

THAILAND

A human rights review based on the International Covenant on Civil and Political Rights

INTRODUCTION

On 29 October 1997 the Royal Thai Government took the significant step of acceding to the International Covenant on Civil and Political Rights (ICCPR). The government has also stated that it is seriously considering acceding to the International Covenant on Economic, Social and Cultural Rights (ICESCR), a step which Amnesty International would also welcome. The ICCPR guarantees many fundamental human rights, including the right to life (Article 6), the right to an effective remedy (Article 2), the right not to be tortured or ill-treated (Articles 7 and 10), the right not to be arrested arbitrarily (Article 9), the right to due process (Article 14), and the right to freedom of expression (Article 19). Although Thailand has made substantial progress in protecting these rights since the May 1992 violent military crackdown on pro-democracy demonstrators¹, there remain several problems both in terms of law and of practice.

A new Constitution, which was promulgated by His Majesty the King in October 1997, goes some way towards correcting these problems, but does not protect all fundamental rights completely. The right not to be tortured or ill-treated is guaranteed in Article 31 of the Constitution, but the same article provides for the retention of the death penalty. Other rights guaranteed in the ICCPR which the new Constitution also protects are the rights to freedom of association, expression, movement, and religion. The presumption of innocence and equality before the law are also guaranteed. The Constitution further provides for the formation of a National Human Rights Commission, which has yet to be implemented, although the government has taken steps towards its establishment. Article 237 of the Constitution allows for the detention of criminal suspects without a court order for 48 hours, instead of seven days under the old Constitution. The new Constitution was also the first to have been drafted with major public participation, as was illustrated by the lengthy consultative process which took place in 1997 throughout the country.

¹During demonstrations in Bangkok, 52 people were killed by the military and 39 are missing, presumed dead. Please see *THAILAND: The Massacre in Bangkok*, Amnesty International, October 1992 (ASA 39/10/92) for a full discussion.

In another reformist trend, the military has pursued a much less active role in Thai politics than it did before the 1992 crisis and has become more accountable to the civilian administration. In September 1998 when General Surayudh Julanond was appointed as the new commander-in-chief of the army, he resigned from his position as Senator and announced that "*the army will not get involved in any form of political activity...*".² However in the areas bordering Myanmar and Cambodia the local military enjoys a high degree of autonomy, sometimes leading to human rights violations, such as the ill-treatment and *refoulement* of refugees.

These positive developments have been somewhat offset by the economic crisis which began in Thailand in July 1997 and soon spread to the rest of Asia. Partly as a result, in November of that year the coalition government of Prime Minister Chaovalit Yongchaiyudh fell and Chuan Leekpai formed a new coalition and became Prime Minister. Since the beginning of the crisis the Thai currency has lost 48% of its value against the US dollar, the government has suspended operations of 56 financial institutions, and unemployment continues to grow. In spite of the promulgation of a new Constitution with many human rights safeguards, the economic downturn has compromised many people's enjoyment of basic economic rights. The Chuan government has concentrated on solving macroeconomic problems, particularly on compliance with the terms the International Monetary Fund (IMF) imposed when it lent over US\$17 billion to the government. The urban poor, farmers and other vulnerable groups have complained that the current government has ignored their plight, while focusing only on reforming Thailand's financial sector.

Partly in response to the overall Asian economic crisis and to refugee flows from neighbouring Myanmar and Cambodia, the Chuan Government has articulated the need for a change in the way in which member states of the Association of Southeast Asian Nations (ASEAN)³ relate to one another. Foreign Minister Dr. Surin Pitsuwan, along with Foreign Minister Domingo Siazon of the Republic of the Philippines, have called for increased openness and transparency in ASEAN members' dealings with each other, including with respect to human rights problems. ASEAN member states have in the past generally pursued a policy of "non-interference", or "constructive engagement" with regard to other members, in an attempt to preserve its principle of consensus. However at the July 1998 annual ASEAN Ministerial Meeting in Manila, the Thai Foreign Minister proposed a policy of "flexible engagement", which would allow member states to voice criticism of one another.

²Reuters, Bangkok, 30 September 1998.

³ASEAN groups Thailand, the Philippines, Indonesia, Malaysia, Brunei, Vietnam, Singapore, Myanmar, and Laos.

Although this policy was not adopted by ASEAN, it is significant that the Chuan Government proposed a reformist policy which would allow for ASEAN countries to comment on each other's human rights records. Foreign Minister Surin further highlighted the government's policy in a speech entitled "The Role of Human Rights in Thailand's Foreign Policy":

*"Although this is the first time that the government has specifically highlighted human rights as a part of its foreign policy, the importance of human rights has actually been imbedded in previous foreign policy statements...It is our cardinal conviction that the world would be a safer and nicer place to live if all governments were to be democratic and to respect human rights."*⁴

Amnesty International welcomes this new direction in Thai foreign policy and hopes it will lead Thailand to play a positive leadership role on human rights issues, both within the region and internationally.

SUMMARY OF CONCERNS

Amnesty International's major concerns in Thailand with regard to the implementation of the provisions of the ICCPR include the death penalty, the impunity of police and other security forces, torture and conditions of detention amounting to cruel, inhuman or degrading treatment, and the lack of fair trial and arbitrary detention of refugees and asylum-seekers.

Death sentences have been carried out at least four times since January 1996,⁵ after a nine year hiatus. The death penalty is regularly handed down, most frequently for murder, rape and murder, and heroin trafficking among other crimes. Government support for the death penalty is illustrated by a statement made in October 1998 by the Minister of Interior Major General Sanan Kachornprasart, who said: *"If we want the death penalty to have an obvious effect, it should be done right away."*⁶

⁴*The Nation*, an English language newspaper published in Thailand, 5 October 1998.

⁵According to a letter to Amnesty International from the Royal Thai Government dated 23 December 1998, the death penalty has been carried out five times since 1996. However Amnesty International does not have any information about the fifth execution.

⁶*The Bangkok Post*, a Thai English language daily newspaper, 15 October 1998.

The police continue to shoot dead criminal suspects in disputed circumstances, and investigations of alleged extrajudicial executions are subject to undue delays. Police also sometimes resort to the use of excessive force in subduing public demonstrations and to torture of untried criminal suspects. The media play an important role in exposing corruption in the Royal Thai Police amid increasing calls for police reform. The public and other sectors of civil society continue to believe that the police operate with impunity.

Prison conditions often constitute cruel, inhuman or degrading treatment, characterized by prolonged shackling in heavy chains, prolonged solitary confinement, and beatings for routine infractions of prison rules. Overcrowding and medical neglect are also ongoing problems. As a result of the economic downturn, prison conditions appear to have deteriorated further, including more overcrowding and a cut in food rations.

Refugees and asylum-seekers, mostly from neighbouring Myanmar, are arbitrarily arrested and detained for "illegal immigration". They are routinely sentenced to from 14 to 40 days' imprisonment, although sentences vary, and are often detained for longer than their sentence at the Immigration Detention Center (IDC) in Bangkok. The Royal Thai Government is not party to the 1951 Refugee Convention relating to the Status of Refugees, nor to its 1967 Protocol.

The right to freedom of expression is generally enjoyed in the Kingdom, but with some notable exceptions. Lese majesty, which provides for three to 15 years' imprisonment for making any statement deemed to be derogatory of the King or the Royal Family, has been used by the military in the past to harass and intimidate their political opponents. The 1952 Anti-Communist Law is almost never invoked, but allows for up to 480 days' detention without charge or trial. The press is among the most free in Asia, but a certain amount of self-censorship occurs among the media. Nevertheless it plays a useful role in exposing human rights violations such as alleged extrajudicial executions.

This report will discuss Thailand's progress in implementing the provisions of the ICCPR, both in relation to policy, based on existing legislation and the new constitution, and in practice. The information in this document is based partly on findings during an Amnesty International visit to Thailand in January and February 1998. It is not a comprehensive review, but rather focuses on key areas which need reform. As the government has not yet submitted its report to the UN Human Rights Committee, which was due at the end of January 1998, what follows is Amnesty International's evaluation of the government's implementation rather than a response to the government's own report.

Prior to publication, the draft text of this document was submitted to the Royal Thai Government for comments. In a letter dated 23 December 1998, the government responded to many of Amnesty International's concerns, including the death penalty; extrajudicial executions; the treatment of prisoners; refugees; freedom of expression; and human rights protection at a time of economic crisis. Amnesty International appreciates these comments, many of which are reflected in the material which follows. In particular the organization welcomes commitments which the government has made to furthering the protection of human rights in Thailand, including:

- ◆ Measures to increase the effectiveness and impartiality of investigations into extrajudicial executions.
- ◆ The establishment of an independent committee to receive complaints about torture and inhuman treatment of prisoners, with power to impose discipline to those found responsible.
- ◆ A concrete role for the United Nations High Commissioner for Refugees on the Thai/Myanmar border to help refugees from Myanmar.
- ◆ A review of laws not in accordance with the new Constitution and international human rights safeguards.
- ◆ A National Plan of Human Rights Education for Thailand, including for law enforcement officers and an independent national Committee for the Formulation of Policy and Action Plan on Human Rights.

ARTICLE 6 - THE RIGHT TO LIFE

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life...” Article 6, ICCPR

The death penalty

Amnesty International is unconditionally opposed to the death penalty as the ultimate cruel, inhuman or degrading punishment, which constitutes a violation of the right to life. In spite of debate within Thailand during the 1997 constitution-drafting process, the death penalty was retained under Article 31, which states *inter alia*: “*Lawful execution is not considered torture or cruel or inhumane in this sense.*” Thai observers have suggested that there is also some support among the general populace for the death penalty, which may reflect the public's frustration with what they perceive as an inadequate criminal justice system.

The death penalty is mandatory for premeditated murder; murder of an official on government business; regicide; and the production and import of 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 or amphetamines, and aircraft hijacking. 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”.

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 Ministry of the Interior forwards these petitions to the office of the King, who pardons the vast majority of these prisoners. With regard to executions, the Royal Thai Government stated in its response to Amnesty International:

“Persons under 18 years of age, pregnant women and insane persons are never executed. In case that the due process of appeal and pardon has been exhausted, regulated steps of the execution will be carried out with concerns of morality, empathy and human dignity. Publicity of the execution is, therefore, prohibited.”

While Amnesty International welcomes these measures, it reiterates its call to the Royal Thai Government to abolish the death penalty completely.

On 29 October 1998 Supoj Pengklai was executed by firing squad at Bangkwang Prison near Bangkok, after his death sentence was upheld in 1996. He was a former master-sergeant attached to Pa Payom sub-district police station in Phattalung Province, southern Thailand. He was sentenced to death for killing two people and injuring several of his police colleagues by throwing a grenade at them when they attempted to arrest him.

A spokesperson for the Corrections Department said at the time: *“When a policeman does wrong, he deserves the severest penalty.”*⁷ As is generally the case in Thailand, the execution took place in secrecy and with no prior announcement.

⁷ *Bangkok Post*, 31 October 1998.

At least 12 death sentences were handed down in the first 10 months of 1998, although one case was subsequently commuted. Thirty-seven death sentences were believed to have been handed down in 1997. However these figures do not necessarily reflect the true number of cases. Accurate death penalty statistics are difficult to obtain because the Corrections Department does not make such information public. For this reason it is not known how many people are under sentence of death, but it is believed that currently 143 people are on death row, 53 of whom have exhausted their appeals and are awaiting a Royal Pardon.⁸ All of them are imprisoned at Bangkwang maximum security prison in Nonthaburi Province, just north of Bangkok, where executions are carried out by firing squad.

Until 1996 the death penalty had not been carried out in Thailand for almost nine years. However on 28 January of that year Prommas Leamsai (m), was shot dead by a firing squad after having been convicted of murdering a policeman in the 1980s. On 5 November 1997 Phnom Thaweesuk (m), age 26, and Boonchote Pongprahm (m), age 38, were shot dead by a firing squad at Bangkwang Prison. Both men had been convicted of rape and murder in the early 1990s. All three men were executed in secret and without prior warning.

Amnesty International urges the Royal Thai Government not to carry out any further executions and to commute all existing death sentences. It also calls on the government to abolish the death penalty by amending the new Constitution. Article 6 of the ICCPR generally refers to abolition in terms which strongly suggest abolition is desirable, including "6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*" The Government has not yet acceded to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

Extrajudicial executions

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 executions violate the right to life, as guaranteed in Article 6 of the ICCPR. Extrajudicial executions 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 executions often result when law enforcement officials use force which is

⁸*The Nation*, 1 November 1998.

disproportionate to any threat posed, although the authorities may claim that this use of force was legitimate.

Criminal suspects are often shot dead by the Royal Thai Police in unclear circumstances. Police generally claim that such killings took place when suspects opened fire first, but as there are generally no witnesses, it is impossible to verify the exact circumstances of the killings. In one apparent extrajudicial execution U Win Htwe, a 19-year-old Karen seaman from Pa'an, Karen State, Myanmar, was reportedly beaten to death by police on 19 June 1997 in Mahachai, Samut Sakhon Province, east of Bangkok. On the evening of 19 June U Win Htwe was in his room with some of his friends when local police officials arrived in the vicinity, causing everyone to flee from the scene. As these people were migrant workers from Myanmar, they fled for fear of being arrested for illegal immigration. According to an eyewitness, U Win Htwe was followed by a policeman and beaten to death. Afterwards police allegedly placed his dead body in a local stream and claimed that he had drowned. Another witness who later saw his body in the hospital morgue stated that the body showed signs of cuts and bruising. This case was brought to the attention of the Royal Thai Police during a meeting with Amnesty International representatives on 26 January 1998 in Bangkok. However it is not known if an investigation has been carried out.

Another Myanmar national was killed on 15 March 1998 by Thai soldiers guarding Mawker refugee camp in Tak Province, western Thailand, which houses Karen refugees. Nyan Lin (m), age 31, reportedly returned to the camp after the 6pm curfew established by the Thai authorities, and was beaten to death. Three refugees, including Nyan Lin, tried to enter the camp at 6.30pm after finishing work outside when they saw a group of Thai security forces coming towards them. Two of them escaped, but Nyan Lin hid in the bushes. Thai forces initially left the scene, but then returned, and on discovering Nyan Lin, beat him with their rifle butts. They reported this to the camp leader, who found Nyan Lin unable to walk or talk. He was then carried back to the camp on a stretcher, and eventually taken to the local hospital, where he was pronounced dead on arrival.

A Thai military officer reportedly paid Nyan Lin's wife a sum of money as compensation, but to Amnesty International's knowledge, no investigation has taken place. Amnesty International calls on the Royal Thai Government to initiate independent and thorough investigations into these two cases of apparent extrajudicial executions immediately, to make the results public, and to bring those found responsible to justice.

Article 2 - the right to effective remedy

“...To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;...” Article 2, ICCPR

Victims of human rights violations in Thailand have seldom been able to exercise their right to an effective remedy, because of flaws in investigative procedures and the general impunity enjoyed by the authorities. For example, after a killing by the police has occurred, the police conduct an investigation and submit its findings to the Public Prosecutor, who then files a case in court. However with regard to the investigation the police do not appear to be under the control of the judicial authorities, which contravenes the basic principle of impartiality and independence. In practice there is often a delay in investigations being completed and cases being brought to court. Even when cases are brought to trial, there are frequently gaps of several months between each court hearing, which often last only one day. Police officers are almost never convicted of crimes related to extrajudicial killings. Amnesty International is concerned that investigations into alleged extrajudicial killings are not prompt, impartial or independent, and calls on the Royal Thai Government to ensure that all investigations into human rights violations meet these criteria.

In this regard Amnesty International welcomes the commitment which the government made in its December letter to improve investigations of extrajudicial executions:

“...Some possible measures have also been discussed among authorities concerned for increasing the effectiveness and impartiality of the fact-finding and investigation process. It is expected that these concrete measures will be introduced soon.”

One example of a delay in the bringing to justice of those found responsible is the case of Joon Boonkhunthod, a rural activist, who was shot dead by a police officer in July 1996. Although a suit was filed by Joon Boonkhunthod's family, the trial has still not concluded over two years after the killing. Another example of a delay in justice is the case of six alleged drug traffickers who were shot dead by police after they had already surrendered in Suphan Buri Province in November 1996.⁹ This case attracted tremendous media attention and provoked widespread public debate, and the Thai Parliament appointed a 22-member committee to conduct an investigation. It was not until June 1998 that the police investigation was completed, which found that 17 police

⁹ Please see *Amnesty International, Kingdom of Thailand: Human Rights in Transition*, May 1997, (AI Index ASA 39/02/97) for a full discussion of these two cases.

officers had shot the suspects in the back, not acted in self-defence.¹⁰ The officers have reportedly been suspended from duty. The case was finally brought to court on 4 November 1998 almost two years after the event.¹¹

¹⁰*The Nation*, 21 June 1998.

¹¹*The Nation*, 5 November 1998.

Nevertheless it is encouraging that investigations are undertaken into alleged extrajudicial killings. In August 1998 the Royal Thai Police issued warrants for the arrest of 14 police officers for the alleged murder of three villagers in Prachuab Kiri Khan Province which took place on 6 July 1998. They were charged with murder and attempting to conceal the murder. Police allegedly mistakenly killed one villager, thought to be a member of a criminal gang, and then allegedly killed two others who witnessed the killing, and finally cremated the bodies. Families of the victims lodged a complaint with the police, who initiated an investigation.¹²

ARTICLES 7 AND 10

Protection against torture and ill-treatment and the right to be treated with dignity

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...” Article 7, ICCPR

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 10, ICCPR

Amnesty International is unconditionally opposed to torture or ill-treatment by government officials in all cases. Article 31 of the new Thai constitution also outlaws the practice:

“Individuals have rights and liberties in their lives and in body. Arrest, detention or personal search that violates this principle is prohibited unless it is done lawfully.

Torture or any kind of cruel or inhumane punishment is prohibited.”

Amnesty International is also opposed to the practice of the authorities' use of testimonies obtained by torture. This right is guaranteed under Article 243 of the Thai Constitution, which states, *inter alia*: “*Testimonies of an individual which is caused by persuasion, promise, intimidation, deception, torture, force or misconduct shall not be considered evidence.*”

Nevertheless torture and cruel, inhuman or degrading treatment take place both immediately after arrest and during imprisonment in Thailand. Ill-treatment has also occurred during demonstrations and when the security forces have confronted groups of refugees. Although the practice does not appear to be widespread, it is a matter for concern, particularly because the police and other security forces enjoy a certain degree

¹²*The Nation*, 23 August 1998.

of impunity in Thailand. The media does go some way to exposing ill-treatment in highly visible cases, such as mass demonstrations. However treatment in police lockups and prisons, particularly outside of Bangkok, is largely unmonitored and unreported.

One police practice in particular undermines human rights safeguards in both the new Constitution and Article 10 of the ICCPR, which refers to the “*inherent dignity of the human person*”. After criminal suspects are arrested, they often participate in a re-enactment of the crime in the presence of the press and others. Onlookers often taunt the accused, and the media report the event, which include photographs of the suspect. Such a practice undermines the presumption of innocence as guaranteed in Article 14 of the ICCPR, which states that “*...Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*”

Since the promulgation of the new Constitution, which guarantees the right to be presumed innocent and the right to human dignity, this practice is reportedly not as prevalent, but it still occurs. A man belonging to the Karen ethnic minority arrested for murder and robbery in August 1998 re-enacted his alleged crime, and was photographed holding a knife against someone’s ribs, although he had not yet been found guilty by a court of law.¹³ Another man, a Myanmar national arrested for the same crime, also re-enacted the event.¹⁴ Amnesty International calls on the Royal Thai Police to abolish the practice of allowing the media and others to be present at a crime re-enactment, as it severely compromises the suspect’s right to be presumed innocent until proven guilty and the inherent right of human dignity.

It is difficult to document incidents of torture and ill-treatment in Thailand. Detainees and prisoners who were mistreated or tortured are often poor, and do not have access to individuals and organizations who might expose these abuses. It is also doubtful whether there are effective procedures in place for prisoners to register an official complaint about their ill-treatment. Prisons and police lockups are generally not monitored by non-governmental organizations, although there are a few individuals and groups which provide material assistance to prisoners. Nevertheless Amnesty International believes that torture and ill-treatment do occur in Thailand. The organization has received detailed and numerous reports about these practices from a variety of sources, many of which provide similar information about beatings, prolonged use of shackling as punishment, and overcrowding.

¹³ Photograph which appeared in *The Nation*, 28 August 1998.

¹⁴ *Ibid*, 27 August 1998.

In its response to Amnesty International, the Thai Government made the following statement about the right to an effective remedy by a torture victim:

“As stated in Section 245 of the Constitution, an injured person in a criminal case, as being tortured by the State’s officials, has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law. In addition, an independent committee will be set up when receiving a complaint of torture or cruel or inhuman treatment of inmates. Such committee has been authorised to impose discipline against those found responsible.”

In this regard, Amnesty International welcomes the government’s commitment to establishing an impartial committee to investigate complaints of torture and ill-treatment.

One incident which took place less than one week after the Chuan administration came to power received widespread media exposure and was investigated by independent international observers. On 15 November 1997 the Fourth Infantry Regiment Task Force, known as Task Force Four, ill-treated a group of 1,100 refugees from the Karen ethnic minority in Myanmar. The group had fled two months previously from forcible relocations and destruction of their homes by the Burmese security forces into Htee Paw Law Su, in Umphang District, Tak Province. The refugees were not permitted by the local Thai authorities to go to Nu Pho Refugee Camp, and so remained at Htee Paw Law Su site. The authorities reportedly visited the site on several occasions in an attempt to threaten and intimidate the refugees into returning to Myanmar. On 10 November they reportedly gave the refugees a deadline of three days to return there.

On 15 November at approximately 5am Task Force Four launched mortars at the site and fired guns in the air. At 9am, after it became apparent that the refugees were not willing to move, the security forces moved through the site, pulling people out of their shelters while kicking and beating them with rifle butts. In the ensuing panic a three day old infant was dropped and died from a broken neck. Two elderly people also sustained serious injuries from shrapnel. The group was forced to move to the Thai-Myanmar border, at a site reportedly 10 minutes’ walking distance from where the Burmese security forces were located. Three Karen refugee men were also tied up by Thai security forces during the raid, severely beaten with rifle butts and kicked, but eventually were able to escape.

The United Nations High Commissioner for Refugees (UNHCR) Office in Bangkok investigated the circumstances of the attack and expressed its concern. Amnesty International wrote to the Royal Thai Government to condemn the excessive use of force and ill-treatment by the army. The organization later had the opportunity to raise the issue several times during meetings with government officials in Bangkok in

January 1998. Assurances were given that such action on the part of the security forces would not be repeated.

Also in the first weeks of the Chuan administration Royal Thai Police violently suppressed a protest demonstration by workers at the Thai Summit Auto Parts Company, Samut Prakan province, just east of Bangkok. Workers began a protest there at around midday on 20 January when they learned that they would not receive as large a bonus this year, due to the economic downturn. The workers blocked the traffic on the Bangna-Trat Highway, causing an enormous traffic jam and angering motorists and local residents. Several hours later, after some protesters were reportedly drunk, they began throwing bottles and rocks, and setting fires. Sometime after midnight local residents, onlookers, and motorists on the one hand and the workers on the other began throwing rocks each other. At around 1am riot police intervened, breaking up the conflict. The police then repeatedly beat with fists and batons and kicked some protesters who had already surrendered and were lying on the ground. According to the police 19 civilians were hurt, including those who said they were not part of the protest, and 10 firefighters and 12 policemen were injured.¹⁵ Over 50 people were arrested.

The incident evoked widespread condemnation of the police action by non-governmental organizations and others amid fears that similar incidents would follow in the wake of the economic crisis. Video footage of police beating protesters who had already surrendered was shown on national and international television. Some commentators said that there may have been “third elements” who provoked the violence. Other observers criticized the police for not intervening sooner, which they alleged could have prevented the build-up of violence over the 12 hour demonstration. After the event the Prime Minister called on the Police Department to provide training to riot police in crowd control techniques which would ensure human rights protection.¹⁶ At a 26 January meeting with Amnesty International delegates, the Chief of the Royal Thai Police stated that the police were investigating the incident. Amnesty International welcomes the investigation, and calls on the police to make public the results of its findings.

Torture and conditions in prisons and other detention facilities

¹⁵*The Nation*, 23 January 1998.

¹⁶*The Nation*, 28 January 1998.

Prison conditions in Thailand do not comply with international human rights standards, particularly Articles 7 and 10 of the ICCPR. Prisons in Thailand are designed to hold 70,000 inmates;¹⁷ in October 1998 official figures indicated that the prison population was 164,000.¹⁸ Former prisoners and witnesses often remark that overcrowding is so severe that inmates cannot all lie down at the same time and must sleep in shifts. Because of poor sanitation and overcrowding, skin diseases such as scabies are widespread. HIV infection is also said to be widespread in Thai prisons, with inmates receiving very little medical treatment. The death in custody rate in prisons is believed to be extremely high, both because of the high level of HIV infection but also because of the prevalence of diseases such as tuberculosis which have been caused or exacerbated by poor conditions.

In its response to Amnesty International the government made the following statement about prison regulations:

“According to the Department of Corrections, all prisoners are provided three meals of food of nutritional value and wholesome quality per day...Cells inside the Bangkwang Central Prison are organized into large, well-ventilated sleeping halls...All sick inmates receive free medical services.”

Nevertheless Amnesty International remains concerned that in spite of such regulations, domestic and international standards concerning the treatment of prisoners are not fully implemented in all Thai prisons.

¹⁷*The Nation*, 28 July 1998.

¹⁸Associated Press, 27 October 1998.

Conditions in Immigration Detention Centres (IDCs) have long been an area of concern for Amnesty International.¹⁹ IDCs are administered by the police department rather than the Department of Corrections, which administers the nation's prisons. Refugees and asylum-seekers, particularly from Myanmar, and others who do not have a valid passport and visa, are routinely arrested in Thailand, charged with "illegal immigration" and detained in IDCs for varying amounts of time. In the past, conditions in the central IDC, on Suan Phlu Road in Bangkok, amounted to cruel, inhuman or degrading treatment, including severe overcrowding, beatings by guards and "trusties"²⁰, and inadequate sanitation, food, and medical care. In the past year conditions have improved there, although periodic overcrowding has been a continuing problem.

Conditions in provincial police lockups have also amounted to cruel, inhuman or degrading treatment. During 1997 migrant workers, many of them from South Asia, were pushed across the border from Malaysia to southern Thailand, where they were detained in extremely crowded conditions in local police cells. These detainees were eventually sent in cramped cattle trucks to the IDC in Bangkok, a journey of several hours. 1,500 of them alone were said to be Bangladeshi nationals. According to eyewitnesses, on arrival these detainees, most of them young men, could not walk due to muscle weakness. They were also suffering from malnutrition and various skin diseases. However because of better conditions and proper medical care at Suan Phlu, many of these people were restored to health. Police lockups which were mentioned as having particularly bad conditions include those in Yala and Narathiwat provinces in the far south, and Chonburi, Pattaya, Mahachai and Rayong in the east.

In January 1998 three Muslims belonging to the Malay ethnic group were allegedly arrested in Malaysia and ill-treated by Thai security forces. They are all members of the Patani United Liberation Organisation (PULO), a separatist armed opposition group of Malay ethnic minority members, which calls for independence from Thailand. PULO has reportedly been active in the four most southern provinces of Thailand, the population of which is mostly Muslim Malays. Their arrests followed a spate of attacks and bombings in the far south.

They were allegedly arrested while on a bus from Kedar State to Kuala Lumpur, Malaysia, when they were seized, blindfolded and handcuffed and taken to an unknown

¹⁹See *THAILAND: Concerns about treatment of Burmese refugees*, August 1991, (AI Index: ASA 39/15/91) and *THAILAND: Burmese and other asylum-seekers at risk*, September 1994, (AI Index ASA 39/02/94).

²⁰ A trustie is a prisoner who has been appointed by the prison administration to perform certain tasks. Trusties in Thailand often abuse their power.

place. There they were reportedly hit on the back and head by Thai security forces and kept handcuffed and tied by the legs over a period of 10 days during which time they were interrogated about their PULO involvement. They were then allegedly taken across the border to Narathiwat Province, Thailand. They were kept there and later flown to Bangkok, when they reported that they had scars on the wrist from being kept handcuffed for a prolonged period. Their date of arrest in Malaysia is believed to be 13 January and they were allegedly arrested on 22 January in Narathiwat. They were later charged with treason, murder, and possession of weapons; their trial is currently taking place.

Amnesty International interviewed one Myanmar national²¹ who had been arrested and imprisoned for illegal immigration for three months during 1997. In Chonburi police lockup, where he was initially taken, he said that he was beaten with sticks and kicked by a “trustie” and a police officer until he lost consciousness. He also said that one fellow prisoner there died from untreated malaria. Three months later in Kanchanaburi IDC on his first day he was beaten with canes and kicked by fellow-prisoners whom he said received bribes from the police. Inmates there who also could not afford the 100 baht²² bribe were beaten in a similar fashion. He described the treatment of illegal immigrants: “*The Thai police treat us like buffalos - they herd us into the truck and hit us with sticks.*”

Another foreign national imprisoned in Chonburi said he was tortured for five hours immediately after he was arrested in July 1997, in an effort by police to force him to confess. He said that while handcuffed he was severely kicked and beaten in the kidneys and head, received electric shocks in the chest and groin, and was threatened with a gun held to his temple. The police then tied a plastic bag around his head until he lost consciousness. He reported that he has been shackled continuously during his 18 month incarceration at Chonburi Prison. Another prisoner at Chonburi Central Prison said he has been continually shackled for 19 months, and also had his nose broken. A third foreign prisoner held in Chonburi Prison for two months in mid 1998 told Amnesty International about widespread beatings there of Thai prisoners by prison guards using steel or wooden batons. Prisoners were then said to be left in the hot sun with no water for eight - 12 hours per day, for a one week period. He also reported that one third of the inmates there were kept in shackles. The widespread use of prolonged shackling in Thailand’s prisons is an ongoing concern, with some prisoners shackled 24 hours a day for several years. Inmates accused of murder, attempted murder, and serious drugs offences are reportedly continually kept in shackles weighing seven - 10 kilograms each.

²¹Names of prisoners and others whose security could be compromised if their identities were to be revealed are not used in this report.

²²37 Thai Baht are equal to one US dollar.

Prisoners and former prisoners have mentioned that conditions at Bombat Piset Prison, which houses people sentenced for drugs offences, are particularly bad, including routine beatings for any infraction of prison rules, almost a complete lack of medical care, and severe overcrowding. Conditions in Building 10 in Bangkwang Prison are also poor, as people who are being punished are kept there in solitary confinement, often remaining in heavy shackles for months at a time. Other cells in Bangkwang Prison are thought to be even worse, where prisoners are confined in a dark cell measuring two square metres wearing 15 kilogram shackles, called “elephant chains” welded to the ankle. Inmates are kept there for three months, and have no washing facilities during that time. All prisoners reportedly must wear shackles the first three months they are in Bangkwang Prison, and all those on death row are also believed to be shackled.

With regard to the prolonged use of heavy shackles, the government made the following comments to Amnesty International:

“The Department of Corrections prohibits the use of instruments of restraint as a form of punishment, and has instructed prison officials to be as lenient as possible. Previously, there were only two sizes of instruments of restraint in use, one having a diameter of 10 millimetres and a weight of 1.8 kilogrammes, and the other having a diameter of 17 millimetres and a weight of 4.2 kilogrammes. In 1995, a new and smaller type of shackles has been introduced, weighing only 600 grammes but highly effective for restraining the prisoners.”

However, Amnesty International remains concerned that in spite of such regulations, in practice shackling is still used as a form of punishment in many Thai prisons.

In light of the economic crisis of the last 18 months, Amnesty International recognizes the difficulties in maintaining international standards in Thai prisons. Nevertheless the Royal Thai Government bears the responsibility for ensuring that prisons are not overcrowded, and that all prisoners receive adequate food, sanitation facilities, and medical care. The Corrections Department must give clear instructions to all prison staff that shackling, beatings and other forms of cruel, inhuman or degrading treatment are not acceptable. The Royal Thai Government could also seek appropriate assistance from the international donor community to alleviate poor prison conditions.

The Royal Thai Government also has a responsibility not to send asylum-seekers and refugees back to a country where they could face torture. Article 14 of the Universal Declaration of Human Rights states: *“1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.”* General Comment No. 20 of the Human Rights Committee on Article 7 of the ICCPR states:

“9. In the view of the committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.”

Amnesty International acknowledges that over the past decades the Royal Thai Government has provided refuge to hundreds of thousands of people fleeing from neighbouring countries. Nevertheless Thailand has subjected thousands of Burmese asylum-seekers and refugees to *refoulement*, both from ethnic minorities and from the majority ethnic Burman group. *Refoulement* to Myanmar places these people at a high risk of torture and cruel, inhuman or degrading treatment. It should be noted however that under the present Chuan government there has been a marked decrease in the practice. In particular Amnesty International welcomes the fact that in April 1998 the government agreed to the presence of the United Nations High Commissioner for Refugees (UNHCR) on the Thai-Myanmar border, which in principle should help to prevent the practice of *refoulement*. The government has made the following comment about UNHCR's role:

“Thailand will also facilitate their return to their homeland with safety and dignity...The UNHCR's role will cover four important areas of work, namely, to witness the process of admission, to assist the Thai authorities in registration, to assist the Thai authorities and give suggestion (if any) on the relocation of temporary shelter areas, and to assist the Myanmar displaced persons for their safe return.”

Amnesty International hopes that the UNHCR presence will provide adequate protection to the refugees in camps near the border, so that they are not sent back to Myanmar against their will and until there is a substantial improvement in the human rights situation there.

Tens of thousands of Cambodian refugees and asylum-seekers have been allowed to remain in Thailand since the July 1997 coup and continued political instability in Cambodia. However there are instances of *refoulement* by the 9th Division of the First Army, which control border areas of Kanchanaburi, Prachuab Kiri Kan, and Raatchburi provinces on the Myanmar border. Beginning in June 1997 the 9th Division declared that because there was no more fighting in Myanmar between the Burmese army and ethnic minority armed opposition groups, the border was closed to new arrivals. A group of some 3,000 Karen asylum-seekers have remained for almost two years on the

Myanmar side of the border at Htee Wah Do village, unable to cross into Thailand and at risk of human rights violations by the Burmese army.²³ Non-rejection at the frontier is an integral part of the fundamental principle of non-*refoulement*. Amnesty International urges the government to instruct the 9th Division to allow asylum-seekers to cross the border and not to send back any refugees against their will.

²³For further details please refer to *KINGDOM OF THAILAND: Erosion of Refugee Rights*, September 1997 (AI Index ASA 39/03/97).

ARTICLES 9 AND 14**Protection of personal liberty and the right to a fair trial**

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”, Article 9, ICCPR

“All persons shall be equal before the courts and tribunals....Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law...In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”, Article 14, ICCPR

Refugees and asylum-seekers in Thailand, the vast majority of whom are from Myanmar, are subject to arbitrary arrest and detention on a regular basis, particularly if they do not have the money to bribe police and immigration officials. Thailand is not a party to the 1951 Convention relating to the Status of Refugees nor to its 1967 Protocol, and regards Burmese refugees and asylum-seekers outside of refugee camps²⁴ as “illegal immigrants”. After they are arrested, refugees and asylum-seekers are generally detained in local police lockups for a brief period and then taken to court where they are charged with “illegal immigration”. The hearings are conducted solely in the Thai language, with no translation of the proceedings available. The judges simply read out the sentence and defendants do not have the opportunity to defend themselves. They are sentenced to varying terms of imprisonment and are then moved to an Immigration Detention Centre (IDC) to serve their sentences before being transported to the Thai-Myanmar border. However they are not always released at the end of their sentence and some asylum-seekers and refugees have spent many months or even years in detention.

Amnesty International opposes the detention of refugees and asylum-seekers unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in an individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers. International standards do not recognize “illegal entry” as a reason for which asylum-seekers may be detained. International standards also state that the detention of asylum-seekers or refugees should normally be avoided. The Royal Thai

²⁴ There are more than 100,000 refugees in camps along the Thai-Myanmar border, mostly from the Karen and Karenni ethnic minority groups.

Government's policy of detaining asylum-seekers and refugees is in clear contravention of these standards.

The issue of arbitrary detention of Burmese asylum-seekers and refugees is a long-standing one, which Amnesty International has been documenting for almost 10 years.²⁵ More recently the status of Burmese migrant workers has been of concern, as hundreds of thousands of them have come to Thailand to seek work. However since the beginning of 1998 the government has begun to deport tens of thousands of them, with the collapse of several key employment sectors such as the construction industry. In deporting migrant workers the government makes no distinction between economic migrants on the one hand and asylum-seekers on the other. Many Burmese migrant workers in the Kingdom are in fact asylum-seekers and have fled from widespread human rights violations in Myanmar. However there is no provision under Thai law for seeking asylum there.

Asylum-seekers and refugees in and around Bangkok have always been particularly at risk of arrest. On 20 May 1998 in Nonthaburi Province, on the outskirts of Bangkok, a large group of police raided the office of the Human Rights Documentation Unit of the National Coalition Government of the Union of Burma (NCGUB).²⁶ Fourteen people were arrested, including asylum-seekers and refugees. Documents about human rights violations in Myanmar and computer and office equipment were confiscated at the same time and the offices were searched. The group was then taken to Nonthaburi Police Station. On 22 May they were taken to court, charged with illegal entry, fined and taken to IDC that evening. On 23 May the group was taken to the Thai-Myanmar border and sent by Thai police across the Moei River to Myanmar territory, where the group dispersed.

Another group of 31 Burmese asylum-seekers and refugees was arrested outside the Burmese Embassy in late August 1998 after a prolonged peaceful sit-in protest about the human rights situation in Myanmar. The group was initially taken to the Bangkok IDC where they were held for two weeks and then transferred to the Special Detention Centre at Bankhen Police Academy. Although seven were released on 12 November, the other 24 are believed to still be detained there, and have not been brought to trial. The Special Detention Centre in the past has been used by the authorities to hold political

²⁵ See *THAILAND: Concerns about treatment of Burmese refugees*, August 1991, (AI Index: ASA 39/15/91) and *THAILAND: Burmese and other asylum-seekers at risk*, September 1994, (AI Index: ASA 39/02/94).

²⁶The NCGUB is an exile symbolic government comprised of National League for Democracy members of parliament-elect (NLD, Myanmar's main opposition party) who fled Myanmar beginning in 1990.

prisoners. Amnesty International calls on the Thai authorities to release these people immediately and unconditionally, or bring them to trial for a recognizably criminal offence.

ARTICLE 19 - PROTECTION OF FREEDOM OF EXPRESSION

“Everyone shall have the right to hold opinions without interference...Everyone shall have the right to freedom of expression...” Article 19, ICCPR.

The right to freedom of expression is generally protected in Thailand, although there are occasional incidents of harassment and intimidation against perceived critics of the government. Death threats are sometimes received by activists involved in protest demonstrations -- in January 1998 during a prolonged demonstration against the completion of a natural gas pipeline from Myanmar into Kanchanaburi Province, some leaders of the protest received anonymous death threats. In March 1998 the authorities intimidated participants of an international conference in Bangkok convened by a Thai non-governmental organization (NGO) about the peace process in East Timor. A large mixed group of security forces, allegedly acting at the behest of the Foreign Ministry, were present at the conference, and foreign nationals were not permitted to give speeches.

At the time Prime Minister Chuan was on an official visit to Indonesia.

Articles 38 and 39 of the new Constitution respectively protect the rights to freedom of religion and speech. However the 1952 Royal Act on the Prevention of Communistic Activities and provisions in the Penal Code which allow for punishment for lese majesty are two laws which, though almost never invoked, are in contravention of both the Constitution and the ICCPR. In March 1998 the Minister of Interior raised the possibility of revoking the anti-communist law, but as yet it has not been repealed, although several Thai human rights activists and lawyers have called for its repeal.

Under the provisions of the anti-communist law, anyone who engages in communist activities, conducts propaganda, is a member of a communist organization, or who attends any communist meeting, can be imprisoned. Other provisions allow for the imprisonment of anyone who helps a communist organization or member, or contravenes restrictions of movement in an area classified as infiltrated by communists. These provisions could be used as a means of political control or as a punishment of someone merely for expressing their peaceful political views. The law allows for the imprisonment of anyone who undertakes communist operations for 10 years to a life sentence, and a five to 10 year sentence for a supporter or sponsor of a communist organization or member.

During the 1970s the government was fighting against the Communist Party of Thailand (CPT), an armed insurgency movement which later disintegrated. However the

anti-communist law was never repealed and people continued to be charged under its provisions in the 1980s. The last known case was in August 1995 when a petrol truck driver was arrested for entering an area allegedly still under communist influence in Uttaradit Province without proper documentation. Reports indicated that the real reason for his arrest was a local dispute between a petrol station owner and a district official. He was released under the orders of the national police after the media reported the case and the Union for Civil Liberties, a Thai human rights NGO, intervened on his behalf.

Another existing law which is rarely used, but which contravenes the provisions of the ICCPR is Section 112 of the Penal Code, which states:

“Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent shall be punished with imprisonment not exceeding seven years.”

This provision, known as lese majesty, contravenes Article 19 of the ICCPR, which protects the right to freedom of expression, and has been used to arrest and imprison people for peacefully expressing their non-violent opinions. The last known case was in 1991, when a warrant was issued for the arrest of prominent social critic Sulak Sivaraksa after a speech in which he described members of the Royal Family as “ordinary people”. However in April 1995 after a prolonged trial, he was acquitted. Had he been convicted and imprisoned, Amnesty International would have considered him a prisoner of conscience.

Amnesty International believes that both the 1952 Royal Act on the Prevention of Communistic Activities and Section 112 of the Penal Code which allow for punishment for lese majesty undermine the right to freedom of expression, as recognized in Article 19 of the ICCPR, and calls on the Royal Thai Government to repeal these laws. In this regard the organization welcomes the following statement which the government made in its 23 December 1998 letter:

“The Government is in the process of reviewing repealing [sic] obsolete laws which are not in accordance with the Constitution and international human rights standards, including the Act of the Prevention of Communistic Activities.”

RECOMMENDATIONS

Amnesty International makes the following recommendations to the Royal Thai Government, which, if implemented, would improve the government's compliance with the provisions in the ICCPR:

1. The government should take steps to abolish the death penalty, including amendment of Article 31 of the new Constitution.
2. The government should ensure that all killings and other deaths caused by state agents are promptly and independently investigated. If the findings conclude that the death was an extrajudicial execution or another human rights violation, those found responsible should be brought to justice.
3. The government should issue clear instructions to all officials not to torture or ill-treat prisoners or others who are deprived of their liberty. All reports of torture should be independently and promptly investigated, and those found responsible brought to justice.
4. The government should take immediate steps to improve prison conditions, which amount to cruel, inhuman or degrading treatment, bringing them up to the level required by international standards.
5. Refugees and asylum-seekers should not be sent back to a country where they are at risk of torture and ill-treatment. Their rights to seek and find asylum should be guaranteed, as recognized in Article 14 of the Universal Declaration of Human Rights.
6. Asylum-seekers and refugees should not be arbitrarily detained.
7. The 1952 Royal Act on the Prevention of Communistic Activities and Section 112 of the Penal Code which allow for punishment for lese majesty should be repealed.