



OHCHR REGIONAL OFFICE FOR SOUTH EAST ASIA – 23 MARCH 2016

On 29 January 2016, the Constitutional Drafting Committee (CDC) made public the first draft of the new constitution seeking comments from the public and interested organizations. In light of the ongoing constitution drafting process, this technical note¹ summarizes some key human rights principles that should be incorporated in the draft constitution to ensure its compliance with Thailand's obligations under international human rights law.

While noting that the draft constitution covers a broad range of issues, such as the structure and functions of the State institutions, the division of powers, decision-making processes, and a bill of rights, this technical note focuses on a few key areas of the draft, namely the sections on the rights and liberties of the Thai population; the duties of the State; and the provisions on transitions.

1. Distinction between citizens and non-citizens

International human rights law is founded on the premise that all individuals, by virtue of their essential humanity, should enjoy all human rights without discrimination unless exceptional distinctions – for example between citizens and non-citizens – serve a legitimate State objective and are proportional to the achievement of that objective.²

With the exception of articles 13 and 25, the rights set forth in the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State party, apply to everyone, irrespective of his or her state of origin or current nationality or statelessness. The general rule is that each of the rights guaranteed under ICCPR must be protected, with no distinction made between citizens and non-citizens. The same general rule applies to the International Covenant on Economic, Social and Cultural Rights (ICESCR) that includes the same provision on non-discrimination as ICCPR.³ ICCPR allows the rights of non-citizens to be qualified only by such limitations as may be lawfully imposed under articles 13 (rights of aliens subject to possible expulsion) and 25 (participation in public affairs, right to vote and to be elected in genuine periodic elections). Similarly, Article 2 (3) of ICESCR allows developing countries to determine whether or not economic rights should be guaranteed to non-nationals by giving due regard to human rights and the national economy.⁴

Therefore, among other human rights, non-citizens have the right to be free from: deprivation of life, torture or cruel, inhuman or degrading treatment or punishment, slavery, forced labour, child labour, and refolement. They also have the right to freedoms of expression, association and peaceful assembly, labour rights (including rights to collective bargaining, workers' compensation, healthy and safe working conditions, the right to health and the right to education).

Recommendation: It is recommended that the title of the chapter on “Rights and Liberties of the Thai Population” be amended to ensure equal constitutional protection of rights for citizens and non-citizens, except for those rights that explicitly fall under Articles 13 (expulsion of aliens) and 25 of ICCPR (concerning the right to participate in public affairs, to vote and to have access to public service) and Article 2 (3) of ICESCR.

2. Right to equality and non-discrimination

¹ This note should be read together with the OHCHR Technical Notes on the National Human Rights Commission of Thailand in the 2015 draft constitution and on the key human rights principles for the 2015 draft constitution of the Kingdom of Thailand.

² OHCHR, *The Rights of Non-Citizens* (United Nations, New York and Geneva, 2006), available at <http://www.ohchr.org/Documents/Publications/noncitizensen.pdf>, at 7.

³ ICESCR, article 2(2).

⁴ ICESCR, article 2 (3).

International human rights law prohibits discrimination based on a number of grounds, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, marital status, birth or other status. Article 26 of ICCPR guarantees both equal protection before the law and effective protection against discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(1) of the Convention on the Rights of the Child (CRC) protects against discrimination based on “disability” in addition to the grounds for prohibition stated in ICCPR and ICESCR.⁵ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) protects discrimination based on sex or marital status. Human Rights Committee decisions⁶ as well as general comment no. 20 of the Committee on Economic, Social and Cultural Rights recognizes sexual orientation as among the prohibited grounds of discrimination.

In 2015, the Committee on the Economic, Social and Cultural Rights (CESCR) in its concluding observation recommended Thailand to adopt a comprehensive anti-discrimination law that includes all the grounds for discrimination set out in article 2 of the ICESCR.⁷

The 2007 Constitution of the Kingdom of Thailand prohibited discrimination on the basis of origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view.

Section 27 of the current draft constitution recognizes the principal of equality and non-discrimination. It prohibits discrimination on the grounds of sex, disability, “or other similar reasons”. Therefore, the grounds for the prohibition of discrimination are not sufficiently defined (apart from sex and disability) and could lead to a very narrow interpretation of discrimination. This is not as exhaustive as the 2007 Constitution or the grounds for discrimination prohibited in different international human rights instruments that Thailand is a party to.

Recommendations: To ensure that all forms of discrimination are prohibited, Section 27 of the draft constitution should expand the list of prohibition of discrimination on the basis of race, colour, sex, language, sexual orientation, religion, political or other opinion, national, ethnic or social origin, property, physical or health condition, age, personal status, economic or social standing, disability, marital status, birth or other status.

3. Rights related to criminal justice

Article 9 of ICCPR guarantees the right to liberty and security of person including against arbitrary arrest and detention. The provisions in Article 9 also provide for procedural guarantees against arbitrary arrest and detention, which includes the rights to be informed at the time of arrest of the reasons for the arrest; to be promptly informed of the charges; to be brought promptly before a judge or other judicial officer within a reasonable time; to review the lawfulness of the arrest without delay; to be tried within a reasonable period of time or be released; to be released as a general rule pending trial absent justifiable reasons that warrant pre-trial detention; and to compensation for any unlawful arrest or detention.⁸

Similarly, Article 14 of ICCPR aims at the proper administration of justice and, in this regard, guarantees equal protection before courts and tribunals; the right to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proven guilty; the right to procedural guarantees⁹ for individuals charged with criminal

⁵ Article 4(1) of the Convention on the Rights of Persons with Disabilities also protects persons against discrimination on the grounds of disability.

⁶ Toonen v. Australia, communication No. 488/1992 (CCPR/C/50/D/488/1992).

⁷ E/C.12/THA/CO/1-2, June 2015.

⁸ ICCPR Article 9.

⁹ The procedural guarantees under Article 14 include the right to be informed promptly and in detail, in a language which the person understands, of the nature and cause of criminal charges brought against him / her; to have adequate time and facilities for the preparation of one’s defense; to communicate with a counsel of one’s choosing; to be informed, if he or she does not have legal assistance, of this rights and to have legal assistance assigned in any case where the interests of justice so require, and without payment by him or her in any such case where the person does not have sufficient means to pay for it; to be tried without undue delay; to be present during one’s trial; to examine, or have examined, witnesses against him / her and obtain the attendance and examination

offences; the right for a criminal conviction and sentence to be reviewed by a higher tribunal; special considerations for juvenile offenders in criminal cases; the right to compensation in cases of miscarriage of justice in criminal cases; and the right to protection from trial or punishment for an offence for which he or she has already been finally convicted or acquitted.¹⁰

The Committee against Torture and the Human Rights Committee has recommended Thailand to ensure, in law and in practice, that all detainees are afforded all fundamental legal safeguards from the very outset of their detention.¹¹

The 2007 Constitution explicitly provided protection for the right to life and liberty of person, and for rights related to judicial processes, in-line with ICCPR provisions. However, the current draft constitution does not explicitly outline all the provisions pertaining to the administration of justice and protection against arbitrary arrest and detention as guaranteed in ICCPR. Section 29 of the draft only provides for the right to protection from double jeopardy, the right against self-incrimination, the right to be presumed innocent until proven guilty, and the right to bail; and Section 28 guarantees the rights to life and liberty and prohibits torture and cruel or inhuman punishment.

Recommendations: As the rights related to the proper administration of justice and fair trial are key elements of human rights protections and for safeguarding the rule of law, it is important to explicitly include them in the draft constitution. It is therefore recommended that Sections 28 and 29 of the draft constitution be amended so as to include all the rights outlined in Articles 9 and 14 of ICCPR.

4. Right to privacy

Article 17 of ICCPR guarantees the right of every person to be protected against arbitrary and unlawful interference with one's privacy, family, home or correspondence, as well as against unlawful attacks to personal honour and reputation.¹² Although the right to privacy is not absolute, and it can be subjected to limitations, such limitations should be lawful (in accordance to the law) and non-arbitrary (reasonable, proportionate and necessary in particular circumstances, and linked to a specific goal).¹³

Section 32 of the draft constitution provides for protection against unlawful interference with one's privacy, family as well as against unlawful attacks against personal honour and reputation. However; this provision is not explicit about unlawful interference with one's home or correspondence. Moreover, the draft constitution does not explicitly guarantee protection against arbitrary interference with the right to privacy, which is a quintessential element for the effective protection of the right to privacy.

Recommendations: It is recommended that Section 32 of the draft constitution be amended to include provisions guaranteeing protection against arbitrary interference with the right to privacy as well as unlawful interference with one's home and correspondence.

5. Right to freedom of opinion, expression and information

Freedom of opinion and expression is the foundation of every free and democratic society, and is guaranteed by Article 19 of ICCPR. Paragraph 1 of article 19 of ICCPR protects the right to hold opinions without interference. This includes all forms of opinion, including those of a political, scientific, historic, moral or religious nature. Under international law, freedom of opinion is an absolute right and is therefore not subjected to any exceptions or restrictions aimed at criminalizing the holding of an opinion.¹⁴

of witnesses on one's behalf under the same conditions; to receive the free assistance of an interpreter if the accused cannot understand or speak the language used in court; and not to be compelled to testify against oneself or to confess guilt.

¹⁰ ICCPR Article 14.

¹¹ CCPR/CO/84/THA, 8 July 2005 and CAT/C/THA/CO/1, June 2014.

¹² ICCPR Article 17.

¹³ CCPR General Comment No. 16: Article 17 (Right to Privacy).

¹⁴ Communication No. 550/93, Faurisson v. France, Views adopted on 8 November 1996.

Paragraph 2 of Article 19 of ICCPR requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. Unlike freedom of opinion, freedom of expression can be subjected to certain restrictions, but these shall only be such as provided by law and necessary with respect to: the rights or reputation of others; the protection of national security, public order, public health or morals. Furthermore, international human rights law prohibits propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Section 34 of the draft constitution guarantees the right to freedom of expression but does not include provisions guaranteeing the right to hold opinions without any interference. Section 55 of the draft under “State duties” includes that States shall provide information to the citizens but does not guarantee the individual’s right to seek, receive and impart information.

Recommendations: It is recommended that the draft constitution include provisions guaranteeing the right to hold opinions without any interference. The draft should also include provisions guaranteeing the right to seek, receive and impart information as outlined in Article 19, paragraphs 2 and 3, of the ICCPR.

6. Right to peaceful assembly and right to association

The rights to freedoms of peaceful assembly and of association serve as vehicles for the exercise of other civil, political, cultural, economic and social rights. They are essential components of democracy as they empower men and women to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable”.¹⁵

The right to freedom of peaceful assembly is guaranteed in Article 21 of ICCPR, and the right to freedom of association, including the right to form and join trade unions, is protected in Article 22. Both rights are also protected by Article 8 of ICESCR and other specific international human rights treaties or instruments.¹⁶

The rights to peaceful assembly and freedom of association are not absolute rights and can be subject to certain restrictions. Yet, any restriction must be prescribed by law and should be necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Moreover, under international human rights law, lawful restrictions on freedom of association can be imposed on members of the armed forces and of the police.

Section 44 of the draft constitution guarantees the right to peaceful assembly, but allows for restrictions on the right to peaceful assembly, in accordance with the law, to maintain national security, order, public morals or to protect the rights and freedoms of others. Section 42 of the draft constitution guarantees freedom of association but subjects it to “reasonable restrictions”, in accordance with the law, to protect public interest, maintain peace and order or the good morals of the public, or to prevent exclusion or monopoly. The draft provisions however do not provide explicit protection to the right to peaceful assembly and association from unnecessary arbitrary restrictions.

Recommendations: It is recommended that Section 42, paragraph 2, and Section 44, paragraph 2, of the draft constitution be amended so as to ensure that any restrictions to the rights to peaceful assembly and to association not only be “in accordance with the law” but also be “necessary”, in-line with Articles 21 and 22 of ICCPR.

7. Right to remedy

Under international human rights law, States are obliged to ensure the investigation and prosecution of gross human rights violations. The obligation to investigate and prosecute gross human rights violations also corresponds to States’ obligation

¹⁵ Human Rights Council resolution 15/21. Preamble.

¹⁶ Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

to ensure an effective remedy, which is clearly established in various international instruments.¹⁷ For example, ICCPR places an obligation on States parties to ensure an effective remedy for any person whose rights or freedoms have been violated (Article 2(3)(a)). This applies whether or not the alleged perpetrator acted in an official capacity. States parties are further obligated to ensure enforcement of such remedies, once granted (Article 2(3)(c)). Similarly, Article 14 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment foresees the right to fair and adequate compensation for victims of torture.

An effective remedy encompasses access to justice as well as reparation for harm suffered.¹⁸ Thus, under Article 2(3)(a) of ICCPR, States parties are required to take effective steps to investigate violations of human rights recognized as criminal offences and bring to justice those responsible for these violations, and to provide an effective remedy to the victims. When gross violations of human rights have been committed, disciplinary and administrative remedies do not adequately satisfy the obligation to provide an effective remedy. Failure to investigate or failure to bring to justice perpetrators of human rights violations could in and of itself be breach of the ICCPR.¹⁹

The need for prompt investigation on allegations of human rights violations and bringing perpetrators to Justice was recommended during the first Universal Periodic Review (UPR) of Thailand on 2012. The Committee against Torture and the Human Rights Committee also made similar recommendations to Thailand.

The 2007 Constitution explicitly provided for the right and liberty to life and person and prohibited torture, ill-treatment or other cruel or inhuman treatment, arbitrary arrest and search, under section 32. It further provided that when such right or liberty is affected, “the injured person, the Public Prosecutor or any other person, in the interest of the injured person, has the right to file an application to the Court for an order stopping or revoking such act and, for this purpose, there may be determined appropriate means or remedies for injury sustained.” Section 60 of the 2007 Constitution also guaranteed the right to sue a government agency, State agency, State enterprise, local government organization or other State authority which is a legal person liable for an act or omission by a government official, official or employee. These provisions of the 2007 constitution provided a critical constitutional basis for victims of alleged human rights violations to seek remedy.

Although Section 41 of the draft constitution includes provisions allowing for any person to file complaints and sue State agencies, it does not ensure the same level of constitutional guarantees to seek remedy as the 2007 Constitution.

Recommendation: The draft constitution should retain section 32 of the 2007 Constitution, including the subparagraph providing for the right to file an application before a court for injunction, and for remedies for human rights violations. Moreover, besides provisions on the right to file complaints or sue State agencies, the draft should include the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparations mechanisms.

8. Right to participate in public affairs including the right to vote and right to stand for election

Article 25 of ICCPR provides for the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected, as well as for the right to have access to public service. This is at

¹⁷ International Covenant on Civil and Political Rights (article 2); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 14); International Convention on the Elimination of All Forms of Racial Discrimination (article 6); Convention on the Rights of the Child (article 39). This obligation also exists under international humanitarian law and international criminal law. The Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV, article 3); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (article 91); and the Rome Statute of the International Criminal Court (articles 68 and 75).

¹⁸ United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147)(2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

¹⁹ Human Rights Committee, *General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add. 13)(26 May 2004), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en

the core of democratic governance, based on the consent of the people, in conformity with the principles of ICCPR.²⁰ State parties are required to adopt measures that ensure their citizens enjoy these rights, whatever form of constitution or government the country adopts.

Participation in public affairs can be direct, when citizens act as parliamentarians, hold executive positions, or take part in electoral processes. Participation can also be indirect, through chosen representatives.²¹ Where a mode of direct participation by citizens is established, there should be no discrimination between citizens as regards their participation or unreasonable restrictions imposed on their participation. Participation through freely chosen representatives is exercised through periodic and genuine elections, which shall be by universal and equal suffrage.

Genuine periodic elections that are universal, based on equal suffrage, and held by secret ballot, are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of the Government remains based on the free expression of the will of electors.²²

Individuals entitled to vote must be free to elect any candidate, to vote for or against any proposal submitted to referendum or plebiscite, and to support or oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of their will.²³

Under international human rights law, restrictions to the rights to vote and to stand for election may not be unreasonable or discriminatory. However, the Human Rights Committee has made clear that the effective implementation of the right and opportunity to stand for elective office ensures that individuals entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election must be justifiable, based on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.²⁴

Section 102 of the draft constitution limits the right to vote and to be elected for the Senate to limited civic and professional groups. The draft also imposes a number of restrictions on the eligibility for voting and for standing for the elections of the Senate, effectively excluding a substantial percentage of the Thai population from their right to both stand for the Senate and to vote in the Senate election. These provisions are discriminatory as they only allow the people's right to vote and to be elected based on their professions.

Section 91 of the draft constitution prohibits voting by Buddhist priests, novices, monks or clergy; those under the suspension of the right to vote, prisoners and detainees, and those with mental disability, which contravenes ICCPR.

Recommendation: It is recommended that the draft constitution ensure that citizen' representatives are freely chosen by the people through periodic and genuine elections, which shall be by universal and equal suffrage. The draft constitution should ensure that both houses of the legislature are elected bodies so that the people can freely and without any discrimination participate in public affairs.

It is also recommended that the draft constitution protects citizens' rights to vote and to be elected at genuine and periodic elections, held by universal and equal suffrage and by secret ballots, without undue influence or coercion. The draft provisions prohibiting the right to vote for prisoners and detainees, those with mental disability and Buddhist

²⁰ Human Rights Committee, General Comment No. 25 (CCPR/C/21/Rev.1/Add.7)(1996), para. 1.

²¹ Ibid., para. 6.

²² Ibid., para. 9.

²³ Ibid., para. 19.

²⁴ Human Rights Committee, General Comments 25, para 15. Other examples of unreasonable or discriminatory restrictions on the right to stand for election include those based on birth or other status, criminal convictions, economic circumstances or property ownership, literacy, excessive residency requirements, language, mental, intellectual, or psychosocial disability, national or social origin, naturalized citizenship, party membership, physical disability, race, political opinion or affiliation, religion, sex, sexual orientation or gender identity, and status as an internally displaced person.

priests, novices, monks or clergy, should be amended. There should also be clear provisions on the criteria for suspension of the right to vote, which should be in-line with the provisions in ICCPR

9. Community Rights

Common Article 2 of the ICCPR and ICESR affirm the right of peoples to dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and on international law.²⁵

The UN Declaration on the Right to Development recognizes the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. It also encourages States to ensure popular participation in all spheres as an important factor in development and in the full realization of all human rights.²⁶

The Declaration on the Rights of Indigenous Peoples requires States to consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (Article 19) and while undertaking projects affecting their rights to land, territory and resources, including mining and other utilization or exploitation of resources (Article 32).²⁷

In 2015, the CESCR recommended that Thailand adopt human-rights based approach in its development projects, as well as establish participatory mechanisms to seek free, prior and informed consent of the individuals and communities concerned. It also recommended giving legal and political recognition to its indigenous peoples based on self-identification.²⁸

Chapter 12 of the 2007 Constitution guaranteed the right of individuals and communities to preserve or restore their customs, local wisdom, arts or culture, and to participate in the management, maintenance, exploitation and preservation of natural resources. It also requires the State to undertake Environmental Impact Assessment (EIA) and Environmental and Health Impact Assessment (EHIA) prior to the commencement of the projects affecting natural resources, environment and health. It also provided an avenue to individuals and communities to file complaints against government agencies for failing to comply with the constitutional requirements. In 2015, the CESCR recommended that in the light of the on-going constitutional reform, Thailand should guarantee that the enjoyment of the economic, social and cultural rights already acquired under the 2007 Constitution is not subject to any retrogressive measures.²⁹

However, the draft constitution does not recognize the rights of the communities to participation in the management, maintenance, exploitation and preservation of the natural resources as well as projects having impact on health and environment. It also does not provide the constitutional right to remedy for the consequence of the damage to affected people or communities due to developmental projects. Moreover, the compulsory constitutional requirement to conduct EIA and EHIA and the need for public participation and information to discuss the results has been removed in this draft. The draft rather envisages the state playing a dominant role in the management and use of natural resources effectively eroding the rights of communities to public participation and to free, informed and prior consent.

Recommendations: It is recommended that the rights of communities to active, free and meaningful public participation; to fair distribution of resources and to effective remedy and redress are protected in the draft constitution. The draft should also retain chapter 12 of the 2007 Constitution that provides substantial constitutional guarantees for the rights of the communities.

10. Provisions on transition

²⁵ See also Human Rights Committee, General Comment 12, Article 1, para. 5.

²⁶ UN Declaration on the Right to Development, 1986.

²⁷ UN Declaration on the Rights of Indigenous Persons, 2007.

²⁸ E/C.12/THA/CO/1-2, June 2015.

²⁹ E/C.12/THA/CO/1-2, June 2015.

Section 257 of the draft constitution provides for the legalization and continuation of orders issued by the National Council for Peace and Order (NCPO) under Article 44 of the current Interim Constitution.

Article 44 of the Interim Constitution of Thailand bestows unfettered authority to the head of the military government, the current Prime Minister, and grants military personnel sweeping law enforcement powers over the civilian population, overriding a wide range of human rights guaranteed under national and international law without any judicial oversight. Article 44 effectively allows the head of NCPO to issue any legislative, executive or judicial order, if he is of the opinion that it is necessary for the benefit of reforms in any field, or to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act that undermines public peace and order or national security, the monarchy, national economics or administration of State affairs. Such orders and the acts, including the performance in compliance with such orders, shall be deemed lawful, constitutional and conclusive. Section 48 of the interim constitution provides absolute immunity from criminal, civil or disciplinary liabilities to the NCPO members and anyone carrying out actions on behalf of the NCPO. This means even violations of human rights under international and national laws would be considered immune, and no avenues of accountability could be pursued.

Recommendations: Article 44 of the Interim Constitution as well as many of the NCPO orders issued under Article 44 of the Interim Constitution are in contravention to the Thailand obligations under international human rights law. It is recommended that Section 257 of the draft constitution be removed to ensure that NCPO orders do not have any legal status or continuity after the adoption of the new constitution.

Moreover, as blanket immunity or amnesty prevents victims of human rights violations from seeking remedies before a competent judicial, administrative or legislative authority, thereby contravening their right to remedy, the draft constitution should not exclude accountability for serious human rights violations that have resulted from the implementation of Article 44 of the 2014 Interim Constitution.

11. Constitution drafting process

A human rights framework should guide not only the substance of the constitution itself, but also the drafting and adoption of the constitution. Both tracks should be in compliance with international human rights norms. Notably, citizens' right to participate in public affairs under ICCPR, includes their right to participation in the constitution-making processes.³⁰ The right of self-determination enshrined in Article 1(1) of ICCPR includes the collective right to choose the form of constitution or government. In addition to the legal responsibility of the State, a broad and inclusive constitution drafting process has practical and political benefits. In the context of Thailand, it can foster national unity, increase public understanding of the constitution, strengthen its legitimacy and acceptance, generate innovative ideas and solutions, and provide a sense of collective ownership.

However, meaningful public participation requires an environment where the general public and civil society actors such as journalists, academics, members of political parties, are able to express their views without fear of harassment, reprisals or arrests. This means that the State has to ensure that human rights, particularly freedoms of expression, peaceful assembly and association, are fully respected and protected.

Recommendation: It is recommended that the CDC and the government ensure that the constitution drafting process is inclusive and participatory, and conducted in an environment where all people in Thailand can effectively exercise their rights to freedom of expression, peaceful assembly and association. Any restriction incompatible with ICCPR in this regard should be immediately lifted.

³⁰ Human Rights Committee, *Marshall v. Canada* (CCPR/C/43/205/1986)(1986).