

article

- 2(3). Each State Party to the present Covenant undertakes:
- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - c) To ensure that the competent authorities shall enforce such remedies when granted.

of the International Covenant on Civil and Political Rights

About *article 2*

article 2 aims at the practical implementation of human rights. In this it recalls article 2 of the International Covenant on Civil and Political Rights (ICCPR), which reads,

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

This is a neglected but integral article of the ICCPR. If a state signs up to an international treaty on human rights, it must implement those rights and ensure adequate remedies for persons whose rights have been violated. Mere talk of rights and formal ratification of international agreements has no meaning. Rights are given meaning when they are implemented locally.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

Some persons may misunderstand this as legalism. Those from countries with developed democracies and functioning legal systems especially may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

Contents

SPECIAL REPORT:

RULE OF LAW VERSUS RULE OF LORDS IN THAILAND

- Introduction: Rule of law versus rule of lords in Thailand 2
Editorial board, article 2
- Institutionalised torture, extrajudicial killings & uneven application of law in Thailand 8
Asian Legal Resource Centre
- Recommendations to the UN Human Rights Committee regarding Thailand 51
Asian Legal Resource Centre

APPENDICES

- Appendix I: Collusion and influence behind the assassinations of human rights defenders in Thailand 56
Tyrell Haberkorn, PhD Candidate, Cornell University
- Appendix II: Partial list of persons publicly reported killed in Thailand during the 2003 'war on drugs' 64
- Appendix III: Letters by the ALRC & AHRC concerning institutionalised torture, extrajudicial killings & uneven application of law in Thailand 78
- Appendix IV: ALRC addresses UN on disappearances and torture in Thailand 108
- Appendix V: Anticipating Thailand's missing-persons centre 112
Asian Human Rights Commission
- Appendix VI: To uphold the Constitution of Thailand, axe criminal libel 115
Asian Human Rights Commission

Introduction: Rule of law versus rule of lords in Thailand

Editorial board, *article 2*

This is the second special report by the Asian Legal Resource Centre (ALRC) published in *article 2* on torture, extrajudicial killings and uneven application of law in Thailand. The June 2003 edition consisted of a special 44-page report, 'Extrajudicial killings of alleged drug traffickers in Thailand' (*article 2*, vol. 2, no. 3), in the aftermath of some 2500 killings. Writing then, Basil Fernando, executive director of the ALRC, noted that the law enforcement agencies directly or indirectly involved in these extrajudicial killings would further lose legitimacy and integrity, harden links with criminals, and act with greater secrecy and deception.

Unfortunately, events since in Thailand have proven these earlier predictions correct, as a new authoritarian rule has asserted its prerogative to direct the country without regard to international human rights standards. Persons are killed or disappeared daily in the south; targeted killings by hired guns are on the rise; torture is believed widespread but law enforcement officers continue to enjoy impunity for their actions; political opponents to the current administration are facing growing threats to their personal and financial security. In its inaugural report released during 2004, the National Human Rights Commission of Thailand rightly spoke of the country as "regressing towards a culture of authoritarianism, instead of progressing to a culture of human rights".

The purpose of this report

The purpose of this report, 'Rule of law versus rule of lords in Thailand', is not just to highlight such gross abuses of rights, but also to demonstrate that in Thailand there is as yet no effective way to counter these abuses through existing legal, constitutional and social avenues. Without the means to obtain effective investigations and redress for human rights violations, there is very little meaning to human rights at all. It follows, for instance, that the Thai army commander-in-chief is able to go on television stating that no serious disciplinary action is needed against generals found to have caused mass deaths in custody.

Anyone seriously concerned about the future of human rights in Thailand and the prevention of such abuses should ponder these comments, and concentrate on how to enable effective investigations, prosecutions and redress for victims.

When state parties ratify the International Covenant on Civil and Political Rights, they undertake to provide legislative, judicial and administrative measures in accordance with article 2 so that citizens may enjoy the rights enshrined in the covenant. Without these measures, ratifying the Covenant is meaningless. At home and abroad the government may voice its commitment to human rights, but these will be words of no significance in the absence of steps to improve the channels needed to bring effective investigations and redress. This is what Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, rightly refers to in his 2005 annual report as the ‘key challenge of accountability’. “The essential thrust of international human rights law is to establish and uphold the principle of accountability for measures both to protect human rights and to respond fully and appropriately to violations of those rights,” he writes. “If measures are not in place to prevent and to respond to extrajudicial, summary, and arbitrary executions, they are unlikely to be effective in responding to other human rights violations either.”

Responding to extrajudicial executions and other gross human rights abuses means having in place the avenues for independent investigation and judicial inquiry. This requires political decisions, which in turn require strong will and serious discussion. However, the established order in Thailand has a deep and long-standing resistance to investigation and inquiry. Fear of investigation is a natural part of its political and social norms. Denial of proper inquiry is the routine. When the government of Thailand takes up and leads discussion on human rights abuses therefore, its first aim is to ensure that its exercise of authority will not be affected. Victims of abuses, who belong to a population that has never seen a serious effort to uncover the truth, accept whatever little they can get—perhaps some kind words or a handful of money—with resignation. Intellectuals and progressives cover up their utter powerlessness and struggle to maintain some form of national pride by speaking about historic struggles and constitutional developments, as if the dismal killings, torture and disappearances were not all that bad.

The 1997 Constitution of Thailand has been called progressive. It was a significant victory after a protracted struggle to overcome authoritarian structures and introduce democratic ones. However, the making of a constitution is only a preliminary exercise. The test of a constitution lies not in its contents but in what is done to assert the rights it proclaims. Where laws and agencies do not accompany these, a constitution is of little use. The efforts that gave rise to the 1997 Constitution may have awoken a new type of resistance to change among the establishment. It will be put to greater tests still. There will be

“The established order in Thailand has a deep and long-standing resistance to investigation”

“When the role of the judiciary is deliberately circumscribed as in Thailand today, where can people turn to obtain their rights?”

many questions about the possibility of democratic forces withstanding constitutionally legitimate forms of authoritarian rule, such as the overwhelming majority obtained by the current government in the last election.

This point is made by the ALRC in its submission to the Human Rights Committee, where it states in paragraph 8 that

In many respects, the thinking of the ruling elite in Thailand continues to be deeply feudal and contrary to the principles of modern governance and justice. Despite the surface appearance of democracy and respect for human rights in the country, it is still the elite and its values that predominate. It is still expected that a general should escape punishment for mass killings, that a political leader should be permitted to threaten publicly persons who question his authority, that a senior police officer should endorse torture, that a villager should be killed for being an alleged drug dealer. On paper, Thailand now adheres to the rule of law; in practice, it is still subjected to the rule of lords. Although the democratic 1997 Constitution suggests the possibility of change, it has become clear in recent times that ancient authoritarian practices and thinking are still very much in place.... The persistent reinforcement of old practices, under the guise of seemingly modern institutions in Thailand, continues to have a tremendously detrimental albeit subtle effect on the possibility of effecting rights under the Covenant.

The role of the UN Human Rights Committee

While several other Asian countries provide some means by which people who suffer human rights abuses can seek redress through directly appealing to higher courts on constitutional grounds, no such avenue exists for citizens of Thailand. Therefore, the citizen is denied the right of redress that the government of Thailand has guaranteed to provide under the Covenant.

Here is a problem for the UN Human Rights Committee, which is due to consider Thailand's initial report under the Covenant during its 84th session in 2005. It is also a problem that speaks to larger difficulties facing the global human rights movement, about which the UN Secretary General Kofi Annan has talked recently. When the Human Rights Committee meets to consider Thailand's record on human rights, it will be meeting with representatives of the executive. However, the executive cannot be the arbiter of the executive. That is the role of the judiciary. When the role of the judiciary is deliberately circumscribed so as to be unable to serve this function, as in Thailand today, where can people turn to obtain their rights? What can be done about this internationally?

Among his recent proposals for radical reform to the United Nations human rights bodies, the Secretary General has identified the need for major changes to the functioning of treaty bodies, which are the independent guardians of those human rights negotiated and accepted over the years. In his April 7 statement to the 2005 annual session of the UN Commission on Human Rights he stated that they must be able to “better carry out their mandates... to function as a strong, unified system”. The Human Rights Committee is among these. Although the

strongest of treaty bodies, the Committee needs to be much improved, to be more accessible, fast and active. It needs to offer strong and salient recommendations based on detailed understanding of defects in a domestic system, which can be pursued within a short period of time.

What will happen when Thailand comes before the Committee? Will diplomatic niceties prevail over the need to have the state realise the gravity of its failure to fulfil its obligations in accordance with article 2 of the Covenant? Can it enter into a rigorous dialogue with the government of Thailand that may effect real meaning for its people? Or will the opportunity to raise serious international discourse on the deep systemic human rights problems in Thailand again be lost? In fact, the maintenance of national pride now very much depends on serious discourse, and not upon new denials or convenient rhetoric.

Recalling the challenge of article 2

This challenge posed by article 2 is a challenge for everyone—the government, the people of Thailand, and the international community, by way of its organisations. The challenge is: can we be serious about preventing gross human rights abuses, and provide redress where they do occur? Perhaps the questions that also needs to be asked are: when violations of human rights occur, how serious are the persons who speak out in condemnation, and what do they really want to achieve? If no one is genuinely committed to stopping such abuses then it will be wishful thinking to expect that they will disappear on their own. What is required is the human will to intervene, stand against such abuses, and demand and obtain real investigations and exposure of all the details of abuse so that the public will begin to believe that there are concerted efforts to bring about change.

The Secretary General's April 7 statement too has raised this challenge for the whole world. The global human rights movement, he rightly pointed out, has ossified. Instead of fighting for meaningful change, it has grown cynical and withdrawn from many of the critical issues facing our time. And foremost among his remarks on the need for bold and comprehensive changes to the UN approach to dealing with human rights, the Secretary General at last laid emphasis firmly on implementation:

The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms - the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation.

The ALRC has made exactly this point for a long time now. It was the reason for the birth of *article 2* in 2002, when its inaugural edition emphasised that the time has arrived to move from articulation to implementation of human rights. The introduction to the first edition, 'Open letter to the global community: Let us rise to article 2 of the ICCPR' read in part thus:

“The UN Secretary General has at last laid emphasis firmly on implementation”

“The concentration of actual power in the hands of the executive cannot be sustained if human rights are to be given real meaning”

It is time for the global human rights movement to examine why it may not yet be achieving real improvement in the global human rights situation. One factor hindering honest examination is the belief that improvement of knowledge about human rights will by itself end human rights violations. This is a myth based on the corresponding belief that education is itself capable of improving things. In reality human rights can only be implemented through a system of justice. If this system is fundamentally flawed, no amount of knowledge—no amount of repetition of human rights concepts—will by itself correct its defects. Rather, these need to be studied and corrected by practical actions. Hence research and intimate knowledge of micro-level issues must become an integral part of human rights education and related work. This is the key issue in promoting and protecting human rights.

The work of human rights monitoring mechanisms is mainly based on correction of individual violations. This approach is inadequate when dealing with systemic breaches. For example, a country may be condemned for acts of torture, mass murder, crimes against humanity and other violations, and a monitoring body may make some recommendations to correct these. However, monitoring bodies have neither the mandate nor capacity to engage in studies on the actual functioning of components within the justice system—the police, prosecutors and judiciary—through which such recommendations have to be achieved. Thus, even if one person or another is punished, the actual system allowing violations remains, and may even get worse.

Another wrongly held belief is that enacting legislation on human rights will by itself result in improvements of rights. Legislation can work only through the mechanisms for administration of justice in each country. If those mechanisms are fundamentally flawed then legislation will remain simply in the books and will be used merely to confuse monitoring bodies into believing that actions have been taken to improve conditions. For example, a constitution may provide for fair trial, however the criminal investigation, prosecution and judicial systems may not have reached a credible standard. Such legislation then only mocks the victims and cynically manipulates monitoring bodies and the international community.

article 2 is being inaugurated to draw global attention to article 2 of the ICCPR, and make it a key concern of all partners in the global human rights community. This integral article deals with provision of adequate remedies for human rights violations by legislative, administrative and judicial means. Sadly, article 2 has become the forgotten component of the ICCPR. There is a dearth of relevant international jurisprudence, and hardly any mention of it in the enormous volumes of annual literature on human rights.

The Secretary General’s comments now make it possible to at last begin strenuous international efforts for implementation of human rights standards in accordance with the principles established under article 2, as articulated in this journal over three years ago.

For those who are serious about the meaning of article 2 in Thailand, the time has come to demand that the historic limitations to judicial power in the country be overcome. The concentration of actual power in the hands of the executive cannot be sustained if human rights are to be given real meaning. They will only seriously take root through developments

in the judiciary together with the participation of people's organisations. This is the meaning of article 2, and the significance of the rule of law gaining way over the rule of lords.

The contents of this report

The body of this report consists of the recent submission on Thailand to the UN Human Rights Committee by the ALRC in anticipation of the country coming for review. That 104-page document, 'Institutionalised torture, extrajudicial killings and uneven application of law in Thailand', was submitted to the Committee in March 2005. The Committee will consider Thailand's compliance with the International Covenant on Civil and Political Rights in July. The original document has also been made available in full on the ALRC website (www.alrc.net).

In this report, the submission has been broken into a number of parts. Some sections have also been excluded, where they had been published in earlier editions of *article 2*, notably in the 'Extrajudicial killings of alleged drug traffickers in Thailand' special edition. Therefore, there have been minor changes in content to allow for publication. In particular, numbering and references of appendices have been modified. Other text is unchanged.

The body of the 'Institutionalised torture, extrajudicial killings and uneven application of law in Thailand' submission follows, as do the ALRC's recommendations to the Human Rights Committee.

The appendices include a partial list of persons reported killed during the 2003 'war on drugs' and letters by the ALRC and AHRC concerning institutionalised torture, extrajudicial killings and uneven application of law in Thailand, which appeared in the original submission. Additionally, there is an article by Tyrell Haberkorn, which was also submitted to the Human Rights Committee, by the Thai Working Group on Human Rights Defenders, two recent statements by the AHRC, and oral statements by the ALRC to the 2005 annual session of the Commission on Human Rights. One of the latter includes a statement to the Commission by the wife of disappeared human rights defender and lawyer Somchai Neelaphajit.

Acknowledgment & dedication

A number of persons who prefer to remain unnamed made important contributions to the contents of this report, and continue to make important contributions for the protection of human rights in Thailand.

The report is dedicated to the victims of torture in Thailand who are struggling to obtain their fundamental rights to redress, which may perhaps be realised once Thailand has ratified the UN Convention against Torture and introduced it into domestic law. It is also dedicated to Somchai Neelaphajit, whose tragic disappearance has become a symbol and a cause for human rights defenders in the country and beyond.

Institutionalised torture, extrajudicial killings & uneven application of law in Thailand

Asian Legal Resource Centre

Preamble

1. The Asian Legal Resource Centre (ALRC) is a regional non-governmental organisation holding General Consultative Status with the Economic and Social Council, having its registered office at Floor 19, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong Special Administrative Region, People's Republic of China. It submits this document to the Human Rights Committee (the Committee) to coincide with the consideration of the initial report of the State party Thailand to the Committee in accordance with article 40 of the International Covenant on Civil and Political Rights (the Covenant). The initial report (CCPR/C/THA/2004/1: 24 June 2004) was issued in accordance with the wish expressed by the Human Rights Committee at its 66th session in July 1999, after Thailand acceded to the Covenant in 1997.

2. Staff members of the Asian Legal Resource Centre have prepared this document in collaboration with colleagues in Thailand based upon their accumulated experience regarding the situation of human rights there. The ALRC has for many years been familiar with human rights concerns in Thailand. It has submitted numerous statements on a number of key human rights issues in the country to the annual sessions of the Commission on Human Rights (the Commission). More recently it has directed a considerable amount of work towards what it sees as a worsening human rights situation there. In June 2003 it released a special report, 'Extrajudicial killings of alleged drug traffickers in Thailand' (*article 2*, vol. 2, no. 3). It has also sought to become increasingly involved in specific cases of violations of civil and political rights, with a view to proposing legal and institutional changes in order to prevent further abuses, and ensure punishment for the perpetrators and redress for the victims. The ALRC and its sister organisation the Asian Human Rights Commission (AHRC) have both increasingly communicated their observations and concerns to the relevant

domestic and international agencies. These include the Minister of Justice, National Human Rights Commission of Thailand, Special Rapporteurs and Working Groups, and on one occasion each, His Majesty the King of Thailand and the High Commissioner for Human Rights. Many of these documents are cited and appear as appendices in this submission.

3. More broadly, the Asian Legal Resource Centre has 20 years of experience in human rights and rule of law issues throughout Asia upon which to make its observations. It has actively engaged with international human rights mechanisms throughout this time. Since obtaining General Consultative Status in 1998 it has annually made written statements to the annual sessions of the Commission on a huge range of issues from throughout Asia, and of relevance to the global human rights movement. It has submitted 40 written statements to the 61st session of the Commission. It has submitted a number of alternative reports to committees. These include comments on the report of Cambodia concerning the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (April 2003) and comments on the 16th periodic report of Nepal to the Committee on the Elimination of Racial Discrimination (December 2003). Together with the World Organisation against Torture (OMCT) it submitted an alternative report on state-sponsored violence in Sri Lanka last September 2004 to the Human Rights Committee, and attended the hearings of the committee on the same. In 2004 it also submitted a proposal for a new agenda item under rule 5(4)(a)(ii) of the Guidelines for the Application by the Sub-Commission on the Promotion and Protection of Human Rights, with reference to the exceptional collapse of the rule of law in Sri Lanka (E/CN.4/Sub.2/2004/3, 7 June 2004). It has also initiated the bringing of a number of individual complaints to the Committee.

4. The Asian Legal Resource Centre has been unique among human rights organisations globally in bringing article 2 of the Covenant to the forefront of all its work. It is unique in having a bimonthly periodical, *article 2*, named after this integral section of the Covenant, which is dedicated to raising issues on effective implementation of human rights standards.

5. The Asian Legal Resource Centre is therefore well placed to comment on the situation of human rights in Thailand with a view to strengthening the Concluding Observations of the Committee in order to improve the application of the Covenant by the State party through constructive discussion with the delegation.

Scope

6. While the Covenant incorporates concern for the full range of civil and political rights, from its work the Asian Legal Resource Centre wishes to draw particular attention to the following problems facing persons seeking to protect human rights in Thailand.

Torture routine

i. **Torture is routinely practiced and publicly accepted in Thailand.** It is used by all security agencies, most commonly, the Royal Thai Police. In the minds of the ordinary people, the police are associated with routine physical abuse and humiliation of persons in their custody. Unusually cruel forms of torture are also inflicted both on persons taken into custody over alleged 'terrorist' activities as well as ordinary criminal cases. The perpetrators rarely face criminal prosecution of any kind. No domestic law exists to effectively address the use of torture, and Thailand has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nor does any specialised independent agency exist to investigate complaints of torture or other grave human rights violations by the police or other state agents. No official attempts are made to counter public assertions, even when coming from senior officials, that torture is acceptable. Limited arrangements exist to compensate victims and protect witnesses. However, in most cases of torture it is extremely difficult to take steps to protect the victims and prosecute the perpetrators as the former are usually held in the custody of the latter for extended periods. Under these circumstances, it is not possible to secure evidence of torture and keep the victims free from coercion and threats by the perpetrators.

Extensive powers permit torture

ii. **Torture and other custodial abuses are freely committed by state agencies in part because of the very extensive powers that they enjoy.** Despite the establishment of new agencies under the 1997 Constitution intended to correct this imbalance, as well as some other minor reforms, the Royal Thai Police are free to operate with relatively little external scrutiny and few avenues for effective complaints by the public. In most criminal cases the police have complete control over the enquiries. During their investigations, the police are able to detain criminal suspects for a period of up to 84 days without laying charges. Many persons are detained for longer periods than are legally permitted, or are rearrested on new charges immediately after being released at the end of the statutory period. While holding a detainee, the police have at their disposal numerous tried-and-tested means to extract confessions and then conceal the evidence of abuse. In practice, the provisions allowing access to lawyers and doctors during this period, to which the State party has adverted in its report (para. 191), do little to prevent these practices. Even in cases where a high level of publicity has been raised around alleged torture, and unequivocal evidence of it exists, there is a heavy reluctance on the part of the authorities—despite rhetorical commitments to the contrary—to do anything to combat it. While these conditions apply under normal circumstances, in parts of the country subject to martial law provisions the security forces are granted considerably wider powers to detain and limit the rights of suspects without outside scrutiny.

Torture linked to extrajudicial killings

iii. **The widespread use of torture is intimately connected to other serious violations of human rights in Thailand, notably extrajudicial and targeted killings.** The number of extrajudicial

and targeted killings in the country has risen alarmingly in recent years. These include the widespread killings of alleged drug traffickers, targeted killings and forced disappearances of human rights defenders and environmental activists, and mass killings and deaths in custody in the troubled south of the country. The perpetrators of these acts are rarely subjected to criminal prosecution. State agents enjoy considerable impunity when responsible for the deaths of others. Although the State party asserts that state agents are subjected to the same laws and procedures when responsible for the death of another person (para. 147), this is in practice not the case.

iv. **Institutions that exist to protect the rights of citizens are not having this effect.** Within the courts, public defenders are not doing their jobs. Ordinary people in Thailand anticipate that if they are assigned a public defender then they will be found guilty. The services provided by the Law Society of Thailand are in many instances little better. Its lawyers may decline to assist in a case where a public defender has already been appointed for reasons of etiquette, even when the public defender is doing nothing. As a result, victims and their families have lost confidence in these agencies. Outside the courts, pending legal proceedings are used as an excuse for inaction. The Department of Special Investigation under the Ministry of Justice, Crime Suppression Division of the Royal Thai Police, and the Ombudsmen have, for instance, all declined to investigate cases on the ground that the matter is pending in the courts. This is even the case when the complaint lodged does not relate directly to the hearings in court. The government of Thailand has not ratified the first Optional Protocol to the Covenant, thereby denying the possibility for a dissatisfied complainant to bring a case before the Committee.

v. **Many of the provisions and institutions established under the democratic 1997 Constitution of Thailand are under serious threat.** The State party has in its report rightly spoken of the importance of this Constitution (para. 22); however, in reality a significant danger is now being posed to the democratic structure of Thailand and its new independent agencies. Both the Forensic Science Institute and National Human Rights Commission have been the targets of uncompromising attacks by senior persons in government and the police, seeking to limit their efficacy. The links between the government and big business have undermined strong public attempts to establish genuinely independent regulators of broadcast media frequencies. The continued use of onerous and outdated criminal defamation laws prevents open debate on issues that are in the public interest, in contravention of the Constitution.

vi. **The dramatically worsening conditions in the south of Thailand are a matter of particularly grave concern and deserve special attention.** The resumption of counter-insurgency measures, including the recent proposal to zone the three southern provinces and deny 'red zones' government funds,

Lack of protection from established institutions

Constitutional provisions under threat

Southern Thailand of particular concern

is an extremely disturbing development. Apart from the daily reports of violence in the south, the scale of human rights abuses by all parties there is unknown. Anecdotal reports suggest that disappearances, torture and extrajudicial killings are widespread; however, the lack of any effective independent oversight makes the extent of these incidents difficult to establish. Notwithstanding, the fact that the perpetrators of the widely reported deaths in custody of at least 78 persons in October 2004 have not faced criminal sanction for their actions speaks to the absolute impunity with which state security forces are being permitted to operate in the south.

**Weakened rule
of law**

7. Overall, these features point to a serious weakening in the rule of law in Thailand that poses a growing threat to the protection of human rights there. The strong hope of the 1990s for a new era of human rights protection in Thailand, from the ending of military dictatorship in 1992 to the promulgation of the new constitution in 1997, is now being replaced by apprehension about the future. The current government has exhibited many characteristics typical of the new style of authoritarian rule in Asia. Among these, it has created confusion about the role of the judiciary and denied it the right to play a role in responding to critical events, such as mass killings. It has created confusion about the law itself, such as by permitting persons who kill alleged drug dealers to escape any consequences. And it has deliberately weakened controls over law-enforcement agencies, such as by rewarding rather than prosecuting officers known to have been responsible for killings, and by publicly attacking those agencies established under the Constitution to subject the police and other agencies to external scrutiny. Self-defence is at its lowest ebb in Thailand for many years. Citizens are quickly losing their basic defences to the rights of life and liberty.

**Feudal thinking
remains entrenched**

8. In many respects, the thinking of the ruling elite in Thailand continues to be deeply feudal and contrary to the principles of modern governance and justice. Despite the surface appearance of democracy and respect for human rights in the country, it is still the elite and its values that predominate. It is still expected that a general should escape punishment for mass killings, that a political leader should be permitted to threaten publicly persons who question his authority, that a senior police officer should endorse torture, that a villager should be killed for being an alleged drug dealer. On paper, Thailand now adheres to the rule of law; in practice, it is still subjected to the rule of lords. Although the democratic 1997 Constitution suggests the possibility of change, it has become clear in recent times that ancient authoritarian practices and thinking are still very much in place. This is not surprising. Such practices have existed for centuries and are part of the collective psyche. The rule of law, introduced by constitutions such as the most recent one, has only a short history. However, any hope of its being internalised is seriously interrupted every time the army is allowed to kill at random, the police permitted to torture at will. The persistent

reinforcement of old practices, under the guise of seemingly modern institutions in Thailand, continues to have a tremendously detrimental albeit subtle effect on the possibility of effecting rights under the Covenant.

Article 2: Effecting rights under the Covenant

2. Where not already provided for by existing legislative or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.¹

9. The Asian Legal Resource Centre has consistently observed that the primary reason for endemic impunity and persistent gross violations of human rights in Asia is the grave defects in policing and judicial systems that prevail throughout the region. Where policing and judicial systems are seriously malfunctioning or non-functioning, it is impossible to effect rights under the Covenant in accordance with article 2. Under those circumstances, talk about rights and ratification of the Covenant has no meaning.

10. The obligation of the State party under article 2 is practical. It means introducing laws and establishing agencies equipped with the resources to enforce the rights enshrined in the Covenant.

11. With reference to Thailand, the following gaps in laws and institutional arrangements undermine the enforcement of rights under the Covenant as stipulated by article 2:

i. **No law exists to proscribe torture and prescribe penalties.**

Article 31 of the 1997 Constitution prohibits torture in accordance with article 7 of the Covenant; however, there is no criminal law prohibiting torture. Section 289(5) of the Penal Code, which has been identified by the State party as addressing cases of a cruel nature (para. 186), is a subsidiary clause with reference to murder, not torture. Similarly, other provisions contained in the Penal Code make reference to acts of cruelty; however, none address torture as a criminal act as envisaged by article 7 of the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State

Policing and judicial defects the cause of most violations

Article 2 a practical obligation

Article 2 breaches in Thailand

No law against torture

party has not ratified the Convention against Torture. Under the circumstances, it is not possible to effect article 7 of the Covenant in accordance with article 2.

No procedures for investigations of torture

ii. **No procedures exist to investigate acts of torture.** There is no specialised agency or avenue to investigate whether somebody has been tortured. The National Human Rights Commission, identified by the State party as the agency “to oversee matters of human rights according to this article of the Covenant” (para. 187), does not have judicial authority, and therefore it must be omitted from discussion with reference to article 2. No procedure exists for judicial officers to make enquiries into acts of torture, or for quick medical examination of the alleged victim specifically in order that the same can be submitted to the courts to establish whether or not an act of torture has been committed. Section 243 of the Constitution stipulates that, “Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.” Section 226 of the Criminal Procedure Code contains a similar provision. However, in the absence of procedures and speedy interventions to establish whether or not a confession submitted to the court has been obtained through use of torture, it is extremely difficult for the accused to invoke this section. For instance, when counsel for Messrs Metta Saiphan and Anucha Siriporn na Ratchasima in Ayutthaya Provincial Court argued that his clients had been tortured to extract confessions, and presented documentation of institutionalised torture by the police, his argument was rejected by the court for lack of evidence. As the alleged victims had been detained for the full duration of the statutory period of 84 days before being charged, and as they lacked the means to obtain medical treatment and access to competent lawyers in the interim period, evidence of the alleged torture had been lost.

No law against forced disappearances

iii. **No law exists to proscribe forced disappearance and prescribe penalties.** There are no criminal provisions against the act of forced disappearance under the law of Thailand. The Penal Code recognises only acts of kidnapping in order to obtain ransom (section 313). Where the body of a disappeared person is never recovered, even if the alleged perpetrators are identified there is no corresponding offence under which they can be charged. The case of prominent disappeared human rights lawyer Mr Somchai Neelaphaijit speaks to this point: the accused police officers have been charged only with coercion and armed gang-robbery (under sections 309[2], 340 and 340 ter. of the Penal Code).

No procedures to investigate forced disappearances

iv. **No procedures exist to investigate forced disappearances.** There is no specialised agency or avenue to investigate whether somebody has been forcibly disappeared. No procedure exists by which the relatives of disappeared persons may bring their complaints quickly and expediently into the courts. That the question of forced disappearances is not addressed in the State party report speaks to the absence of thought on this issue among the concerned authorities in Thailand.

v. **No enabling law exists to bring complaints of human rights violations to the high courts.** A person who has been tortured or otherwise had their human rights violated cannot lodge a claim directly in a high court to the effect that rights have been breached. Section 28 of the 1997 Constitution holds that “a person whose rights and liberties... are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself or herself in the court”. However, no special provisions exist for writ applications to the high courts to show cause that a right enshrined in the Constitution or Covenant has been violated, in order that the court may afford a remedy.

No avenue for complaints direct to high courts

vi. **No specialised agency exists to receive and investigate complaints of serious rights violations against the police.** Where the police commit gross abuses of human rights, or fail to perform their duties as required by law to the same effect, there are no other institutions available in Thailand to initiate steps for redress as envisaged by article 2. Although the largest numbers of public complaints about state agents are against police officers, no specialised agency exists that is capable of registering complaints and initiating investigations that may lead to criminal prosecution of police. The shooting of a school bus in Ratchburi province during 2002 speaks to this point. Although the families of victims have alleged that a police officer was one of the persons behind the attack, they have been unable to do anything to have an investigation opened against the alleged perpetrator, while the Office of the Attorney General has pursued an innocent man through the courts. Again, with regards to agencies for complaints under article 2 the National Human Rights Commission must be omitted from discussion in view of its limited mandate.

No investigating agency over police

vii. **No effective mechanism exists for external scrutiny of abuse committed by the police during investigations.** As criminal investigations are in most cases left entirely in the hands of the police, and in the absence of an agency to deal with police abuses, they are free to pervert investigations without scrutiny. Perverting of cases may include many different acts or omissions with particular aims. During the 2003 ‘war on drugs’ it was widely observed that the police deliberately failed to investigate killings of alleged drug dealers. Where they did attend the murder scenes, investigations and questions were typically directed towards establishing the victims’ guilt, rather than take action to arrest the murderers. Where evidence of drug trading was uncovered, it was also used to justify the murder and effectively close the case. Evidence of drug trading was considered sufficient grounds to justify the death. The police were also widely accused of having planted drugs on the bodies of victims of killings to fabricate cases against them. In ordinary criminal cases referred to the Asian Legal Resource Centre, police have been variously accused of failing to provide access to lawyers and doctors, failing to conduct line-ups, stacking of records, sending

No external scrutiny of police investigations

of false police witnesses to court, failing to investigate, refusing to record witness statements, and refusing to give information as required by law.

Limited role of
Attorney General

viii. **The Office of the Attorney General has no critical role in ordinary criminal investigations.** The Office of the Attorney General does not become involved in ordinary criminal investigations at present unless the police request it. This is a systemic weakness recognised both by the Minister of Justice and the Attorney General, who have recently announced reforms to give the Office of Attorney General a joint investigatory function with the police in special cases, where deemed in the public interest. While this measure is appreciated—and almost universally recognised as a necessary step to stem criminal activities by the police—it is insufficient. In particular, the limiting of a joint role in investigations to the Attorney General on cases of public interest is dissatisfactory, as most abuses of rights under the Covenant occur in ordinary criminal cases, when day-to-day procedure is treated with contempt. Another concern is that as the Office relies upon the police for the obtaining of documentation and presenting of evidence that will secure convictions, it is inevitable that there is a close relationship between police officers and public prosecutors working under the Attorney General. This is particularly the case in smaller towns and cities where the police and public prosecutor may know one another personally. This relationship may be seen in the case of Mr Chanon Suphaphan, who was convicted for robbery by the Singburi Provincial Court, after the public prosecutor presented evidence that did not take into account witness statements for the defence which had been recorded by the police.

Forensic Science
Institute lacking
support

ix. **The Forensic Science Institute has lacked necessary support.** The Forensic Science Institute was established out of recognition that an independent and professional body be able to undertake independent enquiries into suspicious deaths in Thailand, in order that there be redress for the families of dead victims of rights violations under the Covenant. As such, it is an integral agency for the application of article 2 provisions in Thailand. However, it has been consistently challenged by the police and forced to fight to establish its mandate and reputation. Most recently, it has been alleged that volunteers working with the Institute have been kidnapped by police and forced to reveal information about the agency's operations. The Institute has not obtained the necessary cooperation from government agencies to secure its mandate.

Victim compensation
rudimentary

x. **Victim compensation is still rudimentary.** The report of the State party makes reference to the initiative for a compensation fund to be established in accordance with Section 246 of the Constitution (paras 265–68). The Office of Public Compensation for Criminal Cases was recently established under the Compensation for Crime Victim Act 2544 (2001). While compensation in cases of human rights abuse must always be

understood as supplementary to—and not a substitute for—criminal prosecutions, it is nonetheless an important element in effective redress as stipulated under article 2 of the Covenant. This compensation should especially take into account the physical and psychological needs of victims of torture and other gross abuses. To date, where the director general of the Department of Rights and Liberties Protection has spoken publicly on possible compensation for victims, it has been reported in terms of financial compensation. This must also be accompanied by compensation for medical treatment, including physical and mental rehabilitation. Additionally, the question of timely compensation with minimum difficulties for the victim is also yet to be addressed. At present, it is necessary for victims first to obtain medical treatment for injuries suffered due to torture or other abuses, and then seek compensation through the procedure established by law. As many of the victims of torture and other police abuses are poor persons who may not be able to afford a day away from work—let alone the cost of medical bills—this places an undue burden on the victim impinging upon article 2 rights. This was recently illustrated in the publicised case of torture victim Mr Ekkawat Srimanata. In that instance, the victim's friends rushed him directly from a police station to hospital with severe burns all over his penis, testicles and groin. Immediate emergency treatment was needed. However, when police officials were asked about giving assistance, they observed that no provision exists for such an arrangement, and advised that the victim could seek compensation through the established channel. The concern for the police was that should they provide assistance it would amount to an admission of guilt. Therefore, emergency arrangements are yet to be established in cases such as this whereby the victim of abuse may obtain prompt assistance from the government without otherwise jeopardising the due process rights of the alleged perpetrator.

xi. **Witness protection is still rudimentary.** The Protection of Witnesses in Criminal Cases Act 2546 (2003) came into force in Thailand during 2004 when the Office of Witness Protection under the Ministry of Justice started its work. As a consequence, a number of victims of police abuses, including torture and cruel and inhuman treatment, were afforded short-term security. As one of the gravest obstacles to the prosecution of perpetrators of human rights abuses is the fear of witnesses in speaking out against the police and other state security officers, the Office is a critical step for the future protection of human rights in Thailand. However, the concern is that if the Office is not given adequate resources and widely promoted within a short period of time it may not realise its full possibility. As the management of protection for victims under this Office is setting a precedent for cases yet to come, it is necessarily cause for considerable public interest. Recently it was reported in the domestic media that three persons in the south of Thailand who had been afforded protection were killed. If such persons coming forward now to be

Witness protection
rudimentary

protected under the Act are still subjected to threats or death, it will damage public confidence in the new protection regime at an early and crucial stage in its development.

12. Some additional observations flow from the above.

Police subject to
influence

13. **The police in Thailand are at every level influenced by outside parties.** In cases where influential people are involved, whether political or business figures—and increasingly in Thailand this amounts to the same—the police are discouraged from pursuing the case through payments or otherwise. It is well known that the police in Thailand are both highly corrupt and highly politicised. This is public knowledge. During 2003, a nightclub kingpin who has now turned politician went so far as to hold a series of press conferences during which he played guessing games with the media about how much he had paid entire police stations to run illegal businesses. In November 2004 a group of academics reported on a study of police stations across Bangkok that found every rank in every police station engaged in some kind of graft on a daily basis. Public prosecutors are also known to be corrupt. In September 2004 a television station broadcast footage of a deputy provincial head of the Office of the Attorney General offering to be lenient on the defendant in a criminal case in exchange for a bribe. The prosecutor was dismissed and an inquiry established. By contrast, police are rarely disciplined for such wrongdoing. These universally corrupt practices inevitably eat into all criminal cases that relate to the protection of rights under the Covenant.

Protection of
influential persons
from prosecution

14. How the police operate to protect influential persons may be seen in the numerous cases of murdered environmental activists in recent years. As natural resources in Thailand have become increasingly scarce there have been a growing number of conflicts over their use and protection. Powerfully connected businesspeople have been implicated in numerous killings of local environmental activists—mostly ordinary villagers—but are never investigated or prosecuted. At most, the hired killers are arrested; the police, however, do not pursue the investigations further. In most of these cases the police have been accused of acting in some way to protect the perpetrators or masterminds of the killings for reasons of their money and influence. The families of victims and communities for whom they were working have few expectations of seeing justice performed.

Protection of police
from prosecution

15. **The police in Thailand protect one another from prosecution.** Police are the largest perpetrators of human right abuse in Thailand, and the largest numbers of complaints received by quasi-independent agencies—such as the National Human Rights Commission and the Ombudsman—relate to police abuses. However, there is no specialised agency for receiving and investigating complaints against police officers, and commencing prosecution. The Department of Special Investigation under the Ministry of Justice handles certain cases at the discretion of a special committee; however, the police investigate most cases themselves.

16. How the police act to protect one another—sometimes in collusion with other state agencies—can be seen in the case of an attack on a school bus in Ratchburi province during June 2002.² The parents of the children on the bus—three children were killed and 12 injured—have alleged that a policeman was behind the attack. However, a local forest villager by the name of Jobi—who was subsequently also accused of being an illegal immigrant—was instead indicted for the crime, and by his account forced to admit to the crime through threats against his family. Although he has been found innocent, and despite a petition to the Crime Suppression Division by local villagers on 9 August 2004 supporting his claim and blaming the police, the Office of the Attorney General has appealed against his acquittal. This move to pursue the case against an obviously innocent man has been made all the more unfortunate in light of the fact that Jobi's poor state of health after being held in atrocious conditions since 2002 attracted the sympathy and patronage of Her Majesty the Queen. On 27 September 2004, the Asian Human Rights Commission wrote to the Minister of Justice of Thailand regarding the case, calling for the appeal against Jobi to be dropped, compensation to be paid for wrongful prosecution and imprisonment, and an investigation to be undertaken against the accused police officer. However, to date the Office of the Attorney General has chosen to pursue the case, claiming that sufficient evidence exists to secure a conviction. On the surface, this fruitless pursuit of an innocent man serves no obvious purpose. However, for as long as the case is in the courts the Crime Suppression Division is able to use it as a pretext to not reopen the investigation into the case, thereby guaranteeing the alleged perpetrators continued impunity. Meanwhile, a lawyer working with the accused has also spoken to the Asian Legal Resource Centre of being intimidated by persons behind the killing.

17. Cases before the courts are used as a pretext for non-action by state agencies, even when the matter in the court and that being brought to the attention of the responsible officers are different. The Asian Human Rights Commission has recently approached the Ombudsman expressing concern with regards to a complaint lodged by a relative of a torture victim with the Ombudsman. [A copy of that letter is contained in Appendix III]. In that instance, the matter brought to the attention of the Ombudsman related to the alleged torture of a young man, Mr Anek Yingnuek, and his friends at a police station in Ayutthaya province. The Ombudsman declined to investigate the complaint on the grounds that it is being decided in the courts. However, the complaint brought to the attention of the Ombudsman relates to a different issue from that being addressed by the courts: specifically, whether or not the men were tortured, not whether or not they committed a number of criminal offences. The refusal of the Ombudsman to entertain the case is of concern, as it speaks to a tendency to interpret too narrowly the mandate of the office, and perhaps with the deliberate intent of avoiding

Cases pending in
courts used as excuse
for inaction

difficult cases such as this. Under those circumstances, what is the purpose of the office? In this case, if the alleged torture victim must wait until the conclusion of a series of criminal enquiries against him, which may last for years, then what hope does he have of getting a complaint of rights abuse entertained in the manner envisaged by article 2 of the Covenant?

Role of NHRC
sabotaged

18. **The government of Thailand has at each opportunity deliberately sabotaged the limited role of the National Human Rights Commission.** The National Human Rights Commission (NHRC) is an important agency for the protection of human rights in Thailand, although it does not have the capacity to effect compliance of rights as envisaged by article 2. The mechanics of the NHRC have been aptly summarised in the report of the State party (paras 187–89). It is a subsidiary body that lacks the legal power to enforce its decisions: it may only propose and refer matters to the concerned agencies and parliament. Where its recommendations have been ignored, it lacks the means to do anything further. Unfortunately, the NHRC has not only had its recommendations ignored but has been subjected to attacks that have seriously compromised its position. During the ‘war on drugs’ in 2003 at least one of its commissioners was subjected to slander from the Prime Minister and a senior military official after speaking out on extrajudicial killings at a UN function abroad. He also received death threats. As a result, the NHRC was forced to spend much of its time defending its mandate and the reputations of its members, rather than addressing violations of rights themselves. The Prime Minister also refused to meet with the commissioners. The Prime Minister has similarly aimed to sideline the NHRC at each time of crisis by establishing ad hoc competing bodies. After considerable national and international criticism over the large number of deaths in the ‘war on drugs’, rather than permit the NHRC to investigate alleged extrajudicial killings freely—and equip it with the resources to do so—the Prime Minister established two committees to report directly to him. Likewise, after each of the mass-killings in the south of Thailand during 2004, the Prime Minister established a proxy committee to report confidentially to him, and ignored the efforts of the NHRC to investigate properly and report to the government and public alike on its findings. The work of the House Committee on Justice and Human Rights, mentioned in the State party report (para. 190), was similarly circumscribed by the actions of the Prime Minister in these instances.

Article 6: Right to life

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

19. According to the report of the State party,

When military and police officers or the officers of the administrative agencies kill a person, they are guilty of homicide under Section 288 or 289 of the Penal Code and shall be penalized accordingly like any ordinary citizen. (para. 147)

20. In practice, without regard to other circumstances, military and police officers in Thailand who commit killings—or are engaged in organised killings of other persons—rarely face criminal sanction. The extrajudicial killing of at least 2500 alleged drug dealers, mass extrajudicial killings in the south, forced disappearances and targeted killings of human rights defenders all speak to this fact.

State officers kill with impunity

Extrajudicial killing of alleged drug dealers³

21. Between February and April of 2003 at least 2500 persons were killed after being accused of being drug dealers. For the most part, these persons were shot dead by “unidentified gunmen” after reporting to police stations undertaking a campaign to eradicate drug dealers in Thailand within a three-month period. The campaign was begun via a raft of orders issued by the Prime Minister, and was buoyed by comments made throughout this period by him and his subordinates to the effect that the lives of alleged drug dealers are worthless.

Over 2500 alleged drug dealers killed in 2003

22. **Through a package of incentives and sanctions the administration motivated state officers to arrest or kill, or organise the killing of, persons accused of drug trafficking without regard to normal legal procedure.** On 28 January 2003 the Prime Minister set the anti-drug crusade in motion via a series of orders. The incentives were mainly financial, increasing bonuses to officers for drug hauls according to the size of the taking. Warnings to government officers included threats to transfer, demote or sack those failing to produce evidence of success. Incentives were boosted in two sets of regulations issued on February 11. One of those was the Prime Minister’s Office Regulations on Bonuses and Rewards Relating to Narcotics (No. 3). This document amended two earlier reward regimes, and effectively endorsed the murder of drug suspects by providing grades of bonuses where the most efficient and expedient means for officials to be rewarded was simply to kill the accused:

Incentives to kill

Article 18 of the Prime Minister’s Office Regulations on Bonuses and Rewards Relating to Narcotics BE 2537 (1994), which had been amended by the Prime Minister’s Office Regulations on Bonuses and Rewards Relating to Narcotics (No. 2) BE 2540 (1997)... shall be replaced by the following statements:

‘Article 18: The bonus shall be given when officials proceed with a notified case leading to arrest according to the following rules and conditions:

...

'(3) In a case where both the alleged offender is arrested and the exhibited narcotics are seized, *but the alleged offender loses his life during the arrest or thereafter*, if the value calculated based on the quantity of narcotics exceeds 1000 Baht, the bonus shall be paid according to the quantity of narcotics when the Public Prosecutor has ceased the proceedings.' [italics inserted]

Rewards and sanctions increased over time

23. At later dates, rewards and sanctions were further increased. Informants and arresting officers could claim percentages of seized assets. The government also decided that drug-free villages would be entitled to additional state aid. Similarly, outstanding officials would be awarded medals. Provincial governors and police chiefs were ordered to meet a strict timetable. Their performance was measured by statistics on drug dealers 'removed' from society on a month by month basis. Underachieving provinces were announced publicly and senior officials openly threatened with the sack or transfers. An enormous amount of pressure was applied to meet unreasonable and arbitrary targets.

Rapid death toll from start of 'war on drugs'

24. The death toll from the start of the campaign in February was dramatic. Dozens of people were killed daily. [A list of names of over 600 persons reported killed in national and local newspapers and other public documents, most of which occurred in the month of February, is contained in Appendix II]. An anonymous police colonel was reported as having said that his superiors had in fact ordered him to collect information on drug dealers and then kill the informants and track down and kill those named. As a symbolic gesture, a police station in the north piled a dozen coffins onto its doorstep. At the end of February, police in most places had already dealt with their key targets, but were under pressure to continue meeting monthly percentiles imposed on them by headquarters. Officers increasingly went after informants or persons with tenuous links to suspects who had already been 'removed' from the lists. Persons who had merely participated in drug control programmes were targeted. In some places, 'complaints boxes' and anonymous hotlines were set up for people to inform on one another. Police are alleged to have increasingly resorted to planting of evidence and coercion to obtain confessions from suspects.

Public language condoned killings

25. Public language by the highest government officials enabled and encouraged the killing of alleged drug dealers. The Prime Minister consistently portrayed drug dealers as sub-humans deserving to die. He also played down the deaths relative to the apparent successes of the campaign, wondering aloud why the killing of thousands of people who had not yet been proven guilty of any crime should be worthy of public attention or scrutiny. In reiterating the official line, that most deaths were just cases of "bad guys killing bad guys", or "killing to cut the link", he stated that the government had no responsibility to protect undesirable citizens. It is also reported that privately he told senior officials that the 'war' would operate on a shoot to kill policy. The Prime

Minister's remarks were supported at all levels of government. The language used by the Prime Minister and his officials throughout the campaign also sought to evoke a feeling of being at war. Over time, this language found its way into policy documents, such as Prime Minister's Order No. 60/2546, which states in its preamble that "the 'Concerted Effort of the Nation to Overcome Drugs' is specifically regarded as a state of war".

26. Confusion was created through the use of lists linked to the killings. From the start, there were contradictory stories about how lists of alleged drug dealers were prepared, how many there were, and the implications of being on one. There appeared at times to be competing lists, and different ways of managing them in different provinces. They seem to have been drawn up from August 2002 by the police, village heads and local administrative bodies under the Interior Ministry, and the Office of the Narcotics Control Board. Whereas the police claim to have relied upon informants and leads, it appears that often they just added names from records of earlier convictions—some going back years. As for the lists prepared by local administrators, reports suggest that in many places the village or subdistrict chiefs simply called public meetings and asked people to inform on persons selling drugs in the neighbourhood, without any further investigation. The Ministry of Interior claims that lists were cross-checked before final definitive versions were sent out, however in some places police refused to rely on the Interior Ministry lists after criticism that too many innocent persons were being arrested or killed.

Confusion through use of lists

27. Although the manner of deaths varied across the country, the most commonly described pattern was as follows:

Pattern in killings

i. A victim's name would appear on a list. The list would be made public knowledge, by word of mouth, or other means.

ii. The victim would receive a letter or some other notice instructing her to go to the police station.

iii. At the police station, the victim would be coerced to sign something admitting guilt, or otherwise acknowledge guilt, with promises by the police that her name would be removed from the list.

iv. The victim would be shot on the way home, or within a few days, usually by a group of men in civilian clothes, in daylight and in a public place or at her house, often in front of and without regard to witnesses.

v. The police would fail to investigate the killing properly, and would concentrate on establishing the victim's guilt as a drug dealer.

28. The number of reported killings changed throughout the campaign. In February, the Interior Ministry published a daily count of arrests, seizures and killings. As attention increasingly focused on the death toll, the government grew uneasy and accused journalists of misrepresenting the tally. By

Number of reported killings changed

the end of February, public releases of statistics on killings were banned, in response to growing criticism. At the date of the last official tally, on February 26, 1140 persons had been murdered. However, later police did release statistics indicating that to April 16, 2275 persons were killed, 51 by their own agency in “self defence”. By the end of the month the figure was estimated to be around 2400; however, by this stage the government was backing away from the statistic, arguing that perhaps half of the murders had been incorrectly recorded.

International standards disdained

29. **International standards were publicly disdained.** With growing international unease over the killings, as talk grew of possible United Nations involvement, the Prime Minister reacted with annoyance and told his fellow citizens on February 15, “Don’t try too hard to live up to international standards. Our country already looks good in the eyes of the international community.” The Prime Minister also famously remarked to the media that “the United Nations is not my father”, and made a personal and altogether unnecessary attack on the Special Representative of the Secretary General on human rights defenders when she raised concerns over the number of killings during a brief visit.

Killings weakened institutions to uphold rule of law

30. **The killings weakened institutions designed to uphold the rule of law in Thailand and thereby realised the climate for further killings and other grave abuses to follow.** From February 2003, the Asian Legal Resource Centre pointed to the fact that the effect of large-scale extrajudicial killings on Thailand would be more serious and dangerous than the effect of the drugs they were ostensibly aimed at eliminating. By orchestrating large-scale killings, the government of Thailand encouraged the perpetuation of feudal practices and thinking, where punishments were meted out at the wish of rulers without any references to limits imposed by law and morality. They applied the principle that operates behind the worst atrocities of history, that there exists a class of persons who can be eradicated simply because they are deemed socially undesirable—in this case, alleged drug dealers.

Legitimacy of policing damaged

31. **The legitimacy of policing in Thailand was seriously damaged through direct or indirect involvement in the killings.** A law enforcement agency that knows it has blood on its hands cannot think of itself with a sense of integrity. When there is such doubt in an organisation, it is difficult to control corruption. That task is made more difficult by the hardening of the nexus between criminals and police necessitated at the time of large-scale killings. The killings of alleged drug dealers involved specialised well-coordinated sharing of functions between police and criminals. The result inevitably was a strengthening of the bonds between the actual killers and the planners of the killings, including those in government. This in turn brought more secrecy and compromises: the police and government officers complicit in the killings necessarily denying responsibility for what has happened. Falsehood is thus made a normal part of communication, which in turn affects the nature of the

institutions. Public relations are characterised by deception. The image of the police institution is worsened. Under such circumstances, it is inevitable that more and worse events are to follow.

Mass extrajudicial killings

32. While the south of Thailand has most recently been the subject of international attention after the devastating Indian Ocean tsunami, the region was punctuated with deaths throughout 2004, the result of increasingly aggressive policies to suppress regionalist aspirations. In the late 1990s, the government had achieved a measure of success in obtaining greater understanding with people in the south through negotiations and compromise. Regrettably, the last two years have seen a return to confrontation. As a consequence, violent incidents grew sharply in 2004 and have continued up to the present.

Killings in the south

33. Among the killings in the south throughout 2004, two mass killings stand out sharply: the Krue Se mosque massacre in April, and the Narathiwat killings in October. As these have been reported widely, the facts are briefly restated here before turning to related questions.

Two mass killings

34. The first mass killing occurred on April 28. It was spread across provinces where hundreds of lightly-armed young men attacked police and army outposts, but was centred on the Krue Se mosque, where the largest number were holed up. In total at least 107 were killed in the name of “self-defence” by the security forces. However, within a short time many questions arose regarding the ruthless nature of the killings and extremely high death toll. Indications were that the security forces were anticipating the attacks, mostly by groups of teenage boys and young men wielding machetes. Yet rather than do something to avert bloodshed, the security forces lay in wait for their prey. Most of their victims were gunned down well short of their targets. At the Krue Se mosque, 32—who by that time were posing no threat—were killed in cold blood after a stand off that lasted for around nine hours. The Prime Minister was very quick to endorse the killings, and even suggested that the police and soldiers involved would be awarded for their service, thereby guaranteeing further bloodshed.

April 28 mass killing

35. The second mass killing occurred on October 25, when at least 85 persons were killed in Narathiwat province, 78 of them while under army custody. The killings occurred after a group of protesters had gathered at the Tak Bai police station to demand the release of six men being held without charge on minor criminal offences.⁴ There remain questions over the true number of killed, injured, and disappeared, due to the way in which the killing was handled by the administration. Video footage that shows security forces attacking protesters with a relentless barrage of gunfire makes it hard to believe official assertions that only six or seven were killed at the site of the protest itself.

October 25 mass killing

More recently, the government has tried to suppress distribution of this video footage through threats of criminal prosecution on the spurious ground of national stability.

78 deaths in custody

36. The 78 protesters who died in custody were among over 1300 persons arrested out of a crowd of an estimated 3000. The crowd had assembled to demand the release of six persons detained for almost two weeks on relatively minor weapons charges; all of them bailable. Since the tragedy, the six men have in fact been freed. Many of the arrested persons, and those who died, were spectators who had gathered to watch the protest, but were not actively participating. The arrested persons were loaded into army trucks like logs, and most are reported to have died from suffocation and the effects of tear gas, although witnesses have claimed that many were severely beaten before being loaded into the trucks. The army said that there were not enough vehicles to transfer the detainees to a distant army camp, and therefore they were loaded in this manner.

No judicial enquiries

37. **No judicial enquiries followed the mass killings.** Although independent and public judicial enquiries were imperative after each of the killings, none was forthcoming. In both cases, the government appointed ad hoc enquiry committees, answerable directly to the Prime Minister. In neither case have the findings been made fully public. In each case, the senior-most officers identified as responsible for killings faced only minor disciplinary reprimands, by way of temporary transfer to inactive posts.

First fact-finding commission

38. In the case of the April 28 killings, the fact-finding commission was restricted in its mandate to the deaths at the mosque alone. A short summary of its findings released to the media on August 3 revealed that it felt the killing of those inside the mosque was unjustified, and had resulted directly from the army commander in charge attacking with heavy weapons and ammunitions. While recommending compensation payments and the preparation of contingency plans to prevent future similar incidents, the fact-finding commission also observed that, "Investigations should be pursued through the appropriate organs within the judicial system for those officials involved claiming their actions were in fulfilment of their duties." Notwithstanding, the government chose to ignore this recommendation.

Second fact-finding commission

39. Again, in the case of the Narathiwat killings, the response of the government was to establish a fact-finding commission into the deaths answerable to the Prime Minister. This was despite the fact that the distinctive characteristic of these killings, compared to those in April, was that most had occurred in custody. Whereas the army officer responsible for the killings at Krue Se had public security as a pretext, those in Narathiwat could offer no such explanation for the large number of men who died packed like sardines in army trucks. Instead, bad planning was held as the cause of death, despite ample reports suggesting more to it than that. The outcome of the enquiry into the Narathiwat killings was virtually a facsimile of the Krue Se enquiry: however, it is understood not to have recommended

criminal action against the three generals identified as primarily responsible. Again despite government promises, the full report has not been made public.

40. After the matter of Narathiwat was turned over from the enquiry commission to the Ministry of Defence, it was dispatched within a short time. The three generals identified as having been primarily responsible for the killings were rebuked and transferred, but leniency was the watchword as they had 'not intended' to kill anyone. This conclusion violates the Thai Penal Code and 1997 Constitution and flouts the State party's obligations under the Covenant. The power to excuse the perpetrators of serious crimes from prosecution lies not in the hands of any one person or his office. It is a matter for the courts. The Thai authorities must stand accused of wanton failure to prosecute those responsible for the mass killing in Narathiwat in accordance with these provisions until such a day as they decide to take the proper and necessary steps to the contrary.

No prosecutions

41. **The United Nations was also denied a role in investigating the killings.** On October 28, as the news was breaking of the Narathiwat killings after intervention by the deputy director of the Forensic Science Institute, the Asian Legal Resource Centre wrote to the High Commissioner for Human Rights calling for her immediate intervention. The High Commissioner expressed concern over the incident in the course of the same day, and urged that a "swift, independent and thorough" investigation follow "with results made public". Shortly thereafter, the Special Rapporteur on extrajudicial, arbitrary or summary executions requested permission to visit, but was publicly rebuffed by the Prime Minister. The Asian Human Rights Commission subsequently urged the government to reconsider the offer, and received a letter from the Minister of Justice dated 30 December 2004 to the effect that he had transmitted its concerns to the Prime Minister; however, it is unaware of any developments since.

No UN role

42. **The denial of proper impartial judicial enquiries into mass killings is offensive both to the letter and spirit of domestic law and the Covenant.** When a death in custody occurs, a state agent must be held criminally responsible. Arguments to suggest that the deaths were accidental, were caused by poorly trained personnel, or were due to other extenuating circumstances are unacceptable. Article 4 provides that certain rights under the Covenant may be departed from only to "the extent strictly required by the exigencies of the situation"; under any circumstances, the right to life is one from which no derogation is permitted. Without regard to other factors, once the victims were in custody of the army, its personnel had a duty of responsibility and care for them. Where those rights were violated, a remedy must be provided in accordance with article 2. However, no such remedy has been made available to the families of the victims in this instance.

Breach of Covenant

**Minimum standards
of treatment**

43. Both domestic and international laws have obligations pertaining to the minimum standards of treatment of detainees. Article 26 of the 1997 Constitution of Thailand states that, “In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.” Minimum standards of treatment for detainees are laid out in articles 7, 9 & 10 of the Covenant. However, neither of these sets of standards has been applied with regards to the deaths in custody at Narathiwat.

**Military conceals
truth**

44. The struggle over the truth of the mass killings in the south has in reality been a struggle between the people of Thailand and the military over who has control of society. The exoneration of military personnel and success in concealing the truth through pressure from the army, which objects to civilians scrutinising its activities, speaks to the continued entrenched power that this institution enjoys in Thailand. The effect has been to remove the control over procedures following gross human rights abuses further from the public.

**Generals ‘cannot be
punished’**

45. In exonerating the three generals held largely responsible for the killings at Narathiwat, the army commander-in-chief also made a surprisingly frank and pertinent admission. “There is no disciplinary penalty for those holding the rank of general,” he is reported to have said. This statement again speaks to a feudal way of thinking among the governing elite. It reveals how far removed the thinking of top military officers in Thailand is from civilised ideas of what constitutes a modern society and its armed forces. The military principle of command responsibility is that the higher one’s rank the greater the onus when things go wrong. A high officer is more liable than a low one. In Thailand, however, it appears that the higher one goes the lesser one’s responsibility. And if one is promoted to general there is no responsibility at all. If the high-ranking officers in any armed forces are permitted to escape the consequences of their actions, let alone think in this manner, it is impossible to secure the rule of law. Under such circumstances, the State party’s subscription to the rights that are guaranteed under the Covenant is nothing more than pretence.

**No equality
before law**

46. Equality before the law requires that all citizens be treated equally for their offences. The State party assures us in its submission that this principle is applied in Thailand. Regrettably, in this instance all indications are to the contrary. The gravity of the offence and not the rank of those who committed the crime should be the determining factor in taking action. That these crimes were committed by the military does not make them lesser crimes. The quality of citizenship is not a matter of military rank. A crime is a crime whether committed by the least important person in a society or the most important one.

**Offensive to
domestic and
international law**

47. Thus, the statement of the Thai commander-in-chief is offensive. It offends the ideal of equality before the law, and it offends the fundamentals of the rule of law and human rights as established under the Covenant. When large-scale killings under

the command of senior officers are treated as mere trifles, the security forces and society alike are sent a message that they live by different standards. The deaths in Narathiwat last October lowered the esteem of the armed forces and law enforcement in Thailand both at home and abroad in the same manner as the large-scale killings of the year before did to the reputation of the police. When the highest military officer in the country then belittles the whole affair, it is unlikely to do anything other than further diminish the reputation of the military. It certainly will do nothing to diminish the daily escalating violence that has held the south of Thailand in its grip since the killings occurred last year.

48. **Numerous questions remain unanswered.** As the findings of the commissions of enquiry have not been made public and no proper independent judicial enquiries have been held, a great many questions arising from the killings—particularly those in Narathiwat—remain unanswered or unsatisfactorily answered. Among these, who made the decision to transport the arrested persons to a distant army camp? At the time of making such a large number of arrests, some 1300 in total, the question of where all the people would be held must have arisen. Somebody had the obligation to decide the place and means of detention. How was this decision reached? Were any alternatives discussed, or not? For instance, most of the arrested persons could have had their details recorded from identity cards and been released, with just the suspected ringleaders being held for questioning. That most of the people fortunate to survive were subsequently released without any further consequences speaks to the fact that this could have been done in the first instance. Was this option entertained? Was any other alternative discussed?

49. The shortage of vehicles is also cited as a key reason for the large number of deaths. The officers in charge should have considered how they were going to transport the large number of detainees before they arrested them. But even if they had not done so, the military can hire private vehicles at short notice, and under martial law can even take them by force. To find adequate transportation for 1300 people is not a big issue for an army, and under the circumstances, one of its basic duties. Why was this not done? The explanation that there were simply not enough vehicles available is as shocking as the incident itself. Can it be accepted that the military, acting on behalf of the government, simply did not think of this before arresting all those people? It is hard to believe that the chain of command was so ineffective that even the most rudimentary discussion on providing transport was absent from communications.

50. Who decided to stack the people in the trucks one on top of the other? Was it a decision made by one person on the scene, or by an operations command? Who had the authority to give such an order? Even if the procedure for arrests was not thought out properly before hand, the officers in charge should have taken measures to prevent harm coming to the detainees. Were

Numerous questions unanswered

Why not enough vehicles?

Who gave the orders?

animals loaded in this way, it would be regarded as cruelty to animals. However, it does not seem to have been of any concern to those responsible to treat humans in this manner. Did not the truck drivers point out that the people could not live long being piled up like that? Did the soldiers not consider the natural consequences of their actions? Or, as some eyewitnesses have asserted, did they act as they did with expectation that people would die? Perhaps the explanation lies in the most recent concession by the army that some of the victims may already have been dead before being loaded on to the trucks; hence the need to load living people lying down also, in order to conceal the crime.

What do records show?

51. There must be rational answers to these questions: ordinarily, these are to be found in routine internal records. Do such records exist, and what can they tell of what happened? What internal enquiries have been conducted, apart from what has been made known public? After such an operation, military intelligence and other agencies can be expected to investigate immediately, establish the facts clearly, and make reports to the top command. However, to date the public has been left in the dark, as the findings of the government-appointed enquiry have not been revealed.

Role of the Attorney General

Where was the Attorney General?

52. Many of the preceding questions raise issues over the role of the Attorney General in Thailand. The report of the State party indicates that the Attorney General has the power to decide whether or not to prosecute in cases of extrajudicial killings by state agents under Section 143 of the Criminal Procedure Code (para. 152). However, in both the killings of alleged drug traffickers in 2003 and the mass killings in the south in 2004 the Attorney General was conspicuous by his absence, despite the numerous questions that remain to be answered by way of judicial enquiry.

What happened to autopsy procedure?

53. Under section 148 of the Criminal Procedure Code of Thailand, when there is a death in custody, the rights of the victim are upheld by way of a post mortem autopsy and investigation into the cause of death. Under section 150, three agencies must be involved: the forensic doctor, investigating officer, and public prosecutor. With the autopsy completed and report submitted, it is then the job of the public prosecutor to approach the court in order that it carry out an inquest, with a view to entering into criminal proceedings if necessary. This process should under no circumstances be delayed, such as by reason of a politically appointed enquiry also being under way. It is the role of the public prosecutor to investigate and prosecute all crimes, including those committed by government officers, without regard to other factors. However, in the case of the mass killings in 2004 the Attorney General did not play this role.

Letter to Minister of Justice

54. In a letter to the Minister of Justice of November 12, the Asian Human Rights Commission pointed to the absence of the Attorney General in investigating the Narathiwat killings, and

questioned the apparently uneven application of criminal law in the country. [That letter is contained in Appendix III]. It pointed out that the numerous inconsistencies and gaps in various stories regarding the events of October 25 spoke to the important role of the Attorney General in investigating and prosecuting persons responsible for such killings. In particular, it urged that the Attorney General should at once begin criminal proceedings against the alleged perpetrators of the 78 custodial deaths. However, the minister did not entertain a reply, and like the Attorney General, has remained noticeable by his absence from public debate on these killings.

55. Since then, the key officers implicated were exonerated by way of internal military procedures. But how is it that the fate of these officers was left in the hands of the military at all? And even if the matter was turned over to the military it should have been addressed through a properly-established formal tribunal, operating under established procedures for investigation and punishment, rather than being treated with casual disdain behind closed doors.

56. In none of the large-scale killings in the recent years has there been any evidence of a concerted effort by the Office of the Attorney General to perform its functions under the Constitution. This again amounts to a negation of article 2 of the Covenant, which obliges the State party to have a functioning public prosecutor or equivalent capable of documenting complaints quickly and thoroughly, investigating and collecting evidence, and prosecuting alleged perpetrators.

57. It is a basic norm everywhere in the world that arrestees are treated humanely and kept under judicial supervision. Why has the judiciary in Thailand failed to guarantee the same for victims of the military there? Its failure to secure legal action speaks to radical defects in Thailand's justice system, speaking particularly to the role of the Attorney General. While initial responses to the killings gave hope, it lacked the capacity for a sustained fight against more powerful forces. It lacked the inner strength needed to secure and stand by universal norms of justice: that perpetrators of crimes be brought to account for their actions. The experience of the victims and their families after the mass killings in the south has been that impunity is more deeply entrenched in the judicial system of Thailand than is justice. Thus, the system continues to be driven by feudal rather than judicial imperatives. The families of victims in the 'war on drugs' and those of numerous other gross human rights violations throughout the country in recent years have had the same experience. The effect is to reinforce a perception in society that when the security forces and their accomplices kill, nothing can be done. Where there is a feeling that nothing can be done, there is silence: no one bothers to risk speaking out against crimes for which the perpetrators enjoy absolute impunity.

How was the army left to decide the matter?

No evidence that Attorney General has tried to fulfil functions

Why did the judiciary fail to protect the arrestees?

Role of the Forensic Science Institute

Critical role of Forensic Science Institute

58. The Forensic Science Institute was established because of a recognised need for an independent and professional body to identify and assess dead bodies. This has been acknowledged in the State party report (paras 154–55). Quite rightly, this agency is necessary in order to act as a checking measure against uncontrolled killings by the police, and deliberately manipulated or botched autopsies under conventional procedure (para. 149). But despite in-principle recognition of the need for such an agency, the Institute has been obliged to fight for its mandate from its inception. In the face of the large-scale killings of the recent years it has been hard-pressed to fulfil its mandate, and not surprisingly it—and particularly its deputy director—has been the subject of police ire.

Police have not referred cases to Institute

59. **The police have not referred cases of extrajudicial killings to the Forensic Science Institute.** The bodies of alleged drug dealers killed in 2003 were not sent. Whereas police sometimes reportedly excused themselves from conducting proper autopsies on the ground that they needed all their resources to meet the government targets, the Institute's deputy director Dr Pornthip Rojanasunan observed that her agency had resources available to help investigate cases, but the police were not seeking its assistance. Whereas before February 2003 her central Institute had typically examined one to two extrajudicial killings per day, the number of referrals had since dropped to zero. She said that relatives of those killed had contacted the Institute directly to get help in having the deaths properly investigated. However, attempts to intervene in cases were thwarted by prior autopsies in other locations and removal of evidence. She added that in more than half of the cases seen by her drugs appeared to have been planted on the victims after their deaths. Other doctors also reported that they were reluctant to attend the scenes of drug-related shootings as required by law, or record anything that did not verify the police version of events.

Role of Institute after October 25 mass killing

60. After the killings in Narathiwat too four doctors from the Forensic Science Institute conducted partial examinations of the 78 victims removed from army trucks, and took samples for further testing. Their role was critical in exposing the scale of the tragedy at a time that the military might have preferred to conceal it. However, full autopsies were not conducted: nor were officials from the police or public prosecutor reported to be present as required in order to begin prosecution.

Police have tried to subvert role of Institute

61. **The police have attempted to subvert the role of the Forensic Science Institute.** That the police have targeted the agency has been evidenced most recently in the aftermath of the Indian Ocean tsunami—a matter of international concern given the number of foreign victims on the beaches of Thailand. Shortly thereafter, the government sought outside assistance for the identification of bodies. However, the important work of forensic experts from abroad in identifying the remains of victims has had a dangerous effect on the fragile relationship between

the police and the Forensic Science Institute. After the Institute initiated all the work of identifying bodies, the police succeeded in wresting control of the enquiries. Although on the surface the dispute was about the most efficient means by which the very large number of victims from the cataclysm may be properly identified, in reality it was about the power over forensic science in Thailand as a whole. These latest attacks on its mandate and reputation speak to a concerted effort by the police to completely undermine its role. More troubling still are recent allegations that police have kidnapped volunteers who worked with Dr Pornthip during the tsunami recovery effort and interrogated them on the work of the Institute. At least one of these victims is since reported to have received witness protection. These allegations speak to a very real threat to the future of the Institute and its work that is analogous to the threat facing the public over its right to control and determine the shape and direction of the judicial system of Thailand.

Forced disappearances

62. The Asian Legal Resource Centre has heard of a rapid increase in the number of forced disappearances in Thailand, most in the south of the country. These disappearances have accompanied the recent spread of sectarian violence in the region, but are known to have preceded it as well. After the mass killing in Narathiwat, allegations emerged of tens to hundreds of persons missing. Due to the manner of handling the case by the government, reliable evidence to either support or repudiate these claims has not been forthcoming. As the ALRC lacks detailed information on the numerous reported cases in the south for reason of the very difficult security conditions in the region, here it concentrates on the forced disappearance of high-profile human rights lawyer Mr Somchai Neelaphaijit as indicative of the problem as it stands in Thailand.⁵ Indeed, despite immense efforts and a high-level of publicity to date there has been no satisfactory conclusion to this case, which speaks to the enormous obstacles faced by any person in Thailand seeking to have a forced disappearance properly investigated.

63. Mr Somchai was forcibly disappeared on 12 March 2004 while representing four men who alleged that they had been tortured. He was taken from his car while in Bangkok, allegedly by five police officers. Details of the incident have been widely reported. The five officers, none of whom were known to be associated with one another prior to the alleged abduction, have been charged only with collusion to coerce and assault a person, and armed robbery. They have all been released on bail. They all deny the charges. Other police officers conducting the investigation at the scene of the crime are reported to have damaged important evidence, such as by sitting in the vehicle themselves before it could be examined by forensic experts. Senior police have publicly backed their charges.

Growing number of forced disappearances

Case of Somchai Neelaphaijit



Government
response
contradictory

64. Government comments on the case of Mr Somchai have been characterised by contradiction. In a letter of 5 August 2004 to the Asian Human Rights Commission, the Minister of Justice wrote that the Prime Minister “had given a clear command to all Thai agencies concerned that every necessary measure must be taken to search for Mr Somchai Neelaphajit’s whereabouts, and those who are responsible for his disappearance and safety will have to be brought to justice without exception”. Among these measures, he added, “an ad hoc committee under the responsibility of the Special Investigation Department (SID), the Ministry of Justice has been set up to work on information gathering, forensic evidence as well as other investigation for the case”. He further stated that this committee had made “a lot of progress”. However, the minister has since stated publicly that the matter is not with the Department of Special Investigation, nor is he prepared to transfer it to the Department. He has also stated that no one has approached him to have the case taken up by the Department. However, the ALRC is aware that the wife of the victim, who is a joint plaintiff in the criminal case against the five accused police, the Law Society of Thailand and the Thai Working Group on Human Rights Defenders have initiated requests to this effect to the minister. The wife of the victim has claimed that her application to the Department was refused. The AHRC has communicated to the minister about the case on a number of occasions, most recently on 24 February 2005. [That letter is contained in Appendix III]. Finally, on the first anniversary of his disappearance it formally submitted a petition to His Majesty the King of Thailand, via the Consul General in Hong Kong, requesting that his office pay particular concern to this case. [The petition to the King is enclosed in Appendix III].

Number of
disappearances
unknown

65. The scale of disappearances in Thailand remains unknown due to the lack of any directed effort by government or non-government agencies to take up and document the issue; however, anecdotal evidence suggests that it is extremely high. Reliable reports obtained by the ALRC indicate that the incidence of recent disappearances in that region is in the hundreds, if not thousands. Additionally, the deputy director of the Forensic Science Institute has stated that her agency alone receives around 1000 bodies annually that it is unable to identify. Many of these bodies are found under suspicious circumstances. The families of all these victims could benefit from the introduction of effective legislation to stem the practice of forced disappearances in Thailand.

Somchai case of
symbolic importance

66. **The disappearance of Mr Somchai remains of tremendous significance to the situation of human rights in Thailand because it amounts to a challenge to the very foundations of the justice system in dealing with gross violations of rights there.** How is it that the justice system in Thailand has proven so completely incapable of dealing with such a public case of disappearance, even after the initial steps of the crime have become widespread knowledge? Is the hold that impunity has on the system of justice in Thailand so strong that it is not possible

to break even when there is deep public and international concern? The victim's wife has expressed doubts over the ability of the justice system to afford her a remedy for the loss of her husband, with good reason. The Asian Legal Resource Centre shares her suspicions and doubts, as will all reasonable people.

Article 7: Freedom from torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

67. As the State party has noted in its report, article 31 of the 1997 Constitution prohibits torture, in accordance with article 7 of the Covenant (para. 184). However, there is no domestic law to prohibit torture in Thailand. Nor are there provisions in the Penal Code that would effect the same. Nor has the State party as yet ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nor does any specialised agency exist to address the widespread practice of torture in Thailand in any way, shape or form. Nor does any domestic campaign exist to give effect to the same; in fact, where human rights defenders or other citizens attempt to bring cases of torture to the public attention they may be subjected to very serious threats. Nor do the provisions outlined by the State party in its report that purportedly prevent the practice of torture have any real effect.

68. Torture is routinely practiced by the police in Thailand. Reports also exist of the practice occurring to a lesser extent among the armed forces. However, the Asian Legal Resource Centre has obtained the largest amount of information on the practice of torture in Thailand with reference to the police.

69. Among the police, torture is practiced both in cases of alleged security threats, and in ordinary criminal cases. Some examples follow.

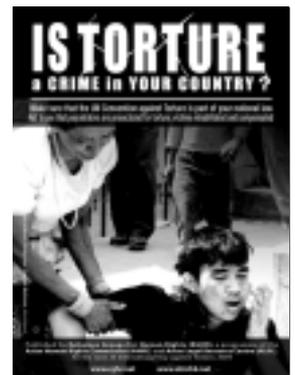
70. On 26 July 2004, the ALRC communicated the details of a grave torture case to the Special Rapporteur on the question of torture.⁶ [That letter, with full details of the case, is contained in Appendix III]. The five victims, Makata Harong (49), Sukri Maming (37), Manase Mama (25), Sudirueman Malae (23), and Abdullah Abukaree (20) were arrested and allegedly tortured in connection with a raid on an army camp by officers of Tanyong subdistrict provincial police station, Narathiwat province. After arresting the men on February 23, the police approached the court to continue keeping them in custody. On March 4, the lawyer for the men, Somchai Neelaphajit, sought a court order that they be taken for physical examination, alleging that they had been tortured. His submission included the following remarks:

No law to prohibit torture

Torture routine among police

Torture practiced in all types of cases

Alleged torture of five victims in Narathiwat



The 4th Suspect was blindfolded by police officer(s) and physically assaulted; strangled and choked, hand-tied behind his back and beaten with pieces of wood on the back and head, suffering some head wounds. In addition, he was also hanged from the toilet door with a piece of rope and was then electrocuted with a piece of fork charged with electrical currents, on the back of his torso and right shoulder.

**Connection to
Somchai
disappearance**

71. Frustrated by his inability to get a judicial response to his applications, Somchai went to government authorities in Bangkok on March 11. The following day he himself was forcibly disappeared.

**Rearrest of four
victims**

72. On May 18 the Criminal Court released the five men after the 84-day statutory limit on detention expired without charges being laid. However, the police immediately rearrested four of them on new charges. To date, none of the alleged perpetrators have been held to account for their actions. Attempts by a senate subcommittee investigating the case to identify officers through photographs reportedly were blocked by police refusing to assist. A member of the National Human Rights Commission also is reported to have stated that the men were “severely tortured by the police but the court did not ask for any detailed information on that torture nor send them to receive any medical treatment”.

**Two further cases of
grave torture**

73. On 12 November 2004, the Asian Human Rights Commission wrote to the Minister of Justice concerning two very grave cases of torture and cruel and inhuman treatment committed by the police.⁷ [The letter is contained in Appendix III]. Both incidents related to allegations over ordinary criminal cases:

**Chol Narapinit &
Siri-on Changluadlai
in Lumpini police
station**

i. Mr Chol Narapinit (28), and his wife Ms Siri-on Changluadlai (17), alleged that the police assaulted them and stole a gold necklace from their possession after accusing them of theft; Ms Siri-on was pregnant at the time. They were then kept in detention at Lumpini police station in Bangkok for 102 days without charge, before finally being released by a court. This period exceeded the statutory limit by 18 days. During this time Ms Siri-on gave birth to a child, but obtained no assistance from the police officers in the station. Her relatives came and took the child from her after five days. It is also alleged that the officer in charge of the case, Police Major Kriangsak, recorded her age as 19 to avoid having to treat her as a juvenile detainee under the Child Protection Act 2546 (2003), established to comply with the Convention on the Rights of the Child. Disciplinary action was taken against some officers, however no criminal charges are known to have been laid, despite early reported remarks by the Minister of Justice that these would follow. Meanwhile, the police acted quickly to issue new charges against the couple and have them rearrested.

**Ekkawat Srimanta in
two Ayutthaya police
stations**

ii. Mr Ekkawat Srimanta (21) was brutally tortured by officers attached to two police stations in Ayutthaya province on accusation of robbery during the first week of November 2004. Officers at Phra Nakhon Si Ayutthaya station are alleged to have covered his head with a hood and beaten him all over his body.

Then they transferred him to Uthai police station, where officers electrocuted him, causing severe burns all over his testicles, penis, groin, and toes. He also suffered severe injuries from beating, including on his back, thighs, cheeks, face, throat and eyes. Again, internal disciplinary action was taken against the accused officers, but there have been no reports of criminal proceedings. This is despite initial statements by senior officials that judicial action would follow, and enquiries having been taken up by the Department of Special Investigation under the Ministry of Justice.

74. Subsequent to these two cases, the ALRC heard reports of further complaints of torture at the Phra Nakhon Si Ayutthaya station. It then uncovered two further credible cases of alleged torture by police there involving six victims:

i. Mr Metta Saiphan (24) and Mr Anucha Siriporn na Ratchasima (28), who were both arrested on 31 March 2004, allege that they were also tortured by officers of the Phra Nakhon Si Ayutthaya police station.⁸ The types of torture allegedly used included suffocation with layers of plastic bags, beating on the body, using pepper spray, and standing on the chest. The men were told that if they did not confess to charges of theft, they would have another nine charges added against them. After this time, they confessed. It is also alleged that the police did not place them in a line-up for identification by the complainant. The two men subsequently retracted their confessions; however, they were sentenced to imprisonment in December 2004. Although in the latter stages of trial a lawyer for the men argued that they had been tortured, the court rejected the argument due to lack of evidence. [The letter on this case to the Minister of Justice is contained in Appendix III].

ii. Mr Anek Yingnuek (24) was arrested on 9 September 2004 on a charge of robbery and also allegedly tortured at the Phra Nakhon Si Ayutthaya police station.⁹ The types of torture included being beaten with PVC pipe, suffocation with plastic bags, and electrocution, including on his penis and testicles through a bag of ice. Anek states that due to the unbearable torture, he gave the names of three friends, Mr Sukit Rachamontri (23), Mr Kampon Kongwiset (19), and Mr Pirom Kruesorn (21) as accomplices. After the three were arrested on the afternoon of September 10 they were also allegedly tortured. Mr Sukit's girlfriend states that the police threw a bottle at Sukit's face before beating, kicking and slapping the men. She also heard loud screams coming from the room where the men were held, before being brought out showing signs of torture. It is alleged that they were constantly tortured until 1am on September 11. The four have now been charged with gang robbery, and are being held in remand awaiting trial. [Reference to the case is given in the letter to the Ombudsman contained in Appendix III].

75. **Extremely brutal types of torture are practiced but suppressed.** Of particular concern in these cases is that the types of torture went far beyond the day-to-day beatings and

Further complaints from Phra Nakhon Si Ayutthaya police station

Metta Saiphan & Anucha Siriporn na Ratchasima

Anek Yingnuek and three friends

Extremely brutal torture practiced

conventional roughing-up tactics that persons in Thailand usually associate with the police. The practices of inflicting wounds and electric shocks on sensitive parts of the body suggest the work of seasoned professional torturers. This fact speaks to a concern that the Asian Legal Resource Centre has repeatedly expressed, that torture is widespread among state security agencies in Thailand: however, up until recently it was not publicly discussed. There is no domestic organisation campaigning against torture in the country. Lawyers, journalists and other concerned professionals there have for many years known about torture, but have shied away out of fear. The addendum to the 2004 report of the Special Rapporteur to the Commission speaks to this point, remarkably listing a mere three cases of torture in Thailand, all involving non-Thai nationals [E/CN.4/2004/56/Add.1, paras 1678–81]. This situation is now slowly changing; however, many more opportunities need to be made to open discussion on the practice in Thailand.

Torture deeply institutionalised

76. Torture is deeply institutionalised. Although the Asian Legal Resource Centre and its sister organisation have repeatedly raised these cases with the Minister of Justice, other relevant national authorities and international mechanisms, it is unaware of any subsequent enquiries or action. This is despite particular efforts to point out to the Minister of Justice that one of the accused police officers is suspected of being a mentally unstable serial torturer, responsible in part for the institutionalised torture at the Phra Nakhon Si Ayutthaya police station. [Appendix III contains a letter of 24 November 2004 sent to the Minister of Justice on these specific points.¹⁰] And the institutional element can be identified in each of the above-mentioned cases. That a young woman could be left to give birth in a police cell, for instance, speaks to a deep institutional tolerance of gross human rights abuse that goes from the arresting officers and those alleged to have assaulted the victims to their commanders, and their superiors.

Torture approved by senior officers

77. Torture is approved by senior officers. It has been the experience of the Asian Legal Resource Centre in its extensive work on the practice of torture in Asia that it always occurs with either tacit or overt approval, and perhaps coordination, of persons high in the chain of command. In Thailand it is a widely shared opinion that torture is necessary to deal with ‘bad’ people. This sentiment is not only felt among the top ranks, but also openly expressed. After some of the above-mentioned cases came to light in 2004, Police Lieutenant-General Amarin Niamsakul, Commissioner of the Immigration Bureau, said in a prime-time national television interview that as police all around the world commit torture, it is reasonable that police in Thailand do so too. He added that torture was necessary to extract confessions, and that ‘bad people need bad treatment’. Although the Minister of Justice spoke publicly against his remarks, no disciplinary action was taken against Pol. Lt-General Amarin. This is despite the fact that his comments, while holding a senior government office, contradict and affront both the 1997 Constitution and the



Covenant. The ALRC has since on a number of occasions called upon the government of Thailand to remove Pol. Lt-General Amarin from office. The consequence of the government's inaction, as in other cases of gross rights abuse in Thailand, is to offer an implicit endorsement of the remarks, and encouragement for other officials to continue to speak and think likewise. As a consequence, it can be expected that the use of torture as an acceptable method for interrogation will persist and expand.

Article 9: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

78. As noted by the State party in its report (para. 243), section 237 of the 1997 Constitution provides for the procedure of arrest in Thailand and rights of the arrested person, including to be sent to the court within 48 hours of arrest. With reference to provisions for arrest and detention, the State party has interpreted its obligations under the Covenant as follows (para. 3[d]):

On the period of time to bring the arrested person to court, Paragraph 3 of Article 9 of the Covenant has used the term 'promptly', the Thai Criminal Procedure Code authorized the inquiry official to detain the accused for 48 hours before bringing the person to court. If the inquiry has not been completed he can further detain the person for seven days. This is not in line with the Covenant. Therefore, Thailand has made a declaration to explain that Thailand shall follow the commitment under this provision in the manner the law of Thailand so provides at the moment.

79. Leaving aside the self-evident problems associated with selective application of the Covenant, it should be pointed out with regards to the above that this interpretative declaration does not cover the full scope of the law, which is outlined by the State party in paragraphs 249–254. As described in those

Procedures for arrest

**Up to 84 days
detention without
charge**

paragraphs, in serious criminal cases application may be made to obtain seven consecutive extensions to the period of detention, totalling 84 days. The State party gives the impression in its report that a system of checks and balances exist to prevent unreasonable application of this provision and that “the court shall thus permit a detention of the accused during inquiry only when necessary”. However, the Asian Legal Resource Centre has observed that there are many problems associated with the periods of detention over which suspects may be held while an enquiry is ongoing.

Extended detention
routine

80. Extended detention is routinely practiced in ordinary criminal cases under enquiry in Thailand. In particular, it may be applied in cases where the accused persons have been tortured or otherwise coerced into admitting guilt by the police, in order to allow sufficient period of time for fabrication of a case and the removal of evidence suggesting torture or wrongdoing. In each of the cases of torture by the police in Ayutthaya province documented by the Asian Human Rights Commission, for instance, the accused were held for the full statutory period before being charged. Despite requirements that the accused be brought to the court upon extension of the period of detention, as the courts have no particular procedures in place for quick intervention into cases of suspected torture, these provisions do not serve to protect the rights of the detained person.

Accused persons
unable to exercise
rights

81. Accused persons are often unable to exercise their rights as envisaged by the law. Most of the accused in criminal cases are ordinary people who lack knowledge about the legal system and their rights as laid out by the State party in paragraph 246 of its report. They may be intimidated in the court and in the presence of the police who may have abused them and extracted confessions by force. Their family members too may be threatened and denied access to them. In the cases of torture in Ayutthaya province, the relatives of the accused were afraid even to go to the police stations and attempt to meet their loved-ones, let alone lodge complaints about their treatment. The accused may not be able to obtain medical treatment while in detention, and are unlikely to meet with a lawyer until they have been charged and the court appoints one. In the case of Mr Chol Narapinit and Ms Siri-on Changluadlai in Lumpini Police Station, for instance, Ms Siri-on gave birth while in detention but received no medical assistance. After five days family members came to collect the child, but she continued to be held in detention in excess of the statutory period. When the couple was finally freed under a court order under section 90 of the Criminal Procedure Code, the police immediately set about issuing new charges against them. Similarly, four of the five alleged torture victims defended by missing human rights lawyer Mr Somchai Neelaphajit were immediately re-arrested on new charges by the police upon expiration of their first 84-day period of statutory detention. Such practices defeat the purpose of the limited periods of detention stipulated under the Criminal Procedure

Code, and again raise questions as to the contempt with which police in Thailand ordinarily feel inclined to treat criminal justice procedures, over which they exercise practical day-to-day control.

82. With reference to cases of compensation for wrongful imprisonment, difficulties arise when cases are still pending before the courts. In the case of the accused Mr Jobi in the 2002 Ratchburi bus shooting, his lawyer has proposed that he be entitled to compensation on this ground. However, as the Office of the Attorney General has appealed against the decision of the Court of First Instance, which dismissed the case against him, the question of compensation cannot be resolved until the matter pending before the courts is concluded. In the event that the matter goes to the Supreme Court, this would take some years.

Compensation obstructed by ongoing cases

83. Rights to liberty and security ordinarily available to persons in Thailand may be denied through application of restrictive security regulations. It should be noted that whereas the above-mentioned provisions apply under normal circumstances, Thailand has a number of laws that place more onerous restrictions on the rights of detainees. Among these, the State party has pointed to the Martial Law Act 2547 (1914), within the power of the Ministry of Defence, and the Administration under Emergency Situation Act 2495 (1952), within the power of Ministry of Interior (paras 121–22). Despite the State party's happy assertion that no declaration of emergency has been necessary under article 4 of the Covenant, it has omitted to point out that martial law is operative in all of the border districts of the 20 border provinces of the country. Additionally, as of 5 January 2004, the entire three southern border provinces have been under the Martial Law Act; full implementation of martial law in the three provinces was authorised by the Prime Minister in February 2005. This act empowers the armed forces to detain persons for up to one week without charge or bringing them before another authority, and also to try certain persons under martial law provisions. Additionally, at the end of November 2004 the government of Thailand made the alarming proposal to introduce a new internal security law that would greatly expand the powers of police to detain persons without charge or having to bring them before the court. This proposal, had it succeeded, would certainly have placed the State party in flagrant violation of the Covenant. It was only after considerable and swift public opposition that the decision to introduce the new law was shelved.

Restrictive security regulations curtail ordinary rights

Article 14: Right to fair trial

1. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

2. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

...

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Problems associated with fair trial

84. The Asian Legal Resource Centre has in reference to preceding articles drawn attention to the defects in policing and administration of justice that impinge upon the ability of persons in Thailand to obtain a fair trial in accordance with article 14 of the Covenant. In particular, the entire programme of eliminating alleged drug dealers in 2003 was premised upon the attitude, articulated on numerous occasions by the Prime Minister and other senior officials, that these persons did not deserve natural justice. Hence, a special category was created for which the provisions of the Covenant and their equivalents under the Constitution of Thailand were deemed non-applicable, and for whom any pretence of ordinary criminal procedure could be abandoned. The ALRC has pointed out that this was an extremely dangerous step that had the effect of deeply undermining principles of fair trial in Thailand.

Court-appointed lawyers fail to fulfil duties

85. **Court-appointed lawyers in Thailand fail to properly undertake their duties.** To ensure fair trial in accordance with article 14 it is necessary that the accused have a defence lawyer. As noted above, the law in Thailand provides for the court to appoint a lawyer where the accused does not otherwise obtain one and faces a possible prison term, in accordance with section 242 of the Constitution. However, the Asian Human Rights Commission wrote to the Minister of Justice on 9 March 2005 expressing concerns that many of the lawyers acting as court-appointed attorneys are not representing their clients adequately. [A copy of that letter is contained in Appendix III]. In the case of Mr Chanon Suphaphan, outlined in the letter, he was sentenced to 10 years in jail on allegations of robbery.¹¹ However, an investigation of the case by the AHRC has uncovered numerous irregularities that speak to the day-to-day defects in policing and administration of justice in Thailand. These include that the police were wilfully negligent in their investigation of the case: refusing to record witness statements; when pressed, not recording all statements; not producing the witness statement in court; not making the statement available to the defendant after the first hearing. As none of the parties to the case are

influential persons known to have contacts with the police that would afford them preferential treatment, it can only be surmised that the reasons for the officers' actions have been to obtain convictions for the purpose of getting promoted and bonuses.

86. Of particular concern throughout the case, however, was the absence of the court-appointed attorney. Like the police, he was totally disinterested in the needs of his client. In fact, it would be fair to say that he did even less than the police, perhaps expecting that the case would be dropped or perhaps without any interest for the consequences at all: simply telling the defendant that he didn't have anything to worry about. He failed to undertake any proper investigation into the case or challenge the failure of the police to present evidence in court. In short, he knew and did nothing about the case. Regrettably, the ALRC has observed that in most other cases where accused persons are represented by court-appointed lawyers in Thailand, they have received little if any real legal assistance. The case of Mr Metta Saiphan and Mr Anucha Siriporn na Ratchasima detailed by way of a letter [in Appendix III] is another example of the same. This observation was echoed recently by an elderly villager with whom a staff member spoke, who said that, "In my experience, people who have public defenders are found guilty." Attempts by staff to obtain advocates from the Law Society to replace those appointed by the court have also been less than successful. On one recent occasion when a provincial Law Society chief was asked to provide a lawyer instead of the one from the court he replied that one wouldn't be any better than the other.

87. **As most of the persons being represented by court-appointed lawyers in Thailand are poor people facing ordinary criminal charges, the non-performance of duties by court-appointed lawyers has a detrimental effect on the routine enforcement of rights under the Covenant.** The question that should be asked is in how many courts the public defender is actually serving the interests of the public prosecutor? The consequences of this unfortunate situation fall not only on the accused, but also on society as a whole. When large numbers of people subscribe to the opinion voiced by the villager mentioned above, the effect is to cause a general demoralisation in society, and loss of faith in its key institutions. When people lose faith in the ability of the judiciary to perform its functions fairly and properly for reason of inactive and disinterested police and public defenders, the rule of law is further undermined.

'People who have public defenders are found guilty'

Non-performance of duties by court-appointed lawyers undermines Covenant

Articles 16 & 26: Recognition and equality before the law

Everyone shall have the right to recognition everywhere as a person before the law.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. 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 race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Discrimination against particular groups

88. While the preceding discussion is applicable to the entire population of Thailand, the Asian Legal Resource Centre is aware that certain groups in the country are faced with greater obstacles in obtaining their rights as stipulated under the Covenant relative to others. In particular, certain non-Thai ethnic groups suffer from a lack of recognition before the law and discrimination as they have not been recognised as citizens, or denied full rights of citizenship. Additionally, both legal and illegal migrants from neighbouring countries, particularly Myanmar (Burma), suffer myriad forms of discrimination that impinge upon their ability to effect their rights as envisaged under the Covenant.

Stateless persons

89. Reasons for the continued statelessness of large numbers of persons in Thailand, most of them belonging to minority upland communities, are complex and closely related to the historical development of the Thai state and concepts of identity, which are beyond the ambit of this discussion. The consequences of statelessness are easier to identify. They include denial of rights to movement—both within the country and abroad—ownership of property, education and a vote. They seriously impinge upon the survival of entire communities. For instance, in 2004 the Asian Human Rights Commission reported that on 23 July 2004, 34 men and 14 women from Pang Daeng community were arrested and charged with forest encroachment and illegal entry into the Chiang Dao national reserved forest.¹² According to the Central Registration Bureau, Department of Local Administration, the affected persons have not been included in the list of ethnic groups that are eligible for citizenship. Therefore, despite the fact that they have occupied the same area in excess of some 20 years, and have been involved in government development projects in the region, they are unable to approach the courts for redress. It should also be noted that there were allegedly numerous irregularities in the procedure of arrest. These included that the police did not inform the persons that they were going to be arrested and did not obtain the proper warrants from the court as required by sections 237–38 of the Constitution.

Migrant workers

90. **Migrant workers in Thailand face numerous obstacles in securing their rights as envisaged by the Covenant, and have over many years been subjected to torture, extrajudicial killing and other gross abuses.** The Asian Legal Resource

Centre is aware that police and immigration officials routinely abuse migrant workers at time of arrest, in detention centres and during deportation, and also knowingly allow, and sometimes profit directly from, the promotion of illegal labour practices, the trafficking of women and children, and related prostitution. Extortion of money from migrant workers by the police and immigration officials is extremely common, and the primary motivation for conducting searches and carrying out arrests targeting migrants. Money is invariably extracted through the use of verbal threats and where necessary, torture. Women in police and immigration detention are also routinely raped and otherwise sexually threatened and abused. The arrests are very often arbitrary and without due legal process: migrants are frequently held without ever being brought before a court, or held even after being ordered released by a court. Senior officials tolerate and often cultivate the climate of impunity in which abuse and exploitation of migrants persists. Human traffickers, brothel owners, employers of illegal workers or state officers who kill migrants are rarely subjected to prosecution, or if so, found guilty. Migrant workers also face the same obstacles in lodging complaints and obtaining redress as envisaged by article 2 as their Thai counterparts. In addition, they face numerous other obstacles, such as the lack of a common language and lack of awareness about their basic rights. They may be confined to their workplace or in a geographically remote location.

91. Among the large numbers of migrant workers in Thailand, the vast majority is from Myanmar. There are no reliable figures on the actual number of these people in Thailand; some estimates suggest as many as two million. Over 350,000 have been registered, although the system for registration of migrants and the number of persons eligible changes frequently. Most people coming into Thailand from Myanmar enter at various points on the border, and are employed in industries and activities in border areas as well as in and around Bangkok. They are extremely vulnerable to all types of human rights violation, ranging from denial of wages and police extortion to assault, rape and murder. Murders of Burmese migrants are rarely investigated properly.

Burmese migrants

92. **Human rights defenders working on behalf of migrants have also been targeted.** For instance, in December 2003, employers had posters of the leaders of the Yaung Chi Oo Workers Association plastered around Mae Sot, Tak province. The police were reported to be looking for the men, who were forced into hiding. The men are exiled activists from Myanmar, who, if deported would certainly face lengthy prison terms and torture. On 14 December 2004, a volunteer interpreter working for a non-governmental group recording and lodging complaints by migrant workers against their employers was arrested and charged with working illegally.¹³ The said person, a Mr A Salam (a.k.a. Ko Kabar) has legal status in Thailand, holding a Burmese displaced person card; in fact he was born in Thailand in 1986 after his parents had migrated in 1975 but has not been recognised as a citizen. However, holders of this card are not entitled to work,

**Human rights
defenders targeted**

and so Mr Salam was charged as an alien without a working permit under articles 7 and 34 of Foreign Workers Act 2521 (1978). The matter is pending in the court. Again in this case, there were numerous procedural irregularities at time of arrest: the police, immigration and labour officials entered the premises without warrants; rifled through and removed large numbers of documents without permission; and failed to inform the accused that he was being arrested.

**Discriminatory
treatment after
tsunami**

93. The Asian Human Rights Commission also pointed to discriminatory treatment of Burmese migrant workers in the aftermath of the devastating Indian Ocean tsunami relief effort.¹⁴ At least 120,000 registered Burmese migrant workers were in areas affected by the tsunami; the total number of Burmese, accounting for estimates of illegal persons, may have been double that figure. Many of these persons lost all of their possessions, including work permit cards, in the disaster. While the Thai authorities were quick to assist Thai citizens and foreign tourists in the affected areas, the Burmese workers were not taken properly into consideration. Ministry of Labour officials announced that only those with work permits would be entitled to assistance, and it was reported to the AHRC that even these persons faced great difficulties in obtaining access to government assistance. Meanwhile, the authorities began rapidly rounding up Burmese persons and forcibly deporting them to their country of origin, after allegations of theft were levelled against them. These included legal workers who had lost their registration cards during the tsunami or whose employers were killed. The consequence was to force a large number of Burmese migrant workers into hiding, under miserable conditions. Another consequence was to hamper the enormous task of identifying all the recovered bodies of the dead, as the affected persons did not dare to approach the authorities to report and identify lost friends and relatives. After considerable domestic and international protest over the treatment of the affected Burmese migrants, international agencies intervened, including the International Organisation for Migration, and government authorities went some way to relaxing the discriminatory relief policies.

Article 19: Freedom of expression

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Freedom of
expression more
restricted**

94. Although the State party has in its report outlined its domestic constitutional and regulatory provisions allowing for the freedom of expression, the Asian Legal Resource Centre is concerned that this right as envisaged under article 19 of the Covenant is being increasingly impinged upon in Thailand. It recently raised a number of its concerns before the Commission on Human Rights.¹⁵

95. **Criminal defamation continues to be actively used to sanction persons in Thailand who may be acting or speaking in the public interest.** Criminal defamation has in recent years been condemned globally as offensive to free expression. Many countries have recognised that criminal defamation is obsolete, and have removed it from the statute books. Unfortunately, in Thailand it remains as section 328 of the Penal Code, and carries a fine and up to two years' imprisonment as punishment. This is an extremely backward provision entirely out of place in a modern and democratic society, and out of step with developments in international law. It is also contrary to both the letter and spirit of the 1997 Constitution, which guarantees unrestricted freedom of expression.

Case of Supinya Klangnarong

96. The criminal libel provision has received considerable attention with regards to the case of media-reform activist Ms Supinya Klangnarong and the Thai Post. Shin Corp sued Ms Supinya for criminal and civil defamation after she observed in an article published in the Thai Post on 16 July 2003 that Shin Corp's profits have increased enormously since its founder Thaksin Shinawatra became Prime Minister. Although Ms Supinya's allegations were based on sound research and motivated in the public interest, the criminal libel suit is currently pending before the courts. Meanwhile, a civil suit for 400 million Thai Baht (US\$10,370,000) is pending the outcome of the criminal suit. Ms Supinya and the editors of the Thai Post newspaper now face possible jail terms and disproportionate financial sanctions under a backward and unnecessary law that runs contrary to international standards and the national constitution. If they are found guilty, it is likely to have a chilling effect on debate over pressing issues of national concern in the future.

Concentration of media ownership

97. **The persistent concentration of broadcast media ownership in Thailand is cause for deep concern.** The television and radio media in Thailand have been under a government and military monopoly since their introduction to the country. Although the new Constitution of Thailand introduced in 1997 set in place provisions for the democratisation of these media, these provisions have not been realised. Radio stations have been started by local communities, but the government has shut some and threatened others with closure on the grounds they are "illegal". In fact it is the government itself that has failed to introduce a licensing regime in accordance with the 1997 Constitution. In 2004 the Department of Public Relations stated that it would establish a regulatory procedure over these broadcasters despite the fact that the proper legal provisions as stipulated by the Constitution have not been put in place. A new media monopoly is also emerging between the commercial and government sectors, as media concessions are issued to Shin Corp and other businesses close to senior politicians, thereby defeating the purpose of the constitutional reforms. Shin Corp has totally dominated all sectors of the commercial media in Thailand, as it owns 24 companies running telecommunications,

television, radio, internet, satellite and other communications throughout the country, and even into neighbouring Cambodia, Laos and Myanmar.

Threats against
journalists increased

98. **Threats against journalists and independent media have increased.** Since the 2003 ‘war on drugs’, many journalists in Thailand have narrowed their reporting in response to overt and covert government threats. Reporters who criticised the government campaign at that time were accused of being in the payment of drug dealers. Editors of newspapers and magazines have also expressed fears over the loss of millions of dollars of advertising fees from companies connected to the government, particularly the Prime Minister. As a consequence, self-censorship is being practiced more widely. Broadcast media programme managers, producers and hosts are allegedly threatened against critical reporting of the government, by way of warnings in person and writing to be more ‘cooperative’. During late 2004, executives of radio stations were reportedly warned not to say anything negative about the escalating violence in the south. At least one radio host was taken off the air after the Supreme Command, which owns the frequency, told the radio media to exercise extreme caution in reporting security and political issues. Community radio stations have been shut down and are closely monitored. Numerous warnings were also issued, and raids conducted, in relation to distribution of video footage of the killings in Narathiwat in October 2004, which were announced as being a threat to national security, in accordance with section 116 of the Penal Code.

Broadcast media
regulator
undermined

99. **The independent broadcast media regulatory body has been wantonly undermined even before inception.** As noted by the State party in its report, article 40 of the 1997 Constitution provides for an independent regulatory body to distribute broadcast frequencies and supervise radio and television broadcasting, with regards to utmost public benefit (paras 14–15). The Wavelength Regulator Act 2543 (2000) established article 40 under law and provided that 20 per cent of the media broadcast spectrum be reserved for people’s media. However, the government has dominated the selection process for the regulator, and selected candidates with whom it has connections. Ms Supinya Klangnarong was at the forefront of a legal battle to have the short-listed candidates disqualified for reasons of lack of transparency in the selection process, which was won in the Supreme Court in 2003. But recent media reports have indicated that the government has again stacked the list of prospective regulatory body members with bureaucrats and businesspeople over which it has influence. In the likelihood that the regulator consists of these persons, the result will be further consolidation of broadcast media in the hands of a few state agencies and a few powerful businessmen, which will not contribute to the freedom of expression in Thailand as envisaged by article 19.

Endnotes

¹ Section 75 of the 1997 Constitution of Thailand corresponds: “The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally and organise an efficient system of public administration and other State affairs to meet people’s demand.”

² AHRC Urgent Appeal UA-101-2004: THAILAND: Families demand real perpetrators of bus shooting be brought to justice, 13 August 2004.

³ Contents of this section are drawn primarily from the special report ‘Extrajudicial killings of alleged drug dealers in Thailand’, *article 2*, vol. 2, no. 3, June 2003.

⁴ AHRC Urgent Appeal UA-143-2004: THAILAND: At least 84 people killed in Southern Thailand, 26 October 2004; Urgent Update UP-65-2004: THAILAND: A list of the victims of the mass killing in Narathiwat province; Immediate international intervention needed, 28 October 2004.

⁵ AHRC Forwarded Appeal FA-06-2004: THAILAND: A human rights lawyer Mr. Somchai Neelaphajit missing, 17 March 2004; and Urgent Updates, UP-14-2004: THAILAND: Mr. Somchai Neelaphajit is still missing and the police may be involved in his disappearance, 25 March 2004; UP-26-2004: THAILAND: 5 suspects in the alleged abduction of missing human rights lawyer Mr. Somchai Neelaphajit bailed out, 11 June 2004; UP-58-2004: THAILAND: Inaction by Thai authorities in investigation the disappearance of Mr. Somchai Neelaphajit, 14 October, 2004; UP-61-2004: THAILAND: Justice Minister responds over case of disappeared lawyer, 19 October 2004; UP-20-2005: THAILAND: Human rights lawyer still missing after nearly one year; Action needed today to have case transferred, 24 February 2005; UP-24-2005: THAILAND: Thai minister refuses to act on missing human rights lawyer case, 9 March 2005.

⁶ AHRC Urgent Appeal UA-94-2004: THAILAND: Severe torture victims still in custody while police torturers remain in posts, 26 July 2004.

⁷ AHRC Urgent Appeal UA-153-2004: THAILAND: Two cases of extremely serious torture and cruel and inhuman treatment by Thai police officers, 9 November 2004; Urgent Update UP-78-2004: THAILAND: Torture cases transferred to special investigators, but police still free, 2 December 2004.

⁸ AHRC Urgent Appeal UA-170-2004: THAILAND: Another case of torture to obtain confession at Ayutthaya Police Station, 10 December 2004.

⁹ AHRC Urgent Update UP-04-2005: THAILAND: Repeated torture at Phra Nakhon Si Ayutthaya Police Station, 12 January 2005; and, UP-10-2005: THAILAND: Updated information on the torture of the four men by the Phra Nakhon Si Ayutthaya police, 3 February 2005.

¹⁰ AHRC Urgent Update UP-75-2004: THAILAND: Demand immediate criminal action against police torturers, 24 November 2004.

¹¹ AHRC Urgent Appeal UA-40-2005: THAILAND: A man receives a ten-year sentence for coming to the assistance of a drunk disabled person, 9 March 2005.

¹² AHRC Hunger Alert HA-02-2004: THAILAND: Hunger caused by mass arrest of villagers, 15 September 2004.

¹³ AHRC Urgent Appeal UA-178-2004: THAILAND: Migrant workers' rights activist facing legal prosecution and death threats, 21 December 2004.

¹⁴ AHRC Urgent Appeal UA-10-2005: THAILAND: Discriminatory relief operations and forced deportation against Burmese migrant workers affected by the tsunami, 19 January 2005; AHRC Urgent Update UP-13-2005: THAILAND: Updates on the tsunami-affected Burmese migrant workers, 16 February 2005.

¹⁵ ALRC Written statement to the Commission on Human Rights, 'Criminal defamation and growing restrictions to freedom of expression in Thailand', E/CN.4/2005/NGO/112.

Recommendations to the UN Human Rights Committee regarding Thailand

Asian Legal Resource Centre

The Asian Legal Resource Centre urges the Human Rights Committee to raise with the State party that it

1. Undertake a thorough review of implementation of article 2 of the Covenant with reference to the respective roles of the Royal Thai Police, Office of the Attorney General, Forensic Science Institute, Department of Rights and Liberties Protection, and court-appointed attorneys.

General

2. Investigate the incidence of torture in Thailand and

On torture

a. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

b. Introduce a domestic law to criminalise torture in accordance with article 7 of the Covenant and the provisions of the Convention against Torture.

c. Suspend alleged torturers from duty, at once and without pay, pending full investigations.

d. Remove from duty at once all state officials who publicly endorse the use of torture.

e. Establish a specialised agency to receive complaints of torture, quickly investigate them and initiate legal proceedings against the accused where a *prima facie* case exists.

f. Provide sufficient resources for the said agency to function effectively and in accordance with its mandate.

g. Publicise the said law and agency widely through the broadcast and print media and educational programmes.

h. Amend judicial procedures and conduct the necessary training programmes so judicial officers can quickly intervene where detainees brought before them during the investigation stage allege torture or show signs of possible torture. In particular, a procedure must be established so that the victims are given thorough independent medical treatment and examinations without delay.

On forced disappearance

i. Undertake training on international law and jurisprudence on torture at all levels of the judiciary and among lawyers.

3. Investigate the incidence of forced disappearance in Thailand and

a. Introduce a domestic law to criminalise forced disappearance in accordance with the principles established in the draft International Convention on the Protection of All Persons from Forced Disappearance.

b. Establish a specialised agency to receive complaints of forced disappearance, quickly investigate them and initiate legal proceedings against the accused where a *prima facie* case exists.

c. Provide sufficient resources for the said agency to function effectively and in accordance with its mandate.

d. Publicise the said law and agency widely through the broadcast and print media and educational programmes.

e. Review existing arrangements for the bringing of the equivalent of *habeas corpus* writs to the courts under Thailand's civil code in order that these be lodged more quickly and expeditiously.

f. Undertake training on international law and jurisprudence on forced disappearance at all levels of the judiciary and among lawyers.

Give right of petition to high courts

4. Make available the superior right to petition directly to the Supreme Court on human rights violations, by way of an enabling law, as a measure of implementation of the Covenant and in accordance with the principle established under section 28(2) of the Constitution. Where compensation is to be paid in such cases it should be paid by the government, for breach of its constitutional duties to protect the rights enshrined therein. This avenue has already been made available in other jurisdictions worldwide, including some in Asia, with good effect for the enforcement of rights under the Covenant. In addition to the remedies afforded the complainant directly, courts in some jurisdictions are now taking it upon themselves to give instructions to the government for institutional and procedural changes.

Ratify Optional Protocol

5. Ratify the first Optional Protocol to the Covenant to allow persons to bring complaints of violations directly to the Committee in the event that all domestic remedies have been exhausted.

Create specialised agency to investigate police

6. Create a specialised agency to receive and investigate complaints of serious rights violations against the police including, but not limited to, complaints of extrajudicial killings. Provide sufficient resources for the said agency to function effectively and in accordance with its mandate. Publicise the said agency widely through the broadcast and print media and educational programmes.

7. Remove the exclusive power of the police over ordinary criminal investigations. Extend the proposed joint power of the Attorney General over select investigations to all criminal cases. Review current institutional arrangements in order that public prosecutors act independently of the police.

Delimit police power over investigations

8. Review the practice of forensic medicine in Thailand and

On forensic science

a. Provide the Forensic Science Institute with all the necessary material and institutional support and publicly defend it from attacks by other government agencies, particularly the Royal Thai Police.

b. Where credible allegations exist that bodies or other material evidence have been destroyed or 'lost' due to the acts or omissions of state officers, investigate the accused and where a *prima facie* case exists, hold them criminally liable and suspend them without pay at once subject to further proceedings.

c. Review the remunerations of doctors required to undertake autopsies and site investigations where forensic scientists are not available, and to establish the means to ensure that they are not subjected to police intimidation.

9. Enhance the victim compensation scheme and

On victim compensation

a. Provide the Office of Public Compensation for Criminal Cases with all necessary resources to fulfil its mandate.

b. Ensure that compensation is timely and adequate and the process to obtain compensation not an undue burden on the victim.

c. Review arrangements for emergency treatment of victims of torture and other gross rights abuses without affecting the right of the alleged perpetrators to a fair trial.

d. In every case take both physical and mental rehabilitation into account when assessing the amount and nature of compensation required.

g. Publicise the scheme widely through the broadcast and print media and educational programmes.

10. Enhance the witness protection scheme and provide the Office of Witness Protection with all necessary resources to fulfil its mandate. Publicise the scheme widely through the broadcast and print media and educational programmes.

Enhance witness protection

11. Ensure that there are full and proper judicial inquiries into all cases of murder or extrajudicial killings. Specifically, establish independent judicial commissions of inquiry into the killings of February to May 2003 during the so-called 'war on drugs', and also the recent killings in the south, including but not limited to the large-scale killings of April and October 2004. A special independent judicial inquiry should be established with reference to the 78 persons who died in army custody on 25 October 2004. Admit a role for the Special Rapporteur on extrajudicial, summary or arbitrary executions in publicly addressing these killings.

Ensure judicial inquiries

On detention 12. Review the current arrangements for statutory detention of up to 84 days in certain criminal cases, with a view to reducing the statutory periods of detention and affording better oversight to judicial officers, registered doctors, and lawyers. Reduce the initial period of custody from 48 to 24 hours. Investigate the incidence of rearrest of the detainees by police officers upon the expiry of the statutory period with a view to preventing the practice.

On court-appointed lawyers 13. Review the role of the court-appointed lawyers with a view to reforming and improving the system to ensure that defendants obtain satisfactory service.

On the NCCC 14. Review the functioning of the National Counter Corruption Commission with reference to the continued widely reported and deeply entrenched corruption among the police.

On the NHRC 15. Permit the National Human Rights Commission to undertake its mandate free from intimidation, and with sufficient resources allocated for the purpose, as provided by the Constitution. Periodically review the role and progress of the Commission in protecting human rights in Thailand and if necessary further enhance its mandate and provide additional resources.

On the south 16. Review the application of martial law provisions and other onerous restrictions on the people of the south of Thailand, such as the proposed 'zoning' system, and

a. Permit free access to the region by independent agencies seeking to undertake investigations, including judicial bodies, parliamentary bodies and the National Human Rights Commission.

b. Guarantee judicial officers stationed in the south, particularly judges, that they will be fully protected and able to undertake their duties as normal.

c. Ensure that any application of martial law provisions anywhere in Thailand does not breach the rights established under the Covenant from which no derogation is permitted.

On statelessness 17. Review practices in relation to stateless persons with a view to granting full citizenship rights to affected persons at the nearest possible date.

On migrant workers 18. Review practices in relation to migrant workers and

a. Ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and bring domestic law into line with the Convention.

b. Establish a specialised agency to receive complaints from migrant workers, and monitor progress in securing their rights.

c. Encourage the National Human Rights Commission of Thailand to establish permanent and effective channels for the reporting of abuses against migrant workers, and propose means for redress.

d. Permit human rights defenders working with migrant workers to operate openly and legally.

e. Review the role of the Office of Labour Protection and provide it with sufficient resources to fulfil its mandate.

19. Abolish criminal defamation and review the existing civil defamation law to bring it into line with international standards, in particular, in claims for compensation proportionate to the harm done.

**Abolish criminal
defamation**

20. Review the present composition of the proposed members of the incipient broadcast media regulatory body and procedure for their appointment in order to ensure that it not be subjected to external influence.

**On the broadcast
regulator**

Thailand webpage: <http://thailand.ahrchk.net>

Visit the Asian Human Rights Commission bilingual webpage for the latest releases on Thailand.

The page includes publications, short articles, statements, press releases, urgent appeals and reports, in Thai and English. It is updated regularly.

Subscribe to the Thai e-mailing list for the contents to be sent directly to you. Subscribe through the site, or by sending an e-mail to thailand@ahrchk.net.

Appendix I: Collusion and influence behind the assassinations of human rights defenders in Thailand

Tyrell Haberkorn, PhD Candidate,
Cornell University

In recent months, Thai and international human rights organizations, United Nations bodies and various governments have criticized the declining human rights situation in Thailand. In 2003, under the so-called 'War on Drugs', over 2500 alleged drug offenders were extrajudicially killed. Nearly two years later these killings have yet to be officially investigated. Since January 2004, the three southern border provinces of Yala, Pattani and Narathiwat have been under martial law. Over 500 people have been killed since then, at the hands of both insurgent groups and state military and police forces. In two notable incidents, the Krue Se Mosque massacre on 28 April 2004 and the Tak Bai massacre on 25 October 2004, large numbers of civilians have died at the hands of state officials. Simultaneously, press freedom has been markedly curtailed over the past four years, spectacularly evidenced by the libel case against journalist and human rights defender Supinya Klangnarong. In its January 2005 assessment, Human Rights Watch noted that the diminishing respect for human rights that has marked the first government of Thaksin Shinawatra "accelerated sharply in 2004".

Yet, despite the worsening human rights situation, in February 2005 Thai Rak Thai and Thaksin Shinawatra were re-elected to office for another four years. Amid widespread questions about

This is the edited version of a document that was originally submitted to the 84th session of the UN Human Rights Committee by the Thai Working Group on Human Rights Defenders under the title, 'In struggle and sadness: The lives and deaths of eighteen human rights defenders under the first Thai Rak Thai government, January 2001 - January 2005' (March 2005). The original version was submitted along with the translation of a report from *Fa Dieu Kan* magazine ('Pradap wai nai lokaa', vol. 2, no. 4, October-December 2004) on the recent killings of 18 human rights defenders. Summarised details of 14 cases follow, which are based upon translations of the originals by Tyrell Haberkorn.

voting irregularities and election tampering, Thai Rak Thai captured 375 of the total 500 parliament seats, effectively creating a one-party government. On 9 March 2005, Thaksin Shinawatra was officially voted into the office of prime minister by Parliament. Dismissing concerns that a one-party government was tantamount to parliamentary dictatorship, Thaksin proclaimed the election as indicating an overwhelming mandate for his continued rule.

Within the context of Thaksin's recent re-election, this article considers the assassination of 18 human rights defenders under the first Thai Rak Thai government (January 2001–January 2005). Not limited to any one region of the country, these murders claimed the lives of a diverse range of women and men, village leaders, students, and lawyers who shared a commitment to protecting their communities and working for justice. They opposed rock quarries, fought for community access to forests, and defended southern Thai Muslims accused of being 'terrorists'. In some cases, either state or private interests were targeted by their actions. However, in the majority of cases it was a combination of both.

The 18 stories of murdered human rights defenders appeared in the *Fa Dieu Kan* magazine in late 2004. A brief introduction to the stories made three insightful observations. First, the rise in assassinations of human rights defenders has been concurrent with a broader mobilization of citizens to demand justice. Second, the strategies employed by the human rights defenders, especially those engaged in environmental struggles, have grown increasingly savvy and ingenious. As a result, the opportunities for capitalist investors have markedly decreased. In turn, this may have increased the frequency and types of violence used against them. Finally, the harsh and often inflexible response to various activist and people's groups by the Thai Rak Thai government, especially Prime Minister Thaksin himself, has caused the groups to be branded 'enemies of the state'. This has caused private investors and other opponents of these struggles to become even more emboldened in their actions.

While not a new phenomenon, the collusion between state and private interests in the murders of human rights defenders appears to have increased under Thaksin Shinawatra's Thai Rak Thai government. In accounts of the lives and deaths of human rights defenders in Thailand during recent years, there have been many references to the presence and actions of 'influential figures' (*phu mi ittiphon*). For example, influential figures demanded that Chaweewan Pueksungnoen cease her opposition to a sub-district construction project in Nakhon Ratchasima. Influential figures in Chiang Mai allegedly have links with the local landowners that Kaew Binpanma challenged. In the case of Supol Sirijant, who defended a community forest in Lamphun against illegal logging, influential figures are alleged to have protected the poachers. In Bo Nok, where Charoen Wat-aksorn

“In accounts of the lives and deaths of human rights defenders in Thailand during recent years, there have been many references to the presence and actions of ‘influential figures’”

“While many sectors of Thai society mobilized rapidly in the 1990s, the backlash from state and private interests has been fierce”

was assassinated, influential figures cooperated with investors and civil servants to appropriate ocean front land for their own use.

The concept of influence has long been present in Thai politics. Yoshifumi Tamada describes the difference between power (*amnat*) as official authority derived from law and influence (*ittiphon*) as authority beyond or outside law. Nidhi Eoseewong further argues that the non-legal origins of influence make it difficult to control or resist.¹ When he wrote his analysis of influence in 1991, Tamada was not hopeful about democratization in Thailand, as he felt that the relationships between those in civil service bureaucracy with power and those with influence outside was stable and mutually beneficial.²

While many different sectors of Thai society mobilized rapidly in the 1990s and after, the backlash from state and private interests has been fierce. In a recent book, Pasuk Phongpaichit and Chris Baker argue that this mobilization has posed a tremendous challenge to big business. Pointing to the intersection of state and business in development projects, they explain that “the rural protests challenged the right of the state to manage natural resources needed for promoting urban growth”.³ Many of the struggles waged by the assassinated human rights defenders concerned the control of natural resources within their communities. In some cases, they fought large-scale projects, including rock quarries, coal-fired power plants, and paper factories. In other cases, they defended the right of their communities to continue using local natural resources, such as the forests. At issue here is not only the natural resources themselves but also the right to make decisions governing the protection and use of those resources.

Citing the problem of the overarching power and decision-making structure encompassing state and citizens, Metha Matkhao, coordinator of the Thai Working Group on Human Rights Defenders, explains that there is collusion at local and national levels among civil servants, politicians, and businesspeople.⁴ In some cases, the form of collusion between private and state interests is quite explicit. After the assassination of Pakwipa Chaloeckin, who opposed the construction of an inland port in Ang Thong province, an investigation revealed that a local member of parliament was part of the group that requested permission to build the port. Before his assassination, Khampan Suksai helped to stop forestry department officials from using their official position to log the Baan Pa Bong community forest illegally; one of those officials was arrested for the murder. The participation of influential figures and collusion between state and private interests in other assassinations is more difficult to discern.

In her 2004 report on Thailand, UN Special Representative on human rights defenders Hina Jilani notes that violations emerging from collusion between private interests and local or provincial government officials is of concern.⁵ Most frequently,

human rights defenders who suffered violations “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” (p. 20). While concentrating on assassinations of human rights defenders, she notes that violations also include threats, intimidation, arrests and surveillance. Many human rights defenders are threatened and intimidated verbally or physically before being killed. Jilani adds that she “is concerned that in its effort to strengthen development the government may actually be supporting violations of the right to development”.

While in many cases the state cannot be identified as directly involved in harassment, threats and violence against human rights defenders, unequal application of the law is more clearly evident. Jilani notes with concern that the law is vigorously applied against human rights defenders, but then not used to fully investigate or prosecute the violations of their rights. Further, she argues that the use of the law against human rights defenders is “initiated to deter defenders from taking public action and to exhaust their time and finances, rather than to enforce the rule of law” (p. 15). Exemplifying unequal application of the law, journalist Surayut Yongchaiyut points to the case of Charoen Wat-aksorn, who was assassinated following his leadership of opposition to a coal-fired power plant and encroachment for shrimp-farming in Bo Nok, Prachuab Khiri Khan province. Although illegally occupying public land, the encroachers cultivated shrimp with no thought for the consequences. After Charoen’s death, Surayut asks, “This present government has a stated interest in strongly suppressing all kinds of influential figures in every single inch of the country, but isn’t it odd that Bo Nok sub-district is an exception?”⁶

At the time of writing, the investigations into many of the assassinations remain unresolved: sometimes due to inaction, at other times due to obstruction. In many cases, the families and communities feel as though the local police have not exhausted all possible lines of investigation due to interference by influential figures. In some cases, while a gunman has been apprehended, investigations into the possible individuals or groups behind the assassination has not been undertaken. Many families and communities have chosen to refrain from cremating the bodies of the assassinated persons until the legal cases have been resolved appropriately and fully.

It is worth noting that in none of the references to influential figures are individuals, companies, or even groups mentioned. The influential figures remain unnamed. While they may be known within communities, because they are unnamed, it is difficult for action to be taken against them. The harsh and bold assassinations of human rights defenders during recent years in Thailand indicates that the rising power of influential figures is contributing to a culture of impunity in which they can take action against their opponents without fear of censure or

“Investigations into many of the assassinations remain unresolved: sometimes due to inaction, at other times due to obstruction”

punishment. For those human rights defenders who remain active in Thailand today, what are the effects of living with the threat of violence from unnamed, perhaps unnamable, influential figures?

Annexe: Targeted killings of environmentalists

1. Jurin Ratchapol
Baan Pa Khlok Conservation
Association;
Amphur Talang, Phuket
Shot 30 January 2001
Gunman imprisoned

1. Mr Jurin Ratchapol, 55-year-old leader of the Baan Pa Khlok Conservation Association, Amphur Talang, Phuket province, was shot dead on 30 January 2001. He had been threatened eight days earlier by Mr Somsak Wongsawanont, owner of the Watchira Farm shrimp ponds. After the killing, Somsak surrendered to the police on possessing a weapon, but denied killing Jurin. A gunman was sentenced to life imprisonment for the murder, but the case against Mr Somsak was dismissed.

2. Narin Phodaeng
Khao Cha-ang Klang Thung
Environmental Protection and
Natural Resource
Conservation Association;
Amphur Khao Chamao,
Rayong
Shot 1 May 2001
Case pending

2. Mr Narin Phodaeng, 67-year-old president of the Khao Cha-ang Klang Thung Environmental Protection and Natural Resource Conservation Association in Amphur Khao Chamao, Rayong province, was shot dead on 1 May 2001, after a meeting of the group at his house to discuss mining at a nearby mountain. One perpetrator was arrested who is known to have connections to politicians serving on the board of the mining company, Rayong Silapetch. The case is before the courts.

3. Pithak Tonwut
Conserve Chompoo River
Basin Network;
Amphur Nunmaprang,
Phitsanulok
Shot 17 May 2001
Suspects released

3. Mr Pithak Tonwut, 30-year-old consultant for the Conserve Chompoo River Basin Network, Amphur Nunmaprang, Phitsanulok province, was shot dead on 17 May 2001 while returning from a meeting with the district authorities regarding a rock quarry. Police arrested two suspects, but they were released for lack of evidence. The family and colleagues of the victim allege that powerful politicians and businessmen have interfered in the case and prevented a full investigation to get the necessary evidence for a conviction. The family has refused to cremate the body of the victim until the case is resolved.

**4. Chaweewan
Pueksungnoen**
Na Klang Tambon
Administrative Organisation;
Amphur Sungnoen,
Nakhon Ratchasima
Shot 21 June 2001
No arrests

4. Ms Chaweewan Pueksungnoen, 35-year-old campaigner with Na Klang Tambon Administrative Organisation, Amphur Sungnoen, in Nakhon Ratchasima province, was shot dead on 21 June 2001 outside her house after challenging the management of local construction projects that were against the public interest. No perpetrator has been charged or arrested, and the police cite lack of evidence. The family has refused to cremate the body of the victim until the case is resolved.

**5. Mr Suwat
Wongpiyasathit**
Leader of campaign against a
rubbish landfill;
Amphur Bang Phli,
Samut Prakarn
Shot 26 June 2001
Six suspects arrested

5. Mr Suwat Wongpiyasathit, 45-year-old leader of a campaign against a rubbish landfill in Tambon Ratchathewa, Amphur Bang Phli, Samut Prakarn province, was shot dead on 26 June 2001. He had been threatened repeatedly and had asked for police protection without success. Six suspects in the case were arrested, but the persons behind the killing are believed connected with the Phairot Somphong Phanit Company, which runs the landfill on a concession from the Bangkok Metropolitan Administration and has close links with a well-known political family in Samut Prakarn.

6. Mr Somporn Chanapol, 41-year-old president of the Khlong Kra Dae Environmental Conservation Group, Amphur Kanchanadit, Surat Thani province, was shot dead on 1 August 2001 while trying to combat illegal logging in the Khlong Kra Dae forest. The police arrested the gunman, but claimed he acted alone. The family of the victim complains that the police have not properly investigated the case to connect it to the illegal loggers.

7. Mr Kaew Binpanma, 59-year-old leader of a landless people's campaign together with the Northern Farmers' Federation in Tambon Doi Loh, Chiang Mai province, was shot dead on 23 June 2002 after occupying unused land, which was connected to powerful families in Chang Mai. A gunman was arrested but he claimed the killing was a personal dispute. Colleagues and family members insist that the police did not properly investigate the case, to avoid implicating powerful people.

8. Mr Boonsom Nimnoi, 44-year-old member of the Amphur Baan Laem Ocean Conservation Group and leader of a campaign against a petrochemical project in Amphur Baan Laem, Petchburi province, was shot dead on 2 September 2002. After the killing, the police did not act to catch the perpetrators, so the villagers protested at the provincial headquarters and two suspects were arrested. However, the court released them on 9 July 2004 for lack of evidence; witnesses to the murder had been threatened and refused to testify; material evidence also was not properly recorded and presented to the court. The family has refused to cremate the body of the victim until the case is resolved.

9. Mr Preecha Thongpaen, 57-year-old leader of the Tambon Kuan Krod Environmental Conservation Group, Amphur Thung Song, Nakhon Si Thammarat province, was shot dead on 27 September 2002 after campaigning strongly against a poorly-conceived sewerage water treatment plant project from which local politicians and businessmen would obtain considerable financial benefit. It took one year of constant pressure by the family to have the alleged gunman arrested. As a result, other family members have been threatened. The case is in the courts, but the family complains that the police have not properly collected evidence and they are concerned that for this reason the accused will be acquitted.

10. Mr Boonyong Intawong, 42-year-old leader of a campaign against the Doi Mae Auk Roo stone quarry, Amphur Wieng Chai, Chiang Rai province, was shot dead on 20 December 2002, after bringing a team from the National Human Rights Commission to see the damage caused by the quarry. The company working the quarry is owned by a member of parliament. One suspect has been arrested, but charges have not yet been laid by the public prosecutor.

11. Mr Samnao Srisongkhram, 38-year-old president of the Lam Nam Phong Environmental Conservation Association, Amphur Ubonrat, Khon Kaen province, was shot dead on 25

6. Somporn Chanapol
Khlong Kra Dae
Environmental Conservation
Group;
Amphur Kanchanadit,
Surat Thani
Shot 1 August 2001
Gunman arrested

7. Kaew Binpanma
Leader of landless people's
campaign in Tambon Doi
Loh;
Chiang Mai,
Shot 23 June 2002
Gunman arrested

8. Boonsom Nimnoi
Amphur Baan Laem Ocean
Conservation Group; Leader
of a campaign against a
petrochemical project;
Amphur Baan Laem,
Petchburi
Shot 2 September 2002
Suspects released

9. Preecha Thongpaen
Tambon Kuan Krod
Environmental Conservation
Group;
Amphur Thung Song,
Nakhon Si Thammarat
Shot 27 September 2002
Gunman arrested

10. Boonyong Intawong
Leader of a campaign against
the Doi Mae Auk Roo stone
quarry;
Amphur Wieng Chai,
Chiang Rai
Shot 20 December 2002
**Suspect arrested; no
charges laid**

11. Samnao Srisongkhram
Lam Nam Phong
Environmental Conservation
Association;
Amphur Ubonrat,
Khon Kaen
Shot 25 November 2003
Gunman arrested

12. Charoen Wat-aksorn
Love Bo Nok Association;
Amphur Muang,
Prachuab Khiri Khan
Shot 21 June 2004
Five suspects arrested

13. Supol Sirijant
Mae Mok Community Forestry
Network;
Amphur Thun,
Lamphun
Shot 11 August 2004
Warrant of arrest issued

14. Pakwipa Chaloecklin
Baan Hua Krabu community
group; Amphur Ba Mok,
Ang Thong
Shot 14 October 2004
Investigation ongoing

November 2003 after years of fighting environmentally unsound practices of the nearby Phoenix Paper factory. The police arrested the alleged gunman, who said that Mr Sompong Naree, the headman of Tambon Kok Sung, had hired him. However, Mr Sompong was released for lack of evidence, and the alleged gunman has since pleaded innocence.

12. Mr Charoen Wat-aksorn, 37-year-old president of the Love Bo Nok Association, Amphur Muang, Prachuab Khiri Khan province, was shot dead on 21 June 2004, after successfully fighting against the construction of a coal-fired power plant in the area. He was killed after coming back from a Senate hearing into fraudulent use of public land. The family claimed that the autopsy was deliberately botched, and over 1000 villagers took the body to Bangkok for re-examination by the Forensic Science Institute. Under public pressure, the case was transferred to the Department of Special Investigation under the Ministry of Justice, and five suspects have since been arrested. However, villagers and family still allege that the investigation has not been done properly, as the investigators claim the killing was a personal dispute to avoid implicating higher-up people.

13. Mr Supol Sirijant, 58-year-old leader of the Mae Mok Community Forestry Network, Amphur Thun, Lamphun province, was shot dead on 11 August 2004 after causing the arrest of an illegal logger and seizure of a number of trucks on August 10. A warrant for one person has been issued, but no further action has taken place.

14. Ms Pakwipa Chaloecklin, 49-year-old vice president of the Baan Hua Krabu community group, Amphur Ba Mok, Ang Thong province, was shot dead on 14 October 2004 after fighting against construction of a container port in the community. Three days later, the community was to meet with officials over the proposed construction. Pakwipa had been threatened and offered money to drop her campaign. A member of parliament is closely linked to the proposed construction. The case is still with the police.

Endnotes

¹ Nidhi Eoseewong, 'Rattathamanun chabab watthanatham thai' ('The Thai cultural constitution'), *Sinlapa watthanatham*, vol. 11, no. 1, November 1991.

² Yoshifumi Tamada, 'Ittiphon and amnat: An informal aspect of Thai politics', *Southeast Asian Studies*, vol. 28, no. 4, March 1991, pp. 455, 465.

³ Pasuk Phongpaichit & Chris Baker, *Thaksin: The business of politics in Thailand*, Silksworm Books, Chiang Mai, 2004, p. 170.

⁴ Metha Matkhao, 'Raengan: Karn khuk khaam doy karn sang harn nak thaw suu pua sitthi manut sia chon nai rattaban Thaksin Shinawatra', ('Report on the threat of assassinations of human rights defenders under the Thaksin Shinawatra government'), Thai Working Group on Human Rights Defenders, March 2005.

⁵ United Nations Economic and Social Council, Commission on Human Rights, 60th Session, Addendum: Mission to Thailand, Promotion and Protection of Human Rights: Human Rights Defenders, Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, (E/CN.4/2004/94/Add.1), 12 March 2004.

⁶ Surayut Yongchaiyut, 'Palang satawn klap ... Karn sangharn "Charoen Wat-aksorn" tung khra "ittipon"... Tuk lang bang?' ('The reflection of power ... Influence behind the assassination of Charoen Wat-Aksorn'), *Matichon*, 8 July 2004, p. 9.

Appendix II: Partial list of persons publicly reported killed in Thailand during the 2003 'war on drugs'

Name, Date, Details

1. Mr Arhah Mabukaree Wahah (Mayabay), 29 January, Shot
2. Ms Sudsakorn Sangsrimek, 29 January, Shot
3. Mr Laosan Saelor, 31 January, Shot by officer of the Narcotics Control Board
4. Mr Sathien Sengthong, 31 January, Shot by officer of the Narcotics Control Board
5. Mrs Phatcharee Ngoiphuthong, 31 January, Shot while driving a motorcycle
6. Mr Pharoj Yamcharoen, 1 February, Shot in front of shop
7. Mr Sompong Rabopphet, 1 February, Shot by 5 perpetrators
8. Mr Somkit Klaykruea, 1 February, Shot from behind by 11mm gun
9. Mr Manus Rungrueng, 1 February, Shot from behind by 11mm gun
10. Mr Manoch Saetang, 1 February, Shot by 9mm gun
11. Mr Bunchuey Unthong, 1 February, Shot after release from prison
12. Mrs Yupin Unthong (Mr Bunchuey's wife), 1 February, Shot after release from prison
13. Mr Somsak Peompoon, 1 February
14. Mr Suchin Chimlim, 1 February
15. Mr Prapas Kaeha, 1 February
16. Mr Sumol Peompoon, 1 February
17. Mr Praival Serkamron, 2 February, Shot by 3 perpetrators in pick-up truck at house while eating
18. Mr Sudchai Armatrawong, 2 February, Shot by 3 perpetrators in pick-up truck after talking for 1-2mins
19. Mr Arthit Thanarak, 2 February, Shot with shotgun by 3 perpetrators in pick up truck at home
20. Mr Plern Phaipong, 2 February, Shot with 9mm gun
21. Mr Surin Bunthanawong, 2 February, Shot with 11mm gun
22. Mr Wichean Chubanprao, 2 February, Shot by .38 gun
23. Mr Kasem Ratri, 2 February, Shot
24. Mr Supab Wongkampon, 2 February, Shot while bailed out in drug case
25. Mrs Phayung Wongkampon, 2 February, Shot while bailed out in drug case
26. Mr Chean Chaipim, 2 February, Shot by 2 perpetrators
27. Mr Seree Arwasri, 2 February, Shot with 11mm gun
28. Mrs Suthanee Arwasri, 2 February
29. Mr Bunteem Chaiyang, 2 February (?), Shot by police during sting operation; 16,000 amphetamine pills allegedly found in car
30. Mr Phrom Malaiwan, 3 February, Shot after being stopped by perpetrator in pick-up
31. Pol. Sgt. Satad Kampaibun, 3 February, Shot in front of shop
32. Mr Sanchai Sanyakorn, 3 February, Shot by 2 perpetrators

33. Mr Krit Donsaphon, 3 February, Shot by perpetrators in black pick-up truck while talking in mobile phone on roadside
34. Mrs Angkana Donsaphon, 3 February, Shot by perpetrators in black pick-up truck with husband (Mr Krit)
35. Mr Somsak Kamphasuk, 3 February, Shot in bedroom
36. Mrs Dawan Maithong, 3 February, Shot in bedroom
37. Mrs Thongchan Chumsrising, 3 February, Shot with 9mm gun by 2 perpetrators
38. Mr Rabeab Litratab, 3 February, Shot at a shop
39. Mr Nippon Ngamwan, 3 February, Shot by shotgun from behind
40. Mr Wa Phusae, 3 February, Shot nearby pick-up truck
41. Mr Damrong Saiwongkam, 2 February, Shot at a shop
42. Mr Sonthaya Rimmakultrap, 3 February, Shot
43. Mr Somchai Tosawat, 3 February, Shot with 9mm gun
44. Mr Suphachai Chaisakun, 3 February, Shot in a pick-up truck
45. Mrs Renu Komin, 3 February, Shot behind a pushcart
46. Mr Daeng Phisingha/ Prisingha, 3 February, Shot by 2 perpetrators in bedroom
47. Mrs Bungchong Saelee, 3 February, Shot in a sedan
48. Mr Sombun (Aod) Srisuk, 3 February, Shot at nursery
49. Mr Yue Tukaew, 3/4 February, Shot; had been arrested and accused of drug trafficking
50. Mr Suwan Kriengsriskun, 3/4 February, Shot in front of wife with .38 gun by 4-5 men claiming to be police officers
51. Mrs Sukanya Sinandah, 4 February, Shot
52. Mr Fung Plaiyaw, 4 February, Shot with 11mm gun nearby own second hand car shop
53. Mrs Sompan Dokchaaim, 4 February, Shot; had been arrested and accused of drug trafficking
54. Mr Phayao Somsukit, 4 February, Shot with 11mm gun
55. Mr Thongbai Bunkum, 4 February, Shot at shop
56. Mr Trongyos Chankan, 4 February, Shot
57. Mr Somsak Sirichariyawatra, 4 February
58. Mr Samai Bunyarak, 4 February
59. Mr Yongyuth Chongchit, 4 February, Shot with .38 gun
60. Mrs Kamping Srinual, 5 February, Shot
61. Mr Surachet Panya, 5 February, Shot by 4 perpetrators in pick-up
62. Mr Narong Sinantah, 5 February, Shot
63. Mrs Sukanya Sinantah, 5 February, Shot
64. Mrs Yenchit Phumas, 5 February, Shot on the road
65. Mr Laaid Chomsri, 5 February, Shot with 11mm gun by 2 perpetrators in pick-up truck at front of shop
66. Mr Yongyuth Phetboribun, 5 February, Shot
67. Mr Chamkad/ Kamchat Chomthong, 6 February, Shot by 5 perpetrators in pick-up truck
68. Mr Sanchai Wannakit, 6 February, Shot with 11mm gun from behind
69. Mr Yindee Sukontha, 6 February, Shot from behind
70. Mr Thanintra Changbad, 6 February, Shot with 11mm gun by 4 perpetrators
71. Mr Prasert Meetrup, 6 February, Shot with 11mm gun by 5 perpetrators
72. Mr Bunchan Papasai, 6 February, Shot by 3 perpetrators on motorcycle
73. Mrs Krongthip Phalah, 6 February, Shot by 2 perpetrators in pick-up truck
74. Mr Buasri Thongchai, 6 February, Shot with 11mm gun by 3 perpetrators after going to district office
75. Mr Sarawut/ Sarayuth Manakul, 6 February, Killed by police during attempted arrest
76. Mr Bunpan Lanoi, 6 March
77. Mr Chatchai Chucherd, 6 March, Shot at a shop
78. Mr Somchit Thongklang, 6 March, Shot at a garage
79. Mr Tawas Thongklang, 6 March, Shot at a garage
80. Mr Lop Sukauam, 7 February, Shot at petrol station with Mrs Noknoi; had previous drug-related convictions

81. Mrs Noknoi Patet, 7 February, Shot at a petrol station with Mr Lop
82. Mrs Bunma Hemchantuek, 7 February, Shot by 2 perpetrators with son; on bail in drug trafficking case
83. Mr Suwit Chaichobngam, 7 February, Shot behind Bannonghin School; criminal record at Khon Kaen police station
84. Mr Prasong Chaisang, Shot by 3 perpetrators
85. Mr Samrerng Phetkaew, 7 February, Shot together with wife by perpetrators in pick-up truck while going to meet neighbour
86. Mrs Pisamai Klabyu, 7 February, Shot together with husband by perpetrators in pick-up truck while going to meet neighbour
87. Mr Udorn Thaicharoen (Peak Naphoe), 7 February, Shot with 11mm gun by perpetrators in pick-up truck while driving motorcycle
88. Mr Amorn Bunchan, 7 February, Shot by 5 perpetrators in pick-up truck
89. Mr Somkiat Kiridej, 7 February, Shot by 5 perpetrators in pick-up truck
90. Mr Manas Nanhom, 7 February, Shot
91. Mr Thanatip Aongard, 7 February, Shot with 11mm gun
92. Mr Chaiya Torat, 7 February, Shot with 11mm gun while bailed out on drug charges
93. Mrs Wasna Kerdrap, 7 February, Shot at home
94. Mrs Sommai Chueykonburee, 7 February, Shot after returning home from Nakhon Ratchasima Provincial Court
95. Mrs Pongsai Sukkasem, 7 February, Shot with 11mm gun by 2 perpetrators at a shop
96. Mr Sengwin (Burmese), 7 February, Shot
97. Mr Ubon Leewang, 7 February, Shot with M-16
98. Mrs Manee ('Aew') Sangthong, 7 February, Shot by group of perpetrators while watching TV at home
99. Mrs Ratana ('Ju') Panyala, 7 February, Shot by group of perpetrators while watching TV at home
100. Mrs Churaporn Wasuwat, 7 February, Shot after coming home from bailing out husband over drugs case
101. Mr San Kruewongsa, 7/8 February, Shot at roadside shelter
102. Mr Samrerng Sukklin (Tee Bangping), 8 February, Shot with 11mm gun
103. Mr Suphalert/Bunlert Intrawichean, 8 February, Shot at home; had been bailed out on drugs charges.
104. Mrs Chusri Ketsuwan (Suphalert's wife), 8 February, Shot at home; had been bailed out on drugs charges
105. Mr Sombat Artcharoen, 8 February, Shot; had been bailed out on drugs charges
106. Mr Kriengkrai Seriphanichkarn, 8 February, Shot; had been summoned to Prachinburi District Police Station on drugs allegations
107. Mr Thanet Buachuey, 8 February, Shot with M-16; had been arrested and charged with drug trafficking – case pending in the Court of Appeal
108. Mr Thong Dokbuason, 8 February, Shot on the way to office
109. Mr Sayan Somnam, 8 February, Shot with 9mm at home
110. Mrs Namkang Iamsaard, 8 February, Shot in front of her husband while cleaning clothes; had been arrested and accused of drug trafficking 4 times
111. Mr Prasertyot Polwat, 8 February, Alleged perpetrator Mr Bunman Phonphan arrested; admitted to being paid 100,000 baht to commit murder
112. Mr Kosol Nakpatom, 8/9 February, Shot by 2 perpetrators on motorcycle while driving motorcycle; had been bailed out on drugs charges
113. Mrs Sampao Punketnakorn, 8 February, Shot at home with 9mm gun by 2 perpetrators
114. Mrs Lek Phetchana, 8 February, Shot while riding motorcycle
115. Mr Narong Nakaim, 8 February, Shot at home
116. Mrs Saipin Yimsai (wife of Mr Narong), 8 February, Shot at home
117. Mrs Busporn Chuenchu, 8 February, Shot with .38 gun by perpetrator in car
118. Mr Somphong Phonil, 8 February
119. Mrs Turean Panphoe, 8 February
120. Mrs Sukontha Suwansaira, 8 February, Shot with .38 gun at home

121. Mr Pairoj Kamchuey, 8 February, Shot with 11mm gun at home; had been released on bail on drugs charges
122. Mr Anek Uarun, 9 February
123. Mr Pratueng Yaumphra, 9 February, Shot; 5 amphetamine pills allegedly found in pocket
124. Mrs Chanida Deenan, 9 February, Shot with 9mm gun
125. Mr Ayae Muenlae, 9 February, Shot with 11mm gun on the way to Muser Aboracha Village
126. Mr Tanes Bunchuey, 9 February, Shot with M-18 gun
127. Mr Manus Nienhom, 9 February, Shot at home by 3-4 perpetrators who came in a pick-up truck
128. Mr Natee Chaorai, 10 February, Shot by shotgun while riding motorcycle
129. Mrs Chinda Sangthong, 10 February, Shot with 11mm gun
130. Mr Tanes Buasai, 10 February, Shot
131. Mr Sepaya Mitramuang, 10 February, Shot
132. Mrs Somsri Pavee, 10 February, Shot with .38 gun
133. Pol. Sgt. Maj. Sanong Chaival, 10 February, Shot with shotgun by Mr Somkuan Kawee
134. Mrs Pannee Rompruk, 10 February, Shot by 2 perpetrators
135. Mr Mongkok Kaewbang, 10 February, Shot by 2 perpetrators
136. Mr Yom Kongchui, 10 February, Shot by 3 perpetrators after returning home from police station
137. Mr Sukchai Sukphon, 10/11 February, Shot with M-16 and 11mm guns
138. Mrs Nualchan Sukphon (Sukchai's wife), 10/11 February, Shot with M-16 and 11mm guns
139. Mr Prasit Promsen, 11 February, Shot by police; over 20,000 amphetamine pills allegedly seized
140. Mr Chamlong Dukaew/Kukaew (police officer), 11 February, Shot by police; 24,000 amphetamine pills allegedly seized
141. Mr Laiad Sasinil, 11 February, Shot by 2 perpetrators
142. Mrs Praman Sasinil (Laiad's wife), 11 February, Shot by 2 perpetrators
143. Mrs Somkid Charubun, 11 February, Shot with 11mm gun by 2 perpetrators at home
144. Mr Somdej Kongpan, 11 February, Shot by 3 perpetrators
145. Ms Busporn Pung-am, 11 February, Shot by perpetrator from pick-up truck while in own grocery store; reportedly acted as bailor for drug suspects
146. Mr Jai-jue Sae Thao (older brother of Mr Somchai Sae Tao), 12 February, Shot and tortured alongside vehicle near village after returning from administrative offices with three other victims
147. Mr Somchai Sae Thao (younger brother of Mr Jai-jue Sae Tao), 12 February, Shot and tortured alongside vehicle near village after returning from administrative offices with three other victims
148. Mr Bunma Sae Thao (cousin of Mr Jai-jue & Mr Somchai), 12 February, Shot and tortured alongside vehicle near village after returning from administrative offices with three other victims
149. Mr Seng Sae Thao (Do Nam Pieng Nam Din village head), 12 February, Shot and tortured alongside vehicle near village after returning from administrative offices with three other victims
150. Mr Chanchai Khamkhomkul, 12 February, Shot by police allegedly while selling amphetamines
151. Mrs Ratreer Bampensin, 13 February, Shot by 2 perpetrators; earlier arrested and charged with drug trafficking
152. Mr Somporn Wilailah, 13 February, Shot on a bridge; had been charged with drug trafficking
153. Mr Ukritthana Jesala (Mitra Trokwat), 13 February, Shot with .357 gun by the police; 12,000 amphetamine pills and 9mm gun allegedly found on his bed
154. Mr Kunakorn Srisukdee, 13 February, Shot with 9mm gun by 5 perpetrators
155. Mr Mongkol Chaisri, 13 February, Police seized property worth at least 5 million baht

156. Mrs Bangon (wife of Mr Mongkol), 13 February, Shot by 2 perpetrators in balaclavas while going home with husband
157. Mr Dam Phothong, 13 February, Shot at home; wife alleges set-up by army officer
158. Mr Wanchat Satsri, 13 February, Shot at home
159. Mr Nok Satsri (wife of Mr Wanchat), 13 February, Shot at home
160. Mr Suwan Chaweeniramol, 13 February, Shot at home
161. Mr Sanya Khampatan (son of Mr Veera), 13 February, Shot by 2 perpetrators on motorcycle while waiting in car at intersection with father and sister
162. Mr Veera (father of Mr Sanya), 13 February, Shot by 2 perpetrators on motorcycle while waiting in car at intersection with son and daughter
163. Mrs Samang Chumchon, 13 February, Hit by gunfire aimed at stopped vehicle of Mr Sanya Khampatan while on bicycle nearby
164. Mr Chamnian Nualwilai, 13 February, Shot; 200 amphetamine pills allegedly seized
165. Mrs Somchit Pavee, 14 February, Shot
166. Mr Pratueng Yachampa, 14 February, Shot at home
167. Mr Kang Silpatam, 14 February, Shot with 11mm
168. Mr Chamnan Suksai, 14 February, Shot with M-16 after returning home from police station. 2 amphetamine pills allegedly found in his pocket
169. Mr Tien Mokmeechai, 14 February, Shot at home
170. Mr Amporn Pidkam, 14 February, Shot at home
171. Mr Suthep Nakachat, 14 February, Shot at home
172. Mr Sompong Promson, 14 February, Shot at home
173. Mrs Sermsriri Thamonnin, 14 February, Shot at home
174. Mr Suriya Thong On, 14 February, Shot by 8 perpetrators in pick-up truck
175. Mr Thanomsak Mulsurin, 14 February, Shot along with wife with 9mm gun by 4 perpetrators after coming back from Nagae Police Station to report about drug trafficking in area
176. Mrs Chalaolak Mulsurin, 14 February, Shot along with husband with 9mm gun by 4 perpetrators after coming back from Nagae Police Station
177. Mr Ram Bunpluk, 14/15 February, Shot with .38 and 11mm guns by perpetrator in pick-up truck after returning home from police station with wife
178. Mrs Samran Saengkaew, 14/15 February, Shot with .38 and 11mm guns by perpetrator in pick-up truck after returning home from police station with husband
179. Mr Thanee Plathong, 14/15 February, Shot with M-16 after returning home from police station. 2 amphetamine pills allegedly found in his pocket
180. Mrs Thitaporn Dejkamnerd, 15 February, Shot by 3 perpetrators after returning home from police station
181. Mr Samphan Chaemchuen, 15 February, Shot by 4 perpetrators at home
182. Mr Preecha Saengphet, 15 February, Shot by perpetrators in pick-up truck
183. Mr Somwang Chongpra, 15 February
184. Mr Phat Bunsard, 15 February, Shot after returning home from police station
185. Mr Aphue Cher Mue, 15 February
186. Mr Prasit Taetiya, 15 February, Shot at home
187. Mr Bunrueng Koram, 15 February, Shot
188. Mr Iang Meepolmak, 15 February
189. Mrs Liab Ruangpueng, 15 February, Shot
190. Mr Damrongrak Kemklad, 15 February, Shot with 9mm gun
191. Mr Sanchai Kampatan, 15 February, Shot with 9mm gun by 2 perpetrators after collecting son from prison
192. Mr Veera Kampatan, 15 February
193. Mr Hual Panngam/ Phannanggam, 15/16 February, Shot with .38 gun by perpetrators in pick-up truck and on a motorcycle while catching fish and talking with his wife and mother-in-law after returning home from police station
194. Mr Pan Laikam, 16 February, Shot; 200 amphetamine pills allegedly found in pocket
195. Mr Sathaporn Amnajcharoen, 16 February, Stabbed

196. Mr Samart Kamsuetrong, 16 February, Shot; house had been searched by the police without uncovering anything illegal
197. Mrs Laead Chunuthai, 17 February, Shot with 11mm gun
198. Mr Anon Promchana (Non Rangwai), 17 February, Shot by 4-5 perpetrators in pick-up truck after returning home from police station
199. Mr Sampao Kruaythong, 17 February, Shot with .357 gun by 4 perpetrators at home
200. Mr Siriyot Thongkamsingha, 17 February, Shot after returning home from the court
201. Mr Ekkasit Thongkamsingha (police officer), 17 February, Shot after returning home from the court
202. Mrs Kwanmueng Wongsai, 17 February, Shot with 11mm gun; 112 amphetamine pills allegedly found in her house
203. Mr Chalong Yampob, 17 February, Shot with .38 gun by 2 perpetrators after returning home from police station
204. Mr Aod Sripheet, 18 February, Shot while having dinner in Songpeenong municipality; 21 amphetamine pills and money allegedly found in pick-up truck
205. Mr Suwat Kiatponglop, 18 February, Shot while having dinner in Songpeenong municipality; 21 amphetamine pills and money allegedly found in pick-up truck
206. Mr Thonglhor Sithibut/ Sutthibutra, 18 February, Shot while having dinner in Songpeenong municipality; 21 amphetamine pills and money allegedly found in pick-up truck
207. Mr Sit Srilamniam (Sit Laokwan), 18 February, Shot by 4 perpetrators in pick-up while driving motorcycle after returning home from police station
208. Mr Sompong Srangtham, 18 February, Shot; had been summoned on drugs allegations
209. Mr Nisai Saejueng, 18 February, Shot with .38 gun nearby pick-up truck on side of road
210. Mr Natee Sornprasit, 18 February, Shot with M-16
211. Mr Manoch Wongprayoon, 18 February, Shot with M-16
212. Mr Chalad/ Pipat Saechang, 18 February, Shot
213. Mrs Phanthong Dabkom (Mr Chalad's wife), 18 February, Shot
214. Ms Aphansri Rojchanasirirangkul (Mr Chalad's daughter), 18 February, Shot
215. Mr Banpot Chandaeng, 18 February, Shot while supervising construction at Donmano temple by 2 perpetrators in balaclavas
216. Mr Prayad Kampakaew, 18 February
217. Mr Pratuan Manpuk, 19 February, Shot with M-16 by 2 perpetrators; had been arrested and bailed in drug case
218. Mrs Suchira Manpuk (Mr Pratuan's wife), 19 February, Shot with M-16 by 2 perpetrators; had been arrested and bailed in drug case
219. Mr Somkid Ratanadee, 19 February, Shot after release from prison on drugs-related offences
220. Mr Kittiphan Rodphan, 19 February, Shot with 11mm gun while returning home from probation department
221. Mr Jane Pongtet, 19 February, Shot with 11mm gun
222. Mrs Ketnika Phuttaprasert, 19 February, Shot with 11mm gun
223. Mr Sommai Samingthong, 20 February
224. Mr Somchai Bunphan, 20 February, Shot by perpetrators on motorcycle while returning home from police station
225. Mrs Long Intrachan, 20 February, Shot while cooking in front of home
226. Mr Nakorn Chomaim, 20 February, Shot on road
227. Mrs Somchit Kayandee, 20 February, Shot by perpetrators in sedan
228. Mr Ha Saelim, 20 February, Shot with 9mm and 11mm guns by 2 perpetrators
229. Mr Tha Chaiya, 20 February, Shot by 2 perpetrators
230. Mr Wilai Intra, 20 February, Shot at home
231. Mr Sakchai Chaicharoen, 20 February, Shot by at least 4 perpetrators
232. Mrs Kamnueng Waiyingyuth (Mr Sakchai's wife), 20 February, Shot by at least 4 perpetrators
233. Mr Prasan Hunnoi, 20 February, Shot with .357 gun

234. Mr Vitaya Phasukarn, 20 February, Shot with 11mm and M-16; 5 amphetamine pills allegedly found at home
235. Mr Sumet Uma (Noi Chuepleng), 20 February, Shot with .38 gun by at least 3 perpetrators; 1000 amphetamine pills allegedly found in his car
236. Mr Seree Suphawan, 20 February, Shot behind Chiang Rai sports ground; 115 amphetamine pills allegedly found in pocket
237. Mr Wichan Desakul, 20 February, Shot by perpetrators on motorcycle while returning home from police station
238. Mrs Somjit Kuanyuyen, 20 February, Shot by 4 perpetrators from pick-up truck at house in front of family
239. Mrs Preeyanuch Ketsampao, 21 February, Shot by perpetrators on motorcycle while returning home from police station
240. Mr Bunsit Bunyarat, 21 February
241. Mr Pipat Thongdee, 21 February, Shot with 11mm gun by 2 perpetrators
242. Mrs Kesorn Srisombun (Sorsorn Tungsamor), 21 February, Shot with 11mm gun
243. Mr Chan Buntham, 21 February, Shot
244. Mr Laolee Saelee, 21 February, Shot
245. Mr Amnaj Ruengkasem, 21 February, Shot with 11mm gun
246. Mr Thanong Pongeon, 21 February, Shot with 11mm gun
247. Mrs Jiranon Sornsingha, 21 February, Shot with 11mm gun
248. Wife of Mr Manoch Khamsat (killed 6 March), 21 February,
249. Mr Chaowalit Sangchuey (Peak Changsai), 22 February, Shot; amphetamine pills allegedly found on body
250. Ms. Widanuch Aobchuey (Mr Wanchai's second wife), 22 February, Shot; amphetamine pills allegedly found on body
251. Mr Sinchai Thaweepiradeesunthorn, 22 February, Shot and critically injured; 4 perpetrators came to hospital and shot him dead there with Mr Preecha Saechang, who was taking care of him
252. Mr Preecha Saechang, 22 February, Shot while taking care of Mr Sinchai Thaweepiradeesunthorn in hospital
253. Mr Wanchai Preecha, 22 February, Shot on road
254. Mr Suphachai/ Supornchai Suchitmanas, 22 February, Shot with M-16 by 2 perpetrators in pick-up truck
255. Mr Banchit Poephan, 22 February, Shot with 11mm gun by 2 perpetrators in balaclavas on motorcycle
256. Mr Kittisak Meengoen, 23 February
257. Mrs Prarinya Limteerakul (Mr Kittisak's wife), 23 February
258. Mrs Chaleaw Sombun (Chaleaw Nongfai), 23 February, Shot by 2 perpetrators
259. Mr Chalud Faksaard, 23 February, Shot with shotgun
260. Mr Kam Yatakad, 23 February, Shot
261. Mr Somdej/Sompoch Pongam, 23 February, Shot with 11mm gun
262. Mr Thongchai Chaewchan, 23 February, Shot with 11mm gun
263. Mr Tawin Chaewchan (Mr Thongchai's wife), 23 February, Shot with 11mm gun
264. Mrs Urai Saengaum, 23 February, Shot with 11mm gun
265. Mrs Bunma Saelao, 23 February
266. Mr Tun U Saengthong, 23 February, Shot with 9mm and 11mm gun
267. Mr Yangchu Saelee, 23 February, Shot with 9mm and 11mm gun
268. Mr Saman Duangngae, 23 February, Shot
269. Mrs Daranee Tasanawadee, 23 February, Shot while she was 8-months pregnant
270. Mrs Kanda Charoenkan, 23 February
271. Mr Dorlor Arwaetalar, 23 February, Shot with AK-47
272. Mr Abdullor Hawae, 23 February, Shot with AK-47
273. Mr Ismaair Arwaetahloh, 23 February, Shot with AK-47
274. Mr Surasit Srichinda, 23 February, Shot; 32 amphetamines allegedly found on body
275. Mr Sudchai Armatrawong, 23 February, Shot by 3 perpetrators who stopped car
276. Mr Bunserm Kulsila, 24 February, Shot by 4 perpetrators in pick-up truck while on way to authorities
277. Mr Charan Komkam, 24 February

278. Mr Prasert Charanan, 24 February, Shot with 9mm gun by 5 perpetrators
279. Mr Rom Naruemol, 24 February
280. Mr Bancha Sanarsa, 24 February
281. Mr Chalad Sripunnam, 24 February
282. Mr Wichean Ruengnet, 24 February
283. Mr Sratthapong Sangkamee, 24 February
284. Mr Sommai Worwisan, 24 February
285. Ms. Wacharin Nirarom (Mr Sommai's wife), 24 February
286. Ms Pacharin Nirarom (Mr Wacharin's sister), 24 February
287. Mr Thong Kettfang, 24 February, Shot at home
288. Mr Sriton Muangintra, 24 February, Shot
289. Mr Kovit Chuminmon, 24 February, Shot
290. Mr Samai Kongtang, 24 February, Shot on the road
291. Mr Tiem Pankaew, 24 February, Shot on the road
292. Mr Krisada Tiennawa, 24 February, Shot
293. Mrs Bunchu Bamrungsri, 24 February, Shot at home
294. Mr Samruay Leepaicharoen, 24 February, Shot with M-16 by 5 perpetrators; died at Phraputtabata Hospital
295. Mr Rome Naruemol, 24 February, Shot
296. Mr Prachern Charanant, 24 February, Shot
297. Mr Worawutti Maklorlay, 24 February, Shot
298. Mr Somnuk Yasungnern, 24 February, Shot
299. Mr Wannapa Yasungnern, 24 February, Shot
300. Mr Somwang Yheenam, 24 February, Shot at home
301. Mr Arsin Singsaro, 24 February, Shot with M-16 in sedan
302. Mr Damrong Thanomworakul (husband of Mrs Somsri), 24 February, Shot by police on highway with wife
303. Mr Somsri Thanomworakul (wife of Mr Damrong), 24 February, Shot by police on highway with husband
304. Mrs Samniang Chusri, 25 February, Shot by 2 perpetrators on motorcycle while at neighbourhood shop
305. Chakraphan Srisaard (boy), 25 February, Shot in back seat of car as mother fled police sting operation
306. Mr Charuek Saetan, 25 February, Shot by perpetrators on motorcycle; child injured
307. Mr Sayan Chandai, 25 February
308. Pol. Sgt. Maj. Samai Songsri, 25 February, Shot
309. Mrs Raiwan Khwanthongyen, 26 February, Shot with 11mm gun by 2 perpetrators
310. 'Ice' (baby daughter of Mrs Raiwan), 26 February, Shot with 11mm gun
311. Mr Chaktip Tabchumpon (Boy Waddao), 26 February
312. Mrs Kwanla Puangchomphum (wife of Mr Thanom), 26 February, Shot by perpetrator in white sedan while driving motorcycle home from police station
313. Mr Thanom Montak (husband of Mrs Kwanla), 26 February, Shot by perpetrator in white sedan while driving motorcycle home from police station
314. Mr Nutawut Wasannalikit, 27 February
315. Mrs Seang Yoktrap, 27 February
316. Mr Sukpor Daorayipta, 27 February
317. Pol. Sgt. Maj Ubol Phusririt, 27 February, Shot
318. Pol. Sgt. Phitak Tewsroy, 27 February, Shot
319. Pol. Cpl. Paitoon Puttapan, 27 February, Shot
320. Mr Kampa Phansri, 27 February, Shot
321. Mr Wutthi Meeded (Suepan), 27 February
322. Mr Pramuk Kerdnan, 27 February
323. Mrs Wanna Chansil, 27 February
324. Mr Surachai Chantonsit, 27 February
325. Mr Pattamas Ratanarungsopon, 27 February
326. Mr Preeda ('Noo') Bergban, 27 February
327. Mrs Nam Buangam, 27 February

328. Mr Lertsak Suwanmacho, 27 February
329. Mr Prakit Promlee, 27 February
330. Mr Somkid Kansakul, 27 February
331. Mr Aod Champutta, 27 February
332. Mr Sawang Sawek, 27 February
333. Mr Bunyung Tangthong, 27 February, Shot by 9 perpetrators in bedroom in front of family after reporting to police station
334. Mr Kiattisak Saksrichompoo (Ban Pa Luang village head), 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
335. Mr Kaoguy Sae Tern, 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
336. Mr Ulong Sae Tern, 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
337. Mr Bunma Sae Tern, 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
338. Mr Uguay Sae Tern, 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
339. Mr Somdej Sae Tern, 27 February, Shot by 4 perpetrators in pick-up truck together with 5 other victims
340. Mr Manoch Khamsat, 6 March, Shot by around 7 perpetrators in pick-up truck with M-16
341. Mr Seng Longsa, 8 March, Shot with AK-47
342. Mr Ded Namdee, 8 March, Shot while on a motorcycle
343. Mr Surasit Singchai, 20 March, Shot by police in sting operation
344. Mr Hong Khaphapu, 28 March, Alleged suicide in police detention on drugs charges
345. Mr Saman Thongdee, 9 April, Shot at home with 11mm gun by at least 3 perpetrators in black sedan
346. Mr Lhing Lhingna, Shot with AK-47; 60 amphetamine pills allegedly found near body
347. Mrs Nual Chanpong, Shot at home
348. Mr Vitaya Ruengsangaram, Shot by 2 perpetrators in balaclavas while going home with wife
349. Mr Bunchan Udchaiya, Shot at home
350. Mr Wichein Singhasawang, Shot while visiting relatives
351. Mr Suthon Phethueng, Shot by 2 perpetrators at home
352. Mr Prakai Nanthakul, Shot by 3 perpetrators in black clothes who came in a pick-up truck
353. Mrs Supanee Aawsri, Shot
354. Mrs Pim Muanthong, Shot by 11mm gun
355. Mr Waen Thongpromma, Shot while driving motorcycle
356. Mr Thamnong Chinongkao, Shot by perpetrators on motorcycle while drinking with friend
357. Mr Srimatra Kanthongyen, Shot by 2 perpetrators in sedan
358. Mrs Samrit/ Arthit Rungrueng, Shot from behind by 11mm gun
359. Mr Thu Thongdonmuen, Shot
360. Mrs Somphan Dokchaaim, Shot
361. Mr Chamlong Mahoran, Shot with 11mm gun
362. Mrs Chutikarn Mangkla, Shot
363. Mr Narong Kadachit, Shot while waiting for public transport
364. Mr Manoch Chutimamar, Shot at home
365. Mr Wiwat Sansong, Shot
366. Mr Prayoon Somtre, Shot
367. Mr Wiman Maneewan, Shot with shotgun
368. Mr Saman Lerthan, Shot at garage
369. Mr Sompong Sirirak, Shot with 9mm gun
370. Mr Bunma Bangtrai, Shot with 11mm gun by 3 perpetrators
371. Mr Narong Sinandah, Shot
372. Mr Seksan Suksan, Shot

373. Mrs Sawat Pholwatanakitcha, Shot
374. Mr Samorn Thongterd, Shot
375. Mrs Prayoon Bunwan, Shot
376. Mrs Lan Meethongyai, Shot
377. Mr Buarintra Somphor, Shot
378. Mr Samlee Bunmanan, Shot
379. Mr Prasit Yongsawaeng, Shot
380. Mr Bunphan Phapasai, Shot
381. Mr Ya Phuthongeon, Shot
382. Mrs Ramphueng Wilailat, Shot at home by 3 perpetrators together with 2 other persons
383. Mrs Ramphueng Chumkasem, Shot at home by 3 perpetrators together with 2 other persons
384. Mr Sampao Srisuntranont, Shot at home by 3 perpetrators together with 2 other persons
385. Mr Santipab Tuaykratok, Shot by 11mm gun while driving from Korat to Chantaburi province
386. Ms Ratana Phanyura, Shot by 4-5 perpetrators while watching TV at home
387. Mr Sayan Nilhoi
388. Mr Nainoi Churasri
389. Mr Winai Thongteng
390. Mr Surin Thongchalem, Shot
391. Mr Bamrung Bunchuey
392. Ms Phawinee Chomsri
393. Ms Thipamat Rodkasem
394. Mr Yaku Chasa, Shot with AK-47 on farm
395. Mr Yhee Laohang, Shot by perpetrators in pick-up truck
396. Mr Suchat Laohang
397. Mr Lhu Sanphor, Shot at home
398. Mr Sengwo Saelee, Shot on road
399. Mrs Wasna Muangcham, Shot at home
400. Mr Bunsong Nakkam, Shot at home
401. Mr Sawai Chawcharoen, Shot with 9mm and 11mm gun at noodle shop
402. Mr Chamnean Kanchanasarn, Shot on road
403. Mr Archem Yawaraya, Shot with 11mm gun while driving sedan
404. Mr Siwakorn Kongsuwan, Shot at noodle shop
405. Mr Vitaya Kanusint, Shot by perpetrators in pick-up truck while on road
406. Mrs Kansuda Wongsila, Shot nearby rubbish dump
407. Mrs Chanipada Thiaralaiok, Shot in pick-up truck on road
408. Mr Lamcheik Kasuwan, Shot at home
409. Mr Udomsak Prasettha, Shot at clothes shop at Lamplaimas Market
410. Mr Decha Thaworn, Shot
411. Mr Num Ketsuwan, Shot in front of Rajaphat Buriram Institute
412. Mr Samai Kochkot, Shot nearby pig farm
413. Mr Arpha Arngee, Shot while warming fireplace at home
414. Mr Krisana Kosin, Shot on motorcycle at Soi Weiangchai sport ground
415. Mr Nopphadon Phanapitakwong,
416. Ms. Nidanuch Aobcheuy (wife of Mr Nopphadon),
417. Mr Arun Hompongphu, Shot by perpetrators in 2 pick-up trucks
418. Mr Niwat Intraman, Shot with 2 relatives by perpetrators in pick-up truck; Mr Pravet Intraman was gravely injured
419. Mrs Thongyoi Intraman, Shot with 2 relatives by perpetrators in pick-up truck; Mr Pravet Intraman was gravely injured
420. Mr Sayan Intraman, Shot with 2 relatives by perpetrators in pick-up truck; Mr Pravet Intraman was gravely injured
421. Mr Supoj Kambunpha, Shot on road
422. Mr Thanarerak Premprue, Shot by perpetrators in pick-up truck while driving motorcycle
423. Mr Aong Deeam, Shot on road

424. Mrs Wanpen Tuikaew, Shot along with husband with M-16 by 5 perpetrators with balaclavas in a pick-up truck while selling goods in front of shop
425. Pol. Snr. Sgt. Maj. Thongplew Tuikaew, Shot along with wife with M-16 by 5 perpetrators with balaclavas in a pick-up truck while selling goods in front of shop
426. Mrs Chanphen Tuikaew, Shot with 9mm and 11mm guns by perpetrators in car
427. Mr Anuthin Kaewmala, Shot while driving pick-up truck back home after reporting to district officer
428. Mrs San Saechang, Shot at home
429. Mr Nikom Ngoenchom, Shot at home
430. Mr Sarawut Phromsri, Shot at garage
431. Mr Phiphat Nualnien, Shot with shotgun at rubber farm
432. Mr Chalernsak/Chalernsit Kongmailik,
433. Mrs Samruay Mueanrat, Shot
434. Mr Sampao Krueksomsat, Shot while selling goods
435. Mr Sakda Saisungngoen, Shot on road
436. Mr Sunthorn Pasikang, Shot at home
437. Mr Charoen Duangsupha, Shot at home
438. Mr Samnieng Kraithong, Shot at home
439. Mr Kambua Nakintra, Shot at home
440. Mr Abdul Ahmad, Shot at rented house
441. Mr Phitipon Setthachirachai, Shot from behind
442. Mr Kosum Tamphong, Shot while sleeping
443. Mrs Wimolrat Ratanarangsri
444. Mr Sawai Chanarat
445. Mrs Anek Mongkolsawad
446. Mrs Suporn Phengsiri
447. Mr Noi Phimchan, Shot
448. Mr Somchai Samran, Shot
449. Mr Chen Phongthet, Shot by 11mm gun
450. Mrs Suchira Chuensant
451. Mr Thon Imnoi, Shot with M-16 on the road; wife gravely injured
452. Mrs Lamai Manawwan, Shot at home after coming back from police station
453. Mr Nual Iamsamang, Shot at home
454. Mr Somkiat Chaonapao, Shot by 3 perpetrators in sedan at Raiking Temple; one person injured
455. Mr Pratueng Somphrom, Shot on motorcycle
456. Mr Wanchai Senram, Shot
457. Mr Prawicha Paksa, Shot
458. Mr Santi Wongchirawatra, Shot
459. Mr Niwas Duandon
460. Mr Bunlai Sanphol, Shot at traffic light
461. Mr Somchai Kotsuwan, Shot at home
462. Mrs Phikul Kaokamcheen, Shot at temple
463. Mr Chaeng Maklai, Shot on the way to Ban Hiha
464. Mr Pradit Thetsingha, Shot at pig farm
465. Mrs Laor Thetsingha
466. Mr Danai Nualdang, Shot on road
467. Mr Anan Chaimongkol
468. Mr Arbo Yerbor, Shot by police at Bohlukrang; over 10,000 amphetamine pills allegedly seized
469. Mrs Tun Tatam, Shot on road
470. Noi Kruewisen
471. Mr Surachitra Chinawong, Shot at home
472. Mr Kasem Udsoi, Shot
473. Mr Sombat Ongart, Shot at temple
474. Mrs Kae Toemak, Shot at home
475. Mrs Arhia Niamem (sister of Mr Kae), Shot at home
476. Mr Chamnan Ketbamrung, Shot by police while fleeing sting operation

477. Mrs Kanit Bunma (wife of Mr Chamnan), Shot by police while fleeing sting operation
478. Mr Pradit Lamyaw, Shot near by the Langsuan train station
479. Mr Suphit Chunuch, Shot with 11mm gun while on motorcycle
480. Mr Aphisit Phutikorndurong
481. Mr Wisuth Pratumrach
482. Mr Phensri Pratumrach
483. Mr Ekkachai Achariyatathanont
484. Mrs Phanthong/Thanya Kuabkum
485. Mr Yameen Chamnurak, Shot by perpetrator in pick-up truck while driving motorcycle
486. Mr Chanchai Labsatitchoksakul, Shot with second wife at pineapple farm
487. Mrs Bo Huaykot (second wife of Mr Chanchai), Shot with husband at pineapple farm
488. Mr Samart Panyachon, Shot on road
489. Mr Chalor Pampob, Shot while drinking alcohol at shop
490. Mr Somphong Phamonpol, Shot while driving motorcycle
491. Mr Preecha Taohom
492. Mr Bunyang Simma
493. Mr Sakulthep Palarak
494. Mr Bunying Treampayung
495. Mr Somsak Aonchon
496. Mr Charoen Kalakan
497. Mr Thammasak Daorueng
498. Mr Cha Kachuey
499. Mr Chawa Sankamchueng
500. Mr Anan Pulanpruk
501. Mr Niphor Ubdullor
502. Mrs Somsri Raksri
503. Mrs Ramphung Kittipongsan
504. Mr Nutawut Srisangthong
505. Mrs Nualchan Saengratna, Shot
506. Mr Yantra Kumthong
507. Mr Chairat Meepin
508. Mr Chakrapan Pruksa
509. Mr Surachai Suemue
510. Mr Phan Laikam
511. Mr Samkae Kamsuetrong
512. Mrs Sangob Taetiya
513. Mrs Somying Kanittabutra
514. Mr Werayuth Klomprasert, Beaten and body dumped in alley
515. Mr Satit Chamsri, Shot while driving motorcycle
516. Mr Wattana Phoewattana, Shot at general store
517. Mr Lamduan Thaisuan, Shot
518. Mr Winai Nakachat, Shot
519. Mr Somporn Suwanrod, Shot
520. Pol. Sgt. Maj. Sanan Saengkaew, Shot
521. Mrs Mayuri Buntrong
522. Mr Veera Sukkho, Shot at home
523. Mr Krisada Kasin, Shot
524. Mrs Wannara Saelim
525. Mrs Sumontha Srichandorn
526. Mr Sawai Meengoen
527. Mrs Wacharee Taechahongsa
528. Mr Wuthichai Panomkorn (Kead Bangpakong), Shot with 9mm gun
529. Mr Prasan Sithiwilai, Shot by 2 perpetrators after he stopped his car
530. Mr Praiwarin Kaongam
531. Mr Chor Saekue, Shot with M-16 after being tied with nylon rope
532. Mrs Rinda Ketchuen

533. Mr Bun Kamkeaw
534. Mrs Yen Kamkeaw
535. Mr Aumnuay Sonthipen
536. Mr Somsak Muangkaoyoy, Shot with 11mm and M-16 guns
537. Mr Kamlah Ponpai, Body found in jungle
538. Mr Sompong Faikratok, Shot in the restaurant
539. Mr Laiad Sasinil
540. Mrs Praman Sasinil
541. Mr Suchat Kanthongkaew, Shot
542. Mr Amnaj Tanpipat, Shot with M-16
543. Mrs Unchalee Saekow
544. Mr Somdej Sampan, Shot while eating
545. Mr Pairach Norasingha, Shot
546. Mrs Wanpen Huipatal
547. Mrs Chong Chuechat
548. Mr Saman Seangzi
549. Mr Chamnong Kernsombun, Shot with 9mm and M-16 after returning home from police station
550. Mr Sawai Manprasong, Shot by perpetrators in pick-up truck
551. Mrs Wasna Songcheng, Shot by perpetrators in pick-up truck
552. Mrs Ratreer Bampensin, Shot
553. Mr Winit Sriwilai, Shot
554. Mrs Chatdao Buayim
555. Mr Wichan Ponpuech, Shot while sleeping in hut
556. Mr Madyeb Senthong, Shot
557. Mr Peeraphat Mukem, Shot
558. Mr Samrong Chueyplean, Had been arrested and accused of drug trafficking; his name was on the blacklist
559. Mr Chong/ Chongkol Srisuk, Shot in front of his three-year-old daughter at home
560. Ms Kamlai Kongream, Shot in front of her three-year-old daughter at home
561. Mr Seam Pramongkun, Shot
562. Mr Songka Chapanee, Killed while in pick-up truck
563. Mrs Unchalee Hankleang, Shot
564. Mr Punsak Yosnongpum, Killed at home
565. Mrs Duangsuda Tadpaibun, Shot; died in Udonthanee Hospital
566. Mr Bundit Ittisukon, Shot by police
567. Mr Veerachat Sansirimongkol, Shot
568. Mr Suton Musikapan, Shot at home
569. Mr Praitamee Chaison/ Chaisonthi, Shot while waiting for the bus at the Pongpisai District Hospital
570. Mr Prasong Chulpan, Killed at home
571. Mrs Thitaporn Kanthong, Shot after returning home from police station
572. Mr Arrom Thongthip, His name was on the blacklist
573. Mr Chalerm Nernnirad
574. Mr Tawaschai Sorachun
575. Mr Wang Chumpol, Shot at home
576. Mr Buakai Chumpol, Shot at home
577. Mr Arsue Sengmue
578. Mrs Meedor Mapao, Shot at home
579. Somsak Sengmue (boy), Shot at home
580. Mr Preeda Sangphet, Shot
581. Mr Sampan Amchuen, Shot at home in front of his 5-year-old grandchild
582. Mr Pan Saikam, Shot; 200 amphetamine pills allegedly found on his body
583. Mr Suwan Kaewkanda, His name was on the blacklist
584. Mr Suchat Pankaew, His name was on the blacklist
585. Mr Kraisorng Kongsan, His name was on the blacklist
586. Mr Denchai Chutipong, His name was on the blacklist
587. Mr Nuttaporn Chantrapong, His name was on the blacklist
588. Mr Nuchta Tinpakasai, Shot

589. Mr Manop Chueykul, Shot with 11mm gun at home; his name was on the blacklist
590. Mrs Safiya Mitramuang, Shot with 11mm gun at home; her name was on the blacklist
591. Mr Samart Kamsue, His name was on the blacklist
592. Mr Chalerm Soisuwan, Shot after returning home from police station
593. Mr Eseng Saelee, His name was on the blacklist and he had been arrested and accused in two drug cases
594. Mr Katha Aumsamang, Shot by 3 perpetrators at home
595. Mr Kloy Chompakwan, Shot; had been bailed out on drugs charges
596. Mr Siriyom Thongkamsang, Shot
597. Mr Veerasak Samart, Shot
598. Mr Sombun Plongthong, Killed on the road
599. Mr Anu Chinnawuttiroj, Shot at home
600. Mr Man Chamnurak
601. Mr Sawang Thongposri, Shot at home
602. Mr Somsak Lhuangsorn, Shot
603. Mr Somsak Pinpayak, Shot at shop
604. Mrs Tanomsri Neerpol, Shot
605. Mrs Thongbai Hongkam, Shot at shop
606. Mr Yoo Somma, Shot
607. Mr Kittisak Suwannarat, Shot by police
608. Mr Prakob Ketsampao, Shot with 11mm gun in pick-up truck; wife gravely injured
609. Mr Krish Kosapol, Shot in pick-up truck
610. Mrs Pim Muanngen, Shot with 11mm gun
611. Mr Kan Sunadta, Shot with 11mm gun
612. Mrs Chariya Suthanukul, Shot with .38 gun
613. Mr Attayasit Phattanasrithong, Shot with shotgun
614. Mr Prasert Chuehongkaew
615. Mr Nuttapon Ratanawichaikul
616. Mr Somchai Saechang
617. Mr Trongwach Chinokul, Allegedly committed suicide in prison
618. Mr Bunma Chairaj, Shot
619. Mr Nakarin Nakkaew, Shot
620. Mr Pian Mormeechai, Shot
621. Mrs Daoteam Artkonghan, Shot at the restaurant
622. Mrs Anchalee Hankleing, Shot
623. Mr Chaiwat Teerawisit, Shot
624. Mr Bunyang Puttipit, Shot with shotgun while driving motorcycle in front of his 2 daughters
625. Mrs Amphan Phonchan, Shot
626. Mrs Tanya Arbkom, Shot
627. Mrs Sunee Chongcharoen, Shot
628. Mr Udom Auksornthai, Shot
629. Mr Main Kamnurak, Shot
630. Mr Seri Supawan, Shot
631. Mr Sutas Vichaidit, Shot
632. Mr Somnuek Chomchuen, Shot after returning home from police station
633. Mr Charoen Phetchompoo, Shot on the road
634. Mr Arthit Srihabutra, Group killing
635. Mr Uthai Srihabutra
636. Mr Arnon Yaprom, Group killing
637. Mr Treepop Suksawasnamchok, Group killing
638. Mr Winaiporn Dansayam, Group killing
639. Mr Sithichai Taweepiradeesuntorn, Shot while in hospital
640. Pol. Snr. Sgt. Maj. Komsan Perngnoi, Shot at home; former officer of Kamphaengsan Police Station
641. Mr Sangob Sripromma, Shot with 9mm gun in front of shop

Appendix III: Letters by the ALRC & AHRC concerning institutionalised torture, extrajudicial killings & uneven application of law in Thailand

Letter by the ALRC to the Special Rapporteur on the question of torture regarding gross acts of torture by the Royal Thai Police

26 July 2004
Prof Theo van Boven
Special Rapporteur on the question of torture
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND

Fax: +41 22 917-9016

Dear Professor Van Boven

Re: Five men tortured by police of Tanyong Subdistrict, Narathiwat, Thailand

The Asian Human Rights Commission (AHRC), sister organisation of the Asian Legal Resource Centre (ALRC), has today issued an Urgent Appeal (UA-94-2004) calling for the release of the victims of torture connected with the case of missing Thai lawyer, Somchai Neelaphaijit, and that action be taken against the alleged torturers.

The five victims, Makata Harong (49), Sukri Maming (37), Manase Mama (25), Sudirueman Malae (23), and Abdullah Abukaree (20) were arrested and allegedly tortured in connection with a raid on the Narathiwat Rachanakarin army camp on 4 January 2004. The alleged perpetrators are serving police officers of Tanyong subdistrict provincial police station, Narathiwat province, in the south of Thailand.

After arresting the five men on February 23, the police approached the court on February 25 to continue to keep them in custody after the 48-hour limit established under Thai law, and obtained a first extension of detention to March 7. On March 4, the lawyer for the men, Mr

Somchai Neelaphajit, sought a court order that they be taken for physical examination, alleging that they had been tortured during the first three days in custody, before being transferred to the Crime Suppression Division in Bangkok. His application included the following remarks:

“While under police custody and during the interrogation conducted at the provincial police station of Tanyong subdistrict, the 4th Suspect was blindfolded by police officer(s) and physically assaulted; strangled and choked, hand-tied behind his back and beaten with pieces of wood on the back and head, suffering some head wounds. In addition, he was also hanged from the toilet door with a piece of rope and was then electrocuted with a piece of fork charged with electrical currents, on the back of his torso and right shoulder. As a result, the Suspect had to make a confession.”

“The 4th Suspect was hanged from the toilet door with a piece of rope and electrocuted with a piece of fork charged with electrical currents”

Having extracted confessions through use of torture, the police then charged the men with a range of offences relating to alleged rebellion against the state, under sections 80, 83, 114, 209, 210, 213, 217, 218(4), 340 and 340(bis) of the Criminal Procedure Code. The police alleged that Makata was a member of an insurgent group, Barisan Revolusi Nasional (BRN), who hired the others to work with him.

Frustrated by his inability to get a judicial response to his applications regarding the torture of his clients, Mr Somchai travelled to Bangkok and distributed a petition on their case to at least five government authorities, on March 11. A full translation of the letter he submitted is attached for your information. The following day, March 12, Mr Somchai was himself taken from his car and forcibly disappeared. He is believed to be dead. Although five police officers have been identified as the persons responsible for initially detaining Mr Somchai, and a court case against them is pending, his subsequent circumstances remain a mystery. The five officers concerned have been charged with relatively minor offences, and not even with kidnapping.

On March 26, a team sent by a group of senators to meet with the five victims found the allegations to be true. However, members of the team were clearly reluctant to talk out about what they had uncovered. Dr Pradit Charoenthathavee, a member of the National Human Rights Commission, said afterwards that:

“I don’t want to give more details particularly on the issue related to administration. If I am killed or abducted, who will take a responsibility? **Before being transferred to a special prison, the 5 suspects told the court that they were severely tortured by the police but the court did not ask for any detailed information on that torture and send them to receive any medical treatment.**”
(Quoted in *Matichon* daily, March 27)

On May 18 the Criminal Court released the five men after state prosecutors failed to file charges against them within an 84-day statutory limit, citing insufficient evidence. However, the police immediately rearrested four of them on separate charges of conspiring to murder police officers at Tak Bai district police station, with only Abdullah Abukaree going free. The four men who have been rearrested are now being held in prison in Narathiwat province, and are obtaining legal assistance from the Law Society of Thailand, which is filing a suit against the police officers alleged to have tortured the men.

After he was released, Mr Abdullah Abukaree spoke to the media about his torture, which occurred over a span of three days:

“The types of torture described indicate that this is most likely the work of experienced professionals”

“While being questioned, I was kicked, slapped and punched. They yelled at me and told me to confess that I took part in the camp raid. I didn’t know anything about it, so I denied it... When I denied involvement, I was tied to a chair and someone in the group [of interrogators] poked my body with a live electric wire. It was very painful. At those moments I wanted to die. I never felt pain like that before.” (Quoted in *The Nation* daily, June 1)

Despite public recognition that the men were tortured, and the initiation of legal action on behalf of the men by the Law Society of Thailand, there has been no discussion about their getting physical and psychological treatment and compensation for what they have suffered. Nor has there been any talk of bringing the alleged torturers to justice, and the police have denied wrongdoing. The Government of Thailand is reported to have recently committed to accede to the UN Convention against Torture and Other Cruel and Inhuman Treatment or Punishment. The ALRC sincerely hopes that efforts will be made to ensure that the Government of Thailand does so without delay, as it notes that in the past commitments by the State party to sign international instruments have not been kept. In the meantime, under domestic law the perpetrators can be charged only causing grievous bodily harm and malfeasance in office.

The ALRC notes with particular concern that the types of torture described by Mr Somchai, including beating sensitive parts of the body and electric shocks, indicate that this is most likely the work of experienced professionals who have engaged in such practices many times before. The ALRC is also deeply concerned that growing martial law powers in the south of Thailand, under which “terrorist suspects” are now being kept under military detention for one week before being turned over to the police, are likely to increase dramatically the incidence of torture there.

The ALRC has reason to believe that torture is widespread in Thailand, however, a culture of silence has for many years kept the issue from public discussion. There is no domestic organisation campaigning on the practice of torture in the country. The ALRC is aware from its close contacts in Thailand that lawyers, journalists and other concerned professionals there have for years known the details of many torture cases, but have shied away from them for fear of the consequences, dramatically illustrated in the case of Mr Somchai. The addendum to your report to the Commission on Human Rights for 2004 (E/CN.4/2004/56/Add.1) speaks to this point, listing a mere three cases of torture in Thailand (paras 1678–81), all of them involving non-Thai nationals.

The ALRC believes that with the public awareness of torture in Thailand aroused by the case of these five victims, the time is now right to break the popular mentality among people there that “this is not something that goes on in our country”. It urges you to take up the case of these five victims as a case of particular concern, and engage the Government of Thailand to fully address the extent and nature of the practice of torture in the country. The ALRC and AHRC would be more than willing to offer you any and all assistance in this regard.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

Letter by the AHRC to the Minister of Justice regarding grave cases of torture and the need to ratify the Convention against Torture

12 November 2004

Mr Pongthep Thepkanjana
Minister of Justice
Office of the Ministry of Justice
Ministry of Justice Building
22nd Floor
Chaeng Wattana Road, Pakkret
Nonthaburi 11120
THAILAND

Fax: +662 502 6699/ 502 6734

Pages: 6

Dear Mr Pongthep

Re: Recent grave human rights violations by state officers in Thailand and the need to ratify the UN Convention against Torture

Further to our letter to you of 14 October 2004 pertaining to the case of the missing human rights lawyer, Mr Somchai Neelaphaijit, we now write to you regarding a number of recent cases of concern involving state officers in Thailand. In the opinion of the Asian Human Rights Commission (AHRC), all of these cases point to the need for Thailand to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and introduce it into domestic law as a matter of urgency. Although I understand that you are familiar with each of the following cases, some of the facts are here restated in brief, together with our observations.

Case 1: Cruel and inhuman treatment of Chol Narapinit and Siri-on Changluadlai at Lumpini Police Station, Bangkok

Mr Chol Narapinit, 28, and his wife Ms Siri-on Changluadlai, 17, were arrested at the Ploenchit skytrain station on 27 July 2004, reportedly on allegations of theft. They have alleged that the police assaulted them and stole a gold necklace from their possession; Ms Siri-on was pregnant at the time of the alleged assault. They were released by the Bangkok South Criminal court on November 5 after being detained by Pol. Maj. Kriangsak Tipjol at Lumpini Police Station for a continuous period of 102 days without charge. This period exceeded the statutory limit for seven periods of detention, totalling 84 days, by a further 18 days. Pol. Maj. Kriangsak had not sought a court order to detain the couple for the additional period. It has been reported that Mr Charnchai Chotivejthamrong, of the Southern Bangkok Criminal Litigation Division 6, which receives the cases from Lumpini Police Station, has stated that the division had at no time received a police report on the case. A third suspect in the case has also been reported as having been maltreated before being released on October 19, at the end of the statutory limit.

During her detention, Ms Siri-on gave birth to a child, but obtained no assistance from the police officers in the station. Her relatives came and took the child from her after five days. It is also alleged that Pol. Maj. Kriangsak recorded her age as 19 to avoid having to treat her

“During detention, Ms Siri-on gave birth to a child, but obtained no assistance from the police officers in the station”

“That a young woman could be left in a police station detention cell, and give birth there, for a period of over 100 days speaks to an institutional tolerance of gross human rights abuse”

in accordance with regulations for juvenile detainees, as per Thailand’s obligations under the UN Convention on the Rights of the Child, and the new Child Protection Act 2546/2003.

To date, the response of the Royal Thai Police has been promising. Pol. Maj. Kriangsak has been temporarily dismissed, and Division 5 of the Metropolitan Police Bureau has established three panels to investigate all officers concerned in the case, including the police station chief and deputy. We are informed that Pol. Maj. Kriangsak is to be charged with malfeasance under sections 148, 157 and 161 of the Penal Code, and confinement, under section 310. However, as no charges have yet been brought, Pol. Maj. Kriangsak has remained at large. We expect that charges will be laid and the accused will be arraigned shortly. Meanwhile, we appreciate that the Office of Witness Protection under your ministry has sought assistance for the victims from the Crime Suppression Division, and trust that all necessary steps are being taken to secure their safety.

While the actions pending against Pol. Maj. Kriangsak are necessary, other officers must also be held responsible for what has occurred. That a young woman could be left in a police station detention cell, and give birth there, for a period of over 100 days speaks to an institutional tolerance of gross human rights abuse. Apart from the arresting officers and those alleged to have assaulted the victims, all of those found to have been responsible for the management of the police station and its detention cells during this period must be held to account. The AHRC trusts that investigations and criminal prosecutions that follow will assess the liability of all officers involved, and not merely Pol. Maj. Kriangsak. In particular, action must be taken against the station superintendent, Pol. Col. Suwat Jaengyodsuek, and his deputy, Pol. Lt-Col Rangsan Praditpol. As superintendent and deputy superintendent of the police station where the abuses occurred, these two officers hold the ultimate responsibility for what has taken place. It defies belief that Pol. Col. Suwat could not have known that people were being held in prolonged detention in his police station, and that a young woman gave birth unattended there. The superintendent was either complicit in the abuse or utterly incompetent and unsuited for his post; in either case action must be taken against him.

The AHRC appreciates your publicly-reported remarks that strict criminal and disciplinary action be taken against the officers in this case, and expect that you will be directing all the necessary resources of your ministry towards this end. In particular, we are concerned that the internal investigations currently being undertaken by the Royal Thai Police be complemented by external enquiries through the Office of the Attorney General without delay, and the Department of Special Investigation (DSI) under your ministry. Reports we have received that the case may be handed to the National Counter Corruption Commission (NCCC) are worrying, as it is not should not be the function of this agency to investigate gross violations of human rights affecting the physical integrity of detainees. We trust that you will ensure that proper action be taken against the perpetrators in accordance with the law to ensure full judicial proceedings follow.

Apart from criminal prosecutions of the offenders, the AHRC also urges you to ensure that the victims are properly compensated for their maltreatment at the hands of state officers, in accordance with the Compensation for Crime Victims Act 2544/2001. We note that the Director-General of the Department of Rights and Liberties Protection under your ministry is reported to have stated that the couple would

be entitled to financial compensation. We would hasten to add that the act also stipulates that victims be entitled to medical treatment, including physical and mental rehabilitation. In light of the circumstances under which the victims were detained, and particularly the condition of Ms Siri-on in being forced to give birth without any assistance from the police while in detention, compensation by way of appropriate rehabilitation must not be overlooked.

Case 2: Torture of Mr Ekkawat Srimanta at Phra Nakhon Si Ayutthaya Police Station and Uthai Police Station, Ayutthaya Province

Mr Ekkawat Srimanta, 21, was arrested in the first week of November 2004 by officers in Ayutthaya Province, on allegations of robbery. It is alleged that officers attached to the Phra Nakhon Si Ayutthaya and Uthai police stations brutally tortured Mr Ekkawat, who was rushed to the local hospital by friends after being released without charge. He is seriously injured, and has extensive burns and injuries on his body, including his penis and testicles, where electric shocks were applied.

Twenty-three officers believed to have been involved in the case have now been transferred to Bangkok under orders from Pol. Gen. Kovit Watthana while investigations are ongoing. Twelve of those transferred for enquiries are reported to be from Phra Nakhon Si Ayutthaya Police Station: 1. Pol. Lt-Col. Suebsak Pinsang; 2. Pol. Snr Sgt-Maj. Preecha Meewongsom; 3. Pol. Sgt-Maj. Winai Kampang; 4. Pol. Sgt-Maj. Somchai Raksakul; 5. Pol. Sgt Pichit Sangchan; 6. Pol. Sgt Kitti Traplom; 7. Pol. Sgt Nontawat Wonghong; 8. Pol. Cpl Pakorn Satabutra; 9. Pol. Cpl Suwan Ruensawang; 10. Pol. Sgt Wirach Chantanit; 11. Pol. Sgt Chareon Meksaen; 12. Pol. Sgt Wichit Suanchimplee. Eleven of those transferred for enquiries are reported to be from Uthai Police Station: 1. Pol. Lt-Col. Picha Rujinam; 2. Pol. Capt. Sritong Jonrod; 3. Pol. Capt. Manoch Bunsong; 4. Pol. Snr Sgt-Maj Wichai Kernumnuay; 5. Pol. Snr Sgt-Maj Panya Enon; 6. Pol. Sgt Pensan Chantem; 7. Pol. Sgt Somkid Chodsomboon; 8. Pol. Sgt Monchai Chaloiyan; 9. Pol. Cpl Pitak Chamcharas; 10. Pol. Sgt Wasan Mingkwan; 11. Pol. Snr Sgt Wisut Raknak. The Commander of Police Region 1, Pol. Lt-Gen. Chalor Chuwong, has stated that criminal proceedings will follow, and the victim is understood to have sought the involvement of the DSI. The AHRC also notes that Justice Weecha Mahakul, of Court of Appeal Region 1 has stressed that the transfer of these police is not sufficient, and they should be suspended and charged without delay.

Of particular concern in this case is that the manner of torture alleged to have been carried out on the victims bears a marked resemblance to that inflicted on the five men previously being defended by the missing human rights lawyer, Mr Somchai Neelaphaijit, namely: 1. Makata Harong; 2. Sukri Maming; 3. Manase Mama; 4. Sudiruean Malae; 5. Abdullah Abukaree. The AHRC has written to you on a number of occasions to express concern over the apparent inaction in efforts to locate the whereabouts of Mr Somchai, as well as seeming indifference to the plight of the five torture victims. In particular, the practices of inflicting wounds on sensitive parts of the body and applying electric shocks to the testicles and penis suggest the work of seasoned and experienced professional torturers who have engaged in such practices many times before. The AHRC has repeatedly expressed concern that torture is widespread among state security agencies in Thailand, however, up until recently intimidation and limits to freedom of expression in the media have meant that it was not publicly

“The manner of torture carried out on the victims bears a marked resemblance to that inflicted on the five men previously being defended by the missing human rights lawyer Somchai Neelaphaijit”

“Torture in police stations is rarely conducted without the knowledge, or at least tacit approval, of station commanders”

discussed. Happily, this situation is now changing, and your ministry should be expected to play a central role in securing the rights of the victims in these cases, and preventing further abuses from occurring, through an aggressive campaign to prosecute and punish all known offenders.

Again, the AHRC is pleased to note that you have gone on the public record to state that your ministry will assist in enquiries into this case and that those officers found guilty of torture will be charged. As in the above-mentioned case, however, the AHRC is concerned that the Office of the Attorney General engage in independent enquiries into the incident without delay, rather than the NCCC, and that protection and compensation for the victim also be guaranteed in accordance with the standards noted above. Additionally, the AHRC supports the call of the victim for the involvement of the DSI, with a view to examining the role of the police station chiefs in this case. From the experience and observations of the AHRC in other countries in Asia where the practice of torture in police stations is widespread, it is rarely conducted without the knowledge, or at least tacit approval, of the station commanders concerned. Therefore, the AHRC you to pay particular regard to this aspect of these cases to ensure that police station superintendents are held fully responsible for abuses committed under their commands. Without stern action being taken against superior officers condoning torture as well as those actually committing it, the practice will not diminish.

The AHRC notes that although article 31 of the Constitution of Thailand prohibits torture, regrettably the Government of Thailand has to date not signed or ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Nor is there a specific provision prohibiting torture under the Penal Code of Thailand. We are informed that in this case the perpetrators may be charged with malfeasance under sections 157 and 161, and grievous bodily harm under sections 297, 298 and 289. Notwithstanding, the current legal domestic legal provisions to deal with torture in Thailand fall far short of that envisaged by the CAT, and have not been tailored in a manner that will effectively address the serious endemic torture and cruel and inhuman treatment suggested by these recent cases.

In light of these two cases, I would also yet again like to stress the need for an independent body for receiving and investigating complaints against police officers in Thailand. The reforms to the police force of recent times are in no way sufficient as to protect the basic human rights of their victims in cases such as these. To our knowledge, no steps have been taken to allow for complaints to be lodged against police officers through any independent channel, other than the Ombudsman and National Human Rights Commission, both of which are subsidiary agencies lacking the power to implement judicial proceedings. The AHRC also supports calls from within Thailand for urgent changes to the management of criminal cases so that the Office of the Attorney General will be given a lead role in investigations rather than the police. We expect that were you as the Minister of Justice to initiate efforts to make changes in accordance with recommendations coming from numerous quarters, you would obtain a great deal of public and professional support and sympathy for your efforts.

Case 3: Deaths in custody of at least 78 persons and other casualties arising from protest outside Tak Bai Police Station, Narathiwat Province

Although the mass killing in Narathiwat Province of this October 25 is now well known internationally, many questions remain to be answered in relation to the tragedy. For the AHRC, a key concern is what is the Attorney General doing about this case? In contrast to the incidents described above, to date there is no evidence of steps being taken towards criminal proceedings against the military personnel involved in the deaths in custody of at least 78 persons and other killings there. It is unclear to the AHRC as to whether or not there is a specific reason for the seeming difference in treatment of police and army personnel. However, the AHRC understands that for the purposes of the application of the criminal law in Thailand both should be subject to the same provisions and sanctions.

Of the 78 persons known to have died in custody, 22 were buried without having been identified. Of the remainder, the AHRC has the names of 32 persons, all of them men: 1. Mamarusaki Latae; 2. Nuhan Modoeseng; 3. Mayalee Yaka; 4. Sukrunai Ar-wae; 5. Sachuden Masoe; 6. Doelor Chae Ar-wae; 7. Manor Porsar; 8. Mahama Sama-aae; 9. Marohing Makar; 10. Roymee Duerae; 11. Ar-Hama Saree; 12. Roha Ar-wae; 13. Harong Patorma; 14. Hamran Ar-rong; 15. Muelee Arwaekuechi; 16. Samree Arwaebango; 17. Nasueree Ebrohng; 18. Gifree Mama; 19. Idrae Ar-wae; 20. Ar-rong Sue; 21. Rusadee Jongo; 22. Rosee Samae; 23. Saroj Tolae; 24. Basaree Lueni; 25. Rosuemai Salae; 26. Abdularye Yaring; 27. Haron Ar-wae; 28. Subaideelah Suriya; 29. Nipaosee Maelae; 30. Arbeedee Gabagor; 31. Sabuting Yusoe; 32. Sama-air Udo.

At least another 40 persons are reported as having disappeared in the aftermath of the killings, and although it is likely that some of these persons are among the 22 buried without being identified, there are reports that the number of those disappeared is much larger. One recent unconfirmed report is that at least 18 bodies were seen floating in the Tak Bai River shortly after the killings. The Chairperson of the Senate Committee on Social Development and Human Security, Dr Niran Pithakwatchara, has also stated that eyewitnesses have told him that the number of persons killed had exceeded the number publicly cited to date.

All of these gaps in information regarding the killings speak to the important role of the Attorney General in investigating and prosecuting those persons responsible. After October 25, four doctors from the Forensic Science Institute under your ministry are known to have conducted partial examinations of the 78 victims removed from army trucks, and to have taken samples for further testing. They played a critical part in exposing the scale of the tragedy at an important early stage, which is appreciated. However, full autopsies were not conducted in compliance with sections 148–156 of the Criminal Procedure Code. Questions must now be asked as to what your ministry is doing to address this situation in order that criminal proceedings are commenced through the Office of the Attorney General without further delay. Although investigations by the senate and the fact-finding team appointed by the Prime Minister are ongoing, there is no reason to delay criminal investigations until these have been completed. It is the role of the Attorney General to investigate and prosecute all crimes, including those committed by government officers, without regard to other factors. Whereas in the recent cases involving police officers

“ It is the role of the Attorney General to prosecute all crimes, including those committed by government officers, without regard to other factors ”

“When a death in custody occurs, a state agent must be held criminally responsible”

described above there appears to be some acceptance of this, by contrast the same appears to be lacking where these military personnel are concerned.

As the scale of the tragedy at Narathiwat far exceeds the incidents described above, and as the military personnel involved unquestionably have criminal liability for their actions, it is hard to imagine that no charges have yet been laid. In particular, the Office of Attorney General should already be commencing criminal proceedings against the alleged perpetrators of the 78 custodial deaths, for which there can be absolutely no excuses. When a death in custody occurs, a state agent must be held criminally responsible. Arguments to suggest that the death or deaths were accidental, were caused by poorly trained personnel, or were due to other extenuating circumstances are totally unacceptable, and in light of the International Covenant on Civil and Political Rights, to which Thailand is a party, utterly irrelevant. Article 2 of the covenant stipulates the necessity for victims of rights violations to have access to effective judicial remedies. We reiterate, therefore, that there is no need to postpone criminal proceedings until other politically appointed enquiries are completed. In fact, it would be negligent to do so, as it would afford time for the perpetrators of these abuses to conceal the extent of their crimes. It is the primary responsibility of Office of Attorney General to ensure that all deaths in custody and extrajudicial killings are fully examined, the perpetrators identified, and held to account for their actions; these things must be done at once.

All of the above cases speak to the urgency for the Government of Thailand at this time to sign and ratify the Convention against Torture, and bring it into domestic law. The AHRC avers that in each of these cases were the CAT a part of the law in Thailand and mechanisms already established to implement it, the perpetrators of the abuses would face far more stringent and appropriate penalties than exist under the national law at present. Those would take into account the gravity with which the international community views acts of torture and cruel and inhuman treatment or punishment. A strong law prohibiting torture in Thailand, combined with public education programmes, could dramatically reduce the incidence of gross human rights abuses. Although the AHRC understands that the Government of Thailand has committed itself to become a party to the CAT, it is unaware of any progress in this regard. As the Minister of Justice we expect that you will be deeply concerned to see the CAT brought into your national legal system without delay, in order that your capacity to deal with gross violations of human rights by state officers is further strengthened.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister
2. Dr Bhokin Bhalakula, Minister of Interior
3. General Sampan Bunyanan, Minister of Defense
4. Mr Khampree Kaocharoen, Attorney General
5. Pol. Gen. Kovit Watthana, Commissioner-General, Royal Thai Police

6. Pol. Lt-Gen. Pansiri Prapawat, Commissioner, Metropolitan Police Bureau
7. Pol. Lt-Gen. Chalor Chuwong, Commander, Police Region 1
8. Pol. Maj-Gen. Kosin Hinthao, Commander, Metropolitan Police Bureau Division 5
9. Mr Charnchao Chaiyanukij, Director-General, Department of Rights and Liberties Protection, Ministry of Justice
10. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
11. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
12. Mr Pichet Sunthornphipit, Ombudsman
13. Mr Dej-Udom Krairit, President, Law Society
14. Mr Abdelfattah Amor, Chairperson, UN Human Rights Committee
15. Mr Jacob Egbert Doek, Chairperson, UN Committee on the Rights of the Child
16. Professor Theo van Boven, UN Special Rapporteur on the question of torture
17. Professor Philip Alston, UN Special Rapporteur on extrajudicial, summary, or arbitrary executions
18. Ms. Yakin Erturk, UN Special Rapporteur on violence against women
19. Ms Manuela Carmema Castrillo, Chairperson, UN Working Group on arbitrary detention
20. Mr Diego Garcia-Sayan, Chairperson, UN Working Group on enforced or involuntary disappearances
21. Ms Lee Wan-Hea, Action Regional Representative, Asia Pacific, UNESCAP

Letter by the AHRC to the Minister of Justice regarding institutionalised torture and the need to ratify the Convention against Torture

24 November 2004

Mr Pongthep Thepkanjana
Minister of Justice
Office of the Ministry of Justice
Ministry of Justice Building
22nd Floor
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND

Fax: +662 502 6699/ 6734 / 6884

Pages: 4

Dear Mr Pongthep

Re: Request for immediate action against torturers and complicit or negligent superiors in the Royal Thai Police

Further to my letter to you of 12 November 2004 pertaining to a number of recent cases of torture and cruel and inhuman treatment involving state officers in Thailand, the Asian Human Rights Commission (AHRC)

“Detained persons were first beaten without any questions being asked, after which some would be taken to a torture chamber on the third floor”

is concerned by apparent delays in bringing criminal charges against some key perpetrators. It is also concerned by expressions of support for police torturers from some official quarters in Thailand, despite early remarks from you and the Prime Minister Dr Thaksin Shinawatra to the effect that torture would not be tolerated.

The AHRC would like to draw your attention in particular to the following personnel of the Royal Thai Police:

1. **Police Major Kriangsak Tipjol**, formerly of Lumpini Police Station, Bangkok, and his immediate superiors, Superintendent **Police Colonel Suwat Jaengyodsuek**, and his deputy, **Police Lieutenant Colonel Rangsak Praditpol**

2. Crime Suppression Inspector **Police Lieutenant-Colonel Suebsak Pinsaeng**, formerly of Phra Nakhon Si Ayutthaya Police Station, Ayutthaya province, and his immediate superiors, including Superintendent **Police Colonel Atthapol Dedduang**

3. Seven unidentified officers of **Tanyong Police Station, Narathiwat province**, and immediate superiors, including the officer in charge, Deputy Superintendent **Pol. Lieutenant-Colonel Chairat Karnchananej**

4. **Police Lieutenant-General Amarin Niamsakul**, Commissioner, Immigration Bureau

According to the information available to the AHRC, despite ongoing investigations and initial disciplinary action against Pol. Maj. Kriangsak for his illegal detention and cruel and inhuman treatment of Mr Chol Narapinit and Ms Siri-on Changluadlai, he has not yet been formally brought up on charges. By contrast, the police authorities have been quick to secure an arraignment against the two victims in this case, after they complained publicly of their maltreatment. Additionally, the AHRC has been informed that Maj. Kriangsak's superior officer Pol. Col. Suwat has been transferred to the south of Thailand. As noted in the previous letter to you it is quite unacceptable for either Pol. Col. Suwat or his deputy Pol. Lt-Col. Rangsak to hold positions of authority within the police force in light of this incident. The AHRC sincerely hopes that further action will be taken against the two officers to ensure that face serious disciplinary action. The AHRC also urges you to pursue investigations to establish whether or not they were complicit in the maltreatment of detainees in the station, and whether or not they should also be subject to criminal proceedings. Indeed, in our previous letter to you the AHRC noted with appreciation your publicly reported remarks that strict criminal and disciplinary action would be taken against the officers connected to this case, and we are keenly awaiting further news.

Even more disturbing are reports coming to the AHRC that Pol. Lt-Col. Suebsak may be a mentally unbalanced serial torturer who was the ringleader in atrocities committed against detainees at the Phra Nakhon Si Ayutthaya Police Station. Another officer named as being behind the abuses at the station is Pol. Sgt-Maj. Winai Kampaeng. Although the case of Mr Ekkawat Srimanata is the only one publicly reported in detail to date, the AHRC has obtained reliable information regarding at least one other recent case of torture in the station. It has been reported to the AHRC that detained persons coming to the station were first beaten without any questions being asked, after which some would be taken to a torture chamber on the third floor. The police are alleged to have kept equipment there for extreme torture, which included stripping detainees naked, tying them down and

electrocuting sensitive parts of their bodies; however, all of these materials were removed by the time investigators came to the station over the case of Mr Ekkawat. During these torture sessions, the officers are reported to have drunk alcohol. Persons aware of what was taking place inside the police station have stated that they believe Pol. Lt-Col. Suebsak is mentally unstable, as he reportedly appeared to relish the opportunity to torture. If this is in fact the case then it raises more serious questions about the role of his superiors, particularly the officer in charge of the station, Superintendent Pol. Col. Atthapol Dedduang, in either tacitly or openly approving the use of torture under their command. In this regard, it is also notable that of the 23 officers initially believed directly connected with this case, to which we referred in our previous letter, all of them are ranking police holding the position of sergeant or higher. Also with regards to this case the AHRC would again remind you of the publicly reported comments of Justice Weecha Mahakul, of Court of Appeal Region 1, to the effect that the police officers involved should face criminal charges. Again, the AHRC has already noted its appreciation of your intention to pursue the case accordingly, and would trust that you will be making swift progress. Urgency in dealing with the case should be expected particularly given the public statements by the Attorney General that the Ayutthaya public prosecutor has been instructed to form an investigating team, and in light of the fact that the victim has received death threats for refusing to withdraw his complaint.

“During torture sessions the officers are reported to have drunk alcohol”

The actions of these officers again draw attention to the serious torture of five detainees at Tanyong Police Station, Narathiwat province, by as yet unidentified personnel in February 2004. The AHRC has written to you previously about this incident in connection with the case of missing human rights lawyer Mr Somchai Neelaphaijit. The AHRC is deeply concerned that although a senate committee obtained a photograph of one or more of the suspect officers, the police department has reportedly refused to comply with its request to identify the man in question. The AHRC urges you to take serious steps to investigate this case and obtain the identities of the suspected police torturers with a view to criminal action against them also. Likewise, their immediate superiors at the time of the torture being committed should be held primarily responsible, particularly in the absence of any other names being available to date.

The recent nationally televised comments from Police Lieutenant-General Amarin Niamsakul, Commissioner of the Immigration Bureau, to the effect that torture by the police is acceptable are also bound to cause outrage among concerned persons in Thailand and around the world. Although the AHRC appreciates that you spoke out publicly against the officer's remarks, this is in our opinion by no means sufficient. The comments by Pol. Lt-Gen. Amarin contradict article 31 of the Constitution of Thailand, which prohibits torture, and also article 7 of the International Covenant on Civil and Political Rights, to which Thailand is a state party. As you will be well aware, these legal provisions prohibiting torture are underpinned by the principle of *jus cogens*, that no derogation be permitted. For a senior police officer to suggest otherwise is both sheer folly and completely unacceptable. When reported internationally, they are also bound to cause serious damage to Thailand's reputation abroad. Accordingly, the AHRC urges you to call for his dismissal from office. It is entirely incompatible with his position that Pol. Lt-Gen. Amarin holds an opinion of this nature, let alone airs it on television, and firm action must be taken against him so other officials will understand that such comments and the practices they condone are unwelcome in Thailand.

“Prevention of torture by the police requires effective investigations”

The AHRC notes with appreciation that Mr Chol and Ms Siri-on, and Mr Ekkawat are being given protection through the assistance of the Rights and Liberties Protection Department under your ministry. These are to our knowledge the first cases to be brought under the Protection of Witnesses in Criminal Cases Act 2546 (2003), which we are informed came into force around the start of the month. Accordingly, the AHRC trusts that every necessary step will be taken to ensure that the complainants are free from threats against their lives by the alleged perpetrators or their associates. As the management of protection for these victims is setting a precedent for cases yet to come, it is cause for considerable public interest. If these persons or others coming forward to seek protection under the act at this time are nonetheless subjected to threats or harm, it would damage public confidence in the new protection regime at an early and crucial stage in its development. We have no doubt that you wish the witness protection programme to be a success and will be closely monitoring developments in these cases to ensure that it is so. If Thailand is able to establish an effective witness protection programme, particularly where state agents are the accused, it will be an exemplar for other countries in the region. The AHRC would certainly vigorously promote an effective model for witness protection from Thailand in other Asian countries where similar reforms are needed.

The AHRC also takes this opportunity to remind you that all the victims in these cases should be entitled to full compensation, medical treatment and physical and mental rehabilitation for the damage caused to them by the torture and cruel and inhuman treatment committed by the police officers in question. In these regards I refer to my previous letter of November 12.

The AHRC also wishes to express appreciation for the recent announcement that a special task force will be established through the Office of the Attorney General to work alongside police to investigate cases in the public interest. This is an important early step in changing the management of investigations in order to prevent the kind of abuses described above taking place in the future. However, prevention of torture by the police also requires effective investigations of cases that do occur, and strong criminal charges being brought against the alleged culprits. For this to take place, the AHRC would again emphasise the need for a mechanism to receive and investigate serious complaints against the police, and the need to ratify and implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Without having taken these steps, the criminal justice system in Thailand will remain poorly equipped to address properly the practice of torture among state agents, despite the best intentions of persons such as yourself to ensure that the perpetrators do not escape punishment.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister
2. Dr Bhokin Bhalakula, Minister of Interior
3. Mr Surakiart Sathirathai, Minister of Foreign Affairs
4. Mr Kampree Kaewcharern, Attorney General

5. Pol. Gen. Kowit Wattana, Commissioner-General, Royal Thai Police
6. Pol. Lt-Gen. Pansiri Prapawat, Commissioner, Metropolitan Police Bureau
7. Pol. Lt-Gen. Chalor Chuwong, Commander, Police Region 1
8. Pol. Maj-Gen. Kosin Hinthao, Commander, Metropolitan Police Bureau Division 5
9. Mr Charnchao Chaiyanukij, Acting Director-General, Department of Rights and Liberties Protection, Ministry of Justice
10. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
11. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
12. Mr Pichet Sunthornphipit, Ombudsman
13. Mr Dej-Udom Krairit, President, Law Society
14. Professor Theo van Boven, UN Special Rapporteur on the question of torture
15. Ms Lee Wan-Hea, Action Regional Representative, Asia Pacific, UNESCAP
16. Mr Eric Sottas, Director, World Organisation Against Torture (OMCT)

Letter by the AHRC to the Minister of Justice regarding further grave acts of torture and the need to ratify the Convention against Torture

13 December 2004

Mr Pongthep Thepkanjana
Minister of Justice
Office of the Ministry of Justice
Ministry of Justice Building
22nd Floor
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND

Fax: +662 502 6699 / 6734 / 6884

Pages: 4

Dear Mr Pongthep

Re: Alleged torture of Mr Metta Saiphan and Mr Anucha Siriporn na Ratchasima at Phra Nakhon Si Ayutthaya Police Station

I am writing to you further to my previous letters to you of 12 and 24 November 2004 pertaining to a number of recent cases of torture and cruel and inhuman treatment involving state officers in Thailand. The Asian Human Rights Commission (AHRC) has obtained information regarding another case of torture at Phra Nakhon Si Ayutthaya Police Station that we believe deserves special investigation. The details of the case are as follows.

“The torture used included suffocation with layers of plastic bags, beating on the body, using pepper spray, and standing on the chest”

Victims:

1. Mr Metta Saiphan, 24, of Bang Kapi district, Bangkok
2. Mr Anucha Siriporn na Ratchasima, 28, of Ayutthaya

Complainant:

Rattanawalee Saiphan, 28, cousin of first victim, residing at Soi Ramkhamhaeng, Hua Mak, Bang Kapi district, Bangkok

Alleged Perpetrators:

Police officers of Phra Nakhon Si Ayutthaya Police Station, including some identified by another torture victim Mr Ekkawat Srimanta, who have already been suspended from service as follows:

1. Pol. Snr Sgt-Maj. Preecha Meewongsom;
2. Pol. Sgt-Maj. Winai Kampang;
3. Pol. Sgt-Maj. Somchai Raksakul;
4. Pol. Sgt Kitti Traplom;
5. Pol. Sgt Nontawat Wonghong;
6. Pol. Cpl Suwan Ruensawang;
7. Pol. Sgt Chareon Meksaen;
8. Pol. Sgt Wichit Suanchimplee.

The other police officers named on the case record are as follows:

1. Pol. Lt-Col. Suthep Srisang;
2. Pol. Lt-Col Nareunart Phutthaisong;
3. Pol. Maj. Paitoon Wansarn;
4. Pol. Cpl Kamphonsak Phakpiboon;
5. Pol. Sgt-Maj. Suwan Ruangsawang;
6. Pol. Cpl Winai Saengphet;
7. Pol. Cpl Boonlerd Khamsamui;
8. Pol. Cpl Somkiat;
9. Pol. Cpl Krisada;
10. Pol. Cpl Phoomsirin Sommongkol;
11. Pol. Cpl Kamphon Chanwong;
12. Pol. Cpl Pradit;
13. Pol. Maj. Pairoot.

According to the information available to the AHRC, Metta Saiphan and Anucha Siriporn na Ratchasima were both arrested and charged with theft on 31 March 2004. According to the police report, they stole a purse from a woman while on a motorcycle, and attempted to escape. The police located and arrested them at Panancheung Temple, after which they were taken to Phra Nakhon Si Ayutthaya Police Station for questioning.

At the police station the two men were allegedly tortured and threatened into confessing for over an hour. The types of torture used included suffocation with layers of plastic bags, beating on the body, using pepper spray, and standing on the chest. The men were told that if they did not confess to the charge of theft, they would have another nine charges added against them. After this time, they confessed. However, it is alleged that the police also did not place them in a line-up for identification by the complainant.

The two men were put in detention and subsequently retracted their confessions; however, the case has gone to court (black no. 920/2547 at Phra Nakhon Si Ayutthaya Provincial Court). During the initial hearings, they had a duty lawyer, who did not study the case nor give any good advice. After the cousin of Metta heard about the torture case of Ekkawat Srimanta in November, she also lodged a complaint of torture and forced confession on their behalf, and obtained a new lawyer

to represent the men. On November 29 the new lawyer argued in the second court hearing that they had been tortured, and pointed to the procedural irregularities in the case. He also cited news reports of other torture cases, and named some of the police accused of torturing Ekkawat as among those who had tortured his clients. He asked a police officer appearing for the prosecution to match the names of the police officers facing enquiries over the torture of Ekkawat against those who had tortured his clients. However, after the lawyer made the allegations of torture, the police officer present and the public prosecutor both went missing during the afternoon hearing. The judgment in the case is expected on December 21. Meantime, the two men are being kept at Phra Nakhon Si Ayutthaya Provincial Prison, as neither was able to meet the THB 200,000 bail set for each.

“The police feel inclined to treat criminal and judicial procedure with apparent contempt”

As the lawyer for the two men has already intimated in court that their confessions were obtained through torture, the AHRC urges you to ensure that an independent investigation be undertaken into these allegations, in accordance with Thailand's obligations under the International Covenant on Civil and Political Rights. This could be done in conjunction with the investigations of the Ayutthaya police officers accused of torturing Ekkawat, which you have already ordered to be carried out under the Department of Special Investigation and in cooperation with the Office of the Attorney General. The AHRC would like to note with appreciation your decision to transfer investigations and trusts that they will be carried out expediently and with a view to full judicial proceedings against those officers believed to have committed torture. As these cases are setting precedents in terms of offering witness protection and the conducting of joint investigations, the AHRC is keenly noting their developments. In particular we are concerned that the criminal case still pending against at least one of the two persons inhumanly detained in Lumpini Police Station, Mr Chol Narapinit, not be used by the police to obtain revenge against the victims after they complained of maltreatment and initiated legal proceedings. We trust that you are doing everything to ensure that the case against them proceeds strictly in accordance with principles of natural justice.

However, the AHRC is concerned that at the same meeting of November 29 no discussion is reported to have occurred regarding the case of missing human rights lawyer Somchai Neelaphajit, despite your earlier assertions that progress is being made, particularly with regards to uncovering the whereabouts of his remains. I trust that you are doing your utmost to ensure that all possible steps are taken to answer the many questions that remain hanging over his forced disappearance, and understand that the case has attracted a great deal of international attention.

Returning to the above-mentioned case, one aspect that is particularly disturbing is the apparent contempt with which the police involved feel inclined to treat criminal and judicial procedure. Not only did the police not bother to conduct a line-up, but they also appear in the habit of stacking records to include the names of many more officers than are actually involved in the enquiries. According to the information received by the AHRC, one officer appearing in court as a witness for the prosecution on October 18, named Paitoon, in fact had nothing to do with the arrest or investigation of the two men, despite the fact that his name appears on the police record. That the police did not even bother to conduct a line-up or to send the appropriate officers to court, and that the police officer and public prosecutor disappeared from court after the allegations of torture arose all speak to how this type of behaviour is deeply entrenched in the institution. It appears

**“Where police
disdain proper
procedure, it poses
a serious threat to
the rule of law”**

that for some police in Thailand, correct procedure is little more than a joke. Yet these procedures exist, as you know very well, in order to safeguard the rights of citizens. Where police officers feel free to bypass or disdain proper investigatory and judicial procedure, it poses a serious threat not only to the entire policing institution, but also to the rule of law and prospects for natural justice. I would urge you to take into account allegations of such irregularities in this case when determining the need for a full independent investigation along the lines of those already being undertaken regarding other recent cases of special concern.

Finally, I would again remind you that the prevention of torture in police stations requires not only effective investigations but also rigorous criminal charges against the alleged culprits. For this purpose, Thailand should ratify and implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay. The AHRC has been informed by way of a letter from the National Human Rights Commission of Thailand of December 1 that your government is at present considering becoming a part of the Convention, and I trust that you will do your utmost to facilitate that process.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister
2. Dr Bhokin Bhalakula, Minister of Interior
3. Mr Surakiart Sathirathai, Minister of Foreign Affairs
4. Mr Kraisaak Choonhavan, Chairperson. Senate Committee on Foreign Affairs
5. Mr Kampree Kaewcharern, Attorney General
6. Pol. Gen. Sombat Amonwivat, Director-General, Department of Special Investigation
7. Pol. Gen. Kowit Wattana, Commissioner-General, Royal Thai Police
8. Pol. Lt-Gen. Chalor Chuwong, Commander, Police Region 1
9. Mr Charnchao Chaiyanukij, Acting Director-General, Department of Rights and Liberties Protection, Ministry of Justice
10. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
11. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
12. Mr Pranoon Suwanpakdee, Acting Secretary-General, National Human Rights Commission
13. Mr Vasant Panich, Chairperson, Sub-Committee on Legislation and Administration of Justice, National Human Rights Commission
14. Mr Pichet Sunthornphipit, Ombudsman
15. Mr Dej-Udom Krairit, President, Law Society
16. Professor Manfred Nowak, UN Special Rapporteur on the question of torture
17. Mr Leandro Despouy, UN Special Rapporteur on the independence of judges and lawyers
18. Ms Wan-Hea Lee, Action Regional Representative, Asia Pacific, UNESCAP
19. Mr Eric Sottas, Director, World Organisation Against Torture

Letter by the AHRC to the Ombudsman pertaining to refusal to investigate case of alleged torture

9 March 2005

Mr Poonsup Piya-anant
Ombudsman
Ombudsman's Office
1193 Exim Bank Building, 20th Floor
Phaholyothin Road
Samsen-nai, Phayathai
Bangkok 10400
THAILAND

Fax: +662 299 0484

Pages: 3

Ref: PR 21/8137

Dear Mr Poonsup

Re: Refusal of the Ombudsman to entertain complaint of Ms Duangnait Thongthai with reference to the alleged torture of Mr Anek Yingnuek by officers of the Phra Nakhon Si Ayutthaya Police Station

The Asian Human Rights Commission (AHRC) is writing to you with reference to your letter of 24 December 2004 replying to the complaint of Ms Duangnait Thongthai that police officers of the Phra Nakhon Si Ayutthaya Police Station tortured her brother Mr Anek Yingnuek on 9 September 2004.

To briefly recall the facts of the case, officers from the Phra Nakhon Si Ayutthaya Police Station arrested Mr Anek on 9 September 2004 on the charge of robbery. The accused has alleged that at the police station, the police officers tortured him for several hours to extract a confession. The types of alleged torture included beating with PVC pipe, suffocation with plastic bags and electrocution of his penis and testicles. Mr Anek alleges that due to the torture he named Messrs Sukit Ratchamontri, Kampon Kongwiset, and Pirom Kruesorn as accomplices, who were arrested the next day. It is alleged that they were also tortured to obtain confessions. The four have been charged with robbery and possession of illegal weapons (Phra Nakhon Si Ayutthaya Provincial Court black nos 1621/2547, 1675/2547 and 38/2548).

The AHRC has ascertained from the contents of your letter to Ms Duangnait that you inquired into the case with the officers of the Phra Nakhon Si Ayutthaya Police Station and the Office of the Public Prosecutor in Ayutthaya Province on 11 November 2004. Furthermore, you have decided that because the case is pending before the court, in accordance with article 24(2) of the Ombudsman Act BE 2542 (1999) you are unable to pursue the matter.

While strongly recognising and asserting the importance of *res judicata* as a fundamental principle in upholding the rule of law, the AHRC opines that in this instance the complaint lodged by Ms Duangnait and the matters pending before the courts are separate albeit related issues. Specifically, the matters awaiting judgment in the Phra Nakhon Si Ayutthaya Provincial Court pertain to whether or not the accused men have committed a number of criminal offences. The court is not

“It is necessary for institutions such as the Ombudsman to take the initiative in expanding and developing their mandates”

sitting in judgment to determine whether or not the police tortured the men in order to obtain confessions. The matter that Ms Duangnait has brought to your attention is with regards to this latter concern, which, as noted, is outside the purview of the pending court case. It follows that Ms Duangnait’s complaint should not be closed in accordance with article 24(2). Accordingly, the AHRC urges you to reopen your investigation into this complaint to establish as to whether or not prima facie there are valid grounds to accept that the police of Phra Nakhon Si Ayutthaya Police Station may in fact have tortured the accused.

From our own investigations, the AHRC has found that the allegations of Mr Anek and his colleagues are sufficiently credible as to warrant investigation by independent government agencies. It is to be regretted that to date none has done so, and the AHRC therefore earnestly hopes that your Office will take responsibility with regards to this matter and commence an enquiry or refer the case to the appropriate government organ for action.

In particular, the AHRC would add that in a case of alleged wrongdoing by police officers, enquiries by the Ombudsman to the said police station where the abuses occurred are highly unlikely to produce anything other than simple denial. The AHRC therefore urges that the Ombudsman make a strong commitment to investigating thoroughly cases of actions by state officers alleged to have causing serious harm to persons. This means pursuing all possible avenues for information into the alleged act or omission, and not merely making enquiries with the accused authority.

More broadly, the AHRC is concerned that article 24(2) of the Ombudsman Act and similar provisions not be too narrowly interpreted as to make ineffectual the Ombudsman’s mandate. If the scope of the Ombudsman’s jurisdiction is unnecessarily curtailed by the Office of the Ombudsman itself it is likely to quickly cause widespread public discouragement and undermine the potentially significant role that the institution may have in Thailand. It is the experience of the Asian Human Rights Commission that it is necessary for institutions such as the Ombudsman to take the initiative in expanding and developing their mandates, and that where this happens there is a significant benefit for society as a whole. This is an observation drawn from many years of deep experience on rule of law and human rights issues in the Asian region. As the Ombudsman is a new institution in Thailand, it is strongly hoped that you will seize the opportunity to give its mandate real life, and meet the strong expectations that citizens of Thailand such as Ms Duangnait who have humbly approached your Office for assistance.

On behalf of the Asian Human Rights Commission I therefore reiterate our request that you reconsider the complaint of Ms Duangnait Thongthai with regards to the alleged torture of her brother Mr Anek Yingnuek, and open a thorough enquiry into the said incident, or refer the matter and the complainant to the appropriate government organ through which to pursue the matter.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister

2. Mr Pongthep Thepkanjana, Minister of Justice
3. Dr Bhokin Bhalakula, Minister of Interior
4. Mr Surakiart Sathirathai, Minister of Foreign Affairs
5. Mr Kampree Kaewcharern, Attorney General
6. Pol. Gen. Kowit Wattana, Commissioner-General, Royal Thai Police
7. Pol. Lt-Gen. Chalor Chuwong, Commander, Police Region 1
8. Mr Charnchao Chaiyanukij, Acting Director-General, Department of Rights and Liberties Protection, Ministry of Justice
9. Pol. Gen. Sombat Amonwiwat, Director-General, Department of Special Investigation
10. Mr Kraissak Choonhavan, Chairperson, Senate Committee on Foreign Affairs
11. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
12. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
13. Mr Pranoon Suwanpakdee, Acting Secretary-General, National Human Rights Commission
14. Mr Vasant Panich, Chairperson, Sub-Committee on Legislation and Administration of Justice, National Human Rights Commission
15. Mr Dej-Udom Krairit, President, Law Society
16. Professor Manfred Nowak, UN Special Rapporteur on the question of torture
17. Mr Leandro Despouy, UN Special Rapporteur on the independence of judges and lawyers
18. Ms Lee Wan-Hea, Action Regional Representative, Asia Pacific, UNESCAP

Letter by the AHRC to the Minister of Justice regarding defective policing and public defenders in Thailand

9 March 2005

Mr Pongthep Thepkanjana
 Minister of Justice
 Office of the Ministry of Justice
 Ministry of Justice Building
 22nd Floor
 Chaeng Wattana Road
 Pakkred, Nonthaburi
 Bangkok 11120
 THAILAND

Fax: +662 502 6699/ 6734 / 6884

Pages: 5

Dear Mr Pongthep

Re: A man receives a ten-year jail sentence for coming to the assistance of a drunk disabled person (Black no. 535/2546; Red no. 1113/2547)

The Asian Human Rights Commission (AHRC) wishes to draw your attention to the following case of concern, which is currently going to appeal. We wish to draw to your attention to particular troubling aspects in the circumstances of the case, which we believe deserve investigation as matters separate from those pending before the courts.

“The police did not do anything to investigate the case to assess the veracity of the allegations”

Details of the case

Accused: Chanon Suphaphan; aged 20 at time of incident, now 23

Investigating Officer: Police Sub-Lieutenant Sornsaran Kaensingh, Singhburi District Police Station

Case number: Black no. 535/2546; Red no. 1113/2547; Singhburi Provincial Court

According to the accused and his witnesses, around 6pm on 24 November 2002, Mr Sanan Phunainnoi drove Mr Thawatchai Nakthong, who suffers a disability in his right leg, on Thawatchai's motorcycle out from a funeral ceremony at Tantanote temple, Muang district, Singhburi province. About 300 meters from the temple, Thawatchai, who was heavily drunk, fell from the motorcycle and on to the road. He was not able to get up. Mr Manop Phunainnoi, a village headman at the time and brother of Sanan, was on a second motorcycle to the rear and witnessed the event. At the time Mr Chanon Suphaphan was coming along a parallel road. His house is some 50 metres away. Manop hailed him and asked him to help Thawatchai up from the road. This Chanon did. His parents also came and saw this, as did other local villagers. In total, around nine persons witnessed the event. Thawatchai was not seriously injured. However, he was incoherent and unable to stand or walk properly due to alcohol. It is reported by all concerned that Thawatchai is known locally to be a drunkard and that his state on that day was not unusual. Therefore, all parties involved left him by the roadside with his motorcycle and went on their respective ways.

On 17 December 2002, Chanon was summoned to the Singhburi District Police Station, where he was charged with robbery of Thawatchai. He and his parents were completely surprised by the charges. Apparently, Thawatchai had complained to the police on December 2 that he was beaten and robbed by Chanon. He claimed that on 23 November 2002, Chanon had asked him for three Buddha amulets, but he refused to give them. He claimed that on November 24 Chanon had assaulted him at the site where he had fallen from the motorcycle. Chanon denied the allegations and was released on bail.

Subsequently, according to the mother of the accused, the police did not do anything to investigate the case to assess the veracity of the allegations against Chanon. On 17 December 2002 the parents and Chanon came with seven other witnesses to the police station when it was time to extend bail. They brought the witnesses together with them in a pick-up truck. However the police did not take any witness statements. They did the same again on December 27 and again the police declined to take any witness statements, without offering any reason for their refusal. They did the same again on 10 January 2003, and this time the police took written statements after Chanon's mother very strongly insisted upon it. However, they told the family just to choose the key witnesses, so the number was reduced to four. Those four persons then signed a written testimony. The four witnesses included Mr Manop, Ms Chusri Panthongwattanakul, Mr Savek Khamnoi and Mr Kae Kingthong.

The mother of the accused also claims that the police were negligent in their duties of investigating the material evidence. For instance, she alleges that Pol. Sub-Lt. Sornsaran Kaensingh did not collect material evidence himself. A relative of Thawatchai took photographs of the site of the incident and Pol. Sub-Lt. Sornsaran certified them

without going to the place in person. In fact, the photos were of the wrong location, around 50 metres away from where the incident actually occurred.

On 3 April 2003 the public prosecutor filed a criminal case against Chanon. He was then appointed a lawyer. According to Chanon and his parents, the lawyer did not study the case or meet with witnesses, but simply told them not to worry because they had a village headman, who is a government official, as a witness. At no point did he come to visit the site of the incident or speak to any of the persons concerned.

On 22 October 2004 the trial opened in Singbhuri Provincial Court and heard statements by the plaintiff and three witnesses. None of the three were eyewitnesses to the event. One was the superior officer of Pol. Sub-Lt. Sornsaran, Police Lieutenant Colonel Sirisak Naksuk. The second was Mr Nern Lukindra, a health care officer from the local public health centre who reported treating Thawatchai for injuries to his face the following day, November 25. He was not aware when he came to the court that he was being summoned as a witness for the plaintiff. He simply came to confirm the contents of his report that he had treated Thawatchai for injuries. He is understood to have said that Thawatchai was still smelling of alcohol at the time and nor did he mention that he had been assaulted. The third was the aunt of Thawatchai, Mrs Samnao Indrarit, who met him the morning after the alleged assault.

On October 26, the accused and two witnesses were heard. One witness was the village headman, Manop. The second was Mr Kae Kingthong, who met the plaintiff around 9pm on November 24 around the same location near the monastery, and saw that he was bleeding from the face. However, he avers that Thawatchai did not mention that he had been assaulted.

The police presented the complaint and photographs to the court in evidence, but did not present the witness statement taken on 10 January 2003. At no time was this statement mentioned. The appointed defence attorney also did not raise this issue. Outside of the court, the relatives of Chanon asked the police why they did not present the witness statement for the defence, but the police did not respond.

On November 26 the court found Chanon guilty of robbery under section 339(3) of the Penal Code and sentenced him to the maximum 10 years in jail. It also ordered the return of the three amulets, or payment of 500 Thai Baht, to the injured party.

The accused has now appealed against the case. He is obtaining alternative legal assistance. Over 200 local villagers have signed a petition supporting his claim of innocence.

Meantime, according to Chanon's mother, approximately 10 days after the judgment, she lodged a complaint form at the police station regarding the missing witness statement. After one week she was contacted by telephone and told that she would not be able to see the document. A couple of days after, she lodged a second complaint form, this time at the court, to the office of the public prosecutor. Again she was refused.

Observations

The AHRC is concerned about this case because of the respective roles played by the investigating officer and the court-appointed lawyer. Their actions speak to larger issues concerning the institutions of justice and protection of human rights in Thailand.

“The police presented the complaint and photographs to the court in evidence, but did not present the witness statement”

“Of grave concern also is the role of the court-appointed attorney”

According to the accused, his parents, the former village headman and others familiar with the case, the police failed to properly investigate the case. In the first instance, the failure appears to have been a matter of sheer negligence. The police did not care to do their job. They did the minimum amount of paperwork necessary and left it at that. The AHRC has written to you previously to express concern over police failure to follow correct procedure and the consequential damage caused by this failure on the rights of citizens.

More seriously, however, the family of the accused has alleged that they had to pester the police constantly until they were even prepared to take witness statements speaking to the position of the defendant. From this point onwards, the information made available to the AHRC regarding this case suggests that the police were in fact inclined to deliberately undermine the defence case. They did not record statements by all witnesses; they did not produce the witness statement in court; they have not since made the said statement available to the defendant. Given that none of the parties to the case are known to have had any prior relations with these officers, their omissions appear to have been aimed at securing a conviction in response to promotion and monetary incentives.

This is a deeply disturbing conclusion. It is well known that the Royal Thai Police employs a heavy system of incentives, and that at times in recent years—such as during the 2003 campaign popularly described as the ‘war on drugs’—these have been used very aggressively to motivate police towards catching criminals at all costs. This case raises very serious concerns as to how frequently in ordinary criminal cases the police fail to investigate and decline to record or present evidence that may support the defence simply because a non-guilty verdict might contribute to their prospects for promotion and bonuses.

It also speaks to a matter that the AHRC has raised with you previously: the continued almost exclusive control of the investigation system in Thailand by the Royal Thai Police. This is a problem in the criminal justice system in Thailand that the AHRC is aware you and the Attorney General, among others, have admitted to publicly. The AHRC understands and appreciates that reforms are currently being introduced to give the Office of the Attorney General a greater role in investigations in cases deemed to be in the public interest. While this welcome development cannot come fast enough, the AHRC is concerned that it will not touch on common criminal cases such as the above. For so long as the local police for all practical purposes retain absolute control over the investigation and lodging of these cases, they will continue to be characterised by the perversion—rather than upholding—of justice.

Of grave concern also in this case is the role of the court-appointed attorney. Like the police, he was clearly totally disinterested in the needs of his client. In fact, it would be fair to say that he did even less than the police, perhaps expecting that the case would simply be dropped or perhaps without any interest for the consequences at all. Under any circumstances the case raises serious questions about the role of public defenders in Thailand. The AHRC has heard many complaints about court-appointed lawyers doing little if anything to help their clients. One elderly villager with whom a staff member of the AHRC spoke recently observed that, “In my experience, people who have public defenders are found guilty.” The question that should be asked is in how many courts the public defender is actually serving the interests of the public prosecutor? Section 242 of the Constitution of Thailand, which provides for the right to have a state-appointed advocate,

presumably was not drafted with the intention that the public defender act in this manner. The unfortunate consequences of the failure of the court-appointed lawyer to do his job fall not only on the accused but also on the society as a whole. When large numbers of people subscribe to the opinion voiced by the villager mentioned above, the effect is to cause a general demoralisation in society, and loss of faith in its key institutions. When people lose faith in the ability of the judiciary to perform its functions fairly and properly for reason of inactive and disinterested police and public defenders, the rule of law is undermined. Under those circumstances, prospects for protection of human rights become very dim indeed.

Accordingly, the Asian Human Rights Commission urges you to look into this case as a matter of concern, and in particular, the alleged negligence of the investigating officer, Pol. Sub-Lt. Sornsaran, and his superiors at Singhburi District Police Station. It also points in particular to the fact that the accused has a right to access all records to his case in accordance with section 58 of the Constitution of Thailand, and therefore, steps should be taken to make available to him the said missing witness statement without delay. The AHRC also urges you to review further, in light of the observations above, enquiry and defence procedures in order to ensure that similar injustices as have been alleged in this instance are not visited upon other persons in Thailand.

Yours sincerely

(Signed)

Basil Fernando

Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister
2. Dr Bhokin Bhalakula, Minister of Interior
3. Mr Surakiart Sathirathai, Minister of Foreign Affairs
4. Mr Kampree Kaewcharern, Attorney General
5. Pol. Gen. Kowit Wattana, Commissioner-General, Royal Thai Police
6. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
7. Mr Charnchao Chaiyanukij, Acting Director-General, Department of Rights and Liberties Protection, Ministry of Justice
8. Mr Kraisaak Choonhavan, Chairperson, Senate Committee on Foreign Affairs
9. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
10. Mr Pranoon Suwanpakdee, Acting Secretary-General, National Human Rights Commission
11. Mr Vasant Panich, Chairperson, Sub-Committee on Legislation and Administration of Justice, National Human Rights Commission
12. Mr Pichet Sunthornphipit, Ombudsman
13. Mr Dej-Udom Krairit, President, Law Society
14. Mr Leandro Despouy, UN Special Rapporteur on the independence of judges and lawyers
15. Ms Wan-Hea Lee, Action Regional Representative, Asia Pacific, UNESCAP

“When people lose faith in the ability of the judiciary to perform its functions for reason of inactive and disinterested police and public defenders, the rule of law is undermined”

Letter by the AHRC to the Minister of Justice regarding the disappearance of Mr Somchai Neelaphaijit and need for a law to prohibit forced disappearances

“Despite your assurance that every possible step was being taken to uncover Mr Somchai’s whereabouts and hold the perpetrators responsible, his fate remains unknown”

24 February 2005

Mr Pongthep Thepkanjana
Minister of Justice
Office of the Ministry of Justice
Ministry of Justice Building
22nd Floor
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND

Fax: +662 502 6699/ 6734 / 6884

Pages: 4

Your ref: 0204/06808

Dear Mr Pongthep

Re: Failure to initiate full, prompt and independent enquiry into the case of disappeared human rights lawyer Mr Somchai Neelaphaijit and implications for justice in Thailand

The Asian Human Rights Commission (AHRC) has previously informed you, through our letter dated 14 October 2005, about our concern over inaction in investigating the case of disappeared human rights lawyer, Mr Somchai Neelaphaijit (Criminal Court case no. 952/2547). We have referred to the case in a number of subsequent letters to your office, for instance, those dated 24 November and 13 December 2004.

The AHRC is extremely disappointed that despite your written assurance of 5 August 2004 that every possible step was being taken to uncover Mr Somchai’s whereabouts and hold the perpetrators responsible in accordance with the law, almost a year since his forced disappearance on 12 March 2004, his fate remains unknown.

The AHRC takes this opportunity to again remind you of what you wrote on that occasion. In your letter of August 5, you asserted that “an ad hoc committee under the responsibility of the Special Investigation Department (SID), the Ministry of Justice has been set up to work on information gathering, forensic evidence as well as other investigation for the case”. You add that the committee had since its establishment made of “a lot of progress”.

It has since become apparent that these assertions were false. No such committee has been established, let alone made progress. It is known that the wife of the victim, Ms Angkana Wongrachain, a joint plaintiff in the criminal case proceeding against the five police officers alleged to have abducted Mr Somchai from his vehicle did on September 23 request the Department of Special Investigation (DSI) to take up the case. She also publicly complained about the lack of efforts by investigators with regards to this enquiry. The AHRC has also learnt that she has been hampered in efforts to obtain documents pertinent to the said court case.

The AHRC regrets to learn that when the request from Ms Angkana was first submitted to the committee to examine special cases to be taken up by the DSI, it was rejected. The reasons for rejection are unknown to us, and the reasoning in refusing the case is altogether unfathomable. This is particularly so given your earlier assertions that the case was already with the DSI, and also your written remarks that “the Prime Minister Dr Thaksin Shinawatra had given a clear command to all Thai agencies concerned that every necessary measure must be taken to search for Mr Somchai Neelaphaijit’s whereabouts, and those who are responsible for his disappearance and safety will have to be brought to justice without exception” (our emphasis).

“The AHRC is left to conclude that your comments were not genuine”

Unfortunately, the AHRC is left to conclude that your comments of August 5 were not genuine, but intended only to deflect attention and discourage persons truly interested in the whereabouts of Mr Somchai from learning the truth. It is now nearly one year since Mr Somchai went missing. Still the question remains: where is Somchai?

Since the case has remained entirely in the hands of the Royal Thai Police it has languished. This is not surprising, as the police are themselves the alleged perpetrators of the crime. It is quite impossible that the facts of the forced disappearance and presumed death of Mr Somchai will become known for so long as the agency believed responsible these crimes is also responsible for investigating them. We also presume that the five officers alleged to have abducted Mr Somchai are being protected by powerful persons within the police force and the government, as they would have been acting on the orders of superiors, not autonomously.

It has now come to our attention by way of a media report of 21 February 2005, citing Mr Tharit Pengditha, Vice Director-General of the DSI, that the case of Mr Somchai will again be brought to the committee on special cases this February 25. Thus, an opportunity again exists for the DSI to take control of the case and conduct a proper and efficient investigation to the satisfaction of the victim’s family and wider public without delay.

Although it must be said that at this stage we have lost all confidence in the ability of your ministry to effect justice in this case, we urge you to breathe new life into your earlier stated commitments and ensure that the DSI be given full control of this case. As you are the deputy-head of the committee responsible for overseeing this decision, answerable only to the Prime Minister—whom you have asserted backs all and any necessary steps to uncover the truth about the whereabouts of Mr Somchai—it is beholden upon you to see that this is done. The DSI must also be given the necessary resources to complete its enquiries quickly and effectively.

In view of the role that Mr Somchai played defending victims of torture in the south of Thailand, and his prominence as a highly respected human rights lawyer, were this case to be properly addressed now it may in some small part help to reduce tensions in that region.

The AHRC would also again take this opportunity to remind you that the matter of the alleged torture of the five persons whom Mr Somchai was defending when he was disappeared, namely Makata Harong, Sukri Maming, Manase Mama, Sudirueman Malae and Abdullah Abukaree, remains, to our knowledge, completely unaddressed. Nor have we obtained any information to indicate that proper criminal enquiries are ongoing against any of the police officers in Ayutthaya province accused of torture, which we have brought to your attention.

“Despite your rhetorical commitment to address custodial abuses in Thailand, no effective steps have been taken”

We would be gratified to hear otherwise. In the meantime, our sister organisation the Asian Legal Resource Centre has prepared a report for the UN Human Rights Committee that adverts to all of these cases.

The AHRC is also dismayed by the non-role of the Ministry of Justice, and in particular, Attorney General, in the enquiries following the mass deaths in custody in Narathiwat last October 2004. The total failure of judicial agencies to become properly involved at a critical juncture in events there has no doubt contributed to the daily growing violence seen in the south. The denial of judicial remedies to the aggrieved by way of criminal prosecutions of the perpetrators is directly responsible for the spreading discontent in that region. In this you as the Minister of Justice are personally accountable. The politically appointed enquiry into that incident was, in our opinion, from the start established in order to deny the necessary role of the judicial arm in addressing the tragedy. It has ended, predictably, in a whitewash. The possibility of some remote disciplinary action against the senior officials involved is in no way a satisfactory response to the custodial death of at least 78 persons, not to mention the deaths of an unknown number of others.

It is extremely disappointing that despite your rhetorical commitment to address custodial abuses in Thailand, no effective steps have been taken on individual cases or at the policy and legal levels to this end. Although the AHRC has been informed through a number of channels for some time now that the government of Thailand intends to ratify the UN Convention against Torture and introduce it into domestic law, we have no evidence to suggest that it will do so soon. Like the case of Mr Somchai, it appears to be another matter of a rhetorical commitment without substance. We would be pleasantly surprised were it otherwise.

The AHRC also again points to the fact that at present there exists no independent body for receiving and investigating complaints over custodial abuses in Thailand. The National Human Rights Commission, although an important agency for the protection and promotion of human rights, is not empowered with the judicial authority necessary to effect its investigations through the law. As such, it remains all but impossible for persons in Thailand to obtain natural justice in cases involving errant police officers or other state officials.

No better example of this last point exists than the case of Mr Somchai Neelaphaijit. Despite his wide reputation and the enormous publicity given to his disappearance in the days after the event, all has come to nought. There is an unequivocal link between Mr Somchai's disappearance and state officers, and quite likely some senior officials. Assuming that Mr Somchai is dead, the responsibility for his death lies with your government. We urge you to at last take up your obligations, for the sake not only of the victim and his loved ones, but also for the sake of the reputation and future of the entire justice system in Thailand. If under the circumstances the government of Thailand is unable to fulfil these obligations, it will be yet another decisive victory for all the state agents who continue to commit grave human rights abuses with impunity in your country. This is, therefore, a case that your justice system can ill-afford to lose.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

CC:

1. Dr Thaksin Shinawatra, Prime Minister
2. Dr Bhokin Bhalakula, Minister of Interior
3. Mr Surakiart Sathirathai, Minister of Foreign Affairs
4. Mr Kampree Kaewcharern, Attorney General
5. Pol. Gen. Kowit Wattana, Commissioner-General, Royal Thai Police
6. Pol. Lt-Gen. Pansiri Prapawat, Commissioner, Metropolitan Police Bureau
7. Mr Charnchao Chaiyanukij, Acting Director-General, Department of Rights and Liberties Protection, Ministry of Justice
8. Mr Kraisak Choonhavan, Chairperson, Senate Committee on Foreign Affairs
9. Pol. Gen. Sombat Amonwiwat, Director-General, Department of Special Investigation
10. Mr Charan Phakdeethanakun, Secretary-General to the Supreme Court President
11. Professor Saneh Chamarik, Chairperson, National Human Rights Commission
12. Mr Pranoon Suwanpakdee, Acting Secretary-General, National Human Rights Commission
13. Mr Vasant Panich, Chairperson, Sub-Committee on Legislation and Administration of Justice, National Human Rights Commission
14. Mr Pichet Sunthornphipit, Ombudsman
15. Mr Dej-Udom Krairit, President, Law Society
16. Mr Diego Garcia-Sayan, Chairperson, UN Working Group on enforced or involuntary disappearances
17. Ms Hina Jilani, Special Representative of the UN Secretary General on human rights defenders
18. Professor Manfred Nowak, UN Special Rapporteur on the question of torture
19. Professor Philip Alston, UN Special Rapporteur on extrajudicial, arbitrary or summary executions
20. Ms Lee Wan-Hea, Action Regional Representative, Asia Pacific, UNESCAP

**Petition by the AHRC to His Majesty the King of Thailand
regarding forced disappearance of Mr Somchai
Neelaphaijit**

“The AHRC has
tried without success
to pursue this
case through
conventional
channels; therefore,
after one year, it has
decided to approach
Your Majesty”

11 March 2005

His Majesty Bhumibol Adulyadej
Office of His Majesty's Principal Private Secretary
Grand Palace
Thanon Na Phra Lan
Bangkok 10200
THAILAND

Fax: +662 224 3259

Pages: 2

Your Majesty

Re: Disappeared human rights lawyer Mr Somchai Neelaphaijit

In highest respect and great humility the Asian Human Rights Commission (AHRC) wishes to request Your Majesty to consider the case of disappeared human rights lawyer Mr Somchai Neelaphaijit. The AHRC earnestly requests that Your Majesty's high office convey concerns over this case to the Royal Thai Government in order that the family of Mr Somchai may obtain justice and thereby the rights and dignity of all Your Majesty's subjects be secured.

Your Majesty will be familiar with the case of Mr Somchai, who was forcibly disappeared from his car while in Bangkok one year ago, 12 March 2004. After that date, His Excellency the Minister of Justice of the Royal Thai Government informed the AHRC that His Excellency the Prime Minister had ordered that every possible measure be taken to locate Mr Somchai's whereabouts and hold the perpetrators of the crime responsible.

The Asian Human Rights Commission was gratified by His Excellency's reassurance; however, since then it has become extremely disappointed and discouraged about this case. Mr Somchai has not been found. The alleged perpetrators of his disappearance deny the charges against them, which under any circumstances do not reflect the gravity of the crime. The AHRC, the wife of the victim and others have repeatedly sought for the case to be transferred to the Department of Special Investigation under the Ministry of Justice, but it has remained in the hands of the Royal Thai Police. While the AHRC respects the institution of the Royal Thai Police, as the accused persons are also officers of the said institution, it opines that it is inappropriate for the Royal Thai Police to be responsible for the investigation.

The Asian Human Rights Commission has tried without success to pursue this case through conventional channels. Therefore, after one year, the AHRC has decided to approach Your Majesty with all due respect, in order that the wife and five children of the victim may at last know what happened to him, and see the perpetrators held to account.

The Asian Human Rights Commission wishes to suggest to Your Majesty that the case of Mr Somchai is not only of deep importance to his family, but also for all of Your Majesty's subjects. The case of Mr

Somchai obtained very high public attention, and it is important that it be solved fully in order that the citizens of the Kingdom of Thailand have respect for—and faith in—its institutions of justice.

In particular, the Asian Human Rights Commission believes that given Mr Somchai's leading role as a human rights defender in the south of the Kingdom, were his case properly addressed now it may in some small part reduce the tensions that are causing daily suffering to Your Majesty's subjects there. In this respect, the AHRC would like to express its deepest sympathy and concern for all persons who have been adversely affected by this needless conflict.

The Asian Human Rights Commission need not point out to Your Majesty that the case of Mr Somchai is one of strong international concern, and has attracted attention from many quarters. Therefore, the reputation of Your Majesty's Kingdom abroad also rests very much upon the whereabouts of Mr Somchai being uncovered and the perpetrators of his disappearance being held fully accountable for their actions.

Accordingly, the Asian Human Rights Commission urges Your Majesty's high office to express concerns over the case of Mr Somchai Neelaphajit to the Royal Thai Government such that his family may obtain some redress and Your Majesty's subjects be satisfied that justice has been done.

In closing, the Asian Human Rights Commission wishes to point out to Your Majesty that forced disappearance of this kind is a heinous crime, and one that is condemned by all civilised societies. A draft International Convention on the Protection of All Persons from Forced Disappearance was introduced in 1998. The AHRC sincerely hopes that the Royal Thai Government will also take the necessary steps to subscribe to the principles entailed in that draft convention and introduce a law to prohibit forced disappearance in the Kingdom of Thailand in the near future.

With utmost respect, the Asian Human Rights Commission submits this modest request to Your Majesty for due consideration.

Yours sincerely

(Signed)
Basil Fernando
Executive Director

Appendix IV: ALRC addresses UN on disappearances and torture in Thailand

Forced disappearance of a human rights defender in Thailand

On March 12, 2004, Somchai Neelaphajit disappeared. He was pulled from his car in Bangkok, allegedly by five policemen, and never seen again.

Somchai was abducted because he was defending five clients who had suffered extremely brutal torture at the hands of the police in the south of Thailand, and he had dared to speak out. He had come to Bangkok to press their case before senior authorities.

Since his disappearance, his wife, Angkana, has sought answers. Despite the wishes of the public prosecutor, she has become the co-plaintiff in a criminal case against the five accused men [Bangkok Criminal Court black case no. 1952/2547]. She has also inspired the relatives of hundreds of other men who have reportedly disappeared in the south of Thailand during recent times.

Angkana wanted to be with us here today, but for personal reasons, she could not. She has asked that the following remarks, which she prepared for this occasion, be read now.

“Over a year has passed since my husband disappeared. We still do not know what happened to him.

“I have never been contacted by any authorities about their investigations. Everything is confidential. I have heard that someone high up in the government was behind his abduction, but I have never received any clear information about this.

The Asian Legal Resource Centre made these two oral statements to the UN Commission on Human Rights 61st session in Geneva during April 2005, under item 17(a) on human rights defenders and item 18, on effective functioning of human rights mechanisms.

“I recently met the deputy director of the Forensic Science Institute. She said that she found useful evidence in his abandoned car, but has had no cooperation from the investigating police.

“All this has made me doubt the intentions of the authorities, and wonder how I can get justice in Thailand.

“Somchai was a person who could not sit still when he saw injustice. He was never reluctant to assist a victim of abuse, even though he got nothing in return.

“My husband taught us to make sacrifices for the betterment of society. My five children and I all believed in him, and I continue to instruct them in his values.

“My children realise that it was due to their father’s work that we have had to face this tragedy. But they are all proud that their father was someone who fought for justice.

“I believe that their father also would be proud of his twenty-year struggle for human rights if he was with us today, and would be even more proud to see his children growing up in the same spirit that gripped him.

“Now the only thing that we wish is to see his remains: even if only his ashes, still we would be happy. His disappearance has wounded us deeply. It is worse than death. But our hopes are not strong. We do not see any genuine goodwill from the authorities.

“I regret that I have no chance to tell you this in person. Perhaps one day that chance will come. In the meantime, I pray to God to protect the families of all victims like my husband, to wipe their tears and make them good persons who will also fight for justice.”

The Asian Legal Resource Centre strongly urges the government of Thailand to resolve fully the disappearance of Somchai Neelaphajit, and hold accountable the perpetrators, in order that other human rights defenders in Thailand do not suffer the same fate. In this regard, it calls on the government to introduce a law criminalising forced disappearances, in accordance with international standards, without delay.

Torture in Thailand and the role of national and international human rights mechanisms

Anek Yingnuek alleges that on September 9 of last year he was tortured at the Phra Nakhon Si Ayutthaya police station, north of Bangkok, Thailand. To have him admit to robbery and implicate some others, the police allegedly beat him with pipes and suffocated him with plastic bags. Then they covered his penis and testicles with ice and electrocuted him through it. Anek confessed and named three friends: enough to raise the charge to gang robbery.

“His disappearance has wounded us deeply; it is worse than death”

“Anek Yingnuek wants the abuse he has suffered at the hands of the police to be recognised and investigated, but he has no way to achieve this”

Anek and his friends are all standing trial [Phra Nakhon Si Ayutthaya Provincial Court black nos 1621/2547, 1675/2547 and 38/2548]. They are in jail. None of the accused police are known to have lost their jobs, despite having been named in a number of other similarly brutal cases. None have faced criminal investigations over the alleged torture.

This pattern is repeated at police stations throughout Thailand. Torture is widespread. Beatings and ‘roughing up’ are the routine; extremely grave torture is also applied in ordinary criminal cases. Victims are held in custody until scars have faded and all evidence is lost. Most are poor persons, unable to afford lawyers, ignorant of the legal system and their basic rights, and easily intimidated by the police.

Torturers in Thailand escape proper enquiry or sanction because there is no law making torture a criminal offence. Thailand has not ratified the Convention against Torture. There is also no avenue by which a complaint can be made directly to the high courts on a human rights violation under the constitution, which prohibits torture.

The existing national and international human rights mechanisms are not properly equipped to deal with this grievous and widespread abuse.

The National Human Rights Commission of Thailand does not have the authority to pursue such cases; it can only refer them to the relevant government authorities. However, there is no institution established to investigate torture and other serious human rights violations by the police. And a widespread attitude prevails, as recently articulated by the immigration police chief on national television, that torture is acceptable and necessary.

Internationally, Thailand is a party to the Covenant on Civil and Political Rights, which also prohibits torture. Article 2 of the Covenant stipulates that state parties must establish the means by which rights are to be enforced and remedies obtained when they are breached. But Thailand has not fulfilled this practical and integral obligation: the Asian Legal Resource Centre has pointed to this failure in a report to the Human Rights Committee to coincide with its considering of Thailand’s initial report under the Covenant this July.

Anek Yingnuek wants the abuse he has suffered at the hands of the police to be recognised and investigated, but he has no way to achieve this. The National Human Rights Commission lacks the means to afford an effective remedy. No domestic law exists to address torture, and there is no way to take his case to the superior courts. Nor can he approach the Human Rights Committee, as Thailand has not ratified the first Optional Protocol to the Covenant.

Effective functioning human rights mechanisms mean effective remedies. In Thailand, to eliminate the practice of torture and afford redress to the victims there must be a criminal

law against torture and a channel for receipt and investigation of complaints. An avenue should be opened up by which complaints of serious rights violations under the constitution can be brought directly to the high courts. Finally, to afford a greater role for treaty bodies, Thailand should ratify the Convention against Torture and the first Optional Protocol to the Covenant without delay.

With these measures in place, Anek Yingnuek and other people like him might have a fighting chance to protect their rights, and in so doing, protect those of all people in Thailand

Appendix V: Anticipating Thailand's missing-persons centre

Asian Human Rights Commission

The announcement last week by Thailand's new justice minister Suwat Liptapanlop that a missing-persons centre will be established under the Forensic Science Institute deserves strong public support. The growing number of alleged disappearances in Thailand is cause for deep concern. A properly established forensic centre for missing persons is urgently needed to help counteract this trend. As the first meeting to plan for the centre will be held this March 28, it should be accompanied by widespread public discussion on the centre's anticipated role.

Considering the experiences of other countries that have sought to address large-scale disappearances, including a number in Asia, what should be expected of the missing-persons centre?

To function effectively, the centre needs access to the remains of missing persons. There must be a body, or something upon which investigations may be based. Without a body or other forensic evidence, the centre will have nothing to do. However, in many forced disappearances, the victim vanishes without a trace. This is what has happened to human rights lawyer Somchai Neelaphaijit. In that case and others like it in Thailand, the police have also been accused of damaging the few shreds of forensic evidence left at the scene of the disappearance. Under these circumstances, to identify the perpetrators and prosecute them according to the gravity of the crime is extremely difficult.

To protect vital forensic evidence of missing persons, therefore, disappearance must be made a crime. Effective identification of disappeared persons requires that legal provisions exist to prohibit disposal of bodies in suspicious deaths until the proper procedure has been completed. The draft International Convention on the Protection of All Persons from Forced Disappearance

This article was released as a statement by the Asian Human Rights Commission (AS-32-2005) on 23 March 2005.

comprehensively defines the crime of disappearance and sets out the necessary provisions to address it in accordance with international law. In making forced disappearance a crime, this definition and other elements of the draft convention should be adopted in order that the centre will be fully equipped to vigorously pursue the cases brought to its attention. In a March 2005 report on Thailand to the U.N. Human Rights Committee, the Asian Legal Resource Centre pointed to the need for such a law, in conjunction with a specialised agency to address disappearances.

To give the work of the centre meaning, it must go beyond mere identification of persons and deal with all aspects of disappearances. The centre should not be limited to simply identifying remains, without thoroughly examining the circumstances of death. If its mandate is too restrictive, many questions will remain unanswered and doubt will be cast over the its ability to deliver justice. If the perpetrators of disappearances are not held accountable, it will only serve to encourage further acts of cruelty. Modern forensic science offers numerous methods by which the circumstances of death can be established through post-mortem examinations, DNA testing, and preservation of key evidence for future study. A large number of national and international reports also offer guidance in methods used to undertake enquiries into forced disappearances, in order to identify not only the victim but also the perpetrators. It is especially gratifying that the centre is to be established under the Forensic Science Institute, which is the leading agency in its field in Thailand and is well-equipped to take into account international developments and standards when entering into this work.

To identify missing persons and perpetrators of disappearances is an act invested with much more than purely legal and technical significance. It is also a deeply personal and innately human act. Forced disappearance has been recognised as a grave human rights violation not only because of the effect on the victim but also because of the effect on the family and loved ones. We all mourn our dead. Where the deceased is remembered through religious ceremonies and customary paying of respect, the pain is eased. Where this cannot be done for want of a body, it is far more difficult to mourn. The father of a disappeared child may for years wait by the household door, the mother may for years keep a spare bowl of food ready in the kitchen. The recovery of remains and identification of perpetrators helps alleviate such pain. The neglect of the dead and missing, by contrast, erodes not only family morale but also that of the whole society. Where disappearances are denied, so too grief for lost children, for lost parents, for lost siblings and friends is denied. Under these circumstances, society becomes less human, more violent.

The justice minister's announcement of the new centre for missing persons should provoke widespread discussion both in Thailand and abroad. The government of Thailand should be open to many ideas and suggestions about how the centre is to

“The centre must go beyond mere identification of persons and deal with all aspects of disappearances”

“We look forward to a time that the expertise growing out of this centre will cause others in the region to seek guidance from Thailand on establishing similar bodies elsewhere”

function, in order that it fulfil public expectations. Professionals with relevant expertise in medical, legal and other fields should be actively involved in establishing the centre. Families of victims and human rights defenders should be invited to contribute. Forensic science agencies from around the world that have been working in Thailand since the December 2004 tsunami should also be prepared to give advice and resources. If an effective missing-persons centre is realised in Thailand it will stand as a model for other Asian countries. We can look forward to a time that the expertise growing out of this centre will cause others in the region to seek guidance from Thailand on establishing similar bodies elsewhere.

At a time that most news from Thailand has given little cause for optimism, the proposed missing-persons centre is a welcome initiative that, if properly implemented, may strongly support efforts to protect and promote human rights there. It is a necessary and timely initiative. The Asian Human Rights Commission encourages all concerned persons in Thailand and abroad to open serious discussion on the future shape of the centre. May it realise the aspirations for justice among families of victims, and open a new chapter in the struggle for human rights and dignity in Thailand, and across our region.

Appendix VI: To uphold the Constitution of Thailand, axe criminal libel

Asian Human Rights Commission

In an announcement this week, Prime Minister Thaksin Shinawatra of Thailand stated that the proposed reform of some hundreds of the country's laws would concentrate on those that violate its 1997 Constitution. Perhaps it can be concluded from this announcement that criminal defamation will be among the laws in breach of both the Constitution and fundamental human rights that will be wiped from Thailand's statute books.

Among the provisions of the Constitution, article 39 states, "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means." No better example of a law that violates this provision of the Constitution exists than section 328 of the Penal Code of Thailand. Section 328 allows for criminal defamation, punishable by a fine of up to 200,000 Thai baht (US\$5000) and two years' imprisonment. This regulation does nothing to encourage enjoyment of liberty to express an opinion. On the contrary, it does everything to stifle it.

Criminal libel regulations have been removed from the statute books of civilised societies, where it has been recognised that a properly framed and restricted civil defamation law is sufficient. However, in Thailand not only is criminal defamation still to be found on the books, it is also used routinely by powerful persons to intimidate and silence critics. The prime minister, by proxy, is among them, as his family business Shin Corp is engaged in a suit against media-reform campaigner Supinya Klangnarong.

Times have not been good for persons in Thailand hoping to exercise their article 39 rights. In a recent report to the UN Human Rights Committee, the Asian Legal Resource Centre, sister organisation of the AHRC, expressed deep concern over the persistent concentration of broadcast media ownership there.

This article was released as a statement by the Asian Human Rights Commission (AS-38-2005) on 8 April 2005.

“Threats against
journalists and
independent media
have increased”

Community radio stations that were started under the new Constitution have in some instances been shut and others threatened with closure on the grounds they are “illegal”, even though it is the government that has failed to introduce a licensing regime as required. A new media monopoly is also emerging between the commercial and government sectors, as concessions issued to businesses close to senior politicians, most notably the prime minister himself, defeat the purpose of constitutional reforms. Shin Corp now totally dominates all sectors of the commercial media in Thailand, with 24 companies running telecommunications, television, radio, internet, satellite and other communications throughout the country, and even into neighbouring Cambodia, Laos and Burma.

Threats against journalists and independent media have also increased. Since the 2003 ‘war on drugs’, many journalists in Thailand have narrowed their reporting in response to overt and covert government intimidation. Reporters who criticised the government campaign at that time were accused of being in the payment of drug dealers. Editors of newspapers and magazines have also expressed fears over the loss of millions of dollars of advertising fees from companies connected to the government, particularly Shin Corp. As a consequence, self-censorship is being practiced more widely. Broadcast media programme managers, producers and hosts are reported threatened against critical reporting of the government, by way of warnings in person and writing to be more ‘cooperative’. During late 2004, executives of radio stations were reportedly told not to say anything negative about the escalating violence in the south. At least one radio host was taken off the air after the Supreme Command, which owns the frequency, ordered that ‘extreme caution’ be exercised in reporting security and political issues. Numerous warnings were also issued, and raids conducted, in relation to distribution of video footage of the killings in Narathiwat in October 2004.

Under these circumstances, it is vital that proposed legal reforms address the antiquated laws that violate the principle of free expression established both under the Constitution of Thailand and the International Covenant on Civil and Political Rights, to which Thailand is a party. Foremost among these is the criminal defamation law, which should be abolished without further ado, and the existing civil defamation law reviewed to bring it into line with international standards, in particular, to make claims for compensation proportionate to the harm done, and not punitive. Many other changes will yet be needed to reassure people in Thailand that they can speak, broadcast and publish freely, but the removal of this law will be an important step that would earn the government much goodwill at home and abroad. Failure to remove it at a time that so many other laws will be going under the axe may rightly raise many questions over the government’s actual intentions.

The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement (www.ahrchk.net/charter)

- 15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.
- 15.4.a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.
- 15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.
- 15.4.c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.
- 15.4.d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

In this issue of *article 2*

Special report: Rule of law versus rule of lords in Thailand

Editorial board, article 2

- Introduction: Rule of law versus rule of lords in Thailand

Asian Legal Resource Centre

- Institutionalised torture, extrajudicial killings & uneven application of law in Thailand
- Recommendations to the UN Human Rights Committee regarding Thailand

Asian Human Rights Commission

- Anticipating Thailand's missing-persons centre
- To uphold the Constitution of Thailand, axe criminal libel

Tyrell Haberkorn, PhD Candidate, Cornell University

- Collusion and influence behind the assassinations of human rights defenders in Thailand

And

- Partial list of persons publicly reported killed in Thailand during the 2003 'war on drugs'
- Letters by the ALRC & AHRC concerning institutionalised torture, extrajudicial killings & uneven application of law in Thailand
- ALRC addresses UN on disappearances and torture in Thailand

article 2 is published by the Asian Legal Resource Centre (ALRC) in conjunction with *Human Rights SOLIDARITY*, published by the Asian Human Rights Commission (AHRC).

ALRC is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. ALRC seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.

ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

For further details, email the editor:
editor@article2.org

Back issues of *article 2* available online:

www.article2.org

Editorial Board

Nick CHEESMAN
Meryam DABHOIWALA
Basil FERNANDO
Bijo FRANCIS
Jayantha de Almeida GUNERATNE
KWAK Nohyun
Sanjeewa LIYANAGE
Kishali PINTO-JAYAWARDENA
Ali SALEEM
Bruce VAN VOORHIS
WONG Kai Shing

Annual Subscription Fee*

Hong Kong HK\$250
Asian Countries US\$35
Outside Asia US\$50

*Subscription fee includes 6 issues of *article 2* and 6 issues of *Human Rights SOLIDARITY*



Asian Legal Resource Centre

Floor 19, Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon

Hong Kong SAR, China

Tel: +(852) 2698-6339

Fax: +(852) 2698-6367

E-mail: editor@article2.org

Website: www.article2.org



Printed on
recycled paper