mechanisms and consultations, as well as limited access to information for the individuals and communities affected (arts. 1 (2), 2, 11, 12 and 15).

The Committee recommends that the State party take all the steps necessary, including revising its legal and policy framework, to:

Effectively remove all obstacles to the enjoyment of traditional individual and communal rights by ethnic minorities in their ancestral lands and take effective measures to guarantee land tenure rights without discrimination so as to ensure access to land and adequate housing for all;

Ensure that forced evictions are used only as a measure of last resort and that persons forcibly evicted are provided with adequate compensation and/or relocation, bearing in mind the Committee's general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on the right to adequate housing: forced evictions;

Adopt a human rights-based approach in its development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent.

Enabling environment for civil society

The Committee expresses concern at reports of enforced disappearances and killings of land-rights and environmental activists, and of perpetrators often going unpunished.

The Committee urges the State party to adopt all the measures necessary to protect human rights activists, including those working to defend economic, social and cultural rights, from any and all acts of intimidation, harassment and killings and to ensure that perpetrators of such acts are brought to justice.

Transnational corporations and other business enterprises

The Committee is concerned at the lack of a regulatory framework to ensure that companies that are incorporated or have their main offices under the State party's jurisdiction fully respect economic, social and cultural rights when acting abroad (art. 2 (1)).

The Committee recommends that the State party establish a clear regulatory framework with a view to ensuring that companies incorporated or with their main offices under the State party's jurisdiction are legally accountable regarding violations of economic, social and cultural rights in their projects abroad, in particular in cross-border development projects. The State party should also take into account its obligations under the Covenant when negotiating international agreements. The Committee draws the attention of the State party to its statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (see E/2012/22–E/C.12/2011/3, annex VI, sect. A).

Non-discrimination

The Committee is concerned that there is no comprehensive anti-discrimination legislation in the State party (art. 2).

Taking into account its general comment No. 20 (2009) on non-discrimination and economic, social and cultural rights, the Committee recommends that the State party adopt a comprehensive anti-discrimination law that includes all the grounds for discrimination set out in article 2 of the Covenant. In the light of the ongoing constitutional reform, the Committee also recommends that the State party ensure the protection of all rights enshrined in the Covenant in its new Constitution, and guarantee their enjoyment without discrimination. The State party should further guarantee that the enjoyment of rights already acquired under the 2007 Constitution is not subject to any retrogressive measures.

Stateless persons

The Committee notes the efforts of the State party to reduce statelessness, including amendments to the Nationality Act and the Civil Registration Act that establish universal birth registration. It is concerned, however, that a large number of persons, particularly members of ethnic groups, migrants, refugees and asylum seekers, remain stateless, which consequently leads to a denial of their economic, social and cultural rights. The Committee is also concerned that a large number of births are not registered in practice and that gaps remain in the Nationality Act, including with regard to the right to nationality for children found abandoned (arts. 2, 9–10 and 12–14).

The Committee recommends that the State party continue strengthening its measures to facilitate the naturalization and integration of stateless persons, including by addressing remaining gaps in the Nationality Act, as well as to ensure the enjoyment of their economic, social and cultural rights. It also recommends that the State party consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Asylum seekers and refugees

While expressing appreciation of the State party's continued commitment to hosting a large number of refugees and migrants from neighbouring countries and its continued cooperation with the Office of the United Nations High Commissioner for Refugees, the Committee is concerned at the absence of an overall legal framework protecting the rights of asylum seekers and refugees and at the lack of a formal national refugee status determination procedure, which hinder the full enjoyment of their economic, social and cultural rights (art. 2).

The Committee urges the State party to adapt its legal framework with a view to ensuring due protection of asylum seekers and refugees in line with its international obligations and the full enjoyment of their economic, social and cultural rights. The Committee encourages the State party to re-examine its position with regard to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and continue its cooperation with the Office of the United

Nations High Commissioner for Refugees in this regard.

The Committee is concerned at reports that migrants and refugees, in particular Rohingyas, were left without access to emergency assistance after being denied the possibility to disembark their vessels, leaving them stranded at sea (arts. 2 and 10).

The Committee calls on the State party to redouble its efforts, including through strengthened international and regional cooperation, to ensure that the economic, social and cultural rights, including access to water, food and medical assistance, of all migrants and refugees arriving on boats are protected and to stop boat “push-backs”. The State party should also engage with other countries in the region, as well as the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and other international institutions to address the root causes of migrant and refugee flows.

Equality between men and women

While noting the adoption of the Gender Equality Act (2015), the Committee is concerned that the Act permits discrimination against women, inter alia, on grounds of religious practice and national security (art. 3).

The Committee recommends that the State party revise its Gender Equality Act with a view to eliminating any discriminatory provisions.

The Committee is concerned at the persistent gender-role stereotypes in the family and society, which result in a low level of women’s representation in appointed and elected positions in public and political decision-making, sex segregation in employment, both vertical and horizontal, and violence against women, including domestic violence (arts. 3 and 10).

The Committee recommends that the State party take measures to eliminate the gender-role stereotypes and ensure equal enjoyment of economic, social and cultural rights by men and women. In this regard, the Committee refers to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights

Conditions of work and social security

The Committee is concerned at the scale of the informal economy in the State party and that, despite the introduction of a voluntary benefit package, a large number of individuals work without legal and social protection. It is also concerned that many domestic workers are not covered by the Home Workers Protection Act and thus do not enjoy guarantees with regard to, inter alia, minimum wages, working hours, overtime payments and social security. Moreover, the Committee is concerned that subcontracted workers are not adequately protected by labour and social protection regulations in practice. The Committee is particularly concerned that these gaps have a disproportionate negative effect on women and migrant workers (arts. 3, 7 and 9).

The Committee recommends that the State party take all the measures necessary to progressively reduce the extent of the informal economy and increase employment opportunities in the formal labour market. It should also take steps to ensure that all workers, including subcontracted, domestic and informal economy workers, fully enjoy their economic, social and cultural rights.

Forced labour

The Committee expresses concern at the persistence of forced labour in the State party, particularly in the fishing industry (arts. 6 and 7).

The Committee recommends that the State party further strengthen its measures to eradicate forced labour, including by increasing the capacity of the labour inspectorate to monitor working conditions on fishing vessels on a regular basis. It should also ensure that those employers violating labour rights are prosecuted and, if convicted, that commensurate sanctions are imposed and effectively implemented. The Committee further recommends that the State party consider acceding to the ILO Work in Fishing Convention, 2007 (No. 188).

Migrant workers

The Committee notes the information provided by the State party on the implementation in 2014 of a nationwide registration scheme for undocumented migrants. Nevertheless, the Committee is concerned at consistent reports of abuse and exploitation of migrant workers, in particular migrants in irregular situations and working in special economic zones (art. 7).

The Committee recommends that the State party explore the need for additional measures to ensure that all migrant workers, regardless of their legal status, are entitled to labour and social protection and can access justice for violations of their rights. The Committee also encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Minimum wage and wage gap

The Committee is concerned that the minimum wage established by the State party is not sufficient to ensure decent living conditions for workers and their families. The Committee is also concerned at the persistent wage gap between men and women (art. 7).

The Committee recommends that the State party take the steps necessary to ensure that all workers receive a minimum wage that enables them to enjoy decent living conditions for themselves and their families, in line with article 7 of the

Covenant. It also recommends that the State party take further steps to eliminate the persistent wage gap between women and men.

Trade union rights

The Committee is concerned that educational personnel of private and public universities, workers in public organizations and non-Thai nationals do not have the right to form trade unions (art. 8).

The Committee urges the State party to ensure that all employees, in both the private and public sectors, effectively enjoy the right to freely form and join trade unions and to extend the right to non-nationals. Given the large number of migrant workers in the State party, the Committee emphasizes the importance of recognizing their right to form and join trade unions to represent their interests with a view to improving the enjoyment of their economic, social and cultural rights.

Right to strike

The Committee is concerned that under the State Enterprise Labour Relations Act not all public sector employees enjoy the right to strike (art. 8).

The Committee recommends that the State party ensure that public sector employees who do not provide essential services are entitled to their right to strike in line with the Covenant and relevant ILO standards. The Committee invites the State party to ratify the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Economic and sexual exploitation of children

The Committee is concerned that, despite measures taken, child labour is still widespread, including in agriculture, fishing and the informal economy, and that many children continue to be exploited in the child sex tourism industry (art. 10).

The Committee recommends that the State party increase its efforts to:

Effectively enforce legislation that prohibits child labour and hold accountable those responsible for non-compliance with this legislation and reinforce the labour inspection system to monitor and detect child labour;

Intensify economic and social support measures for poor, disadvantaged and marginalized families;

Combat child sex tourism, including by establishing and implementing a comprehensive regulatory framework and strengthening international cooperation and advocacy with the tourism industry on the harmful effects of child sex tourism.

Trafficking in persons

While noting the measures taken to combat trafficking in persons, the Committee is concerned at the persistence of trafficking in persons, including women and children, for the purposes of sexual exploitation and forced labour in the State party. The Committee is particularly concerned at the limited identification of victims of trafficking by law enforcement officers (art. 10).

The Committee recommends that the State party intensify its efforts to prevent and combat trafficking in persons, including women and children, for the purposes of sexual exploitation and forced labour, inter alia, by ensuring adequate training of law enforcement officers and the judiciary, with a view to improving early identification of victims. In this regard, the Committee calls on the State party to fully implement the recommendations of the Special Rapporteur on trafficking in persons, especially women and children, contained in the report on her mission to Thailand (A/HRC/20/18/Add.2).

Housing and standard of living

The Committee is concerned at reports that 10 per cent of families in urban areas live in informal settlements, are vulnerable to forced evictions and encounter major problems in accessing basic services. The Committee is also concerned that, although poverty has experienced a continuous decline, an estimated 10.94 per cent of the total population live in poverty, a situation that particularly affects children, older persons and persons living in rural areas (art. 11).

The Committee, taking into account its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on the right to adequate housing: forced evictions, recommends that the State party increase its efforts to overcome the housing shortage and ensure that persons living in informal settlements are protected against forced evictions and enjoy access to basic services, such as water and sanitation. It also recommends that the State party take all the measures necessary to further reduce poverty, paying special attention to disadvantaged and marginalized individuals and groups, including children, older persons and people living in rural areas. The Committee draws the State party's attention to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).

Living conditions in detention centres

The Committee expresses concern at the substandard living conditions and excessive overcrowding in detention centres, including immigration detention centres. It is particularly concerned at reports that asylum seekers, refugees and migrants suffer from

malnutrition and lack of health care, as a result of lengthy and, in some cases, indefinite immigration detention (arts. 2, 11 and 12).

The Committee recommends that the State party:

Increase its efforts to remedy prison overcrowding, in particular by instituting alternatives to custodial sentences;

Ensure that asylum seekers, refugees and migrants are detained only when absolutely necessary and that the time of detention is limited to a strict minimum;

Ensure adequate living conditions in detention centres, provide adequate access to health care, including reproductive and sexual health care, and combat malnutrition by increasing the resources allocated to this end, including through international cooperation and assistance.

Right to health

The Committee notes the achievement of the State party in implementing its universal health-care scheme since 2002. The Committee is concerned, however, that the scheme does not adequately cover disadvantaged and marginalized individuals and groups, including persons with disabilities and persons living in remote rural areas. It is also concerned that stateless persons, migrants, asylum seekers and refugees still face obstacles in accessing basic health-care services. The Committee is further concerned that the quality of health care is negatively affected by overcrowding in provincial hospitals, as recognized by the State party (art. 12).

The Committee recommends that the State party intensify its efforts to address the remaining obstacles to access to the universal health-care scheme, in particular for disadvantaged and marginalized individuals and groups, and to ensure good quality health care.

Sexual and reproductive health

The Committee is concerned that the rate of teenage pregnancies and unsafe abortions is relatively high and adolescents have limited access to sexual and reproductive health education and services (art. 12).

The Committee recommends that the State party take preventive measures to address the problem of the high rate of teenage pregnancies and unsafe abortions, strengthen sexual and reproductive health education programmes that are age appropriate for both boys and girls and ensure the accessibility, availability and affordability of sexual and reproductive health services.

Pollution and health care

The Committee is concerned at shortcomings in the effective implementation of regulations on environmental quality and industrial activity to prevent harm (art. 12).

The Committee reminds the State party of its obligations under article 12 (2) (b) of the Covenant and recommends that the State party take steps to regulate environmental protection comprehensively and ensure strict enforcement of its environmental legislation, so as to prevent harmful effects on the health of the population.

Access of drug users to health and treatment

The Committee is concerned that compulsory treatment and detention have adverse effects on the health of drug users, including increased infection of HIV and hepatitis and on their reluctance to seeking treatment (art. 12).

The Committee recommends that the State party apply a human rights-based and evidence-informed approach to drug abuse, which should include preventive measures, harm-reduction programmes and the provision of appropriate health care, psychological support and rehabilitation.

Right to education

The Committee notes the adoption in 2009 of the 15-year free education programme for all. The Committee is concerned, however, at the overall low quality of education, the significant upper secondary school dropout rates and remaining obstacles to access to education for certain groups, including children with disabilities, children from minority ethnic groups and children living in remote rural areas, as well as for stateless children and the children of asylum seekers, refugees and migrants. The Committee is also concerned that despite pilot projects being carried out, access to bilingual education for members of minority ethnic groups remains limited in the State party (arts. 13 and 14).

The Committee recommends that the State party step up its efforts to ensure that all children under its jurisdiction effectively have access to free basic primary education. The State party should also address the reasons why children drop out of school and improve the overall quality of education, including by ensuring that teachers are well trained and fully qualified. Moreover, the Committee encourages the State party to increase its efforts to provide bilingual education from the early years and continue to facilitate, including through allocating necessary resources, community-based education programmes in line with the cultures of ethnic groups.

Situation in the southern border provinces

The Committee expresses concern at the reports of attacks on teachers and schools, as well as medical personnel, in the southern

border provinces. It also notes the protracted state of emergency and is concerned at the negative effect this has on the full enjoyment of economic, social and cultural rights (arts. 12, 13 and 14).

The Committee recommends that the State party take all the measures necessary to ensure that the situation in the southern border provinces has no adverse effects on the enjoyment of the rights enshrined in the Covenant. In particular, it should ensure that schools, teachers and medical personnel are adequately protected from attacks and that everyone has access to education and adequate health services.

Cultural rights

The Committee is concerned at the adverse effect of the excessive interpretation of lese-majesty on the enjoyment of the right of everyone to take part in cultural life (arts. 4 and 15).

The Committee draws the attention of the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life and recommends that it amend its legislation with a view to ensuring clarity and unambiguity regarding prohibited acts and that any sanctions are strictly proportionate to the harm caused.

D. Other recommendations

The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The Committee invites the State party to continue and strengthen its collaboration on issues relating to economic, social and cultural rights with the Office of the United Nations High Commissioner for Human Rights, the specialized agencies and the relevant United Nations programmes.

The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials, judicial authorities, and society at large and to inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of implementation of the present concluding observations prior to the submission of its next periodic report.

The Committee requests the State party to submit its third periodic report by 30 June 2020 and invites the State party, if necessary, to update its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I). The Committee also invites the State party to update its data on all issues of relevance to the Covenant.