ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **E**

ЭКОНОМИЧЕСКИЙ И СОЦИАЛЬНЫЙ СОВЕТ

Distr.
GENERAL

E/CN.4/2004/94/Add.1
12 March 2004

RUSSIAN
Original: ENGLISH

КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
Шестидесятая сессия
Пункт 17 b) предварительной повестки дня

ПООЩРЕНИЕ И ЗАЩИТА ПРАВ ЧЕЛОВЕКА: ПРАВОЗАЩИТНИКИ

Доклад, представленный Специальным представителем Генерального секретаря по вопросу о положении правозащитников Хиной Джелани

Добавление

Миссия в Таиланд* **

***** Резюме настоящего доклада о миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на английском языке.

****** Настоящий доклад представляется с опозданием, с тем чтобы включить в него как можно больше обновленной информации.

GE.04-11849 (R) 250304 250304

Резюме

В период с 19 по 27 мая 2003 года Специальный представитель Генерального секретаря по вопросу о положении правозащитников совершила официальную поездку в Таиланд. Как указывается во введении к докладу, эта поездка была очень хорошо организована и проходила в духе готовности национальных и местных органов власти осуществлять сотрудничество на основе принципа транспарентности. Направленное правительством приглашение и оказанная им активная поддержка в ходе миссии являются обнадеживающими знаками, свидетельствующими о готовности правительства к рассмотрению выраженной ею озабоченности по поводу роли и положения правозащитников в атмосфере, которая во всех других отношениях является благоприятной для торжества прав человека, демократии и господства права.

В разделе I изучается обстановка, в которой осуществляют свою деятельность правозащитники и отмечается существование достойной самой высокой оценки Конституции, осуществление которой однако сдерживается рядом трудностей. В этом разделе приводится описание учреждений, действующих в области прав человека, включая ряд только что созданных учреждений и механизмов, располагающих широкими возможностями для оказания поддержки правозащитникам. Специальный докладчик приветствует деятельность и независимость Национальной комиссии по правам человека, однако выражает сожаление по поводу того, что правительство или парламент принимают недостаточно энергичные меры в связи с выражаемыми Комиссией озабоченностями. Далее в данном разделе приводится краткое описание вопросов прав человека, наиболее часто рассматриваемых правозащитниками в Таиланде, включая вопросы, касающиеся экономических, социальных и культурных прав, прав фермеров, мигрантов, представителей горных племен и бедных сельских общин, а также, в последнее время, предполагаемых нарушений в контексте правительственной кампании по борьбе со злоупотреблением наркотиками. В заключительной части этого раздела изучаются имеющиеся у правозащитников возможности и отмечается наличие в Таиланде большого числа активных правозащитников, а также рассматривается ряд проблем, ограничивающих их возможности. В этом разделе приводится информация, касающаяся сообщений о публичных заявлениях должностных лиц, содержащих клевету в адрес неправительственных организаций (НПО); усилий по ограничению размера финансирования НПО; ограничений, введенных в отношении свободы ассоциации; и якобы имеющих место случаях слежки и притеснений в отношении некоторых НПО со стороны структур системы государственной безопасности. В разделе I подчеркивается важнейшая роль правозащитников в укреплении демократии и выражается озабоченность Специального докладчика по поводу того, что органы государственной власти,

несомненно, неправильно понимают роль гражданского общества в оказании поддержки процессу осуществления экономических и социальных прав лиц, которые, как они утверждают, страдают от отрицательных последствий проводимой правительством политики.

В разделе II изучается ряд вопросов, вызывающих особую озабоченность. Специальный докладчик приводит описание многочисленных арестов, задержаний и судебных преследований правозащитников и на основе имеющейся в ее распоряжении информации высказывает мнение о том, что в отношении правозащитников закон применяется на избирательной основе. Далее в разделе изучается право на протест и излагается озабоченность Специального докладчика в отношении насилия и других актов, которые, согласно сообщениям, совершались в отношении правозащитников в контексте выраженного ими протеста против строительства газопровода и плотины. Затем в докладе приводится описание вопросов, волнующих правозащитников, которые опасаются, что в контексте проводимой кампании по борьбе со злоупотреблением наркотиками полиция на местном уровне превышает свои полномочия в отношении правозащитников, стремящихся поставить вопросы о нарушении прав человека. В заключительной части раздела приводится описание трудностей, с которыми сталкиваются правозащитники из Мьянмы, включая слежку, притеснения, опасения подвергнуться депортации и трудности с получением виз и других юридических документов, дающих право на въезд в Таиланд и на перемещение внутри страны.

В разделе III доклада изучается вопрос о безопасности правозащитников. В этом разделе особое внимание уделяется предполагаемому тайному сговору между местными органами власти и частным сектором, в результате которого допускаются нарушения в отношении правозащитников, занимающихся рассмотрением экологических аспектов прав на труд и землю. Специальный докладчик выражает свою глубокую озабоченность по поводу многочисленных сообщений об убийствах или покушениях на убийство правозащитников и приводит описание случаев, касающихся, в частности, руководителей горных племен и активистов движения в защиту прав мигрантов и права на труд. В заключительной части этого раздела особое внимание обращается на то, что правозащитники, действующие по линии НПО, журналисты, таиландские и иностранные правозащитники, ученые, активисты, работающие на уровне общин, и другие лица неоднократно заявляли Специальному докладчику о том, что они испытывают чувство неуверенности в личной безопасности.

В разделе IV содержатся выводы и рекомендации и подчеркивается фундаментальная важность сохранения ценной роли Таиланда в региональной деятельности по защите прав человека. Специальный докладчик выражает сожаление по

поводу того, что роль и безопасность таиландских правозащитников недостаточно обеспечивается существующими механизмами защиты, при этом особому риску подвергаются правозащитники, выступающие в защиту экологических и экономических прав на уровне сельских общин. В этом разделе также указывается на необходимость сохранения той роли, которую Таиланд играет в региональной деятельности по осуществлению прав человека, поскольку она имеет важное значение для всего региона. На протяжении всего доклада и в своих выводах Специальный докладчик отмечает ряд позитивных факторов, начиная с того, что на протяжении ее визита правительство занимало открытую позицию и старшие должностные лица пообещали рассмотреть поднятые ею вопросы. Она отмечает сообщения о достойных похвалы действиях властей, которые стали проявлять большую сдержанность в отношении участников протестов, примеры того, когда сотрудники полиции и другие должностные лица оказывали содействие правозащитникам, сообщения о важных правительственных инициативах по созданию механизмов, способных оказывать поддержку правозащитникам в будущем, заслуживающую всяческого одобрения позицию правительства, предусматривающую уделение первоочередного внимания вопросам развития и искоренения нищеты, меры по ликвидации коррупции и инициативы в поддержку сельского населения. Эти примеры обеспечивают благоприятную основу для рассмотрения выраженной Специальным докладчиком озабоченности по поводу положения правозащитников, которое омрачает атмосферу, во всех других отношениях благоприятную для торжества прав человека, демократии и господства права. В заключительной части этого раздела содержится ряд рекомендаций, предназначенных для правительства, парламента, правозащитников и Страновой группы Организации Объединенных Наций.

Annex

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, on her visit to Thailand (19-27 May 2003)

CONTENTS

CONTENTS (*continued*)

Introduction

1. Pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64, the Special Representative of the Secretary-General on the situation of human rights defenders conducted an official visit to Thailand from 19 to 27 May 2003. The Special Representative acknowledges the strong public support provided to her mandate by the Royal Government of Thailand through its co-sponsorship of the above resolutions. She notes that Thailand was the first Asian State to extend to her an invitation to visit the country and that she is also the first special procedures mandate-holder to conduct such a visit to Thailand.

2. The Special Representative wishes to acknowledge the cooperation extended to her by the Ministry of Foreign Affairs in preparation of the visit and for the duration thereof. She commends the Government for its transparency and for the availability of almost all government officials with whom meetings were requested. She welcomed the opportunity to meet with the Prime Minister, the Minister for Foreign Affairs and several other senior members of the Government, as well as with parliamentarians and leaders of the opposition. In addition to Bangkok, the Special Representative visited Chiang Mai and Songkhla Provinces, and expresses her warm appreciation of the availability and transparency of authorities in both Provinces. She is also grateful to the office of the United Nations Resident Coordinator and his staff for their invaluable support in the preparation and conduct of the visit. The Special Representative thanks all those members of civil society and the international community who provided her with very useful information and appreciates their cooperation with her.

I. THE HUMAN RIGHTS DEFENDERS ENVIRONMENT

3. Thailand has been recognized worldwide as an international and regional centre for civil society action, including the work of human rights defenders, fostered by successive national Governments in the recent past and by civil society itself. Thailand has ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Elimination of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Thailand signed the Rome Statute of the International Criminal Court in 2000, although it has yet to ratify it, and has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the 1951 Convention relating to the Status of Refugees. In this section of her report the Special Representative notes the strong potential for defenders within Thailand and the positive actions taken by the current Government, but also several concerns that overshadow the enabling environment required by defenders to conduct their work.

A. The constitution and other legislation

4. In 1997 Thailand adopted its sixteenth Constitution, which provides protection for a broad range of human rights, including rights that are essential to the work of defenders, such as the right of access to information, and emphasizing greater transparency and accountability in

Government affairs. A number of legislative measures provide for a more open media policy, including efforts to end State and private monopolies of radio, television and telecommunications. Civil liberties and fundamental freedoms are fully recognized.

5. The Constitution provides for the direct participation of citizens in the political process and design of public policy. With the signatures of 50,000 voters, citizens may submit legislative proposals to Parliament. Similarly, the requirement to hold public hearings and make environmental impact assessments (EIA's) before major projects are approved could empower local communities with greater control over natural resources and the environment and offer additional opportunities for civil society organizations to express their concerns. Other social protection provisions include the right to education, health care for the poor, pensions for the elderly and guarantee of accessible facilities for persons with disabilities.

6. While the Constitution is often praised, the guarantees it extends are dependent for their implementation upon organic law which is reportedly inadequate to ensure full application of Constitution rights. In its response to the Special Representative's report, the Government of Thailand maintains that its commitment to the protection of the rights and freedom of people is reflected in the fact that all but two of the laws required for enabling the implementation of the relevant constitutional protections have already been passed. However, the Special Representative is mindful of the views expressed by the President of the Constitutional Court, during his meeting with her, that additional organic law was needed to implement provisions of the Constitution in several areas relevant to human rights protections. She hopes that the Government will make further efforts to explore means to fulfil the need expressed by members of the country's higher judiciary and other constitutional experts. The Special Representative welcomed the Prime Minister's recognition of this concern and his Government's commitment to taking prompt action.

B. Institutions supporting human rights

7. A number of institutions have been established to oversee the implementation and protection of human rights.

1. The Constitutional Court

8. Established in 1998, the Constitutional Court has jurisdiction to interpret the Constitution and to judge the conformity of existing law, and any proposed legislation referred to it by Parliament, with its provisions. Only the parliament, the administrative courts and the office of the Ombudsman can submit petitions to the Court which has a key role in the development of constitutional principles and the application of constitutional rights.

9. At a meeting with the President and members of the Court, the Special Representative was told that 33 of the 400 cases referred to the Court have concerned the enforcement of human rights. Three decisions brought to the Special Representative's attention concerned alleged discrimination in appointment to judicial office on the basis of physical disability, criminal charges for peaceful protest against the gas-pipeline project, and the use of fetters and other implements of restraint on detainees. The Court did not find a violation of the Constitution in any of those cases. The Special Representative noted a perception among lawyers and other human rights defenders that the Court has taken a restrictive interpretation of its role. The

Court's President emphasized that Parliament's urgent action to strengthen organic law is needed to implement constitutional provisions and that this legislative gap could not be filled by Court interpretation of the Constitution.

10. Concluding that human rights defenders are apparently unable to rely fully on constitutional human rights guarantees in their work, the Special Representative notes that judicial action to secure respect for the Constitution would enhance public confidence in the legal framework. She hopes that the Constitutional Court will not find itself constrained by organic law when applying constitutional human rights guarantees. The Court's initiative in organizing seminars and workshops promoting understanding of their rights and liberties would be more meaningful if enjoyment of those rights were seen among members of the public as a reality in practice.

2. The National Human Rights Commission

11. The National Human Rights Commission (NHRC) is an independent national human rights institution, established under the Constitution, which can receive information from any source, conduct investigations and publish its findings. Reports of NHRC are submitted to the National Assembly and are disseminated to the public. The Commission maintains good contact with civil society, and the Special Representative notes with appreciation that the Commission is apprised of almost all the human rights concerns expressed by defenders and has initiated processes to study the situations reported to them.

12. The Special Representative commends Thailand for the establishment of the Commission and for the independence of this body. However, her information indicates that the Commission has no authority to enforce its recommendations and that the Government and Parliament have given little response to the concerns raised. NHRC members indicate that they lack sufficient human and financial resources and that they have been publicly criticized by the Government in a manner they consider has undermined their work. After one member of NHRC expressed grave concern at alleged violations committed during the Government's anti-drugs campaign, he was reportedly criticized publicly by the Government and subsequently received anonymous death threats in March 2003. An investigation was reportedly conducted and police protection offered to the member concerned.

13. The NHRC objectives make it an important part of the national human rights protection system. Strengthened resources and greater respect for its independence and response to its concerns would improve its efficacy, strengthen human rights protection and increase its capacity to support defenders.

3. Office of the Ombudsman, Parliament and other institutions

14. The Office of the Ombudsman was established in 2000 under the provisions of the 1997 constitution. Based in Bangkok, the Office relies on partners, such as the electoral agency, members of Parliament and the village-level network of health volunteers to disseminate information about the Office in rural areas. It can publish concerns and recommendations and transmit these to the Government. The Office claims to maintain good cooperation with human

rights NGOs, providing them with a channel through which they can communicate concerns to the Government. While the Office has no enforcement power, its staff consider that the Government response to its recommendations has been satisfactory.

15. Parliament has undertaken some specific efforts to support human rights, including the formation of an association of women parliamentarians with the objective of supporting legislative change in favour of women's rights. A parliamentary committee on justice and human rights holds frequent meetings and submits reports to the Parliament. The Senate Committee on People's Participation and individual senators have been active in raising human rights concerns, including some affecting defenders, but they consider that their impact has been limited. Many defenders consider that the Government majority in the present Parliament limits the body's role in monitoring Government action with regard to human rights as well as defenders.

16. The Administrative Court, the National Election Commission, the National Auditing Office, the National Counter-Corruption Commission and the National Economic and Social Advisory Council are other bodies with a potential to provide avenues of support to defenders. It should be mentioned that the performance of the Administrative Court in addressing violations of rights occurring through executive actions is appreciated by several persons the Special Representative met during her visit.

4. New institutional initiatives by the Government

17. The Government has established several new bodies and mechanisms of particular relevance to the defence of human rights. The mandate of the Ministry of Social Development and Human Security is not yet fully defined but is likely to include a focus on human trafficking, disadvantaged children, the elderly, the urban poor, discrimination against persons with disabilities, citizenship, land rights, protection of juveniles in the justice system, access to adequate housing and strengthening communities. For example, the Government has apprised the Special Representative of several actions taken by the Ministry supporting children's right to participation and initiatives for promoting the rights of the disabled. In addition, the Government has recently created the Rights and Liberties Department within the Ministry of Justice and has launched a process of reform of local government, with the aim of improving efficiency of the civil service response to the public. Several initiatives have also been taken to support rural and farming populations and on the environment. It is too early to make an accurate assessment of the potential of these relatively new initiatives to support the work of defenders.

C. Main issues of focus for human rights defenders

18. The role and situation of human rights defenders can only be understood in the light of the major human rights issues they work upon. Those most commonly addressed by human rights defenders relate to economic and social rights, often in the context of national economic development plans and policies. Amongst these are the right to land ownership of hill tribes communities; the right to livelihood of small farming and fishing communities threatened by industrial projects; environmental rights; labour rights for migrant workers; trafficking in people;

the right to health; human rights in the context of HIV/AIDS; strengthening of the education system; respect for the rights of children to participate in decisions affecting them; and discrimination against persons with disabilities.

19. Many human rights defenders contend that the urge to secure economic growth and avoid a return to the recession of the 1990s is a major reason for the strong emphasis laid by the Government on economic development - for example, in the context of mega-projects in the energy sector - and which has encouraged the trampling on the economic, social and environmental rights of some sections of the population. Defenders state that many civil and political rights concerns - including curtailment of the right to protest and the freedoms of assembly, expression and movement - have emerged as a result of action taken by the authorities against those criticizing the denial of economic, social and cultural rights. Other human rights concerns pertain to citizenship rights, the protection of non-Thai defenders within Thailand and freedom of association. These human rights concerns are prevalent in several regions, and some of them are encountered primarily at the local level while others affect the country as a whole. Judicial and institutional reforms are also amongst the human rights issues taken up by defenders. Of more recent concern to the human rights community are the consequences faced by those raising the issue of alleged extra judicial killings reportedly committed by the police in the context of an anti-drugs campaign.

D. The capacity of the human rights defenders community

1. The contribution of human rights defenders at the local, national and regional levels

20. Thailand's human rights community can be accurately described as a vibrant one. Defenders are found among rural populations, minorities, academics, trade unions, the media and the legal profession. Human rights defenders include a large number of women who are engaged in the protection and promotion of a wide range of human rights, including women's rights. Many human rights organizations investigate and publish their findings on the situation of human rights generally and on specific cases. Defenders have been effective in drawing public attention to violations and have engaged collaboratively with national mechanisms for the protection of human rights such as NHRC and the Office of the Ombudsman.

21. Human rights organizations coordinate well within the country and many are part of effective regional human rights networks. The capacity of defenders to collect information and analyze the trends they monitor is well developed. The Special Representative also noted the keenness of academics to work on human rights issues and commends the work they have produced on international human rights principles and law. On the whole, the Special Representative considers the human rights work conducted from within Thailand, both in terms of quality and the range of issues addressed to be of high standard.

22. In addition to those organizations focusing on human rights issues within Thailand there are many that address human rights concerns in neighbouring countries and in the region as a whole. For example, numerous organizations working on human rights concerns in Myanmar are based in Thailand because they cannot conduct their work safely from within Myanmar.

Other organizations, including the United Nations, have chosen to establish their regional offices in Thailand. The Special Representative recognizes that this regional role represents a tremendous contribution by Thailand to human rights.

23. Thailand's progress in democracy has strengthened civil society. Defenders were involved in the drafting of the Constitution of 1997, some members of the present Government were themselves active as defenders within the NGO community in the past, and consultation between government agencies and the human rights community continues largely unrestricted at several levels. Nevertheless, there was consensus among the many defenders consulted by the Special Representative that Thailand was no longer as comfortable a location for human rights defenders and their organizations.

2. Damaging the public image of human rights defenders

24. The Special Representative notes with concern reports that senior State authorities have made highly critical statements against NGOs. A Senate committee formed in April 2003 to examine the activities of NGOs was described in the media in May 2003 of having accused NGOs of obstructing the country's development and receiving foreign funding. Defenders consider that the committee's report reflects the Government's position. During the Special Representative's visit, statements in the Thai press quoted the Commissioner-General of the police as saying that NGOs were "influences" that must be checked. While the authorities indicated to the Special Representative that the Commissioner-General had been misquoted, defenders reported numerous other statements attributed to government officials, and accurately or inaccurately reported in the press, denigrating NGOs, thereby damaging their credibility and public image. The Special Representative welcomes the assurances provided to her by senior officials that there is no government policy to undermine the role of NGOs. However, she emphasizes the need to reverse the impressions created by such press reports and to allay defenders' fears.

3. Attempts to control and restrict access to funds

25. Several sources and press reports indicate that the State Anti-Money-Laundering Office (AMLO) attempted, without reasonable cause, to investigate the accounts of prominent journalists and NGOs. The Special Representative was informed that AMLO dropped the asset probes shortly before the Administrative Court issued an injunction to halt them and that a government investigation later exonerated AMLO staff of any wrongdoing. The Minister of the Interior, meeting with the Special Representative, denied that the AMLO investigation occurred but did not explain the above reports. Several of the journalists and activists targeted have reportedly initiated civil complaint suits against AMLO.

26. The national press and other sources report an alleged attempt by the Ministry of the Interior to interfere with foreign funding of Thai NGOs. The Ministry of Foreign Affairs was reportedly directed to use diplomatic channels to convince foreign donors to cut funding from some NGOs, but the Ministry reportedly advised against such action and the directive was not implemented. In addition, the Special Representative has been apprised of a recent rule that defines a "foreign NGO" as one that has any source of foreign funding. NGOs have expressed concern that such a definition would require a Thai NGO receiving any foreign funding to

register itself as a "foreign NGO". Recalling article 13 of the Declaration the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter the Declaration on human rights defenders), the Special Representative reminds the Government that receiving foreign funds for the purpose of promoting and protecting human rights and fundamental freedoms through peaceful means is a part of international cooperation from which civil society, as well as States, is entitled to benefit.

4. Freedom of association

27. The existence of numerous NGOs, including those with a human rights focus, in Thailand is evidence of the freedom available in the country to associate and carry out collective activity. However, the human rights community views recent legislative, policy and regulatory changes, enforced or proposed, by the Government as a shift in the policy of openness.

28. Restrictions on NGO access to foreign funding impacts upon the freedom of association and are compounded by the difficulties faced by domestic human rights organizations in obtaining tax-exempt status and the impact of denigrating comments by public officials in the media.

29. Human rights organizations complain that under the current policy no organizations are allowed to operate without registration, with non-registration rendering their status and activities illegal and liable to prosecution. The Special Representative notes that Thailand only recently introduced a requirement for international NGOs to register themselves. Some defenders indicated that they had experienced difficulties in complying with this law because of the heavy administrative requirements, including the obligation to submit monthly reports to the authorities of their activities, a requirement only enforced for some NGOs. Foreign organizations, including some of the best known for their regional human rights focus, are also experiencing difficulties in obtaining work permits for their foreign staff.

30. The Special Representative recognizes the responsibility of defenders' organizations to operate with transparency and respect for the law, and she notes complaints by officials of irregularities detected in the procedures followed by some NGOs regarding the maintenance of bank accounts under personal names rather than under the name of organizations. While she acknowledges that Government complaints are not baseless, she emphasizes that this has only occurred in rare cases, and largely due to registration problems. Although Governments have a prerogative to regulate the process of association, regulation should not interfere with the freedom of organizations independently to define the scope of their activities, nor should it be so onerous as to defeat the purpose of freedom of association that is so critical to the work of defenders.

5. Surveillance and harassment of NGOs and the scope of State security definitions

31. Reports received by the Special Representative indicate that some government agencies have created blacklists of organizations and individuals, including human rights defenders, who are subsequently defined as national security risks and targeted by police and intelligence services for surveillance or other repressive actions.

32. A demonstration in Had Yai and the work of human rights defenders from Myanmar were both described to the Special Representative by authorities as damaging to the national image and national security. The Special Representative received numerous reports of NGO offices and staff being the subject of human and electronic surveillance by the intelligence services, with national security given as the justification for these actions. The Deputy-Director of Internal Security Operation Command was quoted in the press describing the deliberate harassment of activists in the north-east of Thailand. The Special Representative received reports that in early May 2003 the Ministry of the Interior ordered provincial governors to monitor NGOs and individuals in their regions who were critical of the Governments of neighbouring countries. On 2 October 2003 *The Nation* newspaper reported a statement by the Government that NGOs and others who protested during the 2003 summit in Bangkok would encounter difficulty receiving future government assistance. *The Nation* of 9 October 2003 refers to a Government list of foreign activists who would be prevented from entering Thailand prior to the summit.

33. In its comments on the present report, the Government denied that the Ministry of the Interior ever issued instructions of the nature mentioned above. With regard to the matter of visas for foreign activists prior to the APEC Summit in Bangkok, the Government indicated that it does not have a policy of targeting foreign activists. At the same time, the Government asserted its prerogative to determine its territorial integrity and the right to grant or deny entry into its territory, taking into consideration the necessity of maintaining public order and national security. The Special Representative fully recognizes the prerogatives of the Government in this regard. Her concern emerges from allegations that the Government took, or contemplated, action to prevent the presence of foreign activists in the country during the regional event, or to deter any peaceful action by human rights defenders against policies that they consider incompatible with the protection or promotion of human rights. While the press report prior to the APEC Summit is not clarified in the Government's response, the Special Representative welcomes this official response as a sign of the Government's recognition of the defenders' right to freedom of assembly and expression.

34. The Special Representative notes that Thailand does not have a national security law. She is nevertheless concerned that overly broad definitions of security and of State interests including, for example, major construction projects, are enveloping human rights defenders and harming their capacity to work. The investigation and public reporting of alleged human rights abuses in Myanmar, for example, cannot legitimately be presented as a negative security concern. It is vital that national security policies and practices, as well as mechanisms to combat organized crime, not be used against human rights activists or defenders. In her discussions on these issues with the Secretary-General of the National Security Council (NSC) and the Deputy Commissioner-General for the Police both acknowledged that they had not seen any cases

implicating NGOs in genuine national security risks. The Special Representative appreciated the NSCs openness in consulting with academics and other members of civil society on national security policy and its willingness to open a channel of communication with NHRC on relevant human rights concerns.

6. "Conceptions" of the role of civil society

35. Based on comments made to her by the authorities and on information received from non-governmental sources the Special Representative considers that the Government interprets the role of civil society subjectively and narrowly. The Government seems to divide human rights defenders into two categories: NGOs engaged in humanitarian and welfare work were considered legitimate and faced no resistance; however, defenders asserting the economic, social and cultural rights of people who claim to be adversely affected by government development policies, and defenders addressing practices undermining democracy, often met resentment. Some officials perceive the function of serving the people as exclusive to the Government and complained that NGOs had placed themselves between the Government and the population and were a barrier to effective communication between the two. Some officials considered that defenders were "in the wrong" because they were advocating a position supported only by a minority. The same officials said that the human rights arguments advanced by these defenders were incorrect and that their protest was therefore illegitimate and was causing damage to the nation.

36. The Special Representative is concerned that the above approaches represent a misconception and are in contradiction with the rights and responsibilities of human rights defenders defined in the Declaration on human rights defenders. What is important is not that defenders be absolutely correct in their understanding of the human rights concern being raised, but rather that they have the opportunity to raise it and for the concern to be examined through a suitable process that itself respects relevant human rights standards. NGOs cannot replace the Government or lay claim to the same type of legitimacy as democratically elected Governments. However, they have essential roles to fulfil in ensuring Government accountability for its action, providing alternative information and analysing and raising concerns with Government, to safeguard the human rights of groups of people. The Special Representative considers this difference in conception to lie behind many of the problems experienced by defenders, but notes that this is a problem that can be addressed through improved understanding between the Government and civil society.

II. OTHER CONCERNS AFFECTING THE SITUATION OF HUMAN RIGHTS DEFENDERS

A. Civil and criminal prosecution of human rights defenders

37. Human rights defenders exercising their right to peaceful protest, as well as defenders engaged in other human rights activities, have been targeted for judicial prosecution in a great number of instances. According to information provided to the Special Representative, there are approximately 560 cases pending before the courts with regard to members of the Assemblies of

the Poor and 118 arrest warrants outstanding against members of the Northern Peasant Federation (NPF), detailing 996 criminal and civil charges. In May 2002, in Lampoon Province, committee members of the NPF were arrested with one defender reporting 42 civil and criminal cases outstanding against him. Another NPF member described his assistance to farmers in gathering information, negotiating and contacting the law society, the media and the Government. He reported that 54 criminal lawsuits and 10 civil suits had been filed against him on charges of trespassing and destruction of property.

Using the law selectively against defenders

38. When the Special Representative raised her concern about some prosecutions with the authorities, including the Attorney-General and the Songkhla provincial prosecutor, they informed her that there was an obligation to prosecute if the law was broken and that, once seized, the judiciary was independent.

39. However, the Special Representative received many examples of violations of defenders' rights, including killings and harassment described below, for which no police or court action against perpetrators was apparently taken. In two instances, police reportedly arrested two men for the shooting of defenders, but both were reportedly released without prosecution. Numerous defenders face criminal charges following incidents in Had Yai, but no charges were brought against police officers. A court reportedly found in favour of a trade union member dismissed from her job because of her union activities, ordering that she be reinstated, but the order was reportedly not enforced.

40. Based on information provided to her, the Special Representative considers that the law is being applied selectively against defenders, with prosecutions initiated to deter defenders from taking public action and to exhaust their time and finances, rather than to enforce the rule of law.

B. The right to protest: human rights defenders versus mega-projects

41. The Special Representative recalls the immense appreciation Thailand has received for giving effect to the right of its people to present their concerns through public action, with the activities of the Assembly of the Poor cited throughout the region as an indication of tolerance, popular participation and respect for democratic practices.

42. Nevertheless, following discussions with numerous State officials and according to information available to her, the Special Representative considers that the right to protest has, at times, been restricted by police action and government policy and that State interpretation of the right to protest is often incompatible with the Declaration on human rights defenders. For example, numerous authorities indicated to the Special Representative that protesters had broken the law by demonstrating in places that obstructed traffic. While, the Special Representative recognizes the obligation upon authorities to ensure public safety and order, the right to protest, a mode of popular participation and an essential element of democracy, is devoid of meaning if administrative rules are applied to prevent the use of public places for this purpose. Two particular cases were drawn to the attention of the Special Representatives.

1. Protest against the gas pipeline project in Songkhla Province

43. Reports indicate that on 20 December 2002, in Songkhla Province, about 1,000 villagers, accompanied by student human rights defenders travelled 50 kilometres from their villages, around Cha-na, to the provincial capital Had Yai to protest against the construction of a gas pipeline which, they argue, would damage the local land and sea environment and destroy their livelihood. Defenders argued that public hearings and the obligatory EIAs were not fairly conducted. The Prime Minister was participating in a Cabinet-level summit meeting with the Government of Malaysia in Had Yai the same day, and villagers and defenders wished to protest outside the hotel where the meeting was due to be held.

44. Officials indicated to the Special Representative that, after reaching the hotel, the protesters refused to remain in the place agreed upon with police and tried to approach the hotel using a truck to cross the police barrier. Officials reported that protesters used flag-poles as weapons and had small metal balls to throw at the police. Defenders, however, indicated to the Special Representative that it was the police who crossed the barrier and began hitting students in their way. Defenders denied they had weapons and said the metal bearings were fishing net weights still attached to nets in the back of a truck. Several defenders were injured, and one student reported that he was beaten and dragged away by the police who threatened to kill him. Some villagers and students were detained, with police reportedly failing to inform the arrested persons of the charges against them. Arrest warrants were issued against defenders and several of the protesters' vehicles were impounded. The Provincial Governor informed the Special Representative that at least 25 policemen were hurt. Despite accusations of police violence no police officer faced any form of disciplinary action.

45. Songkhla authorities indicated that protesters' action in the past led to the destruction of a police station and two accidental deaths as a result of roadblocks they set up. Defenders, however, report that as of March 2003 Border Patrol Police units have been stationed near their villages and engaged in numerous activities to intimidate them, such as the arrest of protesters against the pipeline, including Sakgariya Mhawang-aiet, the village headman of Bann Koksak on 29 January 2003, Maliya Himmuden, Muhammud-Kotare Mahaji and Tor-hed Sen-a-ra-mean on 13, 20 and 28 March 2003, respectively, and Samasir Phrom-in on 2 April. Protesters reported other acts of intimidation by the authorities, including surveillance of their homes by armed men, and expressed considerable fear for their safety and the future of their communities.

46. Having weighed the reports made to her by the authorities, villagers, defenders, journalists and others who were present on 20 December, and taken note of the NHRC report, the Special Representative considers that there has been injustice in the approach taken by the authorities to the Had Yai villagers and defenders. Credible evidence indicates first and excessive use of force by the police. While the defenders involved denied any acts of violence, she is not able to determine conclusively that this is accurate. Nevertheless, even if the authorities' account of the protesters' conduct is correct it does not justify the action taken by the police against the defenders and, given the large police deployment, the level of security risk claimed by the authorities cannot be genuine. She urges that arrest warrants and criminal proceedings be withdrawn, that impounded vehicles be returned and that authorities ensure a fair hearing of the human rights concerns related to the pipeline project. She also urges that the NHRC be invited to mediate to resolve the issue.

47. The Special Representative warmly welcomes the deep regret expressed by the Governor at the eruption of violence, the transparency with which he and his staff approached the meeting with her and his commitment to take any action within his power to mitigate the negative effects of the incidents.

2. Pak Mun Dam

48. The Pak Mun Dam project involves the construction of a dam in Ubon Ratchathani Province to generate electricity. According to defenders, villagers complain that when the dam is closed, the lower flow of water below the dam severely disrupts the farming and fishing livelihood of 7,000 families. Government officials indicated to the Special Representative that a majority of the population in the region of the dam wanted it closed for several months a year and that its decisions on the matter were taken after fully ascertaining the views of the people. However, defenders reported that local authorities had transported people from outside the immediate area to inspect the dam, without explaining the full implications of the project to them.

49. Defenders report that peaceful activities to protest against the Pak Mun Dam were conducted in the villages most affected and in Bangkok. Defenders reported that they had been threatened with arrest for participating in protests and that protesting villagers had been beaten or faced other forms of intimidation. On 15 December 2002, security personnel working for the company managing the dam reportedly travelled to protesters' villages in buses with the company's name written on the side, after which they reportedly fired gunshots into the air and set fire to village houses. Defenders protesting in front of the offices of the Governor of Bangkok reported that on 5 December 2002 a gang of men, hired by local authorities, attacked their camp, threatened protesters, took away their belongings and threw them into a nearby canal and that on 29 January 2003 the Governor of Bangkok ordered the municipal officers to forcibly disperse the remaining protesters. In its comments on this report, the Government denied taking any action to disperse peaceful assembly by people protesting on the issue and denied that protesters were forcibly removed from camps they had set up in Bangkok. The Government acknowledged the presence of 500-600 municipal officers at the camp "to help demonstrators carry and load their packed belongings onto the bus heading to their home town, arranged for them by the Bangkok Municipal Authority. None of the officers was armed and none of the protestors was either harassed or intimidated".

50. The acts allegedly committed against defenders have reportedly not led to any arrests or prosecutions of perpetrators. In contrast, defenders report that they have faced criminal prosecution, intimidation and harassment in response to their protests, against the threat to their social and economic rights, at the hands of local authorities and the Government.

3. The future of the right to protest?

51. The Special Representative welcomes the indications from several officials that the State policy on public protests is one of non-violence. She accepts that if allegations of police violence in Had Yai are true then this was an isolated incident and not part of a government policy to repress protests with violence. Notwithstanding the concerns raised above, she notes that flexibility and restraint were shown by national and local authorities in several instances.

For example, permission to hold the 20 December protest was officially granted. Following earlier protests, authorities moved the pipeline site five kilometres from the original location and onto public land. The Provincial Governor showed considerable restraint in not insisting on police access to sections of the planned pipeline site barricaded by villagers. Protests on other issues have been held without incident, including a protest against potash mining on 22 September 2002 by the Environmental Conservation Group of Udonthani Province. The Special Representative's concern, however, remains that such flexibility is ad hoc and dependent upon the initiatives of individuals within the State apparatus. She considers it vital that human rights defenders be able to rely on established and consistent mechanisms and standards through which respect for human rights is guaranteed.

C. The impact of the anti-drugs campaign on defenders

52. Following the launching by the Government in February 2003 of a campaign against drug trafficking, allegations of extra judicial killings by security forces engaged in the operation have raised concern within Thailand, including from the NHRC, and at the international level. The Government has denied these allegations. As extra judicial killings in general are not within her mandate, the Special Representative has not investigated reports of such killings. However, she raises the issue in the context of the campaign's impact on human rights defenders.

53. Defenders explained that the anti-drugs operation was conducted under a legal regime that enhances police powers of search and restricts freedom of movement and access to information. While acknowledging that the powers were in themselves not excessive, numerous defenders reported to the Special Representative that weak monitoring and accountability allowed local police officers to abuse their powers under the anti-drugs campaign by harassing, threatening or killing those who criticize or oppose them.

54. Defenders reported that in some districts police officers had compiled a "blacklist" of individuals, including community and hill tribes leaders, who had been critical of the police human rights record and used this list as the basis for their action to meet a quota under the anti-drugs campaign. The Special Representative received reports indicating that Ms. Nasae Yapa, a founding member of the hill tribes network, AITT, was arrested and detained after local police allegedly planted drugs in her home. In a police raid of the village of Huay ieng Sang Moo, in Chiang Mai, on 26 April 2002, defenders allege that the police planted drugs in the homes of five defenders working with AITT. Wiwat Tamee, a human rights defender who has worked with AITT, and who is a member of the Lisu ethnic group and coordinator of a study on the impact of the drugs campaign on the rights of ethnic groups, reportedly attempted to submit a petition complaining about the campaign to ministers from Thailand, Myanmar, the Lao People's Democratic Republic, China and India who were meeting in Chiangrai on 24 July 2003 to discuss progress in ending drug trafficking. On 22 July 2003 he reportedly received threatening phone calls in Chiang Mai from police officers. On the same day, his wife was reportedly visited at their home by a drug suppression police officer and other officers from outside the regional police force who questioned her about the petition and her husband's activities. As a consequence, defenders are afraid to comment on the practices of security forces and their capacity to monitor human rights is limited.

55. The Special Representative was made aware of the intense sensitivity of the Government on this issue. The Attorney-General informed her that a government committee would examine concerns related to the anti-drugs campaign. However, defenders remain sceptical of the efficacy of the committee because of the very limited information that the police have so far submitted to it.

D. Situation of human rights defenders from Myanmar

56. The Special Representative has received information regarding general difficulties faced by human rights defenders from Myanmar in the context of their peaceful human rights work, including on the right to democracy, as well as specific cases of violations of their rights.

57. Defenders from Myanmar and other countries working in Thailand on the situation of human rights in Myanmar reported to the Special Representative that they were having increasing difficulty in obtaining visas allowing them to enter and remain in Thailand. Where visas are granted this is often only for periods of a few months, requiring defenders to cope with the expense of disruption to their work of regularly leaving Thailand and reapplying for visas from abroad. Defenders from Myanmar indicate that they face problems with the large majority of events – conferences and workshops – they organize in Thailand. A workshop on "Women and peace-building", organized for members of the Women's League of Burma on 19 May 2002 in Chiang Mai, was reportedly raided by the police who arrested 14 participants who did not have legal documents with them. A training course for ethnic minorities from Myanmar on environmental issues, organized in Chiang Mai in August 2002, was reportedly closed for one week following pressure from local authorities. On 30 November 2002 soldiers from the 9th Infantry Division reportedly visited the offices of the Shan women's network (SWAN) in Sangklaburi, ordering the staff to reveal their names, biographies and funding sources for their health, education and democratization activities. The Government indicated to the Special Representative that this action had been carried out so as to verify that SWAN and other NGOs in the area were engaged in conduct that was consistent with their status and that specific instructions "were given to the soldiers to carry out the task in a polite and appropriate manner and with due consideration for human rights practice". On 20 December 2002, the offices of Tavoy Women's Union (TWU) and other groups from Myanmar were reportedly ordered to close by soldiers from the 9th Army Division. On 21 January 2003, soldiers reportedly arrested the TWU Secretary-General and took away computers and documents. The Government indicated to the Special Representative that these actions were taken in response to suspicions that the TWU was engaged in activities that "could have negative repercussions on relations between Thailand and Myanmar" and because the TWU Secretary-General had entered the country illegally. On other occasions, defenders from Myanmar have been forced to pay sums of up to 100 dollars to local officials to obtain an informal "intelligence certificate" allowing travel from the border areas, where many are based, to Bangkok or other parts of the country.

58. On 7 December 2000, three democracy activists from Myanmar – Khaing Kaung Sann, Ko That Naing and Ko Hla Thein Tun - were reportedly arrested and deported to Myanmar where they were sentenced to 1' years' imprisonment. SWAN members report an increase in obstacles to their work in Thailand following their publication, on 19 June 2002, of "Licence to rape", a report on human rights violations in Myanmar. SWAN members report difficulty passing security checkpoints to reach the border between Thailand and Myanmar to gather information from refugees from Myanmar. SWAN offices have reportedly been placed under

surveillance and, on 9 September 2002, security forces reportedly told SWAN members to close them down for a few months. On 2 July 2002, the police reportedly raided the office of the All-Arakan Student and Youth Congress in Chiang Mai. In August 2002, the police in the Songkhla district of Kanchanaburi reportedly arrested, and sent across the border to Myanmar, 31 people from Myanmar of whom several were democracy activists. On 10 December 2002, the police reportedly arrested 28 youths from Myanmar who were attending a workshop to mark Human Rights Day. The offices of the Mon Youth Progressive Organization in Kanchanaburi Province were reportedly raided by soldiers in December 2002 who then ordered that the office be closed. On the 18 May 2003, one day before the Special Representative's mission began, two defenders from Myanmar attempting to re-enter Thailand were refused entry and were deported to the Philippines. The Special Representative raised this case with senior Thai authorities and wishes to acknowledge their immediate efforts to investigate the case. She was informed that the refusal was based on irregularities found in the defenders' travel documents.

59. Defenders report that articles in the Thai press, allegedly originating from the authorities, describe defenders from Myanmar as drug traffickers to publicly discredit them and that anti-drugs campaign killings have increased their vulnerability. On 14 May 2003, six migrant workers from Myanmar were reportedly killed in northern Thailand and defenders from Myanmar indicated to the Special Representative that they were afraid to report the incident to the local police whom they considered to be implicated. Many of these defenders report that they now exercise a strong degree of self-censorship to assure their safety.

60. While defenders from Myanmar have experienced difficulties in the past, they nevertheless consider that a past State policy of tacit acceptance of their work may now be changing to a more restrictive one. Ambiguity in their legal status in Thailand is a major cause of their sense of insecurity, leaving them vulnerable to fluctuations in the Government's policy towards Myanmar and to the whims of local authorities. The work of these defenders in monitoring the human rights of groups from Myanmar in Thailand, such as refugees and migrant workers, is as indispensable as their support for human rights and democracy inside Myanmar. Acknowledging the complexities in the situation of Myanmar defenders in Thailand, the Special Representative welcomes the willingness of the Minister of Foreign Affairs and the Minister of the Interior and the Governor of Chiang Mai to examine her concerns and to take whatever action they consider appropriate, in collaboration with other sectors of the Government, to strengthen security for these defenders and to enable them to continue their work.

III. SECURITY OF HUMAN RIGHTS DEFENDERS

A. Alleged collusion between local authorities and the private sector

61. The Special Representative received information on numerous instances in which human rights defenders allegedly encountered violations of their rights in the context of their action at a local district or provincial level. The most common feature of these cases was that defenders were seeking to raise concern with regard to the economic, social and cultural rights implications of a planned activity by individuals or companies from the private sector. Defenders have reportedly been killed, attacked, sent death threats, intimidated, placed under surveillance, arrested and detained by the police, and had civil and criminal court cases filed against them by

both private actors and the State. Defenders argued in almost all these instances that there was collusion between wealthy private-sector actors and local authorities. The Special Representative is concerned that in its effort to strengthen development the Government may actually be supporting violations of the right to development. The following paragraphs provide details of alleged incidents that were reported to the Special Representative.

62. Defenders report that thousands of migrant workers from Myanmar and elsewhere, working in Thailand without a legal permit, suffer poor working conditions because of their precarious legal status. Defenders report that employers collude among themselves and with the local labour department and immigration authorities against workers who raise labour rights concerns. Staff of MAP, a network of migrant workers' organizations in Thailand, were reportedly placed under surveillance by the authorities in Mae Sot. The Friends for Friends Club (FFC) reported collusion between employers and the Labour Protection Department in Lampoon, with employers warning Thai workers not to join unions while police and labour officials reportedly claimed that working conditions were fine. The FFC Chairperson, Mr. Venus Pueng Phorm, was reportedly told in September 2002 that if he did not resign from his job then his wife and friends would lose their jobs. Ms. Ampron Saejew was reportedly dismissed from her job with the Far East Textile Company, in Omnoi district, Samutsakorn Province, as a result of her union activities. The Government emphasized to the Special Representative that, despite a tremendous influx of migrant workers, the Department of Labour Protection and Welfare had instructed all its provisional offices to ensure that the protection of migrant workers was equal to that of ascended Thai labourers.

63. EMPOWER provides training for sex workers on safe sex work, occupational safety and human rights, provides outreach services, condoms and legal advice and organizes activities to mark HIV/AIDS Day and Women's Day. Defenders explained that in some brothels women are not allowed out of the building and that brothel owners resist efforts by EMPOWER to meet and support the sex workers.

64. Defenders report that land farmed by the hill tribes in northern Thailand is being taken over by private actors or the State and that many hill tribes people have no official proof of citizenship allowing them to claim rights to land, education and health services, freedom of movement and employment. Officials, however, claim that the tribes' agricultural practices damage the environment and that many are not actually from Thailand and the land is not theirs. The Northern Peasant Federation (NPF) is supporting the rights of farmers to farm public land which they argue was, sometimes illegally, sold in the 1990s to private-sector buyers and claim that today business people and local politicians are colluding to prevent farmers from working the land. In addition to AITT cases mentioned in the context of the anti-drugs campaign, NPF members were reportedly arrested in May 2002 in Lampoon Province, while Vacharin Uprajong, an NPF leader, was reportedly shot and injured. On 14 July 2002 Chutima Morlaeku, coordinator of the Association of Inter-Mountain Peoples Education and Culture in Thailand was reportedly arrested at Chiang Mai Airport and her home searched. In its comments, the Government denied that Chutima Morlaeku had been arrested and maintained that the search of her house was conducted in accordance with the law. The Community Forest Network reported that, after they set up roadblocks to prevent access by private-sector loggers to the forests in which they live, armed men came into the community in August 2002 and shot and injured a defender.

65. Protests by defenders against the negative health and environmental impact on local people of a rock quarry owned by private-sector actors were allegedly met by the killing of the leading defender, Narin Podaeng, on 1 May 2001. Boonyong Intawong, a community leader from the Wieng Chai District of Chiang Rai, opposing the Doi Mae Ork Roo quarry project, was reportedly killed on 20 December 2002.

66. Boonsom Nimnoi, a community leader opposing a plantation project in Petchburi Province was reportedly killed on 2 September 2002. Suwat Wongpiyasathit, an environmental activist opposing the creation of a landfill site by a private-sector company in Bangplee district was reportedly shot dead on 21 March June 2001, the day before he was due to meet with a Senate environmental committee.

67. Jurin Rachapol was reportedly killed in January 2002 in Phuket after campaigning against the destruction, by a private-sector company, of mangrove swamps filled with nesting birds. Pitak Tonewuth, a leader of the Environment Conservation Student's Club of Ramkhamhaeng University and adviser to the Chompoo river basin villagers, was reportedly killed on 17 May 2001. Sompol Chanapol, leader of the Environmental Conservation Group of the Kratae river basin was reportedly killed in July 2001. Luechai Yarangsi, President of an environmental protection association in Lampang Province, was reportedly shot at.

68. Preecha Thongpan, a community leader opposing a water treatment project in Nakorn Srithammarat Province, was reportedly killed on 27 September 2002. Jintana Kaewkao, a community leader opposing the construction of a coal-fuelled electricity-generating plant in Prachuab Khiri Khan Province, was reportedly shot at in her home on 14 January 2002. The following day Yuthana Khaemakriangkai, working with her, was reportedly shot and injured. Thongcharoen Sihatham, a leader of the Assembly of the Poor, was reportedly attacked on 20 April 2002.

69. The Special Representative was informed that arrests were made by the police in a few of these cases, but that all the suspects were subsequently released without trial. The alleged cases indicate a pattern of violations suffered by defenders at the local level involving collusion between local authorities and commercially powerful actors from the private sector. The Director of the new Liberties Committee of the Ministry of Justice acknowledged this local dynamic and the Government's wish to address it. Similarly, the Special Representative welcomes the commitment of the Governor of Chiang Mai to addressing any violations against defenders that might be occurring in the context of their support for the hill tribes and notes the establishment in May 2003 of a provincial committee to consult with the hill tribes leaders. She also notes that in some instances authorities have clearly supported defenders. For example at a meeting on trafficking attended by police and immigration officials, which was held in Chiang Mai in April 2003, Ministry of Labour officials reportedly supported workers at the Nut knitting factory in Mae Sot where a case was still pending as at May 2003, and police reportedly acted to end the abuse of workers in a gold mine in Mae Sot in February 2002.

B. General

70. The issue of the personal security of defenders has been raised directly or indirectly in earlier sections of the present report. The Special Representative noted a high level of sense of insecurity among the NGO community and other defenders with whom she met. Journalists,

Thai NGO staff, international NGO staff, including those from Myanmar, academics, community activists, members of Parliament and others all expressed varying degrees of concern that they may suffer some form of punitive measures if they were to speak out on human rights issues or for meeting with the Special Representative. The Special Representative emphasizes that none of these defenders reported any attempts to prevent their access to her during her visit and she received no reports of action taken against defenders after meeting with her.

71. Nevertheless, the perception among many defenders that they are at risk must be recognized. Many defenders specifically indicated that they were afraid to report possible human rights violations for fear of retaliation by local authorities, including possibly being killed under cover of the anti-drugs campaign. Such a widespread perception of insecurity among defenders implies that protection mechanisms, such as the NHRC, the Office of the Ombudsman, the Constitutional Court and the Parliamentary Committees, are not adequately supporting and protecting defenders. The Special Representative remains disturbed by this very important aspect of the situation of human rights defenders in Thailand.

IV. CONCLUSIONS AND RECOMMENDATIONS

72. The Special Representative recalls that Thailand has proven to be a haven for human rights defenders in the region, as attested by the fact that many organizations, including the United Nations, have chosen to establish offices there. However, the vitality of Thailand's human rights community is diminished by the limitations of existing institutions beginning with weaknesses in the implementation of the Constitution. The Constitutional Court has not proved itself able to apply the spirit of the Constitution. The NHRC appears genuinely independent but is handicapped by the absence of Government response to its recommendations. There is limited confidence among the affected public in public hearings and EIAs as mechanisms that genuinely reflect their environmental and other human rights concerns, although the Government reports that efforts are under way to reform the process to involve greater civil society participation and independence. General confidence in the judiciary is weakened by the fact that other actors in the judicial process - the police and public prosecutors - are frequently reported as contributing to the repression of human rights defenders.

73. There is limited acceptance among some authorities of the concept of peaceful dissent and of the fact that the critical role of defenders is a component and criteria by which the health of a democracy must be judged. Defenders have been assimilated by senior officials with "dark influences" and national security risks, and subjected to surveillance. Statements by the Government criticizing NGOs are heard by local police and other officials prompting the harassment and intimidation of defenders. Defenders working with the hill tribes, landless farmers and migrant workers face particular difficulties and the situation of defenders from Myanmar is especially worrying. There is concern that Thailand's regional human rights role may be declining. It is of fundamental importance for the region that this role be preserved.

74. In spite of her serious concern about these trends, the Special Representative welcomes several Government initiatives receiving wide support from the human rights community, including measures to address corruption and poverty, to support rural and farming populations, to support development and the establishment of new institutions,

such as the Ministry of Social Development and Human Security. The Special Representative believes that it is well within the Government's capacity to address weaknesses and to halt the negative trends overshadowing an otherwise positive environment for human rights, democracy and the rule of law.

75. The Special Representative acknowledges, once again, the very transparent approach taken by the Government to her visit with every effort made to provide her with free access to officials and locations and to respond directly to her questions.

A. Recommendations to the Government

76. The Special Representative recommends that the Government:

(a) Consider signalling stronger political support for the NHRC by giving priority to the implementation of its recommendations, demonstrating respect for its findings and supporting increases in its resources;

(b) Consider ways in which the Ministry of Social Development and Human Security:

- **(i) Consult with defenders in the development of its definition of "human security";**
- **(ii) Use the Declaration on human rights defenders as an integral component of its policies and programmes;**
- **(iii) Collaborate with the United Nations Country Team and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in order to build its programmes and capacity;**

(c) Consider ways of ensuring a more stable legal and practical environment for human rights defenders working on behalf of human rights in the region, in particular, consider the adoption of a policy that would ensure greater stability for defenders working to support respect for human rights in Myanmar, including opportunities to register and conduct their human rights activities in transparency and safety;

(d) Consider taking the initiative in holding consultations with human rights defenders and organizations so as to understand their concerns, allay their apprehensions, build mutual trust and dispel defenders' sense of insecurity by sanctioning State authorities that denigrate the human rights community;

(e) Consider giving greater opportunities for defenders representing hill tribes, landless farmers and migrant workers to find solutions to their human rights concerns;

(f) Taking into consideration reports by the NHRC, review and consider withdrawing prosecutions against defenders, including with regard to the hill tribes, landless farmers and Had Yai protesters;

(g) Reassess its approach to the right to protest and freedom of assembly and adopt a policy that assures a just balance between respect for the right to peaceful protest and the maintenance of public order;

(h) Ensure the prompt investigation of all violations reportedly committed against defenders, with appropriate judicial or other action;

(i) Consider the publication, in due course, of a report indicating action it may choose to take to address the recommendations contained in the present report.

B. Recommendations to Parliament

77. The Special Representative recommends that Parliament:

(a) Give the highest priority to legislative initiatives for strengthening organic law to give effect to constitutional human rights guarantees and fundamental freedom;

(b) Involve civil society in the development of new legislation to improve the protection of human rights defenders and in activities for the promotion of human rights;

(c) Strengthen efforts to act upon the reports, concerns and recommendations of the NHRC;

(d) Give closer scrutiny to government actions that have an impact on human rights, for example, in the context of major projects, and organize hearings to take into consideration the concerns of human rights defenders.

C. Recommendations to human rights defenders

78. The Special Representative recommends that human rights defenders:

(a) Maintain full transparency in their activities and promote peaceful means for the assertion of rights;

(b) Use peaceful advocacy to highlight laws that obstruct the work of human rights defenders or restrict the freedoms necessary to carry out their functions;

(c) Use the coalitions and networks for enhancing their security and create stronger links with parliamentary committees in order to raise concerns about their security.

D. Recommendations to the United Nations Country Team and the Asia Regional Representative of OHCHR

79. The Special Representative recommends that the United Nations Country Team and the Asia Regional Representative of OHCHR:

(a) Take note of the recommendations in the 2003 annual report of the Special Representative (E/CN.4/2003/104) to the Commission on Human Rights relating to the United Nations Country Teams and with reference to the reform process announced by the Secretary-General;

(b) Consider how the Country Team can support the Royal Government of Thailand in implementing the Declaration on human rights defenders in Thailand;

(c) Consider seeking support from OHCHR in identifying actions to implement the Declaration through the Country Team's programmes;

(d) Strengthen collaboration with NGOs and other human rights defenders based in Thailand;

(e) Establish contacts with the Senate Committee for People's Participation to identify areas of cooperation for strengthening the legal framework for human rights, the Rights and Liberties Department of the Ministry of Justice and the Ministry of Social Development and Human Security.

- - - - -