



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/NGO/65
28 February 2006

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11(d) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2006]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

GE.06-11160

RULE OF LAW OR RULE OF LORDS IN THAILAND?

1. In a series of written statements to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) raised concerns over impunity in Thailand and its effects on the country in terms of growth of torture, disappearances and extrajudicial killings there (E/CN.4/2005/NGO/34, 44, 62, 112). The ALRC also in March 2005 submitted a 98-page report to the Human Rights Committee speaking to the same concerns, in advance of the Committee's assessment of Thailand's compliance with the International Covenant on Civil and Political Rights (ICCPR). In a subsequent public report, the ALRC characterised the challenge for Thailand as "the rule of law versus the rule of lords".

2. In its concluding observations of July 2005 (CCPR/CO/84/THA), the Committee pointed to some key areas for the Government of Thailand to address in order for the national human rights situation to be improved. These included the prevailing culture of impunity enjoyed by the country's security forces and its consequences in terms of growing torture and custodial abuses, deplorable prison conditions, and increased attacks on human rights defenders and the media, among others.

3. In paragraph 10 the Committee wrote that

"The Committee is concerned at the persistent allegations of serious human rights violations, including widespread instances of extra-judicial killings and ill-treatment by the police and members of armed forces, illustrated by incidents such as the Tak Bai incident in October 2004, the Krue Se Mosque incident on 28 April 2004 and the extraordinarily large number of killings during the 'War on Drugs' which began in February 2003. Human rights defenders, community leaders, demonstrators and other members of civil society continue to be targets of such actions, and any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a 'culture of impunity'. The Committee further notes with concern that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3 of the Covenant (arts. 2, 6, 7). The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress. Furthermore, it should continue its efforts to train police agents, members of the military and prison officers to scrupulously respect applicable international standards. The State party should actively pursue the idea of instituting an independent civilian body to investigate complaints filed against law enforcement officials."

4. The wanton killings of thousands of alleged drug dealers in 2003 still reverberate through Thailand. In March of that year, arranged killings were a daily event at many police stations: sufficiently well-organised that the victims were shot in the same place, at the same time and with the same little blue bag of 70 to 200 pills neatly inserted into the back pocket. Although that time was a nadir in the protection of human rights in Thailand, extrajudicial killings were a fact of life in the country before then, and have been a fact of life there since. The police still have very little fear of any consequences. Even in the most outrageous cases, they are safe to insist upon 'suicide': junior personnel are backed by powerful senior officers. Expressions of patronage are more powerful than those of justice.

5. Sunthorn Wongdao, for instance, died of five bullet wounds after being surrounded by the police in May, who then said that he committed suicide. After the then deputy-director of the new semi-independent Central Institute of Forensic Science investigated the case, she said on television that it was impossible that Sunthorn could have killed himself. The police sued her. She has been called to be charged in accordance with Thailand's outdated criminal defamation code: the ALRC has also submitted statements to the Commission on forensic science and criminal defamation in Thailand that discuss this case further. Meanwhile, a police report insisting on suicide was submitted to the public prosecutor, who is limited in power to accept or reject the police findings. In the case of the latter, the prosecutor can do no more than to close the file or request further police inquiries. However, unless the Department of Special Investigation gets involved in the case, it will at most just continue to bounce back and forth between the prosecutor and the police, who most cases control all stages of investigation, arrest, and the laying of charges. At last report, Sunthorn's death was still on the desk of the prosecutor. For the forensic scientist who was sued, it bore an ugly resemblance to an earlier case in which she also faced litigation for alleging that police in the south of Thailand had tortured a suspect to death, including by burning a plastic bottle on his penis and jumping on his chest: the police autopsy had said the victim had died from asphyxia, a commonly recorded cause of death in Thailand. Although she won the case, the police were never investigated or prosecuted over the death.

6. The Department of Special Investigation under the Ministry of Justice, established under the 1997 Constitution, is the only investigating and prosecuting agency in Thailand not under direct police control. Although staffed by police, it is answerable to the Minister of Justice. As such, it exists as a de facto agency to investigate serious criminal acts by police officers, given that there is no specific unit established for this purpose. However, even in high-profile cases it has shown little evidence of success. In perhaps the best-known case of recent times that it has handled—the 12 March 2004 abduction and disappearance of human rights lawyer Somchai Neelaphaijit, allegedly by police officers—it has so far come up with nothing. This is despite the Bangkok Criminal Court on 12 January 2006 convicting one of the police officers accused of having abducted Somchai, and the judge having stated explicitly that he was abducted. The prime minister also has made plain that there is enough evidence to press charges of murder against certain persons believed connected with the case, and yet the department has of start of February 2006 failed to conclude its investigation, almost two years since the incident occurred. The victim's wife has repeatedly expressed deep disillusionment with the department, and has gone so far as to say that she no longer expects justice, but would just like to know what really happened to her husband's body. It seems at present that even this may be too much to ask.

7. No better recent example exists of the impunity enjoyed by the security forces than the killings pointed to by the Human Rights Committee that occurred in the south of Thailand during April and October 2004 (see E/CN.4/2005/NGO/44). The deaths of over 200 young men—at least 78 while in custody—have never been investigated by any agency with the proper judicial authority. The ad-hoc inquiries established in both cases did what was expected of them, defusing political pressure for answers and exonerating those responsible. The generals fingered as primarily responsible in each case have continued their career paths, safe in the assurance of the army commander-in-chief that they will

not—and cannot—be disciplined. The widows and mothers of the dead victims have been left to pursue civil claims for compensation, which are likely to drag on for many years. Meanwhile, it was reported that the provincial governor had offered cash payments to families who would drop legal suits against the authorities: another common feature of responses to gross abuses of human rights in Thailand.

8. Since that time, the situation in the south of Thailand has worsened dramatically. The killings, disappearances, torture and other gross abuses of human rights that are the daily fare of the people living there come as a direct consequence of the manner with which the situation has been mishandled by the government. The sheer lawlessness with which the security forces are operating in the south makes it extremely difficult for independent groups and monitors, even those with some endorsement of the state, to conduct inquiries. That lawlessness is itself a part of law, as the emergency decree introduced by the prime minister in response to the situation during July guarantees impunity to state agents operating in accordance with orders issued under the decree. However, whereas the conflict there is understood as a regional crisis, it should be better understood as a problem with enormous ramifications for the entire country. For so long as the police, military and related agencies are able to operate without scrutiny in the south the same practices will remain rooted in the whole of Thailand. The fact that under the emergency regulations security forces in the south are permitted to detain suspects for up to 30 days without judicial scrutiny is itself a manifestation of the systemic practices allowing for extended detention of detainees with minimal oversight throughout the entire country. Similarly, the practice of forced disappearance, while believed to be more widespread in the south compared to elsewhere, is an issue of concern that needs to be addressed with reference to Thailand as a whole and not merely one part of it. In this respect, the Asian Legal Resource Centre has repeatedly observed that the proposed missing-persons centre to be established under the Central Institute of Forensic Science must be a comprehensive agency with a national mandate coupled to a new law to criminalize enforced disappearances in accordance with international standards. Unfortunately, since it came up for discussion early in 2005, the missing-persons centre has itself gone missing, a victim of bureaucratic infighting and administrative politicking.

9. The Asian Legal Resource Centre has also consistently pointed to the lack of effective remedies for victims of grave human rights violations in Thailand as envisaged by article 2 of the ICCPR, and the need for an independent channel to receive complaints, investigate and prosecute law-enforcement officials for serious abuses. However, such an institution will only become a reality when accompanied by other key elements. Among those, of primary importance is the establishment of a nationwide comprehensive witness protection scheme. While the Witness Protection Office recently set up under the Justice Ministry is an important and laudable first step, it is at present extremely limited in its functions and abilities. This office, among others, deserves very much to be strengthened if the government of Thailand is serious about its commitments to the ICCPR, and is to move beyond the rule of lords and towards the rule of law.

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