

**Alternative Report on Thailand's Implementation of the
Convention on the Elimination of All Forms of Racial Discrimination**
Submitted to
the Committee on the Elimination of Racial Discrimination
by the National Commission on Human Rights of Thailand (NHRCT)

Racial Composition of the Population

1. Thailand has a total population of about 66 million people, but there is no official statistics of the demographic data classified by racial or ethnic groups. Government agencies do not collect data by racial or ethnic groups partly because of a policy to promote the assimilation between the Thai people and other ethnic groups in the past. For this reason, figures on ethnic population in Thailand used in different materials can vary according to sources of reference. However, it can generally be said that the majority population of Thailand is of Thai ethnicity. Other major ethnic groups in the country consist of the Malayu-descended Thais, the hill tribe people, *Chao Lay* or sea gypsies and other minor ethnic groups. The Malayu-descended Thais account for about 3 percent of the population,¹ the majority of whom live in the four southernmost provinces of Thailand. The hill peoples group has a population of about 900,000 and live on the highlands in the north and western parts of the country. The *Chao Lay* or sea gypsies group (*Mokens*, *Moklens* and *Urak Lawoey*) has a population of about 10,000 people and live along the coastlines in southern Thailand.² There are other minor ethnic groups, two of which have retained their traditional way of life and are mentioned in this report, namely the *Sakai* in the south and the *Mlabri* in the north with a combined population of about 400 people.³

2. Apart from ethnic groups mentioned above, there is a significant alien population residing in the country, some of whom do not have a legal status and are at risk of having their rights violated. Major groups of aliens having problems accessing some basic rights mentioned in this report are: persons migrating from neighboring countries and having lived in the country for a long time (about 500,000 people); undocumented migrant workers from Myanmar, Laos and Cambodia (estimated at more than 1.2 million people); displaced persons fleeing fighting from Myanmar who live in temporary shelters along the Thai-Myanmar border (about 110,000 people)⁴; and stateless persons and Thai-descended displaced persons.

General Measures of Implementation of the Convention

3. Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) guarantees the equality of persons and prohibits unfair discrimination against persons on various grounds including differences in origin, race and language. However, Thailand has no laws that specifically prohibit racial discrimination. Existing laws such as the Criminal Code may be

¹Information about Thailand from Wikipedia at <http://th.wikipedia.org/wiki/%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B9%80%E0%B8%97%E0%B8%A8%E0%B9%84%E0%B8%97%E0%B8%A2>. The site of the World Directory of Minorities provides information that Malayu-descended Thais account for about 5 percent of the population (2007).

²Information contained in the first to third periodic reports on the implementation of the CERD Convention (English version), pages 7-8.

³Wikipedia, available at <http://th.wikipedia.org/wiki/%E0%B8%8B%E0%B8%B2%E0%B9%84%E0%B8%81> and website of Highland People Development Center of *Mae Hong Son* Province, available at <http://www.mhcdc.org/interest110.htm>

⁴ Estimates based on the Strategy to Address the Problem of Status and the Rights of Persons 2005.

applicable but their scopes are limited only to the performance of duties by public officials. As the state party to the Convention also has the obligation to prevent racial discrimination by other persons or groups or organizations, existing laws, therefore, may not be sufficient to enable Thailand to fulfill its obligation in all aspects.

4. Thailand has made a reservation to Article 4 of the Convention. Relevant authorities provided information that this was because a bill on unfair discrimination against persons containing the principles stipulated in Article 4 of the Convention, which was then being considered by the government, had not been passed by the time Thailand ratified the Convention. And it turned out that the bill has never been passed into law.

Recommendation: Thailand should accelerate the enactment of a law on unfair discriminatory practices which should prohibit acts of racial discrimination by any person or organization other than public institutions as stipulated in Article 2 and ban propaganda or incitement of racial hatred and discrimination in accordance with Article 4 of the Convention. The Thai government should also develop a plan to review existing laws and make them comply with the Convention provisions to ensure their effective implementation. Concerned authorities, such as the National Broadcasting and Telecommunications Commission, and civil society organizations should be involved in the review process. The enactment and revision of relevant laws will enable Thailand to withdraw its reservation under Article 4, thus fulfilling its voluntary pledges made under the Universal Periodic Review (UPR) process in March 2012.

5. The Thai Government adopted the Second Five-Year National Human Rights Plan covering the period from 2009 to 2013 as a framework for government agencies to promote and protect human rights. It has 4 strategic goals which are: (1) prevention of human rights violation; (2) effective protection of human rights; (3) development of laws and legal mechanisms and (4) capacity building of network organizations. The Plan identifies ethnic and racial population such as stateless persons, migrant workers and refugees, as target groups for the promotion and protection of human rights in many areas such as education, employment, public health, housing and justice system. The Plan does mention that relevant laws to prohibit racial discrimination should be amended to comply with the Convention provisions⁵. However, the Plan in general does not identify specific activities that need to be carried out but provides for broad guidelines only. The NHRCT has learned that there are several obstacles to the implementation of the Plan including the inappropriate mandate of the monitoring mechanism, lack of understanding on the part of implementing agencies and inadequate budget allocation.

Recommendation: The Thai government should improve the existing mechanism to enable it to monitor and evaluate the implementation of the Plan in a systematic manner. Obstacles should also be identified and addressed seriously. In the next National Human Rights Plan, specific measures or activities should be more clearly defined to ensure its successful implementation.

6. Thailand acceded to the Convention in January 2003, but it was not until May 2004 that the government designated the Ministry of Justice to serve as focal point agency in the implementation of the Convention. A Committee to Promote the Elimination of All Forms of Racial Discrimination was established under the Justice Ministry in March 2007 to be responsible for implementation of the Convention and the preparation of country report. It

⁵ The 2nd National Human Rights Plan, pages 39-40, 50-51, 66-68

seems that the Committee has so far focused its attention on the report preparation and dissemination of information to raise awareness and understanding about the Convention. It is not known, however, whether the Committee has any plan to monitor the Convention implementation. Without a systematic follow-up process, it would be difficult to assess the progress made or identify obstacles encountered in implementing the Convention.

7. Thailand has not made a declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination in receiving communications from individuals in accordance with Article 14 of the Convention. Relevant authorities gave the reason that Thailand already has internal mechanisms to receive complaints about non-compliance with the Convention. However, the NHRCT is of the view that given Thailand's commitment to ensuring protection against racial discrimination through various domestic mechanisms, there should be no difficulty for Thailand to accept the Committee's competence under Article 14. The NHRCT has also received complaints relating to discrimination on ethnic grounds which are discussed under the relevant sections of this report.

Recommendation: The Thai government should clearly designate an agency with a mandate to monitor and follow up on the implementation of the Convention, or it may empower the Committee to Promote the Elimination of All Forms of Racial Discrimination established by the Justice Ministry to carry out such function. The said agency or the Committee, as the case may be, should develop a comprehensive monitoring plan and should have the power to supervise the carrying out of such plan by other government agencies. It should also have the mandate to make appropriate recommendations regarding measures to eliminate racial discrimination and to promote tolerance among racial groups to the government or authorities concerned. The government should also review its position with regard to the Article 14 with a view to declaring its recognition of the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications.

Ethnic Groups

Malayu-descended Thais

8. The majority of Malayu-descended Thais live in southern Thailand, especially in the border provinces of *Pattani*, *Yala* and *Narathiwat*. They are Muslims and use local Malay language in their daily life. The unrest in the southern border provinces which began in 2004 has led the Thai government to declare the use of special security laws in the area.⁶ These laws give state officials, both military and civilian, a rather broad and vague power for the purpose of maintaining peace and order including the power to arrest and detain suspects. The enforcement of these laws has affected the Malayu-descended Thais especially because certain groups of this population are suspected by state officials of supporting or participating in the unrest. Civil society organizations provided information that Muslims are often discriminated against by security officers as they are stopped for a search at security check points or government offices more often than other Thai people in general.

9. The NHRCT, as the independent organ having the mandate to examine acts or omission of acts by the state that constitute a human rights violation, has received a number of complaints about unlawful exercise of power and practices by state officers in the southern border

⁶ The Martial Law B.E. 2457 (1914), the Decree on Public Administration in Emergency Situation B.E. 2548 (2005) and the Internal Security Act B.E. 2551 (2008)

provinces, particularly complaints about torture against persons suspected of being involved in the unrest. The NHRCT has investigated a total of 57 complaints on torture cases received from 2004 until 2011. It is found out that most victims of torture are Malayu-descended Thais and that some security officers have negative attitudes toward this group of population.⁷ The NHRCT has suggested to the Government and agencies concerned that measures be undertaken to prevent acts that would violate human rights and eliminate the root causes of unfair treatment that has been felt by many people living in the southern border provinces.

10. The Office of the National Security Council (NSC) provided information that enforcement of the special security laws are still needed for an effective investigation, evidence collection and tracking down of those involved in the unrest as regular laws have certain limitations. However, the special laws will be enforced as necessary to minimize the impacts on the people living in the southern border provinces and they will no longer be used if the situation improves. Despite the assurance given by the NSC, there are still reports that local people have been treated unfairly in the judicial process. One civil society organization undertook a study about the legality of security cases in the southern border provinces on which the Provincial Courts had passed judgment during 2010-2011. It was found that 72 out of 100 cases under the study were dismissed because the court testimony was insufficient.⁸ This might reflect the ineffectiveness of the process relating to the arrest of suspected persons in southern border provinces. Moreover, many arrested persons have no means to pay for bail during trial and have to be detained until their cases are completed. This could take as long as 2-3 years and has greatly affected women and children in the care of the arrested persons.

11. In 2005, the Thai government established the National Reconciliation Commission (NRC) to recommend policies and measures that would bring about peace and order to the southern border provinces. According to the analysis by the NRC, one of the major causes of the violence in the south is unfairness in law enforcement, such as unlawful exercise of power by security officers in search operations, coercion of suspects to give testimony, unlawful detention, failure to respect the rights of the accused to have a lawyer and trusted person in the interrogation process, and unlawful practice of kidnapping or abduction. Although these unlawful practices can also be found in other parts of the country, they do not occur as often and as widespread as in the southern provinces where the majority of the population is Muslim Thais of Malayu descendants. The occurrences of such unlawful practices in a distinct historical, social, cultural and ethnic context have created a feeling among Malayu-descended Thais that they have been treated unfairly.⁹

12. Regarding the 57 complaints relating to torture cases, after the release of the investigation reports, the NHRCT has closely monitored the implementation of the recommended measures to solve the problem in 5 aspects: (1) legal measures; (2) human rights education; (3) mechanism for human rights protection; (4) measures relating to the judicial process; and (5) remedial measures. It is found out that concerned agencies have shown more eagerness in solving the problem and have taken action on the recommended measures: some of them

⁷National Human Rights Commission of Thailand, *The Rights relating to the administration of justice: Investigation of complaints on alleged acts of torture and other inhuman treatment or punishment in the southern border provinces*, page 39 (March 2011).

⁸ Muslim Attorney Centre, *Project on monitoring the legality of security cases in the deep South (Case Audit)*, page 8 (December 2011), available at http://th.macmuslim.com/wp-content/uploads/2011/12/ข้อมูลสถิติและข้อค้นพบในคดีความมั่นคงจังหวัดชายแดนใต้_MAC1.pdf

⁹*Report of the National Reconciliation Commission*, page 17 (May 2006)

have produced concrete results while others are being carried out. At present, various state agencies, be it the Internal Security Operations Command, Region 4, the Police Operation Centre for Southern Border Provinces, or the Southern Border Provinces Administration Centre, together with all other relevant agencies, are making efforts to create a common understanding among state officials on the importance of human rights promotion and protection and to facilitate the visit of affected persons under the control of security agencies in the southern border provinces by NHRCT staff.

Recommendation: The enforcement of special security laws in southern border provinces for a protracted period as if they are regular laws has disproportionately affected the enjoyment of human rights of Malayu-descended Thais, who are the majority population in the area. Many of them feel that they have been treated unfairly in the siege, search, arrest, and detention by security forces performing duties in accordance with special security laws. The Thai government should take this matter seriously and try to refrain from using these special laws in some areas. It should consider lower the degree of the enforcement of these laws from the martial law to the Decree on the Public Administration in Emergency Situation, or from the Decree on the Public Administration in Emergency Situation to the Internal Security Act (as has been done in the 4 districts of *Jana*, *Natavee*, *Thepa* and *Sabayoi* in *Songkhla* province and in *Mae Lan* district of *Pattani* province). If the Thai government deems it necessary to prolong the enforcement of such laws, their provisions regarding search, accusation, arrest, detention of the suspects and investigation should be exempted and the corresponding sections of the Criminal Procedures Code, whose provisions are generally more in line with international standards, be enforced instead. The exemption of these provisions will help reduce the conditions that ill-will groups may use as an excuse to perpetrate violence. Moreover, there is a need to restore confidence in the justice system by ensuring that state officials who commit an offence will be punished strictly in accordance with the law and disciplinary rules and held accountable in civil cases.

13. Apart from unfairness in law enforcement, another major cause that contributes to the unrest in southern Thailand put forward by the NRC is the lack of knowledge and understanding of government officials in the local Malay language and Islam, the religion professed by Malayu-descended Thais. Since most of them use the local Malay language in their daily life, they have difficulty communicating with government officials in which the official Thai language is used. In addition, the lack of knowledge about the practices and way of life in accordance with Islam may lead to unfair or inappropriate treatment of Malayu-descended Thais by state officials, causing dissatisfaction and unwillingness to cooperate with state among them.

Recommendation: The government should consider implementing recommendations of the National Reconciliation Commission (NRC) that orientation and training be organized for state officials who are assigned to work in southern border provinces so that they have the knowledge and understanding about the special characteristics of the area. The recommendation that the local Malay language be used as another working language should be considered.¹⁰

14. The Office of the National Security Council (NSC) provided information that the government had formulated a policy relating to the administration and development of the southern border provinces for the period starting from 2012 to 2014. In the preparation

¹⁰ Ibid, pages 68 and 91

process, the civil society and general public from both within and outside the southern border provinces had been invited to participate and provide information or exchange ideas about ways to solve the problems there. The formulation of the policy was completed and proposed to the Parliament which endorsed it in March 2012. The policy has been developed with the recognition of the need to bring about fairness and justice to the area based on the rule of law and respect for human rights. It gives importance to such issues as the development of mechanisms to protect the rights and liberties of the people, monitoring of the exercise of power by state officials in strict accordance with the law as well as investigation and punishment of offenders to eliminate the culture of impunity. The policy also takes into account the need to respect the religious and cultural identity and way of life of the people in the area. Therefore, it can be said that this newly adopted policy on the administration and development of the southern border provinces does address the major factors contributing to the unrest in the area. The real challenge, however, lies in translating this policy into practice. The government should identify appropriate measures, be it legislative, administrative, social and educational measures, for relevant departments to carry out to bring about a successful implementation of the policy. Monitoring an evaluation of the policy should be regularly carried out by both the government and civil society organizations.

15. The Thai government has adopted measures to help improve the lives of Malayu-descended Thais in order to reduce the existing disparity. However, the implementation of such measures has led Thai Buddhists in the area to feel that they have been treated unfairly by the government.

16. The NHRCT was informed that there has been a delay in the government's action to provide remedies to the persons affected by violence in the south. One civil society organization provided information that the requirement of military, police and administrative officers to certify some documents for the application of remedy is one factor causing the delay because the frequent transfer of officers in and out of the southern provinces has made it difficult for the claimants of remedy to have all the three officers certify the relevant documents. However, it can be said that the government is aware of the problem as the recently adopted policy on the administration and development of the southern provinces recognizes the need to improve the efficiency of the process for remedy and ensure prompt compensation payment. Following the Cabinet's approval of a special compensation package for those affected by the political unrest in 2010, the government is also considering criteria for additional compensation for those affected by violence in the South.

Recommendation: The Thai government should, as a matter of priority, develop an action plan to ensure that the recently adopted policy on the administration and development of the southern border provinces (2012-2014) be carried out effectively. It should also put in place a mechanism to monitor and follow up on the implementation of the action plan seriously, especially on expediting investigation of major incidents and bringing those who commit wrongdoings to justice, upholding the rule of law by ensuring that state officials carry out their duties strictly in accordance with the law, accelerating the process of giving compensation and remedy to those affected by violent incidents on the basis of equal treatment and non-discrimination, promoting respect for way of life and culture of Malayu-descended Thais, and improving communication between state and the people in the area by using the local Malay language along with Thai language. The Thai government should be cautious when implementing special measures to promote equal access of Malayu-descended Thais to various rights so that they do not create a divisive feeling between Thai Buddhists and Thai Muslims. The government should also adopt social and educational measures to enhance understanding and harmony between these two

groups of population. As regards government's policy to give additional compensation for victims of violent incidents in southern border provinces and of political unrest, the government should adhere to the principle of non-discrimination by ensuring that the same criteria are applied in both cases so that victims in similar circumstances will receive the same rates of compensation.

Hill Peoples

17. "Hill peoples" in Thailand are used to refer to ethnic groups who migrate to and fro, as well as those who have been settling, in the border areas of Thailand and its neighbouring countries. The Thai government has a policy to grant the right to residence to those hill peoples who migrated to live in Thailand for a long time and set 3 October 1985 as the cut-off date.¹¹ Therefore, there are two groups of hill peoples residing in Thailand, one group migrating to Thailand before the cut-off date and the other group coming to Thailand after the cut-off date. At present, the government is making efforts to solve the problem of hill peoples in accordance with the Strategy to Address the Problem of Status and Rights of Persons of 2005 with a focus on granting the permanent resident status to the hill peoples in the first group. The authorities have conducted a survey of this group which has a population of about 560,000 people. As for the second group, which has a population of about 1.2 million people, the government has a policy to grant them a legal immigrant status and they may apply for Thai nationality if requirements are met. However, relevant authorities provided information that such policy has triggered entry of new illegal immigrants into the country with an intention to obtain a status and reside in Thailand legally. It is, therefore, necessary to verify personal records of applicants of a status before the appropriate status can finally be granted. Although the government has adopted the Strategy to Address the Problem of Status and Rights of Persons since 2005, its implementation has been rather slow. Security concern has made the process of personal record verification complicated and time-consuming. The delay in the granting of status can affect the lives of hill peoples as a legal status is a basic requirement for access to various rights.

18. A civil society organization provided information that limited knowledge of Thai language among hill peoples prevents them from effectively accessing information disseminated by the authorities including information on procedures for status application. There is also the problem of some corrupt officials demanding money from hill peoples for processing their status application for a status, especially at local level. The office of the National Security Council informed that while applying for a status, applicants can have access to basic rights including the right to education and health services. However, non-governmental organizations working on the ground gave a different picture. According to them, education and public health services are still elusive for hill peoples who have not yet received a status. Their freedom of movement is also restricted as they are allowed to travel only within areas specified by the authorities.

Recommendation: The Thai government should streamline the process to verify personal records of those applying for a status to accelerate the granting of status in accordance with the 2005 Strategy to Address the Problem of Status and Rights of Persons. It should also address the problem of inaccessibility to relevant information faced by some members of ethnic groups by using locally spoken language(s) and undertake measures to prevent corruption by some public officials, especially at local

¹¹Website of Highland Research and Development Institute (Public Organization), available at <http://www.hrdi.or.th/public/files/poly46.pdf>

level. While the application for a status is being processed, the government should ensure that the applicant's basic rights are protected.

19. On the right to education, the Thai government has a policy to allow children who have status problem to study in public educational institutions. But civil society organizations indicated that despite such policy, some hill peoples who have not been granted Thai nationality or a legal status still face difficulties applying for a school because the school will not be allocated extra budget for children having status problem admitted during the year. In schools that do accept these children, teachers sometimes need to ask for donations to pay for their educational expenses. Some schools cannot provide lunch to the children. There is also a problem of communication in school because children of hill peoples, who use local dialect in their daily life, cannot understand the teaching conducted in Thai language.

Recommendation: On the right to education, although Thailand has a policy to allow children with status problem to study in public schools and the government has instructed educational institutions under its supervision to comply with such policy, the measure has proven to be inadequate. There are cases where children with status problem are rejected by certain schools. The government should, therefore, adopt other administrative measures, including an adjustment in budget allocation system, to ensure that the school that admits children with status problem during the fiscal year will receive additional funds necessary for providing education to those children. The government should promote the use of local dialect in public schools in some localities.

20. Hill peoples are usually not aware of the importance of registering the birth of their children and having identity documents which would enable them to get access to their basic human rights. For example, children with no identity cards cannot continue their study at higher levels. However, there was a case where the authorities had issued birth registration documents to some children but refused to do so for the other although they were all from the same family. No clear explanation was available for such action. Hill peoples generally do not know what to do when their rights are violated or how to file a complaint because they do not have access to information due to their illiteracy in Thai language. Sometimes, state officials are not keen to provide them with necessary information.

21. The NHRCT was informed that hill peoples who have obtained Thai nationality or a legal status are often stopped by the police and asked to produce their identity cards. The hill peoples who acquire Thai nationality by naturalization do not have the same political rights as those who are Thai nationals by birth. Persons who are Thai nationals by naturalization must have acquired Thai nationality for not less than 5 years before they can obtain the right to vote in elections both at national and local levels. Persons who can stand for an election as candidates of members of Parliament, members of the Senate and members or executives of local administrative organs must be Thai nationals by birth only.¹² Thai people who acquire Thai nationality by nationalization, therefore, cannot be able to participate in the administration of the localities although they might have lived there for a long time.

Recommendation: The Thai government should ensure respect for and protection of the rights of ethnic groups by enhancing the knowledge and understanding of these groups among public officials, especially the police and administrative officers at both

¹²Constitution of the Kingdom of Thailand B.E. 2550 (2007), sections 99, 101 and 115 and the Act on Election of Members of Local Assemblies or Local Administrators B.E. 2545 (2002), sections 33 and 44.

provincial and local levels. The government should also incorporate in school curriculum, starting from the elementary level, content relating to ethnic groups in Thailand to create awareness among children and young people about cultural diversity in the country. With regard to the right to vote and to stand for elections, the government should undertake review of relevant laws and consider granting such rights to those who acquire Thai nationality through naturalization in cases where it does not impact national security.

22. The lives of hill tribes and other ethnic groups have been specifically affected by the National Parks Act of 1961, which allows the government to announce forest areas that need to be conserved as national parks and prohibit any person from occupying or exploiting the areas. However, national parks announced by the government in some cases overlap with the land that has been occupied by certain groups of population, many of whom are hill peoples. The announcement of national parks has turned these people into forest encroachers, causing them to be evicted from the area and become landless. This has deprived hill peoples of a means to live as these people grow crops and fruits for their living. In 1999, there was a case where state officials burned the lychee plantations of the *Hmongs* in *Pua* district of *Nan* province, in an effort to drive them out of the forestland. In a more recent case, there were reports in 2011 that officials of the National Parks, Wildlife and Plant Conservation Department tried to drive the *Karens* out of the *Kaeng Krachan* National Park by burning down their houses and barns.

23. In June 1998, the Cabinet approved the guidelines to solve the problem caused by the overlapping of national parks and reserved forests with the land occupied by the people. According to the guidelines, authorities must first verify since when the people have lived or occupied the land in question. If it is proven that they have lived on the land before it is announced national parks or reserved forests, and if the land is not situated in the area that will affect the environment and ecosystem, relevant agencies must issue land tenure document to the people so that they can continue living there. But if the land in question is situated in the area that is harmful to the ecosystem, authorities have to move the people out and find other suitable areas for their resettlement.¹³ Despite the Cabinet guidelines of June 1998, the arrest of hill tribe people continues. One civil society gave information that some of them even died while in detention. If the June 1998 guidelines are strictly implemented, government authorities should not arrest hill peoples for living on reserved forest lands but should provide for other suitable land for their resettlement. However, there are cases where the government does pay compensation to the people who have been affected by the performance of duties of state officials. In 2011, the government paid a total of 153 million baht in compensation to 114 *Hmongs* in *Pua* District for the damage to their lychee plantations after it was proven that they had occupied the land before it was announced a reserved forest. As regards the case of *Karens* at *Kaeng Krachan* National Park, it is not known whether their occupation of the forest land has been verified according to the Cabinet guidelines of June 1998 or not.

24. The hill peoples who live in reserved forests or national parks have been treated differently from the Thai people because they are often seen as involved in drug trafficking and deforestation by the authorities. Their houses are often searched and those who are in conflict with government authorities are usually target of arrest. While the *Hmongs* and *Karens* were driven out of the forest, those suspected of encroaching on the *Wang Nam Khiew* reserved forest, most of whom are investors who have built tourist resorts there, were

¹³ Website of the Department of National Parks, Wildlife and Plant Conservation, available at <http://www.dnp.go.th/watershed/gov2.htm#4>

treated in accordance with the June 1998 Cabinet guidelines. The authorities have conducted photo surveys of the land before filing the cases to court. There has so far been no report if concerned authorities have taken any action against the *Wang Nam Khiew* intruders.

Recommendation: The access to the right to housing and to earn a living on arable land is a major problem facing ethnic groups living in areas that have been declared national reserved forests or national parks. While recognizing the need for conservation of depleting forest areas, the NHRCT is of the view that the government should recognize the right of the community that has traditionally lived in certain forest areas before they are declared national parks or reserved forests to take part in the management, maintenance and exploitation of natural resources there in a balanced and sustainable manner as guaranteed in the 2007 Constitution. In enforcing the laws on national reserved forests and national parks, authorities should not discriminate against any particular groups and should follow the guidelines approved by the Cabinet resolution of June 1998 strictly. Neglect or non-compliance should be punished to ensure that the Cabinet resolution is effectively carried out.

Chao Lay or Sea Gypsies

25. *Chao Lay* or sea gypsies are nomadic people who have spent their lives roaming the Andaman Sea for a long time. There are presently about 30 communities of sea gypsies scattered in 6 provinces in southern Thailand, namely *Ranong*, *Pang-nga*, *Phuket*, *Krabi*, *Trang* and *Satun*. The population of sea gypsies totals about 10,000 which can be divided in 3 major groups: (1) the *Moken* totaling about 800; (2) the *Moklen* totaling about 3,000; and (3) the *Urak Lawoey* totaling about 5,000. All the 3 groups of sea gypsies have similar problems of insecurity in tenure of land and houses, inability to access basic services due to lack of identity documents as Thai nationals and the earning of their living in accordance with the traditional way of life.¹⁴

26. Sea gypsies who have settled on land usually live along the coast lines. However, they do not have land ownership documents and the land on which they live belongs either to state or private owners. Sea gypsies are therefore often driven out of their land or sued for land encroachment. The economic development and the growth in tourism industry have created a greater demand for land development as sea ports, hotels or tourist resorts, putting pressure on the already limited land where sea gypsies live and causing many families to live together in an overcrowded condition. Moreover, the government policy to promote tourism has led to intrusion on cemetery grounds and places of worship of sea gypsies that are usually located on the sea shores.

27. Many sea gypsies do not register the birth of their children with the authorities due to their nomadic way of life. This has caused many sea gypsies to become stateless. From the information collected by an NGO in 2003, it was found out that out of the total *Moken* population of about 800, only 94 of them had an identity card. The remaining *Mokens* of some 700 persons had been surveyed and put on civil registration record by the authorities before an appropriate status could be granted to them.¹⁵ According to information given by sea gypsies at *Lam Tukkae* Village in *Phuket*, their village has about 2,000 members but only

¹⁴Chumchonhai Foundation, *Chao Lay Ethnicities*, page 4, available at <http://www.chumchonhai.or.th/sites/default/files/moken.pdf>

¹⁵Ibid, page 5.

500 of them have the right to vote.¹⁶ Such information indicates that many sea gypsies have not obtained Thai citizenship. This has prevented them from receiving protection of their rights under the law and from accessing basic services such as education and health care. Some NGOs gave information that there were cases of state officials extorting money from sea gypsies who do not have identity card. Moreover, some local Thai people do not regard sea gypsies with much respect. In some locality, “sea gypsies” is negatively used to refer to someone who neglects his or her personal hygiene, does not pay attention to learning in schools or spends money carelessly.¹⁷

28. The expansion of marine conservation areas and private land ownership due to the growth in tourism has made it difficult for sea gypsies to earn their living according to their traditional way of life. The boats and fishing tools of sea gypsies are often seized by the authorities or destroyed by tourists or divers who look at sea gypsies as someone who destroy marine resources. It is also difficult for sea gypsies who do not have an identity card to engage in other employment and many of them are persuaded to work on trawlers doing fishing in Myanmar waters. This is an illegal as well as a dangerous job as they risk being injured from the use of explosion and deep water diving. Many sea gypsies suffer from divers’ disease or decompression sickness caused by rapid ascent from deep water diving. Some of them are paralyzed or die at a young age, leaving their families without someone to look after.

29. The tsunami disaster in 2004 has brought the plight of sea gypsies to the attention of the public. In June 2010, the Cabinet approved a plan to address the problems of sea gypsies in a comprehensive way, including security in housing tenure, assistance to sea gypsies to earn their living in accordance with their traditional way of life, provision of health care services, the granting of nationality to sea gypsies, education for sea gypsies’ children and development of local curriculum that corresponds to their way of life. From the information provided by the Ministry of Culture, it is found out that local authorities have carried out many activities aimed at preserving the culture and tradition of sea gypsies, such as compilation of knowledge about folk arts and traditional way of life of sea gypsies and revival of old customs. In *Satun* province, content about the identity of sea gypsies has been incorporated into the local curriculum. As regards sea gypsies’ access to their rights, the only available information is that *Phuket* province has a plan to improve the quality of life of sea gypsies in the areas of housing, education and employment, but no information was provided on how the plan has been implemented. Apart from activities carried out by the local authorities, the Ministry of Culture, in cooperation with *Sirindhorn* Anthropology Center, is producing a book on the cultural skills of sea gypsies to disseminate knowledge and understanding about sea gypsies’ traditional way of life to eliminate racial prejudices.

Recommendation: Although the Thai government has adopted a policy to protect the rights of sea gypsies, progress on its implementation is quite slow. This may reflect a lack of serious commitment on the part of the government. Concerned authorities should accelerate taking measures to protect the rights of sea gypsies as approved by the Cabinet decision of June 2010. Apart from efforts to preserve their culture, the government should pay more attention to solving their problems relating to the right to secure tenure of land and housing, the traditional way of earning their living, and the granting of nationality or status, which will entitle them to basic rights in accordance with the law.

¹⁶ Thai Fund Foundation, *Chao Lay: The Forgotten new Thais*, available at http://www.thaingo.org/story3/news_newpeople_03082546.htm

¹⁷ Chumchon Thai Foundation, *Chao Lay Ethnicities*, page 10.

Sakai and Mlabri

30. *Sakai* and *Mlabri* are two ethnic groups that have been living in Thailand for a long time. These people live by hunting and gathering food from the forest. When food in the area where they live is depleting, they move to other new areas. It is estimated that there are about 150-200 *Sakai* living in the southern provinces of *Trang*, *Satun*, *Patlung*, *Yala* and *Narathiwat*, while there are about 200 *Mlabri* living in the northern provinces of *Nan* and *Prae*.

31. Since these two ethnic groups have little contact with the outside world, they have been left out of the civil registration survey by the Thai authorities and thus are not recognized legally as Thai citizens. Given their simple and self-sustained way of life in the forest, they might not see the need to have any legal status. However, the continued economic development in the country will inevitably have a significant impact on their lives as a constant increase in demand for natural resources will lead to greater exploitation of the forests. At present, some *Sakais* and *Mlabris* have left the forests to find work in towns. In 2010, members of the NHRCT Sub-Committee on the Rights of Vulnerable Groups and Equality visited two *Sakai* communities in *Patlung* province and held discussions with local authorities on ways to help the *Sakais* with regard to their living condition, educational opportunities and their legal status.

Recommendation: The Thai government should assist the *Sakais* and *Mlabris* in their living by taking into account their traditional way of life as appropriate. It should also address the impact of development on the *Sakai* and *Mlabri* and undertake appropriate measures to protect the rights of those *Sakais* and *Mlabris* who have come to work in town. This includes ensuring that they obtain a legal status to enable them to have access to other basic rights.

Non-citizens

Migrant Workers

32. Thailand has a large number of migrant workers from Myanmar, Laos and Cambodia working in Thailand illegally. In the past, the Thai government had these migrant workers registered and allowed them to work on a yearly basis. Since 2007, the government policy has shifted toward legalizing them by seeking cooperation from neighbouring countries to verify the nationality of registered workers and issue them passports, which will then be used to apply for a work permit from Thai authorities. Undocumented migrant workers who have gone through this process have become legal foreign workers and are entitled to protection under Thai labour laws. However, the registration of migrant workers can be done during certain times of the year as will be announced by the government and each time it is open for a rather short period. This has made it difficult for some migrant workers, such as those working in the fishery sector who spend most of their time on fishing boats, to register by the deadline set by the government.

Recommendation: The Thai government should ensure that the processes of registration and nationality verification are accessible to all migrant workers as well as their family members. At the same time, Thailand should seek cooperation from neighbouring countries to facilitate legal import of workers adequate to meet domestic labour demand to reduce irregular migration which put labour at risk of abuse and exploitation by state officials, employers, and human trafficking rings. A systematic

import of labour to substitute for undocumented migrant workers should be fully functioning by 2015 when the ASEAN¹⁸ Community will be realized and people of ASEAN countries will be moving more freely within the region. Without an efficient system of labour management, the freer movement of people may exacerbate the existing problem of undocumented migrants in the country.

33. According to the statistics by the Alien Workers Management Office, Ministry of Labour, as of May 2012, there are 653,174 migrant workers from Myanmar, Laos and Cambodia who have gone through the nationality verification process and received a work permit. Other 886,507 migrant workers have registered with the Labour Ministry but have not yet had their nationality verified.¹⁹ The Labour Ministry informed that it has undertaken measures to accelerate the nationality verification process and make it more accessible and less expensive by opening more nationality verification centers in other provinces apart from the existing ones in the border provinces. It also has information campaign that reaches out to employers and has facilitated permission for migrant workers to travel out of the permitted zone for nationality verification. However, as it is believed that there are as many as two million migrant workers in Thailand²⁰, there remain quite a number of migrant workers who have not registered with the authorities and are more at risk of being exploited than registered workers.

34. The Labour Ministry reaffirmed that migrant workers are entitled to the same protection under the law as their Thai counterparts without discrimination and regardless of their legal status. Labour inspectors visit establishments hiring migrant workers as part of their regular inspection and pay particular attention to the terms and condition of work of migrant workers to ensure that their rights are protected in accordance with Labour Protection Act of 2008. However, some NGOs gave information that some migrant workers do not receive the same wage as their Thai counterparts or are paid less than the minimum wage due to their legal status. Many migrant workers are engaged in dangerous work, work long hours without enough rest or holidays and usually live in crowded and unhygienic condition. Migrant workers can be discriminated against or do not receive protection of their rights in other circumstances. Illegal migrant workers are usually arrested and fined while their employers are not penalized although hiring illegal alien worker constitutes an offence under the law. During the severe flood that hit the country in late 2011, migrant workers did not receive the same assistance as Thai labour. Some of them did not receive the pay owed to them and compensation for being laid off after the flood. Also during the flood, some migrant workers dared not leave their places of accommodation for fear of being arrested for traveling out of the permitted zone. Migrant workers may be abused or cannot access their rights because they are not informed about it. For example, a migrant worker gave in to the extortion of money by some police officer for fear of being arrested although he had a valid work permit. In another case, a migrant worker was lured into paying a large sum of money for medical treatment because he was not informed about his right. Some NGOs gave information that children of Myanmar migrant workers have difficulty in enrolling in public schools. Despite the government's policy allowing migrant children to study in Thai schools, in practice the admission of these children to a school depends largely on each school's administrator.

¹⁸ Association of Southeast Asian Nations

¹⁹ Website of the Alien Workers Management Office, available at http://wp.doe.go.th/sites/default/files/statistic/7/sm05-55_0.pdf

²⁰ Yongyuth Chalamwong and Raphaella Prugsamat. "The Economic Role of Labour Migration in Thailand: Recent Trends and Implications for Development" in Thailand Development Research Institute Quarterly Review, Vol.24, No.3, September 2009.

35. The Labour Ministry informed that it has disseminated documents with information on the rights and duties of both employers and employees in accordance with the law in Myanmar, Lao and Cambodian languages to establishments hiring migrant workers. It also provides for liaison officers who can communicate with migrant workers in their languages at labour offices in provinces with many such workers and at offices with the responsibility to receive complaints (labour hotline 1546). However, migrant workers still have communication problem at hospitals. Concerned agencies may consider providing for a liaison officer as in the cases of labour offices as appropriate.

36. An alien worker who can become a member of the social security fund must possess a valid passport and work permit. Therefore, only migrant workers who have gone through the nationality verification process and received a passport can have access to the social security fund. But even those who are fund members may not receive certain benefits, such as the retirement funds because migrant workers are permitted to work in Thailand only for a maximum period of 4 years. One NGO gave information that some migrant workers who are fund members cannot receive compensation money because their employers do not make contribution to the fund although it is a requirement by the law. Many migrant workers who have gone through the nationality verification process do not become fund members because their employers do not encourage them to do so. Since the Social Security Act applies only to workers in industrial sector, workers engaging in some types of work such as daily manual labour, labour in agricultural and fishery sectors and domestic workers, cannot access the social security fund. This is the case for both Thai and migrant workers. The compulsory health insurance scheme guarantees the access of these migrant workers to the right to health, but they will not receive compensation for illness or death related to work. As for migrant workers who have not registered with the authorities, they are not under any health care scheme and have to pay for their own medical expenses. In case they are unable to pay, they may receive assistance from the hospitals which usually have funds to help those without a means to pay for medical expenses. However, some hospitals suffer from such a lack of funds from having treated a large number of unregistered migrant workers that they have to deny further treatment to migrants.²¹

37. Currently, migrant workers are restricted to engage only in non-skilled work such as manual labour and domestic helper while other foreign workers have, according to the Working of Aliens Act of 2008, more choices on types of work they may engage in. The restriction imposed on migrant workers may lead to systematic discrimination against them. Some migrant workers have the knowledge and skills suitable for other jobs such as interpreter. The government should, therefore, relax such restriction and allow migrant workers to engage in other work suitable to their skills.

38. According to information given by some NGOs, Myanmar migrant workers who have been deported to their country can return to work in Thailand again by giving money to an organized ring operating along the border. This can be considered a form of human trafficking. Thailand and Myanmar should work together to address this problem. Migrant workers make up a large proportion of human trafficking victims. One specific issue of serious concern is trafficking for labour in the fishery sector. A government agency indicated that as a measure to combat trafficking in the fishery sector, the Labour Ministry Regulation No. 10 issued in accordance with the provisions Labour Protection Act to protect labour rights in the fishery sector is being reviewed to expand the scope of its application to cover fishery business with less than 20 workers on board. However, information is not available

²¹Raks Thai Foundation, *UPR Report on Human Rights of Migrant Workers and Their Dependents in Thailand: Civil Society Submission*, pages 17-18. (June 2011)

how effective Regulation No. 10 has been in preventing human trafficking for labour exploitation in the fishery sector.

Recommendation: The Thai government should protect the rights of migrant workers as guaranteed by relevant laws, whether or not they have gone through the nationality verification process and have their status changed to a legal foreign worker. This includes the right to fair employment terms and conditions, the right to equal access to social security system and protection from abuse and exploitation by state officials, employers and human trafficking rings. Special efforts should be made to prevent trafficking for labour exploitation in the fishery sector. Relevant government agencies should assess how effective the current labour inspection and other measures have been in combating human trafficking. The government should also adopt measures to protect the rights of family members of migrant workers. In time of a public emergency, authorities should give assistance to both Thai and foreign workers without discrimination.

39. At present, there are some foreign workers who come to work in Thailand through formal agreements between Thailand and its neighbouring countries but the number is relatively small when compared to the total number of foreign workers working in Thailand.

Recommendation: The Thai government should find a more lasting solution to the problem of migrant workers. According to the information provided by concerned government agencies, short- and long-term plans have been envisaged towards that end. In the short run, legal import of labour will be encouraged and facilitated with more simplified procedures and reduced costs. In the long run, the country's production sector will be reformed so that it relies less on non-skilled workers and the use of technology will be encouraged to replace manual labour. Educational institutions are to produce a workforce with the skills needed by the labour market. Given these measures, the government should seriously embark on their early implementation.

Stateless Persons

40. Stateless persons in Thailand consists of 4 major groups, namely displaced Thais, displaced persons from nearby countries who cannot return to their countries of origin, rootless persons and the *Rohingyas*. Some of these stateless persons are permitted to stay temporarily in Thailand.

41. Displaced Thais are persons of Thai descent who live in Myanmar and Cambodia in the areas near the Thai border. These areas used to be part of Thailand, but the change in borderline some hundred years ago has brought them under the rule of neighbouring countries. Thai people who lived in those areas and their descendants have, therefore, lost their Thai nationality. Recently, some of these Thai people have moved to live in Thailand and staged a campaign requesting that Thai nationality be returned to them for over 10 years. Their efforts have finally culminated in the passing of the Nationality Act (No.5) by the Parliament in January 2012, whose provisions are to return Thai nationality to displaced Thais from Myanmar and Cambodia which total about 20,000 persons. Given the concern of some displaced Thais about the implementation of the new nationality law, the NHRCT Sub-Commission on the Status of Stateless Persons, Displaced Thais, Asylum Seekers and Indigenous Peoples organized a meeting to inform representatives of relevant government departments of such concern and request that it be taken into account in the implementation of the new nationality law.

Recommendation: Concerned government departments should expedite the issuance of the rules and regulations necessary for the granting of the Thai nationality back to displaced Thais in accordance with the Nationality Act (No. 5) of 2012. Information regarding procedures for application of Thai nationality and other relevant details should be disseminated among displaced Thais as widely as possible.

42. The second group of stateless persons consists of people who migrated from nearby countries to Thailand during different periods of time. Those who have lived in the country for a long time have been given permanent resident status by the Thai government and their descendants are granted Thai nationality. Those who migrated to Thailand more recently and cannot be returned to the countries of their former residence are permitted to stay temporarily. Relevant government department is conducting survey of this group to collect necessary information before granting them an appropriate status in accordance with the 2005 Strategy to Address the Problem of Status and Rights of Persons. Stateless persons of this latter group include some hill tribe people as mentioned in paragraphs 17-18 above and they have problems accessing their basic rights like those hill tribe people who are in the process of status application.

43. The third group of stateless persons is rootless persons whose parents or connection with other countries are not known. Responsible government departments will conduct a survey and make a record of rootless persons living in the country before granting them Thai nationality in accordance with the 2005 Strategy to Address the Problem of Status and Rights of Persons. Moreover, in 2008 the Parliament passed the Nationality Act (No. 4) which has provisions that benefit rootless children. According to the Act, the director of a child care institution must apply for the Thai nationality for rootless children who have been with the institution for more than 10 years.

Recommendation: The two groups of stateless persons mentioned above are among the target groups of the 2005 Strategy to Address the Problem of Status and Rights of Persons as is the case of some hill tribe people and they face similar problems. The Thai government should thus accelerate the implementation of the 2005 Strategy so that these stateless persons can be granted appropriate status or Thai nationality.

44. The last group of stateless persons which has been quite problematic is the *Rohingyas* from Myanmar who travel to Thailand in search of better economic opportunities. Some of them want to travel on to third countries like Malaysia and Indonesia. If arrested, these *Rohingyas* will be treated as illegal immigrants and must be deported to their country of origin. However, Myanmar refuses to take these *Rohingyas* back because they are not recognized as Myanmar citizens, causing them to be in detained in Immigration detention center for an indefinite period. Upon receiving reports of the death of two *Rohingya* detainees in 2009 the NHRCT undertook an investigation and found out that the generally weak condition and personal health problems of the deceased before arriving in Thailand coupled with long period detention and lack of proper medical care contributed to their death. The NHRCT have put forward recommendations to the government to give better protection of the right to health of the *Rohingyas* and other detainees in Immigration detention centers, to provide a temporary refuge to the *Rohingyas* as an alternative to detention and to allow them to earn a living while staying in Thailand so that they do not become a burden for Thai authorities to look after them.²²

²² NHRCT investigation report no. 409/2554 dated 26 December B.E. 2554

45. There are other *Rohingyas* who have avoided arrest by the authorities and live outside the Immigration Detention Centers. Some of these *Rohingyas* have tried to apply for a refugee status so that they can live in temporary shelters along the Thai-Myanmar border. They cannot file their application to UNHCR but have to send it to a mechanism established by Thai authorities in each province having temporary shelter(s) for Myanmar displaced persons called “Provincial Admission Board” (PAB). The PAB, however, has not been operating in the past 6 years, leaving these *Rohingyas* with an unknown status. Another group of *Rohingyas* are migrant workers who did not pass the nationality verification process because they are not recognized as Myanmar citizens and thus did not receive a Myanmar passport. Without an official document to verify their identity, Thai authorities cannot issue them a work permit and they will have to be deported according to immigration law.

Recommendation: Thailand should seek cooperation from Myanmar within existing regional cooperation frameworks to solve the problems of *Rohingyas*. Organizations within the UN system such as the UNHCR should encourage Myanmar to cooperate with Thailand as well as other countries facing the same dilemma on this matter. And UNHCR should work with the country of origin to implement appropriate measures to stop the flow of *Rohingyas* migration to other countries. While a more lasting solution is being sought, Thailand should ensure that the basic rights of the *Rohingyas* are protected.

Refugees / Displaced persons

46. Although Thailand is not party to the 1951 Convention on the Status of Refugees and its Protocol, it has been providing safe haven to more than 100,000 displaced persons fleeing fighting from Myanmar for humanitarian reasons for many years. The major reason why Thailand does not become party to the 1951 Convention is its concern that the Convention might attract more influx of refugees from neighbouring and other nearby countries to Thailand, putting additional burden on the country’s limited resources. The Thai government has arranged for Myanmar displaced persons to live in 9 temporary shelters along the Thai-Myanmar border while awaiting resettlement in third countries or return to their country of origin when safety situation allows. All the 9 temporary shelters are administered solely by the Thai government with cooperation from UNHCR and other local as well as international NGOs. However, the fact that Thailand is not party to the 1951 Refugee Convention and its Protocol can put the rights of refugees at risk. For example, the absence of a mechanism to screen *bona fide* refugees from other immigrants may lead to deportation of refugees to their countries of origin where they can face danger to their lives. The NHRCT has been informed by a civil society organization that even though a Provincial Admission Board (PAB) is established in each province having a temporary shelter(s) to serve as a mechanism for refugee status identification, the PABs have not met for 6 years as mentioned in paragraph 45 above, leaving as many as 50,000 – 60,000 displaced persons waiting for their status to be determined.

Recommendation: The Thai government should expedite the review process on becoming party to the 1951 Refugee Convention and the 1967 Protocol in accordance with relevant UPR recommendations that have been accepted by Thailand. In the meantime, Thailand should amend existing laws to put in place a screening mechanism to separate *bona fide* refugees from other undocumented immigrants. This will allow authorities to treat immigrants properly in accordance with their different status and to prevent deportation of refugees to places where their lives may be in danger.

Notes: The NHRCT is of the view that the 1951 Refugee Convention and its Protocol would not constitute a pull factor that will attract huge influx of refugees to Thailand as concerned by the Thai government. Those who will receive protection under the Convention must meet the criteria stipulated in the Convention and there must be a process to determine whether a person is a “refugee” in accordance with the definition in the Convention. Such process will help separate refugees from other illegal immigrants coming to Thailand for reasons not recognized by the Convention. Presently, the NHRCT is considering amendments to Thailand’s Immigration Act so that it provides for a mechanism to determine the refugee status for undocumented immigrants and will submit its proposal to the Thai government for consideration in due course.

47. The Thai government has been receiving international assistance in looking after Myanmar displaced persons along the border. With drastic decrease in such assistance, however, there is concern that the living standard of Myanmar displaced persons might be adversely affected. So far, it is not yet clear how the Thai government will respond to this problem. Some civil society organizations provided information that Myanmar displaced persons living in temporary shelters do not have access to an effective justice system. Thai authorities concerned had tried to establish a justice system there using Thai laws but without much success. One NGO cited the difficulty of displaced persons to travel out of temporary shelters to report cases to the local police as one obstacle to the administration of justice there. At present, the justice system in a temporary shelter is administered by its residents in accordance with their traditional practice. The Thai government does allow NGOs to provide legal counsel to those displaced persons whose rights are violated or who are accused of wrongdoings.

48. Special education is provided to displaced persons residing in temporary shelters with emphasis on vocational training. The education system there is, however, not certified by Thai authorities. The NHRCT has been informed that the Ministry of Education is developing a Thai and English language curriculum that will be generally recognized by any educational institution to facilitate further studies by displaced persons outside temporary shelters. On access to the right to health, the Thai government has allowed certain NGOs, such as Aide Medical International and International Organization for Migration (IOM) to provide basic health services to temporary shelter residents. Cases of more serious illness can be referred to a public hospital outside the shelters for medical treatment whether or not the patients have the means to pay for it. If an outbreak occurs that is beyond the capacity of NGOs operating in temporary shelters to handle, the Ministry of Public Health will intervene to ensure that the situation will be brought under control.

49. One civil society organization gave information the long-necked *karennis* which are major tourist attraction of *Mae Hong Son* province are in fact displaced persons who have been given refugee status and some of whom have been accepted for resettlement in third countries. However, one NGO gave information that Thai authorities have not allowed these long-necked *karennis* to leave the country for fear that tourism industry in *Mae Hong Son* will be affected. To some human rights activists, bringing long-necked *karennis* in a place as display for tourists is like a human zoo and is not acceptable as it is an affront to human dignity.

Recommendation: While undertaking review on the 1951 Convention Relating to the Status of Refugees and its Protocol, Thailand should consider passing new law or revising existing laws to guarantee refugees the basic rights necessary for leading their lives in Thailand, including the right to work, while awaiting a resettlement in

third countries or return to their countries of origin when safety situation allows. Thailand should also implement measures to protect the rights of refugee children in accordance with its obligations under the Convention on the Rights of the Child as recommended by the Committee on the Rights of the Child.²³

50. According to the information given by some NGOs, there are other refugees in Thailand who do not live in temporary shelters along the Thai-Myanmar border. Thailand does not have a law to guarantee the basic rights of refugees and these refugees receive assistance for humanitarian reason on a case by case basis. Some refugees are assisted by NGOs while those who are identified as persons of concern by UNHCR will receive a monthly allowance. However, some *Rohingyas* complain that they are unable to receive assistance from UNHCR for a reason not known to them. There are also reports that authorities have a tendency to arrest foreigners of certain nationalities for illegal entry into the country, some of whom may be considered refugees, such as the *Ahmadiyahs* from Pakistan, the *Tamils* from Sri Lanka and the *Rohingyas*. When arrested, these people will be detained in immigration detention center for a protracted period because they cannot be sent back to the country of origin. As Thai immigration law has a provision for release of illegal immigrants on bail, the NHRCT has, therefore, proposed to the concerned authorities to exercise the power in accordance with such provision to enable these immigrants to live a normal life until the time when they can return to their country or go to third country for resettlement. On the right to education, despite the “Education for All” policy proclaimed by the Thai government, refugee children living in cities still have difficulty accessing education in practice.

Recommendation: In the absence of a refugee screening mechanism, the Thai government should seek cooperation from UNHCR to enable those who consider themselves refugees, including the *Rohingyas*, to have access to refugee status determination process of UNHCR. It should also put in place measures to ensure that these people have access to basic rights while awaiting the results of the application for a refugee status. At the same time, Thailand should raise this issue with the countries of origin under various regional and sub-regional cooperation frameworks with a view to finding a more sustainable solution to the problem.

Conclusion

51. Although Thailand’s Constitution recognizes the fundamental rights and freedoms of individuals and does not permit discrimination based on various grounds, including differences in race, origin, languages and religious beliefs, the fact that it does not have laws dealing specifically with racial discrimination may prevent it from implementing the Convention effectively. In addition, acts of government officials in some cases can be considered discriminatory. This may arise from various causes, including lack of awareness and understanding about the Convention, unfair law enforcement, racial prejudices and corruption among some officials. These factors constitute obstacles that impede access of ethnic groups living in Thailand to their rights. Insofar as alien residents are concerned, Thailand has no law that explicitly guarantees the basic rights of persons who reside in Thailand but have no legal status, such as some hill peoples, undocumented migrant workers, stateless persons, displaced persons from neighbouring countries and refugees. The Thai government has adopted specific policies and administrative measures to address the problems relating to the status and protection of basic rights of these groups of people but such measures have been inadequate. The Thai government should implement legal

²³CRC/C/THA/CO/3-4 of 3 February 2012, Asylum-seeking and refugee children, paragraph 71.

measures to ensure that the basic rights of undocumented alien residents are recognized and effectively protected. When the ASEAN Community comes into existence in 2015, people in the region will be moving more freely across borders. If Thailand does not put in place measures to manage the flow of irregular migration, the problem undocumented migrants that Thailand is facing at present can increase in scale. Finding early solution to the problem will benefit Thailand and prepare it for a closer integration of ASEAN countries in the next 3 years.
