

**Response to
Initial Report of THAILAND
(CCPR/C/THA/2004/1)**

**Submission
to
the 83rd Session of the
United Nations Human Rights Committee
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EXECUTIVE SUMMARY

1. This report provides information on six subjects: 1) the situation in three predominantly Muslim provinces in southern Thailand since early 2004 where martial law has been declared, and there are reports of severe violations of the International Covenant on Civil and Political Rights (ICCPR); 2) extrajudicial killings and other violations by government security forces during its operation termed a “War on Drugs” in 2003 and 2004; 3) killings and threats to human rights defenders in Thailand, 4) the situation in Thailand of people from Burma (both refugees and migrants), 5) increasing threats to and restrictions on freedoms of press, assembly and association in the country, and 6) the rights of women in Thailand. It should be read to complement other submissions such as that of the Asian Legal Resource Centre.
2. A summary of the major Covenant violations *along with suggested questions for the Human Rights Committee to ask the Thai Government* immediately follows this Executive Summary.
3. The Royal Thai Government ratified the Covenant on October 29, 1996. In 1997, Thailand drafted a new constitution that, on its face, was substantially more protective of human rights. In subsequent years, the Government established a National Human Rights Commission (NHRC), as required under the Constitution, which has power to investigate, subpoena witnesses and documents and make recommendations, although it has no binding judicial decision-making function. The NHRC has been a positive development for human rights in the country. During the mid- and late 1990s, many observers praised Thailand for its flourishing civil society, commitment to democracy, and increasing adherence and promotion of human rights principles.
4. Since Prime Minister Thaksin Shinawatra came to power in February 2001, observers have criticized the Government for increasingly restricting human rights and democratic freedoms. These pressures threaten Thailand’s role as a leading democracy with a strong civil society. For example, in 2004, in predominantly Muslim provinces in the South, security forces have unlawfully detained and killed hundreds of Muslims under Martial Law or other emergency powers. In 2003 and 2004, during operations termed a “War on Drugs”, Thai police and security forces have used blacklists with quotas of targets, have killed thousands of alleged drug traffickers and have arbitrarily arrested tens of thousands. Dozens of leading human rights and environmental activists have received threats, been disappeared, or been executed without the Government conducting proper investigations. Authorities have failed to investigate, prosecute and punish security forces police for their alleged roles in arbitrary arrests, detentions, torture, killings, and disappearances, violating Articles 2, 6, 7, and 9 of the Covenant.
5. People from Burma in Thailand also continue to face a variety of Covenant violations. Thailand’s refugee policy has previously violated the right to non-refoulement in several ways. Thailand has refused entry to some asylum-seekers fleeing violence in Burma, while failing to take adequate measures to ascertain whether other the asylum-seekers might deserve refugee status. Until recently, Thailand reviewed the status of those seeking entry

along the border authorizing asylum only for those “fleeing fighting”, thus violating the rights of refugees as guaranteed under international standards. A recent UN High Commissioner for Refugee (UNHCR) publication indicates that Thailand is changing this policy to allow entry for those “fleeing political persecution” or perhaps “fleeing persecution.” Such a new policy should be confirmed and specific steps should be taken to ensure its interpretation in accordance with international obligations. Some ethnic groups, such as the Shan, who flee from Burma, also have fewer opportunities to seek shelter in refugee camps. Thailand’s formal deportation process reportedly returns some individuals directly into the hands of the Burmese military intelligence, while failing to screen effectively for those under UNHCR protection or those requiring asylum as refugees. Through informal deportations, the Thai authorities reportedly deliver thousands routinely each month into Burma without screening them. Such procedures fail to ensure that Thailand is not forcibly refouling those who have a reasonable fear of persecution. For those who are lawful aliens, the lack of formal procedures denies their right to present their case and have it reviewed individually, as guaranteed by Article 13 of the Covenant.

6. People from Burma also face discriminatory practices in Thailand that deny them a number of their rights under the Covenant. For example, the Government has effectively failed to investigate adequately and to prosecute the killings of Burmese refugees. Additionally, in the wake of the catastrophic December 2004 tsunami, the distribution of emergency aid has not reached some people from Burma, due in part to a reported campaign of deportations and discriminatory attitudes. They risk arbitrary arrest and detention simply because they are Burmese. Their employers, with strong indications that Thai authorities will not enforce Covenant anti-discrimination obligations binding on Thailand, subject refugees and migrants to significant workplace discrimination in pay and conditions compared to Thais. Thai authorities have limited the attempts of Burmese migrants to contest these conditions, resulting in restrictions on their rights to speak freely, associate freely, and protest peacefully.
7. Thailand’s press was once renowned for its relative freedom. The current administration has warned and silenced the media on numerous occasions, while Thaksin and his family wield a media empire that floods the airwaves with pro-Government reports. The Government has also weakened the right to free speech, association, and peaceful protest by threatening NGOs working on Burma and human rights issues with loss of legal status or funding cuts and by arresting peaceful protestors.
8. Thailand’s Constitution and the Government’s Report to the Committee speak of human rights, but the legal mechanisms and political will to ensure these rights through independent investigation, prosecution, and judicial remedy have proved insufficient.

SUMMARY OF MAJOR ARTICLE VIOLATIONS

9. Article 2 & 26: Rights to Freedom from Discrimination and Right to Remedy Violations

- a. The Government has not fully investigated or provided remedies for the excessive use of force by its security forces. The Government's failure to provide a full investigation, much less prosecution, of these violations removes any possibility for a meaningful judicial remedy.
- b. The Government's failure to provide adequate remedies for the victims whose rights under the Covenant were violated adversely impacts minority groups and women in Thai society: police discriminatory practices have denied ethnic minority groups, suspected drug users, and female victims of violence their right to remedy.
- c. The procedure of investigation, trial, and other remedies for human trafficking, rape, and domestic violence accompanies penalization of the victims, thereby making them more loathe to pursue legal remedies.
- d. The Government is not meeting its obligations under Article 2 when it does not provide actual legal accountability for human rights violations. The institutional framework in Thailand currently lacks the strength to protect human rights and those defending them from the hostile climate created by the present administration. The under-representation of minority groups in the law enforcement area contributes to the systematic bias imposed against them.
- e. **Suggested Questions for the Human Rights Committee to ask the Thai Government.**
 - **Please provide information on the status of the proposed amendment to the law on autopsy in Criminal Procedural Codes mentioned in the Paragraph 154. Please describe other measures taken by the Government to ensure the independence of the autopsy process and the investigation of the extrajudicial killings.**
 - **According to information before the Committee, acts of ethnically motivated harassment and discrimination against hill tribes, refugees, and foreign migrant workers continue to occur. Please comment on these reports and provide information on what is being done to prevent such discriminatory practices.**

10. Article 3: Right to Gender Equality Violations

- a. Gender discrimination still persists both in the judicial system and in practice. Marital rape is still legal. The threat of female-targeted violence, including domestic violence, still continues. The Government's failure to provide effective protection or remedies for such problems constitutes violation of Thai women's rights to gender equality.

b. **Suggested Questions.**

- **Please describe measures taken to increase women’s participation in local government positions, an issue mentioned in the Government Report (paras. 65 and 75). Please also elaborate on the steps taken by the government to increase the participation of women in certain sectors such as police, public prosecutors and judicial officers. Elaborate on specific efforts to ensure the promotion of women to higher positions.**
- **Please also describe specific measures taken by the Government to resolve the problems working women face in balancing family responsibilities and professional achievements mentioned in the Government Report (paras. 80 and 650). What specific steps are being made to promote women and not penalize them for “shouldering family responsibilities”?**
- **According to the information before the Committee, the Thai Criminal Code only protects women from non-marital rapes, and there are no legal remedies available in case of marital rapes. Please clarify whether this is accurate, and if so, please provide information on what is being done to resolve the issue.**
- **Please provide information on the training program provided for law enforcement officers, lawyers, and judges to protect the privacy of the rape victims.**

11. **Article 4 Violations: Public Emergencies and Non-Derogable Rights**

a. The Government has declared imposition of the Martial Law in parts of the South. The Government declarations have not clearly delineated the legal arenas where Martial Law controls and civil liberties are accordingly curtailed. The declaration of Martial Law potentially raises specific issues with regards to Covenant obligations.

b. **Suggested Questions.**

- **Please clarify what legal consequences have resulted from the imposition of Martial Law or other emergency powers? What articles of the Covenant are affected by the imposition of the Martial Law and other emergency acts? Do such legal changes constitute deviations from compliance with the Covenant, especially regarding the articles from which the Government is not allowed to derogate under Article 4(2)? In case there are any deviations from compliance with the Covenant, please describe the nature of such deviation in detail.**
- **What procedures are in place for notifying citizens of the nature of the restrictions that are imposed on their rights as a result of the imposition of the Martial Law? What measures has the Government taken to ensure that such deviations exist only to the extent strictly required by the exigencies of the situation? If the situation in the South is a public emergency, please explain why the Government has not notified the United Nations as required by Article 4.**

12. **Article 6: Right to Life Violations**

- a. During its “War on Drugs” and crackdown in three predominantly Muslim provinces, Government security forces, police and local authorities have killed thousands. Many were killed using excessive, unjustified force against civilians and arbitrarily selected suspected drug users and traffickers.
- b. The police’s arbitrary and inhuman anti-narcotics enforcement practices drove suspected drug users away from treatment or into jail and thereby significantly increased their likelihood of contracting and dying of HIV/AIDS virus.
- c. The Government has prevented some people from Burma from seeking asylum, thereby at times threatening their right to life. Forcible repatriations and massive deportations to Burma also put some individuals at risk: some allegedly have disappeared upon return.
- d. **Suggested Questions.**
 - **The Government Report (Paras. 149-152) provides information on extrajudicial killings through 2001. Please provide information, including statistics of the extrajudicial killings, committed by security forces since 2001. How many investigations and prosecutions are currently pending?**
 - **Please describe the measures the Government has taken to prevent excessive use of force and extrajudicial killings in areas of the South where Thailand’s martial law is in effect. Please elaborate on similar measures taken during nationwide anti-narcotics enforcement efforts.**
 - **Please provide information on the result of the court hearing on the 1997 incident of extrajudicial killing described in the Government Report (para. 156). Are there similar examples since 1997?**
 - **Please provide information on the status of the investigation report by the government-appointed committee for the Kruesie Mosque incident that occurred in the South on 28 April 2004, and that for the Tak Bai violence and truck suffocation incident that occurred in 25 October 2004. What were the results of the investigations? Did the Government make the reports public? What measures have the Government taken to prosecute those responsible for the death of civilians in these incidents?**

13. **Article 7 & 8 Violations: Rights to Freedom from Torture and Slavery Violations**

- a. As a result of the Government’s failure to protect women from trafficking, numerous women including children suffered from torture and cruel, inhuman, or degrading treatment. Human trafficking also infringes on the victims’ right to freedom from slavery.
- b. Despite the foreseeable imminent risk of torture and other abuses, the Government has continued its practice of unlawful expulsion and forced refoulement of some people from Burma. At times, those returned have suffered torture and other abuses, sometimes even leading to the loss of their lives.
- c. **Suggested Questions.**

- **Please provide information on measures taken by the Government to enforce legislation preventing prostitution and human trafficking mentioned in the Government Report.**

14. Article 9 & 14 Violations: Arrest and Detention Violations

- a. In the South, Government forces detained more than 1,200 people in one day during the Tak Bai incident in a mass arrest. The Government has refused some detainees' rights to counsel.
- b. In the process of anti-narcotics enforcement, the Government's use of arbitrarily drawn-up blacklists, quota systems, and financial incentives has led to the unlawful arrest and detention of many individuals. Police practices of planting evidence on suspected drug users and coercing confessions have resulted in false arrest and detention. The Thaksin Administration's incitement in the so-called "War on Drugs" encouraged police killings of the people without arrest, detention or trial.
- c. **Suggested Questions.**
 - **Please provide information on the measures taken by the Government to ensure that anti-narcotic "blacklists" do not include arbitrarily obtained names. How is the Government monitoring the use of "blacklists" to ensure individuals' rights are protected under the Covenant?**
 - **Please also provide information on measures taken by the Government to ensure that the incentive and quota system used in anti-narcotics enforcement do not result in arbitrary arrest and detention and that the suspects are granted their rights to the presumption of innocence until they are tried fairly before a judicial body.**
 - **Please describe the measures taken by the Government to investigate alleged abuses of the use of blacklists and quotas by local authorities and police officials? Have any investigations resulted in punishment or prosecution of local authorities or police officials? If so, please provide specific details.**
 - **Please provide information on the status of the Tak Bai incident detainees. According to information before the Committee, there have been incidents where the detainees were denied their right to meet their lawyers for representation. Please comment on these reports and clarify whether such incidents occurred. If they occurred, what specific actions has the Government taken to resolve the problem?**

15. Article 13 Violations: Expulsion Violations

- a. The Government has arbitrarily and unlawfully prevented refugees from Burma from seeking asylum and forcibly deported refugees and migrants en masse found in its territory back to their country.
- b. **Suggested Questions.**

- **The Government Report on Article 13 (Paras. 334-363) explains the processes for deporting Cambodians, Vietnamese, and Laotians, but omits discussion of migrants and refugees from Burma, who make up the largest population of foreigners. What screening process does Thailand undertake to protect against unlawful refoulement of asylum seekers from Burma? What procedures are taken to ensure the protection of those who are refouled and suffer violations of Articles 6, 7, 8, and 9 at the hands of authorities in Burma?**
- **The Government Report (Paras. 682-683) acknowledges that “fighting,” “severe suppress[ion of] various minorities,” and “non-democratic government” are reasons for people from Burma to “flee” to Thailand. However, the Government (Para. 682(3) still classifies such individuals as “illegal immigrants.” The Government Report (Para. 689-690) speaks of providing assistance for those “displaced by fighting.” However, the UNHCR Global Appeal 2005 states that the Thai Government has changed its policy from allowing only asylum-seekers “fleeing fighting” to include persons “feeling political persecution.” There are also indications that the policy may be as broad as to allow persons “feeling persecution.” Can the Thai Government clarify what the current policy is and what steps are being taken to meet international obligations to allow those fleeing persecution to seek asylum? Please provide specifics on what this definition means and how it is and will be applied. Please provide specific information on how the Government plans to provides shelter and assistance to those who were denied asylum because of the narrowly defined “fleeing fighting” standard. Will such persons be given opportunities to seek asylum under the new standard that is in line with international obligations? Please provide information on the Government’s specific plans to implement the new policy so that there is effective implementation in practice to meet its international obligations to do so.**

16. Article 19 Violations: Freedom of Expression

- a. Both by direct imposition of pressure and by indirect use of its connection with Shin Corporation, the Government has controlled, harassed, and interfered with the media and journalists in the country, thereby preventing them from raising voices of criticism against the current administration.
- b. **Suggested Questions.**
 - **Please provide information on the status of the Ministry of Interior’s survey on all laws that may be contrary to the people’s freedom of expression granted under the Thai Constitution (Para. 483). Has the result been produced? Did the Ministry find any laws that may violate the right to free speech? If so, what measures has the Government taken to resolve the issue?**
 - **According to information before the Committee, there have been incidents in which Government ownership of most media outlets has led to infringement on the media’s rights to freedom of expression. Please comment on these reports and provide information on the measures taken by the Government to ensure**

that such Government ownership does not affect the freedom of the media that is protected under both Thai law and the Covenant.

17. Article 21 & 22: Right to Assembly and Association Violations

- a. The Government has neglected to protect activists and human rights defenders, which has sometimes even resulted in threat to or actual loss of their lives.
- b. The Government has imposed pressure on activists and NGOs through various means: threatening cuts to NGO funding; strategically denying work permits and visas; using arrest and selective application of law; and imposing surveillance on NGOs beyond the scope of the law.
- c. **Suggested Questions.**
 - **Please provide information on the status of investigation and prosecution of policemen allegedly involved in the disappearance of Somchai Neelupajit.**
 - **Please provide information on the status of investigation of deaths or disappearances of other human rights defenders and environmentalists enumerated in this report.**
 - **According to information before the Committee, there have been incidents where local authorities unlawfully threatened human rights activists and environmentalists, so they would cease their peaceful protests protected under the Covenant. Please comment on these reports and provide information on what is being done to prevent such incidents.**
 - **There are reports that the Government attempted to prevent public protests during the APEC meeting period and banned human rights activists from entering the country. Please comment on these reports and clarify whether the Government action was compatible with the Covenant.**

18. Article 23 Violations: Family and Spousal Rights Violations

- a. Discrimination against women persists in Thai domestic law. Examples include: unequal spousal consent requirement for legal deeds; unequal grant of permissible grounds for divorce; and inequality in eligibility for citizenship in case of marriage.
- b. **Suggested Questions.**
 - **Please elaborate on specific plans and timetables to bring Thai law into compliance with Article 3 and Article 23 of the Covenant. Please elaborate on the status of the revision of the law to grant equal citizenship rights to foreign men who marry Thai women so that the treatment is equivalent to that for foreign women who marry Thai men (Para. 554).**

I. VIOLENCE IN THE SOUTHERN PROVINCES: Yala, Pattani, and Narathawit

“In carrying out their duties, police or military officers may fall into a situation where they are forced to commit extrajudicial killings.”

—Thai Government Report, Para. 148, April 2004¹

“[T]he people, compos[ed] of Thai citizens and foreigners, who follow different religions can live together in harmony. The problem of discrimination on account of religious differences has never arisen in both private and public sectors. Everyone is equally protected and can exercise their rights equally.”

—Thai Government Report, Para. 36, April 2004²

“The Thai people are in general of mixed races and they all are proud to jointly call themselves Thais without any ill feelings or discrimination against those who are of a different race. . . . The problem of racial discrimination is almost unknown in Thailand.”

—Thai Government Report, Paras. 26-27, April 2004³

“They [the local residents] have been happy that soldiers are going to protect them. . . . The Martial Law will not be abused.”

—The Prime Minister Thaksin Shinawatra, Bangkok, June 12, 2004⁴

19. Main Conclusions and Recommendations.

- a. **Article 2 Violations.** The Government has not fully investigated or provided remedies for the excessive use of force by its security and police forces.
- b. **Article 4 Violations.** It is unclear whether the Government has fully implemented Thailand’s martial law in much of the South, nor is it clear exactly what this means in regards to the Covenant. The Government should clarify whether or not the Martial Law of 1914 or some other state emergency act (e.g. The Act on Administration in Emergency Situation (1952), the National Intelligence Agency Act (1985), and the Regulation on National Safety (1974)) is in effect (see Thai Government report, Paras. 471-480)). If Martial Law is in effect, the Government should clearly delineate which civil liberties are being curtailed; the Government must also notify appropriate international bodies in accordance with its obligations under Article 4 of the Covenant.
- c. **Article 6 Violations.** Security forces have used excessive, unjustified force against civilians and alleged militants in southern, predominantly Muslim provinces on repeated occasions, leading to more than 100 civilian deaths. On two separate and particularly disturbing days in 2004, excessive force led to the deaths of more than 100 individuals, including at least 78 who suffocated to death in army trucks on one day.

- d. **Article 9 Violations.** In the South, Government forces have arbitrarily arrested thousands; at least 1,200 were arrested on one particular day—October 25, 2004. The Government has refused some detainees’ rights to counsel.
- e. **Recommendations.** The Thai Government should firmly command its security forces to cease the use of excessive force against civilians immediately. All practices of arbitrary arrest, prolonged and incommunicado detention, and forced disappearances must also cease. The Government should ensure that the Martial Law of 1914 and other state emergency acts do not deviate from ICCPR obligations; if such laws are inconsistent with international law, the Government should amend them accordingly. The Government should also clearly specify the resulting legal implication of the Martial Law imposition to the public. All allegations of security force wrongdoing should be fully investigated and, if sufficiently grounded, publicly prosecuted.

20. **Background and History.** In Paragraph 463, Thailand’s report to the Human Rights Committee claims, “Thailand has given a broad spectrum of religious rights to every persons [sic] for a very long time without any conflict or rift between those various religions.”⁵ Yet since Prime Minister Thaksin’s party entered office, the three provinces of Yala, Pattani, and Narathawit in the South of Thailand have witnessed a significant increase in violence, extrajudicial killings,⁶ and unlawful detentions. These provinces are 90% Muslim.⁷

- a. The Thai Government annexed the three provinces in 1902. Over the years, the relationship among the local Muslim people, the police, and the military within the region has occasionally devolved into violence.⁸ In the 1970s and 1980s, for example, separatist movements wishing to rejoin Malaysia resorted to the use of violence.⁹ However, during the 1990s, this Muslim secessionist movement in Southern Thailand lay mostly dormant, partially in response to the Thai Government’s strategic offering of economic aid.¹⁰
- b. Since the start of 2004, the Government’s policy towards South forces have killed hundreds of civilians in the predominantly Muslim South.¹¹ According to *The Nation*, a leading English-language Thai newspaper, violence first erupted after the 4 January 2004 raid, when the separatist groups attacked the army camp in Narathiwat Province, killing six soldiers and stealing weapons. Immediately afterwards, the Government issued the Fourth Army Region order expanding its control under Martial Law to cover eight additional districts in Narathiwat, Pattani and Yala.¹² Over the following months, the region was besieged by hundreds of cases of arson, as well as attacks on civilians, Government offices, and Government officials.¹³ The Thai Government claims that the attacks were due to conflicts related to illegal trade, human trafficking, drug and arms smuggling, and religious tension, but Amnesty International reports that, in many cases, it is often unclear who the perpetrators are, amid reports of rivalry between the police and the military; and conflicting business interests.¹⁴ Within this historical context and violence, there are consistent reports of the Government security forces violating Covenant articles.

Extrajudicial Killings, Arbitrary Arrest and Detention are Occurring in the South

21. FACTS: Security forces kill and arrest with impunity. Security forces have repeatedly used excessive force against individuals and crowds, which has led to injuries and deaths. Government security forces also engaged in arbitrary, large-scale arrests and detentions without access to legal counsel.¹⁵
- a. The Events of 28 April 2004. Amnesty International reported that, on April 28, 2004, the attack on several police bases and checkpoints in three provinces in Southern Thailand resulted in the deaths of five members of the security forces.¹⁶ It is still unclear who was responsible for those attacks on Government officials and civilians.¹⁷ The security force responded to the attack by opening fire, leading to the loss of many lives. According to *The Nation*, at least 120 people were killed on the day. Security forces killed at least 107 alleged rebels and arrested seventeen.¹⁸
- The Kruesie Mosque Incident. In response, Thai security forces laid siege to Kruesie mosque and opened fire on the alleged militants, killing all 32 suspected assailants inside.¹⁹ The militants were mostly between fifteen and twenty years of age and armed poorly, primarily with machetes.²⁰ Human Rights Watch expressed a concern that some of the killings arguably constituted excessive use of force, in violation of the *U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.²¹ Such assessment is consistent with the Government-appointed committee's investigation report, which, according to *The Nation*, states that, although the area was under Martial Law, the circumstances were not so overwhelming that the troops had to resort to "excessive force."²² The report, however, according to *The Nation*, added that the decisions on what actions to take, if any, and whether to publicize the report resided solely with the Prime Minister.²³ As of March 2005, the report has not been published.
 - The Football Team Incident. In one particularly infamous incident, nineteen young members of the local football team were killed, allegedly by security forces, in neighboring Songkla province. Amnesty International reports that, according to unofficial sources, fifteen members among them had been shot in the back of the head.²⁴ The Government claimed that the security forces were acting in self-defense.²⁵
- b. The Events of 25 October 2004: The Tak Bai Incident. On 25 October 2004, during Ramadan, Thai security forces opened fire on a crowd of approximately 3,000 protestors. The crowd was demanding the release of six village defense volunteers detained by the army in a police station in Tak Bai, Narathiwat province. The six detained men had allegedly given state-issued pistols to Islamic militants.²⁶ *The Nation* reported that, due to the security force's firing, at least six people were killed.²⁷ Thirty-three were reportedly hospitalized.²⁸ A photograph obtained by *The Nation* shows a soldier firing with his rifle leveled at the crowd, contradicting Government statements that the security forces did not fire directly at the protestors.²⁹ The gunfire reportedly lasted for around ten minutes, and security forces also used water cannons and tear gas.³⁰ According to

reporters present at the scene, the police aimed for protestors hiding under cars, and at least one man was found dead under a car.³¹

- The Suffocation in Trucks. According to the media, following the violent repression, the soldiers rounded up more than 1,200 individuals and piled them on top of one another in military trucks to be transferred to an army detention center 130 kilometers away.³² The journey took reportedly six hours, much longer than is normal for the distance traveled.³³ Layers of prisoners were forced to lie down on top of one another in at least some of the trucks.³⁴ Witnesses claim security forces beat them before forcing them into the trucks.³⁵ Due to severe overcrowding, at least 78 protestors were crushed or suffocated to death.³⁶
- The Denial of Access to Legal Counsel. On November 3, 2004, the Law Society of Thailand lawyers attempted to meet the 58 protestors who remained detained in Inkayuthbariharn army base in Pattani for the purpose of representing them. But the military neither allowed them to talk to the detainees nor to listen in on interrogations, demanding consent from the detainees' family members. The Law Society, during the press conference, criticized the Government for violating due process and for lacking transparency.³⁷

22. ANALYSIS: Security force use of excessive force has resulted in violations of the right to life (Article 6) and the prohibition of inhumane treatment (Article 7). In 2004, security forces killed at least two hundred civilians, based on readily available data. While some of the killings may have been in self-defense, photographs and witnesses suggest that the use of force was excessive, and that these incidents constituted extrajudicial killings, in violation of the right to life in Article 6. The arrest of at least 1,200 peaceful protestors, followed by unlawful detention without access to counsel appears to have been an arbitrary and unnecessary abuse of police powers, violating Article 9. The arrest of those peacefully assembled also violated Article 21. The Thai authorities' decision to beat them and force them into overcrowded army trucks displays a gross indifference for human life and denied 78 men their right to life under Article 6. This treatment also constitutes inhuman treatment, in violation of Article 7, for all those placed in the trucks.

23. RECOMMENDATIONS. The Thai administration should require that its soldiers use the minimum force necessary and not use live ammunition against civilians. It should provide training to help soldiers understand the definition of extrajudicial killings and inhuman treatment, and enable them to make decisions in stressful situations that will not lead to violations of the right to life. The military courts must enforce this through prosecutions of those violating the right to life and right to freedom from inhumane treatment. The Government should forbid arbitrary, mass arrests. It should ensure that all those detained are brought promptly before a judge and have access to counsel and medical care. The administration should shift to non-violent, viable long-term solutions for the South.

Denial of Meaningful Investigation and Judicial Remedy (Article 2) in the South

24. FACTS: The Thai Government has failed to launch adequate investigations and prosecutions. The Government has assigned independent commissions to investigate some of the large-scale violations of the right to life in the South. However, many killings and disappearances remain unaddressed. The Government does not always follow up the recommendations of the independent commissions with prosecutions. The current administration has also made statements that seemingly support the security forces' resort to violence.
- a. Kruesie Mosque Incident. To investigate the Kruesie mosque incident, the Government appointed a six-member independent fact-finding mission whose one hundred page report had not been made public as of September 2004.³⁸ Reportedly, the commission found the security forces had used excessive force.³⁹ However, according to Human Rights Watch, as of the end of 2004, the Government had not charged any of the security forces with a crime.⁴⁰ The Thai National Human Rights Commission concluded that the police have tortured many detainees, relatives were not informed of suspects' whereabouts, and suspects were not given access to legal counsel.⁴¹
 - b. Football Team Incident. Regarding the football team, Amnesty International reports that no information from independent autopsies is available.⁴² Autopsies are part of a meaningful investigation under the *U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.⁴³ Thus, the Government violated the right to an independent, effective investigation under Article 2. The Government also failed to investigate the killings of the dozens of others killed that day, including the football team. Thaksin refused to apologize for the security forces' actions.⁴⁴ According to the *Asia Times*, immediately after the October massacre, he claimed, "If we're soft, they'll think we're caving in. I won't have it. [The security forces] did a great job. They have my praise."⁴⁵ Also, according to *The Guardian*, he denied the visit request of the U.N. Special Rapporteur on Extrajudicial Killings to visit the area.⁴⁶
 - c. The Tak Bai Incident. The Thai Government appointed an independent commission to investigate the October Tak Bai incident. The commission submitted its report in late December 2004, although the Government has not made it public. The commission held three generals responsible, finding them reckless and careless.⁴⁷ If the Government charges the generals, a military court will probably try them.⁴⁸ The commission did not find that the killings were deliberate, and no prosecutions or indictments have been made to date.⁴⁹ For the moment, Prime Minister Thaksin has appointed three committees to determine next steps based on the independent commission's findings, which may lead to further delay in any legal proceedings.⁵⁰
25. ANALYSIS: The Government's deficient investigations and prosecutions for violence in the South nullify the right to a judicial remedy, in violation of Article 2. With no one yet brought to account for the Covenant violations in the South, the Thaksin administration has yet to meet its international obligations to adequately investigate and prosecute the wide-scale violence by its security forces in the region.⁵¹ In some cases, the Government has entirely

failed to investigate. In other instances, the results of investigations have remained secret. Finally, even when the Government allows release of an investigatory committee's findings, no action is taken, so judicial remedies remain sorely lacking for victims and their families. Packing at least 1,200 people into overcrowded military trucks, resulting in the deprivation of the right to life for 78 men violates Articles 6 and 7. The security personnel who used excessive force and opened fire on a crowd of protestors violated the right to peaceful assembly (Article 21). Those who made the decision to continue the detention of the more than 1,200 individuals previously packed in the trucks for days after the incident, without access to legal counsel violated Article 9.⁵²

26. RECOMMENDATIONS. The Government should release the independent commission's full report and quickly prosecute those responsible for the crimes.

Unannounced, Prohibited Departure from the ICCPR under Martial Law

27. FACTS: By placing the southern regions under martial law without announcement of any reasonable grounds, the Thai Government failed to follow the key ICCPR Articles. Some areas of the South, as well as the Thai-Burmese border, have already been under some form of martial law for years.⁵³ The military, however, had previously imposed only partial control over the region. According to its report (Para. 122) to the Committee, the Thai Government claims that there has been no declaration of a state of emergency since it became a state party to the ICCPR.⁵⁴ However, according to *The Nation*, on January 5, 2004, the Government issued the Fourth Army Region order, expanding army control under the Thai Martial Law to cover eight additional districts in Narathiwat, Pattani, and Yala.⁵⁵
- a. The precise legal consequences of the Thai Martial Law remain unclear. Allegedly, under its auspices, troops can detain someone for up to fourteen days without charges or a warrant and also declare curfews.⁵⁶ Also, its Article 8 provides that military officers have authority to search, mobilize, ban, seize, reside in, damage or change the tambons, districts or regions under the Martial Law, or expel any person from tambons, districts or regions.⁵⁷ In its report (Para. 471) to the Committee, the Government states that if the Martial Law is applied, it displaces any conflicting laws.⁵⁸ This implies potential non-compliance with some provisions of the ICCPR, which under Article 4, the Thai Government is required to announce, while also specifying the articles from which it is derogating.
 - b. The imposition of the Martial Law in Thailand has led to non-compliance with key articles of the ICCPR without any declaration from the Thai Government. This is demonstrated by unremedied and mass arrests, long incommunicado detentions, disappearances, and curfews in areas under the Martial Law. The Thai Government has failed in its duty to announce and specify the scope of departure from the ICCPR, in dereliction of its Article 4 responsibilities.
28. ANALYSIS: Unannounced departures from the ICCPR under Martial Law violate Article 4. Thailand's failure to communicate the precise manner in which its Martial Law impinges

upon civil and political rights violates the Covenant and allows the Government to arbitrarily infringe upon rights under the guise of martial law and necessity.

- a. Under Article 4(3) of the ICCPR, Thailand can only derogate from the Convention if it declares a state of emergency,⁵⁹ which it claims it has not done. It has not immediately informed the Secretary-General, as required under the Covenant, even though the military has used the Thai Martial Law in some parts of the country for years.⁶⁰ It is also unclear whether the situation in the South rises to the level of a “public emergency which threatens the life of the nation and the existence of which is officially proclaimed.”⁶¹
- b. Even if such an emergency arises, Thailand is allowed to make an exception to its compliance with the Covenant only to the extent “strictly required by the exigencies of the situation” and must specify the provisions from which it derogates.⁶² The Thai law, as currently drafted, states that once the Government declares martial law, “the provisions in any act or law which is in contrary to the Martial Law which is being applied, such provisions shall ceased [sic] to have force and the provisions of Martial Law shall be applied in their place.”⁶³ On its face, the current law allows deviation from protection of non-derogable ICCPR rights and should be redrafted to prevent this possibility. Further, through its practices of excessive force resulting in death and arbitrary arrest and detention, the Thai security forces have violated non-derogable rights, including the right to life (Article 6) and the right to be free from torture and cruel, inhuman or degrading treatment (Article 7). Under Article 4, its derogation cannot discriminate against a particular group, yet its actions in the South thus far indicate that Muslims are far more likely than Buddhists to suffer under the Thai Martial Law. The scope of arrests and detentions in the South has been arbitrarily broad, thus resulting in Muslims being targeted because they are Muslims, rather than because of specific reasonable cause, as required under Thai law. Under the Thai Martial Law, the denial of full access to an effective judicial system also impacts the Muslim community alone to such an extent that it is hard to typify the denial of access as based on a characteristic other than religion.

29. **RECOMMENDATIONS:** In order to meet its ICCPR obligations, if the Thai Government believes the situation in the South is a state of emergency threatening the life of the nation, it must declare a state of emergency to the Thai public and the UN Secretary-General. This declaration should specify the precise powers of the security forces that are allowed to deviate from the ICCPR and explain why each departure from the rule is “strictly required.” Further, in applying its Martial Law, Thailand must not deviate from that certain non-derogable rights, such as the right to life (Article 6); thus, disappearances and excessive use of force resulting in loss of life such as have allegedly occurred in the South are never permissible. The Thai Martial Law should be redrafted to reflect that Thailand cannot deviate from the non-derogable rights specified in Article 4.

Time Line of the Imposition of Martial Law in the South

January 5, 2004: Prime Minister Thaksin expanded the Fourth Army Command under Thai Martial Law to cover eight additional districts in Narathiwat, Pattani and Yala.

March 17: Prime Minister Thaksin announced that he would not lift the imposition of martial law from the area.

April 5: In response to protests by the local people and a National Human Rights Commission report on the human rights violations by the security forces in the South, the Deputy Prime Minister Chaturon Chaisang proposed a new seven-point plan, which included the lifting of the Thai Martial Law and supported the local group's proposal of granting amnesty to the alleged insurgents.

April 10: Prime Minister Thaksin refused to follow through on Chaturon's proposal because it reflected "Muslim attitudes." He denied any responsibility on the military side for the ongoing violence in the South and defended his plan to dispatch 1000 more security personnel to the region.

June 12: Prime Minister Thaksin tightened the Martial Law. The expanded Martial Law authority provided more power to soldiers to allow them to search and arrest suspects, particularly when they were in hot pursuit of suspects. Prime Minister Thaksin said that soldiers needed authority to search suspicious locations, particularly when they were in pursuit of suspects, and expressed hope the shift in strategy would yield results within a month.

Feb. 9, 2005: The Thai Martial Law remained in effect in the region. The local groups demanded the Government lift the Martial Law in the area.

II. VIOLATIONS IN THE COURSE OF ANTI-NARCOTICS ENFORCEMENT

“There is nothing under the sun which the Thai police cannot do.”

—Prime Minister Thaksin Shinawatra’s claim on behalf of widely-abused police powers during the Thai Government’s “War on Drugs” in his speech at Ratchapat Suandusit Hall, Bangkok, 14 January 2003⁶⁴

“From now on if their trafficking caravans enter our soil, we won’t waste our time arresting them, but we will simply kill them.”

—Prime Minister Thaksin Shinawatra, 23 August 2003⁶⁵

30. Main Conclusions and Recommendations.

- a. **Article 2 Violations.** The Government’s failure to provide a full investigation, much less prosecution, of the vast majority of these incidents removes any possibility for a meaningful judicial remedy in the “War on Drugs.” Police discriminatory practices have denied hill tribe members and suspected drug users of their fundamental rights under the ICCPR, including the right to life and freedom from arbitrary arrest and detention.
- b. **Article 6 Violations.** The Thaksin Administration’s “War on Drugs” has killed more than 2,000 people, some allegedly at the hands of the police, in violation of the right to life. Police practices drove suspected drug users away from treatment or into jail and thereby significantly increased their likelihood of dying of HIV/AIDS.
- c. **Article 9 Violations.** The use of arbitrarily drawn-up blacklists, quota systems, and financial incentives has led to the unlawful arrest and detention of thousands. Police practices of planting evidence on suspected drug users and coercing confessions have resulted in false arrest and detention.
- d. **Article 14 Violations.** The Thaksin administration’s incitement led to the police’s killings of the people without arrest, detention or trial. Such policy violates the right to a fair trial and the presumption of innocence required under Article 14.
- e. **Recommendations.** The Thaksin administration should cease issuing public statements that encourage violent solutions to the drug problem. The Government should end the use of blacklists, quotas, and monetary rewards for increased numbers of arrests. The Government should investigate and prosecute the police officers found to be planting evidence and coercing confessions from suspected drug users. The Government should adopt health policies that provide HIV/AIDS prevention strategies for drug users commensurate with those provided to other at-risk groups. The administration should create an effective, independent commission to investigate the killings associated with the anti-narcotics enforcement. The

Government should transfer the responsibility for local investigations of extrajudicial killings from the police to a neutral body.

31. Background and History. The Government's report to the Human Rights Committee claims that in the year 2000, nationwide, only 46 extrajudicial killings occurred.⁶⁶ The Government did not provide any statistics with regards to extrajudicial killings in the year 2003 report. However, according to the Thai police, from 1 February to 30 April 2003, Thaksin's anti-narcotics enforcement led to the deaths of 2,245 people over a three-month period.⁶⁷ The Government claims that the deaths were due to fighting between drug-dealers, but reports abound that Government forces were responsible for extrajudicial killings, in violation of Article 6.⁶⁸ The use of methamphetamines in Thailand is indeed widespread, but the Government's current approach has resulted in and even encouraged wide-scale and severe violations of rights protected under the ICCPR. Alleged violations include extrajudicial killings (Article 6), torture and inhumane treatment (Article 7), arbitrary arrest and detention (Article 9), discrimination against suspected drug-users and hill tribe members (Article 2), and failure to investigate (Article 2).

The Government's Promotion of Violence

32. FACTS: The Government's rhetoric encourages and condones the killing of suspected drug traffickers. The current Government's statements create an atmosphere of violence ignoring the rule of law, where practices such as extrajudicial killings can proceed largely unchecked.
- a. For example, according to the Human Rights Watch report, when Thaksin announced the "War on Drugs" in his January 2003 speech at Ratchapat Suandusit Hall, he quoted a former Thai police chief famous for his use of political assassinations in the 1950s. "There is nothing under the sun which the Thai police cannot do," he said, adding, "Because drug traders are ruthless to our children, so being ruthless back to them is not a bad thing. . . . It may be necessary to have casualties."⁶⁹ On the same note, just before the commencement of the "War on Drugs," the Interior Minister, Wan Muhamad Nor Matha, stated, "They [drug traffickers] will be put behind bars or even vanish without a trace. Who cares? They are destroying our country."⁷⁰
 - b. Further, Amnesty International reports that, in August 2003, when Thaksin referred to smugglers carrying drugs from Burma to Thailand, he stated, "From now on if their trafficking caravans enter our soil, we won't waste out time arresting them, but we will simply kill them."⁷¹ Thaksin was also quoted on the other occasion as saying, "There are two places for drugs traffickers: in prison or in the temple" [the temple refers to the Buddhist practice of cremating their dead.]⁷²
 - c. The climate of impunity among the security forces regarding the extrajudicial killings persisted in the 2004 Government anti-drug campaign as well. According to Amnesty International, at the commencement of a new campaign in October 2004, the head of the Narcotics Control Board stated with regards to the likelihood of extrajudicial killings in

this second round, “It depends on the circumstances. There won’t be many this time because we have done that in the first war and we don’t think there will be many left.”⁷³

33. ANALYSIS: The Government’s inflammatory public statements represent a policy of violence. The Government words appear to have incited security forces to kill alleged drug smugglers without arrest, detention or trial. Such practice does not only violate the right to freedom from arbitrary arrest and detention (Article 9), but also would clearly remove the right to a fair trial and the presumption of innocence (Article 14), and the right to life (Article 6). In fact, in the process of anti-narcotics enforcement, police allegedly engaged in numerous arbitrary arrests, unlawful killings, threats, and coerced or mandatory drug treatment. The rate of homicides more than doubled after the commencement of the “War on Drugs.”⁷⁴
34. RECOMMENDATIONS. The Thaksin Administration must cease to use all language that incites security forces to kill or unlawfully arrest those suspected in the drug trade. The Government should call upon police to obtain warrants based on reasonable suspicion, as required by Thai law.

Blacklists, Quotas, and Large-Scale Arrests

35. FACTS: Blacklists and quota systems resulted in many arbitrary arrests, detentions, and killings. Section 237 of the Thai Constitution provides: “In a criminal case, no arrest or detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence.”⁷⁵ Yet the methodology of the “War on Drugs” has included widespread use of hastily devised blacklists and arrest or “removal” quotas. As a result, the problems of arbitrary arrest and detention escalated dramatically.⁷⁶ Many on the blacklist also mysteriously died when returning from the police station.⁷⁷
- a. According to an Amnesty International report, after the Government announced the anti-drug campaign, local officials rapidly devised a blacklist of almost 42,000 suspects, but the reasons for inclusion of the names remain unclear.⁷⁸ Human Rights Watch reports that local officials and police allegedly placed some names on this quickly created, enormous list just to even scores in local conflicts.⁷⁹ Individuals suspected to have used drugs in the past were also placed on the list, despite a dearth of evidence regarding their current use or involvement in drug trafficking.⁸⁰ The list was intended to create “targets for monitoring.”⁸¹ Those on the list had no means to appeal their inclusion and were not systematically informed.⁸² By the end of the first month of the “drug war,” even senior officials began to question the blacklist’s accuracy. Police Chief General Sant Sarutanond admitted the lists were “poorly prepared and could have affected innocent people.”⁸³ Some of those on the blacklists were coercively called into police offices or went on their own initiative because they had heard they were on the list.⁸⁴ Some of them were shot immediately afterwards, while returning home from the police station, sometimes allegedly by the police.⁸⁵

- b. The Government introduced quota systems and financial incentives to encourage police officers to “remove” suspected drug traffickers. According to Amnesty International, Ministry of the Interior officials informed local and provincial officials that they had to reduce the number of people on the blacklist by at least 75% during the three month campaign or risk demotion to inactive posts.⁸⁶
- c. Police and officials were offered cash incentives for drug seizures and arrests, while senior officials were threatened with losing their jobs if they didn’t produce results somehow.⁸⁷ The police also profited by confiscating the property and money of those killed or arrested in a broad interpretation of Thailand’s anti-money laundering law.⁸⁸ Such government practices have resulted in an array of the security forces’ procedural violations in the anti-narcotics enforcement. According to Human Rights Watch, a total of 70,000 people reportedly involved in the drug trade were arrested over three months.⁸⁹ When Prime Minister Thaksin announced a new round of drug suppression, 839 people were arrested in Bangkok in one day on 24 February 2004.⁹⁰ In the process, police officers reportedly planted evidence on blacklisted persons, arrested them, and then forced them to sign false confessions.⁹¹ In some cases, drug suspects were kept in pre-trial detention for 25 days or never informed of the charges against them.⁹²

36. ANALYSIS: The blacklist, quotas, and financial incentives led to violations of the right to life (Article 6), freedom from arbitrary arrest and detention (Article 9), and the right to due process (Article 14). The presence of one’s name on the list made one far more likely to be killed, yet the placement of names on the list was seemingly arbitrary and not subject to public disclosure or judicial review. The blacklist, quota, and financial incentive system created enormous pressure to “remove” individuals from the list via arrest or the use of other methods. This led to violations of the right to a fair trial and presumption of innocence under Article 14, as persons were assumed guilty and essentially sentenced to death or detention. Planting evidence and coercing confessions from suspected drug-users violates the principle against arbitrary arrest and detention embedded in Article 9 and the right to presumption of innocence under Article 14.

37. RECOMMENDATIONS. The Government should publicly express its concern that the current blacklists may include innocent people. The police and local officials must immediately halt the use of blacklists, which violate due process and the presumption of innocence. Officers should not receive cash incentives for arresting individuals, and they should not suffer punishment when they do not “remove” a specified quota of a blacklist. The Government should clarify that the police must follow lawful procedures for arrest.

Extrajudicial Killings in the Course of Anti-narcotics Enforcement and the Government’s Failure to Investigate

38. FACTS: Unidentified assailants killed some of the people on the blacklist, yet independent, effective investigations have failed to materialize. The independence of the national investigatory commissions is debatable, and procedural problems at the local level render

investigations of individual cases suspect. The police have not offered full cooperation with the investigations.

- a. At the beginning of the “War on Drugs,” the Royal Thai Government proudly published statistics on deaths and arrests. In late February 2003, however, in response to the negative publicity, the Government temporarily suppressed the release of statistics on drug-related deaths.⁹³ The Thai king requested an investigation into the killings, and the Government created two committees to carry this out.⁹⁴ The committee charged with overseeing police behavior is chaired by a police lieutenant general, and the other is headed by the Attorney General and is in charge of witness and informant protection.⁹⁵ The extent to which a committee chaired by a member of the police can independently investigate police misconduct seems debatable. Only at the end of the “War on Drugs” did the police submit lists of those dead to the Attorney General’s committee, despite much earlier requests for such documentation.⁹⁶ In November 2003, Amnesty International reported that “it appears that in most cases investigations have not been completed and that therefore no one has been found responsible for the killings or brought to justice.”⁹⁷ As of September 2004, the date of Amnesty International’s most recent report on the issue, it was unable to obtain the committee’s report.
- b. Although the committee investigation result has not been made public, there is an ample amount of reports that support the police’s participation in the extrajudicial killings. The police themselves say that between 1 February 2003 and 31 July 2003, they were responsible for 129 deaths and 73,231 arrests of suspects in the “War on Drugs.”⁹⁸ Moreover, there has been a significant amount of media coverage on incidents where those on the blacklist were killed on their way home from the police station. Many of these deaths have not been investigated properly at all.
 - Thanom Monta Incident. Amnesty International reports a case in which a married couple, Thanom Monta and Kwanla Puangchompu, were shot and killed only a few kilometers from the police station in Petchuburi Province after being summoned there.⁹⁹ Their relatives claimed that no investigation of the deaths ensued.¹⁰⁰
 - Chakraphan Srisa-ard Incident. In a case reported by Human Rights Watch, the police, after arresting the father, shot nine-year old Chakraphan Srisa-ard in the process of chasing after his mother, who was at the time driving away.¹⁰¹ Three police officers were preliminarily charged with manslaughter.¹⁰² The policemen waited several days to introduce their revolvers into evidence, and the revolvers the police offered into evidence were not the ones used in the shooting, despite traces of gunpowder on the accused officers’ hands.¹⁰³ The delay has prompted some to suspect that the police submitted different weapons.
 - “Ice” Incident. Human Rights Watch reported another incident in which a sixteen-month old baby nicknamed “Ice” was killed along with her mother by an unknown gunman.¹⁰⁴ Rather than investigate, the police assumed that the killing was gang-related, as the mother’s brother was reportedly involved in the drug trade, and did not investigate further.¹⁰⁵

- c. Several factors impede the possibility of an independent and effective investigation and prosecution. According to Amnesty International, the police generally claim that there were no witnesses to the killings, and that they shot in self-defense, and this ends the possibility of a fruitful investigation.¹⁰⁶ Further, the local police unit is usually charged with the investigation, yet this is the same unit suspected of involvement in the killing.¹⁰⁷
- d. The Thai Government's report to the Human Right Committee admits, "The law on autopsy still has many gaps."¹⁰⁸ Thai law provides for a forensic expert to be present at autopsies, yet Amnesty International reports that it is unclear whether this practice is often followed, and the expert is also part of the police force, which affects its impartiality.¹⁰⁹ This violates the right to a meaningful investigation as described in the *U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. The Principles require that the forensics specialist carrying out an autopsy must be independent.¹¹⁰ According to Amnesty International, in some cases, an autopsy has not been completed due to the external pressure. The authorities sometimes did not permit pathologists to perform autopsies, and bullets were allegedly removed from corpses.¹¹¹ The head of Thailand's Forensic Sciences Institute, Dr. Porthip Rojanasuna, expressed suspicion that, while the Thai police previously had sought her institute's aid in differentiating between gangland killings and extrajudicial executions, after the "War on Drugs" began, the police no longer did so.¹¹² Additionally, the lack of an independent autopsy makes it difficult to confirm widespread allegations of torture at the hands of the police.
- e. The following case outlined in an Amnesty International report epitomizes distorted police investigation procedure. Boonterm Chaoyung was found dead in front of a school in Bangkok after visiting his brother, who was in prison on drug-related charges on February 2, 2003.¹¹³ His family was told he was a drug dealer who had opened fire first on the police.¹¹⁴ His family claims he was not involved with drugs and also that his body appeared to have been beaten.¹¹⁵ His body was cremated before an autopsy could be carried out.¹¹⁶
- f. According to Human Rights Watch, during the "War on Drugs," the National Human Rights Commission (NHRC) was overwhelmed with complaints, most related to false arrest, improper inclusion in the blacklists, and resulting due process violations.¹¹⁷ After the "War on Drugs" began, the number of complaints rose from twelve complaints over the course of seven weeks to one hundred twenty-three complaints in two weeks.¹¹⁸ The NHRC can subpoena witnesses and information in its investigations, but cannot bring prosecutions.¹¹⁹ When Human Rights Commissioner Pradit Chareonthaitawee protested against the deadly results of the "drug war" and shared findings of human rights violations with the United Nations High Commissioner on Human Rights (UNHCHR), Prime Minister Thaksin called his behavior "ugly" and "sickening."¹²⁰ The NHRC later produced a report that expressed concerns regarding the arbitrariness of inclusion in the blacklists, use of blacklists to settle personal conflicts, the failure to investigate cases where drugs had allegedly been planted on dead bodies, the lack of evidence to support many summons to police stations on the day drug-related killings occurred, and the lack

of requisite investigation before confiscating assets of suspects.¹²¹ However, the National Human Rights Commission is not a judicial body and possesses no enforcement power.

39. ANALYSIS: The failure to perform independent investigation and prosecution violates the right to a remedy under Article 2. A variety of factors work together to prevent an effective investigation of the killings occurred in the process of anti-narcotics enforcement. Cumulatively, they equal a large-scale, systematic violation of the right to a judicial remedy under Article 2. The Government has given local police the power to investigate their own alleged wrong-doing, meaning that investigatory diligence often is lacking. Autopsy laws do not adequately provide for independent forensic analysis under international standards and are often not followed. Police have significant voice in the “independent” national committee the Government created to report on human rights violations during the anti-narcotics enforcement, thereby impairing its impartiality. The National Human Rights Commission lacks the manpower and resources to investigate all the claims, and cannot prosecute them. Yet perhaps the most significant factor impeding effective investigation and prosecution of the thousands of deaths and arrests in the anti-narcotics enforcement is a lack of desire for answers at high levels of the Thai Government. The country-wide failure to investigate and prosecute large-scale murders, arbitrary arrests, and unlawful detentions constitutes a serious violation of the right to a remedy under Article 2. It also indicates an alarming general breakdown of the rule of law in the fabric of Thai society.
40. RECOMMENDATIONS. In order to ensure that those whose rights are violated can seek a meaningful remedy, the Thai Government should provide for an independent body to carry out national investigations of alleged police wrong-doing. It should support the investigatory commission with sufficient funding and staff to investigate the thousands of murders and arrests. The Government should enforce the findings of the independent investigative body through prosecutions. At the local level, an independent forensics specialist should carry out full autopsies on those killed, and some agency other than the local police should investigate allegations of extrajudicial killings perpetrated by police. Most of all, the Government should make it clear that wide-scale killings and arbitrary arrests are an unacceptable violation of the law, regardless of whether the victims are suspected drug users or children.

The Anti-narcotics Enforcement Has Had a Disproportionate Impact on Minority Groups

41. FACTS: The fundamental rights of hill tribe minority groups have suffered disproportionately during the “War on Drugs.” The policies of anti-narcotics enforcement continued a pattern of discrimination and human rights abuses directed at Thailand’s hill tribes. According to Amnesty International, members of tribal groups “felt especially vulnerable to being targeted for blacklisting; arbitrary arrests and searches; and killings in the anti-drugs campaign.”¹²²
- a. The term “tribal group” refers to the minority indigenous groups that trace their origin to the southern Sino-Tibetan geographical area and now inhabit the Northern hills along Thailand’s borders. Approximately 1 million of Thailand’s 60 million residents are hill tribe members. According to the U.S. State Department Country Reports on Human

Rights for 2000, despite the May 2000 law reform to broaden the scope of citizenship eligibility, the Thai Government still has not conferred citizenship on one-third of the hill tribe population.¹²³ Even after registration, their rights are greatly limited compared to those of the majority group and they cannot move internally without permission from local authorities.¹²⁴ Those who are not registered are considered illegal immigrants. They therefore have no right to public education or health care or labor law protection such as minimum wage.¹²⁵ Hill tribe women represent a disproportionately high number of situations constituting the worst forms of trafficking.¹²⁶ The UN Economic and Social Council (ECOSOC) and NGOs believe this is due to the lack of protection that their statelessness produces.¹²⁷

- b. During the “War on Drugs,” many hill tribe people have been tortured, shot and killed.¹²⁸ They were often targeted as drug user or dealer suspects without any reasonable grounds, partially due to the Thai popular culture, which often stereotypes them as drug-smugglers and addicts.¹²⁹ A National Human Rights Commissioner noted that ethnic minorities were included on the blacklists due to stereotyped assumptions that they were involved in the drug trade.¹³⁰ Security forces also reportedly carried out several warrant-less and allegedly arbitrary general searches of hill tribe villages.¹³¹
- c. In one example provided in the Human Rights Watch report, four members of the Hmong tribe, Seah Jer Sae Thow, Somchai Sae Thow, Boonmar Sae Thow, and Seng Sae Thow (the village headman) went to the district office, as two of the men had received warrants for illegal weapon possession and drug trafficking.¹³² Like many other victims in the “War on Drugs,” the four men were shot dead as they returned to their homes. Hmong villagers found them and reported signs of abuse on the bodies, including black eyes, a broken chin, stab wounds, burns, a broken neck, and bruises. The police claimed that it was case of drug traffickers killing one another, although none of the victims had any history of drug-related activity.¹³³ The bodies were sent to a hospital but no autopsy results were released. Villagers in the village where the killings occurred claimed to have seen policemen in uniform and plainclothes arrive on motorcycles and wait near the crime scene before the Hmong men arrived.¹³⁴ According to Human Rights Watch, on the day the National Human Rights Commission came to investigate, witnesses claimed that the police had told them not to describe what they saw.¹³⁵ The Human Rights Watch report also includes the statement from another witness that a police officer said, “Please understand, we did not kill your father, it was police officers from Lom Sak District.”¹³⁶ As of February 2005, there appears to be no investigation conducted, or, if it ever did, the results are not public.
- d. In another case reported by Amnesty International, two sons saw their father, Biasue Srimee, a Lisu tribe member, in his rice field, handcuffed and surrounded by ten police officers, one of whom held a gun to his head.¹³⁷ The officers then arrested the brothers, accused them of involvement in drug trafficking, kicked them, and took them to the district police station and held them overnight. The next day, two groups of policemen conducted a search of the family home without a warrant. The village head received a phone call about an unidentified body, which the family identified as Biasue Srimee’s. He had been shot five times and stabbed in the back.¹³⁸

e. Even so-called opium detoxification programs have been used to abuse hill tribe members. According to Amnesty International, in December 2001, two Akha hill tribe men were seized by soldiers and taken to the 11th Cavalry military camp for detoxification.¹³⁹ They were shoved in a hole already containing three other Akha detainees, and soldiers then poured water, coal and ashes on them. Ajuuh Che Cuuh Gooh died as a result of beating on 9 December, and another detainee, Ateh Amoh, had to spend six days in a hospital due to a ruptured lung from beatings. On 17 May 2001, the police allegedly beat Apha Wurh Zur, a hill tribe member, to death after accusing him of drug trafficking.¹⁴⁰

42. ANALYSIS: The security forces' targeting of hill tribe members violates hill tribe members' right to non-discrimination in the distribution of rights (Article 2). Rights disproportionately denied to hill tribe members include the right to be free from arbitrary arrest and detention (Article 9), the right to be presumed innocent (Article 14), torture (Article 7), the right to life (Article 6), and the right to a judicial remedy (Article 2).

43. RECOMMENDATIONS. As part of a broader program to end discrimination against hill tribe members, the Thai Government should prohibit the targeting of hill tribe members in the "War on Drugs" based on stereotypes. The Government should publicize cases where security forces flagrantly abused the rights of hill tribe members and use the publicity to spread anti-discrimination messages. The Government should aggressively prosecute these cases. The Government should ban warrantless, general searches of hill tribe villages even in areas under Martial Law. Proper education should be provided to policemen to help dislodge stereotypes regarding hill tribes.

Suspected Drug Users Are Subject to Discrimination, Arbitrary Arrest, and Threats to the Right to Life

44. FACTS: Widely used police "Drug War" practices in Thailand subject suspected drug users to wrongful arrest without evidence and increase their risk of death via HIV/AIDS.¹⁴¹ As the Human Rights Watch report and the Amnesty International report evidence, police have often planted evidence and coerced confessions from supposed drug users. The "War on Drugs" forced many drug users to skip treatment or use unclean needles. It also increased the incarceration rate, where the probability of contracting HIV/AIDS substantially escalates.

a. The "War on Drugs" exacerbated the trend of penalizing drug users and significantly increased the risk of injecting drug users contracting HIV/AIDS, thus violating their right to life (Article 6).¹⁴² According to Human Rights Watch, the anti-narcotics enforcement drove many drug-users underground, as they sought to escape extrajudicial execution.¹⁴³ This further limited their access to clean syringes, and probably increased the likelihood that they contracted HIV/AIDS.¹⁴⁴ Many users were far less likely to report for treatment during the "War on Drugs," due to fear of being added to the blacklist or arrested.¹⁴⁵

- b. At the same time, the police targeted suspected drug users based on factors such as attendance at a methadone clinic and used coercive techniques to force people into ineffective rehabilitation boot camps (“compulsory treatment centers”). Quota requirements seem to have helped motivate this behavior.¹⁴⁶ In compulsory treatment centers, the Thai Government does not offer methadone substitution treatment, which makes it quite unlikely that a heroin addict will permanently quit.¹⁴⁷ This, coupled with the notion that showing up for treatment was perhaps the only way to avoid arrest or murder, caused some non-users who were on the blacklist to enter therapy.¹⁴⁸
- c. Human Rights Watch also reports that the use of clean syringes reportedly declined, as police would use possession of a syringe as a basis for arrest, and sometimes nabbed suspects near pharmacists who sold syringes or outside methadone treatment centers.¹⁴⁹ Many drug users were jailed, where the probability that they would contract HIV was significantly elevated.¹⁵⁰ HIV prevalence in Thailand is almost twice as high among men who have been incarcerated than among men who have not.¹⁵¹ Moreover, HIV/AIDS prevention programs in jails are purposefully almost non-existent,¹⁵² although heroin use is common and syringes scarce.¹⁵³

45. ANALYSIS: The anti-narcotics enforcement exacerbated a pattern of police discrimination against drug users in Thai society, depriving them of key political rights in violation of the anti-discrimination principle in Article 2. The denial of a meaningful remedy removes them from the equal protection of the laws (Article 26).¹⁵⁴ The “War on Drugs” forced them into hiding or jail, increasing their chance of contracting HIV/AIDS, and thus violating the right to life (Article 6). The use of blacklists focused on former drug offenders violates Article 9. The assumption of guilt contravenes the requirements of due process found in Article 14. As long as the Government fails to address these police practices, suspected drug users do not receive equal treatment before the law.

46. RECOMMENDATIONS. The Government must prosecute and discharge officers who plant drugs or coerce confessions from supposed drug users. The Thai Government should provide harm reduction programs for drug users commensurate with those it offers to other at-risk groups. Prisons should offer HIV/AIDS education programs.

III. HUMAN RIGHTS DEFENDERS

Disappearances of Human Rights Defenders in the South

47. FACTS: The case of Somchai Neelapaijit. NGOs have accused the security forces of using torture and inhumane treatment in the South (article 7), as well as orchestrating disappearances (Article 6). Even before the October 2004 Tak Bai incident, persons detained in the South allegedly had been tortured or ill-treated in violation of Article 7. One prominent case is the disappearance of Somchai Neelapaijit.

- a. Somchai Neelapaijit, a well-known Muslim human rights lawyer, disappeared in Bangkok in March 2004 after receiving death threats.¹⁵⁵ He was reportedly on a “blacklist” along with other Muslim lawyers.¹⁵⁶ He is the Chairman of the Muslim Lawyers Association as well as the Vice Chair of the Law Society of Thailand’s Human Rights Committee.¹⁵⁷ He was defending nine Muslims accused of involvement in the violence in the South and also protesting the imposition of Martial Law in the South.¹⁵⁸ Several policemen were arrested for his disappearance and charged with coercion, assault, and armed robbery, but not abduction. According to Amnesty International, the whereabouts of Somchai Neelapaijit remain unknown.¹⁵⁹ The case against the policemen will reportedly commence in August 2005; this is slower than typical cases in Thai courts.¹⁶⁰ If appropriate evidence exists, the Government should meet its obligation to prosecute the police for the actual disappearance of Somchai Neelapaijit.
- b. Somchai Neelapaijit’s disappearance is occurring in the context of other disappearances in the south. Other Muslims in the South have also been reportedly disappeared. Amnesty International was aware of at least ten disappearances in 2003 through September 2004.¹⁶¹ In at least some cases, the person was taken away by vehicles believed to be associated with Government security forces.¹⁶²
 - Five men represented by Somchai Neelapaijit were allegedly severely beaten, almost suffocated due to plastic bags over their heads, and electric shocks administered to their legs and testicles.¹⁶³ According to the Asian Legal Resource Center report, even after making these allegations public, four remained in detention, and the police allegedly responsible have yet to be held accountable as of late 2004.¹⁶⁴
 - With regard to the recurring “disappearances” in the country, the Government claims to have arrested eight policemen due to their alleged participation in some of these cases.¹⁶⁵ However, it has failed to provide the names of the disappeared or further information regarding the investigations.

48. ANALYSIS: Uninvestigated torture and disappearances in Southern Thailand violate Articles 2, 7, and 9. The Government has failed to pursue independent, timely investigations of the disappearances and alleged cases of torture.¹⁶⁶ Under Thai law, investigations of human rights violations by policemen generally are investigated by the local unit, which is often the unit accused of committing the abuse.¹⁶⁷ This conflict of interest in investigating

crimes allegedly committed by the police means that current Thai policy does not sufficiently ensure the right to remedy if Covenant articles are violated, contravening the state's duties under Article 2. Under the *U.N. Declaration on the Protection of All Persons from Enforced Disappearances*, so long as an official or branch of Government is responsible for someone's disappearance against his or her will and fails to account for his or her whereabouts, this constitutes a disappearance.¹⁶⁸ Enforced disappearances are a violation of the right to liberty and security of one's person (Article 9), the right to a fair trial (Article 14), and often result in a deprivation of the right to life (Article 6) and freedom from torture (Article 7) under the ICCPR and the Rome Statute.¹⁶⁹

49. **RECOMMENDATIONS.** The Thai Government must prohibit the use of torture against detainees and end the practice of disappearances. The prevention of torture requires that detainees have access to counsel and that their families know their whereabouts. The Government should disclose the whereabouts of the disappeared. An independent party should investigate all allegations and have the authority to commence prosecutions. The Government should prosecute appropriate cases.

Disappearances of Human Rights Defenders in Other Regions

50. **FACTS: Human Rights defenders and environmental activists risk assassination or disappearance.** As discussed in the section on the South, prominent human rights lawyer Somchai Neelapaijit was disappeared in March 2004. Other human rights activists, particularly those working with hill tribes, landless farmers, or migrant workers, also face serious threats to their bodily integrity and freedom.¹⁷⁰ According to Amnesty International, in the past three years, at least seventeen activists have been executed or "disappeared."¹⁷¹ The following cases reported by Amnesty International provide examples of the common threats imposed on the security of activists in Thailand.
- a. In August 2004, in Northern Thailand, Supol Sirichan, a village head working with locals to protect a nearby forest reserve from the logging activities of local influential persons, was shot dead in front of his own house.¹⁷² The police are reportedly investigating.¹⁷³
 - b. Environmental activist Charoen Wat-aksom filed a report with a Senate committee on anti-corruption and was killed by unknown persons later that day.¹⁷⁴ Despite requests by human rights defenders to have an investigation conducted by national rather than local authorities due to fear of bias amongst the local police, the Prime Minister commanded the local police to carry out the investigation.¹⁷⁵ Three people have been arrested as murder suspects.¹⁷⁶
 - c. Between September and February 2003, six activists who had led community protests against the construction projects in their local were killed: Boorith Chanarong, Preecha Thonpan, Boonsom Nimnoi, Boontong Intawong, Kaew Pinpanma, and Khampan Suksai.¹⁷⁷ As of mid-2003, no one had been prosecuted for the killings.¹⁷⁸

- d. Environmental activists have also been threatened and harassed without adequate protection from state authorities. In 2001, six environmental and lands rights activists were killed, including Jurin Rachapal, who was protesting the destruction of mangrove forests by commercial prawn farming in the South.¹⁷⁹ In June 2002, anti-logging activist Watcharin Uprajong was shot at with an automatic rifle and shotgun.¹⁸⁰ A bullet grazed him, but he escaped in his car. The weapons were left at the scene and bore official Government serial numbers. Six months later, he remained in hiding, and eighteen months later, no one had been arrested or prosecuted. He and fellow villagers had set up patrols to prevent illegal logging, an action that apparently was disfavored by local officials.
- e. In March 2003, during the “War on Drugs,” Pradit Chareonthaitawee, a National Human Rights Commissioner, received death threats after expressing his concern regarding the large number of deaths during the Drug War.¹⁸¹ At the same time, Prime Minister Thaksin’s political party suggested it might seek Parliament members’ signatures to enable the dismissal of Pradit.¹⁸² The death threats to National Human Rights Commissioners in Thailand continued in 2004; targets included Vasant Phanich and Jaran Dittha-apichai.¹⁸³
- f. Hina Jilani, the Secretary General’s UN Special Representative on the situation of human rights defenders, paid an official visit to Thailand from 19 to 27 May 2003, and produced a report on the matter of the disappearances and killings of the human rights defenders. According to the report, other human rights activists killed include: Narin Podaeng (1 May 2001); Suwat Wongpiyasathit (21 March 2001); Pitak Tonewuth (17 May 2001); Sompol Chanapol (July 2001).¹⁸⁴ Others attacked but not killed include: Luechai Yarangsi; Jintana Kaewkao (14 January 2002); Yuthana Khaemakriangkai (15 January 2002); Thoncharoen Sihatham (20 April 2002).¹⁸⁵ A few arrests have been made in connection with these attacks and killings, but all suspects were released without a trial.¹⁸⁶

51. ANALYSIS: The Government’s neglect of or alleged participation in the killings of human rights defenders and environmentalists violates the right to life (Article 6). Because the killings and disappearances seem to be aimed at silencing those airing political views, they also violate the right to freedom of speech (Article 19).

52. RECOMMENDATIONS: The Thai Government should provide adequate protection for human rights defenders and environmentalists. It should investigate their deaths or discover and disclose their whereabouts, and prosecute those responsible for the incidents.

IV. THE RIGHTS OF PEOPLE FROM BURMA IN THAILAND

“They must stay in their place. They must be controlled. . . . They live here and give birth to a lot of children. They shot our students. They bring diseases long gone from our country back to us, including tuberculosis and elephantiasis. They sell drugs and rob and kill our people.”

—Prime Minister Thaksin’s statement regarding his decision to contain or deport Burmese migrants and urban refugees, June 2003¹⁸⁷

53. Brief Conclusion and Recommendation.

- a. **Article 13 Violations.** The Royal Thai Government is violating Article 13 of the ICCPR by preventing refugees from seeking asylum, and forcibly repatriating refugees and migrants en masse to Burma. Such unlawful expulsions and forced refoulement put individuals at risk of torture, and other abuses, leading to potential violations of Articles 6, 7, and 8 of the Covenant. The Thai Government’s action is inconsistent with the Committee’s General Comment 31.
- b. **Article 2 and 26 Violations.** Furthermore, Thai deportation procedures are inadequate, discriminatory (Article 26), and are leading to violations of Article 2. The ICCPR applies to all aliens and protects them equally, regardless of whether their status is lawful or not. In other words, aliens have the same entitlement to the rights listed in the ICCPR as citizens (with the exception of Article 25’s participation in public affairs).¹⁸⁸ Current practices in Thailand violate this in a number of ways. Migrants also face regular discrimination in the work place in violation of Articles 2 and 26, and are subject to arbitrary arrest (Article 9), as well as to violations of the rights to life (Article 6) and association (Article 22).
- c. **Recommendations.** Thai policy, which has previously only provided shelter and asylum for those “fleeing fighting,” is being revised, and the revision in both policy and implementation should respect the principles of non-refoulement for all well-founded fears of persecution as outlined in the Refugee Convention. Those with well-founded fears should be given access to refugee camps or otherwise provided with protected status. Also, Thai policy, laws, and regulations should provide adequate remedies and procedural protection under Article 2(3) of the ICCPR for those who may face “irreparable harm” as defined by the Committee. Additionally, Thai policy towards refugees and migrants should respect Article 2(1) of the Covenant and should not discriminate against certain ethnic groups, including but not limited to those from Shan State in Burma.

54. **Background and History.** Hundreds of thousands of refugees from neighboring countries have sought shelter in Thailand in recent decades. According to the Amnesty International, at the moment, 80% are Burmese refugees fleeing their country’s authoritarian military junta.¹⁸⁹ Thailand is a member of Executive Committee of the U.N. High Commissioner for Refugees (UNHCR) but it has not signed the Convention Relating to the Status of Refugees.

The situation of refugees in Thailand is tenuous, as they do not have official refugee status. Since 1954, Thailand has called refugees “displaced persons” under the Ministry of the Interior’s 1954 “Regulation Concerning Displaced Persons from Neighboring Countries.”¹⁹⁰

55. The Thai Government has often failed to protect those UNHCR pronounces as having a reasonable fear of persecution. According to W. Courtland Robinson’s, “Thailand: Background Paper on Human Rights, Refugees and Asylum Seekers,” UNHCR first gained access to the camps along the Thai-Burmese border in 1998.¹⁹¹ In the past, in theory, after entering the country and possibly registering through the Thai Government, refugees could go to Bangkok or Mae Sot to have UNHCR determine whether or not they met the international definition of refugee.¹⁹² However, UNHCR reports that those in the camps are only allowed to leave them with the permission of district authorities, making it difficult to seek recognition from UNHCR.¹⁹³ While those registered as refugees (called “Persons of Concern” or POCs) with UNHCR were at least in the past provided an increase in protection, as described below in the section on formal deportation, they are still not allowed to travel freely around the country. They continue to be considered “illegal immigrants” and therefore are subject to arrest and deportation in urban centers even though they have met UNHCR’s definition of refugee.¹⁹⁴
56. According to UNHCR, of the approximately one million Burmese refugees in Thailand, at least 116,711 people registered with the UNHCR as refugees rest in refugee camps along the border, along with about 24,000 unregistered refugees who have not been screened for refugee status.¹⁹⁵ Another 4,000 UNHCR-registered refugees live in urban areas; these are mostly political dissidents.¹⁹⁶ Most other refugees are legal or illegal migrant workers, often subjected to unsafe working conditions and to pay rates far lower than the minimum wage and unsafe conditions.¹⁹⁷

Revisions in “Fleeing Fighting” Standard Should Meet Covenant Norms and Non-Refoulement both in Policy Terms and in Implementation

57. FACTS: Thailand has forced legitimate asylum seekers back to Burma, and its standard for review (a “fleeing fighting” definition) has previously led to violations of the Covenant. According to the report by Robinson, Thailand has returned thousands without determining whether they fulfill the definition of refugee. Thailand has also forcibly returned persons the UNHCR has defined as refugees (called “Persons of Concern” in Thailand) to Burma.¹⁹⁸ Beginning in 1998, Thai Provincial Admissions Boards started screening asylum seekers using a standard that only those “fleeing fighting” would be allowed to enter the refugee camps.¹⁹⁹ The UNHCR Global Appeal 2005 recently announced a change in policy to evaluate persons using a “fleeing political persecution” standard; other information indicates the standard may be in fact a “fleeing persecution” standard.²⁰⁰ In the past, those not meeting this “fleeing fighting” standard have been denied registration in camps and at times forced back at the border.
- a. According to the research of Therese Caouette and Mary E. Pack, the Thai government has pushed back large groups of attempted asylum seekers fleeing severe human rights

violations at the Burmese border, often with no review of their status or a review using only the narrow “fleeing fighting” standard.²⁰¹ Others have been dissuaded from fleeing dangerous situations. This has helped create a population of internally displaced persons inside Burma of 600,000 to 1,000,000.²⁰²

- b. Caouette and Pack also report that, from May 1999 to December 2001, only 41% of the cases that the Provincial Admissions Boards reviewed were allowed in the camps.²⁰³ Moreover, according to Human Rights Watch, the Provincial Admissions Boards stopped functioning in 2002-2003, meaning that no new refugees have officially been allowed into the camp and registered with the Thai Government, which has led to 30,000 arbitrarily admitted, unregistered persons living in the camps who could be expelled at any time.²⁰⁴ Starting in January 2004, UNHCR could only register asylum seekers as eligible to enter refugee camps under the “fleeing fighting” standard, rather than actually designating them as “Persons of Concern.”²⁰⁵
- c. Thailand’s failure to apply the international standard for granting asylum seekers entry onto Thai territory leads to severe consequences for those fleeing violence in Burma. For example, according to Amnesty International, in October 2001, 63 Karen asylum seekers attempted to cross into Thailand because they were fleeing forced labor and forced relocation at the hands of the Burmese army.²⁰⁶ The Karen are a minority in Burma whose army continues to fight the Burmese Government, and Karen in the border regions face a panoply of human rights violations based on their ethnic identity. The Royal Thai Army sent them back to Burma immediately because they were not “fleeing fighting.” The UNHCR was not consulted. Upon their return, fifteen were arrested, interrogated, and some were forced to act as porters for the army, a job which often involves severe mistreatment and even torture or death.²⁰⁷ Had the government properly processed these asylum seekers, it seems likely that some of them would have had a well-founded fear of being persecuted for reasons of race, and thus, they should have been allowed in the camps to have their status determined, rather than being forcibly returned in contravention of international law.

58. ANALYSIS: Thai policy that previously provided protection for only those “fleeing fighting” violated the fundamental norm of non-refoulement and Articles 2, 6, 7, 8, and 13 of the Covenant. The fleeing fighting standard violated several Covenant articles; those affected by the policy should be given new opportunities to seek remedies for the violations and to seek shelter and asylum under standards that adhere to the ICCPR and the principle of non-refoulement.

- a. The Human Rights Committee has previously said that Article 2 of the Covenant provides protection from deportation or expulsion “where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Articles 6 and 7 . . . in the country to which removal will be effected.”²⁰⁸ The Committee has also specifically interpreted Article 7 to include a non-derogable right to non-refoulement if torture is likely.²⁰⁹

- b. Furthermore, in order to avoid forcibly returning a person prematurely, states must review the status of individual aliens. Article 13 of the ICCPR, for example, allows expulsion of lawful aliens only after a decision reached in a process prescribed by law that provides the aliens the opportunity to present their individual cases. Aliens lawfully fleeing Burma, for example, deserve such forums. Currently, the Government makes no such determinations, which is a clear violation of Article 13.

- d. In addition to the specific protection required under the Covenant, Article 14 of the Universal Declaration of Human Rights protects the right to seek asylum from persecution.²¹⁰ The right to non-refoulement also applies to all those who meet the international definition of refugee, regardless of whether the host country has signed the Refugee Convention.²¹¹ Under Article 33 of the Refugee Convention, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²¹² The right to non-refoulement has been interpreted to include the right of those meriting the designation of refugee to not be rejected at the frontier of a state. Thailand’s decision to reject at its borders those asylum seekers not “fleeing fighting” means that some who meet the international standard of refugee have been refused entry. A state’s duty to not forcibly return a refugee applies whether or not that person has been processed and formally declared a refugee.²¹³

- e. The protection includes non-expulsion of asylum seekers whose life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social groups or political opinion.²¹⁴ The narrow Thai definition has in the past resulted in expulsion at the border of those who fulfill the international criteria of a refugee. Thailand’s “fleeing fighting” standard was conducive to violation of the right to non-refoulement. The Government must ensure that their new policy remedies this situation not only on paper but also in practice.

59. CONCLUSIONS & RECOMMENDATIONS: Thailand should meet its Covenant obligations and should ensure the “fleeing fighting” standard is not utilized—either in a *de jure* or *de facto* way. Denied entry or expulsion to Burma is a clear violation of General Comment 31’s “irreparable harm” standard as well as principles of non-refoulement. Torture (Article 6), extrajudicial killings of minorities or political opponents (Article 7), disappearances and widespread forced labor and portering (Article 8) are well-documented in the country. The forcible return, without a status review, of political activists and those from ethnic groups currently struggling against the Burmese Government has resulted in violations of the principle of non-refoulement. The evaluation of asylum seekers cases should be systematic and use the international standard rather than the flawed “fleeing fighting” standard.

Thailand's Deportation Processes Fails to Meet Basic Covenant Standards

60. FACTS: Thailand's deportation processes are overly inclusive and fail to properly protect refugees and those who might face torture and other human rights violations in Burma. In December 2002, Thailand expressed its intent to forcibly return asylum seekers. The National Security Council Chief announced that Thailand would begin to forcibly return asylum seekers to their countries of origin.²¹⁵
- a. According to Human Rights Watch, the Thai Government has two methods of deportation, both of which result in the violation of the principle of non-refoulement: informal deportation, which consists of being dumped across the river on the Burmese side; and formal deportation, which involves delivery straight into a delivery center operated by Burmese military intelligence (MI).²¹⁶ The Thai authorities have reportedly arranged for 400 Burmese per month to be returned straight to military intelligence.²¹⁷ No one knows what happens to most of those formally deported to the detention center, but given Burma's reputation for use of torture, the scenarios are grim for those who are members of ethnic minority groups or political dissidents.²¹⁸
 - b. The formal deportation method provides limited safeguards against refoulement of refugees who UNHCR recognizes as Persons of Concern. UNHCR is given a list of those to be returned immediately beforehand. If a name matches one on UNHCR's list, that person can avoid formal deportation. However, the UNHCR-designated refugee has only one alternative: informal deportation.²¹⁹ Either way, the refugee is forcibly returned, a clear violation of General Comment 31 and the principle non-refoulement.
 - c. Current procedures provide no protection for the thousands of migrant workers the Thai Government deports each month. Many of these migrants may in fact meet the criteria of a refugee. According to Caouette and Pack, the authors of a two year study on Burmese immigration, "Indeed, there is an arbitrary line between the groups that have been designated 'temporarily displaced,' 'students and political dissidents,' and 'migrants.'" These faulty distinctions often result in the vast majority of these people being denied asylum and protection and the superficial identification of millions as simply migrants seeking work."²²⁰ As described below, the Thai Government returns both registered and unregistered migrant workers by the thousands without any kind of procedural safeguard to allow them to seek asylum or check that they do not qualify as refugees.
61. FACTS: Thailand has improperly deported people to Burma. According to Human Rights Watch, Thailand currently regularly expels 10,000 Burmese per month, including registered and unregistered migrant workers, as well as UNHCR-designated refugees and those currently seeking asylum. While many of them manage to bribe their way back to Thailand, others may be at a risk of prosecution or other ill-treatment by the Democratic Buddhist Karen Army, one of the military factions that has signed the ceasefire agreement with the SPDC, or Tatmadaw, the Burma's military.²²¹ Even though the forced return implies a serious risk of torture, ill-treatment, and unfair trial to the refugees, the Thai Government is ignoring these problems.

- a. Thailand has forcibly returned a number of persons UNHCR has recognized as Persons of Concern. UNHCR noted that in 2002 and early 2003, the Thai Government carried out large-scale arrests and deportations of Burmese political dissidents. In 2003, Thai authorities arrested 120 refugees bearing UNHCR registration cards when they were foraging in the forest near their refugee camp and delivered them to the Burmese Government.²²²
- b. According to the Caouette and Pack report, political activist Saw Htoo had just received UNHCR refugee status in Bangkok before he was arrested on 27 October 2002. Despite his UNHCR certificate, he was deported to Mae Sot on 29 October 2002. The Thai Government sent him directly to the Burmese authorities. He was immediately arrested and had no way to escape back to Thailand. When he was arrested, he was bearing his biography, the UNHCR letter, and photos of his friends.²²³
- c. Similarly, in 2002, the Thai authorities delivered three Burmese political activists to the Burmese regime, which sent them to jail. Soon after, the Burmese Government removed them from jail and their whereabouts remain unknown.²²⁴

62. ANALYSIS: Thailand's procedures violate various articles, especially Article 13 of the Covenant. Article 13 states that all lawful aliens (e.g. Persons of Concern) should be expelled only in accordance with law and shall have a chance for their case to be reviewed by a "competent authority." The regular deportation of Persons of Concern, for example, brings the adherence to this article into serious question. En masse deportations also raise serious concerns of violation of this article.

- a. The Thai Government arbitrarily treats groups of asylum seekers differently, resulting in discrimination and a violation of equal protection (Article 26). The criteria used to decide whether to register new arrivals or allow them into refugee camps have varied depending on the time of arrival. Thus, current Thai Government practice arbitrarily gives similarly situated asylum seekers different status. The Government has presented no important Government objective achieved by such arbitrary practices, and the status designation has important consequences for the asylum seekers, as those who are registered are at least somewhat more protected from forced return than those who are not.

63. CONCLUSIONS AND RECOMMENDATIONS. As described, the Thai Government has deported those given Person of Concern status. The Thai system of deportation has placed political activists at risk for arbitrary detention and even torture, as the Burmese Government is known for its torture of political dissidents. Thus, the Thai Government has put asylum seekers in danger of "irreparable harm" in violation of General Comment 31 of the Committee and the principle of non-refoulement.

- b. Furthermore, no adequate process exists neither to determine whether asylum seekers should have access to the camps or be forced back to Burma, nor to determine whether they are refugees under international standards. Burmese in Thailand will neither be protected through any impartial, systematic screening process to ensure that those

meeting the definition of refugee are not rebuffed at the border, nor will many of them have an opportunity to present their asylum case to a UNHCR representative.²²⁵ The end result, as depicted, is that Thailand violates the principle of non-refoulement for those meeting the international definition of refugee.

- c. In order to ensure that Thailand does not violate the internationally-accepted principle of non-refoulement of refugees, Thailand must develop specific procedures so that it does not expel asylum seekers entering at the border whose life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.²²⁶
- d. Thailand must realign its deportation model so that it is not conducive to the violation of the principle of no forcible return of those fearing persecution. It should allow UNHCR to evaluate asylum applications before returning asylum seekers and not return those UNHCR finds to be refugees.
- e. The Thai system of deportation violates both the principle of non-refoulement and the ICCPR. The Thai Government should develop specific lists of those UNHCR has designated as refugees (or Persons of Concern) and incorporate them into its deportation system so that they are not forced to return to their countries. The Thai Government should also develop a new process so that those facing informal and formal deportation have a meaningful opportunity to make an asylum claim before being sent en masse across the border.²²⁷

Right to Travel for Aliens, Refugees, and Immigrants

- 64. **FACTS.** Several groups of lawful aliens do not have the right to travel freely within Thailand, despite Thailand's responsibilities under Article 12(1) of the Covenant. Several hundred thousand Shan refugees from Burma face similar restrictions.²²⁸ Some Chinese immigrants are confined to certain areas of Northern Thailand; some Vietnamese immigrants face similar limitations.²²⁹ Burmese refugees in the camps are not allowed to travel outside without permission, even if they are formally registered and have UNHCR refugee status.
- 65. **ANALYSIS and RECOMMENDATION.** These restrictions on travel are not grounded in necessity and therefore violate the Article 12 rights of lawful aliens to move within Thailand.²³⁰ The Government should remove the arbitrary discriminatory restriction on the aliens' right to travel without a valid reason and grant equal rights to everyone lawfully within its territory.

The Discriminatory Treatment of Shan from Burma

- 66. **FACTS:** The Thai Government purposefully forbids some groups from seeking UNHCR designation as refugees and from entering the camps. The Shan are an ethnic minority in Burma who face severe persecution in Burma because the Burmese Government continues to

fight the Shan State Army-South (SSA-South) in their homeland. According to Amnesty International, despite the grave danger the Shan face, under the current Thai Government policy, the Shan previously have been denied the opportunity to enter into Thai refugee camps and the right to seek refugee status with UNHCR, leaving them susceptible to arrest and forced return to Burma as illegal immigrants.²³¹ Many of them fled forced labor, portering, forced relocation, torture, and massacres which the Burmese army continues to inflict upon the ethnic Shan population.²³² There is some information that one or two small de facto camps now exist.

67. **ANALYSIS and RECOMMENDATION:** The plight of the Shan offers another example of Thailand's failure to process asylum seekers and ensure that they are not subjected to non-refoulement. It also constitutes a violation of the principle of equal protection under Article 16, as Shan asylum seekers do not receive the same opportunities as refugees from other ethnic groups to register in the refugee camps. The Thai Government should provide the equal protection to Shan communities that it does to other ethnic groups from Burma so that asylum seekers are adequately protected according the norms of the Covenant.

Treatment of Migrant Workers Violates Established Tenets of the Covenant, including Rights to Freedom from Arbitrary Arrest, Detention, and Expulsion

68. **FACTS and ANALYSIS:** Huge numbers of migrant workers are in Thailand and face regular discriminatory treatment at the hands of the Thai authorities, impacting their working conditions, and their rights to life, association, non-refoulement, and equal treatment. Both registered and unregistered migrant workers are subject to workplace discrimination, including lower pay and worse work conditions than Thais. They usually receive far less than the Thai minimum wage.²³³ Most migrant workers, registered or not, dare not complain, as job loss and deportation are likely consequences. A brave few have brought complaints to the courts, and in some instances they have won their court battles. Yet thus far, the court rulings have failed to deliver a meaningful remedy, as during the court case the complainants were fired and then lost their right to be in the country as migrant workers because they were unemployed.
- a. The migrant worker program offers temporary legal status to those working in a limited number of sectors, but it fails to protect them in a number of significant ways. They face discriminatory treatment in comparison to Thais regarding a number of rights specified under the Covenant. First, registered migrant workers continue to experience arbitrary arrest. Sometimes, the Government arbitrarily deports them. The practice of arresting migrant workers, registered or not, and deporting them to the border is routine. Second, their labor rights are often not protected, and they usually receive far less than the Thai minimum wage. Amnesty International reported that in December 2000, about two thousand Burmese migrant workers were dismissed after a dispute over their pay with management.²³⁴
 - b. In August 2001, the Thai Government created a registration system for migrant workers in which about 560,000 enlisted.²³⁵ Migrant workers are not automatically screened for

refugee status, and few apply to the UNHCR, for reasons that are not entirely clear.²³⁶ Therefore, they have never been evaluated for refugee status. In the informal Thai deportation process, they are swept up en masse and returned without any opportunity to claim asylum.²³⁷ Again, in some cases this results in forced return and violations of the principle of non-refoulement.

- c. Right to freedom of speech and association: The Government has suppressed the rights of Burmese workers to freedom of speech and association in the context of the workplace.²³⁸ Article 45 of the 1997 Constitution protects the right to form unions, farmer groups, and other private organizations, but the Government has not enabled Burmese citizens to fully exercise this right.²³⁹
- f. Amnesty International reports an incident that occurred in the fall of 2002, in which the Government violated the right to association (Article 22) of sixty migrant workers at the Nut Knitting Factory in Tak province. They protested their employer's refusal to help nineteen fellow migrant workers register and thus avoid arrest. All sixty were dismissed and forced to leave without their belongings. The police told the workers they had no rights. Five Thai men then arrived on the scene and beat the workers with iron and plastic pipes.²⁴⁰ The workers had only received slightly more than half the local minimum wage and had worked fifteen hours per day. They claimed unpaid wages at the provincial Labor Protection Department, which the Department granted. However, the employer ignored the ruling. The Thai Law Society took the case to the Nakon Sawan Labor Court, and the case was pending as of November 2003. Many of the workers, however, will not enjoy any remedy awarded, as the immigration police arrested twenty-six of them, took them to Mae Sot Immigration Detention Center, and dumped them across the border.
- g. Similarly, in June 2003, 420 registered migrant workers at King Body Concept Co. Ltd. in Tak province protested their squalid and unsanitary living conditions, including a lack of water, and the fact that they were paid less than half what their Thai co-workers were paid.²⁴¹ After receiving no response from the employer, they filed a formal complaint at the Tak Province Labor Protection Department. The Labor Department sent an official who met with the workers and employer, after which Mae Sot police, immigration police, and armed soldiers surrounded the workers. The employer dismissed the workers, and the combined forces subsequently arrested the workers. They took the workers to Mae Sot Immigration Detention Center and the same day deported them to Burma. Under Thai law, they should have been given seven days to find new jobs after being dismissed before facing deportation.
- h. The actions of the Thai Government impinge upon the workers' right to freedom of association, violating Article 22. The workers were also subjected to arbitrary arrest, violating Article 9. Such punitive actions also make it almost impossible for migrant workers to seek effective redress for discrimination from the court system, violating Article 26. Finally, the Government's actions violated Article 13, the right of the registered workers as lawful aliens to not be expelled except in pursuance of a decision reached in accordance with law and with the right to have their cases reviewed.

- i. Right to Life: Illegal immigrants also are often deprived of their right to life under Article 6. In several recent cases, up to twenty Burmese illegal immigrants have been found massacred, yet no effective investigation has ensued, violating Article 6.
- j. According to the 2002 annual report by the UN Special Representative on Human Rights Defenders, in February 2002, police found the dead bodies of twenty Burmese nationals in a stream, who had been blindfolded with their wrists tied behind their backs. Their throats were cut and their bodies bore signs of beating and stab wounds.²⁴² As of November 2003, no investigation of the case was completed and no prosecution had ensued.²⁴³
- k. Amnesty International reports another incident: in March 2002, thirteen migrant workers were found dumped in Prachin Buri province. Initial investigations indicated they had been left there after suffocating to death under vegetables in a truck. As of the end of 2002, it appeared that no one had been prosecuted.²⁴⁴
- l. On 14 May 2003, six migrant workers were found killed near a smuggling route along the Thai-Burmese border.²⁴⁵ According to the report by the UN Special Representative on Human Rights Defenders, Thai men initially attempted to extract bribes from them, a fight ensued, and then the migrant workers were reportedly taken to the village headman's house and beaten, after which men in uniform took them away in a pickup. Their burnt bodies were found ten days later. Local activists were afraid to complain to the police, as they suspect the local police force was involved.²⁴⁶ Their relatives filed a complaint with the National Human Rights Commission, but the result has not been made public. On their own initiative, the police arrested a local sub-district head who allegedly ordered the killings, and the case is still pending in Thai courts.²⁴⁷ While the pursuit of the second case signals an improvement in justice for Burmese aliens, on the whole, the Thai Government has failed to adequately protect the right to life of Burmese migrants or provide independent investigation of their deaths, and thus violated their right to life under Article 6.²⁴⁸

69. CONCLUSIONS AND RECOMMENDATIONS. Migrants suffer discrimination regarding basic rights to free speech and association in the workplace and are denied an effective remedy, in violation of Article 2 of the Covenant. Thus, they do not receive equal protection of the laws from discrimination, in violation of Article 26. Similarly, migrants suffer regular threats to their rights to life (Article 6), association (Article 22) and arbitrary detention (Article 9).

- a. As the registered migrant workers are in the country lawfully, Article 13 of the ICCPR forbids their expulsion without a procedure established by law during which they can present reasons against their expulsion and have the case reviewed. The failure to review each case and use mass expulsion instead violates Article 13.²⁴⁹
- b. The Thai Government should provide better procedural safeguards to avoid en masse deportations. Additionally, it should amend the law so that registered migrants bringing

claims against employers do not face retaliation for asserting their rights and legal claims to equal treatment.

Burmese and the Tsunami: Right to Life and Non-Discriminatory Treatment

70. **FACTS and ANALYSIS:** In the aftermath of the massively destructive tsunami of December 2004, the inhabitants of Southern Thailand have suffered immensely. The Thai Government's rapid response has helped save lives. Despite the wealth of sympathy the tsunami has elicited, the Government has discriminatorily failed to meet the needs of Burmese migrants in the South to an extent that may threaten their right to life under Article 6 of the Covenant.
- a. Although only 22,000 of them are registered, around 127,000 migrant workers live in the five most tsunami-affected Southern provinces.²⁵⁰
 - b. After the tsunami, Burmese refugees have found themselves in particular peril of informal deportation. According to the BBC report, sensationalist stories in the Thai press claimed that Burmese were looting destroyed hotels and homes.²⁵¹ This prompted local officials to arrest many of the Burmese they could find. In one case, the police arrested Burmese who had just received emergency aid from nongovernmental organizations (NGOs). The local authorities have deported many registered migrant workers.²⁵² The thousands still left cannot seek emergency aid because they fear deportation and also have heard that the Thais will not give emergency supplies to them.²⁵³ Instead, thousands have been reportedly hiding in the hills, in some cases with no food and no medical care.²⁵⁴ This unequal access to medical care and other emergency services results from Thai informal deportation methods, which place even lawful Burmese migrants and those deserving of refugee status at risk for deportation without an opportunity to claim asylum. Thai deportation practices have led to discriminatory receipt of resources so badly needed that their denial may result in death for some tsunami-affected Burmese, thus violating Article 6.
71. **RECOMMENDATION:** The Government should immediately ensure the equal access to medical care and other emergency services for the refugees who suffered from the tsunami. It should provide those deserving of refugee status an opportunity to claim asylum. It should ensure that the lawful refugees and migrant workers are protected from the arbitrary deportation and various discriminatory practices that are currently prevalent in the country.

IV. FREEDOM OF SPEECH AND ASSOCIATION

“Any group that instigates a rally during the summit should be prepared to endure long and painful consequences.”

—Prime Minister Thaksin, announcing that NGO protests would not be allowed during the October 2004 APEC meeting²⁵⁵

“The restriction on the liberty [of expression] shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the state, safeguarding the rights . . . of other person, maintaining public order or good morals. . . . The censorship by a competent official of news and articles before their publication in a newspaper, printed matter, radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict.”

—Thai Government Report, Para. 465, April 2004²⁵⁶

“Thailand has recognized in the Constitution freedom of the people to assembly peacefully and the limitations of the said freedom shall be strictly done by the power of a law as provided in the Constitution.”

—Thai Government Report, Para. 491, April 2004²⁵⁷

72. Main Conclusions and Recommendations.

- a. **Article 19 Violations.** The Government’s suppression of the freedom of the media violates the right to freedom of expression.
- b. **Article 21 & 22 Violations.** The Government’s neglect of activists’ safety and control of activists and NGOs through threatening cuts to NGO funding, strategically denying work permits and visas, using arrest and selective application of law, and imposing surveillance and otherwise harassing human NGOs is beyond the legitimate scope of restriction and violates the right of peaceful assembly (Article 21) and the right to freedom of association (Article 22).
- c. **Article 26 & 13 Violations.** The Government’s use of unlawful means to control Burmese political activists, including arrests and deportations to Burma without compelling reasons, violates their right of equal protection (Article 26) and right to seek asylum without fear of arbitrary expulsion (Article 13).
- d. **Recommendations.** The current administration should renew its commitment to protection of Article 19 of the covenant and stop suppressing the media’s freedom of speech in the country. It should stop interfering with the activists’ and NGOs’ freedom of association and of peaceful assembly. It should provide adequate protection for activists and NGOs so that they can express their opinions and engage in activities without threat to their safety.

The Eroding Rights of the Media in Thailand

73. FACTS: The current Thaksin administration has routinely pressured journalists and editors to suppress reporting that is highly critical of the Government.²⁵⁸ Thailand has generally enjoyed freedom of speech and press. Since Prime Minister Thaksin's entry into power, however, the media have felt increasing pressure to curb their opinions. In 2000, Freedom House ranked Thailand as having a "free" press, but in 2002, after Thaksin's ascendancy into office, Thailand ranked as only "partly free."²⁵⁹ The Thai Journalists Association and Thai Broadcasters Association have tallied more than twenty cases in which pressure from the government caused the transfer or dismissal of news editors and print and broadcast journalists.²⁶⁰
- a. According to the U.S. State Department, freedom of speech in Thailand is greatly undermined by the ownership of media outlets by Government or government-related entities. The Government licenses all radio and television stations, and the Government or the armed force directly or indirectly control their operation.²⁶¹ In March 2002, when Independent News Network (INN) radio aired the Deputy Prime Minister's criticisms of the administration, the Government temporarily canceled the license to the station until in response to public protest it restored the broadcast and claimed its failure to renew the license was due to a temporary closure.²⁶² Opposition parties are often unable to gain access to state-owned television, and one cable television channel that was owned by the non-governmental group Nation Multimedia Group was marginalized.²⁶³
 - b. Thaksin made much of his fortune through the media. He founded the largest telecommunications conglomerate in Thailand, Shin Corporation, and members of his family still control the business.²⁶⁴ Shin Corporation owns Independent Television (ITV), which is, according to the U.S. State Department, the only independent, non-cable television station in Thailand.²⁶⁵ *Asiaweek* reports that on 12 January 2001, 23 ITV staff members, led by managing editor Jira Hongsamrerng, were fired after they formed a union and publicly complained of the political pressure on them to disseminate stories favorable to Thai Rak Thai and Thaksin's Shin Corporation.²⁶⁶ The Labor Relations Committee ordered the station to reinstate the fired employees.²⁶⁷ In May 2001, the ILO's Committee on Freedom of Association accepted the case and recommended the Government to restore the positions of the fired employees. The case is still pending.²⁶⁸
 - c. In March 2004, six major NGOs issued a joint statement protesting "the recent, unprecedented political pressure on the Thai press," as reflected in two resignations/removals of editors last month. According to Human Rights Watch, in February 2004, the editors of the Bangkok Post and Siamrath Weekly News Magazine left their posts amid credible allegations that these moves were the result of political pressure.²⁶⁹
 - d. U.S. State Department reports that in 2001, the Government accused *The Nation*, a leading English language newspaper, of endangering national security through its criticisms of Thailand's relations with Burma.²⁷⁰ Also in 2001, two newspapers received

warnings because they referred to speculation regarding the consequences if the Constitutional Court found Prime Minister Thaksin guilty of assets concealment.²⁷¹

- e. The administration's policies have also affected the expressive rights of foreign journalists, as the Thaksin Government controls foreign journalists working in Thailand by giving or withholding official approval for work permits and visa renewals. For example, according to Human Rights Watch, in March 2002, the Thai Government threatened to deport two journalists working for the *Far Eastern Economic Review* and cancelled their visas because they published an article that depicted tension between Thaksin and Thailand's revered king.²⁷² The visas were revoked under the claim that the journalists constituted a threat to national security.
- f. On 30 October 2004, according to Amnesty International, Thai security forces filmed detainees who spoke to the media on their release from detainment for the 25 October protest in Thak Bai, Narathiwat Province.²⁷³ Then, on 4 November 2004 members of the press were called into the Narathiwat police crime suppression division office, supposedly for a press conference.²⁷⁴ The police questioned them for four hours without access to legal counsel.²⁷⁵ The police presented them with a summons to surrender their video footage and photographs of the demonstration.²⁷⁶

74. ANALYSIS. The Government's exercise of pressure on the media represents unacceptable interference with media freedom. Such practice violates the right to freedom of expression and information, guaranteed by both the Thai Constitution and international treaties, including Article 19 of the Covenant.²⁷⁷

75. RECOMMENDATION. The current administration should renew its commitment to protection of Article 19 of the Covenant by ceasing to interfere with and attempting to control and harass the media and journalists in the country. The Government should hold accountable those who do interfere with such freedom under the appropriate laws of the country and section 39 of the Constitution.²⁷⁸

Local Officials Threaten and Harass Human Rights Advocates and Environmentalists

76. FACTS: Human rights leaders and environmentalists have received anonymous threats. Local authorities have harassed peaceful protestors and violently attacked them.

- a. Amnesty International reports that in September 2002, elderly villagers protesting the construction of the Pak Mun Dam were dragged by paramilitary from a town hall and treated roughly.²⁷⁹ Moreover, according to the report by the UN Special Representative on Human Rights Defenders, in December 2002, Pak Mun Protesters, who were demonstrating in front of Government House in Bangkok, were threatened by a gang of men, hired by the local authorities, wielding machetes, knives and batons.²⁸⁰ The Bangkok Governor commanded municipal police officers to forcibly remove the protestors in January 2003.²⁸¹

- b. In 2002, according to Amnesty International, an anti-Pak Mun Dam activist received threats from local Electricity Generating Authority (EGAT) officials.²⁸² EGAT is a state enterprise. Other Pak Mun activists have also been threatened with arrest, beaten or intimidated for participating in protests.²⁸³ The failure of the Government to investigate and prosecute these cases results in an indirect infringement on the ability of environmental and human rights activists to free expression and association, in violation of Articles 19 and 21.
- c. In December 2002, local Muslim fishermen from Southern Thailand protested the construction of a gas pipeline from Southern Thailand to Malaysia because they feared destruction of the local environment and their traditional way of life. In December 2002, 2,000 protestors attempted to hand a petition to Prime Minister Thaksin, who was visiting Southern Songkla province.²⁸⁴ According to the UN Special Representative on Human Rights Defenders, Thaksin's aide told them to wait in a specified area. When they complied, 1,000 policemen surrounded and attacked them with batons, resulting in their injury.²⁸⁵ Protestors were injured, some were beaten, and several were detained without being informed of the charges against them.²⁸⁶ The Thai National Human Rights Commission found that the Government force's threatening actions were an arbitrary use of force which foreboded possible noncompliance with the Constitution.²⁸⁷ However, no policemen were disciplined for excessive use of force.²⁸⁸ Instead, protestors were arrested and prosecuted. Also, according to Amnesty International, after the December 2002 protest, twenty people were subsequently arrested on charges including carrying arms publicly without permission, causing bodily harm, and leading an assembly in order to commit violence. Yet video footage shows that at least twelve of them had committed no acts of violence.²⁸⁹
- d. According to a report by the UN Special Representative on Human Rights Defenders, 560 prosecutions are pending against members of the Assembly of the Poor, an umbrella organization for activists working on poverty, environmental, and human rights issues.²⁹⁰ There are 118 outstanding arrest warrants against members of the Northern Peasant Federation, and one member has 42 civil and criminal cases filed against himself alone.²⁹¹

77. ANALYSIS: Police violence against peaceful protestors violates the right to free speech under Article 19 and free assembly under Article 21. Threats and violence against groups articulating specific ideologies and complaints inhibits their right to freely associate under Article 22. Rather than providing protection for those defending human rights, the judicial system is becoming a tool of coercion. Instead of addressing the police use of excessive violence, the Thai administration has itself actively used the legal system to infringe upon the right to freedom of assembly (Article 21), freedom of association (Article 22), and freedom of speech (Article 19).

78. RECOMMENDATIONS: The Thaksin Administration should stop harassing the human rights activists and publicly acclaim their role in Thailand's democracy. The police should provide protection for those receiving death threats. The police should not intimidate or

harm those who have peacefully assembled. The Government should not prosecute peaceful protestors on trumped-up charges and should ensure that their rights are protected.

NGOs' Freedom of Expression and Association Under Pressure

79. FACTS: The current administration has placed NGOs under increasing pressure to curb their expression. According to the report by the UN Special Representative on Human Rights Defenders, the Thai Government is controlling activists and NGOs in the following ways: threatening cuts to NGO funding; strategically denying work permits and visas; using arrest and selective application of law; and imposing surveillance and otherwise harassing human NGOs.²⁹² Also, local officials may have used the “War on Drugs” to target human rights defenders.²⁹³ The report also asserts that legal mechanisms to protect human rights defenders were insufficient.²⁹⁴ While the National Human Rights Commission showed independence and bravery, it possesses no enforcement power, and its work was ignored and at times even undermined by the Government.
- a. According to the report by the UN Special Representative on Human Rights Defenders, a Senate committee accused NGOs of obstructing the nation’s development and receiving foreign funding in spring 2003.²⁹⁵
 - b. According to Amnesty International, before the Asia Pacific Economic Forum (APEC) meeting in Bangkok in October 2003, Thaksin asked NGOs not to hold any public protests and said that any group acting in contradiction to his request would face “long and painful consequences.”²⁹⁶ A Human Rights Watch editorial in the *Asian Wall Street Journal* claimed that, just before the APEC meeting, the Government banned 500 human rights and social activists from entering Thailand and threatened those who might have organized protests.²⁹⁷
 - c. According to Human Rights Watch, security forces and Government officials have harassed and intimidated both Thai and international NGOs working near the Burmese border on Burma issues to prevent them from engaging in activities that might damage the Thai Government’s relations with Burma.²⁹⁸
 - d. According to the UN Special Representative on Human Rights Defenders, the Thaksin Administration has also threatened the free expression of certain NGOs in a number of ways. The State Anti-Laundering Office tried, without any reasonable grounds for suspicion, to launch investigations into the accounts of important NGOs and journalists.²⁹⁹ The attempt only ended because an Administrative Court was considering issuing an injunction to halt the investigations.³⁰⁰ No one was held accountable for attempting to carry out this unwarranted investigation.³⁰¹
 - e. Similarly, the Ministry of the Interior tried to instruct the Ministry of Foreign Affairs to utilize diplomatic channels to persuade foreign donors to cease funding certain NGOs, but the Ministry of Foreign Affairs did not implement the directive.³⁰² The Ministry of Interior also implemented a new rule that defines any NGO within Thailand that receives

foreign funding as a “foreign NGO,” thus affecting their tax status.³⁰³ It then pronounced new registration requirements for foreign NGOs that they must submit monthly reports on their activities, although this requirement is only enforced for certain NGOs under Government scrutiny.³⁰⁴ Additionally, some human rights organizations have faced difficulties obtaining work permits for foreign staff.³⁰⁵

- f. The Thai Government has used alleged national security concerns to validate human and electronic surveillance of numerous NGOs.³⁰⁶ According to a UN Special Representative on Human Rights Defenders’s report, some government agencies appear to have created blacklists of organizations and individuals who are then targeted for surveillance and harassment as national security risks.³⁰⁷ The use of blacklisting in the “War on Drugs” affected activists in a similar manner, as the unregulated creation of the Government blacklist enabled the insertion of names of leaders who had criticized the police force’s human rights record. For example, one hill tribe activist, Ms. Nasae Yapa, was arrested and detained after the police allegedly planted drugs in her house.³⁰⁸

80. ANALYSIS. Together, these different measures paint a picture of an administration slowly whittling away the capacity of NGOs to engage fully in expressive speech and other political activities, thus curtailing their right to freedom of speech (Article 19), right to freedom of peaceful assembly (Article 21) and right to freedom of association (Article 22).

81. RECOMMENDATION. The Thai Government should cease its attempt to control NGOs’ activities by unlawful scrutiny, fund-cutting, and law application and enforcement. The Government should also stop using a national security risk blacklist and a narcotics user/dealer suspect blacklist for the purpose of scrutinizing and pressuring the NGOs. The Government should respect the roles of NGOs in a democratic society and protect their legitimate activities.

V. RIGHTS OF WOMEN

“Thailand has tried to rectify the said problem [of sex discrimination] to the extent that it is almost non-existent.”

—Thailand’s Initial Report to the Human Rights Committee, Para. 31, April 2004³⁰⁹

82. Main Conclusions and Recommendations:

- a. **Article 3 Violations.** Sex discrimination still persists both in judicial system and in practice. The threat of female-targeted violence continues. The Government’s failure to provide effective protection or remedies for such problems constitutes a violation of Thai women’s rights to gender equality.
- b. **Article 6, 7, and 8 Violations.** The Government’s failure to protect women from trafficking, rape, and domestic violence often results in the violation of the right to freedom from torture and cruel, inhuman, or degrading treatment (Article 7), the right to freedom from slavery (Article 8), and sometimes even the right to life (Article 6).
- c. **Article 17 Violations.** By penalizing abortions except in very narrow exceptions, the Government infringes upon women’s right to privacy.
- d. **Article 23 Violations.** The persistent discrimination against women in domestic law, including spousal consent for legal deeds, permissible grounds for divorce, and eligibility for citizenship in case of marriage, violates women’s equal rights to marriage.
- e. **Article 2 & 26 Violations.** The Government fails to provide equal protection for women before the law (Article 26). When women are under physical and mental threats such as human trafficking, rape, and domestic violence, they are often penalized both under the law and in the process of its implementation rather than protected as victims of violence. The under-representation of women in law enforcement aggravates such prejudice. As a consequence, the Government failed to provide effective remedies for the violation of women’s rights that should be equally granted under ICCPR (Article 2).
- f. **Recommendations.** The Government should reform its criminal law and procedure to ensure that they provide effective remedies to victims in trafficking, rape and domestic violence cases without penalizing them. The Government should also remove the penal codes criminalizing women and practitioners involved in abortion and provide them with safe, sanitary medical assistance and allocate more resources to education on birth control and HIV prevention. Domestic law and labor law

reforms are necessary in order to ensure gender equality in marriage and employment. The Government should also take more pro-active steps to increase women's participation in public service.

83. Background and History. In the 1990s, Thailand was known as one of the leading Asian countries in the area of women's rights. The Constitution provides under section 30 Paragraph 2 that "men and women shall enjoy equal rights." Many of the women's rights guaranteed by the 1997 Constitution have yet to be enforced. Since Thaksin's election as Prime Minister four years ago, the situation has taken a turn for the worse. Thaksin's Government advocates an economy-first-women's-rights-later policy, ignoring the crucial correlation between the two, and is mostly indifferent to the voice of women with regard to various gender issues. Additionally, a number of sex-discriminatory laws in Thailand persist, in violation of this Convention.

Prostitution and Female Trafficking

84. FACTS. Thailand has been long criticized for its deep involvement in trafficking of men, women, and children. It is responsible for receiving, sending, and transiting women both domestically and internationally. The Government's anti-trafficking efforts have not been successful due to the lack of coordination among different agencies, areas, and organizations, and also due to the misdirected prosecution process, which ends up penalizing victims rather than perpetrators.
- a. Both domestically and internationally, human trafficking still continues to flourish in Thailand. Women are trafficked from northern Thailand to Bangkok for labor and sexual exploitation. According to UNESCO, they are often from the hill-tribe minority group, because a lot of them lack citizenship status and are thus not protected by the Government.³¹⁰ Moreover, Thailand is at the center of international human trafficking. According to the Humantrafficking.org project, Thailand receives trafficked women, children, and men from Burma, Cambodia, Yunnan Province of China, and Laos for labor and sexual exploitation.³¹¹ Tracord, a counter-trafficking organization formed with US support in 2002, estimates that 90% of trafficked sex workers in northern Thailand are from Burma.³¹²
 - b. Thai women are trafficked to Japan, Taiwan, Australia, New Zealand, Europe, and the United States for sexual exploitation and sweatshop labor.³¹³ According to a study on Thai women trafficked to Japan, the women typically volunteer to migrate to Japan with the promise of lucrative jobs by traffickers, without knowledge of the "debt" that would incur during the process, which ranges from US\$25,000 to US\$40,000.³¹⁴ They work for months, or even years, without any payment, in a highly coercive work environment. Human Rights Watch reported that these women often cannot refuse clients who are physically abusive, nor can they negotiate safer sex or get access to medical care without their employers' permission.³¹⁵ The report also says that some women were also beaten by their employers for "disobeying" orders.

- c. While the Government has taken certain anti-trafficking efforts such as promulgation of the Prevention and Suppression of Prostitution Act (1996) and the Prevention and Suppression of Trafficking in Women and Children Act (1997), they have yet been proved to be successful, in part due to the Government's inability to produce a unit capable of coordinating between the multiple agencies, areas, and organizations involved in transnational trafficking.³¹⁶ Moreover, as reported by Human Rights Watch, the anti-trafficking law enforcement has been weak, and often has resulted in violations of women's right to travel. And while there has been an effort by the Thai Government to repatriate female trafficking victim in foreign countries who can demonstrate Thai citizenship, those who lack or cannot demonstrate citizenship are still left in legal limbo.³¹⁷
- d. The Government's efforts to combat the trafficking and sexual exploitation of women focus on penalizing victims rather than perpetrators. According to Thai Women Watch, sex workers are routinely arrested and incarcerated.³¹⁸ The Government continues to prosecute victims transported from other countries into Thailand for illegal entry. Conversely, relatively few traffickers, sex worker employers, or parents who sell their children into prostitution wind up being prosecuted. Prosecution of the traffickers is also hampered by the lack of protection for victims who testify as witnesses, and victim compensation can only be won in a civil suit after the conclusion of a criminal case.³¹⁹ Official corruption—one of the major factors undermining reform efforts—helps the sex trade to continue flourishing.³²⁰

85. ANALYSIS. The Government's failure to protect the women from trafficking results in the violation of their right to freedom from torture and cruel, inhuman, or degrading treatment (Article 7), right to freedom from slavery (Article 8), and sometimes even leads to their right to life (Article 6). Also, by failing to investigate, prosecute, and punish the perpetrators of trafficking and imposing punitive measures on the victims, the Government breached its duty to provide effective remedy to individuals whose rights are violated (Article 2).

86. RECOMMENDATION. Without meaningful change in the factors leading women into prostitution, punitive measures directed at sex workers and trafficking victims will have little impact on the sex industry. The Government should direct its attention toward sex workers' customers, employers, and traffickers, who are the perpetrators complicit in supporting and organizing the sex industry. The Government should create a coordinating body to fight transnational trafficking and ensure that the body functions without corruption and withstands external pressure from the sex industry.

Rape and Domestic Violence

87. FACTS. The Government has failed to provide adequate legal protection for rape and domestic violence victims. Many of the crimes are unreported and the police often marginalize them as being insignificant. A rape victim's sexual history can be used against her at trial. The law does not recognize marital rape.

- a. Marital rape is still legal in Thailand. As Article 276 of the Criminal Code states, only "... rape committed against women who are not one's own wife is considered a criminal offence." Thai Women Watch addressed its concern in the report that the Thai National Police Bureau still does not treat domestic violence as a serious crime.³²¹ Additionally, if a woman brings charges against her accused rapist, her sexual history can be used against her at trial.
- b. The Government has failed to provide adequate support services for domestic violence victims,³²² and many of these crimes go unreported.³²³ A United Nations Development Program study of 2,818 Thai women found that 41% of those surveyed in Bangkok and 47% of those surveyed in Nakhon Sawan province had been physically or sexually assaulted by their husbands.³²⁴ These numbers correlate with the Foundation for Women and Institute for Population and Social Research's survey, which reported that "44 per cent of Thai women who have or used to have spouse[s] had been physically or sexually abused by their husbands or lovers."³²⁵

88. **ANALYSIS.** The Government's failure to protect women from marital rape violates the right to equal protection before the law (Article 26). Moreover, its failure to provide adequate legal enforcement measures that protect the rape and domestic violence victims and penalize the perpetrators removes any possibility for a meaningful judicial remedy (Article 2). Sexual violence, whether inside or outside the home, whether committed by a family member or a stranger, constitutes one of the gravest assaults on a woman's dignity.

89. **RECOMMENDATIONS.** The Government should immediately take necessary steps to outlaw marital rape. The Government should reform the criminal procedures for rape conviction so that the victims are not stigmatized by their past sexual histories. It should also allocate greater resources to facilitating the reporting of domestic violence and providing effective recovery remedies for abused victims.

Prevalence of Illegal Abortion and Degradation in Reproductive Health Condition

90. **FACTS.** Although there have been efforts to sponsor the national family program and promote the use of condoms, the Government has still failed to provide many women with adequate support for birth control and contraception. While the number of new HIV infections is reduced from 140,000 in 1991 to 21,000 in 2003, one in every 100 Thais are infected with HIV, and AIDS is still the leading cause of death.³²⁶ Thailand still maintains its legislation that penalizes women and administrators for abortion except the cases that fall into the very narrow exception. Such Government practices led to the increase in illegal abortions, often performed under unsanitary conditions by unqualified practitioners, which greatly threatens the women's physical and mental health.

- a. According to Thai Women Watch, 72.2% of married women between the ages of 15 and 44 have to solely bear the responsibility for family planning, and teenagers are largely ignored by birth control services.³²⁷ There are signs that unsafe sexual behaviors and the resulting unwanted pregnancies, unsafe abortions, and HIV/AIDS diseases were

increasing among the group. The Health Ministry in Thailand has estimated that less than 50% of teenagers were using condoms.³²⁸

- b. Moreover, a recent study of 80 women with unplanned pregnancies found that although all the married women in the study used contraception, they often used a method incorrectly, and the unmarried women had even further limited knowledge of contraception and tended to use methods with a high failure rate, such as counting days and withdrawal.³²⁹ Additionally, according to the report from United Nations Population Division on abortion policies, a significant proportion of abortion patients had not been practicing any method of contraception prior to their latest abortion.³³⁰
- c. The UNAIDS 2004 Report estimates that, at the end of the year 2003, about 570,000 people were living with HIV. 200,000 of them were women of the ages between 15 and 49, and 12,000 of them were children of the ages under fifteen.³³¹ More troubling still, is the HIV prevalence rate of young men and women aged 15-24: in 2000, the rate for females was nearly twice that (2.3%) of males (1.2%).³³² The Health Ministry has noted that the rate of HIV infection among teenagers rose during 2002 from 11% to 17%.³³³
- d. Abortion still remains illegal in Thailand except when performed by a medical practitioner for the sake of a woman's health or if the pregnancy is the result of rape or unlawful sexual contact. The word "health" here is generally defined very narrowly as "threatening a woman's physical health."³³⁴ Except in case of those abortions that fall into the exception, section 301-205 of Thai Penal Code of 1956 penalizes a woman who causes an abortion to herself or allows another to procure an abortion for her and an administrator or procurer of an abortion with imprisonment or payment of fine. Despite the illegalities, however, a study notes that about 80,000- 300,000 abortions are performed each year. Most illegal abortions are performed by non-medical personnel, such as self-trained practitioners, within the first trimester of pregnancy."³³⁵ According to a research funded by World Health Organization conducted in 1999 in 76 provinces, of a total of 4,588 women interviewed, 12% of them had tried to induce their abortions themselves, and 40% suffered serious complications.³³⁶

91. ANALYSIS. Without a legal right to abortion, Thai women are forced to jeopardize their physical health, mental well-being, and indeed, their lives, in order to obtain an abortion. Such Government practice constitutes violation of the Thai women's right to life (Article 6) and right to privacy (Article 17).

92. RECOMMENDATIONS. The Government should remove the penal codes criminalizing the women and practitioners involved in abortion and provide them with safe, sanitary medical assistance. The Government should also ensure that everyone is equally provided with education and support with regards to birth control and prevention of HIV and other sexually transmitted diseases, regardless of their age or socioeconomic status.

Marital Equality and Divorce

93. **FACTS.** Widespread discrimination against women is manifested in differential treatment by public authorities. The Thai law requires spousal consent in the conduct of legal deeds, but in practice, only married women and formerly married women are held to this requirement. Moreover, as the Government noted in its report, the present Civil and Commercial Code under Section 1516 continues to favor men over women on causes for divorce: a husband, for example, may file for divorce if his wife commits adultery, yet a wife can sue for divorce only if the husband supports or recognizes another woman as his wife.³³⁷
94. **ANALYSIS.** The aforementioned laws effectively grant greater power to husbands vis-a-vis their wives and constitute violation of the right to gender equality (Article 3), the right to equality of rights and responsibilities as spouses as to marriage (Article 23), and the right to equal protection before the law (Article 26).
95. **RECOMMENDATIONS.** Practices regarding spousal consent for legal deeds should be reviewed and changed as appropriate, to ensure equal treatment between men and women. Men and women should be held to the same standards regarding grounds for divorce, and the Government should take all necessary legislative and judicial actions to rectify the situation.

Unequal Grant of Citizenship

96. **FACTS.** As the Thai Government admitted in its report, under the current immigration law, foreign men that are married to Thai women are not entitled to apply for Thai nationality on the basis of marriage while foreign women married to Thai men can do so. In 1996, the Council of Ministers decided to resolve this matter by allowing foreign men the same privilege and assigned the related or governmental agencies to consider the revision of the law; however, the issue remains unresolved amongst those agencies and there has not been any revision of law to confer such a right to foreign men.³³⁸
97. **ANALYSIS.** The existing law that clearly grants favor to the foreign wives of Thai men violates the right to gender equality (Article 3), the right to enjoy equal rights of spouses as to marriage (Article 23), and the right to equal protection of the law (Article 26).
98. **RECOMMENDATIONS.** The Government should immediately take all necessary steps to reform legislation as to allow equal opportunity for foreign spouses to gain citizenship. The Government should ensure that the rights to obtain and to retain citizenship are equally granted to all individuals within its territory and subject to its jurisdiction regardless of their sex or other distinctions.

Unequal Treatment in Employment

99. **FACTS.** Although the Thai Government claims that the promulgation of the 1998 Labor Protection Act improved women's status in the workplace to the degree that entrepreneurs

complained of it being “too much geared toward labor protection too heavily,”³³⁹ working women are still subject to discrimination in wage, promotion, and layoff. Moreover, the legal protection or remedies for sexual harassment in working place is almost non-existent.

- a. Gender discrimination persists in promotions, payment of wages, and the firing of pregnant women. Women in Thailand are often subject to lower pay. According to the report by the Ministry of Social Development and Human Security, in 2002, women made up 46.7% of employees earning below 3501 baht per year, but as income levels increase, the proportion of women decrease. Women, for example, comprise only 28.8% of wage earners making 30,000 baht and up.³⁴⁰ Older women are among those particularly vulnerable to layoffs.³⁴¹ Despite passage of the Labor Protection Act, little support or protection exists for women who file sexual abuse charges, thereby effectively preventing women from raising the sexual harassment issues in the work environment.
- b. The 1998 Labor Protection Act outlawed sexual harassment for the private sector only, failing to include the vast numbers of women working in the informal economy. Moreover, in the name of female protection, by proscribing various limitations on the type of work assignment available to women, the Thai laws in fact reinforces sexist notions of women as the weaker sex..
- c. Migrant women from Burma and other countries are particularly vulnerable to abuse, given their precarious status. Even if they possess legal work status, dismissed workers are subject to deportation, which exacerbates employer abuse. In September 2003, for example, the Asian Human Rights Commission issued an urgent action in response to the routine underpayment, overworking, blackmail, and poor working conditions of Burmese workers at the Siriwat Garment Factory in Mae Sot. Of the 75 abused (and legal) workers, 64 were women.³⁴²
- d. In another example provided by the Asian Human Rights Commission, a 25-year-old Burmese woman, Sandar Hlaing, was found raped and dead in August 2003. She had been working for a knitting factory in Mae Sot, and of the three Thai men who committed the crime, one was a security guard from Sandar Hlaing’s factory.³⁴³

100. ANALYSIS. Gender inequalities still largely persist in the workplace, violating the women’s right to gender equality (Article 3). The Government’s insufficient response and the deficiency in the law results in the violation of women’s right to equal protection before the law (Article 26) and right to effective remedies for rights violation (Article 2).

101. RECOMMENDATIONS. The Government should repeal the current legal restrictions on female employment and extend Labor Protection Act to cover informal sector. It should end its repatriation of laid-off migrant workers and increase support to NGOs working to protect, educate, and organize female workers. The Government should also put more effort into educating the employers and male employees on women’s rights in the workplace.

Women's Access to Public Service

102. FACTS. Although the situation of women's representation in various public service positions has improved over recent years, the discrimination against them still persists. They are especially under-represented in high positions such as government positions, ministries, military, university bureau, law enforcement bodies, and the local leadership. According to a report by the United Nations Development Program Country Team on Thailand, while women represent 59% of all civil service positions, they only hold 14% of high-level executive positions.³⁴⁴ Despite the Constitutional requirement, the Government has not implemented the affirmative action in employment of its officials. The establishment of a Gender Equality Division within the government and of a quota system in the local village fund committees is a promising sign. For the programs to succeed, however, the Government needs to provide further support.

- a. Although women are well-represented in most civil servant positions, they are noticeably absent in the area of law enforcement. According to Ministry of Social Development and Human Security statistics, in 2001, commission police officers included only one female for every seven males, and among non-commission police officers, the ratio was even worse, at one female for every twenty-two males. In the same year, only 13.8% of attorneys were women, and in 2003, women made up just 27.7%, 24.1%, and 8.8% of judges in the primary court, court of appeal, and Supreme Court, respectively. This type of systematic under-representation leads to the potential for significant bias and abuses in law enforcement.³⁴⁵
- b. Women fare poorly within the Office of the Prime Minister, ministries, university bureau, and other independent agencies. For example, according to the government statistics, women comprise just 10.4% of the administrators within the Ministry of Education—despite the fact that they make up a tremendous portion of teachers and university lecturers (58.3% and 66.28% in 1996). At the University Bureau, women are completely absent.³⁴⁶
- c. The UNDP Country Team on Thailand expressed its concern of female under-representation in the positions of the local Tambon Administrative Organization leaders, which are becoming the locus of decentralized power. According to its research, the proportion of women in the national elections in 2001 was only 9.6%, and at the local elections, it was even lower at 8.9%.³⁴⁷
- d. Female representation is generally dismal across all levels of government, and although the Thai Constitution requires affirmative action for women in government, the Government has not implemented this policy. In 2001, for example, according to the research by the Ministry of Social Development and Human Security, only one out of 75 provincial governorships (appointed offices) was filled by a woman. Women fared only slightly better in local elections, making up 2.3% of village heads, 9.3% of Municipal Council Members. At the national level, female representation was at 8.6% in Parliament and 10% in the Senate.³⁴⁸

- e. Notably, the Government has established a Gender Equality Division within each of its branches to train high female government officials on how to incorporate gender issues into their work, but the program has not been in place long enough to judge its efficacy.
- f. One of the most glaring areas of continuing job discrimination can be found in the Thai military, where, even according to the Government, “females are still restricted to the level of Major General and are assigned to tasks related to intelligence, finance, medical service and others which do not relate to the control of combat units.”³⁴⁹
- g. One of Prime Minister Thaksin’s initiatives has been the establishment of a village fund of one million Thai Baht, allocated to each district and distributed by committees to various areas that need financial input. Though the Government made it mandatory that half of the committee members be women,³⁵⁰ this requirement has had unintended consequences: most of those chosen are the wives and daughters of male committee members, which makes it difficult for the women to raise their voice in the process. As with the gender equality division, however, it is still too soon to evaluate the successes and failures of this program.

103. ANALYSIS. The under-representation of women in critical public service sectors such as government branches, military, and local leadership positions signals that women’s right to gender equality (Article 3) are not protected under the current system. The noticeable absence of female employees in law enforcement areas leads to the potential for significant bias and abuses in law enforcement, thereby preventing women from enjoying the right to effective remedies for the violation of their rights under Article 2.

104. RECOMMENDATIONS. NGO’s working to promote women’s rights have an uphill battle against deeply entrenched cultural norms and a lot of time will be required to bring about change through the legislative process. Nevertheless, the Government must take more proactive steps to increase women’s participation in public service. It should especially put more effort into ensuring that women are represented in the law enforcement areas and the military. The Government should also allocate more resources toward leadership development and electoral training.

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Endnotes

¹ *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Initial Report: Thailand*, at ¶ 148, delivered to Human Rights Committee, U.N. Doc CCPR/C/THA/2004/1 (August 2, 2004) [hereinafter *CCPR Initial Report: Thailand*]

² *Id.* at ¶ 36.

³ *Id.* at ¶ 26-27.

⁴ *Violence in South: Martial Law Tightened*, THE NATION (Bangkok, Thai.), June 12, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=5&id=100483&usrssess=>.

⁵ *Id.* at ¶ 463.

⁶ Amnesty International defines extrajudicial executions as “unlawful and deliberate killings, carried out by order of a government official or with the government’s complicity or acquiescence. . . . Extrajudicial killings are distinguished from justifiable killings by the security forces in self-defense; deaths resulting from the use of reasonable force in law enforcement; and the imposition of the death penalty.” Amnesty International, *Thailand: Grave Developments- Killings and Other Abuses*, at 4, November 5, 2003, AI Index ASA 39/008/03 [hereinafter *AI: Grave Developments*]

⁷ W. Courtland Robinson, *Thailand: Background Paper on Human Rights, Refugees, and Asylum Seekers*, at 9, WRITENET Report Commissioned by United Nations High Commissioner for Refugees Protection Information Section (DIP) (July 2004).

⁸ *Id.*

⁹ *Id.*

¹⁰ Amnesty International, *Thailand: Memorandum on Human Rights Concerns*, at 3, AI Index ASA 39/013/2004 (October 27, 2004) [hereinafter *AI Memorandum*] The Thai population is 5-10% Muslim, and this minority makes up a majority in the Southern states of Yala, Narathiwat, and Pattani. See Robinson, *supra* note 7, at 14.

¹¹ Brad Adams, *Letter to Prime Minister Thaksin Shinawatra*, HUM. RTS. NEWS (Human Rights Watch, New York, NY), Oct. 28, 2004, available at <http://hrw.org/english/docs/2004/10/28/thaila9576.htm> [hereinafter *HRW: Letter to Prime Minister*]

¹² *Tourism Groups Fear Long Term of Martial Law*, THE NATION (Bangkok, Thai.), January 8, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=91559&usrssess=>

¹³ *AI Memorandum*, *supra* note 10, at 6-7.

¹⁴ *Id.* at 4-5.

¹⁵ See *AI memorandum*, *supra* note 10, at 6-7.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ *Southern Carnage: Kingdom Shaken*, THE NATION (Bangkok, Thai.), April 29, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=2&id=97956&date=2004-04-29&usrssess=>.

¹⁹ *Id.*

²⁰ *Troubled South’s Worst Day of Violence*, THE NATION (Bangkok, Thai.), April 29, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=2&id=97962&date=2004-04-29&usrssess=>.

²¹ *Thailand: prosecute and discipline the officials responsible for southern violence*, HUM. RTS. NEWS (Human Rights Watch, New York, NY), August 5, 2004, available at <http://hrw.org/english/docs/2004/08/05/thaila9188.htm> [hereinafter *HRW: Prosecute the Officials*]

²² *Mosque Attack ‘Overreaction,’* THE NATION (Bangkok, Thai.), July 29, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=103235&usrssess=>

²³ *Id.*

²⁴ See *AI Memorandum*, *supra* note 10, at 10; See also *Eyewitness: Thai violence aftermath*, BBC NEWS, 12 May 2004, available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/asia-pacific/3703135.stm>. Gunshots in the back of the head are generally considered to be a sign that someone was shot while fleeing or was executed. *AI memorandum*, *supra* note 10, at 10.

²⁵ *AI Memorandum*, *supra* note 10, at 6.

²⁶ *Tak Bai Crackdown: Global outrage as grim details emerge: PM shows no remorse*, THE NATION (Bangkok, Thai.), 28 October 2004, available at

http://www.nationmultimedia.com/2004/10/28/headlines/data/headlines_15214031.html [hereinafter *The Nation: Tak Bai Crackdown*]

²⁷ *The Nation: Tak Bai Crackdown*, *supra* note 28.

²⁸ Editorial Board, *Waiting for Answers in Thailand*, ARTICLE 2 (Asian Legal Resource Center, H.K., P.R.C.), Vol. 3 No. 5 (October 2004), at 4, 5, available at <http://www.article2.org/mainfile.php/0305/163> [hereinafter *ALRC: Waiting for Answers*]

²⁹ *The Nation: Tak Bai Crackdown*, *supra* note 28.

³⁰ *The Nation: Tak Bai Crackdown*, *supra* note 28.

³¹ *Id.*

³² Adams, *HRW: Letter to Prime Minister*, *supra* note 11.

³³ *ALRC: Waiting for Answers*, *supra* note 30, at 2.

³⁴ *The Nation: Tak Bai Crackdown*, *supra* note 28.

³⁵ *ALRC: Waiting for Answers*, *supra* note 30, at 1.

³⁶ Adams, *HRW: Letter to Prime Minister*, *supra* note 11.

³⁷ *Southern Violence: Military denies lawyers access to Tak Bai detainees*, THE NATION (Bangkok, Thailand), November 3, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=1-8384&usress=>

³⁸ *AI Memorandum*, *supra* note 10, at 6. The report allegedly stated that the government used disproportionate force and could have used alternative methods to avoid deaths. *Id.* In response to Amnesty International's inquiries, the government claimed that it was implementing the report's recommendations, including compensation to the families of those killed. However, this still does not mean that the members of the security forces guilty of using excessive force or extrajudicial killings have been held legally accountable, in violation of the right to a remedy for deprivation of life under Article 6. See *HRW: Prosecute the Officials*, *supra* note 23.

³⁹ Human Rights Watch, *World Report 2005: Thailand*, at 327, 328, HRW Index No.: 1564323315 (January 2005), available at <http://hrw.org/english/docs/2005/01/13/thaila9858.htm> [hereinafter *HRW Thailand Report 2005*]

⁴⁰ *Id.*

⁴¹ *Thailand: Lawyer's Disappearance Darkens Rights Climate*, HUM. RTS. NEWS (Human Rights Watch, New York, NY), March 18, 2004, available at <http://hrw.org/english/docs/2004/03/17/thaila8127.htm>.

⁴² *AI Memorandum*, *supra* note 10, at 6.

⁴³ Article 12 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions requires an independent autopsy in suspected cases of extrajudicial or arbitrary executions. Article 14 required the production of written autopsy results which the government must share with the public. United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. E.S.C. Res. 1989/65, at Art. 12, U.N. Doc. E/RES/1989/65 (1989) [hereinafter *UN Principles on Effective Prevention of Extra-legal Executions*]. The opinion of a forensics expert performing the autopsy is an important element of a meaningful investigation. See, e.g., *Velikova v. Bulgaria*, [2000] EUR. CT. H. R. 197 (2000); See also *McCann v. U.K.*, [1996] EUR. CT. H. R. 97 (1996). For effective remedy (use for refugee workers case, see *Aksoy v. Turkey*, [1996] EUR. CT. H. R. 68; *Aydin v. Turkey*, [2001] EUR. CT. H. R. 436 (2001); and the *Kaya v. Turkey*, [2000] EUR. CT. H. R. 128 (2000).

⁴⁴ John Aglionby, *Papering over the cracks*, THE GUARDIAN, November 25, 2004, available at <http://www.guardian.co.uk/elsewhere/journalist/story/0,,1359293,00.html>. [hereinafter *The Guardian: Papering over the cracks*].

⁴⁵ David Fullbrook, *Thailand: Protesters' deaths raise fears of attack*, ASIA TIMES, 28 October 2004, available at http://www.atimes.com/atimes/Southeast_Asia/FJ28Ae05.html.

⁴⁶ Aglionby, *The Guardian: Papering over the cracks*, *supra* note 46.

⁴⁷ Malaysian National News Agency, *Three Thai Generals Face Disciplinary Charges Over Tak Bai Deaths*, BERNAMA, 29 December 2004, available at http://www.bernama.com/bernama/v3/news_lite.php?id=111154.

⁴⁸ *Id.*

⁴⁹ *Thai Officials Blamed for Deaths*, BBC NEWS, 23 December 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4119785.stm>.

⁵⁰ *Thai Protest Death 'Unplanned'*, BBC NEWS, 17 December 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4104335.stm>. But the Senate Social Development and Human Security Committee's investigation found that the officers fired into the crowd deliberately and that the piling of detainees in the trucks constituted inhumane treatment. *Military Slammed: Senate: Tak Bai a Crime*, THE NATION

(Bangkok, Thailand), December 25, 2004, available at http://www.nationmultimedia.com/2004/12/25/headlines/index.php?news=headlines_15890103.html

⁵¹ *ALRC: Waiting for Answers*, *supra* note 30, at 2.

⁵² *Id.* at 5.

⁵³ *AI Memorandum*, *supra* note 10, at 3. Martial Law has controlled areas of the Thai-Burmese border since 15 July 2002, rendering the region off-limits to foreign NGOs and journalists. Therese M. Caouette and Mary E. Pack, *Pushing Past the Definitions: Migration from Burma to Thailand*, at 6, Refugees International and Open Society Institute, December 2002, available at <http://www.ibiblio.org/obl/docs/Caouette&Pack.htm> [hereinafter *Pushing Past the Definitions*]

⁵⁴ See *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 122; See also *AI Memorandum*, *supra* note 10, at 3.

⁵⁵ See *The Nation*, *supra* note 43.

⁵⁶ See AFP, *Thailand Shelves Plan for New Security Law to Counter Southern Unrest*, CHANNEL NEWS ASIA, 4 December 2004, available at http://www.channelnewsasia.com/stories/afp_asiapacific/view/120581/1/.html.

⁵⁷ See *The Nation*, *supra* note 43.

⁵⁸ See *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 471. The Martial Law Act (1914) provides that after Martial Law is “proclaimed to be applied at a certain time or at a certain place, the provisions in any act or law which is in contrary to the Martial Law which is being applied, such provisions shall ceased to have force and the provisions of the Martial Law shall be applied in their place.” Martial Law, B.E. 2457 (1914) (M). For more analysis, see also *AI Memorandum*, *supra* note 10, at 4.

⁵⁹ ICCPR Article 4 (3) provides that “any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated.” G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 471.

⁶⁴ Human Rights Watch, *Thailand: Not Enough Graves*, at 8, HRW Index No.: C1608 (June 2004), available at <http://hrw.org/reports/2004/thailand0704/> [hereinafter *HRW: Not Enough Graves*].

⁶⁵ *AI: Grave Developments*, *supra* note 6, at 5 (quoting *The Nation*, August 23, 2003).

⁶⁶ *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 152.

⁶⁷ *AI Memorandum*, *supra* note 10, at 16.

⁶⁸ *AI Memorandum*, *supra* note 10, at 18.

⁶⁹ *HRW: Not Enough Graves*, *supra* note 67, at 8.

⁷⁰ *Id.* at 9.

⁷¹ *AI: Grave Developments*, *supra* note 6, at 5.

⁷² *Id.* at 3.

⁷³ *AI Memorandum*, *supra* note 10, at 17.

⁷⁴ *HRW: Not Enough Graves*, *supra* note 67, at 9.

⁷⁵ See *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 243.

⁷⁶ See in general *HRW: Not Enough Graves*, *supra* note 67, at 20; See also *AI: Grave Developments*, *supra* note 6, at 4

⁷⁷ *AI: Grave Developments*, *supra* note 6, at 4

⁷⁸ *AI Memorandum*, *supra* note 8, at 10.

⁷⁹ *HRW: Not Enough Graves*, *supra* note 67, at 20.

⁸⁰ *Id.* at 2

⁸¹ *AI: Grave Developments*, *supra* note 6, at 2.

⁸² *HRW: Not Enough Graves*, *supra* note 67, at 20.

⁸³ *Id.* at 20. The Interior Minister stated that some of the people on the list didn’t really exist, and some of the people on it had never been involved in drugs. *Id.* at 21.

⁸⁴ *AI: Grave Developments*, *supra* note 6, at 4. Public summons for drug suspects were coercive. For example, the instruction to report for Ban Paew District professed, “The Anti-Drugs Center of Ban Paew District will not guarantee the safety of those who fail to follow the above instructions.” See *HRW: Not Enough Graves*, *supra* note 67, at 57.

⁸⁵ See *AI: Grave Developments*, *supra* note 6, at 4. See also *HRW: Not Enough Graves*, *supra* note 67, at 20.

⁸⁶ *AI: Grave Developments*, *supra* note 6, at 4.

⁸⁷ *HRW: Not Enough Graves*, *supra* note 67, at 7.

⁸⁸ *Id.* at 15.

⁸⁹ *HRW: Not Enough Graves*, *supra* note 67, at 9

⁹⁰ *Id.* at 12

⁹¹ *Id.* at 2. It should be noted, however, that such incidents have frequently occurred even before the commencement of the “War on Drugs.” *Id.*

⁹² *HRW: Not Enough Graves*, *supra* note 67, at 25.

⁹³ *Id.* at 11.

⁹⁴ *AI: Grave Developments*, *supra* note 6, at 6.

⁹⁵ *Id.*

⁹⁶ *HRW: Not Enough Graves*, *supra* note 67, at 22.

⁹⁷ *AI: Grave Developments*, *supra* note 6, at 6

⁹⁸ *Id.* at 3. The Ministry of the Interior places the numbers at 1,763 dead with 74 killed by police. *Id.*

⁹⁹ *AI: Grave developments*, *supra* note 6, at 4.

¹⁰⁰ *Id.* at 4.

¹⁰¹ *HRW: Not Enough Graves*, *supra* note 67, at 18

¹⁰² *Id.* at 18

¹⁰³ *Id.* at 19.

¹⁰⁴ *Id.* at 10.

¹⁰⁵ *Id.* at 10-11.

¹⁰⁶ *AI: Grave Developments*, *supra* note 6, at 9.

¹⁰⁷ *Id.*

¹⁰⁸ *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 154.

¹⁰⁹ *See AI: Grave Developments*, *supra* note 6, at 9; *see also CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 154.

¹¹⁰ *See* Article 14, “In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.” *UN Principles on Effective Prevention of Extra-legal Executions*, *supra* note 45, at Art. 14.

¹¹¹ *Thailand: Extrajudicial killing is not the way to suppress drug trafficking*, AMNESTY INT’L PRESS RELEASE (Amnesty International, London, U.K.), February 20, 2003, ASA 39/001/2003, available at <http://web.amnesty.org/library/print/ENGASA390012003>

¹¹² *Timeline of Thailand’s “War on Drugs,”* HUM. RTS. NEWS (Human Rights Watch, New York, NY) July 7, 2004, available at <http://hrw.org/english/docs/2004/07/07/thaila9014.htm> (July 7 2004)

¹¹³ *AI: Grave Developments*, *supra* note 6, at 10.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *HRW: Not Enough Graves*, *supra* note 67, at 20.

¹¹⁸ *Id.*

¹¹⁹ *AI: Grave developments*, *supra* note 6, at 7.

¹²⁰ *Id.* at 20.

¹²¹ *HRW: Not Enough Graves*, *supra* note 67, at 24-25.

¹²² *AI: Grave Developments*, *supra* note 6, at 5.

¹²³ *See* US STATE DEPARTMENT, 107TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001, 1194, 1192 (Gov. Print 2002); *see also* Robinson, *supra* note 7, at 20.

¹²⁴ Robinson, *supra* note 7, at 16-17.

¹²⁵ US STATE DEPARTMENT, 108TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002, 1059, 1073 (Gov. Print 2003).

¹²⁶ *Id.* at 17.

¹²⁷ *Id.*

¹²⁸ Security force abuse of hill tribe members on the assumption they are involved in the drug trade were not uncommon before the “War on Drugs.” For example, soldiers in a counter-narcotics unit in northern Thailand beat four men to death. They received a several month prison sentence. US State Department, *supra* note 127, at 1194.

¹²⁹ Robinson, *supra* note 7, at 20.

¹³⁰ *HRW: Not Enough Graves*, *supra* note 67, at 23.

¹³¹ US State Department, *supra* note 129, at 1073.

¹³² *HRW: Not Enough Graves*, *supra* note 67, at 16

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 17.

¹³⁷ For the complete story, *see AI: Grave developments*, *supra* note 6, at 12.

¹³⁸ *Id.*

¹³⁹ Amnesty International, *Thailand: Widespread Abuses in the Administration of Justice*, at 2, AI Index: ASA 39/003/2002 (June 11, 2002), available at <http://web.amnesty.org/library/index/engasa390032002>.

¹⁴⁰ *Id.*

¹⁴¹ *See HRW: Not Enough Graves*, *supra* note 67, at 23-27.

¹⁴² *Id.* at 49.

¹⁴³ According to HRW, the War on Drugs, “included coercing drug users into treatment and rehabilitation centers through threats of arrest or death; creating a climate of fear that drove drug users into hiding and away from health services, including HIV prevention services; penalizing drug users for possession of sterile syringes, resulting in an increased risk of syringe sharing and infection with blood-borne viruses; and incarcerating drug users in detention environments that posed a disproportionately high risk of disease transmission.” *HRW: Not Enough Graves*, *supra* note 67, at 27.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 27, 33. At the Northern Drug Dependency Treatment Center, the number of heroin users attending was 50-80 per week before the War on Drugs, but declined to 10 per week after the War began. *Id.*

¹⁴⁶ *Id.* at 23, 32-33.

¹⁴⁷ *Id.* at 46.

¹⁴⁸ *Id.* at 32.

¹⁴⁹ *HRW: Not Enough Graves*, *supra* note 67, at 38-41.

¹⁵⁰ *Id.* at 2.

¹⁵¹ *Id.* at 2.

¹⁵² *Id.* at 45. Methadone substitution is not available, either. *Id.*

¹⁵³ *Id.* at 42-45.

¹⁵⁴ General Comment 18 notes that “Article 2...obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race...or other status.” The rights of suspected drug users are violated based on their status; they are seen as worthless in Thai society and not deserving of rights. U.N. GAOR Hum. Rts. Comm., Sess. 37, at ¶ 1, U.N. Doc. CCPR/C21/Rev.1 (1989). General Comment 18 continues: “Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground...” *Id.* Police targeting of suspected drug users, the planting of drugs on them, the lack of investigation into killings of drug users and unlawful police practices used against them, and the lack of a presumption of innocence deprive suspected drug users of equality before the law.

¹⁵⁵ *See* Amnesty International, *Thailand: Fear for safety/possible “disappearance”/death threats*, AI Index: ASA 39/006/2004 (March 18, 2004), available at <http://web.amnesty.org/library/index/ENGASA390062004> [hereinafter *AI Fear for safety*]; *See also infra* pp. 25-27. According to the UN Declaration on the Protection of All Persons from Enforced Disappearances, a disappearance occurs if “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials or different branches or levels of government... followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law.” G.A. Res. 3452 (XXX), at 207, 30 U.N. GAOR, Supp. (No. 34), U.N. Doc. A/10034 (1976).

¹⁵⁶ *AI Memorandum*, *supra* note 10, at 6.

¹⁵⁷ *AI Fear for Safety*, *supra* note 161.

¹⁵⁸ *Id.*

¹⁵⁹ *AI Memorandum*, *supra* note 10, at 8.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 5.

¹⁶² *Id.*

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- ¹⁶³ *AI Memorandum, supra* note 10, at 5.
- ¹⁶⁴ *ALRC: Waiting for Answers, supra* note 30, at 5.
- ¹⁶⁵ *AI Memorandum, supra* note 10, at 5.
- ¹⁶⁶ Under Article 6, States Parties have an affirmative duty to establish effective facilities and procedures for disappeared persons where the right to life may be implicated. *CCPR General Comment 6*, U.N. GAOR Hum. Rts. Comm., Sess. 16, at ¶ 4, U.N. Doc. HRI/GEN/I/Rev.1 at 6 (1982).
- ¹⁶⁷ The Thai Royal Police are under the command of the Prime Minister's Office. Amnesty International, *Thailand: Widespread Abuses in the Administration of Justice*, AI Index: ASA 39/003/2002 (June 11, 2002), available at <http://web.amnesty.org/library/index/engasa390032002>
- ¹⁶⁸ *See supra* note 62.
- ¹⁶⁹ Human Rights Committee General Comment 6 on Article 6 notes that, in order to enforce the right to life, "state parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life." *See CCPR General Comment 6, supra* note 172.
- ¹⁷⁰ *See* Commission on Human Rights, *Report submitted by Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani: Mission to Thailand*, at 23, Sess. 60, Item 17(b), U.N. Doc. E/CN.4/2004/94/Add.1, GE.04-11847 (E) 170304 (March 12, 2004) [hereinafter *HRC: Mission to Thailand*]
- ¹⁷¹ *AI Memorandum, supra* note 10, at 14
- ¹⁷² *Id.*
- ¹⁷³ *Id.*
- ¹⁷⁴ Amnesty International, *Thailand: Government must protect human rights defenders*, AI Index: ASA 39/008/2004 (June 23, 2004).
- ¹⁷⁵ *AI Memorandum, supra* note 10, at 15
- ¹⁷⁶ *Id.*
- ¹⁷⁷ *AI: Grave Developments, supra* note 6, at 16.
- ¹⁷⁸ *Id.*
- ¹⁷⁹ *Id.* at 15
- ¹⁸⁰ *See AI: Grave Developments, supra* note 6, at 17-18 for more details.
- ¹⁸¹ *Thailand: Death Threats against a Human Rights Defender*, AMNESTY INTERNATIONAL PRESS RELEASE (Amnesty International, London, U.K.) March 6, 2003, AI Index: ASA 39/002/2003, available at <http://web.amnesty.org/library/index/engasa390022003>.
- ¹⁸² *Id.*
- ¹⁸³ *AI, Thailand: Threats against Human Rights Defenders*, AI Index: ASA 39/007/2004 (May 17, 2004), available at <http://web.amnesty.org/library/index/engasa390072004>.
- ¹⁸⁴ *HRC: Mission to Thailand, supra* note 177, at 21-22.
- ¹⁸⁵ *Id.*
- ¹⁸⁶ *Id.*
- ¹⁸⁷ *See* Human Rights Watch, *Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees*, at 20, HRW Index No.: C1602 (February 2004), available at <http://hrw.org/reports/2004/thailand0204/> [hereinafter *HRW: Out of sight*]; *See also* Yudanee Tunyasiri, *PM takes a whack at UNHCR*, BANGKOK POST, June 28, 2003.
- ¹⁸⁸ *See CCPR General Comment 31* ("the enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State party.") U.N. GAOR Hum. Rts. Comm. Sess. 80, at ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).
- ¹⁸⁹ *AI: Grave Developments, supra* note 6, at 12.
- ¹⁹⁰ *See* Robinson, *supra* note 7, at 23.
- ¹⁹¹ *Id.*
- ¹⁹² *HRW: Out of Sight, supra* note 194, at 2, fn 3.
- ¹⁹³ UNHCR Regional Office Thailand, *Country Operations Plans for 2004: Thailand*, at 2, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/country?iso=tha&expand=operations>.
- ¹⁹⁴ *HRW: Out of Sight, supra* note 194, at 21.
- ¹⁹⁵ UNHCR Regional Office Thailand, *Country Operations Plans for 2005: Thailand*, at 2, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/country?iso=tha&expand=operations>.
- ¹⁹⁶ *HRW: Out of Sight, supra* note 194, at 10.
- ¹⁹⁷ *Id.*

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- ¹⁹⁸ Robinson, *supra* note 7, at 22
- ¹⁹⁹ See Robinson, *supra* note 7, at 23 (citing practice between 1998 and December 2001).
- ²⁰⁰ See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR GLOBAL APPEAL 2005, 258, 259 (UN Print, 2005), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?id=41ab28e50&tbl=MEDIA>.
- ²⁰¹ Caouette and Pack, *Pushing Past the Definitions*, *supra* note 56, at 10.
- ²⁰² *Id.*
- ²⁰³ *Id.* at 11.
- ²⁰⁴ HRW: *Out of Sight*, *supra* note 194, at 11.
- ²⁰⁵ HRW: *Out of Sight*, *supra* note 194, at 3, 26.
- ²⁰⁶ Amnesty International, *Myanmar/Thailand: Nowhere to Run*, AI Index ASA 16/024/2000 (December 7, 2001), available at web.amnesty.org/library/index/ENGASA160242001.
- ²⁰⁷ Amnesty International, *Exodus from the Shan State*, at 3, AI Index: ASA 16/011/2000 (July 10, 2000), available at web.amnesty.org/library/index/ENGASA160112000.
- ²⁰⁸ CCPR General Comment 31, U.N. GAOR Hum. Rts. Comm. Sess. 80, at ¶ 12, U.N. Doc CCPR/C/21/Rev.1/Add.13 (2004).
- ²⁰⁹ See CCPR General Comment 20, U.N. GAOR Hum. Rts. Comm., 44th Sess., at ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add.2 (October 3, 1992); see also *Kindler v. Canada* at Sec. 13.2, [1993] IIHRL 63, Communication Doc. No. 470/1991 (1993) (holding that “if a State extradites a person within its jurisdiction in circumstances such that as a result there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant.”); *Views of HRC under the Optional Protocol of ICCPR: Australia*, at Sec. 8.5, [2003] UNHRC 33, Human Rights Comm. Doc. No. CCPR/C/78/D/1014/2001 (2002).
- ²¹⁰ UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217A (III), UN Doc. A/810, at 71 (1948)
- ²¹¹ For the claim that non-refoulement is customary international law, see UNHCR, *Refugee Protection: A Guide to International Refugee Law*, at 14, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=search>. Under the Refugee Convention, the term “refugee” shall apply to any person who has 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 to, or owing to such fear, unwilling to avail himself of the protection of that country.” CONVENTION RELATING TO THE STATUS OF REFUGEES, at Art. 1(A)(2), 189 UNTS 150 (1951) [hereinafter *Refugee Convention*].
- ²¹² *Refugee Convention*, *supra* note 218, at art. 33.
- ²¹³ “In evaluating the practice of States in regard to the principle of non-refoulement, it, should be emphasized that the principle applies irrespective of whether or not the person concerned has been formally recognized as a refugee... Thus the person concerned may find himself in a State which is not a party to the 1951 Convention or the 1967 Protocol, or which, although a party to these instruments, has not established a formal procedure for determining refugee status. The authorities of the country of asylum may have allowed the refugee to reside there with a normal residence permit or may simply have tolerated his presence and not have found it necessary formally to document his recognition as a refugee. In other cases, the person concerned may have omitted to make a formal request to be considered a refugee. In situations of this kind it is essential that the principle of non-refoulement be scrupulously observed even though the person concerned has not - or has not yet - been formally documented as a refugee.” UNHCR Sub-Committee of the Whole on International Protection, *Notes on Non-Refoulement*, (Submitted by the High Commissioner), U.N. Doc. EC/SCP/2 (August 23, 1977) [hereinafter *UNHCR: Notes on Non-Refoulement*].
- ²¹⁴ *Refugee Convention*, *supra* note 218, at art. 33(1); For more information, see Guy S. Goodwin-Gill, *Editorial: The International Protection of Refugees: What Future?*, INT’L J. REF. L. VOL. 12, NO. 1; James E. Crowe, III, *Notes and Comments: Running Afoul of the Principle of Non-Refoulement: Expedited Removal Under the Illegal Immigration Reform and Immigrant Responsibility Act*, 18 ST. LOUIS U. PUB. L. REV. 291, 299 (noting that the principle of non-expulsion at the border is generally considered as part of non-refoulement and is widely articulated across a variety of international conventions as part of the principle of preventing forcible return); and *UNHCR: Notes on Non-Refoulement*, *supra* note 218.
- ²¹⁵ Amnesty International, *Amnesty International Annual Report 2002: Thailand*, AI Index: ABC 63/004/2001 (May 2002), available at <http://web.amnesty.org/web/web.nsf/print/2003-tha-summary-eng>.
- ²¹⁶ HRW: *Out of Sight*, *supra* note 194, at 7.
- ²¹⁷ *Id.*
- ²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Caouette and Pack, *Pushing Past the Definitions*, *supra* note 56, at 3.

²²¹ *HRW: Out of Sight*, *supra* note 194, at 12.

²²² US Committee for Refugees and Immigrants, *World Refugee Survey 2004 Country Update: Thailand*, available at <http://www.refugees.org/countryreports.aspx?area=investigate&subm=19&ssm=29&cid=176> .

²²³ Caouette and Pack, *Pushing Past the Definitions*, *supra* note 56, at 24.

²²⁴ *HRW: Out of Sight*, *supra* note 194, at 13.

²²⁵ *HRW: Out of Sight*, *supra* note 194, at 4. The Thai government may come up with its own registration system, but in the past it has not been systematic, and it has used a much more narrow definition of refugee.

²²⁶ *Refugee Convention*, *supra* note 216, at Art. 33(1). For more information, see Goodwin-Gill, *supra* note 219; Crowe, *supra* note 219, at 299 (noting that the principle of non-expulsion at the border is generally considered as part of non-refoulement and is widely articulated across a variety of international conventions as part of the principle of preventing forcible return); *UNHCR: Notes on Non-Refoulement*, *supra* note 220.

²²⁷ The current formal deportation system in theory allows those about to be deported the opportunity to make an asylum claim, but they cannot meet privately with the UNHCR representative, so many are afraid to speak. The lack of privacy makes this supposed opportunity to claim asylum fairly meaningless. Any new asylum seekers are simply expelled through the informal deportation process instead. This process also does not in any way address the lack of opportunity to claim asylum for those in the informal deportation process. *HRW: Out of Sight, Out of Mind*, *supra* note 194, at 14.

²²⁸ Robinson, *supra* note 7, at 17.

²²⁹ Robinson, *supra* note 7, at 16.

²³⁰ The Thai government has made no credible claim that these regulations are “necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” *ICCPR*, *supra* note 62, at Art. 12,

²³¹ *HRW: Out of Sight*, *supra* note 194, at 4.

²³² *See, e.g. AI*, *supra* note 213.

²³³ *AI: Grave Developments*, *supra* note 6, at 14.

²³⁴ Amnesty International, *supra* note 143, at 3.

²³⁵ *AI: Grave Developments*, *supra* note 6, at 23

²³⁶ In 2003, the UNHCR received about 3,000 asylum applications, which is a very small number compared to the hundreds of thousands of Burmese migrants. Robinson, *supra* note 7, at 23.

²³⁷ According to Caouette and Pack, “In actuality, 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 and the superficial identification of millions as simply economic migrants. Hence, untold numbers of people from Burma are placed at considerable risk while in Thailand and, if deported, are often delivered back into environments that are abusive and deny their most basic rights.” *supra* note 56, at 3.

²³⁸ For further information, *see infra* section IV. Freedom of Media and Speech.

²³⁹ Thai Constitution, enacted in 1997, article 45, available at http://www.kpi.ac.th/en/con_th3.asp.

²⁴⁰ *AI: Grave Developments*, *supra* note 6, at 14.

²⁴¹ *Id.* at 14-15.

²⁴² *See HRC: Mission to Thailand*, *supra* note 177, at 139; *see also AI*, *supra* note 220, claiming they had been blindfolded with their hands tied behind their backs and their throats cut; *but see AI: Grave Developments*, *supra* note 6, at 13, claiming they had been shot.

²⁴³ *AI: Grave Developments*, *supra* note 6, at 13.

²⁴⁴ *AI*, *supra* note 220.

²⁴⁵ *AI: Grave Developments*, *supra* note 6, at 13.

²⁴⁶ *HRC: Mission to Thailand*, *supra* note 177, at 19.

²⁴⁷ *AI: Grave Developments*, *supra* note 6, at 13.

²⁴⁸ *See e.g., CCPR General Comment 6*, noting that the government has a duty to prevent and punish deprivation of life by criminal acts, and arbitrary killing by government security forces. *supra* note 172.

²⁴⁹ CCPR General Comment 15 states that Article 13’s “purpose is to prevent arbitrary expulsions . . . it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for

collective or mass expulsions.” U.N. GAOR Hum. Rts. Comm., Sess. 27, at ¶ 10, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994).

²⁵⁰ US Committee for Refugees and Immigrants, *USCRI to Assist Burmese Refugee Tsunami Victims in Southern Thailand*, January 7, 2005, available at http://www.refugees.org/news/press_releases/2005/010705.cfm.

²⁵¹ *Thailand's Secret Survivors*, BBC NEWS, January 13, 2005, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/4168749.stm>.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.* See also *Thai Compassion for Burmese Migrants Wears Thin*, INTER PRESS AGENCY, January 14, 2005, noting that the rumor that the Thai government has denied emergency aid to Burmese is unconfirmed.

²⁵⁵ Bangkok Post, 2 October 2003, at 1.

²⁵⁶ *CCPR Initial Report: Thailand*, *supra* note 1, at 83.

²⁵⁷ *Id.* at 89.

²⁵⁸ *Thailand: Libel Suit Deepens Assault on the Press*, HUM. RTS. NEWS (Human Rights Watch, New York, NY) September 1, 2004, available at http://www.hrw.org/English/docs/2004/09/01/thaila9285_txt.htm [hereinafter *HRW: Libel Suit*].

²⁵⁹ Robinson, *supra* note 7, at 15.

²⁶⁰ *HRW: Libel Suit*, *supra* note 270.

²⁶¹ US STATE DEPARTMENT, 108TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002, *supra* note 150, at 1067.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *HRW: Libel Suit*, *supra* note 270.

²⁶⁵ US STATE DEPARTMENT, 108TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002, *supra* note 150, at 1067.

²⁶⁶ See Julian Gearing, *Taming the Media*, ASIaweek VOL. 27 NO. 6 (February 16, 2001); See also US STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002, *supra* note 129, at 1065.

²⁶⁷ *Id.*

²⁶⁸ See International Labor Organization Committee on Freedom of Association Report, *Complaint against the Government of Thailand presented by the ITV Labour Union*, Report No. 327, Case(s) No(s). 2125 (2001)

²⁶⁹ *HRW: Libel Suit*, *supra* note 265.

²⁷⁰ US STATE DEPARTMENT, 107TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001, *supra* note 127, at 1187.

²⁷¹ *Id.*

²⁷² *Thai Press Freedom Threatened*, HUM. RTS. NEWS (Human Rights Watch, New York, NY), March 2, 2002, available at www.hrw.org/press/2002/03/thailand0302.htm.

²⁷³ Amnesty International, *Thailand: Open Letter to Prime Minister Thaksin Shinawatra*, November 25, 2004, AI Index: ASA 39/015/2004 (November 25, 2004), available at web.amnesty.org/library/print/ENGASA390152004.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Forum-Asia, *Political pressure on Thai media undermines independence and the public's right to know*, March 5, 2004, available at <http://www.forumasia.org/5March04.html>. Forum-Asia has special consultative status with the UN Economic and Social Council.

²⁷⁸ Providing that “A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.” *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 465.

²⁷⁹ *Id.* at 18.

²⁸⁰ *Id.* See also *HRC: Mission to Thailand*, *supra* note 177, at 17.

²⁸¹ *HRC: Mission to Thailand*, *supra* note 177, at 17.

²⁸² *AI: Grave Developments*, *supra* note 6, at 18.

²⁸³ *HRC: Mission to Thailand*, *supra* note 177, at 16.

²⁸⁴ For the complete story, see *AI: Grave Developments*, *supra* note 6, at 11.

²⁸⁵ The police claim that the protestors crossed into a forbidden area first. However, the Special Representative on Human Rights Defenders on the situation of human rights defenders found that “credible evidence indicates first and excessive use of force by police.” See *HRC: Mission to Thailand*, *supra* note 177, at 16.

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- ²⁸⁶ *Id.* at 15.
- ²⁸⁷ See Thai National Human Rights Commission, *The Second Statement Concerning the Violent Situation Stemming from the Thai—Malaysian Gas Pipeline Project: The Aggressive Provocation Resulting in a Constitutional Crisis*, December 26, 2002.
- ²⁸⁸ HRC: *Mission to Thailand*, *supra* note 177, at 16.
- ²⁸⁹ AI: *Grave developments*, *supra* note 6, at 11.
- ²⁹⁰ HRC: *Mission to Thailand*, *supra* note 177, at 14.
- ²⁹¹ *Id.*
- ²⁹² HRC: *Mission to Thailand*, *supra* note 177, at 2. The Special Representative stated, “I have sensed a level of insecurity among human rights defenders which ranges from general unease to actual fear. . . Especially those exposing human rights violations, resisting or protesting against policies or projects which threaten their social-economic rights or political rights or those who are raising concerns regarding government priorities and criticizing the social, political, and economic agenda of the government are worst affected.” See Robinson, *supra* note 7, at 19.
- ²⁹³ HRC: *Mission to Thailand*, *supra* note 177, at 2.
- ²⁹⁴ *Id.* at 3.
- ²⁹⁵ *Id.* at 11.
- ²⁹⁶ AI: *Grave Developments*, *supra* note 6, at 1.
- ²⁹⁷ Brad Adams, *Thaksin’s Potemkin Welcome for APEC*, THE ASIAN WALL STREET JOURNAL, October 17, 2003, available at <http://www.hrw.org/editorials/2003/apec101703.htm>
- ²⁹⁸ *Id.*
- ²⁹⁹ HRC: *Mission to Thailand*, *supra* note 177, at 11.
- ³⁰⁰ *Id.*
- ³⁰¹ *Id.*
- ³⁰² *Id.*
- ³⁰³ *Id.*
- ³⁰⁴ HRC: *Mission to Thailand*, *supra* note 177, at 12.
- ³⁰⁵ *Id.*
- ³⁰⁶ *Id.*
- ³⁰⁷ *Id.* (quoting the press coverage of the statement by the Deputy Director of Internal Security Operation Command that describes purposeful harassment of human rights activists in northeast Thailand)
- ³⁰⁸ *Id.* at 18.
- ³⁰⁹ CCPR *Initial Report: Thailand*, *supra* note 1, at ¶ 30.
- ³¹⁰ *The Humantrafficking.org Project: Thailand*, Academy for Educational Development, January 2005, at <http://www.humantrafficking.org/countries/eap/thailand> (last modified at January 2005)
- ³¹¹ *Id.*
- ³¹² Caroline Irby, *Thailand’s cycle of trafficking*, BBC NEWS, April 13, 2004, available at <http://newswww.bbc.net.uk/2/hi/asia-pacific/3623091.stm>
- ³¹³ *The Humantrafficking.org Project: Thailand*, *supra* note 322.
- ³¹⁴ Kinsey Alden Dinan, *Trafficking in Women: From Thailand to Japan*, HARV. ASIA Q. VOL. VI. NO. 3, 3, 7
- ³¹⁵ See *Thousands of Thai Women Trafficked To Japan*, HUM. RTS. NEWS (Human Rights Watch, New York, NY), September 21, 2000; See also Kinsey Alden Dinan, *Owed Justice: Thai Women Trafficked Indo Debt Bondage In Japan*, February 25, 2004, HRW Index No.: C1602, for more details.
- ³¹⁶ CEDAW NGO Report Working Group and Thai Women Watch, *Thailand Second NGO Alternative Report on the Implementation of The Convention on the Elimination of All Forms of Discrimination Against Women*, at 16, October 2003.
- ³¹⁷ Human Rights Watch, *supra* note 367
- ³¹⁸ CEDAW NGO Report Working Group and Thai Women Watch, *supra* note 328, at 18.
- ³¹⁹ *Id.* at 16.
- ³²⁰ *Id.* at
- ³²¹ *Id.* at 15.
- ³²² *Id.* at 15.
- ³²³ US STATE DEPARTMENT 108TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2003: THAILAND, 1001, 1011 (Gov. Print 2004).
- ³²⁴ United Nations Country Team in Thailand, Office of the National Economic and Social Development Board, *Thailand Millennium Development Goals Report 2004*, at 26, available at <http://www.undp.or.th/mdgr.htm>.

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- ³²⁵ CEDAW NGO Report Working Group and Thai Women Watch, *supra* note 328, at 14.
- ³²⁶ UNAIDS, *2004 Report on the Global HIV/AIDS Epidemic: 4th Global Report*, at 31-32, UNAIDS/04.16E (June 2004)
- ³²⁷ CEDAW NGO Report Working Group and Thai Women Watch, *supra* note 328, at 26.
- ³²⁸ Agence France Presse, *Thailand: rate of HIV infection grows among Thai Teenagers*, AEGIS-AFP NEWS, January 2, 2003, available at <http://www.aegis.com/news/afp/2003/AF030102.html>.
- ³²⁹ Andrea Whittaker, *The Struggle for Abortion Law Reform in Thailand*, REPRODUCTIVE HEALTH MATTERS, 2000 Vol. 10 (19), 45, 46.
- ³³⁰ UNITED NATIONS POPULATION DIVISION, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, ABORTION POLICIES: GLOBAL REVIEW 2001-2002, at 126, U.N. Doc. ST/ESA/SER P/191, U.N. Sales No. E 01 XIII. 18.
- ³³¹ UNAIDS, *supra* note 338, at 196
- ³³² The World Bank Group, *GenderStats: Database of Gender Statistics*, available at <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=THA,Thailand&hm=home2>
- ³³³ Agence France Presse, *supra* note 340.
- ³³⁴ Andrea Whittaker, *supra* note 341, at 45.
- ³³⁵ UNPD, *supra* note 342, at 126.
- ³³⁶ Andrea Whittaker, *supra* note 341, at 47 (citing Boonthai, N. Warakamin, *S. Induced Abortion: A Nationwide Study in Thailand*, presented at XXV International Congress of Medical Women's International Association on Women's Health in a Multicultural World, 19-23 (April 2001)).
- ³³⁷ *CCPR Initial Report: Thailand*, *supra* note 1, at ¶ 71.
- ³³⁸ *Id.* at ¶ 553, 554.
- ³³⁹ *Id.* at ¶ 96.
- ³⁴⁰ Thai Ministry of Social Development and Human Security, Office of Women's Affairs and Family Development, *Gender Statistics in Thailand*.
- ³⁴¹ CEDAW NGO Report Working Group and Thai Women Watch, *supra* note 328, at 22.
- ³⁴² Asian Human Rights Commission, *Thailand: Abuse of workers rights by the Siriwat Garment Factory in Mae Sot*, Doc. No. UA-54-2003 (September 26, 2003) available at <http://www.ahrchk.net/ua/mainfile.php/2003/535/>
- ³⁴³ *Id.*
- ³⁴⁴ United Nations Country Team in Thailand, *supra* note 336, at 25.
- ³⁴⁵ Thai Ministry of Social Development and Human Security, *supra* note 352.
- ³⁴⁶ *CCPR Initial Report: Thailand*, *supra* note 1, at art. 3, Tables 1, 2.
- ³⁴⁷ United Nations Country Team in Thailand, *supra* note 336.
- ³⁴⁸ Thai Ministry of Social Development and Human Security, *supra* note 352.
- ³⁴⁹ *CCPR Initial Report: Thailand*, *supra* note 1, at art. 3.
- ³⁵⁰ For further information, see Maytinee Bhongsvej, *Women and Men: Moving Towards a Partnership of Equals in Employment* at 24, Gender and Development Research Institute, Association for the Promotion of the Status of Women, 2004.