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THAILAND: BACKGROUND PAPER ON HUMAN RIGHTS, REFUGEES AND ASYLUM SEEKERS

**A Writenet Report by W. Courtland Robinson
commissioned by United Nations High Commissioner for Refugees,
Protection Information Section (DIP)**

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Caveat: Writenet papers are prepared mainly on the basis of publicly available information, analysis and comment. The papers are not, and do not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. The views expressed in the paper are those of the author and are not necessarily those of Writenet, Practical Management or UNHCR.

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Acronyms Glossary

ARCM	Asian Research Centre for Migration
ASEAN	Association of Southeast Asian Nations
ICCPR	International Covenant on Civil and Political Rights
IDC	Immigration Detention Centre
ILO	International Labour Organization
IPEC	International Programme on the Elimination of Child Labour
MOI	Ministry of Interior
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
NPKC	National Peace-Keeping Council
PAB	Provincial Admissions Board
RAD	Religious Affairs Department
SPDC	State Peace and Development Committee
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNIAP	United Nations Inter-Agency Project on Human Trafficking in the Mekong Sub-region
USCR	US Committee for Refugees

Executive Summary

If geography is destiny, then Thailand's destiny is to be surrounded on most sides by neighbours who have been willing to cross over land and river borders to escape instability in their own countries and seek greater opportunity. Within Southeast Asia, Thailand is an example of economic success and political stability, religious tolerance and ethnic pluralism, freedom of expression and of movement. Because of this, over the past quarter-century, Thailand has played host to hundreds of thousands of Myanmar, Cambodian, Laotian, Vietnamese and other nationals, many seeking temporary refuge from persecution or conflict in their own countries, others seeking economic opportunities unavailable at home.

It is also Thailand's demographic destiny to have achieved lower population growth than its neighbours. The average Thai woman bore fewer than two children in her lifetime in 2000, compared to 6 in the 1960s. Thailand now has fewer children than at any time in the past 20 years and the numbers will continue to decline. These demographic shifts have created labour deficits and a need to fill them. Rising education levels create higher expectations among Thais to achieve high-skill, high-wage employment, even as they increasingly shun the so-called 3D jobs (dirty, dangerous and demanding). In order to fill these jobs and to remain attractive to foreign investment looking for cheap labour, Thailand has resorted to importing labour. By most estimates, there were more than one million foreign workers in Thailand in 2000, principally from Myanmar, Laos and Cambodia; perhaps 90 per cent of these migrant workers were in irregular status.

The Thai Constitution of 1997, also called the People's Charter, has been hailed for its inclusion of numerous rights and benefits, including 12 years of compulsory and free education, public health services, as well as freedom of speech, association and movement. From 1992 to 2003, Thailand acceded to no less than six major human rights treaties. In the past few years, however, some human rights groups and others within and outside Thailand have been asking if the Thai welcome to refugees, migrants, and asylum seekers has cooled, indeed, if the overall human rights climate in Thailand is growing colder. As evidence, they point to crackdowns on illegal migrants, a "war on drugs" in 2003 that left more than 2,000 people dead in three months, rising violence in the South that has killed more than 200 people since January 2004, and pressures on the media to stifle criticism of government policies. These events, some say, correspond to a consolidation of power by one political party, Thai Rak Thai (Thais Love Thai), and its leader, Thaksin Shinawatra, Thailand's prime minister since 2001.

This paper analyzes recent developments in Thailand, particularly since the early 1990s, with a focus on human rights and forced or irregular migration. Its conclusions are that Thailand's recent record on human rights – including treatment of refugees, asylum seekers and other vulnerable groups – is a cause for deep concern. This is likely to cause hardship for thousands of people, including ethnic and religious minorities, refugees and asylum seekers, migrant workers, and media and other voices perceived as critical of the Thaksin administration. At the same time, Thailand has many strong institutions, public and private, religious and secular, that have exercised corrective influences on what are seen as excesses in government policies.

1 Introduction

A constitutional monarchy since 1932, the Kingdom of Thailand (formerly Siam), occupies an area of 514,000 sq km divided into 76 provinces, from Yala in the south to Chiang Rai in the north. On its peripheries, Thailand's land boundaries stretch 4,863 km, bordering Myanmar (Burma)¹ to the west (1,800 km), Laos to the north (1,754 km), Cambodia to the east (803 km) and Malaysia to the south (506 km). Another 3,219 km comprise maritime boundaries on the Andaman Sea and the Gulf of Thailand. In the centre of the country, figuratively and literally, sits the capital city and chief port, Bangkok, home to roughly 15 per cent of Thailand's 64,265,000 people.²

Thailand's population is at once fairly homogenous and quite diverse. Roughly 75 per cent of the population is ethnic Thai but, given the long and relatively open borders that Thailand shares with its neighbours, it is not surprising that one quarter of the population is ethnic Chinese, Lao, Malay, Khmer, Mon, Vietnamese or belongs to one of nine principal highland groups. About 90 per cent of Thais are Buddhist while Muslims, living mainly in the southern provinces near Malaysia, comprise between 6 and 9 per cent of the population, and adherents of other religions – Christians, Hindus, Sikhs, Taoists and animists – comprise another 1 to 2 per cent.

Avoiding the fate of all of its immediate neighbours, Thailand has never been colonized or annexed by Western or Asian powers. Since 1932, it has evolved from an absolute monarchy to a constitutional monarchy and it has survived repeated coups and successive military regimes to emerge as a multi-party democracy. In the last 15 years, Thailand has survived the turmoil of the Asian economic crisis of 1997 and its aftermath with a positive balance sheet; and it has confronted the scourge of HIV/AIDS with public health policies and programmes that have become a model for the developing world.

Compared to most of its neighbours, Thailand is an example of economic success and political stability, religious tolerance and ethnic pluralism, freedom of expression and of movement. Because of this, over the past quarter-century, Thailand has played host to hundreds of thousands of Myanmar, Cambodian, Laotian, Vietnamese and other nationals, many seeking temporary refuge from persecution or conflict in their own countries, others seeking economic opportunities unavailable at home.

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¹ Myanmar/Burma: note on terminology: this report uses the country name Myanmar, the name officially recognized by the UN, except in direct quotations from sources (such as US government publications) where the name Burma is used.

² United States, Central Intelligence Agency, *The World Factbook: Thailand*, Washington, 1 January 2003 [updated to 11 May 2004], <http://www.cia.gov/cia/publications/factbook/geos/th.html> [accessed June 2004]

political party, Thai Rak Thai (Thais Love Thai), and its leader, Thaksin Shinawatra, Thailand's prime minister since 2001.

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2 Brief Overview of Political Developments

King Bhumibol Adulyadej has served as chief of state since his coronation on 9 June 1946. Since the absolute monarchy was abolished in 1932, there have been 17 military coups, some of them bloodless but all contributing to discontinuity and instability in Thailand's progress towards democratic governance.³ The latest coup occurred in February 1991, when the Thai military ousted Chatichai Choonhavan, leader of the Chat Thai (Thai Nation) Party, who had been democratically elected in 1988. The military rulers, going by the name of the National Peace-Keeping Council (NPKC), abolished the constitution, imposed martial law and banned activities by political parties. The NPKC also appointed a businessman and former diplomat, Anand Panyarachun, to head a civilian interim government pending new elections.⁴

When the results of the March 1992 elections proved inconclusive, General Suchinda Kraprayoon, one of the coup leaders, was declared prime minister by a coalition of pro-military parties. Opposition to the military rulers soon became widespread, well organized and vocal. On 20 April, more than 50,000 people gathered in Bangkok to demand General Suchinda's resignation. This was followed by a demonstration of at least 70,000 on 4 May led by Major General Chamlong Srimuang, former governor of Bangkok and leader of the Palang Dharma (Moral Force) Party. On 17 May, as more than 200,000 people gathered for peaceful demonstrations in Sanam Luang Park, they were met by security forces using water cannons and truncheons to disperse the crowd. Following a night of mounting confrontations, General Suchinda declared a state of emergency. From daybreak on 18 May until the evening of 20 May, Thai army troops cracked down on the protestors with increasing violence. In all, official accounts reported 52 people killed, 696 injured and 175 people missing. Unofficial sources put the number of missing considerably higher. On 24 May, General Suchinda resigned and Anand Panyarachun resumed his post as interim prime minister, calling for general elections in September 1992. The Democrat (Prachatiapat) Party won 79 out of the 360 House of Representative seats and, in coalition with other anti-military parties, appointed its leader, Chuan Leekpai, as prime minister.⁵

³ Country Briefings: Thailand: Fact Sheet, *Economist.com*, 20 October 2003, <http://www.economist.com/countries/Thailand/profile.cfm?folder=Profile-FactSheet> [accessed June 2004]

⁴ Amnesty International, *Thailand: The Massacre in Bangkok*, London, 1 October 1992

⁵ *Ibid.*

In May 1995, facing a “no-confidence” vote, Chuan Leekpai dissolved Parliament and, in the elections that followed, the Chat Thai Party won the largest number of seats, making the party’s leader, Banharn Silpa-archa, prime minister. Little more than one year later, in November 1996, former general Chavalit Yongchaiyudh, formed a coalition government and became prime minister. He, in turn, was undone by a loss of confidence in his handling of the Asian economic crisis. In November 1997, Chuan Leekpai was appointed prime minister for a second time, a position he would hold until January 2001.

Although the Chuan administration was credited with implementing important economic and political reforms that enabled Thailand to weather the economic crisis of 1997 and its aftermath better than many of its Asian neighbours, Chuan Leekpai himself was hardly a charismatic leader and Thailand seemed to be seeking a new, more assertive image of itself as the country entered a new millennium. That new face would appear in the form of Thaksin Shinawatra, a former police colonel (with a PhD in Criminal Justice from a US university) and a billionaire telecommunications tycoon.

In 1998, Thaksin had launched his own political party, Thai Rak Thai. In the elections of January 2001, running on a populist ticket of anti-corruption and economic prosperity, Thaksin’s party swept to power in a landslide victory. His three-party coalition – Thai Rak Thai, Chat Thai and Kwamwang Mai (New Aspiration) – ended up controlling 353 seats in Parliament’s lower house, a majority so large it could defeat any no-confidence motion and pass laws virtually unopposed (the upper house, or Senate, cannot block bills that receive more than 350 votes in the House of Representatives).⁶

In 2002 and 2003, Thaksin’s hold on government only grew stronger, as the Kwamwang Mai Party merged with Thai Rak Thai, giving the new party alone 297 seats in Parliament. The Prachatipat Party, second-largest with 129 seats, has had limited effect as an opposition party with the retirement of Chuan Leekpai in November 2003 and with a new leader, Banyat Bantatdan, beset by continued inter-party squabbles and seemingly no match for Thaksin’s dynamism.

Thaksin’s policies, and personal style, have been so distinctive as to spur the coinage of several neologisms. “Thaksinomics”, a term the prime minister himself has adopted, has been described by Robert Looney as “an eclectic strategy that combines the traditional element of the EAEM [East Asian Economic Model], emphasizing mass manufacturing spearheaded by foreign direct investment – dubbed the First Track – and a more domestic focus on local enterprises leveraging indigenous skills and resources, known as the Second Track”.⁷ As interpreted by Thaksin’s critics, the term means, “in essence, that the government bestows patronage on its affiliated crony capitalist groups on the one hand and garners support from the lower classes by increasing their economic power on the other”.⁸

In a September 2003 keynote speech before the Philippine Chamber of Commerce and Industry, Thaksin commented that “our critics condemned our policy and called it, with

⁶ Country Briefings: Thailand...

⁷ Looney, R., Thaksinomics: A New Asian Paradigm?, *Strategic Insights*, Vol. 2, No. 12, December 2003, <http://www.ccc.nps.navy.mil/si/dec03/eastAsia.asp> [accessed June 2004]

⁸ Aeusrivongse, N., Thaksinomics, *Matichon Daily*, 23 November 2001 [in Thai]; English translation at http://kyotoreview.cseas.kyoto-u.ac.jp/issue/issue0/article_76.html [accessed June 2004]

contempt, a populist policy. I must confess I was bemused. A populist policy, so called because it must be a policy so liked by the people. The people like it because they find it beneficial. So if they like the policy and benefit from it, what's wrong?" He noted that Thailand had repaid its US\$ 12.3 billion loan from the IMF (International Monetary Fund) two years ahead of schedule, foreign reserves stood at US\$ 38 billion, GDP growth was 5.3 per cent, the highest since the 1997 crisis, and unemployment had declined from 3.6 per cent in 2000 to 1.4 per cent in 2003.⁹

Another term, "Thaksinocracy", was coined by Thai social thinker, Thirayuth Boonmee; as used by another Thai activist, Paolo Khamsawadi of the non-governmental organization, Assembly of the Poor, "Thaksinocracy" refers to "a new political environment in which political power is monopolized by him alone".¹⁰ Taking advantage of high approval ratings in public opinion polls and his party's clear majority in Parliament, Thaksin has mandated sweeping social reforms. In so doing, some of his critics say, his administration has threatened civil liberties, violated human rights, and suppressed the voices of dissent.¹¹

3 Review of the Human Rights Situation

Following the violent military crackdown on pro-democracy demonstrators in May 1992, Thai NGOs had lobbied the administration of Anand Panyarachun to commit the government to establish a national mechanism for protecting and promoting human rights. After five years of debate and discussion, the establishment of a National Human Rights Commission (NHRC) was mandated in Articles 199 and 200 of the new Thai Constitution which was adopted in October 1997.¹²

Article 199 stipulates that the NHRC is to be appointed by the King with the advice of the Senate and would consist of a chairperson and ten other persons with knowledge and experience in the field of human rights protection, including those from the NGO sector. Each member serves one six-year term. The NHRC's powers and duties include

To examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for action. In a case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding.¹³

In addition to promoting education, research and dissemination of knowledge about human rights, the NHRC was charged with promoting cooperation and coordination among

⁹ Thaksin Shinawatra, Thaksinomics, Manila, 8 September 2003 (keynote address at event organized by the Philippine Chamber of Commerce and Industry and the Philippine-Thai Business Council), <http://www.thaigov.go.th/news/speech/thaksin/sp08sep03.htm> [accessed June 2004]

¹⁰ Poor Hold Thaksin to His Promise, *The Nation* [Bangkok], 7 January 2003

¹¹ Forum-Asia, Political Pressure on Thai Media Undermines Independence and the Public's Right to Know, Bangkok, 5 March 2004 (press release), <http://www.forumasia.org/5March04.html> [accessed June 2004]

¹² Bhattacharjee, K., The New National Human Rights Commission Act in Thailand, *Asia-Pacific News* [Osaka], No. 18, December 1999, http://www.hurights.or.jp/asia-pacific/no_18/no18_thai.htm [accessed June 2004]

¹³ *Ibid.*

governmental and non-governmental organizations and preparing an annual report for submission to the National Assembly which assesses the human rights situation in the country. In carrying out its duties, the NHRC “has the power to demand relevant documents or evidence from any person and to summon any person to give statements of fact, and other powers for the purpose of performing its duties as provided by law”.¹⁴

In April 1998, a government committee began drafting enabling legislation to bring the constitutionally mandated human rights commission into being. As draft versions of the National Human Rights Commission Act circulated in the Senate and the House of Representatives, one of the central disagreements focused on whether the NHRC would be a government agency placed in the Office of the Prime Minister, as many politicians and bureaucrats wanted, or whether it would be independent, as NGO groups largely supported. The act that came into being on 29 November 1999 was a compromise.

In terms of legal independence and operational autonomy, the Office of the Commission was defined as “a government agency attached to the National Assembly”. Although the act spelled out some protective safeguards to prevent the state from interfering with most functions of the commission, in terms of financing and staffing, the Office receives its budget in an appropriations bill and its staff are recruited in accordance with laws and regulations governing civil service. As the human rights lawyer Ken Bhattacharjee noted in his 1999 analysis of the National Human Rights Commission Act: “In theory, the Commission should be able to function with sufficient independence to effectively protect and promote human rights. However, the real test will be whether the Commission can fulfill its role in practice, particularly where the alleged violator is the Thai government or other powerful groups or individuals in Thai society”.¹⁵

3.1 General Respect for Human Rights

Thailand has been a member of the UN since 1946. Since then, it has become a state party to six of the major international instruments relating to human rights and refugees (see Table below), ratifying most of them since the 1990s. As of 1985, Thailand had acceded to only the International Convention on the Elimination of all Forms of Discrimination against Women. This was followed in May 1992 by ratification of the Convention on the Rights of the Child and, in 1996, with ratification of the International Covenant on Civil and Political Rights (ICCPR). In September 1999, Thailand acceded to the International Covenant on Economic, Social and Cultural Rights. This was followed in January 2003 by ratification of the International Convention on the Elimination of All Forms of Racial Discrimination.

Despite a long history of involvement with refugees and asylum seekers and a cooperative relationship with the UN High Commissioner for Refugees dating back to at least 1975 with the first influx of Indochinese refugees, Thailand has never ratified any of the UN instruments relating to the status of refugees or stateless persons.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Thailand's Ratification History of UN Treaties on the Protection of Civilians¹⁶	
<i>United Nations Instrument</i>	<i>Date of ratification or accession (a); date of entry into force</i>
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950)	
Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950)	
Convention Relating to the Status of Refugees (1951)	
Protocol Relating to the Status of Refugees (1967)	
Convention Relating to the Status of Stateless Persons (1954)	
Convention on the Reduction of Statelessness (1961)	
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	28 January 2003 (a); 27 February 2003
International Covenant on Civil and Political Rights (1966)	29 October 1996 (a); 29 January 1997
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	
Second Optional Protocol of the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty (1989)	
International Covenant on Economic, Social and Cultural Rights (1966)	5 September 1999 (a); 5 December 1999
International Convention on the Elimination of all Forms of Discrimination against Women (1979)	9 August 1985 (a); 8 September 1985
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)	14 June 2000 (a); 22 December 2000
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	
Convention on the Rights of the Child (1989)	27 March 1992 (a); 26 April 1992
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).	
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	
Convention on the Safety of United Nations and Associated Personnel (1994)	
Rome Statute of the International Criminal Court (1998)	
United Nations Convention against Transnational Organized Crime (2000)	
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)	
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)	
Protocol against Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the	

¹⁶ Source: United Nations, Treaty Collection, Focus 2004: Treaties on the Protection of Civilians: List of Treaties, 2004, <http://untreaty.un.org./English/TreatyEvent2004/List.asp> [accessed June 2004]

3.2 Right to Life, Personal Security and Physical Integrity

Although the pros and cons of the death penalty were debated in the 1997 constitution-drafting process, it was retained under Article 31 which states: “Lawful execution is not considered torture or cruel or inhumane in this sense.” Under Thai laws and regulations, according to Amnesty International, the death penalty is mandatory for premeditated murder; murder of an official on government business; regicide; and the production and import of heroin. It is discretionary for robbery, rape, kidnapping, arson and bombing if death results, insurrection, treason and espionage, possession of more than 100 grams of heroin or amphetamines, and aircraft hijacking.¹⁷

As a state party to the ICCPR, Thailand is obliged to abide by Article 6 (2) which states: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious of crimes.” The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the UN Commission on Human Rights in 1996, recommended that “the death penalty should be eliminated for crimes such as... drug-related offenses”.¹⁸

3.2.1 Thailand’s “War on Drugs”, February – April 2003

On 28 January 2003, Prime Minister Thaksin Shinawatra signed a series of three orders, launching the “Concerted Effort of the Nation to Overcome Drugs” campaign which began officially on 1 February 2003. Establishing both a national command centre as well as provincial and district-level operations centres, the orders laid out an aggressive, multi-pronged attack on the narcotics trade, including interdiction, arrest and punishment of drug traffickers, and treatment and rehabilitation for drug abusers and addicts.¹⁹ According to UN statistics, Thailand is the world’s largest consumer of methamphetamines – *ya ba* (“crazy drugs”) in Thai slang. Nearly three million Thais, 5 per cent of the total population, are hooked on *ya ba*; more than 600,000 are students ranging from primary school age to university level. Most of the methamphetamine pills – an estimated 500 million to 700 million pills annually – are supplied by drug laboratories along the Thai-Myanmar border.²⁰

On the very first day of the campaign, 4 people were shot dead and 264 arrested, according to the Royal Thai Police. Within ten days, Thai police were saying that 87 suspected drug traffickers had been killed. In most cases, one Thai official told a local newspaper, the drug dealers were “killing each other to avoid the risk of betrayal”. The police admitted to killing eight drug suspects from 1 to 9 February, while asserting that these killings were done in self-defence.²¹

¹⁷ Amnesty International, *Thailand: A Human Rights Review Based on the International Covenant on Civil and Political Rights*, London, January 1999, pp. 4-5

¹⁸ *Idem*, p. 5

¹⁹ Special Report: Extrajudicial Killings of Alleged Drug Dealers in Thailand, *Article 2*, Vol 2, No. 3, June 2003, pp 2-10, <http://www.article2.org/mainfile.php/0203/> [accessed June 2004]

²⁰ Macan-Markar, M., The Costs of Thailand’s Drug War ‘Victory’, *Asia Times Online*, 7 May 2003, http://www.atimes.com/atimes/Southeast_Asia/EE07Ae02.html [accessed June 2004]

²¹ Macan-Markar, M., Thailand’s Drug War Gets Messy, *Asia Times Online*, 14 February 2003, http://www.atimes.com/atimes/Southeast_Asia/EB14Ae01.html [accessed June 2004]

By 30 April, three months after the “war on drugs” began, the Narcotics Control Board was declaring victory: 1,765 major drug dealers and 15,244 minor dealers had been arrested; more than 280,000 drug pushers and addicts had turned themselves in and been sent for rehabilitation, 15.5 million speed pills had been seized. The street price for *ya ba* was 80 – 120 baht per tablet (US\$ 1.80 – US\$ 2.80) in January 2003; by April, the price was three to four times that amount. In ten provinces, government officials were declaring 100 per cent success in eliminating the drug trade, with an 80 – 90 per cent success rate in most other provinces.²²

Human rights activists, however, pointed to a darker side of the success story: As of 15 April 2003, Thai police were reporting that 2,245 people had been killed in the campaign, 51 of them by the police. This is a rate of roughly 30 per day or 900 per month, compared to an average rate of 400 murders per month in Thailand in 2002. Thai authorities asserted repeatedly that most of the deaths involved drug dealers killing one another. In a November 2003 report, Amnesty International expressed concern that:

the stated policy of the Royal Thai Government has allowed the killing of over 2,000 people by unknown assailants with impunity. Some of these killings may have been extrajudicial executions by the police or other members of the security forces. Relatives and associates of those who have been murdered are often too terrified for their own lives to seek an investigation from the authorities. For example, husband and wife Damrong and Somsri Tanomwaorakun, members of the Hmong tribal group from Baan Mae Sa Mai in Chiang Mai Province were found shot dead in their lychee orchard. Damrong’s brother said: ‘I wanted an investigation into my brother’s killing but the police just said it was a drug killing. With things as they are at the moment, I just don’t dare ask for justice, and who would I ask?’²³

Among the concerns raised about the killings was the use of “blacklists” prepared by local officials and by the Ministry of Interior (MOI). The MOI list reportedly contained 41,914 names of people who were “targets of monitoring”. While the authorities were under no obligation to tell people that their names were on these blacklists, police reportedly used the lists to summon people for questioning. In other instances, people would turn themselves in, hoping to clear their names. According to Amnesty International, “many of the killings took place when suspects were returning to their homes from police stations”.²⁴

On 23 February 2003, a nine-year-old boy, Chakraphan Srisa-ard, was killed when police fired on a car carrying him and his mother (the three policemen who did the shooting were investigated on charges of murder but were eventually cleared). As public concern mounted, a senior Thai police official was quoted as admitting that the MOI list was “poorly prepared and could have affected innocent people”. On 26 February, the MOI asked the Narcotics Control Board to review the lists, though it is not clear how or if the lists were amended.²⁵

²² Macan-Markar, *The Costs...*

²³ Amnesty International, *Thailand: Grave Developments - Killings and Other Abuses*, London, November 2003, pp. 8-9

²⁴ *Idem*, p. 4

²⁵ Special Report: Extrajudicial Killings..., p. 14

Criticism of the “war on drugs” killings came from within and outside Thailand. On 24 February 2003, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, expressed “deep concern at reports of more than 100 deaths in connection with a crackdown on the drug trade” and urged the Thai government “to carry out transparent and independent investigations into each individual death.”²⁶ Also in February, during a presentation to a UN conference, Dr. Pradit Chareonthaitawee, a member of the National Human Rights Commission, expressed concern about the high number of killings. In response, Prime Minister Thaksin labelled his remarks as “sickening” and a Thai Rak Thai spokesperson threatened Dr. Pradit with impeachment for actions that were “biased and against national interests”. Dr. Pradit also reported receiving death threats from an anonymous caller who told him to “stop speaking to the United Nations or die”.²⁷

Overall, Thailand’s National Human Rights Commission reported that it received 340 complaints in 2003, from people who felt their rights had been violated. About 50 per cent were related to the government’s anti-drug campaign from February to March 2003. Of these, the NHRC reported that 80 per cent were complaints from or about people whose names were on one or more blacklists being circulated by government agencies. The Commission received 24 complaints made by relatives of people who were killed as drug suspects during that period.²⁸

In its 2003 country report on human rights practices in Thailand, the US Department of State referred to the killing of more than 2,000 drug suspects in commenting that:

the [Thai] Government’s human rights record worsened with regard to extrajudicial killings and arbitrary arrests....[E]lements of the Royal Thai Police continued to use excessive, lethal force against criminal suspects and committed or were connected to numerous extrajudicial, arbitrary and unlawful killings.... The Government failed to investigate and prosecute vigorously those who committed such abuses, contributing to a climate of impunity.²⁹

3.2.2 Violence in the South, January – April 2004

The southern provinces of Thailand, annexed in 1902 as a buffer against British Malaya, historically had been part of the Islamic Sultanate of Pattani, considered by some to be the birthplace of Islam in Southeast Asia. Thailand’s Muslim minority, living mainly in the provinces closest to Malaysia – particularly Narathiwat, Pattani, Yala, and Satun which are 90 per cent Muslim – have coexisted with the Thai Buddhist majority for more than a century, although the relationship often has been strained and occasionally punctuated by violence. Separatist movements seeking reunification with Malaysia were active in the south during the 1970s and early 1980s but new government policies, switching from the stick of suppression to the carrot of economic development, brought peace in the late 1980s and 1990s. Surin Pitsuwan, former foreign minister in the administration of Chuan Leekpai and a

²⁶ Amnesty International, *Thailand: Grave Developments...*, p. 14

²⁷ Special Report: Extrajudicial Killings..., p. 14

²⁸ Charoenthaitawee, P., Highlights of the National Human Rights Commission’s Activities in 2003. Paper presented at the Eighth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Kathmandu, 16-18 February 2004, p. 2, http://www.asiapacificforum.net/activities/annual_meetings/eighth/thailand.htm [accessed June 2004]

²⁹ United States, Department of State, *Country Reports on Human Rights Practices 2003: Thailand*, Washington, February 2004, <http://www.state.gov/g/drl/rls/hrrpt/2003/27790.htm> [accessed June 2004]

senator from the southern province of Nakorn si Thammarat, commented that while “politically and economically, [southerners] are oriented toward Bangkok, culturally they are still part of the Malay/Muslim world”. Thai historian, Thongchai Winichakul, said of Thailand’s estimated six million Muslims: “It’s true that many of them are not seen as Thai, and many of them for a long time never wanted to be Thai. We have a local population who remain very much with a double identity.”³⁰

Following the terrorist attacks on the United States on 11 September 2001, sporadic violence flared again in the southern provinces, spurred perhaps by local Muslim reaction to the Thaksin administration’s close alignment with Washington’s global war on terror. On 4 January 2004, in Narathiwat Province, marauders burned 20 local schools and gunmen burst into an army camp, killing four soldiers and stealing more than 400 weapons. Two days later, bombs killed two soldiers in the city of Pattani. Noting the “coordination, planning and tactical confidence” of the incidents, Anthony Davis, a security analyst with Jane’s Defence Group, said: “It’s confirmation of what has been increasingly apparent over the past two years, which is that the Thais have an insurgency problem on their hands.”³¹

Martial law was imposed on the border provinces but the violence continued and, by March 2004, had claimed the lives of at least 50 soldiers, police, Buddhist monks and civilians. On 12 March, Somjai Neelapajit, chairman of the Muslim Lawyers Association and vice-chairman of the human rights committee of the Law Society of Thailand, disappeared in Bangkok. According to a statement from Human Rights Watch, he had taken a high-profile role in defending individuals arrested on charges of involvement in the recent violence. He had reported receiving threats since he had taken up the case of two alleged Thai members of Jemaah Islamiyah, a radical Islamist group accused of plotting bomb attacks in Thailand.³²

In late March 2004, a bomb blast outside a popular karaoke bar in Narathiwat injured 28 people, including 8 Malaysians. The region began to show increasing signs of strain. As one press account related: “The upsurge in bombings, murders and arson attacks has fuelled an exodus of teachers and doctors. Hundreds of monks have also fled their temples in the three worst-affected provinces... Muslims too say they cannot more freely for fear of extortion or abduction – about 100 are reported to have mysteriously disappeared, sparking fears they have been killed by vengeful security forces.”³³

The unrest in the south also stirred political discord in Bangkok. Polls in March/April 2004 showed that 85 per cent of Thais ranked the violence in the south as the most damaging issue for Thaksin. In late March, adopting a strategy more focused on conciliation than control, Thaksin sent a team of officials into the south to conduct 10 community meetings. The delegation was led by deputy prime minister, Chaturon Chaisang, a former member of the Communist Party of Thailand, who said his mission was to restore peace through dialogue:

³⁰ Bures, F., Muslim Unrest Flares in Thailand, *Christian Science Monitor*, 7 January 2004. See also Winichakul, T., *Siam Mapped: A history of the Geo-Body of a Nation*, Honolulu: University of Hawaii Press, 1994

³¹ Bures

³² Human Rights Watch, Thailand: Lawyer’s Disappearance Darkens Rights Climate, New York, 18 March 2004 (press release)

³³ Agence France Presse, Thailand’s Muslim South Living in Fear as Violence Escalates, 1 April 2004

“Authorities must protect the people and establish trust among them”, Chaturon said. “They must support unity among races and religions.”³⁴

On 23 April, a night of renewed violence left two people dead, a village chief and a fireman, and 50 public buildings, including 15 schools, burned to the ground.³⁵ Less than a week later, on 28 April, armed groups launched simultaneous pre-dawn raids on 15 police checkpoints and outposts in Yala, Pattani and Songkhla provinces. Thai soldiers and police counter-attacked and, after nine hours of fighting, 108 alleged militants were killed along with three policemen and two soldiers. More than 30 of the assailants were killed in a three-hour shootout in a local mosque. Initially, government officials tried to downplay any connections to separatism or religious struggle. “In the end, they were all bandits,” said Prime Minister Thaksin. His deputy prime minister, Chavalit Yongchaiyudh, said: “Judging from their dead bodies, they had taken narcotics.”³⁶ Their remarks were contradicted, however, by General Kittirattachaya, the government’s top security adviser in the south: “Drugs and illegal businesses are not major factors in the south”, he told the Associated Press. “The target of this terrorist organization is separatism and the establishment of a Muslim state.”³⁷ Police General Kovit Wattana, the chief investigator into the incident, also said that police had found several Arabic language pamphlets calling for the creation of a Muslim homeland in Thailand.³⁸

The acting UN High Commissioner for Human Rights, Bertrand Ramcharan, called for an investigation into the killings saying that, under UN treaties, security forces “are required to refrain from using force exceeding that strictly required by the exigencies of the situation.”³⁹ Human Rights Watch also called for an independent probe, noting that “the response of the security forces appears to have been disproportionate and may have harmed civilians or put them at risk, especially when heavily armed security forces stormed into the Krue Se Mosque in Pattani”. Human Rights Watch quoted a local police commander as saying that “the security forces were tipped in advance about the highly coordinated attack and waiting for the poorly armed assailants, most of whom carried only machetes.... Most of the dead insurgent are youths of ages ranging from 15 to 20, but two of the leaders are aged about 50 and 60”.⁴⁰

In the aftermath of the 28 April killings, the Thai government appointed a six-member fact-finding commission – including two former diplomats, two former national security advisers, a Muslim social leader and a Muslim political scientist – who were to hold their first meeting on 6 May. The Thai army and police pledged full cooperation in the investigation. At least seven Muslim lawyers said they were planning lawsuits against state security agencies on

³⁴ Prangtip Daorueng, Thailand: Amid Violence, Muslim South Pins Hopes on New Approach, *IPSNewsNet*, 7 April, 2004, <http://ipsnews.net/interna.asp?idnews=23214> [accessed June 2004]

³⁵ 2 Die in Southern Thai Unrest, *International Herald Tribune*, 24-25 April 2004

³⁶ 112 People Die in Thailand’s Quash of Local Militants, *China Daily* [Beijing], 29 April 2004

³⁷ Adviser: Thai Violence from Movement, *Associated Press*, 30 April 2004

³⁸ Thailand: Attackers in Southern Carnage Were Muslim Separatists, *Associated Press*, 30 April 2004

³⁹ Adviser: Thai Violence...

⁴⁰ Human Rights Watch, Thailand: Probe Use of Lethal Force in Muslim South, New York, 29 April 2004 (press release)

behalf of those who lost loved ones in the attacks.⁴¹ *The Nation*, an English-language newspaper published in Bangkok, reported that dozens of young people in the deep South, tired of police surveillance, had slipped across the border into Malaysia.⁴²

3.3 Torture and Other Inhuman and Degrading Treatment

Although Thailand is not signatory to the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, both the Thai Constitution and the criminal code prohibit such practices. However, according to the US Department of State 2003 human rights report on Thailand:

NGOs and legal organizations continued to report that some members of the police occasionally beat suspects to coerce confessions. During the year, there were newspaper reports of numerous cases in which citizens accused police of brutality, threatening false charges, and extorting bribes. Investigations were undertaken in most cases, including several in which the accused police officers were suspended pending the result of the internal investigation.⁴³

On 14 May 2003, according to reports in both Thai-language and English-language media, six Myanmar migrant workers were killed in Mae Sot, a town in Tak Province bordering Myanmar. They apparently had been accosted by some local Thai men in an effort to extort money from them, a fight broke out, and the Myanmar migrants were seized and taken to the house of the village headman, where they were beaten. Eventually, the six migrants were taken away in a pickup truck by men dressed in uniforms. Their bodies were discovered in a nearby forest on 23 May, burned and with spent shell casings scattered nearby.⁴⁴

The National Human Rights Commission and the Law Society of Thailand both sent representatives to Mae Sot after relatives of the victims filed complaints. On 29 May, Amnesty International wrote a letter to the office of the Prime Minister, urging the government to bring those responsible to justice, and received a reply some days later, which stated: “The Prime Minister is very concerned about this case in particular and about any cases regarding the violation of migrant workers in Thailand in general.... He therefore has instructed the Royal Thai Police and the Mae Sot police authorities to hasten the investigation into the case and report any developments to him.” On 31 May, the local *kamnan* (“village headman”) was arrested and charged with the murder of the six migrant workers. As of November 2003 the case was continuing in the Thai courts.⁴⁵

The US State Department 2003 report also noted that prison conditions in Thailand “were poor and severely overcrowded but in general did not pose a serious threat to the life and health of inmates”. The penal system in Thailand comprises 182 prisons and detention centres, designed to accommodate roughly 100,000 inmates but actually housing a total of 212,620 prisoners in 2002. Medical care in the prisons was “inadequate” according to the report. The Corrections Department employs a total of 7 full-time doctors and 7 full-time

⁴¹ Southern Aftermath: Muslim Lawyers Plot Suits, *The Nation* [Bangkok], 6 May 2004

⁴² Southern Violence: Youths Flee Surveillance to Malaysia, *The Nation* [Bangkok], 6 May 2004

⁴³ United States, Department of State, *Country Reports ...*, p. 3

⁴⁴ Amnesty International, *Thailand: Grave Developments...*, p. 25

⁴⁵ *Idem*, p. 26.

dentists, along with 6 part-time doctors and 107 full-time nurses, to meet the medical needs of the inmate population.⁴⁶

In a 1999 human rights review of conditions in Thailand, Amnesty International expressed concern that “prison conditions in Thailand do not comply with international human rights standards, particularly Articles 7 and 10 of the ICCPR” to which Thailand became a signatory in October 1996.⁴⁷ Article 7 affirms that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”; Article 10 affirms that “all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person”.⁴⁸ The Amnesty International report noted that “conditions in the Immigration Detention Centres (IDCs) have long been an area of concern”. Illegal immigrants, as well as refugees and asylum seekers who do not have valid travel documents, are routinely arrested in Thailand and placed in IDCs for various periods of time, pending deportation or, in a limited number of cases, release for migration to other countries: “In the past, conditions in the central IDC, on Suan Phlu Road in Bangkok, amounted to cruel, inhuman or degrading treatment, including severe overcrowding, beatings by guards and ‘trusties’, and inadequate sanitation, food and medical care. In the past year conditions have improved there, although periodic overcrowding has been a continuing problem.”⁴⁹

3.4 Right to Fair Trial

The Thai legal system and the judiciary date back to the Sukhothai period (A.D. 1238-1350), when the King was the “Fountain of Justice”, personally adjudicating disputes between his subjects. In 1892, King Rama V founded the first building of the Courts of Justice but it was not until the revolution of 1932, when the form of government changed from an absolute to a constitutional monarchy, that the Constitution vested power in an independent judiciary. The Courts of Justice – which have the power to adjudicate criminal, civil, bankruptcy, and other cases – are classified into three levels: the Courts of First Instance, the Courts of Appeal and the Supreme Court. A Constitutional Court, which is charged with interpreting the Constitution, was created in 1998. In civil cases involving Muslims, the Act on the Application of Islamic Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala and Satun Provinces, B.E. 2489 (1946), provides that Islamic (*shari’a*) law will apply.⁵⁰

While the Thai judicial system is independent, the 2003 US State Department report commented, “it was subject to corruption and influence”, although the report did not provide specific examples.⁵¹ Although the Constitution provides for the presumption of innocence, Amnesty International has noted a police practice that undermines human rights safeguards regarding the “inherent dignity of the human person” as well as the right to presumption of innocence:

⁴⁶ United States, Department of State, *Country Reports ...*, p. 3

⁴⁷ Amnesty International, *Thailand: A Human Rights Review*, p. 11

⁴⁸ For the text of the International Covenant on Civil and Political Rights, see, e.g., http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [accessed June 2004]

⁴⁹ Amnesty International, *Thailand: A Human Rights Review*, p. 12

⁵⁰ Thailand, Office of the Judiciary, *The Judiciary of Thailand*, Bangkok, n.d., <http://www.judiciary.go.th/eng/thejudiciary.htm> [accessed June 2004]

⁵¹ United States, Department of State, *Country Reports ...*, p. 5

After criminal suspects are arrested, they often participate in a re-enactment of the crime in the presence of the press and others. Onlookers often taunt the accused, and the media report the event, which includes photographs of the suspect.... Since the promulgation of the new Constitution ... this practice is reportedly not as prevalent but it still occurs. A man belonging to the Karen ethnic minority arrested for murder and robbery in August 1998 re-enacted his alleged crime, and was photographed holding a knife against someone's ribs, although he had not yet been found guilty by a court of law.⁵²

3.5 Right to Freedom of Religion

Thailand's 1997 Constitution, Section 38, states that "a person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form or worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals".⁵³ A survey in 2000 indicated that over 99 per cent of the Thai population professed some religious belief or faith. According to the government's National Statistics Office, approximately 94 per cent of the population are Theravadan Buddhist, 5 per cent are Muslim and fewer than 1 per cent are believers of other religions. Alternate estimates by academics, religious groups and even other government agencies, however, put Buddhists at 85 to 90 per cent of the population, Muslims at up to 10 per cent and perhaps 1 to 2 per cent Christian, with smaller numbers of animists, Hindu, Sikh, Taoist, Confucian and Jewish.⁵⁴

During the drafting of the 1997 Constitution, it was proposed that Theravadan Buddhism be named the official religion of Thailand. While this was rejected over concerns that it might create social divisions and possibly offend other religious communities, the Constitution does require the government "to protect Buddhism and other religions" and also requires that the monarch be a Buddhist. So while "the law provides for freedom of religion, and the government generally respects this right in practice... the state religion, in effect, is Theravadan Buddhism".⁵⁵

Islam is the dominant religion in four of Thailand's five southernmost provinces bordering Malaysia, although Muslim minority groups can be found in 74 of Thailand's 76 provinces. Most Muslims are ethnic Malay, although some Thai Muslims are descended from immigrants from South Asia, China, Cambodia, and Indonesia. A total of 3,320 mosques are located in 59 provinces, virtually all of them associated with the Sunni branch of Islam, although 1 to 2 per cent of the total are affiliated with the Shi'a branch, according to the Religious Affairs Department (RAD).

Christians number 438,600, according to government statistics, about half of whom live in Chiang Mai Province, bordering Myanmar in the north. Roughly a quarter of Thai Christians are Catholic and the remainder are various denominations of Protestants. The six hill tribe groups (*chao khao*), identified by the government, comprise nearly 800,000 people and

⁵² Amnesty International, *Thailand: A Human Rights Review*, p. 9

⁵³ Thailand, *Constitution of The Kingdom of Thailand 1997*, Bangkok: Office of the Council of State, 1997. Official English translation, http://www.oefre.unibe.ch/law/icl/th00000_.html [accessed June 2004]

⁵⁴ United States, Department of State, *International Religious Freedom Report 2003: Thailand*, Washington, December 2003, <http://www.state.gov/g/drl/rls/irf/2003/24323.htm> [accessed June 2004]

⁵⁵ *Ibid.*

generally are described as animist though syncretic practices are also common, mixing Buddhism, Christianity, Taoism and spirit worship. Hindus and Sikhs, primarily recent migrants from South Asia, number about 23,000 people.⁵⁶

The Thai government maintains a quota on foreign missionaries, using numbers first established by the RAD in 1982: the quota system permits 400 Roman Catholic missionaries, 623 Protestant Christians, and 10 Islamic missionaries per year. The 2003 US State Department assessment noted that there were no reports of foreign missionaries, even those who may have entered without official authorization, being harassed or deported “although the activities of Muslim professors and clerics were subjected disproportionately to scrutiny on national security grounds because of continued government concern about the potential resurgence of Muslim separatist activities in the South”.⁵⁷

3.6 Right to Freedom of Expression

According to several international surveys, Thailand has been regarded for some time as having one of the highest levels of press freedom in Asia. In 2000, Freedom House, a US-based non-partisan organization, ranked Thailand as having a “free” press, with only Japan, Taiwan and South Korea receiving higher scores. In that year, there were six national TV stations (five of which were owned by the government or the armed forces), 523 radio stations, and a wide range of local and foreign print periodicals. Among Thai language papers, *Thai Rath* had the largest circulation (1,800,000). *The Nation* and *The Bangkok Post* were the largest newspapers in English (each with a circulation of around 43,000).⁵⁸

In 2002, however, Freedom House downgraded Thailand’s media rating from “free” to “partly free”, citing the Thaksin administration’s decision to ban editions of the *Far Eastern Economic Review* and *The Economist* and threaten to deport two *Review* journalists on the grounds that they were a threat to national security. Local media groups also faced increasing pressure to tone down critical reporting, some programming was taken off the air and editors were forced to resign. “As Thaksin consolidates his party’s hold over bureaucratic structures and increases the power of the executive”, Freedom House commented, “he seems unwilling to allow the press, as well as other independent institutions designed to check corruption, to continue in their role as independent watchdogs of the government”.⁵⁹ Freedom House gave the same “partly free” ranking to Thailand in its most recent study, *Freedom of the Press 2004*.⁶⁰

On 5 March 2004, a group of six NGOs – including the Asian Forum for Human Rights and Development (Forum-Asia) and Article 19, Global Campaign for Free Expression – issued a joint statement protesting against “the unprecedented political pressure on the Thai press recently” as evidenced by the enforced resignation or removal of two editors of prominent

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Ohio University, Southeast Asian Studies Program and Communications and Development Studies Program, *Thailand Country Profile: Communications and Transportation*, http://seamedia.org/thailand.php?story_id=14 [accessed June 2004]

⁵⁹ Karlekar, K.D., *Freedom of the Press 2003: A Global Survey of Media Independence*, Washington DC: Freedom House, 2003, p. 8

⁶⁰ Freedom House, *Global Press Freedom Deteriorates*, New York, 28 April 2004 (press release), <http://www.freedomhouse.org/media/pressrel/042804.htm> [accessed June 2004]

newspapers. On 20 February 2004, the board of directors of *The Bangkok Post*, removed the editor, Veera Prateepchaikul, after the paper had published a series of articles critical of the Prime Minister. On 24 February, Rungruang Preedhakul, editor of the Thai-language *Siamrath Weekly News Magazine*, resigned from his job, and later indicated that the resignation was motivated by political pressures.⁶¹

Article 41 of the 1997 Constitution protects freedom of expression and freedom of the press but, as the 2003 US State Department report on human rights practices noted, the government may restrict these freedoms “to preserve national security, to maintain public order, to preserve the rights of others, to protect public morals, to prohibit criticism of the royal family, or to prevent insults to Buddhism”.⁶²

3.7 Right to Freedom of Movement

The right to freedom of movement, as enshrined in the 1966 International Covenant on Civil and Political Rights, has two main components: 1) an internal aspect, relating to the freedom of movement within a country and 2) an external aspect, comprising freedom of movement between countries. The latter includes the right to leave one’s country and the right to enter one’s own country (sometimes also called the right to return).⁶³

3.7.1 Right to Move Within Thailand

Article 12 (1) of the ICCPR states: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”⁶⁴ The Thai Constitution provides for the right of citizens to change their residence or workplace, a right that the government has generally respected, though with some exceptions.⁶⁵ Some Chinese immigrants – specifically former refugees from communist China who fled to Thailand between 1953 and 1961 – are still required to live in government-designated areas in the northern provinces of Chiang Mai, Chiang Rai and Mae Hong Son. Similarly, some Vietnamese who migrated to Thailand in 1945 and 1946 are still living with restrictions on travel and residence.⁶⁶

According to 1998 data from Thailand’s Tribal Research Institute, there were nine principal hill tribe groups (*chao khao* in Thai), with a total population of 752,000: the Karen, Hmong, Lahu, Lisu, Mien, Akha, Lua, Htin and Khmu.⁶⁷ Lack of citizenship remains an issue for many of these highland people and, as an Asian Development Bank report noted, lack of citizenship also poses “a constraint to social services. There are many ethnic villagers who were born in Thailand but do not have officially registered status. They are essentially treated

⁶¹ Forum -Asia, Political Pressure...

⁶² United States, Department of State, *Country Reports...*, p. 5

⁶³ See, Human Rights Watch, *Human Rights Watch Policy on the Right to Return*, New York, n.d, <http://www.hrw.org/campaigns/israel/return/iccpr-rtr.htm> [accessed June 2004]

⁶⁴ See text of the International Covenant on Civil and Political Rights, at e.g., http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [accessed June 2004]

⁶⁵ United States, Department of State, *Country Reports...*, p. 9

⁶⁶ See Robinson, W.C., *Double Vision: A History of Cambodian Refugees in Thailand*, Bangkok: Chulalongkorn University, Asian Research Center for Migration, 1995, pp. 2-4

⁶⁷ Asian Development Bank, *Health and Education Needs of Ethnic Minorities in the Greater Mekong Subregion*, Manila, 2001, p. A-10

as foreigners.”⁶⁸ One of the constraints, which also applies to several hundred thousand ethnic Shan refugees from Myanmar, is the need to seek permission from local authorities or the army for foreign or domestic travel.⁶⁹

3.7.2 Right to Leave and Return

Thai citizens are accorded the constitutional right to leave and return to their country. In 2001, the International Organization for Migration reported a total of 165,047 Thai contract migrant workers (including 140,104 males and 24,943 females) working in more than 30 countries, with the top three being Taiwan, Singapore and Israel.⁷⁰ The total number of Thai migrants working abroad is probably several times higher than that, although accurate numbers are difficult to obtain, as many of these migrants are outside Thailand without proper travel and/or work authorization. The Ministry of Labour and Social Welfare estimates that there may be 400,000 Thai workers overseas, while the Asian Research Center for Migration at Chulalongkorn University put the number at over a million in 2000.⁷¹

Among the most vulnerable of migrants from Thailand working overseas are women, principally from the underdeveloped North and Northeast regions, who are trafficked to Japan, Taiwan, Australia, Europe and the United States, mainly for work in the commercial sex industry but also in the underground economy as low-wage workers. The Coalition Against Trafficking in Women, Asia-Pacific, reported that “victims are often lured by false promises of good jobs. Many victims then find themselves locked into an impossible financial situation, owing thousands of dollars to traffickers... By the time they arrive in Japan, most trafficked Thai women have accumulated on average about \$25,000 in debt.”⁷² In a 2000 study of Thai women trafficked to Japan, Human Rights Watch concluded:

working arrangements for most of the women from Thailand... constituted debt bondage or forced labour, practices prohibited under international law.... The threat and use of physical force, illegal confinement, and abusive working conditions that women routinely endure also constitute serious abuses of their rights to liberty, security of person, freedom of movement, free choice of employment fair wages and safe working conditions.⁷³

Of additional concern were the women whose homes were in Thailand but who lacked official Thai citizenship. This made the women even more vulnerable to trafficking, according to Human Rights Watch, “both because they are denied access to the same education and employment opportunities as Thai nationals and because they cannot obtain the documents necessary for international travel through legal channels. Even more

⁶⁸ *Idem*, p. A-11

⁶⁹ United States, Department of State, *Country Reports...*, p. 9.

⁷⁰ International Organization for Migration, *Labour Migration: Trends, Challenges and Policy Responses in Countries of Origin*, Geneva, 2003, p. 176

⁷¹ Chantavanich, S., *Mobility and HIV/AIDS in the Greater Mekong Subregion*, Bangkok: Asian Development Bank, 2000, p. i

⁷² Thailand: Human Traffic, in *Unfinished Journeys - Refugees and Migration in Asia and the Pacific*, February 2002, http://goasiapacific.com/specials/journeys/keyissues_thailand.htm [accessed June 2004]

⁷³ Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, New York, September 2003, pp. 3, 5

devastating, once these women leave Thailand it is almost impossible for them to return as the Thai government does not recognize their right of reentry.”⁷⁴

3.8 Economic, Social and Cultural Rights

Thai human rights expert and advocate, Vitit Muntarbhorn, noted in 2000 that one of the ironic and “intriguing lessons” of the economic crash of 1997 in Thailand is that “the plight of the national economy had a positive impact on political changes: it accelerated the passage of the new Constitution as part of the national catharsis and acted as a catalyst for broader promotion of human rights. This is living proof that... there is a key nexus between civil, political, economic and cultural rights.”⁷⁵

Specifically, Muntarbhorn noted several reforms in the late 1990s that paved the way for promotion of economic, social and cultural rights:

- introduction of a social security law and fund for workers;
- new prostitution laws that punish intermediaries rather than the prostitute, and laws to combat trafficking in women and children;
- provision of six years compulsory schooling extended to cover twelve years of basic education under the new Constitution;
- loans to help students go to school, and medical help for the poor;
- accession to the International Covenant on Economic, Social and Cultural Rights.

The economic crash, however, also has “aggravated and/or highlighted various defects: vestiges of poverty, extensive income disparity; child prostitution; child labour; violence against women and children; exploitation of migrant labour; ambivalence towards some cultural aspects of minority and indigenous communities such as religion and language; deprivations in slums; rural underdevelopment; and discrimination against those with HIV/AIDS.”⁷⁶

Article 45 of the 1997 Constitution protects the right to form an organization including “an association, a union, league, cooperative, farmer group, private organization or any other group”. The late 1990s saw a flourishing of local and national organizations focusing on economic, social and political rights. One such group is the Assembly of the Poor, an umbrella organization bringing together people affected by dams, government infrastructure and other large-scale development projects, land and forest disputes, slum problems and labour rights.⁷⁷ Another organization is the Assembly of Indigenous and Tribal Peoples in Thailand, which has sought to address problems relating to the citizenship and legal status of highland peoples as well as government plans for community development, which emphasize

⁷⁴ *Idem*, p. 5

⁷⁵ Muntarbhorn, V., *Human Rights and Human Development: Thailand Country Study*, Human Development Report 2000 Background Paper, New York: UNDP, October 2000, p. 2. See also Lee, T.L., *The State of Economic, Social and Cultural Rights in Southeast Asia, Dialogue & Cooperation*, No 1, 2001, <http://www.fesspore.org/pdf/D+C%202001/tanglaylee.pdf> [accessed June 2004]

⁷⁶ Muntarbhorn, *Human Rights...*

⁷⁷ Amnesty International, *Thailand: Grave Developments...*, pp. 14-15; The Turtle Salutes – the Assembly of the Poor in Thailand, *The Voice of the Turtle*, 24 March 2002, <http://www.voiceoftheturtle.org/salutes/thaipoor.org> [accessed June, 2004]

control over, rather than protection of, communities in highland areas.⁷⁸ In March 2002, these two groups along with other Thai NGOs rallied in front of Chiang Mai city's provincial hall and presented a list of eight demands, including revisions of citizenship laws for ethnic minorities and indigenous peoples. Thai Prime Minister Thaksin Shinawatra, who is from Chiang Mai, met with the protestors and promised that the government would address the issues.⁷⁹

Just over one year later, however, in the wake of domestic and international criticism of his administration's handling of the "war on drugs" in February-April 2003, Thaksin's police chief described non-governmental organizations as "dark influences". On 27 May 2003, wrapping up a 10-day country visit to Thailand, Hina Jilani, special representative of the Secretary-General on the situation of human rights defenders, commented at a press conference that human rights activists faced a "climate of fear" because of state-sponsored harassment. "I have sensed a level of insecurity among human-rights defenders which ranges from general unease to actual fear", Jilani noted. "Especially those exposing human rights violations, resisting or protesting against policies or projects that threaten their social economic rights or political rights or those who are raising concerns regarding governmental priorities and criticizing the social, political, and economic agenda of the government are worst affected", she said.⁸⁰ This fear resulted from public statements against NGOs made at the "highest level of government", said Jilani, by attempts by the government to cut off foreign funding of NGOs, and by use of the state security apparatus and judicial process to harass human rights defenders.⁸¹ Jilani raised her concerns again when she submitted her report to the UN Commission on Human Rights in April 2004. She highlighted alleged violence during a 2002 protest against the Thai-Malaysia gas pipeline project, alleged or attempted murder of human rights defenders addressing environment, labour and land rights issues, lax implementation of the Constitution, and a "widespread sense of insecurity" among human rights workers, the general community and journalists. Jilani also noted that "the current environment is no longer conducive for activities of defenders working from Thailand on human rights and democracy concerns in other countries of the region, including Myanmar [Burma]."⁸²

In its February 2004 report, *Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees and Migrants*, Human Rights Watch cited a new regulation that came into effect on 29 December 2002 requiring Myanmar passport holders to possess a visa to enter Thailand, when previously, like other citizens of ASEAN member countries, they were able to obtain visas for up to four weeks upon arrival in Thailand. The upshot of new visa and immigration requirements is that

obtaining a Thai visa has become extremely difficult for Burmese, especially for activists and human rights defenders.... Increasing numbers of Burmese are being arrested on immigration charges following peaceful actions such as labor strikes, protests, hunger fasts, overseas speaking tours, and other political activities. The fear of

⁷⁸ The Turtle Salutes...

⁷⁹ Amnesty International, *Thailand: Grave Developments...*, p. 15

⁸⁰ *Idem*, pp. 2-3

⁸¹ UN Envoy Cites Climate of Fear, *The Nation* [Bangkok], 28 May 2004

⁸² Rojanapruk, P., Thailand: Academic Urges Probe after Rights Report, *The Nation* [Bangkok], 21 April 2004

being arrested or fined for immigration violations has caused many Burmese activists to restrict their movements and decrease their public activities.⁸³

4 Vulnerable Groups

4.1 Ethnic Minorities

Though the Thai language and ethnicity are dominant, Thailand is a nation of many cultures and ethnic groups, including Chinese, Malay, Lao, Mon, Khmer, Vietnamese, Burman and Indian. However, as Vattana Pholsena notes “the only peoples who have been subjected to policies that are explicitly based on a recognition of ethnic differences are those who have been labelled as ‘hill peoples’ (*chao khao*).” The term “hill tribes” originated as an official designation and legal status in 1959, when the government considered upland peoples bordering Laos to pose a threat to Thai national security. They were successively, and even simultaneously, accused of being involved in communist guerrilla movements, of destroying forests with their “slash and burn” farming techniques, and of cultivating and trafficking opium. Minorities on other borders and in other areas – the Khmer, Mon and Kui – received no such classifications or stigmas.⁸⁴

The Thai Constitution of 1997, also called the People’s Charter, contains several sections stressing the principle of non-discrimination towards ethnic minorities, while also stipulating a range of rights and benefits for all “Thai people”, including 12 years of compulsory and free education, public health services, as well as freedom of speech, association and movement. “However”, Pholsena notes again, “the lack of citizenship for many members of ethnic minority groups, despite for some of them having settled in Thailand for several generations, deprives them of those rights.”⁸⁵

As of 1985, a government survey indicated that only half of Thailand’s hill tribe population were Thai citizens. Ten years later, more than one third still were not citizens, despite efforts by the government and various development agencies.⁸⁶ One major impediment is Thai language literacy. Only about 20 per cent of hill tribe people were literate in the Thai language in 1998. Enrolment in preschool ranged from 20 to 30 per cent of all eligible children in the northeastern provinces that have the highest concentration of ethnic minority families. Schools are more widely dispersed in highland areas, teachers are fewer in number, and they are less well trained than in other areas. If limited education creates limited prospects for obtaining citizenship, the problem cuts the other way as well: lack of citizenship papers limits access to public education to grades 1 to 9 only.⁸⁷

Although the Ministry of Public Health has been expanding the coverage of health services throughout the country, the presence of health workers is lowest in the highland areas and

⁸³ Human Rights Watch, *Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees and Migrants*, New York, February 2004, pp. 32-3

⁸⁴ Pholsena, V., *Inclusion of Minorities in Public Life in Laos, Thailand and Vietnam*, Commission on Human Rights, Subcommission on Promotion and Protection of Human Rights, Working Group on Minorities, Ninth Session, E/CN.4/Sub.2/AC.5/2003/WP.11, 5 May 2003, p. 7

⁸⁵ Pholsena, p. 12

⁸⁶ Aguetant, J.L., Impact of Population Registration on Hilltribe Development in Thailand, *Asia-Pacific Population Journal*, Vol. 11, No. 4, 1996, pp. 47-72

⁸⁷ Asian Development Bank, pp. A-12, A-13

quality of care is below the national average. Discriminatory practices also restrict access to health care, according to the 2001 Asian Development Bank report: “Many ethnic minorities are barred from government health services because of lack of registration or citizenship, which prevents them from obtaining health insurance and welfare cards. Others find that their limited ability to speak Thai results in discrimination.”⁸⁸

Joseph Aguetant notes: “For the 35 percent of the hilltribe people who still do not hold Thai nationality, not being citizens means being cast adrift, surviving beyond Thai law without solid legal protection. Thus their legal status is likely to fall under international norms pertaining to stateless persons.... Without citizenship (and its associated documents) the process of social integration of any hilltribe person into Thai society is greatly hampered.”⁸⁹

To be suspected of disloyalty to the state, to be associated with destructive agricultural practices, to be accused of drug use and production, to be deficient in Thai language skills, to be limited in access to health care and educational opportunities and, above all, to be lacking in citizenship and legal documentation means that ethnic minorities in Thailand also face increased risks of exploitation and human rights abuse. Amnesty International noted that “the effective statelessness of many tribal women makes them particularly vulnerable to joining the large sex industry in Thailand. As they are often unable to obtain jobs without an education, they seek employment or are trafficked into sex work.”⁹⁰ If they are trafficked overseas, lack of citizenship and proper documentation renders their return to Thailand problematic.⁹¹

Accusations that highland groups are engaged in drug trafficking are then used as a justification of arbitrary arrests, searches and extrajudicial killings. On 12 February 2003, at the beginning of Thailand’s three-month “war on drugs”, four Hmong men were shot dead after returning from their district office in Petchaburi Province, where one of the men had been told to report in response to an arrest warrant for drug trafficking. On 28 February, six members of the Mien hill tribe group were killed by gunmen as they were returning from an anti-drugs meeting in Chiang Mai Province. And on 25 April, also in Chiang Mai Province, the body of a Lisu man was found some time after he had been seen being questioned by the police. Amnesty International expressed concern at “the climate of fear created by the killings and the lack of transparency” in the procedures for investigation.⁹²

4.2 Refugees and Asylum Seekers

According to the US Committee for Refugees (USCR), a non-partisan private organization, Thailand hosted over 420,000 refugees and asylum seekers at the end of 2003, the overwhelming majority, 405,000, of whom were from Myanmar, including about 140,000, mostly Karen and Karenni, living in camps, of whom 20,000 were unregistered; an estimated 200,000 ethnic Shan living among the local population, and at least 50,000 from persecuted ethnic minorities living as illegal migrants. Among the non-Myanmar nationals are 15,000 Laotian Hmong, living in refugee-like circumstances at a Buddhist temple, as well as small

⁸⁸ *Idem*, p. A-13

⁸⁹ Aguetant, p. 18

⁹⁰ Amnesty International, *Thailand: Grave Developments...*, p. 11

⁹¹ Human Rights Watch, *Owed Justice...*, p. 5

⁹² Amnesty International, *Thailand: Grave Developments...*, pp. 11-12

numbers of Cambodians and Chinese. At the end of 2003 there were about 4,000 asylum seekers in urban areas, half from Myanmar.⁹³

In the last 30 years, although Thailand has hosted hundreds of thousands of refugees and asylum seekers from virtually every neighbouring country and accommodated a host of international humanitarian agencies, including UNHCR, it is not signatory to any of the UN treaties relating to refugees and stateless persons.⁹⁴ When Indochinese fled across the border into Thailand in 1975, they were housed in camps established and administered by the Ministry of Interior, following a Thai Cabinet decision of 3 June 1975. The first point of that decision captured a fundamental ambivalence towards asylum seekers that has been reflected in much of Thailand's subsequent policies and practices: "Should any displaced persons attempt to enter the Kingdom, measures will be taken to drive them out of the Kingdom as fast as possible. If it is impossible to repel them, such persons will be detained in camps."⁹⁵

The 1951 Convention Relating to the Status of Refugees defines a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country".⁹⁶ In various agreements signed with UNHCR since 1975, Thailand has agreed to waive enforcement of immigration policy and recognize the competence of UNHCR to assist designated populations of refugees and asylum seekers in designated areas, usually camps. As a matter of policy, however, Thailand does not employ the term "refugee" in reference to any of the populations displaced on its soil. The general term employed since 1954 has been "displaced person", following the Ministry of Interior's 1954 "Regulation Concerning Displaced Persons from Neighbouring Countries", which defines a displaced person as "he who escapes from dangers due to an uprising, fighting or war, and enters in breach of the Immigration Act".⁹⁷

4.2.1 Refugees and Asylum Seekers from Myanmar

While the USCR estimates of Myanmar nationals in Thailand classified as refugees or in "refugee-like circumstances" totalled over 400,000 in 2003, other estimates place the total number of Myanmar nationals, including "economic migrants", in Thailand at one million or more. However, as Therese Caouette and Mary Pack noted in a 2002 study,

there is an arbitrary line between the groups that the Thai government categorizes as 'temporarily displaced', 'students and political dissidents', and 'migrants'. These faulty distinctions often result in the vast majority of people being denied asylum and protection.... Hence untold numbers of people from Burma are placed at considerable

⁹³ United States Committee for Refugees, *World Refugee Survey 2004*, http://www.refugees.org/wrs04/country_updates/east_asia_pacific/thailand.html [accessed June 2004]

⁹⁴ See Robinson, W.C., *Terms of Refuge: The Indochinese Exodus and the International Response*, London: Zed Books, 1998

⁹⁵ Muntarhorn, V., *Displaced Persons in Thailand: Legal and National Policy Issues in Perspective*, *Chulalongkorn Law Review*, Vol. 1, 1982, p. 14

⁹⁶ For the text of the Convention Relating to the Status of Refugees, see, e.g., http://www.unhcr.ch/html/menu3/b/o_c_ref.htm [accessed June 2004]

⁹⁷ Robinson, W.C., *Double Vision...*, p. 6

risk while in Thailand and, if deported, are often delivered back into environments that are abusive and deny their most basic rights.⁹⁸

The more than 140,000 Myanmar nationals living in camps along the Thai-Myanmar border, though classified as “displaced persons” by Thai authorities, are recognized by UNHCR as refugees. Many, though not all, have been screened by Thai Provincial Admissions Boards (PAB), which were established in 1998. It was in this same year that, for the first time since Myanmar refugees and asylum seekers began crossing into Thailand in the late 1970s, the Thai government permitted UNHCR to establish a presence on the border (with field offices in Kanchanaburi, Mae Sot, and Mae Hong Son), to observe the screening process and to register populations in the camps.

From May 1999 to December 2001, a total of 29,067 Myanmar nationals applied for asylum in Thailand. Applying a definition that successful applicants must demonstrate that they were “fleeing from fighting”, the Provincial Admissions Boards accepted 11,718 people (41 per cent) and rejected 10,408 (35 per cent), while another 6,941 applicants (24 per cent) were left pending.⁹⁹ According to USCR analysis, the Thai authorities initially said they would expand admission criteria to include persons fleeing “the effects of civil war” but there is no evidence that this was done. USCR noted “numerous shortfalls” in the screening process, including provincial and district procedural differences, long delays, and limitation of UNHCR involvement to that of an observer.¹⁰⁰

Through most of 2002 and 2003, the Provincial Admissions Boards were, according to a UNHCR report, “completely inactive” and “seem to have lost their utility”.¹⁰¹ Meanwhile, UNHCR had been continuing its refugee status determination procedures for relatively small numbers of Myanmar nationals both on the border and living in Bangkok. During 2003, UNHCR received about 3,000 asylum applications from Myanmar nationals, of which 657 were recognized while about 2,000 were pending.¹⁰²

In June 2003, according to a February 2004 report by Human Rights Watch, “relations between the Thai government and UNHCR reached the lowest point in years. The government charged that UNHCR had infringed Thai sovereignty by granting refugee status to Burmese exiles without informing the government about the decisions or the names and addresses of the [Persons of Concern].” On 1 January 2004, UNHCR was pressured to suspend its refugee status determination procedures for new asylum seekers. One month later, UNHCR was granted permission to “register” new asylum seekers but only for referral to border camps.¹⁰³

⁹⁸ Caouette, T, and Pack, M., *Pushing Past the Definitions: Migration from Burma to Thailand*, Washington DC: Refugees International and Open Society Institute, 2002, p. 3

⁹⁹ *Idem*, p. 10

¹⁰⁰ United States Committee for Refugees, *World Refugee Survey 2002*, Washington, 2002, http://www.refugees.org/world/countryrpt/easia_pacific/Thailand.htm [accessed June 2004]

¹⁰¹ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan: Thailand: Planning Year 2004, [2003] (unpublished document)

¹⁰² United States Committee for Refugees, *World Refugee Survey 2004...*

¹⁰³ Human Rights Watch, *Out of Sight...*, p. 2

The halting of status determination procedures by UNHCR, which primarily involved Myanmar asylum seekers in Bangkok and other urban areas, has prevented a build-up of a new “urban refugee” population. In January 2004, Thailand and the United States entered into discussions about the possibility of expanding US resettlement opportunities for an estimated 2,000 individuals already recognized by UNHCR as refugees (though they are called “Persons of Concern” in Thailand) as well as another 2,000 who had cases pending with UNHCR as of December 2003. Human Rights Watch called this a “welcome development”, while noting several concerns. First, the resettlement opportunity focuses mainly on “urban refugees” already recognized by UNHCR; the prospects of asylum seekers who arrive later is far less clear. Second, no resettlement opportunities were under discussion for the upwards of 140,000 Myanmar nationals living in camps on the border. “Also not included for consideration for resettlement or even asylum at this time are members of groups such as the Shan, who have largely been barred by the Thai government from lawful residence in the refugee camps, as well as hundreds, if not thousands, of people with valid claims to asylum within the estimated one million Burmese migrants working in Thailand.”¹⁰⁴

Since 1996, when the Myanmar military regime began a forced relocation campaign in Shan State, thousands of ethnic Shan refugees and asylum seekers have crossed into northern Thailand and are living primarily in the provinces of Chiang Mai, Chiang Rai and Mae Hong Son. During 2003 an estimated 1,000 Shan arrived from Myanmar each month, and it is estimated that at least 200,000 Shan are now living in Thailand, perhaps half of whom are recent arrivals from conflict. While Thai authorities have allowed Karen, Karenni and even some ethnic Burmans to be registered and enter refugee camps along Thailand’s western border with Myanmar, Shan have not been granted such recognition.¹⁰⁵ In May 2002, the Thai government granted temporary shelter to 450 Shan who fled across the border into Chiang Rai Province. Initially planning to repatriate the group, Thai authorities have delayed taking action following an appeal by NGOs.¹⁰⁶

Many of the more than one million Myanmar migrants in Thailand, “fled their homeland for a mixture of political and economic reasons”, according to the 2004 Human Rights Watch report, “and could face serious reprisals from the Burmese authorities if expelled from Thailand. Despite this fact, the Thai government regularly deports thousands of Burmese each month.”¹⁰⁷ In May 2003, Thai authorities began to expel as many as 10,000 Myanmar migrants per month by means of “informal deportations” to Myanmar through an unofficial checkpoint at Mae Sot. Since August 2003, Thailand and the Myanmar authorities have reached an agreement for “formal deportations” of about 400 Myanmar nationals per month, directly from the IDC in Bangkok to a holding centre in Myanmar operated by Myanmar military intelligence. While UNHCR has access to lists of people detained in the Bangkok IDC, and can check whether any refugees or asylum seekers are slated for deportation, there appears to be no way to have their names removed from the list except if they opt instead for “informal deportation” through Mae Sot.¹⁰⁸

¹⁰⁴ *Idem*, p. 3

¹⁰⁵ United States Committee for Refugees, *World Refugee Survey 2004...*

¹⁰⁶ United States, Department of State, *Country Reports...*, p. 9

¹⁰⁷ Human Rights Watch, *Out of Sight...*, p. 6

¹⁰⁸ *Idem*, p. 7

In November 2003, the Thai government announced that undocumented migrant workers had 60 days to register with the authorities or face arrest and deportation. A new bilateral agreement between Thailand and Myanmar in June 2003 requires all Myanmar migrant workers to have passports, visas, and work contracts specifying their term of stay in Thailand. By September 2004, according to Human Rights Watch, the Myanmar government expects to begin replacing “illegal” workers with “legal” ones. “Workers not approved by the SPDC [State Peace and Development Council], especially exiled political dissidents, are unlikely to receive authorization from either government to work in Thailand. Under this policy, they will be returned either directly to the SPDC or simply deported across the border.”¹⁰⁹

4.2.2 Refugees and Asylum Seekers from Other Countries

In December 2003, the US State Department announced that it would begin refugee resettlement processing for an estimated 15,000 Hmong from Laos who had been living in Wat Tham Krabok, a Buddhist temple 60 km northeast of Bangkok. In the 1990s, as refugee camps for Indochinese were closing down in Thailand (and throughout Southeast Asia), thousands of Hmong began to depart the camps of Ban Vinai and Ban Na Pho, opting to remain in Thailand rather than return to Laos or resettle in the United States.¹¹⁰ In 2002, the temple’s abbot and patron of the undocumented Hmong population, Phra Chamnoon, died. One year later, Thai forces built a fence around the temple complex and announced plans to close the site and relocate the population to a military base.

The decision by the US government to process the Hmong in Wat Tham Krabok marks the first time since 1997 that Hmong will be resettled in the United States in large numbers. Between 1975 and 1997, a total of 195,000 highland Lao (principally Hmong) and 135,000 lowland Lao refugees were resettled in the United States. A State Department spokesperson said that “this is the last time we intend to come in” with large resettlement offers for the Hmong displaced from Laos. An 18 December 2003 announcement from the State Department stated that “this is a special program being opened only for Lao/Hmong living at Wat Tham Krabok” who had registered with Thai authorities by August 2003.¹¹¹ Processing began in February 2004 with the first cases scheduled to leave Thailand as early as July 2004.

While refugee advocacy groups and Hmong community organizations welcomed the US commitment of resettlement for the 15,000, some raised concerns about an estimated 100,000 “lost Hmong” who were living outside of the monastery, without documentation. “The Hmong community in the United States and their relatives living outside of Wat Tham Krabok argue that all Hmong refugees who possessed UNHCR documents in the past also should be eligible for the resettlement program”, said Laura Xiong, executive director of Hmong International Human Rights Watch.¹¹² Using that criteria, Refugees International estimated that another 15,000 Lao/Hmong living in Thailand might be eligible for admission to the United States.¹¹³

¹⁰⁹ *Idem*, p. 8

¹¹⁰ Refugees International, *Hmong Refugees in Thailand: Situation Report and Recommendations for Congressional Action*, Washington DC, 27 January 2004, <http://www.refugeesinternational.org/cgi-bin/ri/bulletin?bc=00715> [accessed June 2004]

¹¹¹ Doyle, M., Hmong Can Seek Entry into US, *Sacramento Bee*, 23 December 2003

¹¹² Nelson, T. and T., Future Is Unclear for Hmong Left Behind, *Pioneer Press* [St Paul MN], 2 March 2004

¹¹³ Refugees International, *Hmong Refugees in Thailand...*

Thailand is also a transit country for small numbers of North Korean asylum seekers who have made their way through China and Laos into Thailand with an ultimate destination of South Korea. Thai policy is to leave status determination for North Koreans in the hands of UNHCR and travel documentation with the South Korean embassy.¹¹⁴

4.3 Religious Minorities

As noted previously, various estimates place Buddhists at between 85 and 95 per cent of the population and Muslims at between 5 and 10 per cent, with the remainder being animist, Christian, Hindu, Sikh, Taoist, and other religions. Although Muslims can be found in 74 of Thailand's 76 provinces, they constitute a majority in four out of five of Thailand's southernmost provinces bordering Malaysia – Narathiwat, Pattani, Yala, and Satun. The communal violence that has led to the deaths of more than 200 people since the beginning of January 2004 continues to take lives and disrupt many others. On 28 May, a 67-year-old man was found decapitated and the note pinned to his body said: "If you still arrest innocent Malays, we will also kill innocent Buddhists." A police investigator commented: "It is possible the killer might want to exploit the recent events to hide some personal motive, or he might want to instigate tension between Muslims and Buddhists."¹¹⁵

Shortly after the events of 28 April that left 108 people dead, Malaysian Prime Minister Abdullah Badawi offered to provide temporary shelter for Thai nationals seeking refuge in the wake of the violence. "Some arrangements had to be made if there is a sudden influx of terrified people crossing the border to seek shelter", he said. "They will want a place of refuge until peace returns to their area and, with the uncertainty at present, naturally, they will want to come over here." The *Nation* newspaper described the offer as "unprecedented.... Malaysia normally has a very tough immigration policy."¹¹⁶ Elsewhere in Malaysia, Muslim spiritual leaders and political figures reacted angrily to the killings: "This is oppression, a massacre against Muslims", said one; another commented that if Thailand did not handle the situation effectively, the unrest would escalate as had happened with Muslims in Myanmar and Mindanao in the southern Philippines. Prime Minister Thaksin was equally strong in his response: "Some foreign countries have expressed their readiness to interfere and what I can say is that we have done everything to exercise maximum restraint. If we already explained and they do not understand, that is their problem. We are not begging for food from any countries and we did not start this problem."¹¹⁷

The leaders of both countries later would offer more conciliatory remarks but, as of June, it was not clear what direction Thai policy in the south would take. In the meantime, both Muslims (the minority in Thailand) and Buddhists (the religious minority in parts of the south) expressed fears for their safety.

¹¹⁴ Refugees International, *The Underground Railroad for North Korean Refugees*, Washington DC, 26 January 2004, <http://www.refugeesinternational.org/cgi-bin/ri/voice?voc=00131> [accessed June 2004]. See also Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, New York, November 2002, p. 32

¹¹⁵ Reuters, Attackers Behead Thai Buddhist in Muslim South, *Reuters Alertnet*, 29 May 2004, <http://www.alertnet.org/thenews/newsdesk/BKK212027.htm> [accessed June 2004]

¹¹⁶ Kuala Lumpur Ready to Accept Thai Refugees, *The Nation* [Bangkok], 1 May 2004

¹¹⁷ Agence France Presse, Thai Troops Deployed in Restive South, 2 May 2004

4.4 Labour Migrants and Trafficked Persons

4.4.1 Labour Migrants

Thailand is a major sending, receiving and transit country for migrant labour within the Greater Mekong Subregion (Cambodia, Laos, Myanmar, Thailand, Yunnan province in Southwest China, and Vietnam).¹¹⁸ As a sending country, significant movements of Thai nationals out of the country began in the 1970s mostly with the migration of professionals to the United States. In the 1980s, the oil boom prompted a massive outflow of Thai workers to the Middle East. In the 1990s and 2000s, Thai labour migration was directed more toward newly industrialized countries in Asia.¹¹⁹ As noted previously, in 2001, Thailand official data records a total of 165,047 Thai contract migrant workers in more than 30 countries, with the top three being Taiwan, Singapore and Israel.¹²⁰ Estimates of Thai undocumented migrant labour in the mid-1990s ranged from 100,000 to 200,000, including 55,200 in Japan, 35,800 in Singapore, 16,400 in Hong Kong and 6,300 in Taiwan.¹²¹

As the British geographer Ronald Skeldon has noted, Thailand has progressed farther in the demographic transition to low population growth than its Southeast Asian neighbours. The total fertility rate¹²² was 1.74 in 2000 compared to over 6 in the 1960s. Thailand now has fewer children than at any time in the past 20 years and the numbers will continue to decline. The numbers of Thai young adults aged 15 to 24, typically peak years for migration, also declined from 11.5 million in 1990 to 10.3 million in 2000. As a result of the demographic shifts, noted Skeldon:

Labour deficits have emerged across a broad spectrum of activities. These are most acute at the higher-skill levels but are also being felt at unskilled levels in particular sectors. The latter reflect higher expectations associated with rising education levels as Thais become increasingly unwilling to undertake low-paid, strenuous or dangerous activities, the so-called 3-D jobs (those that are dangerous, demanding and dirty).¹²³

In order to fill these jobs and to remain attractive to foreign investment looking for cheap labour, Thailand has resorted to importing labour. By most estimates, there were more than one million foreign workers in Thailand in 2000, principally from Myanmar, Laos and Cambodia; perhaps 90 per cent of these migrant workers were in irregular status.¹²⁴

¹¹⁸ Harima, R., Varona, R. and DeFalco, C., Migration, in M. Kaosa-ard and J. Dore (eds), *Social Challenges for the Mekong Region*, Bangkok: White Lotus, 2003, p. 225

¹¹⁹ Chantanavich, S., Issues Paper from Thailand, in Brownlee, P. and Mitchell, C. (comps.), *Migration Issues in the Asia Pacific*, Wollongong: Asia Pacific Migration Research Network, 1997, <http://www.unesco.org/most/apmrnw14.htm> [accessed 6 June 2004]

¹²⁰ International Organization for Migration, *Labour Migration...*, p. 176

¹²¹ Chantanavich, S., Issues Paper...

¹²² Total fertility rate is defined as the average number of children born to a woman during her lifetime.

¹²³ Skeldon, R., Irregular Migration in the Greater Mekong Subregion: Policy Dimensions of a Growing Issue, in, *Labour Migration and Trafficking within the Greater Mekong Subregion*, Bangkok, International Labour Office, 2001, pp.36-7

¹²⁴ Battistella, G., Migration 2000 in Asia: A Year in Review, *Asian Migrant*, Vol. 14, No. 1, January-March 2001, pp. 5-20

Beginning in 1996, in an effort to register the population of irregular migrants, Thailand offered an amnesty to persons working illegally in the country. In exchange for registering with the authorities, migrants would be given a permit enabling them to work legally, though only in 46 of 76 provinces and only in 19 designated occupations, including fisheries, rubber plantations, sugar cane plantations, and construction. Research suggests that between one third and one half of all irregular migrants in Thailand registered. Following the 1997 economic crisis, as Thai workers returned from overseas and swelled the ranks of the unemployed, the Thai government announced that 300,000 illegal foreign workers would have to leave the country. Thailand deported thousands of foreigners, especially Myanmar nationals, and reduced the number of provinces in which migrant workers were permitted employment to 37.¹²⁵

In 2000 and 2001, Thailand once again modified its policies and opened all provinces and a wide range of occupations to workers from Myanmar, Cambodia and Laos. Those registering for a 12-month work permit were required to pay Thai baht 4,450 (about US\$ 100 at that time). As of March 2002, a total of 428,431 migrants had registered, of whom 348,747 were Myanmar nationals, 42,085 were Laotian, and 37,595 were Cambodian. Of the Myanmar registered migrants, 56 per cent were men, employed in a range of occupations, including agriculture, construction, fisheries, and domestic work. Of Laotian registered migrants, 59 per cent were women, employed primarily as domestic workers. Among Cambodians, 72 per cent were men, almost half of whom were working in fishery-related jobs.¹²⁶

Virtually no one has argued that the 2002 registration represents the actual total of irregular migrants in Thailand. Only Myanmar nationals, Cambodians and Laotians are counted, first of all, leaving out potentially large numbers of South Asians, Chinese, and other nationalities. Second, only people of legal working age were permitted to register, thus leaving out all child labourers under the age of 14. And finally, anyone working in occupations that are illegal and/or highly stigmatized – including begging and sex work – would not be included in the registration. Some estimates suggest that the number of unregistered migrant workers in Thailand could be two to three times as large as the number of registered.¹²⁷ It is also likely that this would include a significant proportion of women and children, many of whom are victims of trafficking.

4.4.2 *Trafficked Persons, Especially Women and Children*

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime defined “trafficking in persons” as follows:¹²⁸

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the

¹²⁵ Skeldon, p. 31

¹²⁶ Harima, Varona and DeFalco, pp. 229-31

¹²⁷ *Idem*, p. 229

¹²⁸ United Nations, General Assembly, Resolution Adopted ...: Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, A/RES/44/25, 2001; text extract at <http://www.unescobkk.org/culture/trafficking/ev.asp?ev=83&id=92&pr=86> [accessed June 2004]

consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or other practices similar to slavery, servitude or the removal of organs.

The consent of a victim of trafficking on persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article.

'Child' shall mean any person under eighteen years of age.

In 2000, the UN Special Rapporteur on violence against women, Radhika Coomaraswamy, noted that "trafficking in women is one component of a larger phenomenon of trafficking in persons, including both male and female adults and children". Trafficking routes replicate migration routes, Coomaraswamy's report suggested. Traditionally, the movement has been South to North, although increasingly it occurs within regions and within states. She included Thailand on a list of countries or areas of origin for trafficking as well as on a list of countries or areas of destination (only Thailand, China, Hungary, India, Pakistan, and Poland were on both lists), while noting that trafficking was internal within Thailand as well.¹²⁹

Internally, there is the trafficking of labour from rural areas, particularly the underdeveloped North and Northeast regions, to Bangkok. Some of these workers continue on overseas, including the trafficking of Thai women to Australia, South Africa, Japan, Taiwan, Europe and North America, mainly for work in the commercial sex industry but also in the informal economy as low-wage workers. Among these Thai nationals are ethnic minorities who are long-time residents of Thailand though lacking citizenship or clear legal status. Finally, there are foreign nationals – mainly from Myanmar, Laos, Cambodia, and China – trafficked into Thailand as well as through Thailand to the destinations mentioned above.¹³⁰ Statistics on trafficking into, out of, and within Thailand vary as widely as the sources from which they originate. Some may be more reliable than others, and none could be said to be complete, but it is beyond the scope of this paper to document or analyze these statistics. That task has been taken up by UNESCO's Trafficking Project in Bangkok, whose trafficking statistics project compiles data from governments, international organizations, non-governmental organizations, and academic institutions.¹³¹

Regarding the phenomenon of human trafficking, "the popular regional stereotype tends to be a twelve year old girl being sold into sex slavery by unscrupulous parents", noted Phil Marshall, programme manager for the UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region (UNIAP). The reality is more complex and, at least in the Mekong region, he identified three categories of trafficking. In the first, "in the vast

¹²⁹ United Nations, Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*, E/CN.4/2000/68, 29 February 2000, p. 8

¹³⁰ United States, Department of State, *Trafficking in Persons Report 2004*, Washington DC, June 2004

¹³¹ United Nations, General Assembly, Resolution Adopted ...: Annex 2: Protocol...

majority of cases, the actual movement aspects of the trafficking are by and large ‘voluntary’ in the sense that the person has made the decision to travel for work themselves, within the (often limited) range of choices available”.

In this first and largest category of trafficking, it is the end outcome – the nature, the terms and conditions of work at the destination point which defines most cases as trafficking. In this sense, we are talking about a combination of (generally irregular) migration and labour exploitation – exploitation in a range of forms including debt bondage, low or no wages, excessive working hours, unsafe conditions, etc. The second and most high profile outcome of trafficking is, of course, prostitution or sex work, which although in some ways similar to other forms of labour exploitation above, falls into a slightly different category as it often has illegal or ambiguous status. There is a third category of trafficking, however, bringing in those forms of ‘labour’ which address demands society generally finds unacceptable. This includes the trafficking of young children for begging, such as from Cambodia to Thailand, often it appears with at least some degree of assent from parents or other family members.¹³²

According to the 1999 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, these “worst forms” include:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.¹³³

Based on interviews with 153 children employed at sites on the Thai-Myanmar and Thai-Laos borders, the Asian Research Centre for Migration (ARCM) at Chulalongkorn University found that children interviewed were working in factories (22 children), construction (17), fisheries (10), domestic work (4) and other services (5). Nearly one-third (45) of the children were exploited by the sex industry, with an average age of 15.5 and some as young as 13. “Depending on the type of work, children often faced dangerous or hazardous conditions”, the ARCM report noted, “such as working in confined spaces, carrying heavy loads, working with hazardous chemicals and, in the case of sexual exploitation, they were met with issues of forced labour”.¹³⁴ The ARCM report concluded that, based on the interviews with the children who could be contacted:

¹³² Marshall, P., *Globalization, Migration and Trafficking: Some Thoughts from the Southeast Asian Region, Paper to the Globalization Workshop, Kuala Lumpur, 8-10 May, 2001*, Bangkok: UNIAP, 2001

¹³³ International Labour Organization, *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999*, <http://www.ilo.org/public/english/standards/ipec/ratification/convention/text.htm> [accessed June 2004]

¹³⁴ Asian Research Centre for Migration, *Thailand-Lao People’s Democratic Republic and Thailand-Myanmar Border Areas, Trafficking in Children into the Worst Forms of Child Labour: A Rapid Assessment*, Geneva: ILO-IPEC, November 2001, p.2

the trafficking process itself is usually not exploitative, and there are relatively few cases that fit popular notions of human smuggling and the trade in children. A voluntary process of labour migration organized by families, trusted friends or the children themselves appears to be much more common. Unfortunately, however, the children who are trafficked for exploitative reasons involving force or coercion are the most difficult children to reach and thus we know little about the trafficking process in these cases.¹³⁵

5 Future Prospects and Directions

The Singapore-based academic analysts Prem Kumar Rajaram and Carl Grundy-Warr note that in the last decade, Thai policy has tended to treat refugees and undocumented migrants, especially those from Myanmar, as threats to social order, to public health, even to the environment. They are seen as transmitters of disorder and disease from other countries into Thai space. To immunize the Thai populace from these threats, displaced persons are kept in “places of exclusion”, temporary camps that “have produced trapped populations living in limbo, relatively secure but without any real say in their futures”. At the same time, they note another trend:

Ironically, it is the very porosity of the border, and the very large numbers of ‘transgressions’ across it, that mean that the majority of undocumented people live beyond these spaces of exclusion, within Thai villages and towns, in positions of great vulnerability, as mostly voiceless, anonymous, often highly exploited sweatshop workers, construction site workers, seasonal migrant labour, bar girls and prostitutes. They are often at the mercy of the whims and fancies of their employers, occasionally corrupt officials and police, and their luck in avoiding arrest, detention, and forcible repatriation.¹³⁶

Fundamentally, the current debate in Thailand – whether it be about refugees and asylum seekers, undocumented migrants and trafficked persons, or ethnic and religious minorities – is a debate about who has a right to occupy Thai space. Even more basically, it is a debate about who is Thai. In 2000, Vitit Muntarbhorn noted the “welcome trend” that “human rights as a national priority has been gaining ground increasingly in Thai society”, though he added that “even under the new Constitution, there is a pervasive lobby which perceives human rights as the rights of the Thai people rather than the rights of all persons irrespective of nationality and other origin”.¹³⁷

Muntarbhorn noted several other trends that he saw as impediments to the promotion of human rights in Thailand, including an emphasis on top-down, centralized approaches to programmes and policies rather than small-scale, rights-based approaches more in tune with the needs and realities of the populace; “lax law and policy implementation... due in part to a lack of transparency, corruption and the pervasive patronage system from the local level upwards that allows some people to enjoy privileges while others are denied their rights”;

¹³⁵ *Idem*, p. 4

¹³⁶ Rajaram, P.K., and Grundy-Warr, C., The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand, *International Migration*, Vol. 42 (1), 2004, pp. 53-4

¹³⁷ Muntarbhorn, *Human Rights...*, p. 3

and, finally, the fact that “the role of civil society, including non-governmental organizations, has not always been appreciated by the authorities”.¹³⁸

Recognizing both the challenges and the opportunities facing Thailand in the arena of human rights and human development, Muntarbhorn outlined a number of specific targets for action and reform. Some of these are presented below, along with recommendations drawn from a variety of sources, including research institutions, non-governmental organizations and international organizations.¹³⁹

5.1 Ethnic and Religious Minorities

The poorest parts of Thailand are the north and northeastern provinces, home to the largest numbers of hill tribe populations. Some social welfare measures, such as increased access to medical care and to education in ethnic languages, have shown improvement but one overarching issue has yet to be adequately addressed: lack of citizenship for ethnic minorities and all that entails. Perhaps one third or more of highland minorities in Thailand are effectively stateless, isolating them from the Thai polity and political processes, and rendering them vulnerable to multiple forms of exploitation and abuse.

Regarding religious minorities, and especially Muslims in the South, Thai policies will need to find a balance enabling them to promote greater integration (including political participation) while protecting religious and cultural differences. In the short term, this will require balancing a desire to control violent separatist elements with a need not only to maintain limits on the use of force but to promote reconciliation with an unsettled minority population.

5.2 Labour Migrants

Governments of sending and receiving in the Greater Mekong Subregion, including that of Thailand, “need to develop clear, rights-based, gender sensitive migration policies and bilateral agreements that ensure a legal, safe and transparent migration process that primarily protects migrants’ rights, welfare, and the right to migrate legally/legitimately”.¹⁴⁰ This could include amending immigration policies and procedures in light of international human rights standards; publicizing conditions of stay for migrant workers consistent with national labour demands and free of the risk of arbitrary arrest, harassment and exploitation; bringing return and repatriation policies in line with international human rights standards; and, where appropriate, exploring policies to assimilate longer-term migrants. Thailand should also be encouraged to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) as well as all eight core ILO conventions as a means of protecting both migrant and Thai workers.¹⁴¹

Thailand should be given recognition for playing an active and leading role in cooperating with various international and regional initiatives to combat trafficking, including programmes by the International Organization for Migration, the International Labour

¹³⁸ *Idem*, p. 4

¹³⁹ See Amnesty International, *Thailand: Grave Developments...*, pp 28-30; Harima, Varona, and DeFalco, pp. 254-9; Human Rights Watch, *Out of Sight...*, pp. 34-9; Muntarbhorn, *Human Rights...*, pp 14-24; Skeldon, pp. 40-6

¹⁴⁰ Harima, Varona, and DeFalco, p. 255

¹⁴¹ Amnesty International, *Thailand: Grave Developments...*, p. 30

Organization, the United Nations Inter-Agency Project (UNIAP) on Human Trafficking, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Development Fund for Women, the Economic and Social Commission for Asia and the Pacific and the United Nations Development Programme (UNDP). In May 2004, Thailand hosted the first regional Workshop on Human Trafficking organized by UNIAP in conjunction with the Office of the Permanent Secretary of the Prime Minister, the Ministry of Social Development and Human Security, and the Royal Thai Police. At that workshop, Thai Deputy Prime Minister Purachai Piusomboon called for regional action to help victims of all nationalities. He also called human trafficking as “urgent and important an issue as drugs”, making this statement in the same hotel and room as the 2001 workshop that launched Thailand’s controversial “war on drugs”. The UNDP resident representative, Robert England, applauded Thailand’s leading role on human trafficking but said he hoped for “a balance between law enforcement and the humanity/human rights of victims”.¹⁴²

5.3 Refugees and Asylum Seekers – the Role of UNHCR

In its country operations plan for 2004, prepared in early 2003, the UNHCR regional office in Thailand had noted several points, primarily concerning Myanmar nationals. First and foremost, Thailand is not signatory to the 1951 Convention or the 1967 Protocol and thus has not enacted legislation related to refugees. Whether from Myanmar or other countries, refugees are termed “displaced persons” and camps are referred to as “temporary shelters”. UNHCR access to vulnerable Myanmar populations by and large is limited by Thai policy to registered arrivals in border camps, a small number of refugees in urban areas, and selected protection cases. Among the reported two to three million illegal migrants in Thailand, most of them from Myanmar, UNHCR noted that “there are likely to be persons ... who would qualify for refugee status. However the government has made the access to a working mechanism for seeking refugee status so difficult that most people would prefer to remain illegal and unregistered than to face the threat of arrest, detention and deportation.”¹⁴³

Some of UNHCR’s pessimism about events in 2003, however, gave way to guarded optimism in 2004. In its Country Operations Plan for 2005, UNHCR noted that the crisis precipitated on June 2003, when the Thai government requested that UNHCR stop issuing “persons of concern” (POC) letters to Myanmar refugees in Bangkok, “has, interestingly, opened new avenues in the search for solutions”.¹⁴⁴ Although no new formal agreements have been reached, the UNHCR planning document indicated that “the new mechanism being contemplated will lead the recognized Myanmar cases to camp placement in lieu of the provision of subsistence allowance in urban centres. With this new policy in place, it is anticipated that the number of Myanmar applicants for status determination in urban centres will significantly decrease. Those that have a justification for not accepting camp placement will be resettled.”¹⁴⁵

¹⁴² United Nations Inter-Agency Project on Human Trafficking in the Mekong Sub-region, UN Responds to Thai Government Action Meeting on Human Trafficking, Bangkok, 14 May 2004 (press release), <http://www.un.or.th/traffickingproject/News/news.html> [accessed June 2004]

¹⁴³ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan ... 2004, p. 2

¹⁴⁴ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan: Thailand: Planning Year: 2005, [2004] (unpublished document), p. 5

¹⁴⁵ *Idem*

Aided by an offer of resettlement by the United States, UNHCR had submitted more than half of its backlog of 2,000 Myanmar cases for resettlement processing. The agency expected that, by the end of 2004, all of this group either would be resettled or admitted to camps along the Thai-Myanmar border. UNHCR also suggested that resettlement, used both as a tool for protection and burden-sharing, might be available for some residents of the border camps as well, “starting possibly with Tham Hin, an extremely overcrowded camp where living conditions are inadequate”. The apparent new commitments to clear the backlog of urban Myanmar cases by resettling many and moving others to the border, coupled with an understanding reached with the Thai government to carry out a comprehensive registration in the refugee camps in 2004, gave UNHCR confidence to state that “this will make the protection situation in Thailand more manageable by having one system for all Myanmar asylum-seekers while keeping individual RSD [Refugee Status Determination] for non-Myanmar cases”.¹⁴⁶

For 2005, UNHCR identified its main programme goals and objectives under three general headings, Myanmar refugees, non-Myanmar refugees in urban areas, and public information, promotion and training activities.

5.3.1 Myanmar Refugees

As of March 2004, the official number of refugees living in nine camps along the Thai-Myanmar border was 116,711. This figure, however, was based on an official headcount carried out in 1999. With the Thai-administered Provincial Admission Boards (PABs) having ceased to function in 2001, no official registration of new arrivals had been carried out, though estimates put the actual total camp population at around 140,000, the majority of whom are Karen and Karenni ethnic minorities. Thailand has not allowed the estimated 300,000 ethnic Shan refugees living along the northern border to enter designated camps, nor has UNHCR been allowed access to the Shan.

Permission to enter the border camps is controlled by the PABs, which have the responsibility to interview and register new applicants for the camps. A comprehensive registration in the refugee camps, expected to be undertaken in 2004, would have the effect of updating the refugee camp population and providing an identity card for all residents. When the PABs are registering new arrivals, it is not clear if Thai officials will continue to use screening criteria that limit admission only to those “fleeing fighting” or to take up UNHCR’s recommendation that “all persons ‘fleeing the consequences of fighting’ – including forced labour, forced relocation, excessive taxation, physical abuse, and other human rights abuses – should be provided protection”. UNHCR noted that while “the negotiation process has yet to reach a formal conclusion...there are positive signs that it will produce a re-assessment of the 1998 ‘working arrangements’ and the restrictive ‘fleeing fighting’ criteria which had rendered the PABs dysfunctional”.¹⁴⁷

In its country report on events of 2003, UNHCR noted that “a change of the most fundamental kind is taking place in Thailand,” referring both to the clear and active policy of the Thai Prime Minister to move towards reconciliation with Myanmar and a recognition that “the ethnic minorities that have been fighting the SPDC [State Peace and Development Council] for a long time have lost the war and need a negotiated settlement”. What these changes mean for UNHCR is that “both developments have opened up possibilities of

¹⁴⁶ *Idem*

¹⁴⁷ *Idem*

voluntary repatriation. There is a real danger that this repatriation will either be forced or occur spontaneously at a massive scale with disastrous consequences on the returnees, the local population and/or infrastructure in places of origin/return in Myanmar.”¹⁴⁸

In the light of these prospects for return, be it voluntary, forced or spontaneous, UNHCR has been engaged in a contingency planning exercise designed to involve a large range of stakeholders, “Thai authorities, NGOs, donors, UN and other agencies, possibly the KNU [Karen National Union] and, last but not least, the refugees”.¹⁴⁹ UNHCR’s role in this exercise would be to ensure that returns take place in accordance with international standards. In 2003, UNHCR had articulated its position to the effect that

any repatriation process would be conditional on the creation of conditions conducive to sustainable voluntary return in safety and in dignity, including inter-alia, an improved political situation in Myanmar, amnesty for returnees, and UNHCR’s unrestricted access to both sides of the border to monitor repatriation and return. UNHCR will continue to pursue a permanent presence in the refugee camps before any organized repatriation is considered.¹⁵⁰

For the border populations, UNHCR identified the following objectives for 2005:

- Ensure admission, documentation, and reception of asylum seekers and refugees
- Facilitate the re-registration of the camp population and ensure the issuance of documentation to refugees and asylum seekers
- Ensure the physical safety and respect for basic rights of refugees in camps and urban centres in accordance with international standards
- Conduct contingency planning for voluntary repatriation to Myanmar
- Expand the strategic use of resettlement as a protection tool and as a durable solution
- Improve partnerships with donors, government, UN and inter-governmental agencies, and NGOs for protection support and resource mobilization.¹⁵¹

5.3.2 Non-Myanmar Urban Refugees

As of March 2004, UNHCR reported a caseload of 2,051 Myanmar and 256 non-Myanmar urban refugees. Following the crisis of mid-2003, when the Thai government demanded that UNHCR halt all further status determination interviews with asylum seekers in urban areas, it appears that new agreements will allow for a clearing of the backlog of Myanmar urban refugees (either through resettlement or movement to the border camps). As noted previously, UNHCR anticipated that, with these new arrangements, “the number of Myanmar applicants for status determination in urban centres will significantly decrease”, leaving a caseload of non-Myanmar urban refugees, who came from 26 countries, including Cambodia, China, Sri Lanka, Afghanistan, Iraq, Vietnam and others. It was not clear if this number included any

¹⁴⁸ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Report 2003: Thailand, [2004] (unpublished document), p.6-7

¹⁴⁹ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan ... 2005, p. 2

¹⁵⁰ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan ... 2004, p. 4

¹⁵¹ United Nations High Commissioner for Refugees, Regional Office Thailand, Country Operations Plan ... 2005, p. 5

North Koreans, whose status determination UNHCR may consider to be largely a matter of bilateral understandings between the Thai and South Korean governments.

For refugees in urban areas, UNHCR identified the following objectives for 2005:

- Ensure admission, documentation, and reception of asylum seekers and refugees
- Ensure the physical safety and respect for basic rights of non-Myanmar refugees in urban centres in accordance with international standards
- Expand the strategic use of resettlement as a protection tool and as a durable solution.¹⁵²

5.3.3 Public Information, Promotion and Training

Finally, in identifying goals for public information, promotion and training activities, UNHCR has cited four main issues for 2005:

- Increase awareness of UNHCR's mandate and refugee law
- Strengthen local protection capacity
- Achieve attitudinal change on accession issues
- Reduce negative public attitude towards the presence of refugees in Thailand.¹⁵³

6 Conclusions

In concluding his exploratory policy paper on labour migration and trafficking in the Greater Mekong Subregion, Skeldon noted that, while there is a great need for continued data collection, several directions are clear. The first is that migration is increasing. Uneven development, sustained decline in fertility and, he might have added, continued instability and conflict in some countries, will continue to produce cross-border movements, particularly of young adults, male and female. Thailand, in particular, is both a point of departure and a destination for these migrants, given its relatively high development, low fertility, increasing labour deficits, and relatively open borders. Migration in the subregion, Skeldon argues, is also permanent. "At present, governments tend to see migration primarily as a temporary or short-term phenomenon. Perhaps the most important initial step is to encourage a shift in thinking at all levels: that migration is going to be a permanent feature of future development in the subregion, both outmigration from some areas and immigration to other areas."¹⁵⁴

Finally, migration quite literally changes the face of a country, a fact that many nation-states have resisted, particularly those intent on clinging to what Skeldon calls the "myth of the homogeneous state". Countries in the subregion, and Thailand is no exception, will need to address serious issues in immigration policy, including labour migration policies in the context of national development strategies; policies toward refugees, asylum seekers and other vulnerable groups; and policies on citizenship and assimilation of migrants.

To fail to act or to react primarily with restrictive and punitive measures will not resolve migration problems but merely distort them. As Stephen Castles, Director of the Oxford Refugee Studies Centre, has noted:

¹⁵² *Idem*

¹⁵³ *Idem*

¹⁵⁴ Skeldon, p. 46

Transnational communities resulting from migration will, through thousands of micro-strategies, seek security and humane conditions for their members. By doing this, they will probably become a major factor undermining the plans of the mighty. The future will probably be as messy as the past, and all predictions are likely to be wrong, but one thing is clear: there is no return to the neat idea of closed-off nation states with homogenous national communities.¹⁵⁵

Thailand is engaged in a debate about who will be included in its own national community. It is clear that debate has turned “messy”, with growing concerns about the climate of support for human rights and vulnerable sub-groups. It is not clear how that debate will end but it can be hoped that, building on the new foundations of the 1997 Constitution and the country’s recent accession to several important human rights treaties – and incorporating the perspectives of Thailand’s dynamic institutions in the media, education, and non-governmental organizations – the debate and the decisions that follow will be open, pluralistic and not dictated by a single point of view.

¹⁵⁵ Castles, S., Migration and Community Formation under Conditions of Globalization, *International Migration Review*, Vol. 36 (4), 2002, p. 1164

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