

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL THA 2/2024
(Please use this reference in your reply)

22 February 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 53/4, 51/8, 54/14, 53/12, 52/20, 52/5, 49/5 and 52/7.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **detention conditions of 43 Uyghur migrant individuals that may amount to cruel, inhuman or degrading treatment or even torture and which has reportedly caused the deaths of five Uyghur migrant detainees, including two minors.**

Reference is made to the treatment of asylum-seekers and irregular migrants in Thailand in previous communications, including [THA 2/2022](#), [THA 3/2021](#), [THA 8/2020](#), [THA 5/2019](#), [THA 5/2018](#), [THA 1/2018](#), [THA 5/2017](#), [THA 3/2015](#) and [THA 6/2013](#) sent by Special Procedures Mandate Holders to your Excellency's Government. We thank your Excellency's Government for the substantive responses provided for THA 5/2019, THA 1/2018, THA 5/2018, THA 5/2017, THA 3/2015 and THA 6/2013. We also appreciate the responses in acknowledgement of the communications received for THA 2/2022, THA 3/2021, and THA 8/2020, despite them not substantially addressing the concerns raised.

According to the information received:

Since March 2014, a number of Uyghur persons have been detained in life-threatening conditions in Thai Immigration Detention Centres and prisons. Five persons have since died. Currently 48 men remain under incarceration out of which five men are currently serving sentences of up to twelve years related to their attempt to escape immigration detention. 43 are held at Immigration Detention Centre of the Office of the Immigration Bureau (Suan Phlu) in Bangkok in life-threatening conditions.

Almost all currently in detention are part of a large group of approximately 350 individuals who were detained in 2014 after crossing the Thai border from China aiming to ultimately reach Turkey. According to the information received, three of the men currently held were detained when they were minors.

It is alleged that the families of the detainees have not been informed of the circumstances or the location of detention nor have the detainees been allowed to have contact with their family members while in detention. Up to this date, the detainees have been denied access to legal representation of their choice.

In July 2015, 173 Uyghur women and children were voluntarily transferred to Turkey, while 109 men, women and children were forcibly returned to China. The fate and whereabouts of those returned to China are currently unknown and it is further reported that a comprehensive risk assessment and review process regarding their repatriation and related risks of enforced disappearance, ill treatment, torture, and extrajudicial killings were not properly undertaken before repatriating them. Due to these forcible returns, many families were separated, including those of the individuals currently still in detention in Thailand.

It is reported that access to health care is inconsistent and insufficient to fulfil the healthcare needs of those currently in immigration detention in Thailand. In urgent cases detainees have been reportedly brought to a hospital in the latter stages of their diseases and returned quickly to detention, without receiving adequate medical attention. In addition, Uyghur detainees and prisoners have been reportedly denied access to health care, despite their pleas to the detention authorities. As a result, many detainees have developed serious health problems since being in detention or have experienced a worsening of pre-existing conditions, including those with chronic diseases. These include bowel cancer, heart and lung disease, high blood pressure, and skin conditions.

Since 2014, five Uyghur detainees, including two children, have reportedly died in Thai Immigration Detention Centres as a result of their prolonged detention, inhumane conditions in which they were held, and inadequate medical care.

On 21 April 2023, a 40-year-old man died of suspected poor circulation and heart failure, after nine years spent in the IDC Suan Phlu. Despite the worsening of his symptoms over the course of several weeks, he reportedly did not receive adequate and timely medical care, dying shortly after his arrival at the hospital. It is understood that he has a surviving wife and three children whose whereabouts are unknown and therefore that had reportedly not been informed of his death at the time of writing.

On 11 February 2023, a 49-year-old man died due to pneumonia, after almost nine years in IDC Suan Phlu. He did not suffer from pre-existing medical conditions but, during his detention, he reportedly developed heart issues and high blood pressure. Throughout his detention, he was reportedly denied adequate medical care by the Thai authorities. He was married and a father of four children.

On 1 August 2018, a 29-year-old man detained since March 2014 reportedly died of cancer for which he had reportedly received no adequate medical care whilst in detention.

On 22 December 2014, a three-year-old child died due to tuberculosis, after having been detained with the Uyghur group in Hat Yai Immigration Detention Centre in southern Thailand in unhygienic and cramped conditions since March 2014.

In June 2014, a new-born baby, born while her Uyghur mother was in detention, died at two days old.

According to the information received, the 43 men referred to above in the communication are held in unhygienic and overcrowded conditions at the Immigration Detention Centre of the Office of the Immigration Bureau (Suan Phlu), separated from other detainees, with a lack of appropriate and adequate nutritious food. Over the last ten years of their detention, the detainees of Uyghur ethnicity have not been permitted any legal or social visits, access to the exercise yard has been erratic and they have never had permission to make phone calls, remaining *incommunicado*. Notably, prolonged *incommunicado* detention amounts to ill-treatment and may amount to enforced disappearance. In addition, rare visits by NGOs were permitted in previous years when the men were held in regional detention centres.

Since July 2022, organisations have had very limited access to the group detained in the IDC Suan Phlu, with the exception of the National Human Rights Commission of Thailand, and a medical NGO which carried out sporadic supervised visits with groups of detainees during 2023.

Reportedly, Thailand has adopted the National Screening Mechanism (NSM), which concerns identifying and potentially protecting refugees in Thailand. On 27 March 2023, Thailand's Cabinet approved a regulation stipulating the procedure and eligibility criteria to be applied to anyone seeking protection under the NSM. However, the NSM excludes applicants "belonging to any group which is dealt with by specific mechanism or procedure by the Ministry of Interior". Considering that persons of Uyghur ethnicity are considered under the purview of the authority of the Thai National Security Council, they are prevented from accessing the protection provided by the NSM and any other asylum procedure within the country.

It is reported that the National Human Rights Commission of Thailand has recognised that "the detention of the Uyghur detainees by the Immigration Bureau for a long and indefinite period of time without clarity as to when they will be released or legally repatriated, is tantamount to an act or an omission of act which constitutes human rights violation."¹

While we do not wish to prejudge the accuracy of the aforementioned allegations, if the above allegations prove to be true, they may constitute a violation of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand in 1996, of the International Covenant on Economic, Social and Cultural Rights, acceded to by Thailand on 5 September 1999, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Thailand on 2 October 2007, of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Thailand on 28 January

¹ NHRCT's weekly press release on important news np. 39/2023

2003, and of the Convention on the Rights of the Child, ratified by Thailand on 27 March 1992, as well as the rules of customary international law, particularly concerning the principle of *non-refoulement*.

In this regard, we wish to stress that States should ensure that all returns fully respect the human rights of migrants and comply with international law, in particular the principle of *non-refoulement*. Involuntary returns cannot be lawfully carried out without due process of law: under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual's circumstances and protection needs, including in relation to the principle of *non-refoulement*, and the right to family life. In this connection, individuals facing deportation should have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions. In the absence of such procedures, the forcible returns carried out by the Thai authorities may violate the prohibition of arbitrary or collective expulsion and the principle of *non-refoulement*. The principle of *non-refoulement* is enshrined in the 1951 Refugee Convention and codified in article 3 of the CAT as an inherent element of the prohibition of torture and other forms of ill-treatment, being characterised by its absolute nature without any exception.

We, thus, express our serious concern about the alleged forcible return of 109 Uyghurs men, women, and children, often separating families, without an individual assessment of their protection needs under international human rights and refugee laws. We also wish to draw the attention of your Excellency's Government to the information received that this treatment of asylum-seekers is not confined to individuals of Uyghur ethnicity, but it is also recurrent with others seeking asylum in Thailand, including the Rohingya from Myanmar.

Against this background of the treatment of asylum seekers, especially noting the immigration detention of individuals lasting ten years in this case, we wish to recall the current standards established in international law concerning immigration detention. The Working Group on Arbitrary Detention has long asserted that while administrative detention is not prohibited in itself by international law, the irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows.² Also, such measures can amount to arbitrary detention if they are not carried out following the principle of proportionality and according to strict legal safeguards.³ Such safeguards include the need to determine, by law, the maximum period of detention and the right of every detainee to have their detention periodically reviewed. Additionally, any form of administrative detention or custody in the context of migration must only be applied as an exceptional measure of last resort and for the shortest period. Consequently, the detention of a migrant should not continue beyond the period for which the State can provide an appropriate justification, considering that both unjustified detention and detention proceedings carried out without due diligence amount to arbitrary detention.

Further, any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or another judicial authority. In light of the above, we express our grave concern over the Thai Immigration

² Working Group on Arbitrary Detention, [Revised Deliberation no. 5 on deprivation of liberty of migrants](#)

³ [A/HRC/13/30](#), Report of the Working Group on Arbitrary Detention, 18 January 2018

Act B.E.2522 (1979), according to which anyone who has no valid passport or visa, including refugees, asylum seekers and other migrants in vulnerable situations, can be subjected to imprisonment or a fine not exceeding THB 20,000. After serving the sentence, migrants will be transferred to Immigration Detention Centres for deportation where they may be held for an indeterminate period of time before being deported, such as the case at hand.

Also in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion or other status [...]. The Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. We would also like to turn your Excellency's Government's attention to the recommendation of the UN General Assembly ([A/RES/67/172 \(2013\), para. 4](#)) that States review detention periods to avoid excessive detention of irregular migrants and to implement, whenever possible, alternative measures to detention.

Particularly concerning is the reported immigration detention of children. The Committee on the Rights of the Child has clearly stated that the immigration detention of any child is a violation of children's rights and always contravenes the principle of the best interests of the child. Within this context, we also wish to raise concerns over your Excellency's Government's reservation to article 22 of the Convention on the Rights of the Child, which specifically addresses the rights and protections ensured for children seeking asylum and refugee status. Such a provision is essential in guaranteeing the rights of children within the context of asylum seeking. In this regard, while we would like to acknowledge the Inter-ministerial Memorandum of Understanding on the Determination of Measures and Approaches Alternatives to Detention of Children in Immigration Detention Centres (the MOU-ATD) of January 2019, we are deeply concerned about its lack of application for children of Uyghur ethnicity. We are equally concerned about the slow process to release children from detention and with the information received that the children released risk re-detention once they turn eighteen.

Furthermore, the right to life, codified in article 3 the Universal Declaration of Human Rights and in article 6(1) of ICCPR, is considered a customary rule and the prohibition of arbitrary deprivation of life a *jus cogens* norm, to which no derogations can be made, under any circumstances. In this regard, we also refer to the Convention on the Rights of the Child, which enshrines specific obligations of States toward the protection of children. Considering that two of the five people who allegedly died due to their detention were children, we would like to turn your Excellency's Government's attention to articles 2 and 6 of the CRC, which guarantee the right to life to every child, without distinction of race, colour, sex, language, religion, national, ethnic or social origin, property, disability, birth or other status.

Against this background, we underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary

Executions (the [Minnesota Protocol on the Investigation of a Potentially Unlawful Death](#) (2016)). As it was highlighted by the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, on Deaths in Prison ([A/HRC/53/29](#)), States assume direct responsibility for the lives of individuals deprived of liberty and they may not use the lack of financial resources, logistical problems or the privatization of prisons to reduce this responsibility. It follows that there is a presumption that States are responsible for the deaths of prisoners and detainees, entailing their obligation to investigate all deaths in custody and to do so in a prompt, effective, thorough and transparent manner. Considering the above, we urge your Excellency's Government to investigate the suspected deaths of the five Uyghur individuals in the Bangkok IDC Suan Phlu and other immigration detention centres in Thailand.

It is also noted that the Human Rights Committee, in its general comment no. 31,⁴ affirmed that the enjoyment of the rights enshrined in the ICCPR "is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party."

Within this context, we further wish to express our serious concern for the physical and psychological safety of Uyghur migrants which we believe to be at risk of retaliation in direct connection with their values and beliefs, as already ascertained by the Office of the High Commissioner for Human Rights.⁵ Accordingly, article 18 of the ICCPR protects the right to freedom of thought, conscience and religion or belief, which entails the obligation of your Excellency's Government to ensure the respect for the rights of the Uyghur individuals within your territory. Similarly, we refer to article 26 of the ICCPR, which stresses that all persons are equal before the law and are entitled to the equal protection of the law without any discrimination. In light of this context, we express our utmost concern over the allegation of unequal treatment of detainees of Uyghur ethnicity, who have been prevented from receiving visits and are kept isolated from other detainees.

As it relates to non-discrimination, we would like to highlight that all international human rights instruments, complemented by various protocols, provide for the prohibition of discrimination based on any status. For example, the right not to be discriminated against is stated in article 2 of the UDHR and in all human rights treaties. Other provisions, for example, in particular article 7 of the UDHR and article 26 of the ICCPR, reaffirm the right to equality before the law and equal protection of the law without discrimination. These provisions of the ICCPR have been interpreted by the UN Human Rights Committee to include equal protection of non-citizens. As the Committee has explained, except with respect to laws relating to specific political rights and rules concerning freedom of movement, "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens" (general comment no. 15). Thus, while it is Thailand's prerogative to enforce immigration laws, it must do so within the limits of international human rights law and may not do so in a way that negates a victim's access to justice.

⁴ [CCPR/C/21/Rev.1/Add.13, 2004](#), Para. 10

⁵ [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#)

The allegations also appear to present a breach of the guarantees of a fair trial, provided by article 14 of the ICCPR. We respectfully recall that article 14(1) sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Article 14 of the ICCPR provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, counsel of their own choosing.

We would like to further refer your Excellency's Government to articles 12.1 and 12.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by Thailand in 1999, which establishes that an obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights (CESCR), general comment no. 14, para. 34). In addition, we would like to refer to the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9).

Particularly concerning the right to health in the context of deprivation of liberty, it is worth mentioning the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ([A/HRC/38/36](#), 2018), which asserts that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that “[v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”. He also stresses that “for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality.”

Moreover, if the above-mentioned allegations prove to be accurate, they may indicate a *prima facie* violation of article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), regarding the prohibition and elimination of racial discrimination in all its forms without distinction as to race, colour, descent, or national or ethnic origin, in enjoyment of human rights.

Additionally, if confirmed, the reported conditions of detention and the lack of adequate medical assistance to detainees, especially in the face of their worsening health due to the conditions of detention, could amount to cruel, inhuman and degrading treatment or punishment in violation of article 5 of the UDHR, article 7 of the ICCPR and at least articles 1, 2 and 16 of the CAT.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be

grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information regarding the number of persons held in immigration detention in Thailand, the conditions of the places of detention, including the total number of persons of Uyghur origin, disaggregated by age and gender.
3. Please provide detailed information on the measures undertaken to ensure that persons of Uyghur origin held in immigration detention are authorized to communicate with and be visited by their families, legal counsels, or any other person of their choice.
4. Please provide the details, and where available, the results, of any investigation and judicial or other inquiry undertaken in relation to the above allegations of ill-treatment, particularly the lack of medical care, and arbitrary detention, including prolonged *incommunicado* detention.
5. Please explain whether these investigations were conducted in compliance with international standards, particularly the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
6. Please provide information regarding the National Human Rights Commission of Thailand (NHRCT)'s role in relation to investigations in this matter and its mandate in detention monitoring.
7. Please provide information on the legal basis for the prolonged and indefinite detention of the Uyghur individuals mentioned above in light of the requirements, under international human rights law, for immigration detention to meet the conditions of legitimacy, legality, necessity, and proportionality, noting that some individuals have been detained for nearly 10 years in Immigration Detention Centres in Thailand.
8. Please provide detailed information on the legal basis for their *incommunicado* detention, including their prolonged solitary confinement, and for the alleged ill-treatment of Uyghur migrants in custody, including children.
9. Please provide information concerning the conditions of detention of the Uyghur individuals, including their physical and mental well-being and access to medical care. Please also provide information on their access to legal representation of choice and to their families while in detention.
10. Please provide clarification on what constitutional, legislative and policy safeguards have been put in place by your Excellency's

Government to protect the Uyghurs against all forms of discrimination in Thailand, including those in detention.

11. Please indicate what measures have been taken by your Excellency's Government to protect the human rights of migrants, including to ensure the full respect of the principle of *non-refoulement*, the prohibition of arbitrary and collective expulsions and the effective access to asylum and other international protection procedures in Thailand, without discrimination.
12. Please provide information on measures taken by your Excellency's Government towards ending immigration detention of children, as well as efforts made to provide effective protection, adequate care and non-custodial reception for migrant children.
13. Please provide information on measures taken by your Excellency's Government in developing alternatives to the detention of undocumented migrants, asylum seekers and refugees, including children, as per the recommendation by the Committee on the Elimination of Racial Discrimination (CERD).⁶
14. Please provide information on the risk assessment and review process regarding the repatriation of the Uyghur 109 men, women and children to China in 2015.
15. Please provide information on measures taken by your Excellency's Government to explore safe and sustainable resettlement options in third countries and to ensure that families are not separated in the process.

We would appreciate receiving a response to this communication within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future since in our view the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

We would also like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the

⁶ CERD/C/THA/CO/4-8

Government, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. Similarly, the Working Group on Enforced or Involuntary Disappearances may also transmit the individual cases through its standard humanitarian procedure. The Government is required to respond separately to the allegation letter and the regular procedures of each Working Group.

Please accept, Excellency, the assurances of our highest consideration.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Matthew Gillett

Vice-Chair on Communications of the Working Group on Arbitrary Detention

Aua Baldé

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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Special Rapporteur on the independence of judges and lawyers

Gehad Madi

Special Rapporteur on the human rights of migrants

Nicolas Levrat

Special Rapporteur on minority issues

Nazila Ghanea

Special Rapporteur on freedom of religion or belief

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party since 29 October 1996, particularly to articles 6, 7, 10, 16, 18, and 24 which establish the right to life, prohibition of torture, the respect for the inherent dignity of the human person, the recognition as a person before the law, the right to freedom of religion and belief and right to protection for every child, respectively. It is noteworthy that the general comment no. 31 of the Human Rights Committee reaffirmed that the rights enshrined in the ICCPR shall be guaranteed to all individuals, regardless of their nationality, such as asylum seekers, refugees, migrant workers or others who find themselves in the territory or subject to the jurisdiction of the State Party⁷.

Within this context, article 6 of ICCPR provides for the right to life, a right also enshrined in article 3 of the UDHR. We would like to remind that the duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of the ICCPR would be violated (CCPR/C/GC/36, para. 30). Additionally, State parties to the ICCPR must adopt special measures and respond urgently and effectively in order to protect individuals who find themselves under a specific threat (CCPR/C/GC/36, para 23).

In relation to the protection of the right to life, we underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the [Minnesota Protocol on the Investigation of a Potentially Unlawful Death](#) (2016)), and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) In this sense, States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (CCPR/C/21/Rev.1/Add. 13, para. 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Additionally, the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, on Deaths in Prison ([A/HRC/53/29](#)) reiterates that “States assume direct responsibility for the lives of individuals deprived of liberty and they may not use lack of financial resources, logistical problems or the privatization of prisons to reduce this responsibility.” It also asserts that States are not only presumably responsible for the deaths of prisoners, but they also have the obligation to investigate every prison death, which must be undertaken by an independent, impartial expert body, in a prompt, effective, thorough and transparent manner (para. 47).

⁷ [CCPR/C/21/Rev.1/Add. 13, 2004, Para. 10](#)

We wish to refer to article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution." We would like to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of *non-refoulement* and the prohibition of arbitrary or collective expulsions.

The principle of *non-refoulement* is enshrined in the 1951 Refugee Convention but is also considered as customary international law. The principle is also codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Thailand acceded in 2007, prohibiting all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations, in the place to which they are to be transferred or removed.

In this respect, we would like to draw the attention of your Excellency's Government once again to General Comment No.31 of the Human Rights Committee,⁸ which specifies that State obligations under article 2 of the ICCPR entail "an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm" (para. 12). The principle of *non-refoulement* under international human rights law is characterized by its absolute nature without any exception, applying to all persons, including migrants, at all times, irrespective of their citizenship, nationality, statelessness or migration status. In addition, principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establishes that no one shall be returned or extradited against his or her will to a country where there are substantial grounds for believing that he or she may be subjected to extra-legal, arbitrary or summary execution in that country. In addition, the Declaration on the Protection of all Persons from Enforced Disappearances⁹ states that no State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance (art. 8.1). For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights (art. 8.2).

We also wish to recall the current standards established in international law concerning immigration detention. The Working Group on Arbitrary Detention has long asserted that while administrative detention of asylum seekers is not prohibited in itself by international law, it can amount to arbitrary detention if it is not carried out according to the principle of proportionality and accordingly to strict legal safeguards¹⁰. In this sense, it has affirmed that "If there has to be administrative detention, the principle of proportionality requires it to be the last resort. Strict legal limitations must be observed and judicial safeguards be provided for. The reasons put forward by States to justify detention, such as the necessity of identification of the migrant in an irregular situation, the risk of absconding, or facilitating the expulsion

⁸ [CCPR/C/21/Rev.1/Add.13](#)

⁹ Declaration on the Protection of all Persons from Enforced Disappearance (1992)

¹⁰ [A/HRC/13/30](#), Report of the Working Group on Arbitrary Detention, 18 January 2018

of an irregular migrant who has been served with a removal order, must be clearly defined and exhaustively enumerated in legislation.”¹¹ Regarding procedural safeguards on detention, generally, we refer to article 9(3) of the ICCPR, which requires that individuals arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power and be entitled to trial within a reasonable time or to release. In accordance with general comment no. 35¹², 48 hours is ordinarily sufficient to satisfy the requirement of promptness and any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

Furthermore, articles 9 and 14 of ICCPR guarantee the rights to liberty and security of the person and to a fair trial. Concerning such provisions, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

In addition, the Working Group on Enforced or Involuntary Disappearances would like to reiterate that, under international law, the failure or refusal to acknowledge a deprivation of liberty by State agents or persons or groups of persons acting with their authorization, support, and acquiescence, constitute enforced disappearance, irrespective of the duration of the deprivation of liberty or the type of concealment concerned. State authorities are thus obliged to take all necessary measures to effectively protect the rights of the persons deprived of their liberty, as it automatically assumes responsibility for their lives, physical integrity, and wellbeing.

We refer to article 18(1) of the ICCPR, which stresses that “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Concerning this matter, the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,¹³ states in its article 2(1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief”. Furthermore, we would like to refer your Excellency’s Government to article 4(2) of the abovementioned Declaration, according to which: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs.”

We would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in at least articles 1, 2 and 16 of the Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (CAT), acceded to by Thailand on 2 October 2007, and in article 7 of the ICCPR. We also wish to draw the attention of your Excellency’s Government to paragraph 27 of General Assembly resolution 68/156, which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or

¹¹ Ibid., para. 59

¹² Human Rights Committee, [General Comment 35](#), para.33

¹³ UN [Res. 36/55](#)

degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

We further would like to refer to the body of standards and guidelines governing conditions of detention and treatment, not least the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), based on the obligation to treat all prisoners with respect for their inherent dignity and value as human beings, in particular rule 27 which states that “All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

Particularly concerning the right to health within the context of deprivation of liberty, the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, on Deaths in Prison ([A/HRC/53/29](#)) affirms that “[p]risoners should be treated with dignity. States should ensure that prisons are safe, habitable, not overcrowded, clean and fireproof and that utilities are operational; that nutrition is sufficient; that potable water is available in sufficient quantity; that prisoners’ health is monitored and that necessary steps are taken to prevent physical and mental illness and injury, including self-harm; (...) and that prisoners are able to maintain contact with family and friends.” In line with article 10 of the ICCPR, we reiterate that every detainee within the Thai jurisdiction should be treated with humanity and respect for their inherent right to dignity.

Indeed, in its General Comment on the right to recognition as a person before the law in the context of enforced disappearance,¹⁴ when the deprivation of liberty of a person is not acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance places the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms. Additionally, the Working Group Enforced or Involuntary Disappearances has also observed that the enforced disappearances of human rights activists and persons actively promoting the enjoyment of economic, social and cultural rights, are used as a repressive tool to deter the legitimate exercise, defence or promotion of the enjoyment of these rights. Due to their collective character, such measures also violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights.¹⁵

In its report to the UN Human Rights Council on enforced disappearances in the context of transnational transfers,¹⁶ the Working Group noted the increasing practice of force returns by States in violation of article 8 of the Declaration and the principle of *non-refoulement*. It noted that some enforced disappearances may be transnational in nature, even if there is no consent of the host State or transnational transfer of the victim per se. In this sense, the Working Group reiterates that, however

¹⁴ [A/HRC/19/58/Rev.1](#)

¹⁵ [A/HRC/30/38/Add.5](#)

¹⁶ [A/HRC/48/57 \(undocs.org\)](#)

it is qualified, the practice of States resorting to the deprivation of liberty of individuals and refusing to acknowledge it or to disclose the fate or whereabouts of the individual concerned, for whatever purpose or duration and in whatever context, constitutes an enforced disappearance, in violation of *jus cogens* norms of international human rights law. We reiterate that *non-refoulement* prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman, or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations.

In addition, the report on enforced disappearances in the context of migration¹⁷ states that among the main obligations of States is not to expel, return (*refouler*) or extradite a migrant to another State where there are substantial grounds to believe that she/he would be in danger of enforced disappearance (para. 59), that all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary or short-term disappearances (para. 60), and all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary disappearances. Accordingly, all migrants deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise their rights are assured (para. 63).

Considering the deaths of two children while in detention, we recall the Convention on the Rights of the Child, ratified by Thailand in 1992. Articles 2 and 6 guarantee the protection of the right to life to all children, without discrimination. Regarding the immigration detention of children, we wish to refer to the position of the Committee on the Rights of the Child, which affirms that detaining children for migratory purposes is always a violation of their rights and against the principle of the best interests of the child. Likewise, the General Comment of the Working Group on children and enforced disappearances,¹⁸ emphasises that child victims of enforced disappearance suffer particularly severe harm in these situations and the separation of children from their families has specific and especially serious effects on their personal integrity that have a lasting impact and causes great physical and mental harm (paras. 1 and 6) and thus, States should pay particular attention to the expeditious resolution of cases involving child victims of enforced disappearance (para. 37).

We wish to bring to the attention of your Excellency's Government the right to an effective remedy established by article 2.3(a) of the ICCPR and article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

Moreover, we would like to remind your Excellency's Government of its obligation to protect lawyers and enable them to exercise their functions freely in accordance with Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders on 7 September 1990. Principles 1, 2, 7-8, in particular, contain the States' obligations to ensure

¹⁷ [A/HRC/36/39/Add.2](#)

¹⁸ [A/HRC/WGEID/98/1](#)

prompt and effective access to lawyers. Principle 16 requires Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and to prevent lawyers from being threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards, and ethics. Principle 18 expressly provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions. According to principle 21, it is the duty of the competent authorities to ensure lawyers access to appropriate information, files, and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

We would also like to bring to your attention the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, resolution 67/187, adopted by the General Assembly in 2012 provides that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Principle 2 states that "States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system."

These Guidelines further state that "it is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid" (principle 3) and that: "Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures" (principle 10).