

KINGDOM OF THAILAND

HUMAN RIGHTS IN TRANSITION

I. INTRODUCTION

Five years after the military's suppression of the 1992 pro-democracy movement in Thailand, the human rights situation has improved, although change in some important areas is still needed. In May 1992 a series of mass demonstrations protesting the appointment of General Suchinda Khraprayun as Prime Minister culminated in a violent crackdown by security forces in Bangkok, the capital. Fifty-two people were killed and 39 others went missing during the demonstrations and are now also presumed dead.¹

The Royal Thai Government has taken several positive steps to strengthen protection for human rights in the last five years. In June 1993 during the United Nations World Conference on Human Rights the government made a commitment to accede to the International Covenant on Civil and Political Rights (ICCPR). After a delay of over three years, the government acceded to the ICCPR on 29 October 1996; three months later its provisions came into force. However the government has not acceded to other human rights treaties which Amnesty International considers to be important for the promotion and protection of human rights, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

After a bloodless February 1991 military coup² a new constitution was promulgated in December of that year amid protests from the pro-democracy movement about what they saw as excessive control by the military of the political process. In particular opposition groups objected to a clause which allowed for a non-elected politician to be appointed as Prime Minister. An amendment to the Constitution rescinding that clause was promulgated on 13 September 1992 in the aftermath of the May 1992 demonstrations. Other constitutional amendments followed, and on 23 October 1996 an amendment to Constitutional Article 211 was promulgated, which allowed for the drafting of a new constitution by a Constitutional Drafting Committee (CDA). In December 1996 the Parliament elected 99 CDA members, comprising one member from each of Thailand's 76 provinces and legal and other experts. The CDA has been meeting regularly and is due to submit a draft to Parliament on 11 August 1997. An extensive consultation process for public participation was also put into place.

After the May crisis, Parliament established a House of Representatives Committee on Human Rights and Justice in 1992. The Committee considers a wide

¹For a full discussion of the May 1992 events, please refer to *Amnesty International: Thailand, the Massacre in Bangkok*, (AI Index: ASA 39/10/92), October 1992.

²There have been 22 military coups and attempted coups in Thailand since 1932.

variety of cases relating to human rights and other current issues, such as alleged police corruption. However the committee cannot subpoena witnesses and has only recommendatory powers. In September 1992 the government stated that it would establish a National Human Rights Commission. However in spite of pending legislation, to date such a body has not yet been established. In March 1993 a law which empowered the supreme military commander to order troops to suppress demonstrations was repealed. A bill requiring prior Cabinet approval for military intervention in civil disturbances was passed by the Senate in July 1993. Both pieces of legislation were enacted in an effort to curb the powers of the military, and to ensure that the military are more accountable to the civilian administration.

Thailand's rapid economic development and democratization have seen the emergence of a strong and more outward-looking civil society. Living standards for some sections of the nation have risen. Between 1980 and 1992, the Thai economy averaged growth rates of more than 8 per cent per annum. GNP per capita increased from US\$810 in the mid 1980s to US\$2110 in the mid 1990s and is projected to double again by the year 2005. In 1992, life expectancy had reached 68 years. 76 per cent of the population had access to safe drinking water.

However the benefits of development remain unevenly shared and rapid economic growth has exacerbated existing inequities, especially in the rural areas and the informal migrant workforce. Corruption has tainted public life. As economic growth begins to level off, structural problems have emerged in the economy and social pressures have increased.

The improvement in the human rights situation is also due to the increased vigilance of non-governmental sectors after the events of May 1992. Non-governmental organizations (NGOs) have become stronger and more vocal over the last five years. New groups have been formed, such as the Forum of the Poor, which deals with a wide range of problems besetting poor people. Increased NGO activity has to a certain extent been matched by increased government respect for the right to freedom of assembly.³ From late January until early May this year thousands of members of the Forum of the Poor from around the country camped out in front of Government House in Bangkok in a well-organized move to protest government inaction on disputes involving land rights and problems of the urban poor. The disputes revolve around the construction of dams and other infrastructure projects and the resulting loss of livelihood

³Notable exceptions to the free exercise of the right to freedom of assembly include the 1993 suppression of a demonstration in Ubon Ratchathai province protesting the construction of a dam and the February 1996 deportation of an overseas delegate who had come to Thailand to participate in a NGO conference about ASEAN.

for farmers and fishermen. Urban workers are concerned about pollution on the job which adversely affects their health. The government has tolerated their presence and for the most part has reportedly not harassed or intimidated participants. Amnesty International has also established a membership presence in Thailand, and has been particularly effective in helping to promote human rights in other countries in the region.

The press has operated relatively freely and has played a role in publicizing human rights violations, especially extrajudicial executions and the government's treatment of refugees and asylum-seekers. The print media enjoys more freedom than the broadcast media, which is licensed by the Government and operated under direct or indirect oversight by the Government and the military. Public criticism of the monarchy, known as *lese majeste*, is prohibited under law. Members of the press have occasionally been subject to intimidation and threats if they publish material critical of the government. In spite of these restrictions, NGOs and the media have made a significant contribution in counteracting less reform-minded sectors of the government, such as the military and police.

Despite the improvements mentioned previously, human rights violations continue to be committed by the police and military. These include an increasing number of extrajudicial executions, *refoulement* of refugees, and the continued detention of refugees and asylum seekers in poor conditions, sometimes amounting to cruel, inhuman or degrading treatment.⁴ The imposition of the death penalty for a wide variety of crimes is also a concern. There is a widespread belief among the public that the police operate with impunity, and people who investigate its abuses have been subject to intimidation and harassment. Corruption among the police is common, and reportedly includes large scale bribe taking. In July and August 1996 a university professor who had published findings on widespread police corruption received anonymous death threats and unsolicited "police protection".

Retired General Chaovalit Yongchaiyut, the leader of the New Aspiration Party (NAP) formed a new coalition government in November 1996 after the third general election since the May 1992 crisis. Elections in Thailand are known for the practice of extensive vote-buying and violence, but this election was the most violent on record. During the campaigning period seven canvassers were killed and many others were injured by gunmen in inter-party violence. On the day of the election one official of PollWatch, the independent election monitoring body, was intimidated by a local

⁴Refugees and asylum-seekers are frequently arrested by police for "illegal immigration" and held in Immigration Detention Centres (IDC), which are not subject to the regulations of the Corrections Department.

official after she attempted to monitor an alleged case of tampering with a ballot box. She entered a polling station in Samut Prakan Province with election police and was confronted by an armed village headman who drove up on his motorcycle and told her not to inspect election documents.

This report is based partly on findings of an Amnesty International visit to Thailand in late January and early February 1997, when delegates met with NGOs, human rights lawyers, and parliamentarians. It is also based on reports received by the organization about extrajudicial killings and the treatment of refugees. The material which follows covers the period from January 1996 through April 1997, and deals with most but not all human rights violations of concern to Amnesty International⁵. While reports of alleged torture and ill-treatment of criminal suspects by police have periodically appeared in the media, Amnesty International has not yet had the opportunity to gather sufficient information about individual cases. For example a defendant in a murder trial claimed that he had been beaten by several policeman during his detention.⁶

II. THE DEATH PENALTY

Amnesty International opposes the death penalty in all cases as the ultimate cruel, inhuman or degrading treatment, which constitutes a violation of the right to life. The right to life is enshrined in Article 3 of the Universal Declaration of Human Rights, which states: *“Everyone has the right to life, liberty and security of person.”* The right to life is also proclaimed in Article 6 (1) of the ICCPR: *“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*

Amnesty International does not condone the crimes for which people may be sentenced to death and it recognizes the suffering of the victims of crimes and their families. The organization believes however that the death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is imposed. Furthermore no clear evidence has emerged from the many studies made on the subject that the death penalty deters serious crime more effectively than other punishments.

In Thailand the death penalty is mandatory for premeditated murder; murder of an official on government business; regicide; and the production and import or export of

⁵Amnesty International works on behalf of prisoners of conscience, that is, people arrested for their non-violent views; for fair trials of political prisoners; and against the death penalty, extrajudicial executions, and torture and ill-treatment in all instances.

⁶*The Nation*, a Thai English language daily newspaper, 22 November 1996.

heroin. It is discretionary for robbery, rape, kidnapping, arson and bombing if death results, insurrection, treason and espionage, possession of more than 100 grams of heroin, and aircraft hijacking. On 16 October 1996 a new law went into effect which increased the maximum penalty for amphetamine trafficking (defined as possession of more than 100 grams) to the death penalty. As a State Party of the ICCPR, Thailand is obliged to respect and ensure that all individuals within its territory are guaranteed the rights enshrined in the treaty, including Article 6 (2), which states: *“In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...”*. Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states that the scope of crimes punishable by death “should not go beyond intentional crimes, with lethal or other extremely grave consequences”. In his report to the UN Commission on Human Rights in 1996, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that “the death penalty should be eliminated for crimes such as...drug-related offences”.

Information about the death penalty in Thailand is difficult to obtain because death sentences are often not reported. At least seven death sentences were believed to have been imposed during 1996, three for heroin trafficking, two for rape and murder, one for bombing and one for murder. In January 1997 five people were sentenced to death for heroin trafficking and about 100 other people are thought to be under sentence of death. People sentenced to death in civilian courts in Thailand have the right to appeal, first to the Appeals Court and then to the Supreme Court. Once all appeals have been exhausted, prisoners sentenced to death are allowed 60 days to petition the King for commutation. The King pardons the vast majority of these prisoners. In June 1996 the King pardoned 120 people under sentence of death in an amnesty to mark the 50th anniversary of his rule. However this Royal Pardon did not include people convicted of drug offences.

People sentenced to death in Thailand by military courts have no right of appeal. The failure to afford appeals to people sentenced to death in trials in military courts violates Article 14 (5) of the ICCPR, which as a State Party to this covenant, the government is bound to comply with. This article requires that the government ensure that everyone convicted of a crime has the right to have his/her conviction and sentence reviewed by a higher tribunal, according to law.

Until 1996 the death penalty had not been carried out for nine years. However on 28 January of that year Prommas Leamsai, age 38, was shot dead by a firing squad at Bangkwang Maximum Security Prison. He had reportedly been convicted of murdering a policeman in the 1980s. His execution was conducted in great secrecy and there was no prior public notification. According to a Ministry of Interior statement, Prommas Leamsai was considered by the authorities to be beyond rehabilitation. The statement

also indicated that he was killed to set an example to other criminals. In January 1996 Amnesty International issued urgent appeals to the government condemning the execution and urging the government to refrain from executing any other prisoners.

Amnesty International urges the Royal Thai Government not to carry out any further executions. It also calls on the government to commute all existing death sentences and to abolish the death penalty completely. Amnesty International's latest information shows that over half the countries in the world have now abolished the death penalty in law or practice. On 3 April 1997 the UN Commission on Human Rights adopted resolution 1997/12, which states *inter alia* that "*the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.*" The resolution also "*calls upon all States that have not yet abolished the death penalty to consider suspending executions, with a view to completely abolishing the death penalty.*"

III. EXTRAJUDICIAL KILLINGS

Amnesty International defines extrajudicial executions as unlawful and deliberate killings, carried out by order of a government official or with the government's complicity or acquiescence. Extrajudicial killings violate the right to life, as guaranteed in Article 6 of the ICCPR. They also violate the right to a fair trial, because the victim is killed before a court has had the opportunity to hear his case. The right to a fair trial is proclaimed in Article 14 (1) of the ICCPR, which states: "*In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*" Extrajudicial killings are distinguished from justifiable killings by the security forces in self-defence; deaths resulting from the use of reasonable force in law enforcement; and the imposition of the death penalty. Extrajudicial killings often result when law enforcement officials use force which is disproportionate to any threat posed, although the authorities may claim that this use of force was legitimate.

Since November 1996 there has been a marked increase in reports of police shootings of criminal suspects in Thailand. On some occasions these killings have occurred when gunfire was allegedly exchanged between the suspects and police, but in other cases police have shot dead suspects after they had already surrendered. Still other cases involve a disproportionate use of force by the security forces. Amnesty International recognizes the right of security forces to defend themselves, but is concerned that Thai police officers have shot suspects dead when the suspects posed little or no threat to the police. Between 21 November 1996 and 22 January 1997 alone, 19 criminal suspects were reportedly shot dead by police; most of these cases involved men suspected of amphetamine trafficking. Between the end of January 1997 and the end of April 1997 at least 10 shootings of criminal suspects by the police have been reported.

Trafficking in amphetamines, particularly from the Shan State in northeast Myanmar into Thailand, has increased recently. Amphetamine use has reportedly spread among the population to include Thai young people. In the first six months of 1996 police reportedly seized more than one tonne of amphetamines, as compared to 500 kilograms for all of 1995.⁷ As a result there has been heightened public concern about drug trafficking, and about what is perceived as a flaw in the administration of justice for convicted drug dealers. On the other hand some government critics claim that the alleged upsurge in amphetamine use is being used by the government to gain popularity in its campaign to drastically reduce drug trafficking. One set of statistics indicated that less than one per cent of Thai students were addicted to amphetamines.⁸ It is also widely believed that the police have instituted a *de facto* shoot-to-kill policy to deal with suspected traffickers. On 17 January Interior Minister⁹ Snoh Thienthong stated at an address he gave in Chiang Rai, northern Thailand: “*I don’t care how many of them [amphetamine traffickers] are killed - be it hundreds or thousands - or what the critics say. The earth will be better off without these people.*”¹⁰

Although there has been an increase in police killings in the past six months, such killings have occurred during the last several years amid concern that police officers sometimes shot to kill criminal suspects. Thongbai Thongpao, a prominent Thai human rights lawyer, described police behaviour with regard to violent criminals: “*Even after suspected criminals give themselves up during a raid, they are still not safe. Officers would take the suspects to a forest and set them free, and then they would chase them down and kill them. Incidents like this happened quite often.*”¹¹ An unnamed police source alleged that police tend to shoot to kill “*infamous criminals*”, by either involving the suspects in a gun battle and intentionally shooting to kill, or by killing a suspect after an arrest is made, leaving the gun in the suspect’s hand.¹²

⁷Reuter, Bangkok, 15 October 1996.

⁸*The Nation*, 2 January 1997.

⁹The Interior Ministry in Thailand supervises all policemen in the country; there are no local police forces per se.

¹⁰*The Nation*, 18 January 1997.

¹¹*The Nation*, 10 May 1995

¹²*Ibid.*

When a suspected extrajudicial killing by the security forces has taken place, Amnesty International calls for a prompt, impartial and independent investigation to be conducted. In Thailand after a killing has occurred, the police conduct an investigation and submit it to the Public Prosecutor, who will then file a case in court. It is the responsibility of the local police to conduct such investigations, even if their colleagues from that area are alleged to have committed the killing. In practice there is often a delay in investigations being completed and cases being brought to court. Police officers are almost never convicted of crimes related to extrajudicial killings. In 1996 reportedly no members of the security forces were convicted of extrajudicial killings. Amnesty International is concerned that investigations into alleged extrajudicial killings are not prompt, impartial or independent, and calls on the Thai Government to ensure that all investigations into human rights violations meet these criteria. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which were adopted by the United Nations Economic and Social Council on 24 May 1989, state that:

“There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.”

After the May 1992 killings of at least 52 people by the security forces, a number of committees were established to determine the truth of those events. However most of

them were not empowered with judicial authority to subpoena witnesses, enter facilities and obtain all the information they required. Principle 10 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions state that the investigating body:

“Shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses including officials allegedly involved and to demand the production of evidence.”

The material which follows is information about five cases of suspected extrajudicial executions which occurred in a wide variety of circumstances and locations. Some of those shot by the security forces were people who the authorities may have suspected of having engaged in criminal conduct; some were refugees; one was a land rights activist and two were suspected of being members of an armed opposition Muslim group in the south of the country. The killings detailed below took place between July 1996 and January 1997.

Killings of six suspected amphetamine traffickers

On 27 November 1996 police shot dead Suparerk Rueanjaiman, Subin Rueanjaiman, Prasit Pohom, Hatsanu Sriboonpen, Suthep Parnboon and Yew Prariwatsakulkaew, all of whom the police claimed were suspected amphetamine traffickers. The group of six men had reportedly driven to the house of someone who owed them money in Bang Pla Ma District in Suphan Buri Province, central Thailand on 26 November. They apparently could not locate him, so left the house, and were met by police who had been alerted to their presence in the area. The six then fled to a nearby house, firing at one of the police and injuring him in the arm. They took as hostages the residents of the house, a paralysed man and his wife and their eleven-year-old daughter. Police surrounded the building and called for reinforcements over the 12-17 hour period of the standoff. During that time the six reportedly shot four times from the house at the police, although no one was injured.

The six suspects surrendered after a police officer who was allegedly known to one of them persuaded them to release the hostages unharmed and come out of the building. According to reports there was no struggle and some of the six were then handcuffed with their arms in front of their bodies. By this time scores of policemen, reporters and onlookers were outside of the building. Police officers took the group back into the building, allegedly so that they could show the police where their weapons were hidden. The Supan Buri police officer assigned to investigate the case stated at a parliamentary hearing on 7 February 1997 that the suspects asked the police to remove

their handcuffs so they could show them their weapons which were hidden in the water underneath the house.¹³ People outside the building then heard a series of gunshots, and when reporters entered the building, they saw the dead bodies of the six men on the floor.

None of the police officers was injured after the six men had surrendered. The police claimed that they had shot the six when one of them had grabbed a weapon after indicating its location to the police. The handcuffs had been removed by the police, allegedly so that they could point to their weapons. Police later stated that they had discovered several weapons, including two M-16 assault rifles and an M-79 grenade launcher.

¹³ The killings took place just after the rainy season when the area was still flooded.

The bodies were reportedly quickly removed to the local hospital for brief medical examinations and then handed over to the relatives, who cremated them according to Buddhist custom. No autopsies were performed. A few days later, the police burned down the house where the killings had taken place, thus preventing investigators from examining bullet holes and other evidence. The owners of the house were reportedly given 150,000 Thai baht in compensation for the destruction of their house.¹⁴

Subsequent events

The killings evoked widespread public outcry, condemnation from Thai human rights groups, debate and extensive coverage in the media. An investigation was conducted by Supan Buri police, but at the time of writing has not yet been submitted to the Public Prosecutor. According to reports, the Office of the Attorney General also set up a team of public prosecutors to question police officers involved in the shootings. Region 7 Attorney's Office and the Suphan Buri provincial attorney were assigned to conduct an investigation and forward the results to the provincial governor and then to the Office of the Attorney General to determine if charges will be brought against any of the police officers.¹⁵ The families of the six victims have also retained legal counsel.

In addition, a special 27-member parliamentary committee was established on 9 January 1997 to investigate the killings, and met beginning on 22 January. The committee interviewed police and others involved in the incident, but has no powers to subpoena witnesses. Therefore they are only able interview those who will volunteer to provide them with information. On 31 January the doctor who conducted the medical examinations told this committee that three of the suspects were shot in the left temple; one was shot in his right cheek, one in his right temple and one was shot under his right eye. He said that the victims also had other gunshot wounds in their upper bodies. The parliamentary committee continued its investigation in May. At the time of writing a report detailing their findings had not been submitted to the Parliament.

Amnesty International is concerned that police shot six men in suspicious circumstances in what may have been extrajudicial executions. It is also concerned that the investigations have not yet concluded. Amnesty International calls on the government to ensure that an independent and impartial investigation is completed promptly. If on the basis of the findings of such an investigation the police are believed to have been responsible for extrajudicial killings, Amnesty International calls on the government to bring them to justice.

¹⁴ 150,000 Baht is equivalent to approximately US \$6,000.00.

¹⁵*The Nation*, 5 December 1996.

The case of Joon Boonkhunthod

Joon Boonkhunthod was a 30-year-old chili farmer with a wife and one child from Thailand's northeastern Chaiyaphum Province. He was involved in a protest movement against the construction of the Pong Khun Phet Dam, which would flood two districts, including land where his farm was located. According to fellow villagers, Joon Boonkhunthod received threats against his life by police and local officials before his death. He was reported to have been shot shortly after returning from a demonstration calling for the removal of the local headman, who was allegedly corrupt.

Joon Boonkhunthod was shot by a junior police officer on 22 July 1996 in a field near Ban Thab Nai village in Nong Bua Rawe district, Chaiyaphum Province. Sources close to the incident gave the following account of what happened. Joon was at a friend's house, who was a leader of the protest, when police officers arrived and searched the house for illegal materials without a search warrant. They reportedly found nothing incriminating. Because his friend was talking with the police, Joon volunteered to go out to gather his friend's chickens after it began to rain. A witness stated that as Joon went out into the field, a police officer in hiding called out his friend's name. After Joon Boonkhunthod tended to the chickens he turned to go back into the house, and was shot once in the buttocks with a 38 millimetre shotgun between 5 and 6pm by the junior police officer hiding some 30 feet from him. After he had been shot the policeman came out of his hiding place, handcuffed Joon Boonkhunthod, and left him in the field. He was still handcuffed when fellow villagers found him.

Friends took Joon Boonkhunthod to the hospital by car, but were delayed 30 minutes by police who stopped them at the main road. By the time he reached the hospital, Joon Boonkhunthod had died as a result of haemorrhaging from a main artery which had been severed by the bullet. Since his death police have provided various accounts of the events. They alleged that Joon Boonkhunthod had resisted arrest and attempted to grab the policeman's gun. Police also reportedly claimed that Joon Boonkhunthod had been shot accidentally. They said that he was suspected of cultivating marijuana and claimed to have found a marijuana plant after searching his farm. Unofficial sources state that the plant had been placed on his farm by police. The junior police officer who shot Joon was arrested and charged with murder. He is currently free on bail.

Because of widespread community concern about the killing, the then national police Chief announced that he would set up a special team to investigate Joon Boonkhunthod's death.¹⁶ The murder trial of the policeman was scheduled to begin in

¹⁶*The Nation*, 7 August 1996.

November 1996 but was delayed until 3 February 1997. The case was subsequently transferred to Bangkok. Amnesty International is concerned that Joon Boonkhunthod was shot by the police when he apparently posed no threat to them. Police motivation for the killing may have been his peaceful political activities. The organization is further concerned that the police prevented Joon Boonkhunthod from receiving prompt medical care. Amnesty International calls on the government to ensure that Joon Boonkhunthod's family is adequately compensated for his death.

The killings of three Karen refugees

On 4 August 1996 three Karen refugees from Myanmar who lived in Mae La Refugee Camp, north of Mae Sot in Tak Province, Thailand, were shot dead by Thai forestry officials. U Paw Kyaw (m), age 48, Maung Win Sein (m), age 21, and Saw Eh Ther (m), age 21, had left the camp to search for bamboo for basket-making at They Ka Ya, on the Thai side of the Moei River. They had evidently entered a hut nearby. Two witnesses gave the following account of what happened next. A vehicle with a group of nine Forestry officials drove up near the hut and at about 12 noon seven of them approached the hut on foot and shot randomly at it. About a half an hour later the Forestry officials drove off. The witnesses then went to Mae La Camp to inform the three men's relatives what had happened. The relatives went to the hut and found the three bodies of U Paw Kyaw, Maung Win Sein, and Saw Eh Ther so mutilated by gunfire that they had to be buried on the spot. The families then burned down the hut.

Thai military sources reported that the forestry officials claimed to have mistaken them for illegal loggers and opened fire as the three were about to cross by boat to the Myanmar side of the Moei River. According to the military, the refugees panicked and attempted to flee, so the officials opened fire.¹⁷ To Amnesty International's knowledge, no investigation has been conducted and no compensation paid to the families of the victims. The organization is concerned that three unarmed civilians who apparently posed no threat were shot dead by Thai security forces. It calls on the government to initiate a thorough, independent and impartial investigation, to make the results public, to bring those suspected of being responsible to justice and to provide adequate compensation to the victims' families.

The killings of two religious leaders

On August 11, 1996 Arshi Tolue and Sa-aree Salair, two Muslim religious leaders in Yala Province, southern Thailand, were shot dead on the road at Talolor village, Gotabaru subdistrict in Raman district by five police officers, who later said that they

¹⁷ *Bangkok Post*, an English language Thai newspaper, 7 August 1996.

had mistaken the two for members of an armed opposition group. In the past there have been instances of violence committed by armed Muslim separatist groups in the four most southern provinces of Thailand, where the majority of the population is Muslim. However, such activities by separatist groups have declined in recent years.

On 16 September 1996 a group of some 800 Muslims gathered at Yala town to peacefully protest the killings and to call for the transfer of the policemen alleged to have been involved. They held a meeting with local officials, who agreed to transfer the five police to another province. The officials also agreed to conduct an investigation into the case. The first hearing, when witnesses will provide their testimonies, is scheduled for 18 June 1997. There were also reports that witnesses to the event were afraid because they had received anonymous death threats. Although the details of the shootings are unclear, Amnesty International is concerned that the police may have used excessive force in subduing two individuals mistakenly believed to be members of an armed opposition group.

The killings of three Cambodian nationals

On 4 January 1997 three Cambodian minors were shot dead by Thai security forces as they were crossing the border from Aranyaprathet District in Sa Kaew Province, Thailand to Poipet town, Cambodia. According to Thai military sources, the three were killed after they had opened fire with AK-47 assault rifles on Thai soldiers.¹⁸ Unofficial sources who investigated the incident in detail provided the following information to Amnesty International, which contradicts the Thai military statement. The sources report that five Cambodian children had crossed into Thailand at around 12 noon on 3 January to collect scrap metal and other recyclable material to sell at the market in Poipet. They crossed the border on a regular basis in order to earn money by gathering discarded goods. On this occasion after they had finished their work they spent the night in Thailand and were confronted by four armed Cambodian adults and forced to remain with them. At about 3am the adults awakened the children and compelled them to accompany them to steal chickens and ducks from a Thai village near the border.

Afterwards, the adults forced the children to return back to Thailand with them. As the group was crossing back into Cambodia, four or five Thai border guards suddenly opened fire 100 metres from the frontier. The Cambodian adults returned fire four times with AK-47's and then escaped uninjured. Four of the children were injured; one managed to escape unharmed. The fifth child, who was not badly injured, was also able to flee. The three others were severely wounded: Sarain (m), age 13, was hit in the neck; Kmao (m), age unknown, was hit in the throat and the stomach; and Rith, age 12,

¹⁸*Agence France Presse*, Sa Kaew, Thailand, 4 January 1997.

was hit in the groin. The Thai soldiers interrogated the three, who were by that time lying on the ground, and then went to search for the adults. Ten minutes later they returned and opened fire at point blank range at the forehead of Sarain and at the arm of Rith. Kmao was already dead. The soldiers then retreated. Two days later the three dead children were identified at the local morgue in Thailand.

To Amnesty International's knowledge, no investigation has been conducted into the case. It is concerned that three unarmed children were shot dead in circumstances which remain unclarified by Thai security officers. Amnesty International calls on the government to initiate a thorough, impartial and independent investigation, make the results public and bring those suspected of unlawful conduct to justice.

IV. REFUGEES

Background

The fundamental basis of Amnesty International's refugee work is the principle of non *refoulement*, which forbids the returning of any person to a country where he or she would be at risk of serious human rights violations. As part of its human rights mandate, it opposes the *refoulement* of any person to a country where he or she would be at risk of falling victim to imprisonment as a prisoner of conscience¹⁹, torture, "disappearance", extrajudicial execution or the death penalty. It should be noted that the principle of non *refoulement* is widely recognised as a principle of customary international law, binding on all states. Thailand has yet to become a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol. However, the country, like all other countries, is still bound by this principle of international law, and should afford effective and durable protection from *refoulement* to all those who would be at risk of serious human rights abuses. Amnesty International also calls on host countries to ensure that refugees in their territory are adequately protected from human rights violations.

Despite the fact that the country is not party to the Refugee Convention, Thailand is a member of the inter-governmental Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR Excom). This body, which meets once a year in Geneva, oversees the work of the UNHCR and adopts conclusions regarding issues of refugee protection and assistance. It is the only international forum where refugee issues are discussed in a comprehensive manner, and its conclusions

¹⁹Amnesty International considers people to be prisoners of conscience if they have been detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, and if they have not used or advocated violence.

represent an authoritative international consensus regarding standards of refugee protection. Given Thailand's important role as a member of this international body, Amnesty International once again calls on the Thai Government to make clear its international commitment to refugee protection and accede to the Refugee Convention and its Protocol.

Thousands, on occasion hundreds of thousands of refugees from neighbouring countries have sought refuge in Thailand over the past 20 years. On many occasions, the Thai Government has harboured these refugees, and allowed the UNHCR and other international organisations to assist them in refugee camps in Thai territory. However, the Thai Government considers these asylum-seekers to be "illegal immigrants" and makes no distinction between them and other migrants. Amnesty International has many concerns regarding the treatment of asylum seekers outside of camps, in cities such as Bangkok.

The police arrest and detain refugees and asylum-seekers, particularly Burmese nationals, on a regular basis in Bangkok and other cities. Such detainees are not given an opportunity to challenge the legality of their detention as required by international standards. Burmese asylum-seekers convicted of "illegal immigration" are fined and imprisoned in immigration detention centres before being taken to the border between Thailand and Myanmar. Even those asylum seekers who have been found by the office of the UNHCR in Bangkok to be needing of international protection are not safe; these people are often detained and harassed by the Thai authorities, to the point that many of them are forced to abandon their efforts to seek asylum.²⁰ However a distinction needs to be made between Burmese nationals in Bangkok, who for the most part participated in the 1988 pro-democracy movement, and other Burmese nationals who remain in camps along the border and generally belong to ethnic minority groups. Those refugees in camps are normally not subject to arrest and detention; however those who are living in Bangkok are at risk of arrest at any time.

In 1984 the Burmese Army launched a major offensive against the Karen National Liberation Army (KNLA), which is the armed wing of the Karen National Union (KNU), one of the many ethnic minority groups who have fought for greater independence from the central Burman authorities since the end of World War II. As a result of the fighting in southeastern Myanmar, 10,000 ethnic Karen refugees fled to Thailand that year. Since then the Thai authorities have permitted refugees from the

²⁰For a full discussion of the Thai Government's treatment of ethnic Burman asylum-seekers and refugees, please see *THAILAND: Burmese and other asylum-seekers at risk*, (AI Index ASA 39/02/94), September 1994; and *THAILAND: Two Burmese asylum-seekers still detained*, (AI Index ASA 39/01/96), January 1996.

Kayin (Karen) State in Myanmar to stay in camps along its western border as successive waves of Karen civilians fled from fighting and human rights violations committed by Burmese troops. In 1987 Amnesty International began to document violations of human rights committed by Burmese soldiers on Karen civilians. The violations include ill-treatment, torture, and extrajudicial executions. The organization has subsequently published nine reports which describe such violations, all based on interviews with refugees who have fled from Myanmar.

On 21 December 1994 a few hundred Buddhist members of the KNUA formally split from the KNU, whose leadership is largely Christian, and set up a new movement, the Democratic Kayin Buddhist Organization (DKBO). The DKBO formed a tactical alliance with the State Law and Order Restoration Council (SLORC, Myanmar's military government who seized power in September 1988). In January 1995 the Burmese army, with the support of the DKBO, captured the KNU headquarters at Manerplaw, at the confluence of the Salween and Moei Rivers in the Kayin State. As a result some 10,000 Karen civilians fled into Thailand as the Burmese army took control of former KNU territory. In February 1995 the DKBO began to attack refugee camps in Thailand, abducting and killing a number of Karen refugees and Thai nationals and burning thousands of refugee homes. The Thai authorities on the border responded by moving some of the camps further inside Thailand and consolidating several smaller camps into larger ones. Nevertheless DKBO attacks continue intermittently, creating a climate of fear in Karen refugee camps as well as in Thai villages near the border.

One of the most recent attacks in Thai territory occurred on 4 April 1997, when some 80 heavily armed men, whose identity was not clear, crossed the Myanmar-Thailand border at Ban Huay Nam Nak, Tambon Chong Khaeb in Phop Phra, Tak Province. At about 5am the soldiers reportedly fired warning shots at the shelters of Karen refugees who were living in Thai Karen villages and asked them to return to Myanmar. Two refugees, Ar Ngae (f), age 37, and Na Boe (f), age 30, fled the scene in fear. The Burmese armed men fired at them, shooting Ar Ngae in the back, killing her instantly, and seriously injuring Na Boe. Forty other refugees were forced by the troops to return to Myanmar.

In much larger attacks on 28 January 1997 the DKBO burned Wangka and Don Pa Kiang camps to the ground, leaving 8,000-10,000 refugees homeless and killing one Thai shopkeeper as he fled the scene. Since that time the DKBO has threatened to attack other camps unless refugees agree to return to Myanmar. On 11 March refugees from Don Pa Kiang Camp were relocated by the Thai authorities to join other homeless refugees at the site of Wangka Camp, where they remain at risk of further attacks. Further south in Kanchanaburi and Ratchaburi provinces SLORC troops frequently cross into Thailand, where refugee camps are also close to the border. In light of these developments, Amnesty International urges the Thai Government to provide adequate

protection and security for these refugees and others seeking safety along the Thai-Myanmar border.

Amnesty International points to international standards regarding the location of refugee camps, in particular Conclusions 22 and 72 of the Excom (of which Thailand is a member). These international standards state that asylum states must ensure that refugee camps are situated in a secure location and “as far as possible ... at a reasonable distance from the frontier of their country of origin”.

Forcible repatriations by the Royal Thai Army

Since 1989 the SLORC has agreed cease-fires with 16 armed ethnic minority groups.²¹ The SLORC and the New Mon State Party (NMSP), an armed ethnic minority opposition group, signed a cease-fire agreement in June 1995. Beginning in 1990 large numbers of ethnic Mon refugees fled from human rights violations by the SLORC and sought shelter in refugee camps inside Thailand. However after the cease-fire agreement, between December 1995 and May 1996 some 10,000 Mon refugees who remained in Thailand were forcibly repatriated by the Thai authorities to Myanmar with no international supervision.

The KNU remains the last major group not to agree a cease-fire. At the end of January 1997 cease-fire talks between the SLORC and the KNU broke down for the fourth time. In early February 1997 the Burmese army initiated a large offensive against remaining KNU positions in the Kayin State, resulting in the flight of 15,000 - 20,000²² Karen civilians to Thailand. Refugees streamed into Umphang District, Tak Province, and into Kanchanaburi and Raatchaburi Provinces, all bordering Myanmar in western Thailand. Thai authorities allowed most of these new arrivals to remain inside Thai territory. In particular refugees who crossed the border into Umphang District were permitted to stay by the local authorities. In mid March some 12,000 of them were moved further inside Thailand to a new camp site called Nu Pho. Others remained at Ta Per Poo close to the Myanmar border. There are currently some 100,000 Karen refugees in Thailand.

However in February and March over 4,000 refugees in Kanchanaburi and Raatchaburi Provinces were forcibly returned to Myanmar by the Ninth Infantry Division

²¹ The March 1995 cease-fire agreement between the SLORC and the Karenni National Progress Party (KNPP) broke down after three months.

²² This range in numbers of newly-arrived refugees is due to the fact that there are refugee movements back and forth across the border and in and out of refugee camps on a regular basis.

of the First Army. It is unclear why these refugees were singled out for return to Myanmar, while those in Tak Province were allowed to remain. However some of the refugees who had fled to Bong Hti, Kanchanaburi Province were in the area of a road which is planned to go from Bong Hti to Tavoy town in Myanmar.

Beginning on 22 February several thousand Karen refugees fled from an area in Tanintharyi (Tennasserim) Division, Myanmar, where the KNU Fourth Brigade Headquarters is located, and between the towns of Mergui and Dawei (Tavoy) as the Burmese army advanced. They sought refuge in Ban Bong Hti and Ban Pu Nam Rawn, two villages in Kanchanaburi province. On 24 February around 500 men out of a group of Karen people seeking refuge were not allowed to enter Thailand. However some 100 men and youths did manage to cross the border, only to be returned on 25 February. Women, children, elderly and sick people were allowed to cross the border to Ban Pu Nam Rawn. On 25 February, officers of the Ninth Division of the Thai Army informed refugees at both Ban Bong Hti and Ban Pu Nam Rawn that they would only be allowed to stay for three days and that the men would be sent back to the conflict area and the women and children to a "safe corridor" further south. Unofficial sources disputed that the "safe corridor" was secure, given the movements of the Burmese army.

On 25 February about 230 men at Ban Bong Hti were sent back over the border into the area they had fled. On 25 and 26 February two groups of some 900 mostly women and children Karen civilians who had sought refuge at Ban Bong Hti were forcibly returned to the border and eventually made their way to Htaw Ma Pyo Hta, five kilometres inside Myanmar. The remaining 2700 refugees at Ban Pu Nam Rawn were moved in the first week of March to a new site at Phu Muang in Kanchanaburi Province, about three kilometres inside Thailand. On around 27 February a small group of about 200 people originally from Amla Kee were also returned, although further details are unknown.

On 9 March some 2,000 Karen crossed into Thailand from Thu Ka; in the morning of 10 March the Thai Army ordered them to return, stating that if the Burmese Army came closer to the border, they could come back to Thailand. They returned that day to a site one kilometre inside Myanmar. A second group of 1100-1500 Karen refugees were living at Hti Lai Pa, which straddles the border. Because of the advance of the Burmese army, on 27 February they moved to a site on the Megatah River in the Thung Yai Naresuan National Forest in Thailand. However on 9 March the army moved them back near Hti Lai Pah on the Thai border because Thai villagers had complained that the refugees were polluting their water source.

These forced returns were criticized by Amnesty International on 26 February and again on 12 March. Refugee organizations as well as the United Nations High Commissioner for Refugees (UNHCR) and the United States Government also

expressed concern about these forcible returns. In response to this widespread criticism, General Chettha Thanajaro, Commander-in-Chief of the Royal Thai Army, ordered an immediate halt to all movements of Karen refugees. On 14 March General Chettha stated, “...we will not send the refugees back until the situation is back to normal where we are able to guarantee their safety.”²³

On 22 March the Burmese army attacked Hti Lai Pah, which the refugees had fled from in advance of the attack. Seven Karen were captured by the Burmese Army, although the Thai Army persuaded them to release all but one. During the SLORC attack two Karen were killed: one KNLA soldier who was acting as a guard was shot dead and a civilian was killed in unknown circumstances. Some 800 other refugees were allowed safely back to the Megatah River; however on 26 March the Thai Army told them they could not remain there and that they would be moved to another location on the border.

The SLORC also attacked Hta Ma Pyo Hta, where women and children refugees had gathered on 25 and 26 February after being forcibly returned. By 22 March some 2500 of them fled to Raatchaburi Province in Thailand, settling with the Thai Army’s permission at a site in Ban Huay Sut, some six kilometres from the border. Some of these people were part of the 900 who had been forcibly returned in the first place. Beginning on 28 March a new group of some 1300 refugees from Meh Pya Kee in Myanmar fled from SLORC advances into Thailand and were welcomed by the Thai 9th Division at Ban Bo Wi also in Suan Phung District, Raatchaburi Province. On 12 April 2,482 refugees at Thu Ka Camp just inside Myanmar were relocated by the Thai authorities two kilometres inside Thailand because of shelling which had occurred close to the camp.

Amnesty International urges the Thai Government to abide by its obligations under the principle of non refoulement, which includes non rejection at the frontier. Amnesty International is encouraged that since late March 1997 the Thai Government seems to have allowed Karen refugees to cross into Thai territory and remain there. On 7 April 1997 a representative of the Royal Thai Government wrote to Amnesty International in Italy, stating that:

“...Thailand will continue to adhere to its long-standing value of providing safe and humanitarian assistance to all fleeing unrest from neighboring countries...In the current situation of ethnic minority [sic] from Myanmar, Thailand grants them permission for temporary stay...”

²³ *The Nation*, 15 March 1997.

With regard to the repatriation of refugees, Amnesty International points to the fact that since March over 7,000 refugees have fled from fighting and accompanying human rights violations inside Myanmar, and that in any case a halt in armed conflict does not in any way guarantee that the Burmese army will stop ill-treating or killing Karen civilians. In cease-fire areas in Myanmar the army continues to seize civilians for forced portering and other labour duties and to forcibly relocate them under threat of death. Amnesty International urges the Thai Government to ensure that no decision regarding the repatriation of refugees is made before the human rights situation in Myanmar is subject to independent and impartial assessment, and it has been found that there has been a fundamental and lasting change in the human rights situation in that country. In addition, refugees should not be repatriated without a meaningful opportunity for an adequate, individual assessment of their asylum claim, either by the Thai authorities or by the UNHCR.

V. A NATIONAL HUMAN RIGHTS COMMISSION

In May 1994 it was reported that the Attorney General's Office was drafting a bill to promote and protect human rights in Thailand, including the establishment of a national committee on human rights. The bill grew out of a resolution to promote human rights which was passed by the Cabinet of the interim Prime Minister Anand Panyarachun in the aftermath of the May 1992 crisis.²⁴ The most recent information indicates that the bill had been drafted by the Attorney General's Office and submitted to the Office of the Prime Minister. However to date the current Chaovalit government has not been known to take any action on this proposed legislation. Amnesty International urges the Thai Government to establish an effective National Human Rights Commission as soon as possible, taking into account the recommendations below as well as the Principles relative to the status of national institutions, as adopted by the UN Commission on Human Rights on 3 March 1992.²⁵ However the creation of a national human rights commission does not replace or diminish the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary.

Amnesty International makes the following recommendations with regard to the establishment and functioning of a National Human Rights commission in Thailand:²⁶

²⁴*The Bangkok Post*, 1 May 1994.

²⁵Resolution 1992/54.

²⁶For a full discussion of standards for a national human rights commission, please refer to *Amnesty International: Proposed Standards for National Human Rights Commissions*, (AI Index 40/01/93), January 1993.

- ◆ The national Human Rights Commission should be independent from the government and its Charter should reflect its independence.
- ◆ Members of the Commission should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- ◆ The scope of the Commission's concerns should be defined in terms of state obligations under international human rights law.
- ◆ The Commission should have precisely defined powers to investigate on its own initiative situations and cases of alleged human rights violations.
- ◆ The Commission should be authorized to investigate the conduct of the security forces throughout the national territory.
- ◆ The Commission should have full and effective powers to compel the attendance of witnesses, including all government officials, and the production of documents.
- ◆ Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice.

VI. CONCLUSION AND RECOMMENDATIONS

While there have been improvements in the human rights situation in Thailand, which Amnesty International welcomes, there are major areas of concern which call for reform and attention by the government. Police often appear to operate with impunity, and are widely regarded as accountable to no one, sometimes even including the government itself. Police impunity undermines the rule of law and allows for such human rights violations as extrajudicial killings to continue. Death sentences are imposed on a regular basis, and the execution of Prommas Leamsai in 1996 was a step backward for the Thai Government's human rights record. There remains no legal mechanism for persons to seek asylum; asylum-seekers are treated as "illegal immigrants" and are in a precarious situation, often in danger of *refoulement*. There are also numerous instances of the Thai army expelling asylum-seekers at the frontier, in contravention of the principle of non *refoulement*.

Amnesty International makes the following recommendations to the Royal Thai Government:

With regard to the new constitution,

Amnesty International urges the government to ensure that the new constitution, a draft of which is scheduled to be submitted to Parliament on 11 August 1997, incorporates the protection of fundamental human rights. The following international human rights instruments, all of which Thailand has acceded to, should be incorporated into the constitution: the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Thailand should also accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and incorporate its provisions into the new constitution. In addition, Thailand should make clear in the new constitution its commitment towards the protection of refugees.

With regard to the death penalty,

Amnesty International urges the government to commute all existing death sentences and to give full consideration to abolition of the death penalty as punishment for all offences in law. Ratify the Second Optional Protocol to the ICCPR, adopted by the United Nations General Assembly in December 1989, which entered into force in July 1991. This Optional Protocol aims at the worldwide abolition of the death penalty. Article 1 states:

- “1) No one within the jurisdiction of a State Party to the present Optional Protocol shall be executed.
2) Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”*

Amnesty International also recommends that if a person receives a death sentence in a military tribunal, that he have the right to judicial appeal.

With regard to extrajudicial executions,

1. Ensure that the security forces and law enforcement personnel comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles state that force and firearms must be used with restraint only as a last resort in self-defence; in defence of others against imminent threat of death or serious injury; to prevent a serious life-threatening crime; or to apprehend a person presenting such a

danger who resists their authority. The intentional and lethal use of firearms can only be a measure of last resort to protect life.

2. Ensure that a thorough, prompt and independent investigation is conducted into all suspected extrajudicial executions, and that those found responsible are brought to justice. In this regard, ensure that procedures outlined in the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions are followed, particularly Principles 9 and 10.

3. Ensure regular training for all security personnel in procedures designed to prevent extrajudicial killings. Make international standards on the use of force, such as the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, known to all security forces.

With regard to refugees,

1. Take immediate measures towards ratifying the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

2. Abide scrupulously by the principle of non *refoulement*, including the principle of non-rejection at the frontier, and ensure that no person is sent back to a country where he or she would be at risk of serious human rights violations.

3. Conduct an immediate and comprehensive revision of domestic legislation so that persons seeking asylum are treated in accordance with international standards. In particular, those asylum-seekers recognised by the UNHCR as needing protection should be afforded treatment in accordance with their status as refugees, and should in any case be given durable and effective protection against *refoulement*.

4. Ensure that repatriation of refugees or asylum-seekers does not occur until it has been assessed independently and impartially that there has been a fundamental and lasting change in the human rights situation of the country of origin. Ensure that repatriation is monitored internationally on both sides of the border and that the United Nations High Commissioner for Refugees (UNHCR) is allowed access to refugees throughout the process, including after return.

5. Conduct adequate training for military officers regarding international standards on the treatment of refugees and asylum-seekers, including clear instructions to these officers to abide by the principle of non *refoulement*. Ensure that these instructions are followed and initiate appropriate disciplinary sanctions or judicial proceedings against those who fail to comply.

6. Protect those refugees in Thai territory from human rights violations, including cross border attacks from Myanmar. Ensure that refugee camps are situated in a secure location suitably far from the border, as required by international standards.