

## **Universal Periodic Review (UPR)**

### **UNCT, Thailand Submission**

#### **I. Background and Framework**

##### **A. Scope of international obligations**

1. Thailand has a long-standing commitment to the promotion and protection of human rights. In 1948 it was one of the first Asian countries to endorse the Universal Declaration of Human Rights and to date it has ratified seven of the nine core international human rights treaties and four optional protocols. The Royal Thai Government (RTG) signed the Convention for the Protection of all Persons against Enforced Disappearance in January 2012 but has not yet ratified it.
2. Thailand is also a signatory to the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954) and its first Protocol as well as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972). Thailand has also ratified fifteen international labour Conventions.
3. The UNCT recommends that the RTG also ratify the following treaties: the International Convention on the Rights of All Migrant Workers and Members of Their Families; the International Convention on the Protection of All Persons from Enforced Disappearance; Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention relating to the Status of Refugees and its 1967 Protocol; and the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.
4. While Thailand has had a long commitment to the promotion, protection and fulfillment of human rights, since the 22 May 2014 military coup d'état, the country has failed significantly to meet its international obligations, particularly as it relates to freedoms of speech, expression and assembly.

##### **B. Cooperation with international human rights mechanisms**

5. Thailand has issued standing invitations to the Special Procedures and the last visit was done by the Special Rapporteur (SR) on Water and Sanitation in February 2013. Since the last UPR, SR on Freedom of Association and Assembly (2013), SR on Racism (2013), SR on human rights of IDPs (2012), SR on extreme Poverty and human rights (2014) and SR on human rights and hazardous substance (2015) have requested for country visit and are awaiting an official response from the Government.
6. Thailand does not have overdue reports to submit to the treaty bodies. Since the last UPR, Thailand was reviewed by the Convention on the Rights of the Child (CRC) including the two Optional protocols in February 2012, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in November 2012, the Convention against Torture (CAT) in June 2014 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in June 2015. Thailand submitted its initial report on the Convention on the Rights of the Persons with Disabilities (CRPD) in 2012 and its review is scheduled for 2016. It also submitted its reports to the Convention on the Elimination of the All Forms of Discrimination against Women (CEDAW) and its report on the International Covenant on Civil and Political Rights (ICCPR) in June 2015.

7. The UNCT recommends that RTG facilitates the visit of the Special Procedures, implements the recommendations of the treaty bodies and special rapporteurs and submits all overdue reports to the ILO supervisory bodies.
8. The UNCT recommends that the RTG withdraws existing reservations to international treaties, including article 22 of the Convention on the Rights of the Child.

### **C. Constitutional and legislative framework**

9. The Constitution of the Kingdom of Thailand was annulled, excluding the provisions of Chapter II related to the King, following the military coup d'état in May 2014. Although Section 4 of the 2014 Interim Constitution states that the rights, liberties and equality previously enjoyed by the Thai People shall be protected in-line with Thailand's existing international obligations, the Interim Constitution gives unfettered powers to the National Council for Peace and Order (NCPO) to give any order deemed necessary and that the orders issued by the NCPO regardless of their executive, legislative and judicial force are deemed to be legal, constitutional and conclusive. Key constitutional bodies set up by the NCPO are also primarily dominated by military personnel and those loyal to the military government effectively limiting any forms of checks and balances. The military coup in May 2014 has had significant impact on the enjoyment of human rights, including on economic, social and cultural rights.
10. Thailand has been in the process of drafting a new Constitution under military leadership for nearly one year. A draft constitution prepared by the junta-appointed Constitutional Drafting Committee (CDC) was presented to the junta-appointed National Reform Council (NRC) in September 2015 and was rejected. Prior to the vote, concerns arose that the draft constitution was not aligned with democratic and international human rights principles. A new 21-member CDC shall be mandated to draft a new charter within six months' time.
11. The UNCT reiterates the call from the UN Secretary General for a prompt return to constitutional, civilian and democratic rule. Moreover, the electoral process should align with internationally accepted democratic principles. Laws and reform processes set in motion by the military junta should not circumscribe the outcome of such elections. UNCT also expresses concern over the uncertainty of the outcome of the current constitution drafting process. The UNCT recommends that the new constitution drafting process is inclusive and participatory and that the general public and political parties are allowed to express their views on both the content and the process in a free and open manner. The UNCT also recommends that the RTG ensures that the key democratic and human rights principles are incorporated in the new constitution in line with Thailand's obligation under international human rights law.
12. The UNCT also recommends that the new constitution protects and promotes gender equality and women's rights in accordance to the international obligations and standards, and guarantees substantive equality between women and men by explicitly prohibiting both direct and indirect discrimination. It is recommended that the new constitution also ensures equality and non-discrimination for all gender and sexual minorities.

### **D. Institutional and human rights structure**

13. Thailand has established various mechanisms to protect human rights, including the National Human Rights Commission of Thailand (NHRCT); the Rights and Liberties Protection Department under the Ministry of Justice; the Office of International Peoples'

Rights Protection under the Office of the Attorney General; the Administrative Court; and the Ombudsman.

14. The NHRCT was established in 2001, under the 1997 Constitution and the 1999 National Human Rights Commission Act. On October 2014, the International Coordinating Committee of the National Human Rights Institutions (ICC) recommended that the selection and appointment of the NHRCT Commissioners is done through a participatory transparent and merit based process. The ICC gave the NHRCT a one year grace period to address the concerns and warned that it would be downgraded to “B” status if no measures are taken by October 2015. The Government selected the third batch of the NHRCT based on the 2007 Constitution. Concerns were raised on the lack of civil society participation on the selection process. The NHRCT needs to be further strengthened in both its internal capacity and its interaction with civil society.
15. The UNCT recommends that the RTG ensures the independence of the NHRCT by strengthening its protection and promotion mandate. The RTG also implements the recommendations of the ICC by reviewing the selection process of the NHRCT to allow increased transparency and wider participation of CSOs.

## **E. Policy measures**

16. Thailand has established a number of policies, plans and programmes to support the promotion and protection of human rights. On November 2014, Thailand approved the third National Human Rights Action Plan (NHRAP, 2014-18). The NHRAP has 11 human rights dimensions and 15 target groups. Despite a number of policies and plans on human rights, their implementation remains challenged due to bottlenecks in coordination mechanisms, lack of understanding of the policies at the implementation level, the insufficient and/or uncoordinated data system, insufficient budget and in some case the poor quality of some of these policies. The UNCT recommends that there is coordinated and consistent approach amongst the government institutions as well as efforts to include the general public and CSOs in implementing its human rights programmes.

## **II. Promotion and protection of human rights on the ground: achievements, best practices, challenges and constraints**

### **A. Administration of justice, including impunity, and the rule of law**

17. Following its military putsch of 22 May 2014, the Thai military imposed a nationwide martial law and replaced the civilian government with the military rule. Although the military government has claimed that the coup was necessary to restore law and order and for the necessary political reforms, UNCT notes that in accordance with international human rights standards any change of the Government has to be constitutional and democratic. On 01 April 2015, nationwide martial law was revoked and replaced by NCPO Order No. 3/2015 issued under Section 44 of the Interim Constitution. Section 44 provides unlimited executive, judicial and legislative power to the head of the NCPO without any oversight and NCPO Order No. 3 grants law enforcement powers to a broad range of soldiers, including the power to detain anybody without judicial review for seven days. Since the coup d'état, at least 856 civilians have been tried in the military court raising a number of concerns, including the capacity and independence of the military courts and

right to fair trial. Moreover, more than 1,200 people have been summoned, arrested, and/or detained by the military since the coup. As civilian courts in Thailand remain functional, the UNCT recommends that the NCPO stop using military courts to try civilians. The NCPO should also stop the practice of arbitrary summoning and detaining individuals, often held incommunicado and without access to lawyers.

18. The UNCT notes that security legislation such as the Internal Security Act (ISA), Martial Law, Computer Crimes Act and the Emergency Decree have inevitably negative implications on the rule of law. In Thailand's southern border provinces, the martial and special emergency laws have been in effect for more than ten years as a response to the armed insurgency. These laws have negative implications on the rule of law including due process guarantees. It has also significantly curtailed citizens' fundamental freedoms, put them at risk of intimidation and harassment by authorities and created an environment of impunity whereby security forces are systematically not held accountable for human rights abuses, including torture, extrajudicial killing, and other violations. Insurgent groups routinely target civilians, either for targeted assassination or as collateral damage from IED attacks. Access to information remains challenging in light of the nation-wide ban on community radio stations after the coup. The UNCT is particularly concerned of the current practice of the security forces to collect DNA sample (exceeding 40,000 people currently) which has resulted in intimidation, harassment and detention of youths including children of Malay ethnicity. The UNCT recommends the RTG to take concrete measures to stop the practice of checks and arrests based on ethnicity, to review the special laws with a view to meeting international human rights standards and to thoroughly investigate all allegations of human rights violations and prosecute those found responsible.
19. The UNCT is also concerned about the inclusion of the death penalty in the new Anti-Corruption Law and urges to repeal the clause related to expanding the use of the death penalty for economic crimes.

## **B. Democratic Space**

20. Thailand has generally been an open society with a vibrant civil society and media. However, the UNCT is concerned about continued restrictions on freedom of expression including the closing down of anti-junta media and websites; banning of books, arrests of persons for the expression of opinions; and strict enforcement of broadly-defined *lèse-majesté* laws.<sup>7</sup> Since the coup, the NCPO has issued a number of orders primarily aimed to clampdown on press freedom and freedom of expression. NCPO orders prohibit criticism of the military government, prohibit any dialogue or discussion on political and public issues and set conditions for reporting and broadcasting. Over the last few years, Thai authorities have reportedly closed down more than 100,000 websites for allegedly promoting anti-monarchy sentiments and posing threats to national security and a number of individuals have received lengthy prison sentences for breaching this law. Most recent offenders were sentenced to 30 and 28 years in prison for *lèse-majesté* content on social media. After the 2014 coup, the arbitrary application of the Article 112 (or the *lèse-majesté* law) and Computer Crimes Act have been ramped up, as cases are tried *in camera* before military courts, including lack of access by defense lawyers to “incriminating evidence” including harsh prison terms by military courts in such cases. Since the May 2014 military

coup, at least 40 individuals have either been convicted or remain in pre-trial detention for lèse-majesté offences, both under Section 112 and under the 2007 Computer Crimes Act. The NCPO has also continuously summoned, arrested and/or detained individuals who have been critical of the military government creating a sense of fear against those who dare to speak out. The UNCT calls on the RTG to restore free expression and public dialogue, including freedom for journalists to operate without fear of reprisals, in line with Thailand's international human rights obligations. The UNCT recommends that the RTG amends the vague and broad lèse-majesté law to bring it in line with international human rights standards.

21. The UNCT is also concerned about the restrictions on freedom of assembly and association. The NCPO's announcement No. 7/2014 now replaced by No. 3/2015 bans organizing or taking part in public gatherings of more than five people and the Announcement No. 14/2014 bans any anti-NCPO protest/activities. A new Public Assembly Act which came into effect on 13 August 2015 requires protest organisers to notify authorities 24 hours in advance of the purpose of the gathering, duration of the gathering and the venue. The law also bans public gatherings within 150 meters of government offices, airports, ports, bus and train stations, hospitals, or royal residences. Since the coup, it is noticeable that protests, regardless of sizes, that are deemed to be against the government or its policies, have been stopped or repressed. The UNCT notes with concern incidents of broad interpretations of 'political gatherings' and that the Government has ordered the cancellation of public forums and meetings organised by not only academics, journalists, human rights organisations or political activists but also by farmers and landless people. The UNCT recommends the RTG to repeal the orders limiting the freedom of peaceful assembly and urges it to facilitate the exercise of the peaceful assembly by all groups.

### **C. Women's human rights**

22. The UNCT welcomes Thailand's withdrawal of the reservation of the CEDAW Article 16 on July 2012 and key progress made in fostering gender equality and fulfillment of women's human rights.
23. The UNCT commends the RTG's efforts to promote, protect, respect and fulfill women's human rights. The UNCT notes that the Gender Equality Act enacted in September 2015 with an aim to prevent and address gender discrimination is an important step forward for ensuring gender equality in Thailand. The UNCT welcomes that the Act prohibits both direct and indirect discrimination not only on the basis of being a man or women, but also on the basis of one's sexual expression that differs from biological sex<sup>1</sup>. The UNCT, however, expresses concerns that the Act does not consider the actions undertaken in accordance with religious principles and for national security as an unjust gender discrimination and it could potentially leave room for interpretations barring equal enjoyment of rights between women and men and on the basis of gender. The UNCT

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<sup>1</sup> Article 3: The definition of discrimination in accordance to the Act shall mean an act or omission of an act that is a distinction, exclusion or restriction of any benefit, either direct or indirect, that is unjust on the basis of sex or sexual expression different from the sex at birth

recommends the RTG to continue the efforts for comprehensive and coordinated policies and programmes for substantive gender equality and fulfillment of women's human rights.

24. The UNCT welcomes the RTG's efforts to strengthen the multi-coordination mechanism for the protection of domestic violence victims as stipulated in the Protection of the Domestic Violence Victims Act, 2009. The UNCT recognizes that a revision of the law is on-going, and encourages the RTG to ensure that *international* standards on the prevention and protection of domestic violence victim/survivors are incorporated in the revision process. The UNCT welcomes the establishment of the 1,300 One Stop Crisis Centres (OSCC) coordinated by the Ministry of Social Development and Human Security as an effort for a comprehensive initiative for reporting and coordinating on VAW cases, and recommends strengthening of the coordination of the OSCC with other agencies, such as the hospital-based One Stop Crisis Center under the Ministry of Public Health, including towards a development of comprehensive data system on VAW
25. The UNCT notes that there is no single law on VAW in Thailand and recommends that the criminal justice system be reviewed to be more gender-sensitive. The UNCT notes that research has shown that in only about five percent of the reported cases of violence against women, the suspects are arrested and legal actions taken. Moreover, there is also no functioning system to track cases from reporting to sentencing, making it impossible to track attrition rate<sup>2</sup>. There are still barriers, such as: costs of forensic tests, fear of stigma and availability of the services in only few selected hospitals for the victims to seek health services and legal recourse in VAW cases. The UNCT recommends that the RTG undertakes a comprehensive prevalence study of VAW and develops a systematic plan for sensitization and capacity building of local authorities in the prevention and response.
26. The UNCT welcomes the progress made by the RTG to enhance the fulfillment of the economic rights of women. The UNCT however notes some exceptions in the Labour Protection Act that bar women from enjoyment of the same rights as men. In addition, the UNCT welcomes the Ministerial Regulation No 14, 2012 under the Act, which increases entitlements of domestic workers, over 90% of whom are women. However, there remain exceptions in the entitlements, such as a maximum of eight hours per day, and that of a one-hour break after five consecutive hours of work, starting and ending of working hours, overtime payment, minimum wage, welfare, protection of pregnant women prohibiting them to perform certain tasks, and entitlements to capacity development and prohibition of carrying items that are too heavy. The UNCT recommends the RTG to withdraw these exceptions.
27. The UNCT commends the RTG in setting up the National Commission on Policy and Strategy for the Improvement of the Status of Women, 2008 under the chairmanship of the Prime Minister. Thailand has also implemented a system of the Chief Gender Equality Officers (CGEOs) at the ministerial and departmental levels since 2003. The UNCT recommends that the RTG strengthen capacities of gender mainstreaming mechanisms as well as institutionalizing gender mainstreaming tools, including the gender focal point system, gender statistics and gender responsive budgeting.
28. Women, especially young women, in Thailand face challenges with access to reproductive choices and information, partly due to the prohibition by law and the lack of protective mechanisms for women to exercise and enjoy their reproductive rights. Abortion is allowed

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<sup>2</sup>The Thailand component of the UN Women-UNDP-UNODC multi-country study on policing and prosecution on sexual violence, conducted by the Thailand Institute of Justice, 2014 (draft).

only if it is performed by a medical practitioner and for the sake of the woman's health or for a pregnancy due to a sexual crime. Access to safe abortion is therefore restricted, increasing the risk of unsafe abortion. The UNCT recognizes the progress made by Thailand in the registration of abortion medicines as recommended by World Health Organization (WHO) with the Food and Drug Administration in 2014, which allows women to have choices on abortion medicines other than surgical methods and also helps reduce unsafe abortion. The UNCT recommends that Thailand continues to include these drugs to the essential drug list and closely monitor the use of abortion medicines.

29. Women with disability in Thailand lack legal protection to their reproductive rights. They are not only discouraged to have babies but also are also forced to be sterilized including in some cases with violence. The UNCT recommends the enactment of the legal and procedural mechanism to protect the reproductive rights and health of women, especially among vulnerable populations.
30. Access to information on sexual and reproductive health for gender and sexual minorities remains weak, due to discrimination, stigma and lack of information service providers within the national health system. The UNCT recommends that the RTG strengthen efforts to ensure sexual and reproductive health information is accessible and available to all citizens regardless of sexual or gender identity.

#### **D. Children's rights**

31. Thailand has performed well in many of the indicators on children's wellbeing especially in health and education. However, investments in child protection and early child care are still not adequate. Moreover, despite ongoing efforts of the Government, children of ethnic and religious minorities, migrant workers, and from poor families continue to face sexual exploitation and abuse, detention as a first response, child labour, trafficking, corporal punishment, hazing, unnecessary institutionalization and violence in their homes as well as schools.
32. The UNCT applauds the efforts of the RTG in achieving nearly 100 percentage birth registration amongst Thai Children. The birth registration amongst children of migrant workers remains at only 66 percent because of the lack of understanding of the birth registration process, lack of required documentation as well as lack of adequate support from the local officials. The UNCT recommends that the RTG ensures that effort is made to ensure that children of the migrants have easy access to birth registration.
33. The UNCT commends Thailand for its commitment to realizing the right to education for all children, including for migrant children irrespective of their legal status. The UNCT notes that despite the legal and administrative policies to facilitate access of the migrant children to public schools, more than 60% of migrant children in Thailand are still not attending school. The drop-out rate before the completion of the primary education is also high. Learning difficulties due to language barriers and informal eligibility restrictions imposed at the local level have further discouraged the migrant's children to attend schools. UNCT recommends the RTG to strengthen mother tongue-based multi-lingual education and provide flexible learning opportunities to working and over-age migrant children.
34. In Thailand, unwanted pregnancies are in a rising trend among teenage girls. The adolescent birth rate increased from 31.1 to 47.9 births per 1,000 women aged 15-19 years

in the past 15 years.<sup>3</sup> The UNCT recognizes the efforts made by Thailand in promoting youth-friendly health services as well as introducing Comprehensive Sexuality Education (CSE). However, social stigma against unplanned (teen) pregnancies and adolescent sexuality, attitude of service providers and parents remains a barrier to adolescent reproductive health. Moreover, due to the physical and psychological trauma caused by unwanted pregnancy, adolescent mothers are unable to enjoy their equal rights to education, work and other economic, social and cultural rights. The UNCT recommends that RTG establishes a functioning protective mechanism to guarantee adolescents' right to confidentiality when seeking sexual and reproductive health services. It also recommends reviewing and standardizing the CSE with participation of children and adolescents.

35. Sexual violence amongst children is one of the challenges in Thailand with child girls at higher risk of being victims of sexual abuse than boys. The UNCT commends the RTG for amending Section 277 of the Criminal Code which sets out liability to punishment for the abuser who is less than 18 years old and who raped a minor aged 13-15 with his/her consent even if both are allowed to legally marry. The UNCT, however, is concerned that the provision could force marriage to occur between the abuser and the girl victim since limiting girl's right to marriage and her reproductive rights to have children.
36. The UNCT commends Thailand for its progressive legislation establishing juvenile and family courts throughout the country. However, the UNCT is concerned that the minimum age of criminal responsibility at 10 years old still remains below internationally acceptable standards. In addition, the UNCT is also concerned by the use of corporal punishment in juvenile institutions.
37. In the Southern provinces ongoing violence is taking a high toll on children, in spite of the RTG's efforts to protect them. Children are still subject to the application of Martial Law and the Emergency Decree due to the special legal mechanism under the security laws and the absence of special regulations for juveniles. Children affected include those suspected of participating in or supporting any act that constitutes an emergency situation; and those whose family members have been suspected of participating in or supporting any aforementioned act.
38. The UNCT notes that there has been a decline in attacks against schools as well as against students and teachers in the three Southern provinces in 2015 as compared to 2014. Military presence in schools has not been reported for the last 12 months. However, the well-being of children affected by the violence, in particular psychosocial, or children orphaned by the violence should be effectively provided with support services, monitored and acted upon.
39. The UNCT recommends that security laws be reviewed to ensure their conformity with internationally accepted juvenile justice standards and the Convention on the Rights of the Child, that civil society organization are part of the review process and that effective monitoring mechanism is established.

#### **E. HIV/AIDS and human rights**

40. The UNCT recognizes the significant progress the RTG has achieved in halting and reversing the HIV epidemic. The UNCT commends Thailand for committing to ending AIDS by 2030 and acknowledges the efforts of the Government in ensuring availability

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<sup>3</sup> Public Health Statistics, Bureau of Policy and Strategy, Ministry of Public Health <bps2.moph.go.th>

and accessibility of quality HIV prevention and treatment services, with an emphasis on key populations of men who have sex with men, sex workers and drug users.

41. UNCT notes with satisfaction that the new HIV infections have been on a steady decline due to enhanced policy strengthening and community-based HIV response. The rate of mother-to-child transmission of HIV (MTCT) has been reduced to 2.1%; antiretroviral treatment (ART) is made accessible for every Thai citizen testing HIV positive; as well as migrants from Cambodia, Lao PDR, Myanmar and Viet Nam can access the service under the Health Insurance for Migrants Policy. The new GEL is also expected to contribute in reducing gender & HIV-related stigma, strengthening protection and encouraging health-seeking behavior, especially in transgender people.
42. The UNCT notes with concern that the practice of compulsory drug dependence treatment still exists, which prevents drug users from seeking and accessing health services and may result in continued HIV transmission among people who inject drugs, as well as their sexual partners. The UNCT recommends that compulsory drug dependence treatment be transformed into human rights based treatment, rehabilitation and re-socialization services.
43. The UNCT notes with grave concern the high level of HIV related stigma in antenatal care services (ANC). People living with HIV are advised against getting married or having children; women are persuaded and at times coerced to undergo abortion and sterilization. UNCT recommends that the commendable effort to reduce stigma and fulfill human rights in health settings is redoubled and accelerated, with particular attention to ANC and other sexual and reproductive health facilities.
44. The UNCT further notes that domestic financing for continued engagement beyond 2017 of civil society and communities in the disease responses and wider health has not been secured, and encourages the RTG to review and strengthen its legal framework accordingly.

## **F. Migrants' rights**

45. Thailand hosts millions of migrant workers from neighboring countries. Significant steps have been taken to regularize their status and to access social service, in particular health. However, challenges in protecting rights of migrant's workers still remain significant. Undocumented migrant workers, including adolescents, can be subject to deception and human trafficking by means of debt bondage, passport retention, and physical abuse, particularly in fisheries, agriculture and as domestic helpers. There are also cases of mass expulsions of migrant workers. Further steps need to be taken to ensure migrant workers' rights to access social services. The Ministry of Public Health (MOPH)'s budget limitations and existing language barriers limit the ability of migrants and their families to seek and receive health support in Thai hospitals.

## **G. Refugees and asylum seekers**

46. The UNCT commends Thailand for receiving refugees from neighboring countries over the past several decades and continuing to provide protection for some 109,000 Myanmar refugees in the 9 Temporary Shelters along the Border with Thailand, including protection from *refoulement*.<sup>4</sup> The UNCT also commends the strong joint collaboration between UNHCR and the RTG in connection with the "joint verification" exercise within the 9

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<sup>4</sup> Thailand's Human Rights Commitments and Pledges made on the occasion of the Human Rights Council Election 2010.

temporary shelters completed in April 2015, which will support ongoing planning in the context of eventual voluntary return in coordination with Myanmar and persons of concern. Nevertheless, Thailand is not yet a party to the 1951 Convention on the Status of Refugees, nor its 1967 Protocol, and still does not have an appropriate legal framework, processes or procedures for addressing its responsibilities towards persons with international protection needs, notwithstanding its commitments vis-a-vis, *inter alia*, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR) or the customary international law principle of *non-refoulement*. As a result, among the non-temporary shelter based persons of concern to UNHCR, there were at least 155 persons subject to *refoulement* either from within the territory of the Kingdom or as a result of non-admission between 2012 to mid-2015<sup>5</sup>. Moreover, arrest and detention of refugees and asylum seekers, including children, continues to be a significant issue and a regular event, despite the fact that there are clear indications in existing Thai law (as well as responsibilities pursuant to Thailand's extant international commitments) that detention can be discretionary, although some noted relaxation in access to "bail" procedures is a welcome development.

47. The UNCT recommends that Thailand refrain from the *refoulement* of asylum-seekers, refugees, migrants in refugee-like situations, asylum-seeking or refugee victims of trafficking, and asylum-seeking or refugee victims of smuggling, especially to places where their lives or freedom would be threatened. The UNCT also recommends that Thailand either/or implement a CAT screening process and/or accede to the 1951 Refugee Convention. The UNCT recommends that Thailand follow its public commitment in 2009 to stop forcing of boats carrying Rohingya into international waters, particularly in light of boat arrivals in 2011 and 2015. The UNCT also recommends that Thailand seek clear and consistent alternatives to Immigration detention for refugees and asylum seekers (especially children, families and vulnerable persons) and use detention as a last and limited resort and, if it insists on detention, ensure that Immigration authorities have the financial resources, personnel capacity and physical infrastructure to detain persons in appropriate conditions. The UNCT takes note of and welcomes the ongoing collaboration between the RTG, UNHCR and other concerned stakeholders in addressing these issues.

## H. Statelessness

48. In December 2011, the RTG officially reported some 506,197 persons considered stateless. These are primarily persons with long physical links to Thailand and since 2005 Thailand has had a policy framework and a strong political will to implement the policy.<sup>6</sup> It is believed, therefore, that this number has reduced but a new official number has not, as of August 2015, been released. The UNCT applauds the efforts of the RTG in these regards and looks forward to significantly increased efforts to further reduce statelessness within the framework of the Policy. Meanwhile, there appear to be protection gaps for other categories of stateless persons or persons at risk of statelessness including, for example,

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<sup>5</sup> This includes some 109 persons of Turkic origin who were forcibly deported to a country they expressed fear of being sent to. Earlier some 172 women and children of Turkic origin (include spouses/children of those mentioned above) were permitted by RTG to be deported to a country of their choice. 58 such persons remain and RTG is urged to allow them to be deported to a country of their choice, provided that country is willing to receive as is their right under the ICCPR, which is consistent both with the CAT and Thai domestic law which does not expressly envision any specific protocol concerning destination of deportation. The UNCT also recommends that Thailand fulfill its public commitment to specifically and regularly monitor the treatment of these 109 persons.

<sup>6</sup> See 2005 *National Strategy for Solving Problems Concerning Legal Status and Exclusion from Receiving Fundamental Rights of Non-Thai Individuals in Thailand*

foundling children and others of uncertain nationality. Among persons already identified as stateless and others, there can be challenges in accessing the nationality process as well as some basic rights and services on par with nationals. For example, children recognized as stateless by the RTG generally have access to primary education on par with Thai nationals, however, access to scholarships and educational grants is restricted to nationals, which *de facto* excludes many stateless children from access to upper secondary and/or tertiary education. The UNCT also notes that while there is a well- developed system for accessing nationality, barriers can include the prohibitive official and unofficial costs which can lead to processing delays and associated lack of access to the rights and benefits of nationality.

49. Accordingly, the UNCT recommends (in addition to accession to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*) that Thailand formally update official statistics in order to reflect the good progress in addressing these issue. At the same time, the UNCT recommends that Thailand take steps to make the application process more accessible and affordable, while also ensuring that stateless children have access to upper secondary and/or tertiary education, by *inter alia* amending the *2005 Policy and Cabinet Resolution (Education Policy)* to guarantee stateless children's access to scholarships and educational grants, in line with Articles 2, 4 and 28 of the *Convention on the Rights of the Child*. In these regards, the UNCT takes note of the strong collaboration between and among the RTG, UNHCR and other stakeholders in furthering the progressive aims of Thailand's nationality policy.