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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in April 2014, of Thailand's initial report on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture).

The document focuses on Amnesty International's ongoing concerns in Thailand in relation to the Convention. In particular, Amnesty International is concerned about Thailand's failure to fully comply with its obligations under articles 1, 2, 3, 4, 12, 13, 14 and 16 of the Convention.

Amnesty International welcomes the invitation extended to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Thailand in August 2014.

ARTICLES 1 AND 16: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

There is a long-standing and continuing practice of torture and other cruel, inhuman or degrading treatment (other ill-treatment) in military and police custody, as well as within the prison system. Incidents of torture and other ill-treatment in police and military custody have been reported most commonly from southern Thailand in the context of ongoing counter-insurgency operations which started in 2004.

Torture and other ill-treatment most often takes place during interrogations and at the early stage of detention including during attempts to extract confessions. Methods commonly reported include beatings (including over protracted periods of time), electric shocks, being stripped naked, exposure to extreme temperatures and attempted asphyxiation.[1]

[1] Amnesty International *Thailand: Torture in the southern counter-insurgency*, January 2009, AI Index ASA 39/001/2009, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc- html, US Department of State, Bureau of Democracy, Human Rights and Labor, Human Rights Country Reports on Human Rights Practices for 2013 Thailand, available at Permalink: http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220234Hayashi et al. BMC Public Health 2013, 13:733 *Reports of police beating and associated harms among people who inject*

Between 2007 and 2013, the National Human Rights Commission (or NHRC) received a total of 134 complaints of torture, including 14 in 2013.[2] Just over 75% of all complaints about torture received by the NHRC during this period have come from the southern provinces, of which 71% concerned the practice of torture by the army.[3] Correspondingly, 82% of the complaints received by the NHRC from the rest of the country concern the police.[4] During the same period, the Muslim Attorney Centre, which provides free legal aid to individuals charged with security offences in the south, received a total of 382 complaints of torture and other ill-treatment, including 57 in 2013.[5] While individual police officials have in the past acknowledged the practice of torture to Amnesty International, they have denied that the practice continues, despite evidence to the contrary collected by Amnesty International, the NHRC, the Muslim Attorney Centre and others.[6]

Migrants detained in the context of controls on their immigration status also continue to report torture and other ill-treatment. Methods reported have included sexual harassment, rape, and being kicked, slapped and beaten.[7] Torture and other ill-treatment by police also continue to be reported during investigation of drug-related criminal offences and in the policing of drug use more generally.[8] A police officer interviewed in the media in 2013 stated that it is "not uncommon" for police officers to carry out physical assaults while interrogating suspects whom they strongly believe to be guilty.[9] The convictions of a Border Patrol Police (BPP) captain and several of his subordinates, on charges involving rape in custody of a woman and the kidnapping, blackmailing, and assault of her and her husband, provides evidence of police use of unofficial places of detention, and of torture, including electric shocks, attempted asphyxiation and beatings to elicit false confessions in drug cases.[10]

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drugs in Bangkok, Thailand: a serial cross-sectional study, 2013, available at: http://www.biomedcentral.com/1471-2458/13/733.

[2] See Appendix I, Table 1, Number of torture complaints received by the NHRC during 2007 to 2013.

[3] See Appendix I, Tables 2 and 3.

[4] See Appendix I, Tables 2 and 3.

[5] See Appendix I, Table 4, Number of torture complaints received by the Muslim Attorney Centre during 2007 to 2013.

[6] A former Royal Thai Police official confirmed to Amnesty International in 2013 that police engaged in torture in the past, but stated that the practice has stopped. In February 2012, for example, police are reported to have beaten four minors aged 15-17 in Nakhon Pathorn province in order to force a confession http://www.state.gov/documents/organization/220446.pdf.

[7] Human Rights Watch: *From the Tiger to the Crocodile, Abuse of Migrant Workers in Thailand*, , available at: http://www.hrw.org/sites/default/files/reports/thailand0210webwcover_0.pdf Mekong Migration Network*: No Choice in the Matter: Migrants' experiences of arrest, detention and deportatio*n, June 2013available at: http://mekongmigration.org/add/wp-content/uploads/2012/11/Book-ADD_Eng.pdfhttp://www.mekongmigration.org/No%20Choice_Eng.pdf.

[8] Hayashi et al. BMC Public Health 2013, 13:733 *Reports of police beating and associated harms among people who inject drugs in Bangkok, Thailand: a serial cross-sectional study, 2013,* available at: http://www.biomedcentral.com/1471-2458/13/733.

Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand June 2010, available at http://www.opensocietyfoundations.org/sites/default/files/Detention-as-Treatment-20100301.pdf

[9] A middle ranking police official, Nation (Thailand) *Acting out Crimes is Necessary: Police* 4 July 2013, available at: http://www.nationmultimedia.com/national/Acting-out-crimes-is-necessary-police-30209660.html

[10] Human Rights Watch: *Thailand: Convictions of Police in Drug Campaign Abuse a 'First Step'* December 2009, available at: http://www.hrw.org/news/2009/12/14/thailand-convictions-police-drug-campaign-

TORTURE IN THE CONTEXT OF COUNTER-INSURGENCY IN SOUTHERN THAILAND

Since 2004, there have been regular attacks on security forces and civilians in Thailand's three southern-most provinces (Yala, Pattani, Narathiwat) and four districts of Songkla province (Jana, Nathawi, Thepa, Sabayoi), which have led to more than 5,000 deaths and 10,201 injuries as of June 2013.[11] In the context of counter-insurgency measures, during field research in 2008, Amnesty International identified a pattern of the security forces systematically using torture and other ill-treatment during investigation, in order to extract confessions and to intimidate detainees to withhold support for the insurgents.[12] The NHRC reported in 2010 on the widespread and systematic use of torture by both police and army in the context of the southern conflict.[13] Torture has also been used to gather general intelligence about the insurgency.[14] It has been suggested that authorities are more extensively using torture and other ill-treatment techniques that do not leave visible marks or signs. This includes beatings with sticks wrapped in cloth, and the use of sleep deprivation and forms of psychological torture or other ill-treatment, including humiliation and abusive language.[15]

Since violence intensified in the south in 2004, emergency security legislation[16] has been in force almost continuously. Provisions in the 1914 Martial Law Act and the 2005 Emergency Decree and regulations[17] have allowed for the weakening of procedural safeguards[18] that

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abuse-first-step.Nation (Thailand*), More charges levelled against border police gang*, 29 January at 2008, available at: http://www.nationmultimedia.com/2008/01/29/national/national_30063852.php Nation (Thailand) *Terms cut for BPP team jailed for abduction, assault, extortion,* 1 October 2013, available at http://www.nationmultimedia.com/national/Terms-cut-for-BPP-team-jailed-for-abduction-assaul-30215998.html Nation (Thailand), *Police officers sentenced*, 28 February 2014, available at: http://www.nationmultimedia.com/national/Police-officers-sentenced-30228014.html

[11] Deep South Watch, August 2013, available in Thai at: http://www.deepsouthwatch.org/node/4570. Internal Security Operations Command 4th division spokesman reported to the media that between January 2004 and December 2013 there were 5,532 deaths and 9,965 injuries due to "separatist activities" Bernama (Malaysia) 15, 317 Victims of Violence in Patani in last 10 years, 4 January 2014 available at: :http://patanipost.net/2014/01/04/15317-victims-of-violence-in-southern-thailand-last-10-years/

[12] Amnesty International, *Thailand: Torture in the southern counter-insurgency*, January 2009, AI Index ASA 39/001/2009, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.htm

[13] National Human Rights Commission Investigation Report No 275-304/2553, *Rights in Judicial Process in Case of Examination on Complaints that there are Torture and other Inhumane Treatments or Punishments in the Southern Border Provinces*, 15 September 2010, available at: http://www.nhrc.or.th/2012/wb/en/news_detail.php?nid=536&parent_id=1&type=hilight

[14] A Pongsapich, *Security Sector Reform and Governance, The Case of Southern Thailand*, cited in Asia Security Policy Initiative Series Working Paper, 22 July 2013, Keokam Kraisoraphong, Chulalongkorn University, available at: http://www.rsis.edu.sg/NTS/resources/research_papers/MacArthur_Working_paper_kk.pdf

[15] Amnesty International interview Feb 2014.

[16] Martial Law Act BE 2457 (1914), Emergency Decree on Administration in Emergency Situation BE 2548 (2005) and the Internal Security Act (ISA), B.E.2551 (2008). The ISA confers considerable discretionary powers on the military to restrict freedoms of expression, peaceful assembly and association and freedom of movement.

[17] Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Official as per Section 11 Of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), unofficial translation available at Annex II of Muslim Attorney Centre and Cross Cultural Foundation, *Report to UPR Human rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State* 2011, available at:

protect against torture. The 2005 Emergency Decree allows for up to 30 days' detention without charge, and the Martial Law Act for seven days[19] with no requirement to produce detainees before a judge. Furthermore, under the Emergency Decree, arresting officials do not have to inform detainees of the reasons for their arrest and may also refuse for lawyers to be present during interrogation.[20] Under martial law there is no judicial review of arrest warrants. These provisions remove important safeguards, and facilitate the practice of torture and other ill-treatment by presenting obstacles to the short-term detection of evidence of torture, as do official refusal of permission for visits to detainees by their relatives and lawyers, the use of unofficial detention centres, and the lack of consistent, unfettered, and independent monitoring of the detention centres.[21] While there is no publicly available regulation denying access to lawyers, lawyers have told Amnesty International that in practice, they are generally not allowed to see detainees being held under either martial law or the Emergency Decree. Likewise, medical personnel do not have regular access to detainees[22] and security officials have denied or obstructed attempts by the NHRC and independent organizations to gain prompt access to alleged torture victims under custody.

Amnesty International has consistently urged the authorities to amend or repeal national security legislation, including on the basis that its provisions may protect officials from prosecution for human rights violations they may have committed while enforcing it.[23]

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http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS8-JointSubmission8-eng.pdf

[18] An arrestee or accused who is restrained or detained shall be entitled to, at the earliest occasion, inform or request the inquirer to inform his relative or a person in whom he reposes of the fact that he is under arrest and the place of his restraint. Also, the arrestee or accused shall be entitled to:

(1) Meet with and take advice of a person to become his counsel tête-à-tête.

(2) Have his counsel or the person in whom he reposes attending his interrogation during the inquiry.

(3) Receive visitation of or contact with his relative in an appropriate manner.

(4) Have expeditious medical treatment provided for in the time of illness.

The administrative or police official receiving the arrestee or accused shall bear the duty to, at the earliest occasion, enlighten him on the rights set forth in paragraph 1.

Under section 7/1 of the *Thai Criminal Procedure Code*, available at:
http://www.humanrights.asia/countries/thailand/laws/Criminal%20Procedure%20Code%20I.pdf

[19] *Martial Law Act BE 2457 (1914)*; section 15, available at:
http://www.thailawforum.com/laws/Martial%20Law.pdf Amnesty International Thailand: *Torture in the southern counter-insurgency*, January 2009, AI Index ASA 39/001/2009, available at:
http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html, see section 4.2 – laws facilitating torture.

[20] Nation (Thailand) 20 September 20011, *Open letter to PM Yingluck: Review emergency decree now*, available at: http://www.nationmultimedia.com/opinion/Open-letter-to-PM-Yingluck-Review-emergency-decree-30165639.html.

[21] Amnesty International Thailand: *Torture in the southern counter-insurgency*, January 2009, AI Index ASA 39/001/2009, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html

[22] Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency,* January 2009, available at: *http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html*.

[23] Section 17 of the Emergency Decree explicitly provides for immunity from civil, criminal, or disciplinary liability to competent officials implementing powers and duties under the Decree, where those acts are performed in good faith, are non-discriminatory, and are not unreasonable or exceeding the necessity of circumstances. This provision has in practice been interpreted in a way to protect officials from prosecution

ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT DURING THE IMPOSITION OF THE EMERGENCY DECREE IN BANGKOK

Torture and other ill-treatment[24] of individuals detained under the Emergency Decree took place while the decree was in force in Bangkok in May and June 2010. Individuals subsequently charged with offences under the Criminal Code and Emergency Decree, including arson and robbery, were reportedly subjected to electrical shocks and beatings. One individual was repeatedly kicked in his face over a period of three hours until he signed a confession[25], and another individual was electrocuted.

PRISONS AND DETENTION FACILITIES

Amnesty International has received credible reports of the practice of torture and other ill-treatment in prisons.[26]

There are allegations of the use of beatings as a punishment in drug rehabilitation facilities[27]. Allegations of the death in custody of a prisoner, possibly as a result of beatings in Pitsanulok Central Prison on 18 May 2013[28], and that a prisoner suffered serious injuries in Sra Kaew Central Prison on 1 September 2013[29] are currently under criminal investigation.[30] These so-called "trusty beatings" (beatings of inmates by other inmates who have been given responsibility by prison officers to control and discipline prisoners) have also been reported at Bangkok Remand Prison.[31] There are allegations that prisoners were beaten with truncheons

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for human rights violations. Amnesty International Thailand: *Torture in the southern counter-insurgency*, January 2009, AI Index ASA 39/001/2009, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2009/en/45c12270-dcd6-11dd-bacc-b7af5299964b/asa390012009eng.html

Amnesty International: *Thailand, Time to end human rights violations, Amnesty International, Submission to the UN Universal Periodic Review, October 2011*, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2011/en/f3c62adf-5601-458a-b525-895016d56407/asa390012011en.pdf

[24] Human Rights Watch: *Descent into Chaos, Thailand's 2010 Red Shirt Protests and the Government Crackdown*, 3 May 2011, available at: http://www.hrw.org/reports/2011/05/03/descent-chaos

[25] Interview with Saichon Paebua, the accused of Central World's arson, 19 January 2013, available at: http://prachatai.com/journal/2013/01/44777.

[26] Union for Civil Liberty (UCL), "Thai Prison 2011," May 2011.

[27] Open Society Institute: *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand*, May 2010, available at http://www.opensocietyfoundations.org/sites/default/files/Detention-as-Treatment-20100301.pdf

[28] MCOT Thailand, 18 May 2013, available at: http://www.mcot.net/site/content?id=51978f38150ba0024a000459#.UywLkfmSymU.

[29] Thai Rath, 1 September 2013, available at: http://www.thairath.co.th/content/region/367148.

[30] Amnesty International interview with family members of the deceased and the injured prisoner in February 2014.

[31] Bangkok Post, *The Story of Lese Majeste Prisoner*, 21 July 2013.

by police officers during a search of cells at Bang Kwang Central Prison in May 2012, as part of a crackdown on drug-dealing from prisons[32], and that similar beatings were witnessed in the same month at the Central Correction Institution for Drug Addicts in Klong Prem Central Prison.[33]

Acts of male rape and other forms of sexual violence by male prisoners continue to be reported within Thai prisons.[34] Studies carried out by Mahidol University's Department of Social Science into sex in prison have pointed to an absence of a policy on sexual activity between prison inmates and lack of intervention by prison authorities which could lead to sexual violence.[35] Amnesty International is not aware of the launching of criminal investigations into reports of rape or other forms of sexual abuse[36].

CONDITIONS IN DETENTION

Amnesty International is concerned that conditions in prisons, drug rehabilitation facilities and immigration detention centres (IDCs) fall short of international standards, including the UN Standard Minimum Rules for the Treatment of Prisoners, particularly in the allocation of space, access to medical care and use of restraining instruments. The conditions have at times constituted cruel, inhuman and degrading treatment or punishment.[37]

Overcrowding

Prison facilities remain heavily overcrowded for both male and female prisoners, with female prisoners constituting 14.5 per cent of the prison population. Government regulations stipulate a standard sleeping area of 2.25 square meters in all correction settings.[38] However, in practice,

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[32] Nation (Thailand), *More phones found as jail crackdown continues,* 18 May 2012, available at http://www.nationmultimedia.com/national/More-phones-found-as-jail-crackdown-continues-30182253.html

[33] Notes on beatings in Thai jails, June 2012, available at: http://deathpenaltythailand.blogspot.com/2012_06_01_archive.html. Amnesty International also received a scanned copy of the complaint letter from 95 foreign inmates from Building 9, Central Correction Institution for Drug Addicts on 17 May 2012.

[34] Bangkok Post, *Academic says prisoners should be allowed to have sex,* 18 March 2013, available at: http://www.bangkokpost.com/lite/topstories/400492/academic-says-prisoners-should-be-allowed-to-have-sex Bangkok Post, *Tales of prison life: A male convict tells all*, 31 October 2010, Wilson D, Ford N, Ngammee V, Chua A, Kyaw MK (2007) *HIV Prevention, Care, and Treatment in Two Prisons in Thailand.* PLoS Med 4(6): 204. doi:10.1371/journal.pmed.0040204 , 26 June 2007, available at: http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0040204;

[35] Bangkok Post, Academic says prisoners should be allowed to have sex, 18 March 2013, available at: http://www.bangkokpost.com/lite/topstories/400492/academic-says-prisoners-should-be-allowed-to-have-sex

[36] Prisoner blog, *Sexual Abuse in Thai Prisons*, available at: http://garygraemejones.blogspot.co.uk/2009/10/sexual-abuse-in-thai-prisons.html *Becoming a cell boss*, August 2007, interview by Richard Barrow, available at: http://www.thaiprisonlife.com/gor/becoming-a-cell-boss/ http://garygraemejones.blogspot.co.uk/2009/10/sexual-abuse-in-thai-prisons.html.

[37] 300 to 400 persons had to stay in a room built for 40 to 50 persons. "Inhuman Detention Conditions in Bangkok?" Oxford Monitor of Forced Migration, volume 2, no. 1 June 2012, pp 28-33. North Korean Refugee Flow into Thailand Surges, US Cable 18 May 2007, available at: http://www.wikileaks.org/plusd/cables/07CHIANGMAI92_a.htm

[38] Department of Corrections, *Prisoners' rights under the Thai Penitentiary Act*, 2008, available at: http://www.internationalpenalandpenitentiaryfoundation.org/Site/documents/Stavern/30_Stavern_Repo

there are reports that each prisoner on average is allocated a sleeping area of 1.15 – 2 square metres or less. According to statistics from the Department of Corrections, 144 prisons and detention facilities across the country were housing 291,734 inmates as of January 2014.[39] This is nearly three times the official capacity. There can be as many as 40 to 60 inmates per cell. In Bang Kwang Central Prison and Klong Prem Central Prison prisoners have complained that there is barely enough room to lie down on the floor[40]. In the Central Women's Correction Institution, Amnesty International found in March 2014 that there were up to 40 women prisoners sleeping in one cell with access to only one toilet sometimes.[41]

According to the Thai Ministry of Disease Control, the size of cells in immigration detention centres across Thailand ranges between 114 to 156 square metres: officials report that they have the capacity to hold between 50 and 100 people each, which would allow for a minimum provision of 1.19 metres per person.[42] This amount of space does not allow adequate space for all of the detainees to lie down to sleep. In practice there have been reports of persons held for months in IDCs with less than one square metre of floor space each.[43] From January 2013, Rohingya (a Muslim minority from Myanmar) migrants, including asylum-seekers were detained for months in inadequate facilities. The effect of overcrowding on individuals was compounded by a failure to provide adequate medical care. The facilities in IDCs and police stations in southern Thailand where more than 1,500 Rohingya men[44] were detained over at least six or more months from January 2013 were extremely overcrowded.[45] Reports described how individuals were held in Phang Nga IDC in small cells with inadequate space to even sit.[46] Many were denied exercise or the opportunity to leave their cells, and their lower limbs swelled and muscles atrophied.[47]

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[39] International Centre for Prison Studies, *World Prison Brief. Thailand*, available at: http://www.prisonstudies.org/country/thailand.

[40] Reported to Amnesty International staff member 2014.

[41] Amnesty International visit, March 2014.

[42] Thai Ministry for Disease Control, quoted in WHO Thailand and the Bureau of Tuberculosis (BTB) of the Royal Thai Government's Ministry of Public Health (MoPH), Forum on international migration and health in Thailand: status and challenges to controlling TB June 2013, available at: http://www.searo.who.int/thailand/news/final_report_tb_review.pdf

[43] Channel 4 (UK) news report aired in May 2013, footage of the conditions of detention for some 276 persons held in Phang Nga IDC. An estimate by Amnesty International of the available space suggests that individuals may have had as little as 0.342 metres squared floor space.

[44] The men were part of a group of some 2000 individuals believed to be Rohingya from Myanmar who had arrived in Thailand by boat from Bangladesh and Myanmar. Within the group were individuals held following raids on trafficking camps on the Thai/Malaysia border. The government granted the group temporary permission to remain in Thailand on a humanitarian basis until 26 July 2013. This period was later extended, but authorities began deporting members of the group to Myanmar. In February 2014, authorities announced that 1,300 Rohingya had been returned to Myanmar.

[45] Human Rights Watch: *Thailand: Release and Protect Rohingya 'Boat People'*, August 2013, available at: http://www.hrw.org/news/2013/08/20/thailand-release-and-protect-rohingya-boat-people

[46] IRIN: *Rohingya detainees in Thailand face dire conditions* 28 June 2013, available at: http://www.irinnews.org/fr/report/98301/rohingya-detainees-in-thailand-face-dire-conditions.

Channel 4 news: *Rohingya kept crammed into filthy cages in Thailand*, 31 May 2013, available at: http://www.channel4.com/news/rohingya-kept-crammed-into-filthy-cages-in-thailand.

[47] Human Rights Watch *Thailand: Release and Protect Rohingya 'Boat People'* August 2013, available at: http://www.hrw.org/news/2013/08/20/thailand-release-and-protect-rohingya-boat-people

The Thai Government has confirmed in a communication to the UN the finding of the International Organization for Migration that there was overcrowding in many of these facilities, which had led to "*psychological problems, skin diseases, airborne diseases and muscle problems*"[48] The NHRC reported inadequate provision of sanitation, which was a contributory factor to the ill-health of detainees.[49]

Conditions of detention may have been a contributing factor in deaths in detention. In another incident of mass detentions of Rohingya, the NHRC found in the case of the death of a 15-year-old youth and an 18-year-old man, who died in July and August 2009 respectively after being held since January 2009 in Ranong IDC with a group of 78 men, "*that the overcrowded condition and poor ventilation of the detention centre, together with a lack of proper medical care to the sick, had contributed to the death of the...Rohingya detainees.*" [50] During 2013, seven men and one minor died in custody – as a result of sepsis, lung, heart and kidney failure[51] - during a period in which there was inadequate access to health care. In January 2014, a group of 686 Rohingya taken during a police raid on two traffickers' camps on the Thai-Malay border by police were placed in IDCs. Many were reportedly in poor states of health and five men aged between 16 and 40 years old were reported to have died soon after their rescue.[52]

Drinking water

The NHRC in 2012 reported a lack of clean drinking water in Ratchaburi Central Prison and Khaobin Central Prison. The institution further reported that in the summer there is a scarce supply of water, including for drinking, for prisoners in Surathani Central Prison, Chonburi Central Prison, Ratchaburi Central Prison, Khaobin Central Prison and Chonburi Women Correction Institution.[53] Reports continue of a lack of regular access to clean drinking water in IDCs.[54]

Healthcare

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[48] Response of the Royal Thai Government's Permanent Mission to the United Nations, October 2013, available at: https://spdb.ohchr.org/hrdb/24th/Thailand_30.10.13_(6.2013).pdf.

[49]IRIN "*Hell is real for the Rohingyas in Thailand*", 28 February 2013, in which Human Rights Commissioner Pitakwatchara was quoted as saying in this context that "Hell is real for Rohingyas in Thailand", available at: http://www.irinnews.org/printreport.aspx?reportid=99717

[50] Response of the Royal Thai Government's Permanent Mission to the United Nations, October 2013, available at: https://spdb.ohchr.org/hrdb/24th/Thailand_30.10.13_(6.2013).pdf

[51]Response of the Royal Thai Government's Permanent Mission to the United Nations, October 2013, available at: https://spdb.ohchr.org/hrdb/24th/Thailand_30.10.13_(6.2013).pdf

[52] Reuters: *Thai police target human traffickers but rescued Rohingya may face more abuse,* 13 February 2014, available at: http://www.reuters.com/article/2014/02/13/us-thailand-rohingya-idUSBREA1C0FB20140213. Phuketwan: *Nameless Graves Mark the end of tortured existence of Rohingya in Thailand*, 12 February 2014, available at: http://phuketwan.com/tourism/nameless-graves-mark-tortured-existence-rohingya-thailand-19736/

[53] The National Human Rights Commission's Sub-Committee on Rights to Judicial Process, *Report of the Visits to Facilities Vulnerable to Human Rights Violations: Police Stations and Prisons*, 2012.

[54] Mekong Migration Network*: No Choice in the Matter: Migrants' experiences of arrest, detention and deportatio*n, June 2013available at http://www.mekongmigration.org/No%20Choice_Eng.pdf

The inadequate provision of health care is a serious problem in Thai prisons, drug rehabilitation centres[55] and IDCs. Experts have raised concerns over insufficient medical staff and delayed diagnosis and treatment.[56] In the majority of the 18 detention facilities visited by representatives of the NHRC in 2011-2012,[57] medical care was restricted to weekly visits by one or two doctors, with no possibility of immediate access to a doctor, and general medical care was otherwise provided by one or two nurses.[58] The majority of prisons provided inadequate treatment and facilities for those suffering from mental illness.[59] Access to emergency medical care at night-time, weekends and public holidays was either not provided or limited. In some cases the only available emergency medical care at night was provided by designated prisoner volunteers.[60] For example, prisoners frequently report that treatment offered to them was often restricted to the administration of analgesia. The availability of drugs at no cost varies from prison to prison and is limited.[61]

A notable example of denial of medical care occurred following the detention of protesters in Tak Bai in October 2004, and their transportation in military trucks to detention in a military camp. Some 1,200 people were denied adequate medical attention. As a result, many protesters suffered severe injuries that required amputation of their limbs.[62]

Disciplinary Measures

Article 14 of the Correction Act, B.E. 2479 (1936) provides that instruments of restraint can be used in case prisoners pose a great risk to their own or others' lives or they are likely to attempt to escape, but cannot be used as a form of punishment. In 2012 the NHRC documented the use

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[55] Open Society Institute: *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand,* May 2010, available at: http://www.opensocietyfoundations.org/sites/default/files/Detention-as-Treatment-20100301.pdf

[56] Bangkok Post, '*Experts urge better inmate health care*', 3 September 2013.

[57] The National Human Rights Commission's Sub-Committee on Rights to Judicial Process, *Report of the Visits to Facilities Vulnerable to Human Rights Violations: Police Stations and Prisons*, in 2011 and 2012.

[58] The National Human Rights Commission's Sub-Committee on Rights to Judicial Process, *Report of the Visits to Facilities Vulnerable to Human Rights Violations: Police Stations and Prisons,* in 2011 and 2012 revealed that in Pranakorn Sriayuddhaya Central Prison, the ratio of medical personal and prisoners is 1:1600. Doctor will visit the prison once weekly. In Pranakorn Sriayuddhaya Provincial Prison, there are two nurses for 2,981 prisoners, the ratio of medical personal and prisoners is 1:1700. Doctor will visit the prison only on Wednesday. In Pranakorn Sriayuddhaya Correction Institution for Drug Addicts, there is one nurse for 1,193 prisoners, the ratio of medical personal and prisoners is 1:1250. Doctor will visit the prison once a week for three hours. In Nakorn Ratchasima Women Correction Institution, there are three nurses, the ration of medical personal and prisoners is 1:733. In Chiangmai Central Prison, there are three nurses for 3,505 prisoners. There is no medical doctor in prison.

[59] The National Human Rights Commission's Sub-Committee on Rights to Judicial Process, *Report of the Visits to Facilities Vulnerable to Human Rights Violations: Police Stations and Prisons*, in 2011 and 2012.

[60] Wilson D, Ford N, Ngammee V, Chua A, Kyaw MK (2007), *HIV Prevention, Care, and Treatment in Two Prisons in Thailand.* PLoS Med 4(6): 204. doi:10.1371/journal.pmed.0040204, 26 June 2007, available at: http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0040204.html

[61] United Kingdom Foreign and Commonwealth Office, *Thailand prisoner pack,* March 2013, available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/144204/Thailand_Prison_Pack.pdf

[62] Amnesty International and Human Rights Watch: *New Government should ensure Justice for Tak Bai*, 24 October 2006, available at: http://www.amnesty.org/en/library/asset/ASA39/015/2006/en/edc2ed51-d3e1-11dd-8743-d305bea2b2c7/asa390152006en.html

of shackling as a punishment for prisoners in Chonburi Central Prison, Khon Kaen Central Prison, Suratthani Central Prison and Khon Kaen Correction Institution for Drug Addicts. Drug addicts detained in drug rehabilitation centres under the Narcotic Addict Rehabilitation Act have been restrained with shackles and steel chains[63] to enforce discipline.

Until May 2013, all death row prisoners were held in leg shackles for 24-hours a day, a fact confirmed by the findings of the NHRC during its visits to Pitsanulok Central Prison and Khao Bin Central Prison in 2011-2012.[64] In May 2013, the government announced that they had removed leg shackles from 563 prisoners on death row in Bang Kwan Central Prison as a pilot project to terminate this practice. To Amnesty International's knowledge, the pilot project continues to date in Bang Kwang Central Prison, but prisoners in Pitsanulok and Khao Bin are still shackled. Prison officials have not disclosed whether instruments of restraint are still in use as disciplinary measures.

The Correction Act B.E. 2479 (1936) further permits prison officials to impose sanctions against prisoners who violate prison rules and regulations. Prisoners may be put in solitary confinement in cells of one and a half square metres by two metres for up to three months. This constitutes at least cruel, inhuman or degrading punishment in violation of Article 16 of the Convention, and may, depending on conditions and individual circumstances, amount to torture as defined in Article 1(1). According to the findings of the Union for Civil Liberty (UCL), there are no ventilation fans in solitary confinement cells, where the temperature in summer time may reach 50 degrees Celsius. Inmates in solitary confinement are not allowed to meet their family, have irregular access to medical services, lack clean water for drinking or washing, and frequently contract skin diseases.[65]

Indefinite administrative detention

Since Thailand announced a "crackdown" on irregular migrants in 1993, there have been consistent reports that conditions at 14 IDCs throughout the country fall below international standards for detention, particularly when they are used for long-term detention.[66] All those who enter the country without visas or travel documents may be considered in breach of Thai immigration laws and are at risk of arrest, detention, and deportation. Irregular migrants and asylum-seekers may be detained at IDCs, where they may be at risk of indefinite detention in facilities that are neither intended nor equipped for long-term accommodation. Amnesty International remains opposed to incarceration of asylum seekers and of irregular migrants solely on the basis of their status and is specifically concerned at the apparent lack of systematic review of the need for detention, and at the long-term and indefinite detention of asylum-seekers and migrants in IDC facilities[67] The organization is concerned that in view of the

[63] Open Society Institute: *Detention as Treatment: Detention of Methamphetamine Users in Cambodia, Laos, and Thailand* May 2010, available at: http://www.opensocietyfoundations.org/sites/default/files/Detention-as-Treatment-20100301.pdf

[64] The National Human Rights Commission's Sub-Committee on Rights to Judicial Process, *Report of the Visits to Facilities Vulnerable to Human Rights Violations: Police Stations and Prisons*, in 2011 and 2012.

[65] UCL, "*When Death Penalty Will Be Abolished*?" December 2012, p.9-10.

[66] Amnesty International, *Burmese and other asylum seekers at risk*, September 1994, AI Index: ASA 39/02/94, available at: http://www.amnesty.org/fr/library/asset/ASA39/002/1994/fr/65d5d46c-ebf5-11dd-9b3b-8bf635492364/asa390021994en.pdf

[67] Amnesty International has received information on the long-term detention of asylum-seekers in immigration detention for up to ten years. See also UNHCR: *No crime, no sentence, but refugees in Bangkok languish in detention,* 9 July 2009, available at: http://www.unhcr.org/4a55e8596.html

conditions and the indefinite nature of detention periods this use of detention may constitute cruel, inhuman and degrading treatment.

RECOMMENDATIONS

Amnesty International recommends that the Thai authorities:

- take legislative, administrative and practical steps to ensure that all persons deprived of liberty are immediately informed of their rights, including to complain about their treatment without fear of retaliation, and to have a lawyer present during questioning;
- ensure that detainees have prompt and frequent access to lawyers, including the right to have them present during all questioning, as well as to family visits, and ensure independent monitors and the NHRC have unfettered and immediate access to all places of detention and detainees;
- provide training to all personnel involved in the detention process, including medical personnel, police, army and prison officers in the human rights of detainees including as provided under the Convention; the judicial guarantees to ensure these rights and minimum standards of treatment, making clear that all acts of torture and similar ill-treatment are criminal acts;
- instruct officials that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment;
- ensure, in law, policy and in practice, that any allegation of torture and other ill-treatment are promptly impartially, independently and efficiently investigated, and ensure that at the very least disciplinary measures are applied to police, army or judicial personnel found to have ignored or dealt negligently with allegations of torture or other ill-treatment
- ensure that judges order full investigation whenever a detainee appearing before them complains of torture or other ill-treatment or shows any signs of ill-treatment;
- train officials, including lawyers, judges, medical personnel ,police and army to handle complaints, reports and cases of torture and other ill-treatment in accordance with the Convention, including by creating protocols for detecting, preventing and prosecuting acts of torture and similar ill-treatment;
- amend Section 17 of the Emergency Decree of 2005 and the 1914 Martial Act to ensure that there is no immunity from prosecution for officials who commit offences associated with human rights violations or international crimes, including torture and similar offences.
- ensure that detainees held without charge under security legislation are presented in person in court;
- sign and ratify the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and fully implement its provisions, in particular maintaining, designating or establishing National Preventive Mechanisms (NPMs);
- ensure that conditions of detention conform to international standards for the treatment of prisoners, including particularly by the provision of adequate space for prisoners and adequate medical care and sanitation, particularly in immigration detention facilities;
- immediately end the practice of permanent shackling of death row prisoners, the use of shackling as a punishment and prolonged solitary confinement and review conditions of detention in solitary confinement cells to ensure that they meet international standards;

- immediately end indefinite detention of migrants. Change laws, policies and practices to ensure that migrants and asylum seekers are not deprived of liberty solely on the basis of their status.

ARTICLES 1 AND 4: CRIMINALIZATION OF TORTURE

As acknowledged by the Thai Government in its initial report to the Committee against Torture,[68] there is no specific definition of torture corresponding with the definition in the Convention set out in Thai legislation. Currently, the prosecution of suspected perpetrators of torture can only be done under other crimes defined in the Penal Code such as murder, attempted murder, grievous bodily harm and battery.[69] The absence of an offence of torture in the Penal Code has been one of the obstacles to preventing and prosecuting torture in Thailand.

Amnesty International welcomes the recent government initiative to ensure that the act of torture is included in Thai law as a criminal offence, and that draft legislation has been under discussion before a Committee of Law, Justice and Human Rights[70] - the Draft of the Act on Amendments of the Penal Code (No.) BE and a Draft of the Act on Amendments of the Criminal Procedure Code (No.) BE. The organization, however, remains deeply concerned that in the current draft, the definition of the offence of torture[71] is not fully in line with the definition in Article 1 of the Convention against Torture, and that other provisions in the Draft Acts, including on prevention and redress for torture, fall short of the Convention's requirements.[72]

DEFINITION OF TORTURE

There are wide discrepancies between the offence of torture as defined in Article 166/1 of the draft and Article 1(1) of the Convention. The offence of torture in the draft defines an act of torture as (1) an act of rape as stated in Article 276 of the Penal Code, (2) physical assault that causes grievous bodily harm as stated in Article 297 of the Penal Code and (3) an act of physical assault causing the other person to suffer prolonged mental harm.

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[68] Committee against Torture, "*Consideration of reports submitted by States parties under article 19 of the Convention. Initial reports of States parties due in 2008. Thailand*", UN document CAT/C/THA/1, 26 February 2013, paragraph 56-59.

[69] Ibid, pars. 36-37.

[70] Currently a Standing Committee, whose members have been disqualified following the suspension of Parliament.

[71] Article 166/1 of the Draft Act defines torture as rape, assault and as "an act of physical assault causing the other person to suffer prolonged mental harm" and omits instigation, consent and acquiescence in the definition.

[72] The proposed measures are in line with those put forward by other organizations, including the Association for the Prevention of Torture.

Amnesty International is concerned that, rather than providing for a new offence of torture, this draft Article does little more than classify existing offences as torture, which may exclude any acts not falling into these three categories from the offence of torture. The organization is further concerned that key elements of the Article 1(1) definition such as official involvement, intention, purposes or discrimination are either absent from the draft's definition or else are inadequately provided for.

The definition of severity of pain or suffering caused by torture relies on a provision in Thai Penal Code to determine the severity required. Amnesty International is concerned that the severity level required by Article 297 of the Penal Code and the draft act is much higher than that required in Article 1 (1) of the Convention. Grievous bodily harm as defined in Article 297 of the Criminal Code has to result in severe outcomes.[73]

PURPOSES

The draft currently only provides for the following purposes of torture: to (1) obtain from the person or from a third person a statement or confession; (2) punish the victim; (3) compel the victim to act or to refrain from acting against the victim's will. Amnesty International is concerned that this does not fully reflect the Article 1(1) definition. In addition, the provision for "any reason based on discrimination of any kind" in Article 1(1) is missing from the draft.

REMEDIES FOR TORTURE

Article 90/1 of the Draft of the Act on Amendments of the Penal Code (No.) B.E, details procedures for seeking judicial remedy for torture, namely that the Court of Justice may undertake inquiries following complaints on individual cases, and may order that perpetrators provide remedies and compensation, but does not include reference to other aspects of reparations as elaborated by the Committee's General Comment on Article 14,[74] including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The draft act does not stipulate a statute of limitations, nor does it include provisions that allow for universal jurisdiction and the provision of rehabilitation, restitution and redress to victims of torture, regardless of where the torture occurred.

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[73] Section 297 of the Penal Code provides that whoever commits bodily harm, and thereby causing the victim to receive grievous bodily harm, shall be punished with imprisonment of six months to ten years. Grievous bodily harms are as follows:

Deprivation of the sight, deprivation of the hearing, cutting of the tongue or loss of the sense of smelling;

Loss of genital organs or reproductive ability;

Loss of an arm, leg, hand, foot, finger or any other organ;

Permanent disfiguration of face;

Abortion;

Permanent insanity;

Infirmity or chronic illness which may last throughout life;

Infirmity or illness causing the sufferer to be in severe bodily pain for over twenty days or to be unable to follow the ordinary pursuits for over twenty days; available at: http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#295

[74] General Comment No. 3 of the Committee against Torture: Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3, 16 November 2012.

RECOMMENDATIONS

Amnesty International recommends that the Draft of the Act on Amendments of the Penal Code (No) BE is amended to retain the language of Article 1 (1)(1) of the Convention and all core elements of this definition, as detailed further below and thereby:

- add to the current draft provisions that prevent unequivocally the invocation of any justifications for the use of torture, including on the basis of exceptional circumstances (Art. 2(2) of the Convention) as well as orders from senior officers or public officials (Art 2(3) of the Convention).Include with respect to article 90/1 of the draft, provisions for comprehensive reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- add a provision to the draft the effect that there be no statute of limitations for the offence of torture.;
- retain the language of Article 1 (1) of the Convention on who may be liable for acts of torture namely "a public official or other person acting in an official capacity";
- incorporate all purposes of torture provided in the Convention and ensure that the list is not exhaustive;
- add "or for any reason based on discrimination of any kind" as an alternative, or complement, to the element of purpose of torture;
- ensure that Thailand establishes its jurisdiction over torture-related offences, tries or extradites persons suspected of torture under its jurisdiction and take other necessary measures under its universal jurisdiction obligations as provided in Articles 5-9 of the Convention;
- ensure that the draft is interpreted in light of the Convention against Torture and other international law jurisprudence.

ARTICLE 3: NON-REFOULEMENT

Thailand is not a state party to the 1951 Convention Relating to the Status of Refugees, and has no formal legal framework for recognizing or determining the status of refugees and asylum seekers. In this vacuum, refugees and asylum-seekers continue to be at risk of arrest, detention, deportation as illegal migrants, and potentially refoulement to torture or other ill-treatment.

Amnesty International is concerned that the lack of legal status for asylum-seekers as well as inconsistencies in policy and practice towards stateless people, asylum-seekers and refugees of different backgrounds increase the risk of refoulement of individuals in need of protection from torture. Ad hoc arrangements which have historically allowed the protection of certain groups of Myanmar, Lao and Cambodian refugees and asylum-seekers within official refugee camps, have not been made available to everyone seeking protection in Thailand.

Amnesty International repeatedly raised concern at the forcible repatriation of individuals at risk of torture and other ill-treatment on return to their home country, when Thai authorities

forcibly returned Lao Hmong to Laos in 2005, 2008[75] and 2009. These included 158 individuals whom the UN High Commissioner for Refugees (UNHCR) had classified as "persons of concern" who have faced arbitrary detention and torture on return. According to credible sources, one of the individuals returned on 28 December 2009 died in police custody in Laos after being arrested in 2011, and his corpse was later found mutilated[76]. Over 20 girls and young women forcibly returned in 2005spent around one-and-a-half years in arbitrary detention in Laos. Several of them have, since their release, reported that they were tortured in detention[77]. No investigation is known to have taken place.[78]

Amnesty International is also concerned by the Thai government's refoulement of groups of Rohingya,[79] who have fled violence and displacement. Authorities have returned Rohingya to Myanmar, including individuals who were held in poor conditions for months in detention in Thailand, and have also pushed back Rohingya people arriving in waters off the Thailand coast, preventing them from landing or remaining in Thailand.[80]

The apparent policy to push-back boats to sea violates the principle of non-refoulement and puts migrants and asylum seekers at risk. Reports also suggest that the policy may have directly or indirectly cost lives. In at least one incident, some 97 individuals believed to be Rohingya reportedly died at sea after their boat was intercepted and pushed out to sea by Thai authorities in late January 2013.[81]

There are also concerning reports of smugglers subjecting Rohingya held in smugglers camps on the Thai-Malaysia border to a series of abuses including alleged killings, and the use of torture and other ill-treatment to extort funds. Amnesty International is also concerned by reports of official awareness or involvement in the transfer of individuals to traffickers.[82] A Rohingya woman who left a government shelter in May 2013 to join two men, one of whom was a police officer who had promised to take her to Malaysia to reunite her with her husband, was

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[75] Agence France Presse, *Rights group urges Thailand to halt forced return of Hmong,* 6 March 2008 available at: http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=47cf99d38

[76] Amnesty International, *Laos Annual Report 2012*, available at: https://www.amnesty.org/en/region/laos/report-2012

[77] Amnesty International, Thailand: Thai government must not fail Lao Hmong refugees and asylum seekers, 20 January 2009, available at: http://www.amnesty.org/en/library/asset/ASA39/002/2009/en/5655ee8b-e6ee-11dd-a371-adcd1d2c1b57/asa390022009en.html

[78] Amnesty International: *Annual Report 2012; 2011; 2010, country entries on Laos,* available at*:* http://www.amnesty.org/en/region/laos/report-2012*;* http://www.amnesty.org/en/region/laos/report-2011 ; http://www.amnesty.org/en/region/laos/report-2010

[79] The situation of the Rohingya minority community in Rakhine state, Myanmar, has significantly deteriorated since the eruption of violence between members of the Buddhist and Muslim communities in June 2012. The violence resulted in considerable death and injury on both sides.

[80] Amnesty International: *Thailand/India/Indonesia: Rohingyas at risk need protection*, 17 February 2011 available at: www.amnesty.org/en/library/info/ASA01/004/2011/en

[81] Amnesty International: *Thailand*: *Open Letter On The Treatment OF Rohingya Asylum-Seekers And Migrants*, 10 June 2013, AI Index: ASA 39/002/2013, available at: http://www.amnesty.org/en/library/asset/ASA39/002/2013/en/955e0fa5-e140-49ba-aed9-bc1b6cf5d228/asa390022013en.html.

[82] Reuters Special Report: *Thailand secretly supplies Myanmar refugees to trafficking rings,* 5 December 2013, available at: http://uk.reuters.com/article/2013/12/05/uk-thailand-rohingya-special-report-idUKBRE9B400920131205

beaten and threatened by the police officer in order to extort payment from her husband for her journey to Malaysia.[83]

[83] Amnesty International *Thailand*: *Ensure Access To Justice And Protection For Rohingya Asylum-Seekers,* 15 July 2013, AI Index ASA 39/003/2013, available at: http://www.amnesty.org/en/library/asset/ASA39/003/2013/en/a5774924-fd1c-4f25-bec8-25f4f42dfd1a/asa390032013en.html.

RECOMMENDATIONS

Amnesty International recommends that the Thai authorities:

- instruct officials to allow migrants the opportunity to register claims for refugee protection and do not return anyone to a place where they would be at risk of torture and other ill-treatment;
- ensure that officials make the opportunity to seek protection available to all without discrimination;
- investigate all allegations of refoulement and hold those found to be responsible to account;
- investigate allegations of state complicity in handing detainees to people smugglers and hold those found to be responsible to account;
- enact domestic legislation to recognise refugee status and provide asylum in accordance with international legal standards;
- sign and ratify the 1951 Refugee Convention and its 1967 Protocol.

ARTICLES 2, 12, 13 AND 14: ACCOUNTABILITY FOR TORTURE

The lack of accountability for torture in Thailand has been facilitated by legal obstacles such as the lack of criminalization of torture and provisions providing immunity from prosecution as contained in the 1914 Martial Law Act[84]and the 2005 Emergency Decree[85]. Other factors at play include acts of intimidation against individuals seeking redress, a lack of effective independent investigative mechanisms, the absence of effective witness protection and independent oversight of detention facilities. It appears that authorities occasionally use internal disciplinary measures against perpetrators, but rarely initiate criminal prosecutions for torture.[86]

[84] Martial Law Act BE 2457 (1914), Section 16.

[85] 2005 Emergency Decree section 17.

[86] In the case of the beating to death of Imam Yapa Kaseng by the army in 2008, an internal investigation reportedly led to the punishment of three military personnel for sixty days, and one officer to thirty days. All were reportedly allowed to continue on active duty and were transferred. Amnesty International interview August 2008.

NEED FOR INDEPENDENT INVESTIGATIONS

Two bodies have been employed sporadically to investigate allegations of human rights violations, including torture – the Department of Special Investigation (DSI) [87] and the National Anti-Corruption Commission (NACC).[88] Complainants have alleged delays in the investigation process by both bodies.

Prisoners may report concerns about violations in the prison service to the Department of Corrections within the Ministry of Justice, and to an external Ombudsman in writing,[89] and persons held in IDCs may raise complaints through the director or supervisor of the facility or may contact a lawyer or representative.[90]

In one of the most widely publicised cases of torture in Thailand, a complaint was filed with the DSI on 11 March 2004 by lawyer Somchai Neelapaijit about the torture under martial law in January 2004 of Suderueman Malae, and four others. The DSI investigated the claims and passed information to the NACC. After a considerably delayed investigation, on 22 December 2010 the NACC dismissed the complaint on the basis of the inconclusiveness of physical evidence of torture. The dismissal of the case was then taken as proof that the torture did not take place, by a court that sentenced one of the persons allegedly tortured, Suderueman Malae, to two years imprisonment. He was convicted of maliciously providing false information to inquiry officers because he had filed a complaint of torture.[91]

Internal investigations by security forces of allegations of torture have been undermined by their clear lack of impartiality and independence. These shortcomings were highlighted during the inquest into the death of Ashari Samae-ae, who died in custody on 21/22 July 2007.[92] At the inquest in 2012, Yala Provincial Court, found that he died of brain injuries sustained as a result of an assault by police and army officers while in their custody. The Court pointed out that these army and police officers were the same officials who had compiled a report of his death, in which they had concluded despite evidence to the contrary that he had died as a result of injuries falling in a river whist resisting arrest.

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[87] The DSI was formed in 1999, on the recommendation of the Committee of the Senate, and is part of the Ministry of Justice, and has the remit to investigate "special crimes".

[88] The NACC (formerly NCC) has the mandate "to investigate and decide whether a state official who holds an executive post or a Government official who holds a position from the Director level upwards or the equivalent has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office."

[89] The Corrections Department has issued instructions to prison staff not to open any such mail. *Prisoners' rights under the Thai Penitentiary Ac*t, written by specialists of the Department of Corrections, 2008, available at: http://www.internationalpenalandpenitentiaryfoundation.org/Site/documents/Stavern/30_Stavern_Report%20Thailand.pdf.

[90] Guidelines on Standards in Immigration Detention Centres; Immigration Order 148/2553 2010 section 12, viewed at page 227 of Mekong Migration Network -*No Choice in the Matter: Migrants' experiences of arrest, detention and deportation* June 2013 available at: http://mekongmigration.org/add/wp-content/uploads/2012/11/Book-ADD_Eng.pdf

[91] Amnesty International Thailand: *10 years on, find truth and justice for family of Somchai Neelapaijit* 14 March 2014, available at: http://www.amnesty.org/en/library/asset/ASA39/001/2014/en/85208d4c-ba62-43b2-b916-601ea87dd994/asa390012014en.pdf

[92] Press release, Muslim Attorney Foundation and Cross-cultural Foundation, July 2012, available at: http://voicefromthais.files.wordpress.com/2012/07/2012_07_24_-yala-court-decided-in-assaree-inquest-trial-_he-was-tortured-to-die-_final_.pdf.

Private Wichean Puaksom died on 5 June 2011 as a result of being tortured on 1 June 2011 in Naradhiwas Rajanagarindra military training camp in Cho Airong district, Narathiwat, in punishment for taking leave without authorisation on 29-31 May 2011. His relatives reported that after his death officials privately offered them compensation in exchange for not taking further action, and there was little progress in military investigations into his death until they filed a complaint with the Privy Council[93]. Government officials have reported that the military training camp committee that investigated his death from liver failure, found that it took place due to "*severe living conditions during the 2 days escape from training centre during which Private Wichean Puaksom had insufficient food and water…excessively severe discipline training which was against the army regulations and shortcomings by the training centre for not being able to give prompt medical attention.* The military court attorney stated that on 5 September 2011 that there had been malfeasance[94] by nine of the individuals, and that they would face legal action. The persons involved were subjected to disciplinary measures, including probation, and detention between 15 days and three months[95]. According to relatives' statements to media, the personnel implicated in the incident have been allowed to continue with their duties pending the case being brought to military court.[96] There has been little progress reported in the review of the case[97], which is reportedly being conducted by the Public Sector Anti-Corruption Commission (an investigative body designed to investigate low and medium level public sector employees) formed in 2008 to reduce the workload of the NACC.[98]

LEGAL OBSTACLES TO ACCOUNTABILITY

As discussed earlier, Amnesty International is concerned that provisions in security legislation[99] allow for immunity from prosecution for officials exercising these special powers, and has called for the appeal or amendment of these laws to allow for accountability for state officials suspected of committing human rights violations. It should be noted that the

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[93] A council of advisors to the King of Thailand.

[94] *Clarification by the Royal Thai Government regarding the allegations of torture resulting in the death of Private Wichean Puaksom,* 4 March 2014, available at: https://spdb.ohchr.org/hrdb/23rd/Thailand_04.03.13_(11.2012).pdf

[95] *Clarification by the Royal Thai Government regarding the allegations of torture resulting in the death of Private Wichean Puaksom,* 4 March 2014, available at: https://spdb.ohchr.org/hrdb/23rd/Thailand_04.03.13_(11.2012).pdf

[96] Nation (Thailand) *Govt urged to amend criminal code*, 28 June 2012, available at: http://www.nationmultimedia.com/national/Govt-urged-to-amend-criminal-code-30185061.html

[97] Cross- Cultural Foundation *Army agreed to pay 6.5 millions baht for Supot Draftee died in training*_16 July 2013, available at: http://voicefromthais.wordpress.com/2013/07/16/crcf-news-released-private-wichean-phuaksoms-mother-awarded-6-5-million-compensation-her-son-was-tortured-to-death-by-military-trainers/

Crosss-Cultural Foundati *on Royal Thai Army agreeing to a 6.5 millions compensation for the death of Private Wichean beaten to death by his trainer*s, 24 February 2014 available at: http://voicefromthais.wordpress.com/2014/02/24/royal-thai-army-agreeing-to-a-6-5-millions-compensation-for-the-death-of-privateatwichean-beaten-to-death-by-his-trainers/

[98] According to the government the case is being investigated by the NACC. *Clarification by the Royal Thai Government regarding the allegations of torture resulting in the death of Private Wichean Puaksom*, 4 March 2014, available at: https://spdb.ohchr.org/hrdb/23rd/Thailand_04.03.13_(11.2012).pdf

[99] Article 16 of the Martial Law Act BE 2457 (1914provides blanket impunity for military officials acting in an official capacity, and victims cannot request any compensation from military -- see page 3 of this document for further discussion of the Act.

Emergency Decree has been in continuous force since 2005 in many areas of southern Thailand affected by the conflict.

Seventy-eight men suffocated or were crushed to death after they were detained at Tak Bai, Narathiwat on 25 October 2004 and transported to detention facilities in appalling conditions. They were piled on top of one another in trucks and left for a lengthy period before being unloaded at military barracks in Pattani. In 2009, following the result of an inquest into the 78 deaths in Tak Bai, the Songkla Provincial Court in the South of Thailand ruled that the deaths were caused by suffocation, but did not elaborate on the manner of death as required by law, stating that they died in the custody of officials who were performing their duties. Relatives of the victims subsequently challenged the Provincial Court's ruling at the Central Criminal Court, the Appeal Court and later at the Supreme Court. In 2013, the Supreme Court stated that the relatives should submit their challenge to the Songkla Provincial Court, not to the Central Criminal Court. The consequence of this decision is to uphold the previous court ruling of Songkla Provincial Court, which stated that the 78 died only from suffocation and that security personnel were blameless and had only been performing their duty.[100]

Under the Law for the Organization of Military Court, military personnel are subject to prosecution in a military court[101]. International human rights bodies have increasingly adopted the position that serious violations of human rights, including torture, should be tried in civilian courts, depending on the alleged crime.[102]

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[100] Amnesty International, Thailand: *Government fails to provide justice for the victims of Tak Bai Killings,* 1 August 2013, available at: https://www.amnesty.org/en/news/thailand-government-fails-provide-justice-victims-tak-bai-killings-2013-08-01

[101] Under the Act on the Organization of Military Courts (B.E. 2498) 1955, criminal offences are to be tried by the military court "*Unless the offence is a joint offense by person(s) under the jurisdiction of a military court and person(s) not under the jurisdiction of a military court; (2) an offense connected with another case within the jurisdiction of a civilian court; (3) an offense which must be tried in the juvenile court; and (4) an offense held by a military court to be outside its jurisdiction."*

[102] Concluding Observations on the UN Human Rights Committee on Guatemala, UN Doc. CCPR/CO/72/GTM (2001), para 20; Concluding Observations of the UN Human Rights Committee on Colombia, 25 September 1992, UN Doc. CCPR/C/79/Add.2, para 393; Concluding Observations of the UN Human Rights Committee, Colombia, UN Doc. CCPR/C/79/Add.76 (1997), para 18 and 34; Concluding Observations of the UN Human Rights Committee, Peru, 25 September 1992, UN Doc. CCPR/C/79.Add.8, para 8; Concluding Observations of the UN Human Rights Committee, Croatia, 28 December 1992, UN Doc. CCPR/C/79/Add.15–A/48/40, para 369; Concluding Observations of the UN Human Rights Committee, Brazil, 24 July 1996, UN Doc. CCPR/C/79/Add.66, para 10; Concluding Observations of the UN Human Rights Committee, Lebanon, 1 April 1997, UN Doc. CCPR/C/79/Add.78, para 14; Concluding Observations of the UN Human Rights Committee, Chile, 30 March 1999, UN Doc. CCPR/C/79/Add. 104, para 9; see also Concluding Observations of the UN Human Rights Committee, Bolivia, UN Doc. CCPR/C/79/Add.74, para 11; Concluding Observations of the UN Human Rights Committee, El Salvador, 18 April 1994, UN Doc. CCPR/C/79/Add.34, para 5; Concluding Observations of the UN Human Rights Committee, Ecuador, 18 August 1998, UN Doc. CCPR/C/79/Add.92, para 7; Case of Jos Vicente and Amado Villafane Chaparro, Luis Napoleon Torres Crespo, Angel Maria Torres Arroyo and Antonio Hugues Chaparro Torres v. Columbia, Communication No. 612/1995, decision dated 29 July 1997, UN Doc. CCPR/C/60/D/612/1995; Case of Nydia Erika Bautista v. Columbia, Communication No. 563/1993, decision dated 13 November 1995, UN Doc. CCPR/C/55/D/563/1993.

Committee against Torture, Conclusions and Recommendations of the Committee against Torture, Peru, 16 November 1999, UN Doc. A/55/44, para 62; Committee against Torture, Concluding Observations of the Committee against Torture, Colombia, 9 July 1996, UN Doc. A/51/44, para 80; Committee against Torture, Concluding Observations of the Committee Against Torture, Venezuela, 5 May 1999, UN Doc. A/54/44, para 142.

Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, Colombia, 15 February 1995, UN Doc. CRC/C/15/Add.30, para 17.

The case of Imam Yapa Kaseng highlights the obstacles to redress s for relatives under military procedure laws. Following the post-mortem inquest ruling by Narathiwat Provincial Court, which found that Imam Yapa Kaseng died in custody as a result of torture carried out by military officers, no prosecution has taken place of the perpetrators. A criminal case filed by his relatives against the suspected perpetrators was dismissed by Narathiwat Provincial Court in 2011 This was on the basis that under military procedure laws[103] only state prosecutors can be the plaintiff in a case filed against a military official, any damaged party has to allow the state prosecutor to be the sole plaintiff of their case and no other parties are allowed to be co-plaintiffs.[104] Imam Kaseng's widow had filed a civil case that prompted this judgement after no public progress was made with the investigation of her husband's death by the NACC.

The ability of the NHRC to investigate complaints of human rights violations (including torture and other ill-treatment) is limited in law. The Act states that the Commission has a duty to investigate and propose remedial measures for acts "*which [are] not a matter being litigated in the court or that upon which the court has already given final order or judgemen*t"[105].

WEAK DOCUMENTATION OF TORTURE AND OTHER ILL-TREATMENT

Amnesty International has received reports that inadequate access to doctors during detention, coupled with doctors' fears of reprisal if they document torture, creates a key obstacle to obtaining medical evidence of torture. The length of detention without charge or trial under security legislation may also mean that by the time a detainee is able to access medical personnel after their release, physical evidence may have faded.

In one instance, the family of a man detained by the army in February 2012 reported that he was tortured, including by beatings and attempted asphyxiation. An army investigation which dismissed his complaint reportedly relied on a medical report provided by a private doctor after his release from custody, who only recorded his claim of torture without information of the supporting physical signs, without providing any information on whether or not there was evidence of physical injury or mental trauma, as proof that no torture took place. The individual in question had been visited in custody by the NHRC. A doctor accompanying the NHRC only

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Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, 20 August 2008, UN Doc. A/63/313, para 48; Human Rights Questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Report on Extrajudicial, Summary or Arbitrary Executions, prepared by Bacre Waly Ndiaye, Special Rapporteur, 7 October 1996, UN Doc. A/51/1457, para 125; Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, prepared by Ms Asma Jahangir, Special Rapporteur, 6 January 1999, UN Doc. E/CN.4/1999/39, para 67; Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, prepared by Ms Asma Jahangir, Special Rapporteur, 25 January 2000, UN Doc. E/CN.4/2000/3, para 89.

Report of the Working Group on Enforced or Involuntary Disappearances: Best practices on enforced disappearances in domestic criminal legislation, Addendum, prepared by the Working Group on Enforced or Involuntary Disappearances, 28 December 2010, UN Doc. A/HRC/16/48/Add.3, para 57.

[103] Military procedure Act B.E. 2498.

[104] Cross-cultural Foundation *Progress of the Case on the Death of Imam Yapha Kasenkg: Civil case and Criminal case as of 20 July 2011* published 25 July 2011, available at: http://voicefromthais.files.wordpress.com/2011/07/2011_07_25-update-on-imam-yapha-case_-civil-court-and-criminal-case-english-version.pdf

[105] National Human Rights Commission Act BE 2542 (1999) available at: http://www.asiapacificforum.net/members/full-members/thailand/downloads/enabling-legislation/thailandact.pdf

carried out a preliminary examination, and did not provide any records of the visit to the family.[106]

WITNESS PROTECTION

The intimidation of witnesses to and victims of human rights violations to deter them from initiating or proceeding with seeking judicial redress has been well documented.[107] As recognized by Thailand in its report to the Committee, there is a need to improve the current witness protection law, especially where it applies to persons in cases against officials – including by adequately resourcing its enforcement, and ensuring that protection is not provided by the same agency as the perpetrators of human rights violations that are being prosecuted.[108]

Under the Witness Protection Act 2003, criminal defendants cannot be provided witness protection[109], which could compromise the ability of tortured criminal suspects to file a suit against their treatment in detention

FINANCIAL COMPENSATION AND LACK OF COMPREHENSIVE REPARATIONS

The Administrative Court is also able to issue a restitution order for compensation on application by the complainant. According to reports, the awards given are often insufficient. Persons accused in criminal cases whose "*body, life or mind have been injured by the criminal offence*[110]" may request compensation for the medical treatment, or physical//mental rehabilitation under the Damages for the Injured Person and Compensation

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[106] Deep South Watch Journalism School, 25 February 2012 available at: //www.deepsouthwatch.org/dsj/2951. Note that According to Regulation of ISOC Region 4, security officers also monitored the visit and the interview of detainee by outsiders which in effect may cause detainee fear reprisal if speaking about officials' misconduct.

[107] Asian Human Rights Commission, *What Really Happens to Witnesses in Thailand: Some cases* available at: http://www.humanrights.asia/resources/journals-magazines/article2/0503/what-really-happens-to-witnesses-in-thailand-some-cases

Human Rights Watch: *Thailand: Stop Threatening Activists in the South*, 13 February 2009, available at: http://www.refworld.org/docid/49991d892c.html

[108] Committee against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention. Initial reports of state parties due in 2008. Thailand, 9 July 2013, available at: http://www.refworld.org/docid/5284a2af4.html , paras 141-144.* See also Asian Human Rights Commission *Special Report: Protecting Witnesses or Perverting Justice in Thailand* June 2006, available at: http://www.article2.org/pdf/v05n03.pdf.

[109] The definition of a "Witness" under Section of the Act is: "a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness", available at: file://intsec.amnesty.org/data/users/kgerson/Downloads/Thailand%20Witness%20Protection%20Act%20(2003)%20(6).pdf

[110] Section 3, Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act 2001, available at: http://www.thailawforum.com/laws/Damages%20for%20the%20injured%20person.pdf

and Expense for the Accused in Criminal Case Act[111], and are required to submit a complaint within a year of the offences.

Since 2012, the Thai Government has disbursed payments from a compensation fund for deaths and injuries associated with the violence in Thailand's southern provinces, including in cases where these have been caused by official action.[112] Among the categories of persons eligible for compensation are persons "*affected in security operations including disappearances, torture and human rights violations.*[113] In August 2012 the Southern Border Provinces Administration Centre (SBPAC) which administers the fund provided payments of between 4 million and 7.5 million baht ($127,000 - 238,345) per life lost[114] to the victims of the families of those who died in custody in the Tak Bai incident. While the granting of compensation in this case is a welcome measure and acknowledgement of state responsibility, Amnesty International notes that according to press reports, by June 2013 only five of 400 people who claimed compensation for torture had been granted compensation.[115] The organization calls for measures of compensation to be dispensed in tandem with measures to hold those found responsible for torture fully to account.

Measures have not been taken to comprehensively provide reparation, including compensation, rehabilitation, satisfaction and guarantees of non-repetition to the victims of torture. There is no systematic state provision of rehabilitation and redress for the physical and psychological consequences of torture, including appropriate medical and psychological care.

Problems reported with the administration of compensation funds to torture victims[116] point to the need for judicial measures to establish the truth about allegations of torture. When serious human rights violations occur, the truth and facts of the violation as well as responsibility of the relevant state organs are not regularly acknowledged or made public.

RECOMMENDATIONS

Amnesty International recommends that the Thai authorities:

- establish an independent civilian body to investigate allegations of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement officials upon receiving complaints or any other reports of torture or other ill-treatment, and carry out a

[111] Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act 2001 Available at http://www.thailawforum.com/laws/Damages%20for%20the%20injured%20person.pdf

[112] Pattaya Mail, *Cabinet increases compensation for southern violence victims,* 16 August 2012, available at: http://www.pattayamail.com/news/cabinet-increases-compensation-for-southern-violence-victims-15607#sthash.ZWWUUaJ9.dpuf.

[113] MCOT *Bt7.5 million compensation scheme approved for victims of Deep South violence*, 12 February 2012, available at: http://www.mcot.net/site/content?id=4ff674da0b01dabf3c03f894#.Uyjqrvl_v7I

[114] Khabar Southeast Asia, *Thailand Approves Massive Payout to Deep south Victims*, 20 June 2012, available at: http://khabarsoutheastasia.com/en_GB/articles/apwi/articles/features/2012/06/20/feature-02

[115] The Nation (Thailand), "Little compensation for torture victims, forum told", 27 June 2013, available at: http://www.nationmultimedia.com/national/Little-compensation-for-torture-victims-forum-told-30209196.html

[116] Lack of physical visible marks of torture, or medical evidence that could not be linked to another cause of injury, has been used as a basis for not awarding all who allege torture compensation under the fund. The Nation (Thailand) *Little compensation for torture victims, forum told June* 2013, available at: http://www.nationmultimedia.com/national/Little-compensation-for-torture-victims-forum-old-30209196.html.

prompt, independent, impartial and efficient investigation; ensure that the scope, methods and findings of such investigations are made public;

- suspend, for the duration of the investigation, all officials suspected of committing torture or other ill-treatment from any duties that involve the treatment of detainees or that may influence the investigation and where such investigations produce sufficient and admissible evidence, prosecute all those responsible for torture and similar offences, irrespective of rank or position, in proceedings which meet international standards of fairness;

- ensure, in law, policy and in practice, that complainants, witnesses and others at risk are protected from intimidation and reprisals, including by adequately resourcing the witness protection program;

- ensure in law, policy and practice that military personnel may be tried in a civilian court for acts of torture and similar offence;

- institute a systematic and comprehensive range of effective and accessible measures, in consultation with victims of torture and their representatives, to systematically grant victims of torture redress, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;

- ensure that no statements or other material obtained through torture or other ill-treatment are used in any proceedings, except against suspected perpetrators as proof that the statements were made.

APPENDIX I

Statistics on torture and ill-treatment complaints in Thailand in 2007-2013

Table 1: Numbers of torture complaints received by National Human Rights Commission nationwide in 2007-2013 divided by regions.

Year / Regions	2007	2008	2009	2010	2011	2012	2013	Total (case)
Southern border provinces* (Pattani, Yala, Narathiwas, and 4 districts of Songkla)	9	8	10	21	16	16	13	93
South	1ac	5	3	1	-	-	-	10
North	2	2	1	1	-	2	-	8
Northeast	-	1	-	1	3	-	-	5
East	-	-	1	-	1	-	-	2
West	2	-	-	-	-	-	-	2
Central	2	3	3	4	1	2	1	14
Total (case)	16	19	17	27	21	20	14	134

Source: National Human Rights Commission of Thailand

In the 134 cases mentioned above, there are 188 victims. Among 188 victims of torture, 174 are men, 14 are women. Five victims did not survive the abuses and died, 183 suffered different levels of injuries.

Table 2: Numbers of officials alleged to have committed torture or other ill-treatment, divided by agencies of alleged perpetrators

Year / Alleged perpetrators	2007	2008	2009	2010	2011	2012	2013	Total (person)
Police/Border Police	10	15	8	8	7	8	3	**59**
Military	9	5	8	15	15	11	12	**75**
Prison Officers	-	-	2	5	-	3	-	**10**
Others*	1	-	-	1	-	1	1	**4**
Total (person)	**20**	**20**	**18**	**29**	**22**	**23**	**16**	**148**

Source: National Human Rights Commission of Thailand

*Others such as immigration police, village head, and village security volunteers (armed and trained by state)

Table 3: Numbers of officers alleged to have committed torture or other ill-treatment, divided by agencies of the alleged perpetrators and by region

Region / Alleged perpetrators	Central	North	Northeast	East	West	South	Southern borders	Total (person)
Police/Border Police	12	6	5	1	1	8	26	**59**
Military	-	-	-	1	-	-	74	**75**
Prison Officers	1	2	-	-	-	2	5	**10**
Others*	1	-	-	-	1	-	2	**4**
Total (person)	14	8	5	2	2	10	107	**148**

Source: National Human Rights Commission of Thailand

*Others such as immigration police, village head, and village security volunteers (armed and trained by state)

Table 4: Numbers of torture complaints in the southern borders provinces received By the Muslim Attorney Centre in 2007-2013

Provinces/ Year	2007	2008	2009	2010		2011	2012	2013	Total (case)
Pattani	-	-	20	27		14	9	7	**77**
Narathiwas	-	-	19	30		34	15	25	**123**
Yala	25	88	22	6		2	12	25	**180**
Songkla	-	-	-	-		-	1	1	**2**
Total (case)	**25**	**88**	**61**	**63**		**50**	**37**	**58**	**382**

Source: Muslim Attorney Centre, Thailand

www.amnesty.org