

## **Civil Society Report on Thailand – Rights situation and HIV/AIDS**

**Submitted by:**

**The Thai Network of People Living with HIV/AIDS, Thai NGO Coalition on AIDS, Raks Thai Foundation, and Foundation for AIDS Rights**

**12<sup>th</sup> Universal Periodic Review**

**22 February 2011**

**(Due date: 14 March 2011)**

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### **Introduction**

#### **Participants to this UPR CSO**

1. The review was conducted with 21 participants from the following organizations: the Thai Network of People Living with HIV/AIDS; the Networks of People Living with HIV/AIDS in Central, Upper Northern, Lower Northern, and Northeastern Regions; Foundation for AIDS Rights; Raks Thai Foundation; Thai Treatment Action Group Foundation; Population Service International Foundation; and FTA Watch Group.

#### **HIV/AIDS Situation in Thailand**

2. According to experts of the Thai Working Group and the 2005-2025 Asian Epidemic Model (AEM) Project for HIV in Thailand, it is estimated that Thailand had cumulative 1,138,020 persons living with HIV/AIDS (PLHA) in 2010. Of which, 641,633 were cumulative dead cases, 499,324 were still alive, and 10,853 persons were estimated to be newly infected in 2010. Majority of AIDS patients (89.41%) are in productive age (15-59 years old). There are more female PLHA than male with the ratio of 2:1. Most of PLHA acquired the virus through unprotected sex (84.17%), followed by drug use (4.34%), mother-to-child transmission (3.61%), and blood transfusion (0.02%), respectively. (ref: [www.aidsthai.org](http://www.aidsthai.org))
3. Although, Clause 51 of the 2007 Thai Constitution states that equity and full access to quality and timely public health services are people's basic rights, Thailand still implements several health service systems with different standards or benefit packages. Current health service systems in Thailand include:
  - National Universal Health Coverage (UC) – This scheme is administered by the National Health Security Office and currently covers 48 million populations. The government is responsible for all expenses incurred under this scheme.
  - Social Security Scheme (SSS) – Administered by the Social Security Office of the Ministry of Labour and Social Welfare, at present, this scheme has approximately 940,000 members; of which, some 80,000 members are labour migrants. This scheme requires the same level of contribution from employees, employers, and the government. The benefit package of this scheme, however, does not include antiretroviral drug (Atazanavir) while the UC Scheme includes this drug in its benefit package.

- Health Insurance for Civil Servants and Government's Employees – There are some 4.9 million persons receiving this benefit, in which the government covers all expenses.
- Migrant Health Insurance System (MHIS) – This scheme was established solely for labour migrants from Myanmar, Lao PDR, and Cambodia by the Ministry of Public Health. Some 932,000 migrants currently participate in this scheme by contributing THB 1,300/ person/ year. However, this scheme does not cover the cost for antiretroviral treatment.
- Ethnic populations who regained their right to health service according to the Cabinet Solution dated 23 March 2009, as they are in the process of obtaining a Thai nationality. These 457,433 populations are under care of the Ministry of Public Health and their benefit package is the same as the UC.

### **Background and framework**

4. Below is the list of 7 international human rights conventions related to HIV infected persons, AIDS patients, and affected persons that the Royal Thai Government has agreed and been a signatory member of:
  - (1) The International Covenant on Civil and Political Rights (ICCPR),
  - (2) The International Covenant on Economic, Social and Cultural Rights (ICESCR),
  - (3) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol,
  - (4) The Convention on the Rights of the Child (CRC) and its two Optional Protocols on the Involvement of children in Armed Conflict and on the Sale of Children, Child Prostitution, and Child Pornography,
  - (5) The Convention on the Elimination of All Forms of Racial Discrimination (CERD),
  - (6) The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and
  - (7) The Convention on the Rights of the Persons with Disabilities (CPRD)
5. There are 2 human rights conventions that Thailand has not ratified including:
  - (1) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and
  - (2) The Convention for Protection of All Persons from Enforced Disappearance.
6. In addition, Thailand has not endorsed the Declaration of Commitment on HIV/AIDS, 2001 as well as the Political Declaration on HIV/AIDS, 2006.

## **II. Promotion and Protection of Human Rights on the Ground**

Cooperation with human rights mechanisms

7. Special Rapporteurs – At present, there is no special rapporteur on the issue of migrant workers in Thailand.

## **Implementation of International Human Rights Obligations**

### **Equality and Non-discrimination**

8. Although Thailand has been successful in reducing the number of new HIV infections, stigma and discrimination still exists in many forms. The stigma is related to the HIV status and also the stereotypes created towards – drug users, men who have sex with men, prisoners, and sex workers.
9. It is particularly noted that the discrimination that either criminalizes or marginalizes various groups leads to exclusion and neglect by government health information and service programs. The Thai government does not allocate resources for health information programs tailored for these groups.

### **Access to Health Services**

10. Health systems in Thailand lack of equity since different health insurance schemes offer different benefit packages. While the SSS requires its members including PLHA to contribute a monthly fee, the UC and the Health Insurance Scheme for Civil Servants and Government Employees do not require member fee since the government uses the national budget to subsidize all costs incurred from these two schemes. HIV/AIDS related benefits under the SSS are not in line with treatment protocol of the Ministry of Public Health. For example, Atazanavir is included in the UC's benefit package but not the SSS.
11. MHIS does not include antiretroviral treatment for HIV infection.
12. Irregular, undocumented migrants cannot access HIV/AIDS services, especially the voluntary counseling and testing (VCCT), CD4 and viral load tests, and treatment of opportunistic infections.
13. Labour migrants who are victims of sexual abuse, e.g. rape, cannot receive antiretroviral drug to reduce the risk of contracting HIV while this service is available for Thais. This is clearly a form of discrimination.
14. Undocumented female migrants who are HIV positive do not have access to antiretroviral treatment for prevention of mother to child transmission.

### **Right to life, liberty and security of the person**

## **Free Trade Agreement (FTA)**

15. The 2007 Thai Constitution's Clause 190 indicates the change of process in negotiating international agreements to ensure the transparency and enhance people's participation. The international trades in 2003-2007, especially at the bilateral level, were usually kept secret and had no involvement of civil societies at all. This raised several concerns among academia and social activists since it is well-known that bilateral agreements with developed countries such as the USA and the EU often include requirements or demands beyond the Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization. Studies from Thailand and elsewhere show that requirements in the forms of TREPS Plus always include the sole rights of international pharmaceutical companies and leave no room for generic drugs to the market; resulting in extremely high cost of life-saving drugs, putting health insurance systems at risk for bankrupt, and leaving patients with no access to treatment. Accordingly, the free trade negotiation between Thailand and the USA was widely opposed by both academic societies and patient and consumer networks.
16. Despite the process for negotiating international agreements stated in the Clause 190 of the 2007 Constitution, in which FTA is a part of, the government has not established any laws to detail out its implementation, and therefore, the actual practices have been implemented according to interpretation of relevant officers in charge. The FTA negotiation between Thailand and the EU is a good example on this. While the Cabinet had appointed a committee to conduct public hearing and the process was completed more than half a year ago, the public hearing result has not been submitted to the Cabinet to date. Nonetheless, the International Economical Policy Committee did approve the draft agreement framework and it is unclear if the result from public hearing was taken into consideration. In addition, it is very likely that public hearing on the draft agreement framework will not be conducted prior to submission to the parliament chamber, despite the risk on violation of people's rights according to the constitution. It is important to note that, the public hearing suggested that if the FTA between Thailand and the EU were materialized, Thailand must not accept protection of intellectual properties beyond the agreed level with the World Trade Organization.
17. Pharmaceutical companies stipulate that countries above the poverty line cannot access low-price drugs but to procure original drugs.

## **Medical Hub Policy**

18. As an impact from the 2007 world economic crisis, large-scale hospitals and trade unions promote the medical hub policy by attracting people from advanced economic countries to receive medical and health services in Thailand, as well as attracting retired senior citizens to resettled in Thailand. These efforts have made Thailand ranked the world's top destination for medical/ health tourism. However, these policies have been causing negative impacts to health service access among patients, and not to mention inequality in the public health system.

19. A brain-drain problem from medical schools and government hospitals since experts and specialists, especially those in the fields that have insufficient personnel such as specialized surgeons and specialists in cardiovascular, brain, and neurological diseases, were drained to treat foreign and upper-class Thai patients in private hospitals. On the other hand, to overcome the brain-drain problem, Thai medical schools have to adapt themselves and establish various types of “Centers of Excellence” such as those for cardiovascular, brain, and neurological diseases and charge very high medical fee to attract experts/ specialists to work for them. In addition, medical schools also recruit physicians from government hospitals. All these create a chain of impact to the Thai public health system and further broaden gaps of inequality to treatment service.
20. Although, the Department of Health Service Support of the Ministry of Public Health did actually conduct public hearing, several concerns raised by civil societies were not included in their report. Thus, the report only mentions support to this policy and persuade medical schools and government hospitals to join the medical hub policy and neglect their mandates in taking care of Thai people.
21. Attempts have also been made to amend the law to allow government hospitals and medical schools (that are mostly government schools in the case of Thailand) to open special clinics during official hours. This actually further takes away national resources and budget to take care of wealthy patients from oversea. The situation is worse when the Bureau of Investment tries to advocate for tax waiving for commercial medical services without considering its impact on Thai patients even though this is against the National Health Charter.

#### **Interpretation of the laws that are barriers to drug access**

22. Although Thailand has announced its rights to import 7 generic drugs, the Department of Disease Control of the Ministry of Public Health does not translate this into practice for universal access and these generic drugs are to be used among Thai populations only. In fear of violation of the TRIPS of the World Trade Organization, documented migrants in Thailand cannot access to these drugs.
23. In addition to misinterpretation among the government sectors that does not support universal access to essential drugs, the international pharmaceutical industry and developed countries (USA, EU, and Switzerland) all have to be responsible for the chilling effect they have caused to the Thai government since they always threat the Thai government may intimidate the TRIPS. But once it is clear that compulsory licensing that Thailand have announced is protected under both Thai and international laws, these industry and countries use their other international trade and investment that Thailand has to rely on to continue to threat the Thai government.

24. Recently, the President of Pharmaceutical Research and Manufacturing Association (PReMA), a branch of the International Pharmaceutical Industry Association, sue the PLHA, cancer, and psychiatric patient networks for libel even though leaders of these patient networks did everything according to available channels that legally allow them to request the Pharmacy Council to investigate a case of a pharmacist who might have misused his/her license to protect business benefit that clearly reflects an unethical trade by the international pharmaceutical industry.
25. In addition, the announcement to allow voluntary licensing of generic drug industry of antiretroviral drugs among international pharmaceutical companies while developing countries like Thailand are not allowed to do so can be considered discrimination as well as a key barrier for Thai patients to access life-saving drugs. This is also an obvious form of human rights violation.

### **Right to social security and to an adequate standard of living**

26. Many government agencies refuse employ PLHA. Before applying for the government positions, applicants have to undergo HIV antibody test. HIV positive persons are not allowed to take the exam for several government job employments such as junior police officer position of the Royal Thai Police Department, Assistant Attorney position of the Office of Attorney-General, Assistant Judge position of Court, or to enroll in the Thai Traditional Medicine Program of Rachabhat Chiang Rai University, etc.

### **Right to education**

27. HIV positive children are stigmatized and making it difficult to attend schools in the community they belong. The government does not monitor this situation neither does it set up effective mechanisms to reduce stigma in the community and in schools.

### **Right to Privacy, Marriage and Family Life**

28. Children age below 18 years are not allowed to access VCCT services without parent consent due to the rules and regulations of the Medical Council of Thailand that requires parental or guardian's consent. This makes younger people afraid to seek such services and can lead to late diagnosis.
29. Adolescents who are HIV positive are pressure by health personnel not to have sexual partners, not to marry and have children. Health providers often use negative remarks towards HIV positive women who become pregnant. Some cases are convinced to undergo tubal ligation; to use long term contraceptive such as implantations. This is against the reproductive health rights of women.

30. HIV positive youth who have been taking antiretroviral drugs for many years feel shameful or embarrassed when reaching their adolescent years. There is no mechanism to support or reinforce them to take antiretroviral drugs continuously.
31. Children clinics only take care of children who are HIV positive when reaching 15 years of age are to be transferred to adult clinics. This process often does not take into account the sensitivities of the youth and causes them to feel alienated which can result in destructive behaviors.

### **Freedom of Movement**

#### *Right to expression of religion, culture (confirm)*

32. The 100,000 group ordination project of Dharmagaya Temple requires all applicants to undergo health checkup including HIV antibody test. If found positive to HIV, applicants will not be allowed to join the Project (cannot enter the monkhood).

#### Ratification and accession

33. Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

### **The Thai Government is recommended to:**

34. Apply human rights-based approach to overcome HIV/AIDS issue without discrimination.
35. Take concrete actions to ensure that all health care / insurance systems are of the same standard.
36. Review and amend laws and policies that obstruct access to various services among PLHA
37. Amend rules and regulations of the Medical Council of Thailand to allow children age below 18 years old to access VCCT service without obtaining a consent from their parents or guardians
38. Ensure reproductive health rights of women and girls by training health providers on the basics of human rights and reproductive health rights.
39. Ensure that the free trade agreement must not exceed TRIPS agreement. No TRIPs plus should be allowed. The agreement has to be developed in bilingual. Thailand has all the right to apply Doha Agreement without being intervened e.g. compulsory licensing and promotion of locally produced pharmaceutical products for in-country use. Amend the laws related to intellectual properties or access to pharmaceutical drugs, medical treatment, or

other agreements with participation from the people's sector. Any agreements to be made must be free of negative impact to the Thai basic health system. Efforts need to be made to ensure concrete technology transfer to Thailand. Thai people must be able to access information, including information on negotiation of agreements. Public hearing must be conducted and referendum must be obtained. Representatives of civil society should be made parts of the country's representatives to discuss and negotiate the agreements. Instead of amending the Clause 190 of the constitution, the government should better issue a law to properly administer its implementation. Taxation of those who benefit from the agreements to compensate affected persons must not affect the Thai culture or community's ways of life. Appropriate monitoring system should be put in place. If found that any agreements have negative impacts on people's life, there should be ways to cancel such agreements. The definition of "fake drugs" must not include generic drugs. Duration of drug patent must not be extended.

40. Lift any government agencies' policies that are against the constitution and the international conventions related to human rights that Thailand has ratified, as well as the stigma, discrimination, and violation of the rights of PLHA in employment and access to social services and welfare.
41. Ensure that the medical hub policy does not contradict to the 2009 National Health Charter. While centers of excellence for specialized medical services should be promoted and supported, these must not be done for business purpose but rather to the benefits of all human beings. It must not reduce access to basic health services among the country's populations. The physician's capacity should be enhanced, both in terms of quantity and medical etiquette.
42. Develop effective mechanisms to enhance understanding related to human rights among its populations and government officers.
43. Promote people's participation to reduce HIV/AIDS issues, both in terms of prevention and care and treatment, by establishing AIDS fund with supportive law.
44. Promote sex and sexual right education, especially among adolescents, to equip people with skills to protect themselves from HIV infection, and
45. Create enabling environment for safer sex practices by allocate sufficient preventive measures that are suitable for each sub-population groups, e.g. male and female condoms, clean needles and injecting equipments (for drug users), etc., so that they can protect themselves from HIV infection.