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article 2

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

A sister publication of Human Rights SOLIDARITY

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:
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> (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;
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> (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

Governments of Asia obliged to respond to rising popular sentiment against torture

Asian Human Rights Commission

Protests against the use of torture by law enforcement agencies are becoming more widespread in countries throughout Asia. These are emanating from a growing popular sentiment against torture as an abuse of power. With greater awareness and a sense of their own dignity, people are openly opposing abuse by law enforcement officers, who are also only human beings like themselves. The question being asked constantly is what gives one group of people the authority to torture others?

Governments in Asia who underestimate this popular sentiment against the use of torture are likely to face serious problems in the near future. These governments can offer no justification for torture except that it is the only method of criminal investigation known to the police. Some governments lament that they are unable to afford qualified criminal investigators. Others are not willing to spend money and time to build modern facilities and institutions that will make the use of torture redundant. However, these excuses no longer pacify public outrage against the barbaric abuse of human bodies and minds by persons in uniforms who represent the state.

The poor criminal investigation methods and facilities in a large number of Asian countries mean that the police routinely assault individuals after failing to find the real culprits of crimes. These innocent persons are then substituted for the accused. Human rights activists in Bangladesh state that about 70 per cent of cases filed in court involve innocent civilians who have been accused of crimes where the police have either allowed the perpetrators to escape or were unable to catch them. It is common knowledge there that the actual criminals are often allowed to escape after bribing the police. If complaints are made to higher authorities about the abuses of lower-ranking officers, these are closed through the payment of bribes. Similar practices occur in countries where the rule of law has all but completely

collapsed, including Cambodia, Nepal and Burma. In other countries where the overall situation is less severe, such as Thailand, evidence suggests that torture is still used routinely.

Thailand: Growing repugnance of barbaric torture

In Thailand the police use electric shocks on victims' genitals in ordinary criminal cases. Writing to Suwat Liptapanlop, the Minister of Justice of Thailand on June 22, the Asian Human Rights Commission observed, "The question may well be asked as to why Thai police enjoy electrocuting testicles?" The remark was made after the May 24 gruesome torture of Urai Srineh, allegedly at the Chonburi provincial police station. Urai was electrocuted on his testicles for hours before being released. Doctors have said that he may suffer lasting damage. If he loses his ability to reproduce, the perpetrators could be charged with grievous bodily harm, and be sent to jail for up to ten years. However, none have yet been investigated or even identified. When Urai was in hospital a deal was struck and money paid to close the matter.

Urai's treatment is reminiscent of earlier genital torture cases in Thailand. These include the assault on Ekkawat Srimanta by officers attached to two police stations in Ayutthaya province during November 2004. Ekkawat was rushed to hospital by relatives with severe burns all over his testicles, penis and groin. His suffering was widely reported and excited public disgust. Similarly, in September 2004 officers of the Phra Nakhon Si Ayutthaya station allegedly electrocuted Anek Yingnuek by attaching live wires to a fork stuck in a bag of ice resting on his groin. Like other poor people in Thailand, Anek had anticipated that he would be beaten up during police interrogation, but had not imagined such sadistic methods. "It was really torture," he said with disbelief later. Unfortunately for Anek, he was kept in detention under a system that allows the Thai police to hold an arrestee for up to 86 days before charges are laid, during which time evidence of his maltreatment was lost.

"As a result of their cruelty the reputation of the Thai police is at an all time low"

As a result of their cruelty the reputation of the Thai police is at an all time low. The silence that has long existed around their brutal and corrupt methods is being broken. As more and more reports of heinous torture in police stations are being discussed publicly, repugnance grows. As the practices of police in setting up uncounted numbers of extrajudicial killings are exposed, the reaction is getting stronger. As the extent of corruption that pervades the entire police force is laid bare, people are demanding action. Even some senior police officers admit in private that things are going badly wrong.

The previously unquestioned power of the Thai police is daily facing greater challenges. Some parts of the police force can be expected to take strong steps to defend their authority and enjoyment of illegal practices. In the case of prominent human rights lawyer Somchai Neelaphaijit, who had publicly implicated police in the torture of his clients, this meant forced

disappearance. Most recently, police linked to the reported extrajudicial killing of a suspect in Nonthaburi province have sued prominent forensic pathologist Dr Porntip Rojanasunan after she questioned their conclusion that the death was a suicide. She earlier won a litigation case brought by other police after suggesting that a man who died in custody had been a victim of torture: including by having a burning plastic bottle applied to his testicles.

"India's domestic mechanisms to address torture have not even served the purpose of a scarecrow"

These reactions are symptomatic of a growing struggle for the power over criminal investigation and justice in Thailand. The question that people in Thailand are now asking is whether this power belongs to the police or the public—on whose behalf it should be exercised through open and accountable civilian-run institutions, including the courts, branches of the bureaucracy, and independent agencies. As the questioning becomes louder, new ideas for change are being shaped and directed, and the historical dominance of the police is becoming increasingly untenable.

India: Failure of the justice system means impunity for torturers

Cruel treatment of detainees is standard practice in Indian police stations. In a recent case reported to the Asian Human Rights Commission (AHRC) from Kollam police station, Kerala, the arresting officer allegedly pounded the detainee at the police station along with five other police constables, killing him within hours of arrest. This police station, according to local people, has a designated room known as the "museum" where the officers keep instruments for torture.

There is little chance of a case being properly investigated or prosecuted and the torture perpetrators being brought to justice in India. Even if it is pursued and investigated, the system is unable to ensure that it is done properly. For example, there are not enough forensic facilities to provide an accurate report in reasonable time. The forensic facilities available in the state of West Bengal are beyond comprehension. Human bodies are left to rot and be eaten by stray dogs and rats on the floor, since the morgues do not have freezers. Morgue attendants and cleaners examine the bodies and make reports, which are signed by doctors who never even enter the autopsy rooms. These reports are often prepared according to the instructions of the police who bring the body to the morgue. So it is that the autopsy report of a person killed in custody is prepared under the instructions of the police who have perpetrated the crime, and also are the investigators of the case.

Although India has signed the UN Convention against Torture, it has failed to ratify it on the pretext that the existing domestic mechanisms in the country have enough built-in provisions to serve its purposes. However, the domestic mechanisms have not even served the purpose of a scarecrow. India therefore needs to ratify the convention at the earliest possible date.

Sri Lanka: As a sign of protest, let us stand by the victims of torture

A few years after the UN Convention against Torture was prepared, the Sri Lankan government ratified it and passed Act No. 22 of 1994 in parliament to introduce it into domestic law. However, for many years, this legislation remained dormant, and it is only now beginning to be enforced, albeit to a minimal degree. It has so far failed to prevent the widespread use of torture in the country.

> "Painfully low amounts of compensation paid to torture victims are a feature in many Asian countries"

In his address to the 61st session of the UN Commission on Human Rights, Lakshman Kadirgama, PC, Minister of Foreign Affairs, acknowledged the gravity of custodial torture allegations in Sri Lanka and condemned torture without any reservation:

> The government of Sri Lanka, taking serious note of recent allegations regarding torture while in police custody, has introduced short- and long-term preventive mechanisms to address the issue in line with the recommendations of treaty bodies. The government of Sri Lanka condemns torture without any reservation... Under domestic legislation, torture is considered a serious crime, which carries a minimum mandatory sentence of seven years rigorous imprisonment. The government looks forward to having a constructive dialogue with the Committee against Torture when Sri Lanka's second periodic report is taken up for consideration.

In light of these remarks, Sri Lankan citizens have the right to demand not only strict enforcement of existing legislation but also justice for torture victims. Recent studies have shown that torture victims suffer severe trauma, thus creating a mental disequilibrium. Their condition is often manifested in inconsistent behaviour: the inclination to refrain from making decisions or assuming responsibilities, inconsistency in language or statements, the apparent reluctance to do any work, complaints of physical aches and pains and distrust of institutions and people—all are associated with trauma resulting from torture. However, the gravity associated with the crime of torture has never been recognised by the state.

This failure on the part of the state also explains the modicum of compensation awarded to victims when the crime is established. Furthermore, no institutional arrangements exist to provide rehabilitation to victims, whether pecuniary assistance or psychological counselling. However, it is these commitments that will indicate to the actual or potential perpetrators of torture the gravity accorded to the crime by the state and its readiness to stand by the victims whose dignity has been violated.

The painfully low amounts of compensation paid to torture victims are a feature in many Asian countries. Payment of pathetic sums in compensation for torture is an affront to human dignity. Minimal compensation also encourages further torture and does little to enhance popular confidence in the courts. In fact, the damage done by torture cannot be measured in monetary terms. However, where financial compensation is awarded, it

should reflect the gravity of the offence, serve as an apology from both state and society for allowing the offence to occur, and send a firm message that the practice must be stopped. Payment of small amounts of money in compensation for torture is also often accompanied by the settling of cases outside the courts, in order to save the perpetrators from punishment. The practice of compensation in lieu of punishment must also be condemned. When compromises are struck persons unworthy of wearing police uniforms are allowed to continue wearing them. Entire police forces are corrupted as a result.

> "Sri Lankan society has either tacitly condoned torture or shunned the victims"

The Sri Lankan society at large has either tacitly condoned torture or shunned the victims, who generally come from the lowest strata of society. An assumption still exists that the police are law-abiding and that torture victims deserve such treatment. It is time that such assumptions are challenged and rejected: torture is routinely inflicted on a large number of innocent people throughout Sri Lanka. Furthermore, Sri Lankan law does not allow for torture, whether as punishment or for the purpose of extracting a confession. Therefore, resistance to the widespread use of torture, even acknowledged by the state, must come from members of the community standing alongside torture victims. Gestures of solidarity, such as medical and financial support, providing security against threats by the perpetrators and counselling to the victims, can send the message that society is standing with the victims and against the perpetrators of this heinous crime.

Philippines: Torture practiced with impunity and without fear of prosecution

The 1987 Constitution of the Philippines prohibits torture. The country is also a party to the UN Convention against Torture. But the government's failure to criminalise torture has shielded the police, military and other public officials from prosecution, thus creating an environment of impunity. Although the government's law enforcement agencies have denied the practice of torture by their ranks, the reality in the country suggests otherwise.

In most cases, allegations of torture are not investigated. Where there are allegations of torture, the burden to prove this claim rests on the victim. Even if the victim intends to seek legal remedies for the violation of their rights and to prosecute the perpetrators, there is no law against torture. There is also no institution that will look after the needs of torture victims. Consequently, the victim is left isolated, persecuted and traumatised, and may be forced to face charges in court that are the result of a forced confession through torture.

There is a proposed law against torture pending in the Congress—House Bill 4307: Act Penalising the Commission of Acts of Torture and Other Purposes—that stipulates torture as a criminal offence. The bill contains a detailed proposal of how to address torture in terms of prevention, prosecution,

rehabilitation and the indemnification of victims. The bill, however, has had difficulty passing into law. There is strong opposition from some government law enforcement agencies, public officials and even legislators regarding torture. Most of those who oppose the bill are critical of the captured insurgents, so-called suspected terrorists, political detainees, militants and others who are the victims of torture in most cases. Freedom from torture is perceived as more of a political issue rather than a basic human right.

Although ordinary Filipino citizens also experience torture, most of these cases are not investigated, brought into public discussion or reported to the Philippine Commission on Human Rights, relevant police officials, and the military ombudsman for investigation and sanctions. Society's poor understanding and inability to articulate that freedom from torture is a basic right is the main reason that torture has not yet been considered a criminal offence in the Philippines.

"The Indonesian government has refused to cooperate in any judicial process involving torture cases in the Special Panel for East Timor"

Indonesia: Government unwilling to implement the UN Convention against Torture

It has been almost seven years since Indonesia ratified the UN Convention against Torture and introduced the corresponding domestic legislation, Law No. 5 of 1998. Still to date there have been no adequate measures to prevent and criminalise acts of torture and to make them punishable by appropriate penalties. None of the norms of convention have been adopted into the domestic law, and nor is there any way for people to lodge complaints about violations. Although torture is among the elements constituting crimes against humanity under Law No. 26 of 2000 in the Human Rights Court Act, there is no procedure for acts of torture to be brought before a court as the Penal Code does not have any specific provision on torture. At present, torture is treated legally in the same way as an act of abuse between one private citizen and another, which is contrary to the principles of the UN convention.

With the new bill for the Truth and Reconciliation Commission, Law No. 27 of 2004, victims of torture will be even less likely to be able to obtain justice than at present. The proposed legislation does not provide them with the right to reparations. Article 27 states that the victims of gross violations of human rights, including torture, will have the right to reparations only if the perpetrator gets amnesty. The bill also gives the commission the authority to recommend amnesty for perpetrators of gross violations of human rights, including torture. In addition, the Indonesian government has refused to cooperate in any judicial process involving torture cases in the Special Panel for East Timor in Dili. The government, together with the government of East Timor, has shielded the perpetrators of torture by establishing the Commission of Truth and Friendship there.

The need to eliminate torture in Asia

"The rising popular sentiment against torture is important in establishing more vibrant democracies throughout Asia"

In recognition of the International Day in Support for Victims of Torture, 26 June 2005, the Asian Human Rights Commission hopes that governments of Asia will heed popular demand to eliminate torture. To do this, torture needs to be recognised as a crime in every country and competent and independent investigators need to be appointed to redress all complaints. Those governments that have ratified the UN Convention against Torture without implementing it in domestic law are facing growing criticism from home and abroad. But judicial and legal agencies must also be held to account for their inability or unwillingness to adopt modern jurisprudence on torture.

The Asian Human Rights Commission salutes all those groups and individuals throughout Asia who are speaking out against torture. Their effort will help to bring in a new era of respect for human dignity. The rising popular sentiment against torture is an important development in establishing more vibrant democracies throughout Asia. The effect of this movement must be to completely eradicate torture in the region, thereby securing lasting freedom and dignity for future generations

END INVESTIGATIONS BY TORTURE

MAKE TORTURE A CRIME

In accordance with the UN Convention against Torture

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Rule of law versus rule of lords in Thailand: Stronger institutions needed

Asian Legal Resource Centre

(An additional document in support of the alternative report to the initial report of Thailand to the Human Rights Committee presented by the Asian Legal Resource Centre, July 2005)

Preamble

1. This is a supplement to the report of the Asian Legal Resource Centre (ALRC) submitted to the Human Rights Committee (the Committee) in March 2005 to coincide with its consideration of the initial report of State party Thailand in accordance with article 40 of the International Covenant on Civil and Political Rights (the Covenant). The ALRC report, 'Institutionalised torture, extrajudicial killings and uneven application of law in Thailand' (ALRC Report) has been made publicly available on the ALRC website (www.alrc.net). It has also been published and widely distributed in the ALRC's bimonthly periodical, *article 2*, as 'Rule of law versus rule of lords in Thailand' (vol. 4, no. 2, April 2005: www.article2.org).

2. This document does not reiterate the contents of the ALRC report except in so much as to identify in summary areas for the Committee to consider with reference to a set of key recommendations. It supplements the report by further examining the roles of certain institutions in reference to article 2, specifically the Department of Special Investigation, Department of Rights and Liberties Protection, Central Institute of Forensic Science and proposed missing-persons centre. It contrasts the roles of these agencies with those of the National Human Rights Commission of Thailand and the Ombudsman. Additionally, it relates some recent cases and developments since the ALRC submitted its report to the Committee, with particular reference to articles 6, 7 and 19 of the Covenant.

3. The government and society of Thailand are different from nearby countries in a number of respects. Although democratic change there is still limited by old ways of thinking and doing,

compared to its neighbours, Thailand is far advanced. Struggles to end the absolute monarchy and military dictatorship in Thailand succeeded with relatively little bloodshed. By contrast, in neighbouring Cambodia the monarchy's resistance to change contributed to the tensions that caused the mass killings of the 1970s and total collapse of the society. In Myanmar too, the transfer of power from colonial rulers to an independent government was erratic and lacking in rational leadership, resulting in the continued dominance of the military and denial of a role for civil society there. Thailand, however, has negotiated significant change in recent decades without the same scale of upheaval or tragedy. For this the State party rightly deserves recognition.

4. However, the legacy of Thailand's militaristic and feudal past persists. As a result, there are serious conflicts between efforts to modernise institutions and the deeply entrenched habits of its military and police. The policing system of Thailand in particular has not undergone any meaningful or significant change. Public confidence in the police is very low. The average person in Thailand associates a police officer with corruption and violence. Murders, extrajudicial killings, torture and forced disappearances go uninvestigated and unaddressed either because the police do not care about them or because they are the perpetrators, or are in league with the perpetrators.

5. As the silence that has long existed around brutal and corrupt methods of law enforcement in Thailand is being broken, conflicts are growing. Reports of heinous torture and killings by police are at last being discussed publicly. Police power is no longer presumed. As the extent of corruption is laid bare, the entire criminal investigation system is being subjected to growing criticism and ridicule. Even some senior police officers admit that things are going badly wrong. The trend in legal reform is rightly towards removing powers from the police and giving them to semi-autonomous civilian agencies. However, the gap between attempts at reform and the realities of policing in Thailand is still very wide. It is this gap that must be recognised and closed if the State party is to more fully comply with the Covenant.

Article 2: Effecting rights under the Covenant

6. The ALRC has already identified numerous holes in Thailand's laws and institutional arrangements that undermine the enforcement of rights as articulated in article 2. These pertain, among other things, to the use of torture, forced disappearances, bringing of complaints to the high courts, making of complaints against police, investigating complaints against police, criminal investigation procedure, forensic science, victim compensation and witness protection.

Roles of institutions

7. Article 2 is all about institutions: what institutions do or do not exist to protect rights and afford remedies, what improvements can be made to their work, and what further institutions are needed. With reference to Thailand, a number of government

and quasi-government institutions deserve special attention: the Department of Special Investigation, Department of Rights and Liberties Protection, Central Institute of Forensic Science, proposed missing-persons centre, National Human Rights Commission and Ombudsman.

I. Role of the Department of Special Investigation

Department of Special Investigation

8. As discussed by the ALRC previously, Thailand lacks an independent mechanism for the taking of complaints and launching of investigations and prosecutions against police. The nearest equivalent is the Department of Special Investigation (DSI), under the Ministry of Justice, which addresses special cases deemed 'in the public interest'. Among those that have been brought to the DSI in recent times are the disappearance of Mr Somchai Neelaphaijit (ALRC Report paras 63–64), torture of Ekkawat Srimanta (ALRC Report para. 73[ii]) and killing of Charoen Wat-aksorn (ALRC Report Annexe 1). Generally, these cases are transferred to the DSI when the victims or their supporters are able to generate enough pressure through media publicity and other actions. However, once attention is eased the complaints are swallowed up by the DSI and there is a lack of transparency and evidence of action to address even the most high-profile cases properly. The effect is to create further demoralisation among victims and their families where it should be doing the opposite. The three above-mentioned cases all speak to this point:

Case of Somchai Neelaphaijit

i. The wife of Mr Somchai, Mrs Angkhana Neelaphaijit, has expressed sceptisism over the ability of the DSI to resolve the case of her husband, which is discussed in further detail under article 6 (paras 37–41). Although two Deputy Prime Ministers were appointed to oversee its handling, there is no information or evidence that the DSI has taken the necessary steps to solve what happened to Mr Somchai. Mrs Angkhana has stated that up until recently she was not even contacted by the Department. It has often been unclear as to whether or not the DSI has even been handling the case at all. The Minister of Justice was quoted in newspaper reports as saying that the investigation would be completed by the end of June (one year and three months since the killing) but as usual no information on progress has been forthcoming.

Case of Charoen Wat-aksorn

ii. The wife of Mr Charoen, Mrs Korn-uma Pongnoi, has expressed similar doubts over the work of the DSI, and recently called upon it to reopen the case into her husband's killing. She insists that the investigators can identify the persons behind the killing, but as they are influential people they have enjoyed impunity. The DSI has sat on the case for a year without result. Mrs Korn-uma says that the DSI has excluded a great deal of evidence from its investigation. After meeting with Mrs Korn-uma on June 21, when she led protesters to the front of their offices, the Minister of Justice and the Director of the DSI agreed to reopen the investigation. Under the circumstances this

announcement gives little cause for optimism and seems intended primarily to deflect media attention rather than as a genuine commitment to solving the murder.

Case of Ekkawat Srimanta

iii. In the case of Mr Ekkawat, according to the Ministry of Justice in a recent letter to the sister organisation of the ALRC, the Asian Human Rights Commission (AHRC), six of the police who committed torture have been removed from duty (see para. 57). However, no prosecutions are known to have followed and nor is any action known to have been taken against the police station superintendents and deputy superintendents concerned. It is not known what role if any the DSI played during the investigation, although the Ministry of Justice has informed the AHRC that the DSI did investigate the case. However, the disciplinary action taken against the six police appears to be strictly internal procedure, whereas had the DSI performed its role it should have been able to lodge criminal charges with the public prosecutor, suggesting that its involvement may have been nominal at best.

Confusing role of National Counter Corruption Commission

9. Another perplexing feature in the handling of serious cases in Thailand is that those not transferred to the DSI are sometimes instead transferred to the National Counter Corruption Commission (NCCC), as a defacto alternative non-police agency. According to the Ministry of Justice in another recent letter to the AHRC, this is what has happened in the case of Mr Anek Yingnuek and friends (ALRC Report para. 74[ii]). Although the ALRC has opined that the case of Mr Anek is as serious as that of Mr Ekkawat and deserving of a thorough investigation by the DSI, the Department has not been given the case, perhaps for want of public pressure. Under any circumstances, the ALRC is aware that many such cases are transferred to the NCCC for reasons that remain unexplained. As has been rightly pointed out by all parties concerned, the NCCC is charged with addressing corruption, not cases of torture, extrajudicial killing or other gross police abuses. Moving such cases to a body that is not mandated to address them may have an even more detrimental effect than leaving them in the hands of ordinary police investigators, as the process of inquiry is slowed greatly. It should be added that the NCCC is recognised publicly as not having performed well according to its actual mandate to combat corruption, so it is hard to imagine that it could make any progress concerning cases of grievous torture or extrajudicial killing that are outside of its jurisdiction.

Changes needed to make DSI effective

10. While the Department of Special Investigation has a role in obtaining redress for victims of rights violations in Thailand as envisaged under article 2, to date it has been too limited, and for various reasons it is not performing its existing functions well. The management of the DSI must be changed to make it a more transparent and speedy agency. This certainly requires increases in budget, personnel and training. However, it also requires a change in administrative style and behaviour. The DSI must be far more responsive to the needs of victims and

their families. It must be able to operate autonomously and with greater initiative. The Government of Thailand must also put in place measures to penalise police officers that attempt to obstruct the work of the DSI, as has been reported from the south.

Independent unit needed to investigate police abuses

11. Notwithstanding an improved performance from the DSI, Thailand is desperately in need of an independent body to receive, investigate and prosecute complaints against police officers and other state officials. One or more special units should be initiated under the supervision of the Attorney General or Minister of Justice. The units should have all the powers of full criminal investigation units, including powers to arrest, interrogate and prosecute police suspects. The ALRC has stressed this need throughout its report to the Committee.

II. Role of the Department of Rights and Liberties Protection

Department of Rights and Liberties Protection

12. As the ALRC noted in its original submission to the Committee, the Department of Rights and Liberties Protection under the Ministry of Justice oversees the new witness protection and victim compensation schemes, which are integral to guaranteeing remedies under the Covenant as envisaged in article 2. This Department is newly established and deserves recognition for its work so far. However, the Department is under-funded and poorly equipped. For instance, it has recently been given responsibility to handle communications with international organisations on human rights standards in Thailand, including the State party reply to the April 13 list of issues from the Committee (CCPR/C/84/L/THA). This is a large amount of work; yet, the Department has only one staff person allocated the primary responsibility of handling all these communications.

Need for quick intervention

13. More importantly, the Department lacks the means to offer very quick intervention in most cases where witnesses may be in need of immediate security or victims of immediate assistance. This is a critical weakness that jeopardises all aspects of the Department's work and seriously undermines the ability of the State party to implement article 2. For instance, in the case of Mr Urai Srineh (para. 53), after allegedly suffering very brutal torture by provincial police officers he was approached while still in hospital and recovering from his injuries and offered money to stay silent, which he accepted. As a result, the likelihood of any complaint being lodged against the alleged perpetrators in this case is now very remote indeed. The sum of money that Mr Urai obtained at the time is also said to be insufficient to pay for his hospital expenses in the long run, but under the circumstances it is likely that he saw it as the best possible outcome. At present there are no arrangements for providing emergency compensation to persons needing to pay hospital bills and other expenses associated with recovery from abuse by state agents. Poor persons have little choice but to take whatever they can get, when they can get it, from whoever is offering it.

Handling of witness protection

14. Although the Department oversees witness protection, the actual provision of security is in the hands of the National Police Commission. For persons who may be getting protection from police officers or other state agents, it is a disturbing prospect to find police being sent to protect against police. In one case known to the ALRC, the witness concerned found that a number of police had been assigned as watchmen. When the witness complained about the management of this 'protection', one of the officers implored that they also did not know what they were supposed to do but asked that no complaint be lodged against them because they did not want to get in trouble and were just following orders.

Need for strengthening of role

15. The establishment of this Department is an important and commendable step in the offering of effective remedies by the State party as envisaged by article 2. However, for it to operate effectively, and in particular for it to manage the incipient witness protection and victim compensation schemes properly, the State party needs to provide it many more funds, staff and training. As the ALRC has already stressed to the Committee, the role of the Department must be greatly strengthened if it is to meet public expectations and bring Thailand into compliance with the Covenant.

III. Role of the Central Institute of Forensic Science

Importance of forensic science for human rights

16. The extent to which forensic science is used in criminal investigations has a direct bearing on the scale of human rights violations throughout Asia. To deny the use of forensic science in criminal investigations in itself amounts to a serious human rights violation, as it permits the continuation of flawed and violent methods of policing and attendant abuses. If the perpetrator of a crime or a gross abuse of human rights is not detected for want of proper forensic analysis—either inadvertently or deliberately—the victim is bereft of an avenue through which to pursue a remedy. Where effective remedies are not forthcoming, crime and rights abuses are further encouraged. Thus, any state that is serious about preventing crime and protecting human rights is obliged to improve the quality of criminal investigations, which means using forensic science expertise extensively.

Limitations placed on forensic science in Asia

17. The role of forensic experts in criminal investigations throughout Asia is usually limited because of vast powers held by the police. In most countries, Thailand among them, the police control all areas of criminal investigation: in a few, the public prosecutor shares power. In many, the law has not described the role of forensic professionals in detail; in most, their presence in criminal investigations is not obligatory. The result is that the police or prosecutors use forensic experts very little. Unless systemic changes are made to expand the role of forensic professionals and delimit the power of the police over criminal investigations, this situation is unlikely to change.

Central Institute of Forensic Science

18. In Thailand, the importance of proper and independent forensic science in criminal investigations has been recognised through the establishment of the Central Institute of Forensic Science (CIFS) under the Ministry of Justice, which has been in operation for two years. Prior to its establishment, the police had unchecked power over the issuing of death certificates and conducting of post-mortems. With the advent of the CIFS there exists an agency with the purpose of checking that power. The creation of the CIFS, like other newly established agencies in Thailand, is an act vested with great significance for which the State party deserves recognition. The CIFS is a key government agency for the realising of effective remedies in accordance with article 2 of the Covenant.

Lmitations on existing role

19. However, it must also be recognised that the CIFS faces an enormous uphill task. Its role is still extremely limited. At present it has rudimentary operations in only four of the country's 76 provinces; in just one of these, Nonthaburi, it is actively engaged in crime scene investigations. It requires permission from the police to join with them in investigations, and to be invited to work outside of the four provinces to which it is technically restricted. The possibility of expanding its role depends upon many factors, including the extent to which it can succeed in professionalising forensic work in Thailand in its area of current activities, and the political will to support its initiatives.

Police threats to CIFS work

20. By far the greatest threat to the success of the CIFS is the police force. As described by the ALRC, the police perceive the CIFS to be undermining their previously unassailable power. They have in recent months shown that they are at best disinclined to assist the Institute, and at worst are quite prepared to launch counter-attacks on its credibility, as well as that of its staff and forensic science in general. Staff persons of the Institute have increasingly been denied access to crime scenes in most parts of the country: it has been reported that in some areas, including the southern provinces, orders have been issued to police stations prohibiting them from contact with the CIFS on threat of punishment. Findings of the Institute's staff have also been questioned by the police, and individual staff targeted in the media and through legal sanctions. In two recent cases discussed under article 6 (para. 49), apparent homicides have been written off by the investigating police as suicides. Both victims had multiple fatal gunshot wounds: one with two bullets in his brain, the other, four in his chest and one in his brain. In both cases the bodies had apparently been moved after the killings; in the latter case, the 'suicide' had come at the end of a stand-off with police officers. However, the police have in each instance reportedly defended their findings and in the latter case the officers concerned have even sued the Deputy-Director of the CIFS and the Deputy Permanent Secretary of the Ministry of Justice for suggesting otherwise, as discussed under article 19 (para. 62).

Conflicts between CIFS and police

21. The CIFS has since its inception dealt with numerous cases of extrajudicial killing and torture by the police. Often its findings have directly contradicted those of investigating officers or forensic staff under the police department. Large numbers of cases have involved clear fabrication of evidence at the crime scene by police officers: such as the planting of drugs—particularly during the 2003 'war on drugs'—or weapons. In many instances the complaints have been brought to the CIFS by relatives of the deceased who have tried without success to have the death properly investigated by police: sometimes carrying the remains of the deceased person from outside of the Institute's area of jurisdiction to its offices for examination.

Forensic science not part of investigation system

22. There is as yet no systematic integration of forensic science into criminal investigations and judicial procedure in Thailand, which poses a grave obstacle to persons seeking to obtain a remedy as envisaged under article 2. Where families and other persons concerned with victims take the initiative to have the CIFS investigate a case there is no possibility of further investigation without police cooperation. Public prosecutors continue to depend on the police. The police for their part prefer witness testimonies to scientific evidence, which also suggests their predilection for extracted confessions through use of torture. It has been alleged that senior officers in some parts of the country, including the south, have advised their subordinates to disregard forensic science, and have cast doubts over its accuracy and relevance for investigations. To a lesser extent this mentality extends to other parts of the judicial system: many judges as yet do not understand or trust forensic science, or are confused about it by doctors doing forensic work who are not properly qualified.

Lack of qualified professionals

23. The shortage of forensic professionals in Thailand is itself a serious concern. One of the reasons that unqualified doctors perform forensic inquiries is that there are only about 60 forensic pathologists in the country. At present only five are working at the CIFS. In most cases the police call general practitioners working in state hospitals to investigate. There is little incentive or enthusiasm for these doctors to assist, especially as they are often called to deaths at locations far from their workplaces and are not remunerated for the travelling time or expense. If they fail to attend they are sent warnings rather than given assistance. This pressure on doctors to perform post-mortem investigations against their will has been cited as one of the reasons that over 2000 doctors have quit government hospitals in the past four years. Ultimately, the lack of skills and enthusiasm of doctors for this task cause many serious rights violation cases to be improperly investigated, to the reassurance of the perpetrators. The police also do not have qualified crime scene officers: investigations in most cases are done by police officers who refer their findings to lab scientists, of which there are likewise only a few hundred around the country.

Opportunities to enhance CIFS role

24. Obstacles to the wider use of forensic science in criminal investigations in Thailand must be understood also as obstacles to the effecting of rights under the Covenant, and addressed by the State party in these terms. There are many opportunities for Thailand to obtain technical and financial assistance for forensic science from abroad. Since the Indian Ocean tsunami of December 2004, many highly equipped and professional international agencies have been involved in forensic work in Thailand. These agencies are in an excellent position to extend technical assistance to the CIFS and should be encouraged to do so. The Committee should pay special attention to this matter in its discussions with the State party, and direct the attention of concerned United Nations agencies and mechanisms to the same.

IV. Role of the proposed missing-persons centre

Proposed missing-persons centre

25. The ALRC warmly welcomed the announcement by the Minister of Justice in March that a missing-persons centre would be established under the Central Institute of Forensic Science. The proposal to establish the centre was a bold initiative that came after years of lobbying for its creation by the Deputy-Director of the Institute, and one that could strongly further the rights of victims in accordance with article 2.

Attempts by police to sabotage proposal

26. Regrettably, although not surprisingly, the police force immediately set out to sabotage the proposed centre. At a second meeting called by the Minister to discuss the matter in April, the police—who had previously shown no interest in the idea—insisted that it would be their job to set up the centre. Having said that, no police representatives attended two subsequent meetings. Finally, in June the CIFS was told by senior government officials that the police force had been given the go-ahead to establish the centre. This instruction was subsequently countermanded verbally by the Prime Minister; however, it remains to be seen as to whether or not the Ministry of Justice will be permitted to establish the proposed centre, and whether or not the police may attempt to establish a competing agency. According to the latest publicly available information, the ministry has tabled its proposal with the cabinet. However, the police are still insisting that they should be given authority, and are backed by senior government officials including a former police general who is now a Deputy Prime Minister.

Reasons for police opposition

27. The police will fight any serious efforts to establish a missing-persons centre in Thailand that is outside of their authority because if properly managed it would open the door for independent official investigations into the many human rights abuses they commit. Giving the police control over any missing-persons centre would inevitably defeat the very purpose of the proposed agency. Their attempts to obstruct the course of the proposed centre must be opposed vigorously by the State party, and the Committee should place a strong emphasis on seeing that the said centre be established outside police control and ensure that all prerequisites are met for its effective functioning.

28. In setting up the missing-persons centre, the State party should consider the following.

Prerequisites for effective missing persons centre

i. The centre needs access to the remains of missing persons. There must be a body, or something upon which investigations may be based, to begin work. However, in many forced disappearances the victim vanishes without a trace. Police are also accused of damaging the few shreds of forensic evidence left at the scene of a disappearance. Under these circumstances, to identify the perpetrators and prosecute them according to the gravity of the crime is extremely difficult. It follows that to protect vital forensic evidence forced disappearance must be made a crime in Thailand. Legal provisions must also exist to prohibit disposal of bodies in suspicious deaths until the proper procedure has been completed.

Law to criminalise forced disappearance

ii. The centre must go beyond simple identification of persons and deal with all aspects of disappearances. It should not be limited to just identifying remains without thoroughly examining the circumstances of death. If its mandate is too restrictive, many questions will remain unanswered and cast doubt over 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. Once again, the international community has much to offer in giving guidance on how to undertake enquiries into forced disappearances, as well as resources for this purpose. Similar centres operate in numerous countries around the world, and these should be willing to offer knowledge and skills to the new agency. Professionals with relevant expertise in medical, legal and other fields from around the world and within Thailand should be actively involved in establishing the centre and giving advice to this end. Foreign governments that have been keen to donate large amounts of money for the recovery efforts after the tsunami should likewise offer the necessary support to make this centre a success.

Broad mandate and expertise

iii. 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 its significance for the family and loved ones left behind. Neglect of the dead and missing erodes not only family morale but also that of society as a whole. For this reason, families of victims should be brought into discussions on the establishing and managing of the centre at every available opportunity.

Involvement of victims' families

V. Roles of the National Human Rights Commission & the Ombudsman

National Human Rights Commission

29. In contrast to the preceding organisations, neither the National Human Rights Commission (NHRC) of Thailand nor the Ombudsman is an agency with capacity to afford effective redress for rights violations under the Covenant as per article 2. While both are potentially useful for the furtherance of human rights and good administration in Thailand, neither has the authority to investigate and prosecute complaints as envisaged in article 2.

NHRC unable to implement human rights standards

30. It should be stressed that with regards to the NHRC the State party's report is misleading. Therefore, the third question of the Committee regarding the ability of the NHRC to implement Covenant rights under article 2 is also misguided. ["Constitutional and legal framework within which the Covenant is implemented (Art. 2): 3. Please inform the Committee about action taken by the National Human Rights Commission since its establishment (paras. 187-189 of the report) in the implementation of the Covenant rights..." (CCPR/C/84/L/THA, 13 April 2005)]. The preceding agencies referred to in reference to article 2—the Department of Special Investigation, Department of Rights and Liberties Protection, Central Institute of Forensic Science and proposed missing-persons centre—are all of much greater importance in terms of implementing the Covenant than the NHRC. In practical terms, the investigating power of the NHRC is very limited, and is restricted to making recommendations to state agencies for action. In fact, state agencies have consistently ignored the recommendations of the NHRC, knowing that it has no power, and that it is viewed with animosity by senior government figures, which the ALRC has discussed previously (ALRC Report para. 18). The State party has been at pains to emphasise that where recommendations are ignored the NHRC can table a report to Parliament in accordance with section 200 of the Constitution. The ALRC is not aware of any case in which this has been done. It is also not aware of a state agency or officer ever having been punished for ignoring the recommendations of the NHRC.

NHRC limited investigation powers

31. The ALRC pointed to the limitations of the NHRC's role before the Commission on Human Rights in Geneva during its 61st session in May, with reference to a brutal torture case. According to information available to the ALRC, the largest number of complaints that the NHRC receives are about police, of which some 19 per cent are about torture. However, having received the complaints, the NHRC cannot investigate the cases without the cooperation of the police: as the police are also the alleged perpetrators, the matter ends there. Very often, tortured persons have also given forced confessions and are awaiting trial or have already been tried. In these cases too the NHRC is refused a role on the ground that it is prohibited from investigating cases pending in or decided by the courts. So the NHRC is effectively barred from dealing with most rights cases involving police.

Ombudsman

32. The Office of the Ombudsman is also prohibited from investigating cases going before the courts. However, the AHRC has argued to the Ombudsman that matters pending before the courts may be distinct from the complaints lodged at the office, and therefore merit examination (ALRC Report Annexe 2). In a March 30 reply to the AHRC regarding the brutal torture of Mr Anek Yingnuek, referred to above, the Ombudsman said that the victim could "raise the issue of police officers' malpractices of torturing in the attempt to obtain a confession for the court to consider". The difficulty with this assertion is that, as discussed, the judicial system in Thailand has no provision to address cases of torture, for want of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; domestic legislation; an implementing agency; and relevant court procedures and training of judges, among other factors. Even in cases where depositions on torture have been made before a court—such as by the clients of missing human rights lawyer Mr Somchai Neelaphaijit in the Bangkok Criminal Court during April—these have only been as evidence in reference to other offences. In that case, four of Mr Somchai's former clients who had been charged with having planned bombing attacks in Thailand were acquitted for lack of evidence. Among the four, at least one said that he was brutally tortured to extract a confession. A prominent senator testified in court on his behalf to the effect that while in police custody the man had been suffocated with a bag and hit in the groin with a club. Meanwhile, one of the police officers implicated in Mr Somchai's disappearance has been identified in court as having been among officers connected with the arrest and torture of his former clients. Again, testimonies of torture were accepted by the court in that case only with reference to other charges pending against the accused. To the knowledge of the ALRC, in no case where the question of torture has been raised before a court in Thailand has there been explicit action taken upon it by any person or agency in the judiciary, administration or police.

NHRC & Ombudsman not relevant to article 2

33. Therefore, the National Human Rights Commission and Ombudsman, while potentially valuable agencies for the promotion and protection of human rights in Thailand, must be excluded from any discussion with reference to the application of article 2 (ALRC Report para. 11[ii]).

Article 6: Right to life

Extrajudicial killings unaddressed

34. There have been no significant developments in addressing extrajudicial killings of alleged drug traffickers during 2003 or the mass extrajudicial killings in the south of Thailand during 2004 since the ALRC submitted its report to the Committee in March. However, with regards to the mass killings in the south, the ALRC would like to draw particular attention of the Committee to the annual report of the Special Rapporteur on extrajudicial, summary or arbitrary executions:

> Thailand: a request was made [for a country visit] on 8 November 2004, especially in relation to the southern provinces of Narathiwat, Pattani and Yala. In a reply of 22 November 2004 the Government noted its deep regret at the 78 deaths that occurred in relation to the transportation of detainees and characterized it as a "process which, in hindsight, with greater care and more scrupulous preparations could have been avoided". It also noted its commitment to "**ensuring that the incident is promptly, independently and thoroughly investigated**" and that "**where wrongdoing is found, those responsible would be held to account by due process of law**"... In the Government's view, domestic processes of investigation "should be permitted to pursue their work unperturbed". The view was also expressed that a public request to visit by the Special Rapporteur "could well affect the overall climate under which the Independent Commission has to work, to the detriment of its effectiveness and likely to prejudge its findings". The Special Rapporteur... entirely agrees that a visit by a special rapporteur could never be a substitute for appropriate domestic processes. In his view such visits are much more likely to raise confidence in those procedures, and to demonstrate that a Government is extending its full cooperation to the special procedures of the Commission on Human Rights. He looks forward to the outcome of the prompt report which the Government has undertaken to produce in relation to this matter, and reaffirms his willingness to undertake a visit at an appropriate time. [E/CN.4/2005/7, 22 December 2004, para. 26(g), emphasis added]

No judicial action on mass killings

35. It is manifest that these important government commitments have not been kept. Although the findings of the two inquiries into the incidents have been made public, the inquiries could not be said to have been properly independent, as they were politically appointed. The object of the two investigations was primarily to deflect public and international criticism, rather than to reach conclusions with which to address the worsening conflict in the south and the wider institutional problems for the protection of human rights in Thailand. This they achieved, as evidenced by the March 21 note verbale to the Commission on Human Rights by the Permanent Mission of Thailand to the UN Office at Geneva, with regards to the November 2004 killings:

> The Independent Fact-Finding Commission was promptly established to carry out a transparent, impartial and immediate investigation into the circumstances of the incident...
>
> According to the findings of the Commission, the demonstration at Tak Bai Police Station was pre-organised and pre-planned by a group of people with certain ulterior motives. The demand to free six detained members of a village security guard unit was merely a pretext. Some of the demonstrators were also armed. It was established that the exercise of state authority in taking control of the situation and maintaining public order was reasonable given the necessity dictated by the prevailing circumstances. However, the Commission found that, during the process of transporting arrested demonstrators to an assigned military camp for interrogation, errors were made on the part of commanding officials who failed to properly discharge their duty resulting in unfortunate injuries and deaths. However, the Commission found that these officials did not have the intention to cause such injuries or casualty. The Commission also provided a set of recommendations to address the issue in a comprehensive manner.

> Promptly after receiving the findings and recommendations from the Independent Fact-Finding Commission, the Cabinet issued a resolution instructing agencies concerned to undertake appropriate measures in accordance with the said findings and recommendations. Pursuant to the aforementioned Cabinet resolution, a Remedial Commission has been established to provide remedies and assistance for any damage caused in the course of the incident…
>
> The Ministry of Defense has, in pursuant to the Cabinet resolution, also commenced an internal investigation process on the basis of the findings of the Independent Fact-Finding Commission. Appropriate measures are being considered against officials who failed to properly discharge the assigned functions and duties. In addition, a National Reconciliation Commission has been recently established to foster a spirit of reconciliation and national unity through a consensual, non-partisan approach… [E/CN.4/2005/G/22, 22 March 2005]

Politically-appointed inquiries used as cover-up

36. The note verbale reveals the true purpose of establishing the commissions of inquiry: to make a neat performance for domestic and international viewing, and simultaneously to displace the conventional role of judicial agencies, which have been absent in the aftermath of these killings. The note from the Permanent Mission impresses on the reader that a judiciary is unnecessary where the government can convene a group of former civil servants to excuse army personnel responsible for mass deaths in custody because 'they didn't mean it' and there were troublemakers afoot to blame. The "domestic processes of investigation" mentioned to the Special Rapporteur have been unperturbed because of their lack of work, not the pursuit of work. Even those found responsible by the inquiries have not been "held to account by due process of law". As made clear by the Permanent Mission, the matter has been wrapped up with "appropriate measures" being considered by the Ministry of Defence. Despite public and international outcry, no prosecutions have followed against any state official over the killings. The National Reconciliation Commission, like the National Human Rights Commission, is largely irrelevant to this discussion for want of judicial authority. The families of victims have been left to pursue remedies in the courts of their own accord, some with the assistance of lawyers' groups, including the Law Society of Thailand. Some have complained that promised compensation has been slow in coming or pitifully small. Families of the victims of the Krue Se mosque raid (ALRC Report para. 34) are reported to have received only 2000 Thai baht (US$50), without explanation or apology. As a consequence, the Government of Thailand and its security forces have lost all trust of the population in the southern provinces, and are faced with daily mounting violence from which there will be no easy turning back.

Case of Somchai Neelaphaijit & implications

37. The unresolved case of Mr Somchai Neelaphaijit, to which the ALRC has already referred, has been another cause of discontent in the south, although it is a case with enormous implications for the entire country. Despite the fact that two Deputy Prime Ministers were assigned to the case, there have been no further developments. In April, the ALRC made an oral statement to the Commission on Human Rights for Mr Somchai's

wife Angkhana. She has alleged that there has been a cover-up and that behind the five relatively junior police officers on trial in connection with her husband's disappearance there are powerful people who are beyond prosecution. The government has made no attempt to deny this allegation.

Somchai case taken up in UN fora

38. Also in April, the ALRC together with the Thai Working Group on Human Rights Defenders assisted Mrs Angkhana to submit a formal written complaint on her husband's disappearance to the Working Group on enforced or involuntary disappearance. At its meeting in Bangkok in June, the chairman of the Working Group announced that it was taking up the case and expressed great concern over the disappeared lawyer. The ALRC has, among others, welcomed the news that the Working Group has taken up the case. However, although the Government of Thailand has agreed to cooperate with the Working Group, the Prime Minister said that it has 'done all it can' and that the case has nothing to do with the government. These comments do not bode well in view of the level of 'cooperation' shown by the State party concerning 34 other cases of forcibly disappeared persons in Thailand pending with the Working Group. To the knowledge of the ALRC, no additional information has been given regarding any of those persons. On the same occasion the Prime Minister expressed resentment at the interest of United Nations agencies in the situation of human rights in Thailand, which is ironic given his backing of former Minister of Foreign Affairs Mr Surakiart Sathirathai in his bid to become UN Secretary General. Mr Surakiart has for his part been reported recently as having criticised domestic media for shining too negative a light on the country. Meanwhile, the case of Mr Somchai has also been taken up by the Organisation of Islamic Conference, which sent a delegation to visit the south of Thailand in June.

Threats to victim's wife

39. At the same time as Mr Somchai's case was being taken up in United Nations fora, Mrs Angkhana received warnings about speaking out on her husband's disappearance. In early April, an unidentified man came to her house and advised her against high-profile advocacy, such as going on television or making other public statements. On April 18, she allegedly received a telephone call from a man whose voice she recognised as being that of a government intelligence officer, who asked about her interventions in the United Nations. Upon receiving this information, the AHRC made an urgent appeal for witness protection to the Minister of Justice, and was gratified to learn that on April 20 the Director of the Department of Rights and Liberties Protection had ordered his staff to visit Mrs Angkhana and make the necessary arrangements. Notwithstanding, the ALRC is not aware of any efforts undertaken to identify the source or sources of these threats against Mrs Angkhana, and the security of her and her children is an abiding concern.

Somchai case exemplary of state failures on human rights

40. The case of Mr Somchai Neelaphaijit is critical to the development of an effective human rights regime in Thailand because in it the nexus between cases of heinous torture, forced

disappearances and extrajudicial killings is explicit. It is an exemplary failure of state agencies under pressure—even under intense pressure—to address the impunity that prevails in the country. That five police officers are facing relatively minor criminal proceedings in connection with Mr Somchai's disappearance now seems to be considered a satisfactory conclusion for the State party. It is not.

Forced disappearances

41. In the disappearance of Mr Somchai is the disappearance of uncounted numbers of persons across the country. Concern over forced disappearances in Thailand is rightly directed towards the missing in the south. The Chairperson of the National Reconciliation Commission, former Prime Minister Mr Anand Panyarachun, has reportedly said that the number of missing persons there is greater than he had imagined. Local religious leaders in March told a government representative that around 50 persons had been abducted in recent months after interrogations by local security officials. Unconfirmed allegations have emerged that abducted persons may even have been dropped from helicopters. At least one senior military officer has tacitly acknowledged that the army has been behind disappearances by informing an audience at a seminar in the south that the abductions would be brought to a halt. However, while the situation in the south deserves special attention, it should be understood that the incidence of disappearances is a nationwide problem for Thailand. The Central Institute of Forensic Science alone receives some 200 bodies annually from other parts of the country that it cannot identify; its staff has estimated that perhaps 1000 persons go missing each year in 'ordinary' parts of the country. Evidence suggests foul play in many cases, but the Institute, like other agencies, is unable to further their investigations without police assistance. Hence the need for the establishment of a missing-persons centre outside of police control.

Pattern of killings

42. The State party has also failed to take action to address the pattern of killings of human rights activists and environmentalists in the country, which as in the disappearance of Mr Somchai is indicative of the impunity enjoyed by perpetrators of gross human rights abuses in Thailand. Again in his 2005 report, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated:

> In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers. [E/CN.4/2005/7, 22 December 2004, para. 72]

Case of Phra Supoj Suwagano

43. On June 17, Buddhist monk Phra Supoj Suwagano was the latest environmentalist to be killed in the face of government inaction, apparently as a result of his efforts to protect local natural resources. Phra Supoj had been involved in a foundation conserving hundreds of acres of forestland that was under threat

from local influential developers known to have connections to senior political figures. Phra Supoj and other monks working with him had in the past been threatened over their conservation efforts. On at least one occasion they tried unsuccessfully to lodge a complaint with the police.

Scepticism over investigation into Phra Supoj murder

44. There are now strong demands to arrest and prosecute the killers of Phra Supoj not only to afford some justice to him but also to protect others involved in the struggle. Another senior monk in the environmental foundation is under police protection. However, there are grave fears that those behind the killing will not be arrested, and already there are indications coming from the investigating police that they wish to close the matter as a simple manslaughter or murder due to a conflict with local residents who had been cutting some bamboo. Under the circumstances, this is the least likely explanation for the killing.

Role of influential persons

45. The hands of influential persons can be seen both in the murder of Phra Supoj itself and in subsequent events. At the end of June it was reported that police who had said they had made 'remarkable progress' in investigating the case had not even spoken to the monk's parents or close associates. Then on the night of July 4 the house of a key witness was burnt down. Its owner, Mrs Khum Laowan, was the groundkeeper at the monastery who first discovered the monk's body. Mrs Khum had been staying at friends' houses since shortly after the killing and was not present when the house was razed. She has alleged that police officers from Fang District Police Station had started coming to her house at midnight, after which they would take her for questioning at the station and return her only in the morning, therefore she moved out. For their part, the police were said to have concluded that the house was accidentally burnt down. It is not known as to whether or not Mrs Khum has been offered or received witness protection through the Department of Rights and Liberties Protection, or whether the destruction of her house has been investigated by any outside agencies.

DSI given case

46. On June 20, the Minister of Justice ordered the Department of Special Investigation to investigate the murder. The transfer of the case to the DSI should give rise to hope among victims and their families that it will be taken seriously. However, the failure of the DSI to address other similar cases properly, such as that of Mr Charoen Wat-aksorn (para 8[ii]) has caused grave doubts over its ability to investigate.

Case of Manop Rattanacharungporn

47. The killing of Phra Supoj also followed an attempt on the life of a journalist in Phang Nga province on July 1, who was shot while driving home. Mr Manop Rattanacharungporn, a writer for the prominent Matichon daily, had accused local influential persons of illegally grabbing land after the tsunami. The Minister of Justice has also reportedly ordered the DSI to investigate this case.

Links between killings & corruption

48. The pattern of attacks on environmentalists, journalists, human rights defenders and persons opposing 'development' projects in Thailand persists in large part because of the sums of money involved and the enormous corruption that is widely recognised as a feature of governance and policing there. Two reports released by academics in May, for instance, estimated that police annually pocket illegal earnings of up to 31 billion Thai baht (US$775 million), and that police superintendents in Bangkok could earn 300,000 to one million Thai baht per month (US$7500–25,000). The earnings of 'influential persons' who use the police to secure their interests are presumably far higher. With huge sums of money involved, and with growing contests over scarce resources, the scale of the risks associated with threatening or killing opponents becomes smaller. This aspect of the problem must be recognised and directly addressed by the State party if the pattern of killings is to be stopped. Although at the end of March senior police for the first time publicly admitted that the police force is corrupt from top to bottom, the suggestions to address it included honesty and 'a service-minded attitude'. Clearly, a more realistic approach will need to be taken by the agencies concerned if the issue is to be addressed. The Government of Thailand also needs to take a stand against these killings. To the knowledge of the AHRC, at no time has the Prime Minister or another senior figure spoken on this pattern of murders and committed the government to bringing them to an end.

Case of Sunthorn Wongdao

49. While police in Chiang Mai were searching for a way to make the apparent murder of Phra Supoj into manslaughter, others in Nonthaburi province investigating the case of Mr Sunthorn Wongdao were stretching the imagination even further by turning homicide into suicide. Mr Sunthorn was found dead in Bang Yai district, Nonthaburi, on May 21. He is said to have hidden in a house after being accused of shooting his wife and father-in-law in Bang Khunthien district, Bangkok. Police from that district claim that after they surrounded the house, Mr Sunthorn committed suicide rather than surrender. But the brother of the victim challenged that version of events and said that he believes that the police killed the man. Investigators from the Central Institute of Forensic Science have supported the view that the death was not suicide. According to them, neither the condition of the victim's body nor the crime scene suggested a suicide. In fact, the victim had four bullets through a lung and one through his head. The gunshot wounds appeared to have been fired by another person at close range. Furthermore, the crime scene had allegedly been tampered with. The body of the victim seemed to have been turned over, and evidence organised to suggest a suicide. Despite this, the police concerned have reportedly continued to insist that it was a suicide and prepared an extensive report to this end. The brother of the victim has since expressed concerns that his life is also in danger, as he has campaigned for justice. It is not known as to whether or not he has obtained witness protection. Five officers have also

had the audacity to lodge a defamation complaint against a forensic scientist and senior bureaucrat who spoke on the case, which is discussed further in reference to article 19 (para. 62). The 'suicide' of Mr Sunthorn, it should be added, followed another case where police similarly concluded that a man with two bullets in his head, Mr Sompong Charoenkrongsakul, had killed himself. However, as that case occurred outside the jurisdiction of the Central Institute of Forensic Science it has not been thoroughly investigated. To the knowledge of the ALRC, neither case has been transferred to the Department of Special Investigation.

Contradictions in Thai criminal justice

50. These deaths expose some of the deep contradictions in Thailand's criminal justice system. Whether these victims died as a result of homicide or suicide should be for the courts to decide. But to get the matter before a judge, it must go through the police. If the police lodge a report of suicide rather than murder, at most the prosecutor can ask for a reinvestigation. As the ALRC has already observed, this is a grave defect in how criminal investigations are conducted in Thailand. The power enjoyed by the Thai police in pursuing or neglecting cases is an enormous barrier to the exercise of basic criminal justice. In fact, this power completely subverts the whole judicial process.

Greater burden on authorities when police accused

51. Particularly where police themselves are suspected of being killers, it is essential that inquiries be conducted impartially and thoroughly. Hence the need for a properly functioning Department of Special Investigation, and an independent agency to pursue specific complaints against the police. The very fact that the brother of Mr Sunthorn complained that the police were responsible for his death should create a greater burden on higher authorities to ensure transparency in investigations, let alone in view of the forensic experts weighing heavily against the police version of a story. At present, there are no institutional arrangements in Thailand to ensure that this is the case, and hence it is impossible for the State party to assert that it has the means with which to comply with its obligations under article 6.

Article 7: Freedom from torture

Torture routine

52. Torture continues to be practiced routinely by the police in Thailand. The ALRC has already noted that the reasons for this are in part that no law exists to proscribe torture and prescribe penalties; no procedures exist to investigate acts of torture, or for quick judicial or medical intervention where sufficient cause exists to suspect that a person has been tortured.

Electrocution of genitals

53. In its report to the Committee, the ALRC noted that particularly gruesome types of torture, including electrocution of genitals, are used by Thai police officers in ordinary criminal cases. In May, it heard of another case of electrocution of a detainee's genitals, a summary of which follows.

i. Mr Urai Srineh, a 44-year-old security guard, was allegedly illegally detained and brutally tortured by officers of the Chonburi Provincial Police Station in May 2005. Mr Urai was at home with

Case of Urai Srineh

his family around 6pm on May 24 when five men in plain clothes came into his house, identified themselves as police officers and told Mr Urai to go with them. They did not offer a warrant or give a reason for their actions. When Mr Urai protested, they are alleged to have said that, "The police don't do anything carelessly." Within three minutes Mr Urai was removed from his house before the eyes of his wife and children. He was placed in a car and blindfolded and handcuffed, after which he was driven for about two hours.

ii. Mr Urai was then taken into a room, still blindfolded, and told to confess to the killing of six Cambodian migrant workers and injuring of four others at the Para Eastern Industry Company Ltd in Klaeng District, Rayong Province on May 7. When Mr Urai strongly maintained his innocence, the police electrocuted his testicles and groin repeatedly over a period estimated to be around four hours. When he was electrocuted, Mr Urai's body contracted and there were spasms of pain. He was also beaten on his body with a stick. However, Mr Urai constantly insisted on his innocence and the police brought another accused, Mr Prakard Boontha, to the room. When Mr Prakard saw the victim, he told the police that Mr Urai was not involved in the murder. The police then took the victim out of the premises after a one-hour interrogation. It was around 2am on May 25. When he was taken out, Mr Urai saw that he was leaving the Chonburi Provincial Police Station. At about 5am he was dropped nearby his house.

iii. After reaching his house, Mr Urai was taken to the Klaeng District Hospital and then transferred to the Rayong Provincial Hospital due to the severity of his injuries. He was found to be suffering burn marks on his groin, swollen testicles, an injury on his left toe and bruised wrists due to the use of handcuffs. He was unable to urinate. He was experiencing numbness in his lower body and lung and kidney problems. According to doctors who have examined him, the injuries are serious and may result in lasting damage.

iv. While Mr Urai was at the hospital, some police officers led by the investigating officer in charge of the murder case, Police Major Manop Prasart of Klaeng District Police Station, came to visit him and offered a sum of the money if he would not report them. The victim reportedly accepted the money to pay his medical bills and avoid further trouble. After that he moved to another location for reasons of personal safety.

v. According to media reports, the commander of Regional Police Bureau 2 Police Lieutenant-General Jongrak Juthanont has stated that he would ensure justice for the victim. However, it is not known what action, if any, he has taken. The fate of the other accused is also unknown.

Common features of torture in Thailand

54. The case of Mr Urai speaks to a number of features common to torture cases in Thailand, which the ALRC pointed to in its report to the Committee. These include that torture is routinely used in ordinary criminal cases, and that the type of torture

inflicted is often extreme. The injuries suffered are very serious and can have permanent effects both physically and psychologically. The pattern of very harsh torture in Thai police stations suggests a mentality among officers that extremely cruel and barbaric treatment of persons in custody is acceptable. The ALRC and AHRC have in the past month distributed a survey asking 'Why do Thai police electrocute the genitals of persons in their custody?' An artist's depiction of the genital electrocution of one torture victim in Thailand was used for a poster released by the AHRC to commemorate the annual International Day in Support of Victims of Torture 2005.

Extended periods of detention

55. Torture is easily committed in Thailand in part because of the extended periods of detention available to the police. As discussed by the ALRC in its report to the Committee, the police can hold suspects initially for 48 hours without charge. They can extend that period for seven days at a time over seven successive times with approval from the courts. Only once a confession is extracted and the police lodge charges is the person transferred to prison to await trial, or released on bail. Prolonged detention is a systemic cause of routine torture. Torture cannot be eliminated without strict limits being placed on the periods that are allowed for detention outside prisons, particularly immediately after arrest.

Case of Chuchart Somjit

56. A number of cases in the ALRC report to the Committee speak to this point, as does the case of Mr Chuchart Somjit, who was tortured and held in detention by police in Bangkok. According to recent reports, 43-year-old Mr Chuchart met with the Minister of Justice on April 4 to complain that he was arrested, tortured and illegally detained by seven officers of the Don Muang District Police Station in July 2004 on allegations of possessing illegal drugs. Mr Chuchart has said that he was handcuffed, stripped naked, suffocated with a plastic bag and beaten over many hours, particularly on his ribs and genitals, after which he lost consciousness. He was finally forced to sign a confession. Although his mother lodged a complaint with the police station, he was not released and his father was threatened over the complaint. After nine months he was found not guilty and released from prison. Staff at the Central Institute of Forensic Science reportedly examined Mr Chuchart and confirmed that he had been tortured. It is understood that the Minister of Justice had advised Mr Chuchart that he could claim compensation for physical and mental rehabilitation and lost earnings; however, it is not known as to whether or not any action has been taken to identify and prosecute the alleged perpetrators.

Perpetrators do not fear repercussions

57. It is evident that even where torture cases are taken directly to the Minister of Justice, perpetrators in Thailand have little fear of repercussions. As has been established, not only is the use of torture treated as normal among low-ranked officers, it is also tacitly or openly condoned by their superiors. The perpetrators rarely bother to conceal their crimes or hide their identities. At worst, they may face internal disciplinary

proceedings; none have been charged or prosecuted for the offence to the knowledge of the ALRC. In the case of Mr Ekkawat Srimanta (para. 8[iii]), according to information received by the AHRC in May, six officers from two police stations have been removed from duty because of his torture, namely:

i. Pol. Lt-Col. Suebsak Pinsang, formerly of Phra Nakhon Si Ayutthaya Police Station

ii. Pol. Sgt-Maj. Winai Kampang, formerly of Phra Nakhon Si Ayutthaya Police Station

iii. Pol. Snr Sgt-Maj. Wichai Kernumnuay, formerly of Uthai Police Station

iv. Pol. Snr Sgt-Maj. Panya Enon, formerly of Uthai Police Station

v. Pol. Cpl Pitak Chamcharas, formerly of Uthai Police Station

vi. Pol. Sgt Wasan Mingkwan, formerly of Uthai Police Station

No criminal prosecutions

58. However, even in a case such as this that attracted a very large amount of media attention, the police have not, to the knowledge of the ALRC, been prosecuted. Furthermore, no action has been taken against the police station superintendents and deputy superintendents.

Role of senior officers

59. That senior officers are ultimately responsible for these abuses is now being more widely acknowledged. In a lengthy newspaper article on torture by the police in Thailand published in June, one senior officer reportedly admitted that the training received by police falls by the wayside once police are posted at stations and must follow the instructions of their superiors. He also reportedly made the remarkable observation that, "We have more than 200,000 policemen and only about 10 percent of them have done something bad". That "only" about 10 per cent of police in Thailand, some 20,000 personnel, are considered to have done something bad by a relatively open-minded senior officer itself speaks to the scale of the problem and the underlying mentality that the police in Thailand are a law unto themselves.

Need to ratify UN Convention against Torture

60. The ALRC has for some time heard that the Government of Thailand will soon ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On the occasion of the situation of human rights in Thailand being taken up by the Committee, it earnestly appeals to the government to ratify this important Convention without delay. Ratification will be a progressive and opportune step for the entire society of Thailand. By ratifying the Convention, the government will be initiating a new and important stage in state–society relations, with positive effects for all areas of life in the country. It is also a step that can be taken without delay, as the 1997 Constitution of Thailand already prohibits torture in principle, so the changing of laws and other arrangements to accommodate the Convention can be done later. The ALRC believes that only

once the Convention against Torture is ratified will the State party be ready to address its obligations under article 7 of the Covenant properly.

Article 19: Freedom of expression

Case of Supinya Klangnarong

61. The ALRC has consistently raised concern over the use of outdated criminal defamation laws in Thailand as a means to attack human rights defenders and other persons speaking in the public interest. In its report to the Committee, it has referred to the case of media reform campaigner Ms Supinya Klangnarong, which is at present going to court (ALRC Report para. 96). It also acknowledges that the Committee has taken up this issue with the State party (Issue no. 20, CCPR/C/84/L/THA, 13 April 2005).

"Five bullet suicide" defamation case

62. In May another example of how Thailand's defamation laws are prone to manipulation and misuse arose in relation to the alleged extrajudicial killing of Mr Sunthorn Wongdao, which police insist was a suicide (para. 49). Five police involved in the case lodged defamation complaints against the Deputy Director of the Central Institute of Forensic Science and the Deputy Permanent Secretary of the Ministry of Justice after the two said on television that it was unlikely that the victim killed himself. A call-up poll run by the broadcaster found that some 92 per cent of respondents agreed with their view. The AHRC has expressed outrage over the defamation complaints to the Minister of Interior and has urged that the police officers be called upon to withdraw them; however, to date they are understood to be pending with the prosecutor.

Earlier defamation case against forensic scientist

63. It should be added that this is not the first instance that police have attempted to sue the Deputy Director of the CIFS for defamation because she has spoken out on alleged gross abuses of human rights. She earlier won a similar case over her conclusion that a man in Surat province had died in custody due to torture—including having a plastic bottle burnt on his genitals and being stomped with boots on the groin and chest. To the knowledge of the ALRC, although a court case proceeded against the forensic pathologist for her findings, no criminal prosecutions followed against the accused officers.

Need to repeal criminal defamation

64. These defamation complaints speak to the sheer absurdity of this law and its application in Thailand. That police are permitted to refute or ignore the opinions of forensic professionals makes the criminal law nothing more than a bad joke. That they are permitted to threaten scientists with punishment for doing their jobs makes it a monstrosity. Such laws and actions have no place in a modern justice system. The ALRC has repeatedly urged that the Government of Thailand repeal the criminal defamation law and review civil defamation regulations. In May, the Press Council of Thailand urged likewise, pointing out the numerous ways in which the criminal defamation law is used to place unreasonable obligations on the defendant. These include

the lodging of multiple complaints in different jurisdictions, the obligation of the defendant to respond to each of the summons issued, and the fact that defendants are fingerprinted and forced to produce bail or be imprisoned.

Attacks on community radio

65. Recent months have also seen an unprecedented level of attacks on community radio stations in Thailand, on spurious allegations of being—in one way or another—illegal. As already indicated by the ALRC, the reason that these stations are 'illegal' is that the Government of Thailand has failed to meet its obligations to establish an independent broadcast media regulator as required under the 1997 Constitution (ALRC Report para. 97). The government has deliberately delayed introduction of the regulator in order to buy time and manipulate the constitutional provisions to suit its own purposes. Proposed members of the regulating agencies have on two occasions mostly been persons with close links to senior political figures and mainstream media, inimical to the interests of community radio. The first group selected was thrown out after a court case brought by Ms Supinya and her colleagues. The second group was thrown out this April by a Senate panel that concluded that the selection process had again been rigged.

Case of Anchalee Paireerak

66. One primary target of the attacks has been Ms Anchalee Paireerak, a former talk-show host at a mainstream radio station who lost her job after exposing corruption, reporting critically on the mass killings in the south and interviewing opposition party figures. After no other mainstream station or production company would hire her, apparently for fear of upsetting powerful political figures, she began working at an independent Bangkok community radio station, FM 92.25. The station soon came under scrutiny and was one of at least seven shut down by the Public Relations Department in May on the disingenuous ground of violating regulations over the maximum height of transmission antennae and broadcast strengths. In June its website was one of two that were shut down by the Ministry of Information and Communication Technology on equally dubious allegations of being improperly registered. On June 24 Ms Anchalee was reported to have said that she is leaving Thailand in fear of her life after police and unidentified men had come looking for her at the station, and as she had received intimidating phone calls. In view of the pattern of killings described under article 6 above, such threats should be taken seriously.

Principle of freedom of expression to be upheld

67. 'Freedom of expression' defines the ability of a society to talk. A talking society is a democratic society: a society under the rule of law, a society where human rights are respected and protected. A silent society, by contrast, is a society ruled by the fear of causing offence to powerful people, and a society ruled by laws designed to protect personal interests rather than people's rights. In Thailand, growing attacks on people speaking in the public interest, expressing their determination to be heard, combined with newly proposed regulations to limit the rights to public protest against development projects and in certain places

such as highways, are indicative of increasingly authoritarian behaviour. For this reason the Committee must take a strong position with regards to the State party on its article 19 obligations.

Key recommendations

The Asian Legal Resource Centre summarises its key recommendations already made to the Human Rights Committee that the State party

1. Ratify immediately the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and introduce a domestic law to criminalise torture.

2. Introduce a domestic law to criminalise forced disappearance, establish the proposed missing persons-centre under the Ministry of Justice and pay particular attention to resolving the case of Mr Somchai Neelaphaijit.

3. Make available the right to petition directly to the Supreme Court on constitutional rights violations.

4. Ratify the first Optional Protocol to the Covenant to allow complaints of violations to be made directly to the Committee.

5. Create a specialised agency to receive and investigate complaints of serious rights violations against the police and strengthen the role of the Department of Special Investigation.

6. Remove the exclusive power of the police over ordinary criminal investigations, and extend the role of the Attorney General over the same; review criminal investigation procedures to reduce the incidence of gross rights abuses.

7. Strengthen and protect the work of the Central Institute of Forensic Science.

8. Enhance greatly the victim compensation and witness protection schemes.

9. Ensure that there are full and proper judicial inquiries into all cases of murder and extrajudicial killings.

10. Review the current arrangements for statutory detention with a view to reducing the periods of detention and affording better oversight to judicial officers, registered doctors, and lawyers.

11. Abolish criminal defamation and review the existing civil defamation law to bring it into line with international standards.

Why do Thai police electrocute the genitals of persons in their custody?

Asian Human Rights Commission

Please give your opinion and any comments for each of the following questions, remove the page and return to the Asian Human Rights Commission at 19th Floor, Go-Up Commercial Bldg, 998 Canton Road, Mongkok, Kowloon, Hong Kong; fax: +852 2698 6367. Answers will be used confidentially.

1. Physically, is electrocuting genitals the worst form of pain that can be used to get a confession?

2. Culturally and psychologically, is electrocuting genitals the worst form of humiliation that can be used on a person in custody?

3. Practically, is electrocuting genitals the easiest form of serious assault available to Thai police?

4. Do persons in police custody deserve to have their genitals electrocuted?

5. Do Thai police enjoy electrocuting genitals?

6. Are persons who have had their genitals electrocuted likely to be too intimidated or embarrassed to complain?

7. Do Thai police believe that they can do anything they like to a person in their custody?

8. Do Thai police believe that the judicial system is too weak or too slow to punish them for anything they do?

หยุด!

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Interrogating injustice; Make way for the rule of law

Supara Janchitfah, Correspondent, *Bangkok Post*

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Interrogating injustice

International covenants stipulate that police suspects shall not be subjected to torture or cruel, inhumane or degrading treatment, but a growing mound of evidence suggests that some Thai authorities are ignoring this dictate

Anyone who has ever watched a Hollywood detective movie is familiar with the refrain which is always recited when the "bad guys" are finally captured: "You have the right to remain silent.

"Anything you say can and will be used against you in a court of law.

"You have the right to talk to a lawyer and have him present with you during questioning.

"If you cannot afford a lawyer, one will be appointed to represent you, if you wish."

These sentences came from the US Miranda Law, which has as its purpose to neutralise the distinct psychological disadvantages that suspects are under when dealing with police. Unfortunately, people who are arrested as suspects of any crime in Thailand never hear anything like this, and the experiences of some of them suggest that they have no rights at all.

Ekkawat Srimanta was arrested in Ayutthaya province one November evening in 2004. He left his workplace about six, and later that evening he was stopped while driving his motorcycle because he wasn't wearing a helmet. Police found he had no driver's licence and arrested him and took him to the police station. While he was about to pay the fine a police officer asked him if he had lent his motorcycle to anyone that day. He said the motorcycle had been parked behind his shop the whole day. Then police showed him a golden necklace and an amulet which they

said they had found under the seat of the motorcycle. Ekkawat said he was puzzled and had no idea how the valuables had gotten there.

At a recent conference on the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (or CAT, which Thailand has never signed) organised by the National Human Rights Commission (NHRC) and many allied organisations to mark June 26, an International Day Against Torture, Ekkawat told of how the police had tortured him to try to make him admit to taking the necklace and implicate others.

"Police then took me to another room and tried to force me to admit that I stole the necklace. They said if not I would be hurt. I told them that I didn't know anything about it. They slapped me.

"They took turns to smack and slap my head, and then as I still did not confess, they forced the air out of a plastic garbage bag and pushed it over my head. Then they began kicking me all over my body," Ekkawat said bitterly.

He continued: "There was no air in the garbage bag and they kicked me until I felt that I was dying ... and then I said I would confess. Then they took the plastic bag off and I did not confess. How could I admit to something that I did not know? They continued kicking me."

Ekkawat told the conference how the group of police continued inflicting physical injury on him, slapping both of his ears and kicking him after placing the bag over his head. Yet he still did not confess, although he told them again that he would to gain a brief respite from the painful treatment. They took him somewhere else to hear the confession, but after he said he could not implicate anyone they resumed the torture, which became even more inhumane.

"There was no air in the garbage bag and they kicked me until I felt that I was dying ... and then I said I would confess"
– Ekkawat Srimanta

Not an isolated case

Ekkawat was transferred to Uthai district police station. There, he said, officials began administering electric shocks. At this point in the story Ekkawat was sobbing and trying hard to swallow his bitterness, in such severe emotional pain that he could not continue telling the audience what he had been through. His lawyer, Somchai Sukpuedkij, had to finish in his place.

The lawyer said he could not imagine that such practises were still in existence in the present day. It was Somchai who finally put an end to Ekkawat's ordeal and got him released from police custody.

The lawyer said that he regrettably had been busy on the first day he learned about Ekkawat's incarceration, so he came the following day. If he had waited another day, said Somchai, Ekkawat might have been dead and his case counted as a suicide.

> "They covered my 'things' with a bag of ice and electrocuted me through it"
> *– Anek Yingnuek*

Somchai said that in his 20-year experience as a lawyer he had come across many suspects who had allegedly hanged themselves in jail, with police saying that stress was the motive for them taking their lives.

For example, two years ago a man died in police custody in Surat Thani. The NHRC conducted an enquiry and concluded he had effectively been beaten to death.

"He (Ekkawat) had more than 1,000 wounds all over his body," said the lawyer. "I advised his employer to send him to a state hospital. Oh! That hospital was so kind. The doctor gave him a pack of paracetamol and let him go home."

Somchai later took Ekkawat to a private hospital. A physical checkup revealed severe burns all over his testicles, penis, groin, and toes. He also had severe injuries on his back, thighs, cheeks, throat and eyes.

While he was in the private hospital the media received word of the inhumane treatment and Ekkawat's case was put on the front page of many newspapers across the country.

"Ekkawat has returned from the thresholds of death. I admire his determination not to confess to something he didn't do," said Somchai.

Internal disciplinary action was taken against the accused officers involved in Ekkawat's case, but there have been no reports of criminal proceedings.

In the very same province, Anek Yingnuek was allegedly tortured by a group of police on September 9, 2004 at Phra Nakhon Si Ayutthaya district police station.

Anek was arrested on a charge of robbery. To have him admit to the accusations and implicate others in the crime, the police allegedly beat him with pipes and nearly suffocated him with a plastic bag while kicking him, much the same techniques that were used on Ekkawat.

"Then they covered my 'things' (penis and testicles) with a bag of ice and electrocuted me through it," he said.

Anek is still being detained at the police station. The policemen who allegedly tortured him and Ekkawat still come to the station and are frequently seen in a public park in Ayutthaya.

Unfortunately, there are many more well-documented cases in which police officers have acted in flagrant violation of Articles 9 and 10 of the ICCPR which have been brought to the attention of the NHRC.

Easing the workload

For some police, torture seems to have become a technique to make their job easier, to allow them to bypass the hard work of investigating and putting evidence together to make a good case. What's worse, apparently the practice has been tacitly approved from some in high levels of the Thai police establishment.

A senior Thai police officer actually made statements in a prime-time television interview in 2004 to the effect that torture is acceptable. The officer, who was attached to the Police Immigration Bureau, said in the interview that, as police all around the world commit torture, it is reasonable that police in Thailand do so as well. He added that torture was necessary to extract confessions, and that "bad people need bad treatment".

With this kind of mentality among senior officers, it is no wonder that it might be viewed as an acceptable practise by rank-and-file law enforcement officers.

Prior to the disappearance of Somchai Neelapaijit, the noted civil rights lawyer, he publicly claimed that several of his clients had been tortured by police.

Makata Harong, Sukri Maming, Manase Mama, Sudirueman Malae, and Abdullah Abukaree were arrested on charges related to the looting of weapons from the Fourth Army battalion in Narathiwat province. On March 4, last year, Somchai sought a court order asking that the four be taken for physical examinations to determine if they had been tortured.

In his plea for the examination, Somchai stated: "The 4th suspect was blindfolded by police officers and physically assaulted, strangled and choked, hands tied behind his back and beaten with pieces of wood on the back and head. He suffered 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 his torso and right shoulder."

After Somchai went missing, several medical doctors, among them Senator Nirun Pitakwatchara and NHR Commissioner Prof Pradit Charoenthaithawee, went to the jail and examined two of the suspects and found out that they had sustained injuries as Somchai claimed.

A problem with the fundamentals

It is a well-established principle among all reputable law enforcement organisations in free societies throughout the world that confessions must be voluntary, an exercise of free will on the part of a suspect, regardless of the nature of the alleged crime. Why do some Thai law enforcers choose not to uphold this principle?

"We face a fundamental problem. It is the stereotype that a person who is arrested or who has become a suspect is a bad person and deserves bad treatment. It's always been that way," said Law Society of Thailand President Dejudom Krairit.

"In many cases, police want to finish their reports as soon as possible so they use torture as a means to force their suspects to make a confession," added Dejudom.

"It is the stereotype that a person who is arrested or who has become a suspect is a bad person and deserves bad treatment"

– Dejudom Krairit

"We have more than 200,000 policemen and only about 10 percent of them have done something bad"

– Pol Col Nepparit Plipimine

"One of my friends who is a high-ranking police officer recently told me that he just bought an electronic baton. He said that he must use it to make people confess or admit what they have done wrong... Think about what went wrong in our society," said Dejudom.

Some of those involved in providing education for the police admit that there are some shortcomings in the police training system.

Pol Col Nepparit Plipimine of the Samparn Police Academy said that the training at the school is partly to blame for producing some wayward police officers.

"We have more than 200,000 policemen and only about 10 percent of them have done something bad," Pol Col Nepparit estimated.

"But I have to say that we have been placing too much emphasis on drilling them. The pressure makes some of them become 'robot cops'," he added.

"When they are students at the academy, they are just like a piece of white cloth. But when they enter into their workplace their environment changes. That is the 'real university' for them. Then they have to respect and follow their seniors," he said.

He explained that police officers essentially spend their lives in their own company, beginning with four to seven years in the police academy and in the preparation school.

It is almost inevitable that they respect the seniority system and adopt the ways of the senior officers.

"I think we have to change the curriculum at the police academy, but I am too small to make the changes myself," said Pol Col Nepparit.

Pol Lt Col Natree Chainupong, who also came from the Police Academy, said that most police are basically good and try to be fair.

"We need to support those who try do good things, don't discourage them. They are ordinary people who wear the police uniform, but it is society that teaches them.

"Many want to do good things, but the reality is that they are surrounded by the patronage system and the seniority system. How can they resist those things?" he asked.

Charnchao Chaiyanukij, director-general of the Rights and Liberties Protection Department, wondered how many police officers really respect the rule of law.

"I think many officers tend to think that the people whom they torture deserve it," he said. "They believe the suspect is a gangster, or they may think the suspect is not Thai because he speaks Malay, and therefore doesn't have any rights. They immediately assume that the suspect is guilty and they must make him admit it.

"Our Thai culture supports the abuse of power by some authorities. We must change this kind of attitude and make people and officials respect the rule of law," he said, adding that now is the time for Thai society to encourage all people to appreciate the value of human rights.

"Thai culture supports the abuse of power by some authorities"
– Charnchao Chaiyanukij

This is the second part of a series on alleged violations in Thailand of the ICCPR, which will be the topic of discussion in Geneva in a meeting between representatives of the United Nations High Commissioner for Human Rights and representatives from the Thai government and civic groups.

Make way for the rule of law

Until measures are put into place to end the attitudes which allow police abuse and impunity, Thai society will continue to suffer the consequences

"Have you ever seen the retaliation in a Chinese movie?" asked a taxi driver in Patttani, responding to my question about what went wrong in the southernmost provinces. His meaning was that at the root of the problem is the abuse of power by the authorities.

"If officials can kill, torture, abduct and detain many Muslim people without just cause and still walk freely, 'they' can do the same thing," said the driver, referring to the southern trouble-makers.

The native of Pattani then quickly excluded himself from the group that is engaged in the bombings and killings which are bringing about the chaos in the South.

Unfortunately, power abuse does not only exist in the South, but also elsewhere in the country. A perception of police impunity and brutality has worsened the atmosphere in the country, as well as its reputation.

About 2,598 suspected drug dealers and users were killed during the first phase of the government's war on drugs during February-April 2003. Out of the 2,598 killings, the police only investigated 752.

Of those, arrest warrants have been issued in just 117 cases, with police saying they are still interrogating suspects in 90 others. The remaining 1,639 cases have been dropped due to a lack of witnesses and evidence.

In addition, 19 social and environmental activists have been murdered or disappeared without a trace under suspicious circumstances since 2001, when Prime Minister Thaksin assumed office, and the government has done little to pursue their cases.

Although many relatives of those arbitrarily killed or arrested in the war on drugs, the southern unrest or elsewhere choose to suffer in silence, and some may choose to follow the rule of law

and take the routes to justice provided by the 1997 Constitution, there are others who feel that they must take it upon themselves to do something. Revenge, in other words.

"The culture of impunity and torture permeates Thai society" – *Wasant Panich*

"My son told his friends that we have to kill police and soldiers because they killed his father," said the wife of a man who died in the violent incident on April 28 last year in the South.

"We haven't gotten any compensation, but they (policemen or soliders) get promoted," she added.

Said National Human Rights Commissioner Wasant Panich: "The culture of impunity and torture permeates Thai society. These practices are undermining the country's processes to achieve justice."

He said that in principle and in word the 1997 Constitution prohibits inhumane treatment or any act that undermines human dignity. Moreover Thailand has also signed the International Covenant on Civil and Political Rights (ICCPR), which has provisions concerning torture (see box). However, Thailand has never signed the more comprehensive Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the country has no specific laws that make torture a crime and prescribe punishment for such acts, said Wasant.

For example, he said there is no specific law which prohibits taking suspects before the press to re-enact their alleged crimes, despite the fact that they have not yet received a court trial. This is an insult to their human dignity, said Wasant.

Moreover, there is no organisation to monitor the implementation of the Constitution and the ICCPR with regard to torture and inhumane punishments and no special organisation to receive and investigate complaints of right violations against the police. Wasant said this needs to be rectified.

He added that it was inappropriate that Ekkawat's case was referred to the National Counter Corruption Commission (NCCC), as the NCCC is charged with deciding matters of financial corruption, not malfeasance or malpractice of duty.

"This will only prolong the case, as the NCCC already has too many cases to handle," said Wasant.

Wasant urged Thailand to sign the CAT. "Then we will have a chance to formulate laws that respond to the international convention and the Constitution, which will also enable us to set up an independent organisation to enforce the laws," he added.

How to stop the abuse

There is no doubt that at a certain level laws would be useful, but the problems of police impunity and abusive behaviour are very deep-rooted in Thai society. What can be done when those who are supposed to protect human rights become human rights violators themselves?

Lawyer Dejudom Krairit suggests that Thailand should start educating people about human rights when they are still young.

"We need to amend the attitudes and stereotypes of Thais. They must be aware of their rights and other people's rights," he said, adding that there are also weaknesses in police and military academies, as those institutions have never taught human rights either.

Narong Jaiharn, a law lecturer at Thammasat University, also expressed his concerns on the subject of human rights.

"Some universities have provided classes on human rights, but it is only an elective subject," he said.

He said that many things have gone wrong in the Thai justice system and there is a need to educate and provide training for law enforcers and the public in general.

"There is an urgent need to train law enforcers to understand human rights, as well as to look at the people whom they arrest as human beings," said Narong.

He also said that the CAT gives a wider interpretation on what should be considered as torture and cruel or inhumane treatment, which includes reducing a suspect's dignity.

"In many cases, police may force the suspects to confess that they have committed a crime before the court trial, and then take them to a press conference. What can we consider about this situation? Doesn't it reduce their human dignity in the process of interrogation?"

He added that if a person dies while in official custody, there must be a system in place to assure that there is an autopsy, and also that the court should appoint a lawyer for the dead person's relatives.

"With these kinds of processes and measures, it might prevent some authorities from abusing their power," said Narong.

He echoed Wasant's words on the need to have a third party or independent organisation which is knowledgeable on the subject of torture to proceed in cases of alleged torture, to ensure that wrongdoers are brought to justice. Physicians should determine the situation, he said. At present, in any incident of alleged torture, people must file their own complaint against the officials they are accusing.

"However, the problem is how to ensure that suspects and relatives get protection if they file a complaint against police. Will the police investigate the case or just resort to more torture?

"The fact is that officials hold the power and some stay above the law. The justice system might end up benefitting only some groups of people," said Narong.

"The problem is how to ensure that suspects and relatives get protection if they file a complaint against police"
– Narong Jaiharn

> "Imagine how much bitterness you would have if you were detained and interrogated again and again when you had not done anything wrong"
> *– Anonymous lawyer*

Charnchao Chaiyanukij said that the Central Institute of Forensic Science, Ministry of Justice, should have more of a role in collecting information and evidence at the interrogation level in any crime case.

Some have also suggested the empowerment of the NHRC, which is regarded by many as "toothless".

"The Thai NHRC can only investigate the case and send their recommendations to the relevant state agencies," Narong pointed out. The NHRC in India has more power - its own interrogation team, and even the power to enforce the law, said Narong.

"In the US, whenever the police are suspected of abusing their power the case is placed under the jurisdiction of the state governor, and a civilian committee investigates the case. We (Thailand) have criminal laws to protect people from police abuse, but they have to be enforced," he said.

Narong also expressed his concern about the number of the days that suspects can be detained at the police station for interrogation.

"The longer they stay with the police, the greater the risk of being abused," he said.

At present, the criminal law allows a suspect to be detained for 48 hours. However, in the southernmost provinces, where martial law is enforced, suspects can be detained and interrogated for seven days without charge. This contributes to the public outcry to lift the martial law in the area.

A Muslim lawyer who asked not to be named gave an example: "A suspect was held for questioning at a military camp in Pattani for seven days. His interrogators got nothing they considered useful to press charges against him and he was released.

"But when he stepped out the front door of the military camp, he was again arrested by the police and interrogated for another seven days."

Certainly this kind of treatment has some consequences, said the lawyer.

"Imagine how much bitterness you would have if you were detained and interrogated again and again when you had not done anything wrong. In most cases, no lawyer is provided... Many might end up charged with a criminal act or treason.

"If these practices are allowed to run rampant, it will only bring about deep pain in people's hearts. You have to imagine for yourself what the consequences might be," he warned.

Tales of two Sri Lankan massacres: The relevance of Embilipitiya to Bindunuwewa

Basil Fernando, Executive Director, Asian Human Rights Commission & Asian Legal Resource Centre

Hardly any one looks into the massacres, killings and other violence in Sri Lanka during recent decades from the point of view of justice and its absence. Each such event is reduced to mere confirmation of a racial or ideological perspective of one kind or another: Tamil killed by Sinhala, Sinhala killed by Tamil, communist JVP (Janata Vimukti Peramuna) killed by military, politician killed by JVP, and so on. The actual events are buried under self-serving ideological positions. From these, there is no possibility to gain insight into what actually happened, nor provide some redress for past victims and prevent similar incidents in the future.

What happened at Embilipitiya, and why

This situation may explain in part why there is nowadays hardly any reference to the Embilipitiya schoolchildren's massacre. At Embilipitiya, 48 schoolchildren were abducted and murdered between 2 August 1989 and 10 January 1990. The murderers were Sinhala, the victims also Sinhala. The murderers were members of the Sri Lankan army, or their associates. The victims were not insurgents nor suspected insurgents. So the massacre does not fit with those same conventional categories. It upsets all of the polarised ideological positions that characterise discussion about the bloodshed in Sri Lanka. Therefore Embilipitiya is avoided.

There were two reasons for the deaths of the schoolchildren at Embilipitiya. The first was that some of the boys had teased the school principal's son over a love interest. The second was that a few students had protested that some of the school's land had been transferred to a businessman friendly with a local politician. These two facts are now well established. The military was used to obtain revenge by the school principal and interested parties in the land through personal contacts with officers.

"To hide one child would have put the father's other two children, and even his entire family, at risk"

In a video interview made by the Asian Human Rights Commission during June 2005, Mr Shelton Handuwela, a father of one of the victims and a founding member of the Association of Disappeared School Children at Embilipitiya, recounted some of the events of the time. He recalls that he received a message from an army officer to bring his son to a particular place at a designated time, which he did. The officer met him there and asked him to bring his child to the nearby Thimbalkuliya army camp, close to Udawalava, and meet the colonel who was in charge. This also he did; the colonel spoke politely and calmly and asked him to leave the child with him for one week, and to bring a toothbrush, towel and other necessities. Not knowing what else to do, the father followed the instructions. Before the end of the week he received a call to collect the boy. The colonel told him that the boy had swallowed some keys and glass and that he needed medical treatment. He told the father to take his child to a doctor and then bring him back in one week. After collecting his boy, the father heard from him that he was forced to swallow the keys and shards of glass. After one week, the boy was not yet healed. The father brought him back to the colonel but asked for more time. He was given another week. Coming back with the child the following week, the camp authorities hurriedly turned the two of them away, telling them to come the next week. The father began to take his son home by motorbike. A yellow Lancer car followed them from the entrance of the camp: some men alighted and hit the father, then took the boy away. He was never seen again. Another 47 children from the same school disappeared under similar circumstances. How they were killed and what happened to their bodies has not been revealed. At the time, their disappearances and deaths were not unusual: at least 15 per cent of disappeared persons in the south of Sri Lanka alone were under 19 years old.

Anyone hearing this story asks some very obvious questions. Why did the father take his child to the army camp in the first place? Why did he leave him there for a week? Why did he take him for a second and third time, even though he knew his son had been severely tortured during his first stay? The father was not an ordinary villager. He was the Deputy Director of Education in the country. He had many years of professional experience and specialised in English, so he was able to communicate in the language used by the social elite and upper bureaucracy. When asked these questions, the only reply he could give was that, "We had faith that they would not do something like this."

In retrospect, other questions arise. Could the father have done anything else? Could he have hidden the child somewhere, for instance? Under the circumstances of 1989, he could not have taken such a risk. To hide one child would have put the father's other two children, and even his entire family, at risk. Could the whole family have fled to some other part of the country? Perhaps, but no part of the country was safe: terror had spread everywhere; others would have asked questions, and may also have been put in danger. Could they have sought help from the courts? In those

days, the courts had hardly any influence over what was happening: at least 30,000 persons were killed in the south alone, with the courts powerless to intervene. There were no controls over the military. Army officers were free to do as they wished. Even the teasing of a classmate over a love affair was within the scope of military affairs. An arrest could take the form of 'an invitation' for a father to hand over his son, as in this case. Detention could continue indefinitely. Extremely cruel torture could be inflicted and the family given responsibility for medical treatment and then told to return the victim. Having decided to kill, kidnapping could be organised from an army camp.

If the rule of law had existed in the country to a minimum degree, how would this scenario have been different? The father would have asked why his son had to be taken. He would have demanded to know the legal grounds. Without reasonable explanation, he would have refused to comply with the army's instructions. If necessary, he would have sought the help of a lawyer, and gone to court. He would have informed the media, politicians and civil society organisations. Had his son still been taken and tortured, he would have reacted with ferocity having found out that he was forced to swallow keys and glass. He would have united with the families of the other 47 children early on and fought, probably successfully, to save their lives. None of those possibilities existed for the Embilipitiya parents.

"The common feature of the two massacres, lost among all the racial and ideological positions taken on the killings, was the absence of the rule of law"

Failure to protect the Bindunuwewa victims

Nor did they exist for the parents of the youths killed at Bindunuwewa. At the Bindunuwewa rehabilitation camp, 25 young men were hacked to death by a local mob on 25 October 2000. The murderers were Sinhala, the victims Tamil. The police officers and others responsible for the camp, also Sinhala, did nothing to stop the attack. No doubt the motivation for the killings at Bindunuwewa was racial. But does that factor alone explain what happened? Why weren't the victims protected? Why weren't the police and armed forces mobilised to foil the attack? The common feature of the two massacres, lost among all the racial and ideological positions taken on the killings, was the absence of the rule of law. Had a minimum degree of protection been available in either case, the massacre would never have occurred. The basic preconditions that allowed for each massacre were the same. Instead, the army was given freedom to act or not to act as it chose, and the victims were everywhere and from every background. Looking at what happened to the 48 innocent children at Embilipitiya, one can see a small reflection of the far greater horrors that were unleashed in the north of the country at that time. But although the scale may have been different, the quality of the military actions was the same, and permitted in each case by the lack of any external and internal restraints.

Discipline is enforced with an army through internal policing and investigation. Under normal circumstances, where army personnel are believed to have committed crimes, they will be brought before a military tribunal, even when a related case may

"If the Sri Lankan armed forces cannot be brought within the confines of a functioning justice system, can there be any resolution of the country's conflict?"

be going on in a civilian court. However, during and after the disappearances and killings in Sri Lanka, these elementary practices were discarded. There has never been a military inquiry into what happened at Embilipitiya. Presumably, the story is the same for most other atrocities of the period. Had there been inquiries, there would be records of how victims were arrested and detained, and what finally happened to them. There would be records of who gave the orders. However, none exist. In all probability, there were never any records kept of the 48 children at Embilipitiya, as the officers did not feel obliged to keep them. They felt free to do anything they liked, not only at Thimbalkuliya but anywhere in the country, including Bindunuwewa.

What are the implications of this for the prospects of peace in Sri Lanka? Over the last 20 years or so a huge amount of literature has been turned out on how to solve the conflict there. Most of it deals with the conflict and parties in the north. It is common to read and hear about how peace can be arranged between the 'Sinhala army' and 'Tamil rebels'. As discussed, although race may aggravate the violence, it does not help us to understand it or bring us closer to a solution. The real need is for legal restraints on the armed forces, both from inside and outside. Without highly visible and far-reaching changes to the management and control of the Sri Lankan army, how will peace become possible? How will the parents of dead children in Embilipitiya be able to trust the army, let alone the parents of the dead from Bindunuwewa, or countless other killings in the north? If the army was let loose to roam freely in the south today, would the people there be any happier about it than the people in the north? Would they trust that there would not be more massacres? What reason would they have for such trust? What mechanisms exist to ensure that the army can be restrained?

These are all questions about institutions. Conflict cannot be stopped through goodwill and hope. It requires institutions to control the warring parties. If the Sri Lankan armed forces cannot be brought within the confines of a functioning justice system, can there be any resolution of the country's conflict? To the average Sri Lankan, the answer is obvious. However, the many scholars and theoreticians who dominate the discussion on the conflict, particularly those from abroad, have difficulty with obvious answers. One reason for this may be that they have built-in assumptions about functioning institutions, acquired through a different lifestyle, which cause them to miss this fundamental point. Another may be that it is easier to reduce everything to religious, ethnic or political conflict than go into the minutiae of administration and justice.

Politics versus justice

Talk about justice is different from talk about politics. Of course, the two are related. But they are distinct. It is true that at one point Embilipitiya became a political rallying point and gave momentum to demands for change in the south, whereas Bindunuwewa never obtained such attention: it was almost

universally condemned, but not followed by any real action. That young Tamils could be slaughtered without political implications speaks to fundamental problems in Sri Lanka's political process. But more importantly, in neither case were there any judicial implications: there was no judicial input to affect the political discourse, because there must first exist something that can be called a discourse on justice. Such discourse is at present completely absent from Sri Lanka. It follows that it is also absent from any discussions about Embilipitiya and Bindunuwewa. In its absence, no tools exist with which to penetrate the rhetoric and propaganda of political and theoretical talk.

"When talk is reduced to 'some justice', it is still political discourse"

Many will challenge this position. It can be argued that, at least on the surface, there is talk about justice in Sri Lanka, and talk about justice for the victims of massacres. At least, there is some talk about some justice. Embilipitiya and Bindunuwewa are contrasted because in the former case eventually some persons were found guilty of kidnapping, whereas the persons accused in the latter were acquitted. So it is said that the parents of the Embilipitiya schoolchildren obtained 'at least some justice'. These parents still do not know what happened to their children: where and how were they (presumably) killed? By whom? What happened to the remains? What does 'at least some justice' mean under these circumstances? It is simply a reference to a measure of punishment, without any reference to a basic level of credible justice, just as the limited talk about justice lacks credibility.

In fact, when talk is reduced to 'some justice', it is still political discourse. What is meant is: what kind of justice can be obtained through political pressure that would not otherwise be obtained in the absence of this pressure? Another contemporary example to illustrate this type of thinking in Sri Lanka is the lobby over the government's failure to reduce crime. The effect has been to allow for the extrajudicial killing of some persons described as dangerous criminals. The political lobby is then sated. Opponents to the killings are abused, or accused of being in league with the criminals. There is greater encouragement of vigilante-style justice. This is a version of justice that comes from political pressure. It is symbolic justice, rather than legitimate justice, and it places the justice system as a whole in grave danger. Courts may now put people in prison without much regard to the norms of justice so as to avoid serious political embarrassment. Under these circumstances all that people can demand is 'some justice': a symbolic act to make them feel there has been a societal response to their suffering.

Symbolic justice is no justice

Symbolic justice is the symptom of a sick society. Legitimate justice operates through institutions that function irrespective of political pressure. Independence of the judiciary is the characteristic of a sane society. Endless demands for symbolic justice for this group or that, this incident or that, will not bring sanity. The overall circumstances in the society will remain unchanged. In fact, the situation gets worse every day.

"The missing discourse on justice must be brought up consciously and actively"

This is the present situation of Sri Lanka. Thus, the missing discourse on justice must be brought up consciously and actively. Above all, it must be brought into the talk of peace and conflict resolution. Until this is done, fundamental problems with the state and its institutions will be missed, and there will be no hope of finding a lasting solution. Recommendations and actions based upon dialogue that neglects these problems and pretends that the state and its agencies are functioning to the minimum degree necessary will not serve anybody's interests in the long run. The example of post-war Germany is telling. After defeat in 1945, serious discussions arose as to how it had not been possible to stop Hitler arising and dragging the country into conflict. It was recognised that new institutions were needed to prevent future occurrences of the same: as a result the constitutional court was established and given extensive powers. The prevention of future disasters was not left to the politicians alone. A similar approach is needed to ensure peace in Sri Lanka today. This does not mean replicating European models. It means that peace depends upon the rebuilding of institutions needed to protect society from conflict, particularly those of the judiciary.

In conclusion, the following areas should be given high priority in studies on peace, conflict resolution, democracy and human rights in Sri Lanka:

1. Conduct of army operations since independence, particularly after 1971. Apart from factual details, including extrajudicial killings, torture and other gross abuses of human rights, research should concentrate on the internal and external military controls or the lack thereof, and record-keeping by the armed forces.

2. Existing avenues for complaints against the armed forces and police in emergency or conflict situations, and quick redress, with particular reference to constitutional provisions.

3. Controls exercised through parliament on these occasions, with particular reference to their limitations.

4. Role of the courts in safeguarding rights on these occasions. Do they face limitations when emergencies are declared or are there more inherent defects that make them unable to play a decisive role when needed most? Have political allegiances or ethnic bias affected their work in protecting the rights of citizens?

5. Implications of over 30 years of conflict on the legal fabric of Sri Lanka, especially its administration in the hands of the police, attorney general and judiciary. Emphasis is needed on the constitutional provisions to strengthen the higher judiciary so that it can intervene to prevent further catastrophes.

6. Reactions or lack thereof from the Sri Lankan middle class to gross human rights abuse by the armed forces and the police. Has the middle class acted to discourage, condone or even encourage abuses?

7. Role of the media with regards to all of the above.

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.

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