

Shadow Report on Eliminating Racial Discrimination: THAILAND

Submission to the CERD Committee

Coalition on Racial Discrimination Watch¹

Preamble:

1. “ We have a distinct way of life, settlement and cultivation practices that are intricately linked with nature, forests and wild life. Our ways of life are sustainable and nature friendly and these traditions and practices have been taught and passed on from one generation to the next. But now because of State policies and waves of modernisation we are struggling to preserve and maintain our traditional ways of life”

Mr. Joni Odochao, Intellectual, Karen ethnic,
Opening Speech at the Indigenous Peoples Day Festival
in Chiangmai, Northern Thailand 2007

Introduction on Indigenous peoples and ethnic groups in Thailand

¹ The coalition was established as a loose network at the Workshop Programme on 5th July 2012 on the Shadow Report on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) organised by the Ethnic Studies and Development Center, Sociology Faculty, Chiangmai University in cooperation with Cross Cultural Foundation and the Highland Peoples Taskforce

2. The Network of Indigenous Peoples in Thailand², in the International Working Group for Indigenous Affairs (IWGIA) yearbook on 2008, explained the background of indigenous peoples in Thailand. The indigenous people of Thailand are most commonly referred to as “hill tribes”, sometimes as “ethnic minorities”, and the ten officially recognised ethnic groups are usually called “chao khao” (meaning “hill/mountain people” or “highlanders”). These and other indigenous people live in the North and North-western parts of the country. A few other indigenous groups live in the North-east and indigenous fishing communities and a small population of hunter-gatherers inhabit the South of Thailand. According to the Department of Social Development and Welfare (2002), the total officially recognised “hill-tribe” population is 925,825ⁱ and this population is distributed across twenty provinces in the North and West of the country. There are still no figures available for the indigenous groups in the South and Northeast of Thailand.
3. The indigenous people in Thailand belong to five linguistic families: Tai-Kadai (e.g. the various Tai groups in the North, the Saek, or Shan, also called Thai Yai), Tibeto-Burman (e.g. the Akha, Karen, Lahu, Lisu), Mon-Khmer (e.g. Lua, Khmu, Kui, Mlabri), Hmong-Mien (Hmong, Mien) and Malayo-Polynesian (Moken).
4. The ten ethnic groups that are officially recognised as “hill people” living in the North and West of the country are: the Akha, Hmong, H’tin, Karen, Khmu, Lahu, Lisu, Lua, Mien and Mlabri. There are however several other small groups that reside in the North, so-called local Tai groups (Tai Lue, Tai Khuen, Tai Yong), Kachin and Shan.
5. With the drawing of national boundaries in Southeast Asia during the colonial era and in the wake of decolonisation, many indigenous people living in remote highlands and forests were divided. Various ethnic groups live on the Korat plateau of the North-east and especially along the border with Laos and Cambodia and these ethnic groups share characteristics in common with other groups that are considered indigenous people in Thailand. There are several Tai speaking groups (Saek, Phuan, Phuthai and Black Thai), the Mon-Khmer speaking Kui (also called Kuoy or Suoi) and the So. Larger populations of these peoples live in the respective countries across the borders from Thailand. A group known as the Nyahkur, Niakkuoll, Niakuolor or Chao Bon live in Chaiyaphum Province and speak the old Mon language.
6. The Chong live in Trat Province and in the Chanthaburi Province of Eastern Thailand (as well as the in adjacent areas in Cambodia). They are a Mon-Khmer speaking group who also call themselves Chong-Samré in Trat or Chong la and Chong heap in Chanthaburi.
7. The Sa’och of Trat province and neighbouring Cambodia speak the same language as the Chong but are physically very different, i.e. they have negroid features. Both groups

² The Network of Indigenous Peoples in Thailand (NIPT) is a collective network of more than 30 different Indigenous People Groups/Networks from across Thailand.

used to sustain themselves mainly from swidden farming, hunting and gathering.

8. In Southern Thailand, along the border with Malaysia, live people who across the border in Malaysia are classified as belonging to the negrito group of the Orang Asli. In Thailand they are sometimes called Ngo, Ngko, Ngok Pa or Sakai, terms which have a negative connotation in Malaysia but less of a negative connotation in Thailand. In some records they are also called Manni, which is the generic term for the negrito groups of the Orang Asli in Malaysia.
9. Along the coast and the islands of the Andaman Sea, from Malaysia through Thailand into the Mergui archipelago of Myanmar live the so-called “sea gypsies” or, in Thai, “chao le” (meaning “sea people”). In the Southern part of the country, between Phuket island and the Malaysian border, live the Urak Lawoi, north of Phuket and into the Mergui Archipelago of Myanmar live the Moklen and Moken.

Stereotyping and Discrimination

10. The official term chao khao has been used since the late 1950s. The earlier term chao pa (“forest people”) was used to denote the non-Thai minority groups.
11. For the Thais, pa – meaning “forest” – has the connotation of “wild,” which is generally conceived as a word in opposition to “civilised”. The adoption of the term chao khao was part of a nation building process in which national identity and the definition of “Thai-ness” were linked to cultural traits, particularly Buddhism, the Thai language and the monarchy. With the negative stereotyping of the hill tribes as forest destroyers, opium cultivators and communist sympathisers, the social category of the chao khao came to be defined as being “non-Thai”, underdeveloped and environmentally destructive. Other terms applied in Thailand are more or less equivalent to terms commonly used in English for the region like klum chat tiphon (“ethnic groups”) or chon klum noi (“ethnic minorities”). The (former) hunter-gatherer groups in the South are still often referred to by the derogatory term sakai (literally meaning “slave”).
12. These stereotypes and discrimination have been reinforced directly and indirectly through the national education curriculum from the primary to the university level.
13. In opposition to these commonly used derogatory terms and the negative connotation associated with their official designation as chao khao, indigenous organisations and indigenous rights advocacy groups began to promote the term chon phao phuen mueang (ชนเผ่าพื้นเมือง) as the translation of “indigenous peoples” over ten years ago.
14. The government of Thailand has rejected the application of the term “indigenous peoples” and stated that these groups are as Thai as the other Thai citizens and are able to enjoy the fundamental rights and are protected by the laws of the Kingdom.ⁱⁱⁱ However, until today the indigenous peoples of Thailand continue to suffer from the same historical stereotyping and discrimination as other indigenous peoples in other parts of the world.

15. Underlying many current laws, policies and programmes targeting indigenous peoples are the same prejudices and widespread misconceptions of indigenous peoples that have been prevalent over the past decades, that is, that indigenous peoples are drug producers and pose a threat to national security and to the environment. Although in recent years there have been some positive developments away from this approach, discriminatory attitudes and actions are still prevalent among government officials.
16. Thailand has ratified and adopted several international human rights and environmental conservation instruments such as the Convention on the Elimination of Racial Discrimination (CERD), the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention of the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on Biological Diversity (CBD). Thailand also voted in favour of the adoption of the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly. These international legal commitments oblige the Thai Government to recognise, respect and protect the rights of indigenous peoples through national laws, policies and programs. However, the reality on the ground has hardly changed.
17. The historical discrimination against the indigenous peoples of Thailand as “uncivilised”, in opposition to the “civilised” majority Thais, and now also as a threat to national security, continue to shape the government’s laws, policies and programs which impact indigenous peoples. Thailand does not have laws recognising and protecting the rights of indigenous peoples and the new Constitution passed in 2007 does not explicitly recognise their identity. This is despite the fact that during the drafting of the new Constitution, indigenous peoples’ representatives participated in different constitution-drafting discussion forums at the provincial as well as national levels.

Process of Shadow Report Preparation

18. Since Thailand became a state member of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) on 28th January 2003, Thailand has not submitted its first country report to the CERD committee. The Cross Cultural Foundation's project study on racial discrimination in 2009 was aimed to create understanding of the term and forms of racial discrimination in Thailand through study, consultation and shadow report writing. With the hope of reinforcing the Constitution of the Kingdom of Thailand 2007 (B.E. 2550), the articles 5 and 30 provide the principle on elimination of discrimination. With reference to international law on human rights, both articles from the Thai Constitution are read as follows:

“Article 5: Thai people, regardless of birth, gender and religious, are equally protected by this Constitution.” and “Article 30: people are equal in terms of law and legal protection, regardless of their gender”

19. To emphasise the obligation of Thailand, the third paragraph of Article 30 conforms to that in the ICERD which states clearly that “discrimination against people due to differences in birth, race, language, age and gender is strictly prohibited.”

20. The 2009 study of racial discrimination in justice processes was conducted by integrating various methodologies and through incorporating functional research with other methods. Being case-study centered, the study explores two main target groups: migrant labourers and nationality-less people, and collects relevant data from network organisations that work on Malayan-Muslims, highlanders, sea gypsies and Thai displaced people from Myanmar. The draft shadow report was completed but due to the delay in submission of the State report, the shadow report was not submitted in 2009.

21. A Workshop programme was organised on 5th July 2012 on the “Shadow report on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)” organised by the Ethnic Studies and Development Center, Sociology Faculty, Chiangmai University, in cooperation with Cross Cultural Foundation and Highland Peoples Taskforce. With the cooperation from networks, the amendment of this shadow report was made to up-to-date and analysis of the factors contributing obstacles and problems on access to justice and the use of justice measures in eliminating and remedying such discrimination. The consultation and dissemination of the information related to CERD was conducted with partnerships, namely NGOs workers, law practitioners, communities who have faced discrimination and the victims of racial discrimination. This shadow report covers from 2006 until the present.

22. Thailand acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on 28 January 2003, and the Convention has entered into force for Thailand from 27 February 2003. Upon its entry as a State Party to CERD, Thailand made an interpretative declaration that the articles of CERD will not apply beyond the framework of

Thailand's Constitution and Thai laws. Although the Constitution of Thailand Chapter 3 titling "Rights and Liberties of Thai National", it must be applied in accordance with article 4 that "Human dignity, rights, liberty, and equality of the people shall be protected" and article 30 which prohibits discrimination on ground of origin, race, language, personal status etc. Therefore, the Constitution afford guarantees equally to all person in line with recommendation 30 of CERD which stated that the provisions of the Convention should apply equally to all persons within the borders of the Kingdom.

Recommendation:

23. We are requesting the Thai government to restate its willingness to abide by this Convention fully and to confirms that its interpretative declaration shall not obstruct fully implementation of CERD provisions.

Implementation of the Convention: Article 1 – Definition of Racial Discrimination

24. Since 1960, the word "Chaokao" has been used to distinguish the high-land from the low-land people. Since then, there have been some negative perceptions and attitudes towards the high-land people. Recently, a new concept has been put forward by academics and the high land population to counter these negative attitudes. The highland population has started to call themselves the chonpao, which is a short term for indigenous people in the Thai language. Some academics also term the chonpao as an ethnic group.

25. In the past, the Citizenship Act of 1965 granted Thai citizenship to people belonging to indigenous peoples who were born in Thailand, provided their parents were Thai nationals. Many indigenous people with a legitimate claim to Thai citizenship are however excluded because they do not possess birth registration or other means of proof. Approximately 296,000 indigenous people in Thailand still lack citizenship,^{iv} which restricts their freedom of movement and their ability to access public services such as basic health care or admission to schools.^v Policies and programmes specifically addressing the "hill tribes" have been implemented since the late 1950s after the creation of the Central Hill Tribe Committee and later the creation of the Hill Tribe Welfare Division within the Ministry of Interior. Until the 1980s, Thai policies towards indigenous peoples were dominated by concerns about opium cultivation and communist insurgency.

26. By the 1980s, deforestation and control of resources in the uplands became important national issues and in 1982, the "Committee for the Solution of National Security Problems involving Hill Tribes and the Cultivation of Narcotic Crops" was established to implement and coordinate policies aimed at indigenous peoples, including the Master Plans for Development of Highland Populations, Environment and Control of Narcotic Crops and the National Economic and Social Development Plans. The objectives of these policies, which are still used today, include the integration of the indigenous peoples into Thai society, requiring the reorganization of their way of life accordingly, the elimination of opium cultivation and consumption, the

reduction of population growth and improvement of living standards.

Article 2 – Condemnation of & Policies to Eliminate Racial Discrimination

27. Even though Thailand has attempted to develop its law, registration and policy to eliminate racial discrimination against indigenous peoples and ethnic groups living in Thailand, as stated in both the Constitutions of 1997 and 2007, there is yet to be a specific Act, policy or action plan to eliminate existing racial discrimination. There is a provision in the 2007 Constitution for example that the domestic law related to protected forestry has been the law which is suppressing the rights to housing and cultivation of many communities living in the forest regions, home to many indigenous and ethnic groups. This law which has declared the land to be protected has made millions of people encroachers on the State's land. Another example is a provision by the Ministry of Interior from 1996 and the Cabinet Resolution of August 2000 which has limited the freedom of movement of people without citizenship cards or immigration papers.

28. Even though the state has reasons for making rules for proper visa or proper immigration permission, this everyday unjustified practice has led to the abuse of migrant workers and immigrant workers at the hands of police officers who often demand bribes in return for the right to movement.

Recommendation:

29. To correct these problems, Thailand should develop clear policies and laws that have been formulated with the participation of the people, including indigenous groups. Thailand should review all of the laws that have led to the incitement of racial discrimination and human rights abuses. These laws should be abolished. Further, Thailand needs to create a new law which offers a clear definition of what constitutes racial discrimination, what the laws are, which behaviors will be condemned under this new law and what the corresponding punishments will be.

Article 4 – Dissemination of Thoughts/ Organisations Based on Racial Discrimination

30. When Thailand ratified CERD, the government included an interpretation of Article 4, subsections (a), (b), and (c). This interpretation stated that the government believed that it must only act where there was a need to act. Further, the government has said that this Article will only apply to new laws passed by the Kingdom. This interpretation is problematic for indigenous and ethnic groups of Thailand because there is already legislation that exists which has created damaging stereotypes for these groups. For example, bias reporting surrounding violation of the Forest Management Act 2007 has led to the stereotype that the indigenous hill tribes, which have lived in the mountains and forests of Thailand for hundreds of years, are now responsible for the destruction of those forests.

31. Similar insensitive reporting has spread with regards to the drug trade. For example, on May 6th 2012 Thai Rath (a Thai national newspaper) Online ran the headline "Selfish! Ethnic Minorities cutting down trees to plant marijuana in Kaeng Kachan forest"; and again on May 7th

2012, “Shocking! Ethnic Minority encroaching Petchaburi Forest cutting down big trees”. To continue with this reservation will be to continue with the propaganda that perpetuates the perception that properly documented nationals are more deserving of dignity and respect than indigenous and ethnic groups. This will continue the perception that they are responsible for the destruction of the forest and watershed or for the drug trade.

32. In 2003, the suppressive drug policies that have been implemented to combat drug trafficking have targeted ethnic communities and have caused a number of deaths in the ethnic groups who have allegedly been involved in the drug trade. Many of these allegations are never substantiated. Suppressive drug policy, racial profiling and stereotypes of indigenous and ethnic groups continue.

33. The National Human Rights Commission of Thailand reported in 2005³ at ICCPR committee that during the investigation, the NHRC found several irregularities during the process as the means to draw up the blacklists were problematic, lacking reliable evidence and giving opportunities for officials to include their conflicting parties into the list, unfairly including friends and relatives of the accused into the same category and ensuring discriminating practice against highlanders (indigenous and ethnic groups in northern part of Thailand).

34. Moreover, a similar problem is now faced by the Malayu Muslims in the Southern provinces. In the South, the Malayu Muslims are seen as the cause of the violence and conflict. Also, the counter insurgency policy caused hundreds of deaths of many Malayu Muslims in the South in 2004 such as in Takbai and 28 April/Kruse incident and yet the perpetrators of these crimes were never blamed and these incidents did not invoke public outrage as prejudice has made it seem as though these groups deserved to be killed.

Recommendation:

35. With regard to the interpretation of article 4, the government should rescind the reservation of this article.

Enforcement of Special Law

36. Since 2004, the Southern Border Provinces, namely Pattani, Yala, Narathiwat and four districts of Songkla, including Chana, Sabayoi, Thepa and Nathawee, were declared as the area under the martial law and two special laws, namely the Emergency Decree on Government Administration in States of Emergency 2005⁴ and the Internal Security Act 2008, were

³ Assessing Thailand’s Compliance with the Obligations under the ICCPR and in relation with the constitution, National Human Rights Commission of Thailand, 2005, page 15, Para. 88

⁴ The first response in early 2004, the government at that time imposed a Martial Law 1914 to suppress and prevent insurgent groups. On 19 July 2005, the Martial Law was lifted and replaced with the Emergency Decree 2005 and declared as threatening emergency situation in the Southern border provinces, exclusive of the four districts in

enforced.⁵ Under these laws, certain rights and liberties of the people are derogated for the competent authorities to address and suppress the unrest. These national security laws are only applied to Muslims. There were no Buddhist people or other groups arrested, pretrial or trial detained or charged under the provision of these laws. Cross Cultural Foundation (CrCF) and Muslim Attorney Center Foundation (MAC) has submitted the report on “Human rights in Criminal Justice Systems in Southern Conflict & State counter-insurgency policies” to Human Rights Council during UPR process in Oct 2011. The report can be viewed at http://voicefromthais.files.wordpress.com/2011/09/upr_report-eng-thai_on-administrationof-justice-in-southern-thailand.pdf

Recommendation

37. The State must lift the enforcement of Martial Law and the Emergency Decree in the three southern border provinces and abolish racial profiling in practice of counter insurgency and counter internal security offences. In addition, there must be defined rules on the persons arrested and detained in accordance with minimum standards relating to arresting and detaining individuals by Thai laws and international standard on arresting and detaining persons. The detainees must be detained in an authorized place of detention.

Climate Change Damage Model affected Indigenous People Populations in Thailand

38. Indigenous peoples living in forested areas of Thailand have become scapegoats for climate change. This includes indigenous communities living in the North of Thailand. The Ministry of National Resources and Environment, Department of National Parks, Wildlife and Plant Conservation have formulated a model to fine individuals for the damage that they cause in contributing to climate change. However, this model is scientifically flawed and has a disproportionate effect on indigenous communities who depend on shifting agriculture for their livelihood. Indigenous communities who have been affected include the Karen and Hmong.

39. Examples of fines under the model include: THB 4064.15 per rai/year (one rai is equivalent to 0.16 ha) for loss of soil nutrient and THB 5400 per rai/year for causing less precipitation (Daily wage in Thailand is 300 baht). The methods used to calculate the damage are “highly questionable in terms of their scientific basis and accuracy”.⁶ In addition, the model is unjust because the lifestyle of an indigenous person, practicing shifting agriculture can contribute less to climate change than the lifestyle of the average Thai. The ecological footprint of an individual living in the Huay Hin Lad Karen community was between a quarter and a third of

Songkla province. After the coup d'etat on 19 September 2006, the Martial Law had been declared again, the Southern border provinces are under the two special laws until the present.

⁵ The Internal Security Act was imposed on the four districts of Songkla since November 2009 after the Martial Law was lifted. In Mae Lan district of Pattani, the Internal Security Act was lifted in January 2011 but the Martial Law is still effective. The Internal Security Act is also another new problematic law that might cause severe damage to rule of laws, human rights in criminal justice system not less than Emergency Decree.

⁶ Network of Indigenous Peoples et al. (2008). *Global Warming Scapegoat: A New Punishment Measure Imposed on Indigenous Peoples*. Retrieved July 17, 2012, from http://ccmin.aippnet.org/index.php?option=com_content&view=article&id=417&Itemid=164.

the average Thai's ecological footprint.⁷ The traditional practices of this community actually help to mitigate the adverse impacts of climate change and maintain a sustainable food security.⁸

40. Currently, the Human Rights Lawyers Association (HRLA) based in Bangkok and the Land Reform Network of Thailand have helped to bring a challenge to this law in the Administrative Court. The plaintiffs include indigenous peoples from the North, such as the Karen and Hmong. Information has been provided to the Court about how long the individuals have lived in the various areas under dispute, ranging from twenty to sixty years, so as to show that the individuals are not causing climate change. Under the Thai Constitution, indigenous communities are protected through the Community Right which is enshrined in sections 66 and 67 although these protections have rarely been enforced by the courts.

Case of Mae Om Ki community: Shifting Agriculture in Protected Forests found not guilty by appeal court but the appeal court requested communities to move out from protected forestry land

41. Indigenous peoples who practice shifting agriculture can also face criminal charges and can be ordered to relocate. In Mae Om Ki, Tha Song Yang District, Tak, two members of the Karen community, Mr. Dipaepho, an 80 year old man and Ms. Naw He Mui Whigwittacha were charged with slashing, clearing and burning forest and use of land in a national forest reserve under the *National Reserved Forest Act* and the *Forest Act* in 2008.⁹

42. Although in 2010, the Court of First Instance acquitted the villagers of all charges, the Court of Appeal ruled differently in two separate decisions in 2012. The Court of Appeal found Ms. Naw He Mui Whigwittacha not guilty because she did not intend to trespass as she did not know the area was a National Forest. She had relied upon a Cabinet Resolution of June 30, 1998¹⁰. Mr. Dipaepho was found guilty even though he also did not know that the area was a protected forest and had also relied upon the Cabinet Resolution. The Court of Appeal found that the Cabinet Resolution is not law and ignorance of the law was not an excuse for Mr. Dipaepho.

43. Both defendants were required to relocate from the protected area as the Cabinet Resolution was not the law. Ms. Naw He Mui Whigwittacha had to relocate from 6 rai of protected land and Mr. Dipaepho must relocate from 7 rai. The Human Rights Lawyers Association (HRLA) will be representing both defendants in appeals to the Supreme Court.

44. Reducing the amount of land available for shifting cultivation through the creation of protected areas and forests has meant that there is less land available for shifting cultivation which means that some communities cannot practice shifting cultivation without risking

⁷ Northern Development Foundation and Huay Hin Lad Community (2010). *Climate Change, Trees and Livelihood: A Case Study on the Carbon Footprint of a Karen Community in Northern Thailand*. Retrieved July 17, 2012, from http://www.ccmn.aippnet.org/index.php?option=com_content&view=article&id=350&Itemid=159.

⁸ *Ibid.*

⁹ Note: In 2008, at the lower court level both villagers were sentenced to jail time. However, in an appeal it was decided that the lower court level trial would be redone as the defendants did not have access to lawyers or interpreters.

¹⁰ This Cabinet Resolution stated that communities that had settled in forests prior their becoming protected areas could continue stay in the areas.

arrest.¹¹ Alternatively, fallow periods used in shifting cultivation are reduced drastically which also decreases agricultural yields. This has also meant that many families are no longer self-sufficient in food production and they face increased poverty.¹² In addition, indigenous communities which continue to practice shifting cultivation in protected areas live in fear because they are unsure whether they will be arrested or relocated.¹³

Recommendations

45. The use of the climate change damage model should be eliminated and charges dropped against those currently charged under the model. A different strategy should be used to address climate change and indigenous communities should be involved in the creation of such a strategy. Those who have had to pay damages under this model unjustly should be compensated.

46. The government of Thailand should recognise the “hill tribes” of the North and the “chao le” of the South and other “tribal peoples” in the Northeast, East and West as indigenous.¹⁴

47. National forestry and land laws should legally recognise the collective rights of indigenous peoples over their lands, territories and resources as per the *United Nations Declaration on the Rights of Indigenous Peoples*. The National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act and other forest and natural resource management laws should be reviewed and amended accordingly. Indigenous peoples who have been displaced or relocated according to these laws should be given redress: either restitution, or where not possible “just, fair and equitable compensation”.¹⁵

Case: Forcible Eviction of Karen People from Kaeng Krachan National Park by the State of Thailand

48. For more than a decade, the Government of Thailand, and specifically the national park and forestry authority, have been attempting the forcible eviction of Karen indigenous people from the Kaeng Krachan National Park (“KKNP”). These evictions have resulted in numerous violent and discriminatory human rights abuses.

49. The forcible evictions may even be linked to the murder of Karen human rights defender Tatkamol Ob-om who was shot on September 10th 2011 after helping one of the victims petition the Thai National Human Rights Commission. These evictions continue despite a clear legal framework which protects the rights of the Karen people to remain on their ancestral lands and continue their traditional cultivation system.

50. Much of the conflict between the Karen and the Thai State began in 1961, when a part of the Karen people’s ancestral lands were declared to be part of KKNP by way of the National Park Act. Since this time, the State has relied on many arguments to legitimise the forcible eviction of the Karen people, from claiming that the cultivation techniques they use are

¹¹ Asia Indigenous People’s Pact and International Working Group for Indigenous Affairs (2010). *Drivers of Deforestation: Facts to be considered regarding the impact of shifting cultivation in Asia*. Retrieved July 17, 2012, from <http://unfccc.int/resource/docs/2012/smsn/ngo/235.pdf>.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

damaging to the environment to arguing that the evictions are necessary for national security, to claiming that the evictees are involved in the drug trade or arguing that the Karen are not even of Thai decent. These arguments do not withstand scrutiny.

51. The most recent involuntary eviction occurred in July 2011. During this attack national park guards burned the homes and food supplies of the Karen, stole valuables, killed livestock and forced villagers to flee. The Head of the KKNP, Mr. Chaiwat Limlikhitaksorn, claimed that these latest evictions were undertaken against undocumented migrants from Myanmar, rather than Karen indigenous people. It was further argued that even if the evictees had been indigenous people, the evictions would still have been lawful because the Forestry Law prohibits anyone from occupying the park.

52. Evidence from this incident indicates that the evictees were indeed Thai by birth and decent. Further, sections 66 and 67 of the 2007 Thai Constitution provide for the right of Thai people to remain in protected areas, such as KKNP, as long as it can be proven that their people occupied the land before its establishment and demarcation. Moreover, the Cabinet Resolution, adopted on August 3rd 2010, specifically affirmed the rights of the Karen people to remain on their land and to continue their cyclical farming pattern.

53. Article 10 of the U.N. Declaration on the Rights of Indigenous Peoples emphatically denounces the use of forcible eviction and requires that the voluntary, informed consent of indigenous peoples be given before any relocation occurs. Thailand has endorsed this Declaration. A request for the consideration of this situation was submitted by several indigenous peoples and human rights groups, CSOs and NGOs in February 2012. The situation of the Karen people was then considered under the early warning urgent action (EW/UA) procedure at the Committee's 80th session. After such consideration, the Committee then expressed its concern, in a letter dated March 9th 2012, to the government of Thailand, requesting to know the steps that had been taken to improve the situation of the Karen people.

54. Today there are still internally displaced members of the Karen tribe. After being forcibly evicted from their homes and relocated, they now live in unfamiliar surroundings and often in substandard living conditions. The Committee should again turn its attention to this matter.

Art 5 (b) – Right to security and protection by the State Arrest, Detention and Deportation of Migrants in Thailand

55. Many migrants that come to Thailand from neighbouring countries such as Cambodia, Lao and Myanmar do so irregularly. In most cases, this is because migrants coming from these countries are lacking the proper documentation needed to enter the country legally. Undocumented migrants are at risk for arrest, detention and deportation from Thailand at any time and may even be punished in their home countries for leaving and returning illegally. In

2008, estimates of the amount of unregistered migrants in Thailand ranged from between 800,000 and 1.2 million.¹⁶ The International Convention on the Protection of the Rights of Migrant Workers and their Families provides for protection against many of the human rights abuses that are consistently occurring against migrants in Thailand but Thailand has not ratified this Convention.

Recommendation:

56. Thailand should ratify the International Convention on the Protection of the Rights of Migrant Workers and their Families.

Conditions of Arrest:

57. As has previously been stated, undocumented migrants may be arrested at any time, day or night, while in Thailand. Instances have been recorded of migrants being arrested while sleeping, working, waiting for the bus, or even at their place of worship.¹⁷ Even migrants who have proper documentation may be subject to arrest for failing to carry their ID card on them, only presenting a receipt of registration (while waiting for the ID card in the mail), or while changing employers. Some registered migrants have even been arrested because their ID cards were confiscated by their employers, even though this practice has been illegal since 2005.¹⁸

58. The threat of arrest for an ID card violation has been used to deter migrants from making complaints about discriminatory, unsanitary and unsafe working conditions. The constant threat of arrest has resulted in fear, panic and anxiety in migrant groups and many migrants have lost all faith in the Thai legal system. These fears and anxieties are further exacerbated when one considers the documented instances of female arrestees who experienced full body cavity searches by male soldiers¹⁹

Conditions of Detention:

59. As with arrest, there is no set procedure for the detention process. Some detainees report spending time in detention facilities at security check points, whereas most others will typically spend some time in a local police station before being transported to an immigration facility and then a detention facility at the border²⁰ Another experience common to most detainees include having to pay a fine, ranging from THB 600 to THB 5,000, before they are released²¹

¹⁶ *Migration in the Greater Mekong Sub Region – In-depth Study: Arrest, Detention and Deportation*. Mekong Migration Network & Asian Migrant Center (June 2008) Pp 127.

¹⁷ *Ibid*, 129.

¹⁸ *Ibid*, 130.

¹⁹ *Ibid*, 135.

²⁰ *Ibid*, 136.

²¹ *Ibid*, 137.

60. Conditions in the detention facilities themselves seem to vary although they all tend to be crowded. In addition, some detainees have complained about abuse whilst being detained. In one example, five female detainees being held at Mae Sot IDC were reportedly removed from their cells by male officers at 8pm and not returned until 5am. When questioned by their cellmates, all the women would say is that they “had a terrible experience and did not want to talk about it.”²²

Conditions of Deportation:

61. As mentioned above, migrants who are being deported may be liable for further punishment in their home country. Punishments for leaving and re-entering the country vary between Cambodia, Lao and Myanmar but all deportees experience some level of stigmatisation in their country of origin.

62. During the deportation itself, the most common problem seems to be that deportees are not allowed a get off the bus to go to the toilet. This can be very uncomfortable for deportees as the trip to the border can take six or seven hours²³. Another serious issue that needs to be addressed during the deportation process is the condition in which deportees are transported. 63. Trucks and buses that are overcrowded, coupled with speeding deportation vehicles has led to tragic accidents, and in some cases, resulted in the deaths of migrants²⁴. Additional problems faced by migrant deportees include the loss of their belongings either through confiscation or abandonment, being deported while still being owed unpaid wages and ending up in a situation of indebtedness because of all the fines and charges levied against them during the process.²⁵

64. What is perhaps most disturbing about this overview of arrest, detention and deportation processes of migrants from Thailand is the lack of compassion that is evident in the manner in which these procedures are carried out. The lack of consistency on the part of officials instills constant fear and anxiety in migrants which no human being should have to live with. The Thai government has begun to institute new laws designed to address the many challenges faced by migrant workers in Thailand but many of these initiatives have proven to be slow moving, leaving most migrants in the same positions they were in before. Instead, what is needed is a set of uniform procedures that apply to all migrants and guarantee just and humane treatment every step of the way.

Culture of Impunity

65. Since 1997 and 2007, the establishment of independent investigation has been created, the cases of the allegation that government officials may be involved in serious human rights violations, National Anti Corruption Commission (NACC) and/or Department of Investigation

²² Ibid, 140.

²³ Ibid, 143.

²⁴ Ibid, 144.

²⁵ Ibid, 146.

(DSI) will be the responsible agencies, normally polices and state prosecutors stopped their investigation and leave the justice pending, especially cases of extrajudicial killings and tortures allegation such as Takbai, Krue Se, SabaYoi or missing persons of Mr. Mayuni Lohniya, Mr. Mayateh Maranor case, death in custody of Mr. Assari Sama-ae, Mr. Yakariya Pao-mani, Imam Yapha Kaseng, Mr. Sulaiman Naesa in order to bring the suspects to justice fairly. None of officials have been brought to justice since 2004 in spite of the cry for justice over well-known cases including the missing case of Somchai Neelaphaijit. The human rights violations against Malayu Muslims in the southern conflict have reaffirmed the culture of impunity. None of perpetrators have been brought to be punished in the Thai criminal justice process from 2004 up until today

Kruesae Incident in 2004

66. On 28th April 2004, 32 people were shot and killed at the Kruesae mosque, Pattani Province by the security forces during the enforcement of Martial law. The post mortem inquest started in November 2004 and finished on 14th September 2006. On 28th November 2006 the Pattani Provincial Court read out the inquest that cause and circumstance of death was fighting with the soldiers and police officers with gun and knives. The performance of soldiers and police officer was under the command of *General Pallop Pinmanee, Colonel Manas Kongpan, Lieutenant Colonel Naphat Nakchaiya*. All the persons died from injuries to important organs caused by the bullets and bomb explosives. On 10th February 2009 the public prosecutor decided not to file a criminal lawsuit against the commander.

Takbai Incident

67. On 25th October 2004, more than 1300 individuals who were protesting peacefully in front of Takbai Police station in Narathivath Province were taken into custody. 78 persons died in custody. The post mortem inquest with respect to the death of 78 persons started in 2007 and was completed in 2009. The post mortem inquest did not pin point responsibility on anybody with regard to the death of the 78 persons.

Case of Imam Yapa Kaseng

68. Imam Yapa Kaseng was taken into the custody of the Special Taskforce 39 of Ruesor District, Narathiwat Province together with his two sons and another 18 year old villager named Mr. Rayu on 19 Mar 2008. Imam Yapa died early in the morning on March 21. Immediately after his death, the Army came up with all kinds of excuses and possibilities. The Court dismissed the motion of the lawyers since the officials were authorised to detain the suspects under the Martial law and Emergency Decree. The post mortem inquest which concluded in 2008 did not give any ruling as to who was responsible for the death of Imam Yapha. However, the Army to agreed to pay 5.2 million THB in compensation due to the civil case settlement. The criminal case against army officers is still pending with no progress.

Drug Suppression policy and war on drugs

69. The summary executions and disappearance of persons in Thailand carried out by

government officials since 2003 under the drug suppression policy include the cases of execution of six Mien people in Huay Chompu Tambon (sub-district), Muang District, Chiang Rai Province on 22 February 2003.^{vi} In addition,²⁰ Lahu people in Mae Ai and Fang Districts of Chiang Mai Province who were accused by government officials of being drug dealers, suffered severe beatings and electrical shocks and were incarcerated in pits in the ground, and were either executed or disappeared between 2002 and 2004.^{vii}

70. The passage of the new National Security Act 2007 that has led to increased human rights abuses against indigenous and other minority people that are mainly perpetrated by the government officials and security forces. Throughout 2008, while claiming to help combat the “drug epidemic” in the country, this law was used for controlling and suppressing indigenous peoples and other forest dependent communities from (supposedly) “encroaching” on the forests, for cross-border labour migration and for addressing the “problem of terrorism” in the three southern provinces i.e. Narathiwat, Yala and Pattani. Aside from the three southern provinces this law is also frequently employed by government officials in addressing the “problem of so-called terrorism” in the border areas of Chiang Rai, Chiang Mai, Mae Hong Son, Tak, Kanchaburi and Ratburi Provinces.^{viii}

Recommendation:

71. With regard to the matter of summary executions related to drug suppression, the Thai government has established the “Independent Commission to Investigate, Study and Analyse Thai Drug Suppression Policy and Practice and the Impacts on People’s Life, Reputation and Property,” which produced a report. However, the government has not yet taken any action on the findings presented in the report and has not provided redress and justice to the victims. It is recommended that the government provide redress and justice to the victims and take action to address the findings within the report.

Art 5 (c) – Political rights, elections, running for office

72. Sections 68 and 69 of the Thai Constitution exclude a number of Thai national from running for national election and voting at the national level. This provision shall be amended as stated by the Thai government in its CERD state report. The Local Administration Act is also prohibitory and exclusionary on political rights, elections and running for office. Article 44 of the Election Act on the member of local administration in the year 2002 outlines who is qualified to be a candidate of the provincial level, district level, Bangkok special administration and Pattaya special administration. Article 44 says that persons eligible to run in the election need to be of Thai nationality by birth. This requirement excludes a number of indigenous people and members of ethnic groups who are eligible to be Thai citizens by the Nationality Law under Article 7 (2). This article gives the power to the Ministry of the Interior to grant Thai nationality. Many indigenous people are born in Thailand but fail to have their births registered. They are Thai nationals but without the proper paperwork and they are excluded from running in elections as per Article 44. Without the ability to participate in democratic elections, ethnic and minority groups are unable to have a say in budget and land allocations, development plans and other important matters that directly affect their communities.

73. Additionally, Article 33 of the same Act states that eligible voters shall also be of Thai nationality but it is stated that those who have obtained their nationality through a

nationalisation process must wait a period of five years before they are able to vote in elections.

Art 5 (d) – Other rights – freedom of movement, right to leave, nationality & right to marriage

74. Section 33 of the 2007 Thai Constitution provides that Thai nationals have the right to freedom of movement and section 34 provides for the right to choose a place of residence within the Kingdom. Subsection (2) states that this freedom is limited by the other laws of the country for the protection of national security. For this reason, indigenous people and ethnic minorities including migrant workers (with and without work permits) are not allowed to move about freely and can be arrested and deported at any time. Those in the process of nationalisation can experience significant delays and during this time also have their right to freedom of movement restricted.

75. For example, in the Northern border provinces in order to get out of the area to study or to work individuals may need to pay 300-10,000 baht to local authorities to get through the checkpoints. The International Work Group for Indigenous Affairs published a book entitled “The Indigenous World 2007” which estimates that there are nearly half a million stateless indigenous people in Thailand. Of these people 60,000 are stateless children, 120,000 have been granted permanent residency status and a further 300,000 are still awaiting a decision from the Ministry of Interior.

Recommendation:

76. The restriction on freedom of movement should be lifted, at least for those people who have been granted permanent residency status and those who are awaiting a decision from the Ministry of Interior. The restriction on these people’s rights, coupled with the evils of corruption that this restriction has created, outweighs any remote risk to national security, peace or safety that may be at stake.

Act 5 (d) (iii) nationality

77. Lack of citizenship has been a long standing cause of human rights violations committed against indigenous people in Thailand. Without citizenship, there is no guarantee of fundamental rights. However, there has been an attempt to introduce a government policy to grant citizenship to indigenous population and ethnic groups. In 2005, the Cabinet adopted a Resolution dated January 18th entitled the Strategy to Address the Problems of Status and Rights of People, which tried to speed up the process of determining citizenship matters. This was coupled with the fourth amendment of the Nationality Act 2008 and the 2nd Amendment of the Civic Registration Act 2008.

78. However, in practice the number of people who are still unable to obtain Thai nationality has changed very little between 2005 and 2011. The Registration Office, Administration Division, of the Ministry of Interior in April 2011 reported that the number of people who has still not been granted nationality was 542,505. This represents a minor change from 557,606 people who were waiting nationality status in 2005 when these laws were passed. Moreover, on the 7th of December 2010, the Cabinet withdrew 17 previous Cabinet resolutions relating to 13

indigenous and ethnic groups. These resolutions had granted members of these 13 groups the ability to temporarily stay in Thailand. The repeal of these resolutions was supposed to be in support of the new laws; however, with the very limited success of the new laws, this has left many indigenous people stateless.

79. We congratulate that for the years the dispute over a reinstatement of Thai nationality by birth by the displaced Thai for nationality is reinstatement, the displaced Thai has been legalized. The Thai government approved the Nationality Act (5th) Amendment to include up to 18,000 displaced Thais whose nationality have been changed due to the change of Thai territories. However, it is argued that the Ministerial Regulation issued under the nationality act will excluded other people who have been mistaken in civil registration as aliens without Thai race or who have been registered as having "Burmese" nationality. The inclusiveness of the Ministerial Regulation to be issued and people's participation in solving their statelessness issue is still debatable.

Recommendation:

79. The Thai government should improve the citizenship application process. Improving the process will require an increase in the budget and staffing as well as cooperation with representatives from Civil Society Organisations and NGOs and political will to end corruption by concern agencies.

Act 5 (d) (iv) right to marriage

80. By Thai law, if you have no status, you belong to indigenous or ethnic groups or are a migrant worker, Since such individuals have no Thai National ID card, they must be able to provide proof of marital status from their origin country before they can get married (Regulation by the Ministry of Interior 0310.2/WOR1170 dated 31st May 2000). This is problematic because few members of these groups are able to produce such documentation. This has led to many fathers having no legal rights over their children, and likewise, to children having no legal ties to their biological fathers.

Recommendation:

81. The government should withdraw order 0310.2/WOR1170 and promote the formation of the family unit.

Art 5 (d) (v) – Right to Own Property & 5 (d) (vi) Right to Inherit

Indigenous Religious/Cultural Rights and the Use of Natural Resources

82. Indigenous people and ethnic groups in Thailand mostly practice agriculture. They have a distinct way a life that is linked to nature, the forest and wildlife. However, state policies have resulted in enacted laws related to the regulation of the forests: the Code of Laws on Land 2004, and with regard to agriculture in the Land Reform Act or Agriculture 1975, the Forest Act 1941, The Wildlife Sanctuary Act 1992, and the Community Forest Management Act 2007, which have severely affected the livelihood of many indigenous Thai people and ethnic groups. Such individuals are often subjected to arrest and forced relocation without proper procedures

and due process. In addition, those who have been evicted are not entitled to any form of compensation. This reality is contrary to General Comment 7 made by the Committee on Economic Social and Cultural Rights which has stated that forced eviction is contrary to the International Covenant on Economic Social and Cultural Rights (ICESCR).

83. The current law allows the government to declare that more and more forest is protected. Currently, the protected areas cover the locations where more than 10 million people live. Between 2004 and 2006 the Thai government implemented a New National Policy on Forestry and Natural Resource Management which was aimed at suppressing drug trafficking, environmental conservation and ensuring national security.

84. Importantly, these forestry laws and national policy on forestry and natural resource have had severe impacts on indigenous peoples' rights to residence and farming. Under these laws and resolutions millions of hectares of land have been declared as reserved or as conservation forests or protected areas. Today, 28.78% of Thailand is categorised as protected areas.

85. As a result, thousands of farmers previously living in the forest or relying on the forest for their livelihoods have been arrested and imprisoned and their lands seized. Cases have been filed against them for encroachment on government lands.

86. The Community Forest Act was passed on 21st December 2007 despite much opposition from civil society organisations and advocates. The final version of this law deviates substantially from the original proposal of civil society organisations as many provisions defacto abolish the rights of numerous forest communities. The contents of Sections 25 and 34 are considered to be not much different from the conventional forest laws that are aimed at curbing peoples' rights to forests. According to indigenous rights advocates, the law will make it impossible for most indigenous communities to participate fully in community forestry and resource management and contradicts the provisions for community resource management rights in the new Constitution.^{ix}

Recommendations:

87. Due process rights of indigenous people and ethnic groups need to be ensured and protected when they are arrested for encroaching in their own land that the state declared under several forestry laws. A new set of studies and assessments need to be conducted with regard to the state of the forest in Thailand. The declaration of forestry and reserved land were created without sufficient information and background on the communities that would be affected by them. An updated assessment and new set of laws will need to be completed with the input of the affected societies and representatives from CSOs and NGOs.

Situation of Indigenous People along coastline:

88. After the 2006 Tsunami, problems with land rights became prominent among sea gypsies, that is, the Morken, Urak Lawoi and Morglan. Their traditional land rights and common property cannot warrant against newcomers who have access to official land titles. The Urak Lawoi community in Rawai Beach, Phuket, lost their rights over inherited land and traditional livelihood. In 2012, private property claimants won a lawsuit for land ownership in court. Two families were ordered to leave their land and many more will face the same difficulties. The

policy to allocate indigenous cultural land to indigenous people proposed by the government according to the cabinet on 2 June 2011 has not been imposed to address this problem.

Art 5 (e) (iv) – Right to public health services, & social services

89. Thailand has expanded access to health care to public health service to all Thai people in 2002. This law is called the National Health Security Act but this scheme only applies to Thai nationals. On the 23rd of March 2010 the Cabinet reinstated a resolution which purported to grant back to indigenous peoples the right to health care in their local hospitals. This effectively granted the right to health care back to 475,409 indigenous people. However, according to documentation from the Ministry of Health released in 2012, there are still 109,591 people who are not registered and a further 55,716 who were registered but who did not turn up. This scheme does not cover treatments required for heart disease, antiretroviral medications for people living with HIV and AIDS, dialysis treatments for people with kidney disease, or cancer treatments.

Recommendation:

90. The Thai government should amend the health policy for those who have problems with their legal status and implement a system for people who have no documentation or status at all, especially in their own locality. The assessment of these health policies should be done with the assistance of the affected people at the district and municipal levels.

Art 5 (e) (v) – Right to education and training

91. Article 5 (e) (v) of the CERD Convention stipulates that States Parties must provide education and training “without distinction as to race, colour, or national or ethnic origin”²⁶ Every child’s right to free basic education is likewise enshrined in Article 28 of the Convention on the Rights of the Child. Decent education early in life is the key to proper socialisation, a basic understanding of everyday life, knowledge of cultural and historical significance and it has been shown to cultivate self-esteem and confidence in children. Unfortunately, and despite contrary claims made in the government periodic report, the right to basic education and training in Thailand has not been ensured for all children equally.

92. In a documentary entitled “Eliminating Racial Discrimination”, created by the Highland People’s Taskforce (HPT) Thailand, members of the highland peoples of the North assert that the reality remains that many children without proper documentation or citizenship status are routinely denied access to education.²⁷ The issue of indigenous peoples, in both the North and

²⁶ United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e) (v).

²⁷ The Highland People’s Taskforce (HPT) Thailand, “Eliminating Racial Discrimination”.

the South, lacking access to basic education was previously highlighted in the concluding observations of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) regarding Thailand's last periodic review into that Convention in 2006.²⁸

93. Similarly, access to education for stateless people and migrant workers was also highlighted in the concluding observations of the Human Rights Committee regarding the last periodic review of Thailand under the International Covenant on Civil and Political Rights (ICCPR) in 2005.²⁹ In February 2012, the concluding observations of the Committee on the Rights of the Child during the periodic review of Thailand under that Convention also expressed deep concern for the continuing discrimination against ethnic and minority children and the lack of access to quality education.³⁰

94. The 1st to 3rd periodic reports, submitted by the government, at page #35 states that the Ministry of Education Regulations on Proof of Admission of Students into Educational Institutions B.E. 2548 (2005) and the Cabinet Resolution dated July 5th 2005 have together been implemented wherein “[a]ll educational institutions are duty bound to admit children of school age to study in their institutions, with or without proofs, by using birth certificates or letters of certification of birth, or other proofs issued by the government authorities, or documents accepted by the Ministry of Education. In the case of absence of the aforementioned proof, parents, care-takers, or non-governmental organizations can present personal history records of the children, or the educational institution concerned can conduct an interview to note down personal history of the child concerned for record.”³¹ This claim, however, is directly contradicted by the experiences of both indigenous peoples and ethnic minorities who need to rely on these rules to obtain access to a basic level of education for their children.

95. The existence of this rule is not enough as what is needed is a monitoring body to oversee the implementation of this rule to ensure that it obtains the force of law and that records are kept appropriately. With a monitoring body handling educational administration, and basing their decisions on a clearly defined responsibility, the problem of several local educational institutions making individual decisions is avoided and those facing unjust decisions would have a recourse mechanism to which they could appeal.

Art 5 (e) (v) – Right to education and training

96. Indigenous children are among the most disadvantaged in Thai society. A major factor contributing to the disadvantaged position is the lack of quality education. Quality education

²⁸ United Nations, CEDAW 2006 Periodic Review Thailand. Para. 33-36.

²⁹ United Nations, ICCPR 2005 Periodic Review Thailand. Para. 21-23.

³⁰ United Nations, CRC 2012 Periodic Review Thailand. Para. 33-34.

³¹ United Nations, Convention on the Elimination of All Forms of Racial Discrimination. First to Third Periodic Report, Government of Thailand. Page, 35. At para 116.

requires the inclusion of children in quality teaching and learning processes with teachers based on child-centred approach, curriculum, learning materials and learning outcomes. The curriculum has to reflect the cultural heritage and history of the community. It has to be well resourced, culturally sensitive, and respectful of heritage and cultural security and integrity. The education provided should promote social equity and equality at all levels, encompassing human rights, community and individual development, and should be designed in a way that is implementable (A/HRC/12/33).

97. On the issue of improving Access to Quality and Relevant Education for Indigenous Children in Thailand, Pestalozzi Children's Foundation (PCF) and partner organisations in Thailand (Inter-Mountain Peoples' Education and Cultures in Thailand Association, Foundation for Applied Linguistics, the Life Skills Development Foundation and the Indigenous Knowledge and Peoples Foundation) state that Thailand has been losing its cultural diversity during the nation-building process by creating a "unified Thai identity", as part of its response to Western colonial power.

98. The aim of a unified identity has prevented Thailand from seeing and treating its diverse cultural groups as a resource and instead the country has treated cultural diversity as a threat. This was exemplified in then-Prime Minister General Plaek Piboonsongkram's announcement in 1940 that the teaching of languages other than Thai was forbidden in Thai schools.³²

99. Today, however, it is time for positive change, revitalizing and celebrating our rich cultural diversity and resources. There are now examples of some policies that promote the values of cultural diversity, including the Cabinet Resolutions on 2 June 2010 and 3 August 2010 regarding the policies on the restoration of the traditional practices and livelihoods of the Chao-lae and Karen People respectively.

100. Additionally, the former Prime Minister Aphisit Vejajiva approved the National Language Policy in 2010 and the current Prime Minister Yingluck Shinawatre has approved the Royal Institute's request to set up of the Executive Committee and the National Language Policy Strategy and to set up the National Language Strategy Operational Committee on the 23rd of March 2012. To build on the opportunities presented in the National Language Policy effectively however, it is essential to improve the effective participation of representatives from Indigenous Peoples and other related Civil Society Organizations in the formulation of educational policies directly concerning them.

101. Starting with the principle of non-discrimination, and the goal of improving equal access to quality and relevant education for Indigenous and non-Thai speaking children in Thailand, the following educational arrangements for Indigenous children are recommended.

Recommendation:

102. Laws and regulations should be rapidly issued to implement the Cabinet Resolutions on policies regarding the restoration of the traditional practices and livelihoods of Karen people (August 3, 2010) and Chao-le People (June 2, 2010) including sufficient budget allocation to enable implementation. Specific monitoring bodies and mechanisms should be created to

³² National Declaration No.9 B.E 2483 (1940), June 24th concerning the Thai language and good citizens' duties

oversee the policy implementation in support of education managed by the concerned indigenous ethnic communities as stated in the resolution. In order that this can be good practice example for promoting cultural diversity, these policies must be implemented with the Karen and Chao-le peoples and positive outcomes should be expanded to other indigenous peoples and ethnic minorities in Thailand.

103. The recommendation of the Committee on the Rights of the Child to the Thai government that the Government must ensure the implementation of the National Language Policy of 2010 to ensure effective mother tongue based bilingual education from the early years especially for non-Thai speaking children in accordance with article 30 of the Convention on the Rights of the Child should be acted upon

104. There should be a department responsible for the mother tongue based bi/multilingual education approach, to ensure that the budget is allocated annually for the implementation.

105. The Ministry of Education (MoE) should adopt an affirmative recruitment policy for local teachers who also speak the language of the communities fluently. Additionally, a scholarship programme for the development of teachers/teaching assistants who are members of the non-Thai speaking communities to develop qualified teachers should be set up.

106. A clear national language policy with a clear budgetary allocation within the MoE/OBEC for enabling the implementation of the policy and the Mother Tongue Based Multilingual Education (MTBMLE) should be created.

Note: Bilingual education for indigenous children means mother tongue based Bi/Multilingual education which is an education system that utilizes mother tongue as a language of instruction in early years and National language as their second language, and another third or fourth language such as English or Chinese.

107. Education is an important key to development, poverty eradication, combating discrimination and peace building. Human rights education is an integral aspect for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. Learning about human rights is the first step towards respecting, promoting and defending the rights of all individuals and peoples (A/HRC/12/33 Advice No.22). In light of this, to build peace, celebrate diversity and reduce racial discrimination, the following to be included in the national curricula:

108. Human Rights Education, including all human rights treaties that the government has ratified as well as the UN Declaration on the Rights of Indigenous Peoples which the government supported in its adoption in 2007.

109. Intercultural education to promote peaceful coexistence, as well as an intergenerational cultural transmission of knowledge of all existing indigenous/ethnic groups in Thailand.

Rights to Education in Malayu Muslim community

110. The Malayu language is a part of the culture, everyday life and communication in the Southern border provinces of Thailand. The government prohibited the teaching of the Malayu language at all schools in Thailand in the Nationalistic Announcement Number 9, made in

1940. It stated that the Thai language was the national language and the teaching of all other languages would be prohibited. Although this Act was abolished, the practice in Thai schools remains the same. This is regarded as a violation of this Convention.

111. Currently, there is no law banning the teaching of Malayu language in Thai schools but it is not a part of the curriculum and not taught in schools. Recently, schools in Southern Thailand states have been promoting the Malayu language using the Thai alphabet instead of promoting the use of local script. This initiative is against the wishes of the people in this locality who identify themselves as Malayu ethnics. They wish to speak and write the Malayu language and to use their own script. Jawi script has been used in teaching the Muslim religion in the past and it is part of everyday life, including their religious practice.

112. Teaching and learning the Malayu language through the Thai alphabet means Malayu ethnics cannot read and write in the Jawi script. Local Malayu Muslims in Thailand are becoming separated from the Malayu world in Southeast Asia. This is one reason that explains why Malayu Muslims are not willing to send their children to state schools.

113. Moreover, the Thai government has not given enough opportunity for Malayu language to be used in State media, including on radio frequency and in television and newspapers. The Nationalistic Announcement Number 9 prohibited the Malayu written language to be used in public advertisements and on government street signs, including signs indicating street names and village names. This practice continues today. In the past, each of the Malayu names on the street and village signs needed to be translated into the Thai language. Sometimes, the Thai translation used did not maintain the meaning of the Malayu word. The signs could not use the Yuwi script and this was interpreted to mean that Malayu language was not acceptable in the Thai state. The script has been seen as a separatist ideology. Today, if there is a motion to ask for the translation of the road or district into the Malayu language, the Ministry of Transportation does not allow it. The regulation only allows for Thai language to appear on the signs.

Recommendations:

114. The government should promote and development the use, teaching and learning of the Malayu language in Thailand immediately. A central office responsible for the development and promotion of the Malayu language studies should be created with the participation of local intellectuals from the Malayu Muslim community. The government should allocate a sufficient budget and personnel. This centre will also be a benefit to the Asian community in the future.

Situation of human rights of migrant workers³³

Migrant management and legal status policy³⁴

115. It is estimated that there are more than three million migrant workers in Thailand, the biggest group are from Myanmar, Cambodia and Laos People's Democratic Republic. The Thai Government (TG) imposed different policies and entitlement of these migrant workers into four different groups.
116. **The undocumented workers** were exploited on the basis of their illegal immigration and employment status. It is estimated that there are at least two million of them underground, mostly from Myanmar. These workers receive no social welfare but can retain some labour right protection if they can access legal counseling, but many fear retribution and being deported. They are the most vulnerable group in term of access to healthcare, labour protection and general social services. Many are exploited in worst form of employment and labour trafficking. Despite the TG encouraging undocumented workers to report and register, many cannot do so because the registration requires consent from their employers. Undocumented migrant workers will be deported if arrested but their employers are only subject to some fines such that there is a lack of willingness to register migrant workers due to complexity of the process, costs and corruption prevent that the policy from being fully implemented.
117. **Registered irregular migrant workers** are those who were former undocumented workers, who register and are allowed to legally work and reside on annual basis, by virtue of cabinet resolutions. The registration include a paid scheme for health insurance but not for workmen's compensation since the access to the workmen compensation fund requires a passport which they do not have. Although registered workers are given legal status with identification document and work permit issued by Ministry of Interior and Ministry of Labour, they are not treated with equal rights entitlement.
118. The registration requires that migrants must be registered with an owner and they cannot travel out of the area of employment unless permits are issued. They cannot access to driving licenses and work accident compensation fund. The Thai government tried to persuade legalised temporary migrant workers to either enter nationality verification or return to their country to enter Thailand as workers under the MOUs between Thailand and their respective country.
119. **Regular migrant workers** are those who either 1) passed the national verification process (former registered irregular migrant workers) or the 2) newly imported migrant workers under the MOUs. The Ministry of Labour's policy convinced workers that they

³³ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

³⁴ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

will enjoy the rights on the same par as Thai workers. However, the cost for national verification and/or the MOUs import process through employment agencies are high (\$ 200-400/ person). The process is a financial burden to migrant workers who will have their wages deducted by employers who advance the cost on the recruitment process.

120. Regular migrant workers in theory enjoy the right to travel, own properties and all labour related welfare for which they are required to pay contribution according to the law. Some restriction imposed on migrant workers include that they are not allowed to change employers freely as Thai workers and they cannot form unions. It was also reported that some area, such as Mae Sot district in Tak province, legalized workers still require additional clearance from their employers to travel out of the district.³⁵

121. Migrant Workers in Thailand, as of May 2012³⁶

Classification	Number
1. Nationality verified migrant workers	653,174
2. Imported migrant workers	100,507
3. Generic migrant workers	76,019
Total Regular migrant workers	829,700
1. Registered irregular migrant workers (Cabinet resolution)	886,507
2. Ethnic groups	25,391
Total Irregular migrant workers	911,898

Labour Rights³⁷

122. By Thai labour protection law, migrant workers are protected and entitled to minimum wages and fair working condition in terms of employment benefit. However, migrant workers are usually underpaid and subject to harsh and dangerous working conditions. Lack

³⁵ Personal communication with Migrant Working Group (MWG) coordinator.

³⁶Ministry of Labour

³⁷ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

of effective labour inspection mechanism also results in no enforcement of good laws.

123. Migrant workers are disempowered due to their marginalised legal and social status. There is no collective bargaining power with employers especially among irregular migrant workers due to fear of being laid off and deportation if they cannot find new employer within 7 days. The law prohibits also migrant workers to form a union with migrant workers as union leaders and as union committees. They can however, join the unions organized by Thai workers.

Workmen's compensation fund (WMCF)³⁸

124. Access to the workmen's compensation fund is limited to those workers who own passports and their employers contribute to the workmen's compensation fund. The internal regulation of Social Security Office (SSO) since 2001 results in denial of migrant's access to the workmen compensation fund as it requires work permits, a formal registration and workers must either pass nationality verification or are legal entry migrants in order to be covered by government supported workmen compensation fund scheme (WMCF). Otherwise, employers will have to be responsible for the medical costs and other compensation. This much-debated regulation has been announced "discriminatory" by ILO's committee of expert on application on the application of conventions who have urge Thai Government to review such regulation since 2009. Recently, the SSO issued the new regulation which does not address the gap of work related accident/injury compensation. The new regulation maintains the same requirement that the migrant workers must passed the national verification process before able to access WMCF and still result in discriminatory exclusion of both undocumented and registered irregular workers from WMCF.

125. Migrant workers take on dirty, dangerous and degrading jobs. Employers often neglect to give workers safety training in languages the workers can understand. Inevitably, this leads to accidents, for which many workers can rely on no adequate system of compensation. Though national and international law ostensibly protect all workers, social security regulations and the migrant private health insurance scheme preclude compensation through usual channels to over a million undocumented and irregular workers.

Restrictions to access rights and protection for irregular migrant workers³⁹

126. Irregular and unregistered migrant workers face risk of arrest and exploitations. According to Human Rights Watch, "migrant workers regularly work more hours than is

³⁸ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

³⁹ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

legally permitted by Thai labor laws, get paid sub-minimum wages, work in unsafe conditions, and face illegal deductions from their pay. In some cases, migrant workers are cheated out of all their wages by unscrupulous employers...⁴⁰ A lack of documents facilitates extortion by the police. Employers also use physical intimidation as a means of control. Fear of arrest and deportation often prevented them from seeking medical care and assistance when abused. Lack of impunity and redress perpetuate the abuse of irregular migrant workers.

127. In some provinces like Surat Thani province in the southern region, any gathering of migrants that might involve political and cultural activity is illegal and often suppressed, restricting migrants' freedom of assembly and ability to work together to improve their situation.. In these provinces and others, undocumented migrants cannot own motorbikes, restricting their freedom of movement. Violations of these restrictions and the absence of documents serve as a pretense for detention and the extortion of large sums of money by the police.⁴¹

128. Lack of social safety nets during disasters in migrant workers populated areas during the 2011 flood forced many migrants to remain in abandoned and flooded factories with minimum means to seek assistance, relief packages and social services until the later part of the disaster. Many were forced to leave or seek new employment after the flood inundated their factories. Some faced arrest, extortion and abuse on the way to return to home countries during the flood.

Employment conditions⁴²

129. Migrants are registered to work for a single employer and usually lose their registered status if they leave, giving the employer huge leverage over the migrants.⁴³ On limited conditions such as a termination of employment due to abuse, former employers death or lack of labour protection, migrant workers can change their employers within seven days. Those who cannot find new employers after seven days will be deported. Most workers did not understand the rules and often change their employers unofficially, which they are at risk of arrest and deportation. Regular migrant workers still subject to the same rule and practice.

⁴⁰HUMAN RIGHTS WATCH, FROM THE TIGER TO THE CROCODILE: ABUSE OF MIGRANT WORKERS IN THAILAND 72 (2010), AVAILABLE AT WWW.HRW.ORG/SITES/DEFAULT/FILES/REPORTS/THAILAND0210WEBWCOVER_0.PDF, P 85.

⁴¹ HUMAN RIGHTS WATCH, FROM THE TIGER TO THE CROCODILE: ABUSE OF MIGRANT WORKERS IN THAILAND 72 (2010), AVAILABLE AT WWW.HRW.ORG/SITES/DEFAULT/FILES/REPORTS/THAILAND0210WEBWCOVER_0.PDF, P 32.

⁴² Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

⁴³ Report of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 17th Sess., at 55, U.N. Doc. A/HRC/17/33/Add.1 (May 17, 2011). No. 74

130. Some migrant workers, even regular ones, still have their personal document confiscated by their employers to ensure that they will not leave the work before the end of the contract and that the costs for import them to work or the nationality verification costs, which is required by the law to be paid by the employers, were paid back by migrant workers.

131. Imported migrant workers often found that their employment conditions do not match the conditions they were informed before entering Thailand. Wages are deducted to pay for the cost of MOUs import process. Some also found that housing conditions, working hours and employment conditions are different than what was stipulated in their employment contracts

Deportation and immigration detention centers⁴⁴

132. Conditions at Immigration Detention Centers can be poor and unsanitary and detainees may be subject to physical and sexual abuse.⁴⁵ Deportees are transported in cramped buses with no food and toilet break during the transportation to the border, which usually takes up to eight hours.

Challenges from nationality verification and MOUs import⁴⁶

133. Regular migrant workers or former irregular migrant workers, with the exception of the ethnic groups, may be fully legalised through nationality verification or re-enter Thailand through MOUs import.

134. The nationality verification system is slow, extremely complex, and, since the government rarely provides interpreters, requires spoken and written Thai. As a result, migrants must rely on employers and brokers who routinely extort extra money from the migrants. However, even those who complete the registration or nationality verification process are not protected from abuse.⁴⁷

135. MOUs import, particularly for migrant from Myanmar is very costly as it must be facilitated by brokers and employment agents from both the Thai and the Burmese sides. Despite the employers pay advance costs of the import, the full costs are often deducted from

⁴⁴ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

⁴⁵ Report of the Special Rapporteur on the Human Rights of Migrants, *supra* note 12, at 56

⁴⁶ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

⁴⁷ Report of the Special Rapporteur on the Human Rights of Migrants, Human Rights Council, 17th Sess., at 55, U.N. Doc. A/HRC/17/33/Add.1 (May 17, 2011).

monthly wages of migrant workers. Regular fees for importation costs from 400-600 USD on Thai part of the process, which include application and work permit fees, health examination and visa application fees. Thai employers usually deduct up to 35 USD from their wages for a year to cover the cost. Migrant workers will have to pay for employment services on Burmese side at the cost between 250-900 USD and they must remain at the Burmese border for 2-3 months and pay for employment agents at the border to apply for Burmese passport and other related processes.

Right to health⁴⁸

135. In January 2011, Charlie Diyu, a legally registered migrant working at a construction site, sustained serious injuries when a concrete wall fell on him. When the hospital discovered he could not pay his high medical bills (his employer provided no compensation), the police arrested him, detaining him for several days, first at the unhygienic Immigration Bureau, then at the Police General Hospital where he was chained to his bed. The courts have confirmed that such treatment is unconstitutional, but offered no compensation to Charlie Diyu.⁴⁹ The situation of Charlie reflect lacks of protection of irregular migrant workers which makes highest number of migrant workers in Thailand.

137. It is unclear whether the government fully ensure that migrant children can purchase Ministry of Public Health insurance. The insurance will provide basic healthcare at reasonable cost to unemployed children but in the past the campaigns were not publicized and most parents will have to pay full costs for medical fees for their children or seek charity healthcare.

Reproductive health⁵⁰

138. The labour ministry announced in June 2012 that a new regulation will be drafted to send migrant workers during three to four months in their pregnancies back to deliver in home countries. They will be able to resume the work after giving birth. The measure is designed to address human trafficking and exploitative working status among migrant children.⁵¹ Rights workers argued that the policy will separate families put women at risks of unsafe abortion and reproductive health risks as well as discrimination among female workers. Female workers who are mandatory required to contribute to the social security fund are also entitled to delivery

⁴⁸ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

⁴⁹ Press Release, HRDF, Court of Appeals Confirms First Court Decision (March, 21 2012) (on file with authors).

⁵⁰ Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

⁵¹ Bangkok Post, "Pregnant migrants to be sent back home," 26 June 2012, accessed <<http://www.bangkokpost.com/news/local/299669/pregnant-migrants-to-be-sent-back-home>>

allowance according to the law. Human Rights Watch recently responded to this policy by submitting the complaints to National Human Rights commission of Thailand, <http://www.hrw.org/news/2012/07/17/letter-prof-amara-pongsapich-re-labor-minister-s-plan-deport-pregnant-migrant-worker>

Right to legal personality among children⁵²

139. The Burmese government expressed thier intention to issue an identification paper or Cetificate of Identification (CI) to those accompanying migrant workers. However, the CI require that the bearers will have to return to Myanmar to receive their passport. Hence it is better and more convenient for the Burmese government to issue passports to those accompanying migrant workers, including but not limited to children

Recommendation

140. Eliminate barriers for undocumented migrant workers to recive social services, assistances and protection from abuse.
141. Ensure that the migrant workers policy will be inclusive and match expectations and needs of employers and migrant workers. Costly legalisation processes such as MOUs import and nationality verification may discourage workers and employers to seek legalized employment.
142. Enforce immigration laws and sanction on brokers and employers who hire or assist in acquiring undocumented workers.
143. Eliminate discriminative employment conditions and abusive practices such as deduction of salary, prohibition to change employers and unfair contractual agreement.
144. Jointly disccus and revise MOUs import processes and reduce the costs with the Myanmar, Laotian and Cambodian governments.
145. Ensure that pregnant migrant workers will not be deported.
146. Revise the new circulation “RNg 0607/W987” dated 31 May 2012 to include protection of undocumented workers to claim compensation from the workmen’s compensation fund directly.
147. Improve detention facilities and deportation practices.
148. Ensure that all migrant workers, regardless of their immigration and employment status will be protected under the labour law and labor protection law.

⁵² Report by Human Rights and Development Foundation, Thailand contributing to CERD shadow report July 2012

149. Discuss with the Myanmar, Laotian and Cambodian governments to provide personal documentation, preferably passports, to those accompanying migrant workers to work in Thailand.

Situation of refugees and asylum seekers in Thailand

150. Thailand is not a state party to the 1951 Refugee Convention and its 1967 Protocol and does not have domestic legislation to administer asylum in the Kingdom. The Thai government should be congratulated for continuing the provision of spaces for refugees from Myanmar to seek temporary refuge for over 27 years. The current number of refugees in nine camps is approximately 160,000. Well under 100,000 refugees are registered in the camps by the Ministry of Interior of Thailand and UNHCR, while about 60,000 refugees have been waiting for screening procedure to be conducted by the Provincial Admission Board for over six years. Without proper status, the unregistered population continued to fear threat of cutting down on their food rations and accessing services available in the camps by Thai authorities.

151. In 2011, the depressing conditions in the camps brought about fear of forced repatriation to Myanmar and cutting down on funds supporting basic needs and social services in the camps by international communities and lack of material supports from Thai government agencies to fill in the gaps in assistance programmes.

152. Grave concerns should be expressed on the violation of freedom of movement, right to work, right to development and other forms of violations of the rights of refugee children after over 27 years of encampment.

153. The right to education according to the Thai Government's national policy on "Education for All" has not been implemented for refugee children in the camps. Informal education without accreditation provided by NGOs for refugee children in the camps or limited number of Thai language training or vocational trainings cannot be considered as a replacement for formal education especially in primary and secondary levels as well as higher education in Thai education system.

154. However, the vast number of de facto refugees living in the Thai-Myanmar border without the possibility of being admitted to the camps are facing with daily difficulties in sustaining themselves and their family. In addition, they are not included in the plan for repatriation and development, if and when, the situation in Myanmar becomes conducive for return.

155. The Thai Government's policy announced at the UN Human Rights Council that Thai Government will respect the principle of non-refoulement and voluntary repatriation as well as the refugees will only be repatriated in safety and with dignity is applaudable. The Thai Government's policy and effort to implement birth registration and issuing of birth certificate to all children born in Thailand including refugee children born in the camps with retroactive effect is also positive.

156. Expressing concerns on the lack of legal framework on administering asylum procedure for refugees coming from countries other than Myanmar is required. Over 2,000 refugees are currently seeking asylum in urban areas of Thailand and continue to fear the risk of being arrested and indefinite detention. Certificate of Persons of Concern issued by UNHCR has no legal validity in Thailand and thus do not offer any protection to asylum seekers and refugees when they are confronted with Thai authorities. Physical abuses, extortion and corruptions are reportedly wide-spread reality facing refugees and asylum seekers in urban areas.
157. Recently, the Thai Government, Immigration Bureau and the National Human Rights Commission of Thailand in cooperating with Thai Civil Society Organization released historically refugees and asylum seekers from Immigration Detention Center in Bangkok in June 2011, which continue with more cooperation from Civil Societies up to present. This innovative programme has been instrumental in alleviating the suffering faced by refugees and asylum seekers, many of them young children, who had been detained for many years as a result of the lack of stipulation regarding the right to seek asylum in the Immigration Act of Thailand.
158. The efforts of the National Human Rights Commission of Thailand in leading inter-governmental agencies working group to review and recommend to amend Immigration Act of Thailand in order to include provisions to allow the right to seek asylum should be commended.
159. There is a lack of clarity in the policy related to Rohingya who newly arrived in the country and those who have been living in Thailand for a long time without the prospect of returning to Myanmar given the fact that they failed the nationality verification process conducted by Myanmar authorities and the deteriorating conditions in Rakhine State of Myanmar.

Recommendations:

160. The Thai Government should actively and positively review the Immigration Act of Thailand to allow the right to seek asylum and establishing domestic legislation on refugee and asylum.
161. The Thai Government should reassess the ratification of 1951 Refugee Convention.
162. Engaging international and national civil societies and other agencies in the planning, preparation and implementing of voluntary repatriation in order to ensure that it meets international standards and take into account the human rights of refugees should be undertaken.
163. Refugees access to public services, especially formal education and health care as well as freedom of movement and right to work, should be ensured.

Article 6 Protection & Right to Remedies

164. In the conflict in the Southern part of Thailand the government has provided a compensation scheme for deaths and injuries committed by insurgents between the years 2005 to 2010 up to a maximum of 500,000 baht. The compensation scheme has been followed according to the Cabinet Resolution dated the 31 of May and 6 of September 2005. In order to obtain this compensation, the beneficiary must obtain signatures from the police, the army and a government civilian to say that the case is related to insurgency. The officers favour the Buddhist community when providing their signatures. If the beneficiary does not obtain all three signatures then the dispute is considered private, not related to the insurgency, and the beneficiary cannot get compensation.
165. Another compensation scheme available to the entire Thai population is the Compensation Act: Victims Compensation and Expenses Reimbursement in Criminal Cases, year 2001. The Committee for Policy and Administration on Compensation who administers this scheme has not properly considered the applications of the populations affected by violence in the South without prejudice.
166. In October 2011, the government introduced another compensation scheme and stated that the victims of violence committed by the state can receive compensation up to a maximum of 7.5 million baht. This scheme has set up a committee to determine who will be eligible for this compensation. The Southern Border Provincial Administration Centre of Thailand had set up a committee together with the representatives from civil society. However, the victims of state violence are almost or all Muslim Malayu. Therefore, the Buddhists felt that they were not subject to this government scheme and this compensation scheme will actually spread hatred between the Buddhist and Malayu communities even further.

Effect on Muslim Women

167. According to the Women for Peace Network in a consultation on the 3 April 2008, the husband of Ms. Asana Jehle was shot dead 20 metres away from his home in Yala province. She did not get any compensation except for the 2500 baht from the local office of social development and human security office of Yala province. In another incident in the same village, seven people were shot dead. The beneficiaries were not able to get all three required signatures and thus could not get compensation.
168. The same network has also expressed the difficulty for Muslim women to get access to justice and compensation. The women have to make their own way with their children and they have many children. Therefore, they face obstacles to travel and to follow up with the paperwork related to this government scheme for compensation. These women need special mechanisms to help them complete the paperwork and fulfill the requirements of the scheme.

The situation of internal displacement faced by the ethnic highlanders in the North of

Thailand⁵³

169. Internally displaced people or IDPs are people who have been forced to leave their homes and flee to other areas of their country because of untenable situations such as conflict, natural disasters, or human rights violations.

170. The displaced ethnic highlanders in Northern Thailand have resulted from government policies aimed at State security, economic development, and natural resources. These policies have been formulated without the participation of the affected ethnic highland groups. IDPs are found in the Northern provinces of Lampang, Chiang Mai, Nan, and Chiang Rai; and they came from a range of different ethnic groups that have been experiencing ID since at least 1975 and thousands of people have been affected. The reasons for these relocations have included the declaration of Mae Fang as a National Park Area, the need to restrict opium cultivation, and forest reservation, amongst others.

171. Life after displacement is often hard as relocation sites often lack water, basic infrastructures, and have poor soil conditions. While ethnic highland groups would normally plant upland rice to supplement their food sources, this is at times impossible to do after relocation because of soil erosion. IDPs often also face difficulties integrating with the locals in their new surroundings.

172. As a result of Internal Displacement, ethnic highlanders have to adapt to their new circumstances. Sadly, this has led to a change in their traditional ways of life, and gradually, their identities. Some IDPs have been forced to work jobs that pay very little and are exhausting such as bamboo cutting. Others have been forced to work in urban areas as labourers or sex trade workers. Each of these changes has had a negative impact on the social and cultural dimensions of the communities.

173. The responsibility for protecting the rights of IDPs largely rests with national authorities; however, the best protection is the prevention of displacement in the first place. In addition, Civil Society Organisations and humanitarian aid workers will be needed to help the ethnic highlanders of Thailand's North to cope with ID. Also important, is the need to cultivate a "self-help" attitude within these communities to help rebuild lost self-esteem.

174. Overall, the government has not paid serious attention to the solution of the above issues and problems. Nevertheless, independent organizations established under the Constitutions of 1997 and 2007, such as the National Human Rights Commission, Administrative Court, and the Constitutional Court, have played an important role in addressing the violation of the rights of indigenous peoples.

⁵³ Summary of an article entitled "Internal Displacement and the Ethnic Highlanders and in northern Thailand"

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- 6 Peoples Collage, Pattani Province
- 7 Network of Indigenous peoples and ethnic groups in Thailand
- 8 Health Network of Ethnic highland peoples
- 9 Pestalozzi Children's Foundation
- 10 Inter-Mountain Peoples' Education and Cultures in Thailand Association (IMPECT)
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ⁱ See A directory of ethnic highland communities in 20 provinces, in Thailand, B.E. 2545 (2002) provided by the Department of Social Development and Welfare.

ⁱⁱⁱ. UNHCR, Sub-Commission on Prevention of Discrimination and Protection of Minorities. WGIP 10th session. E/CN.4/Sub.2/AC.4/1992/4.

^{iv} Background document provided by the Office of National Security, workshop on finding solutions for illegal immigrants, 18 June 2009 at Rimkok Resort, Chiang Rai.

^v IWGIA: The Indigenous World 2009, page 335.

^{vi} Report of the Highland People's Taskforce (HPT).

^{vii} Data from the Lahu Association for Development of the Quality of Life.

^{viii} Ibid page 446.

^{ix} Erni, Christian. The Concept of Indigenous Peoples in Asia, page 445.