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**THAILAND:
TORTURE IN
THE SOUTHERN
COUNTER-
INSURGENCY**

**AMNESTY
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MAP OF SOUTHERN THAILAND



1. INTRODUCTION AND SUMMARY

On 4 January 2004, insurgents raided an army depot in the southern Thailand province of Narathiwat, stealing hundreds of guns and killing four soldiers. The attack signalled a return to violence in the historically restive southern-most provinces of Thailand, where violence has simmered intermittently for a century. The violence in southern Thailand reflects the longstanding disenfranchisement of the area's population, which is predominantly Malay in ethnicity and language, and Muslim in religion. The area is relatively one of the poorest and least developed in Thailand, and the population has long resented efforts at assimilation by the country's Thai Buddhist central government and majority. The growth of militant religious ideologies in the region has also contributed to the rise of the currently active insurgent groups.

Now into its sixth year, this new phase of violence and counter-insurgency has been marked by widespread and escalating human rights abuses by all sides. The current violence has led to at least 3,500 deaths so far, with the number of total deaths increasing each year through at least 2007.¹ In March 2008 government statistics showed that 66 percent of those killed in the south since 2004 were civilians. Just over half of those killed were Muslims. Anti-government forces have been particularly brutal. Since 2005 the insurgents have engaged in bombings of civilian areas, beheadings, and drive-by shootings of both Buddhist and Muslim security forces and civilians, including local officials seen as cooperating with the government. The insurgents have targeted state schools and teachers, and tried to frighten Buddhist residents away from the area. Such actions constitute serious human rights abuses.

The Royal Thai Government has a right and a duty to protect its citizens from such abuses. But the government's heavy-handed security response, with some 45 percent of Thai military forces currently stationed in the south, has led to widespread human rights violations and has alienated the local population. This report focuses on the use of torture and other ill-treatment by government security forces between March 2007 and May 2008 in the four predominantly Muslim southern Thai provinces affected by the insurgency: Narathiwat, Pattani, Yala and Songkhla. Amnesty International's research in the area established that Thai security forces have systematically relied on torture and other cruel, inhuman or degrading treatment or punishment in their efforts to obtain information, to extract confessions to compensate for poor intelligence and evidence-gathering, and to intimidate detainees and their communities into withholding or withdrawing support for the insurgents. In several cases documented by Amnesty International, security forces tortured detainees to death.

Many Muslim residents of southern Thailand told Amnesty International that they or other victims were detained by joint military-police forces numbering between 20 and 300 personnel in the early morning hours, pursuant to the Thai military's "Battle Plan for the

Protection of Southern Lands” announced in June 2007. The plan has been characterized by arrests of large numbers of suspects under the powers of preventative detention conferred on the security forces by the Martial Law Act and the 2005 Emergency Decree. Torture survivors and others described the climate of fear that this approach - and the torture or other ill-treatment that sometimes follows - has created in their villages. Some of the victims who spoke with Amnesty International were clearly traumatized from the treatment they had received. One man who survived being tortured, but whose friend did not, stated that “What happened to us will remain for the rest of our lives”. A woman who was subjected to physical and psychological torture in detention, could only talk indirectly about the ill-treatment of her young son who had been detained with her. Others, whose friends or relatives were still in detention - or having confessed to criminal activity under torture, were in prison - spoke to Amnesty International with anxiety and anger.

Reports of torture and other ill-treatment by individuals and their families in the south increased significantly between mid-2007 and mid-2008. In February 2008, Thai MP (Puea Pandin party) Waehamadi Waedaoh, from Narathiwat province, told parliament that southern Muslims had complained since the start of the year that they had been tortured while in detention.² In April 2008, the Muslim Attorney Centre in Yala province noted that it had received 77 reports of torture since June 2007,³ while the National Human Rights Commission’s (NHRC) Subcommittee against Torture, established in 2007, had by June 2008 received and investigated 14 cases of torture in the south.⁴ The information in these complaints and reports is consistent with Amnesty International’s field research, and indicates a violation of the categorical and universal prohibition against the use of torture and other ill-treatment.

Amnesty International has obtained no positive evidence to indicate that the use of torture or ill-treatment is pursuant to a written or verbal policy of the security forces, and torture has been consistently condemned at various levels of the Thai military and government both publicly and in private discussions with Amnesty International. Positive developments have included a regulation interpreting the Emergency Decree in effect in the south stating that detainees are not to be ill-treated, and the fact that many of the security forces there also have their own internal guidelines prohibiting torture (under penalty) and/or have been trained in human rights prior to deployment.

However, Amnesty International’s experience throughout the world is that states which practice torture and other ill-treatment seldom do so in officially recognised or regulated forms, and practices of torture are often accompanied by declaratory denunciations and official prohibitions. Thailand has passed no legislation specifically criminalizing torture or implementing the provisions of the UN Convention against Torture not already covered by existing Thai law,⁵ and another provision of the Emergency Decree provides for circumstances under which officials are immune from prosecution for human rights violations, including torture. To date, Amnesty International is not aware of a single successful prosecution of an official for torture or other ill-treatment, despite numerous reports, complaints, and official investigations.

Amnesty International notes the positive developments outlined above relating to policy, guidelines, and training. But Amnesty International believes that its findings indicate that Thai security forces systematically engage in torture and ill-treatment in southern Thailand. Amnesty International documented torture and ill-treatment (a) in all four relevant provinces,

(b) by both police and military units, (c) in both official and unofficial places of detention, and (d) often only during the first three days of detention. All these factors indicate that torture and ill-treatment are practised systematically.

WHEN IS TORTURE “SYSTEMATIC”?

Article 20 of the UN Convention against Torture provides for the Committee against Torture to initiate an “examination” when it receives “reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party.” The Committee has since described the criteria it uses in making an assessment as to whether torture is systematic:

“The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.”⁶

The information provided in this report indicates that Thai security forces in the country’s southern provinces practice torture systematically, within the meaning of this term under the criteria of the Convention against Torture. Not all detainees are ill-treated, and both security forces and local human rights activists claim that these practices have decreased slightly since the widely-publicized death of a detainee in custody, likely as a result of torture, in March 2008. Nonetheless, the use of torture and other ill-treatment remains sufficiently frequent and widespread both geographically and among the various security forces, to withstand dismissal as the work of a few errant subordinates or occurring in only isolated instances.

This report draws on testimonies concerning the treatment in detention of 34 persons; Amnesty International was able to interview 13 torture survivors directly, and spoke with either relatives and/or witnesses to the torture or ill-treatment of the other persons, four of whom died in detention from their treatment. This first-hand information was recorded by Amnesty International in June 2008 in Narathiwat, Pattani, Songkhla, and Yala provinces. Another trip to meet with the Thai government and military officials was undertaken to the south and in Bangkok in November 2008. All of the victims were Muslim, all but one were male, and 20 of them were under the age of 30; the youngest was a boy of six, the oldest 46.

For security reasons, Amnesty International has omitted all names and most personal information (including age and family status); all village, subdistrict, and district names; and all specific dates of arrest and detention of the victims, family members, and witnesses. Also for security purposes, this report omits facts concerning where the detainees were taken prior to and after they were tortured, whether they received visitors in detention, whether they remain in custody or have been released, and whether they confessed to any wrongdoing or not. At least 19 of the torture victims were told to confess by their captors, eight of whom did

so. Several were subsequently convicted on that basis and sentenced to prison terms.

Amnesty International largely attributes the systematic nature of torture and other ill-treatment in southern Thailand to provisions of martial law and the Emergency Decree in effect in the area. These provisions effectively facilitate the practice of torture by creating circumstances under which it can go virtually undetected by superior officers in the short term, and by codifying immunity from prosecution for officials who perpetrate, permit, or refuse to punish human rights violations, including torture and other ill-treatment. These circumstances include lengthy periods of pre-charge detention, the failure to bring detainees physically into a court and before a judge, the absence of judicial review of arrest warrants and requests to extend detention, the denial of requests for personal visits to detainees, the use of unofficial detention centres, and the lack of consistent, unfettered, and independent monitoring of the detention centres.

A major problem is that detainees are held in unofficial detention centres, where they are more vulnerable to abuse, particularly in the crucial first days after being detained. Thai security authorities officially acknowledge only two detention facilities designated for suspected insurgents in the south: Ingkharayuthboriharn Army Camp in Pattani province and the Forward National Police Officer Operations Centre in Yala province.⁷ Reports suggest that there are at least 21 other unofficial detention sites being used, 11 of which had held or were holding detainees (or witness or relatives thereof) interviewed by Amnesty International. Amnesty International received numerous reports of torture at Ingkharayuthboriharn Army Camp in Pattani province, indicating that Thai authorities need to pay special attention to ending abusive practices at the base.

Unofficial detention centres about which Amnesty International received credible information are: (in Narathiwat province) Pi-Leng Camp, Wat Suan Tham Special Taskforce Camp 39 (until mid-2008), Chulaporn Military Base, Ba Ngo Aor Military Camp, Rueso District Police Station; (in Pattani province) Wat Changhai Battalion 24 Army Camp, Plakalu Song Battalion Army Camp, Banglan Army Camp, the Police Coordination Centre, Wat Lak Muang Army Camp, Nong Chik Police Station; (in Yala province) Region 9 Police Training Academy, Chor Kor/Taskforce 11, Banglang para-military ranger Camp, Special Taskforce Camp 39 (since mid-2008), para-military ranger Regiment 41; (in Songkhla province) Rattanaon Camp, Special Forces Unit 43; (in Chumporn Province) Ket-udomsak Army Camp; (in Ranong province) Rattana-Rangsang Army Camp; and (in Surattani province) Wipawadee-Rangsit Army Camp.

Amnesty International urges the Royal Thai government to immediately ensure that its security forces stop committing torture and other ill-treatment under all circumstances, including in its counter-insurgency operations in southern Thailand. Specifically, Amnesty International urges the Thai authorities to:

- Immediately close all unofficial places of detention, and amend Section 12 of the Emergency Decree of 2005 to expressly prohibit such secret and unlawful detentions.
- Amend the Emergency Decree of 2005 to expressly permit visits by family members, lawyers, and medical personnel immediately upon detention, and allow such visits to take place.

- Amend Section 17 of the Emergency Decree of 2005 to remove the immunity for officials who violate human rights in the course of carrying out their official duties; then prosecute all alleged perpetrators of torture and ill-treatment.

This report concludes with more detailed recommendations.

2. BACKGROUND

2.1. THE SOUTHERN THAI PROVINCES

The Sultanate of Pattani, which included the present-day Pattani, Narathiwat, Yala, and parts of Songkla provinces, was annexed by Thailand (then the Kingdom of Siam) in 1909, following a treaty negotiated with the British Empire. Approximately 80 percent of the roughly 1.7 million people in this region are ethnic Malay Muslims. By comparison, in the rest of Thailand only nine percent of the population is Muslim (both Malay and others); almost 85 percent of the Thai population is Theravada Buddhist. Ethnic Malay Muslims in these southernmost provinces speak a dialect of Bahasa known as Malayu, the written form of which is known as Yawi, using the Arabic script. According to Muslim community leaders, many Malay Muslims do not speak or read Thai fluently, as Malayu is their first language. The four provinces are predominantly rural, with extensive rubber and fruit plantations and a large fishing industry on the Gulf of Thailand.

2.2. INSURGENCY AND COUNTER-INSURGENCY: A TIMELINE

Since the determination of Thailand's southern border with Malaysia (then Malaya) in the early 1900s, the region has been plagued by rebellion and insurgency. In the 1970s, dozens of armed groups were operating in the region, although many were nothing more than criminal gangs. At that time, the largest and most effective insurgent group in the area was the Pattani United Liberation Organization (PULO), established in 1968 with the goal of creating an independent Islamic state.

Insurgency and violence died down in the 1980s due to an overhaul of the government's strategy in handling the situation. Key responses to quell the conflict included the establishment of more responsive administrative and security bodies in the south, the channelling of development funds into the area, increasing Malay Muslim participation in the government, and a blanket amnesty for separatists who laid down their weapons. However, the insurgency was never fully eradicated.

The current insurgency, since January 2004, is thus rooted in a renewal of a decades-old dispute between the local population and the Thai state. The group spearheading the current insurgency is the Barisan Revolusi Nasional-Coordinate (BRN-C) and its military wing the Runda Kumpulan Kecil (RKK). Other groups include a breakaway faction of PULO (New PULO), Bersatu, the Mujahideen Islamic Pattani Group, the Mujahideen Pattani Movement (BNP), the Pattani Freedom Fighters, the Pattani Islamic Mujahideen Movement (GMIP), and the Pattani Liberation National Front (BNPP). Despite or because of this disparate and non-unified assortment of groups, the insurgents have never fully revealed their organizational structure, leadership, or demands. They have never claimed responsibility for their attacks, nor have credibly expressed a willingness to negotiate with the Thai government.⁸

January 2004 saw a resumption of the Muslim insurgency in southern Thailand, followed by increasing counter-insurgency operations by the Royal Thai government in all or part of four provinces.⁹ Following the raid on a Narathiwat arms depot that reignited the insurgency, the government invoked the Martial Law Act for all of Narathiwat, Pattani, and Yala provinces, and four districts of Songkhla province.¹⁰ In April 2004, insurgents carried out attacks against 11 police outposts in Pattani, Songkhla, and Yala provinces, killing five police officers. Security forces opened fire on the insurgents, killing more than 100, and later entered Krue Se mosque in Pattani and killed all 32 attackers who had retreated there.

In October 2004, after six people were arrested for allegedly supplying weapons to the insurgency in the village of Tak Bai in Narathiwat province, others began demonstrating for their release in front of the police station where they were being held. Soldiers reinforced the police and fired tear gas, water cannons, and their rifles into the crowd, killing seven people. After arresting hundreds of others and forcing them to lie horizontally on top of one another in the back of trucks, 78 were crushed or suffocated to death amidst the weight and heat. Charges were filed against 58 people accused of participating in the demonstration, but were later dropped in 2006 after the military government's Prime Minister Surayud Chalanont apologized publicly for the heavy-handedness of the security forces' actions.

The nature of the government's response in 2005, in its confused mixture of policies and tactics, has held true in the subsequent years. It formed a National Reconciliation Commission (NRC) which later found that security forces had used excessive force at both Krue Se and Tak Bai,¹¹ devised a "blacklist" of suspects, and began forming militia groups in the south of armed civilians (both Buddhist and Muslim). These steps were taken pursuant to the other main government response in 2005: an Emergency Decree, replacing martial law and applicable to Narathiwat, Pattani, and Yala provinces, which has been renewed twelve times and remains in effect.¹²

2006 witnessed near-daily attacks by the insurgents, a notably high number on state schools and teachers. Following a *coup d'état* in September of that year when martial law was re-imposed in the south, the military government re-established the Southern Border Provinces Administrative Centre (SBPAC) to address grievances and coordinate government efforts.¹³

In 2007, however, the government sharply increased the number of soldiers in the south and announced its "Battle Plan for the Protection of Southern Lands". Within three months of the plan's commencement in June, as many as 20 'sweeps', consisting of overwhelming numbers of security personnel arresting large numbers of people, had taken place in the south, with more than 600 persons detained.¹⁴ Also as part of the plan, the government increased the use of "voluntary" four-month occupational training camps in three other provinces, to receive suspects upon their release from detention in exchange for not being charged with violating martial law or the Emergency Decree.¹⁵ In a final step, the Internal Security Operations Command (ISOC) Region 4 issued an order under martial law in July 2007, that several hundred persons on a forthcoming list were to be expelled from the area covered by the Emergency Decree for six months from the date of the order.¹⁶ Both the camps and the expulsion order were intended to prevent persons from assisting the insurgency, but a court subsequently found the former to be unlawful unless truly voluntary, while the latter was rescinded in November 2007 in response to pressure from civil society and the international community.

In addition, in 2007 the military government expanded its program of arming civilians in the south, and began including in the program civil servants under the Ministry of Interior. Reports of enforced disappearances, extra-judicial executions, torture and other ill-treatment - often of human rights defenders - re-appeared with greater frequency and detail.¹⁷

In March 2008, Interior Minister Chalerm Yubamrung publicly stated that he had “no idea” how to end the civil armed conflict there.¹⁸ In October, the government dissolved the Peaceful Strategy Committee, established by the National Security Council in 2001 to resolve conflicts in Thailand, including in the south. The following month, and ending a several-month period of consistent but low-level attacks by the insurgents, two bombs exploded on the same day in Narathiwat, injuring more than 70 people. The government responded by announcing a budget of nearly eight billion baht for 2009 to combat the insurgency.¹⁹ Throughout 2008, while the Royal Thai government’s focus was primarily on challenges to its own legitimacy raised by demonstrations in Bangkok, the insurgency continued unabated in the south.

3. SYSTEMATIC TORTURE IN SOUTHERN THAILAND

3.1. TORTURE IN THE CONTEXT OF COUNTER-INSURGENCY

In southern Thailand, detainees registered isolated complaints of torture in the south as early as 2004, but they began doing so in larger numbers in early 2007, mostly concerning Ingkharayuthboriharn Army Camp in Pattani province.²⁰ One of the first cases to receive public attention - and generate the first official response - occurred in October 2006 in Narathiwat, after a 42-year-old rubber farmer, Muhammad Aming Yusoe, claimed he had been tortured in detention by soldiers in Yala. In January 2007, General Sonthi Boonyaratklin, then Commander-in-Chief of the Royal Thai Army, asked officials to investigate the case, stating that there was no policy to torture or ill-treat suspects in the south and giving assurances that any official who had done so would be punished. On orders of ISOC Region 4, SBPAC conducted an investigation and found that the suspect had indeed been tortured or ill-treated. However, SBPAC did not provide names of the perpetrators and no one was subsequently prosecuted or otherwise held responsible for the violation, although the victim was provided compensation.²¹ In March 2007, a 25-year-old survivor of torture in detention in Pattani complained to the NHRC about his treatment, and the security personnel alleged to be involved were transferred.²²

Reports of torture and other ill-treatment have increased significantly since mid-2007, sometimes followed by a reaction from the Royal Thai government. In September 2007, a network of students from nine universities called on the government to withdraw all paramilitary rangers from the south, stating that many villagers had complained of mistreatment at their hands and that the rangers had exacerbated tensions in the region. A representative of ISOC Region 4 stated both that security forces were ordered to exercise caution when detaining suspects, and that further mistreatment would result in strong punishment.²³

On 15 January 2008, the Asian Human Rights Commission issued a statement about complaints of torture by detainees at Wat Changhai Battalion Army Camp in Pattani province - otherwise a Buddhist temple ("wat") - and sent letters of appeal to nine officials in the government or security forces.²⁴ The following month, two members of the Muslim Attorney Centre in Yala province, which provides legal assistance to torture survivors, were indirectly threatened that they would become "the next Somchai Neelapaijit" if they did not stop speaking out about torture.²⁵ Khun Somchai, a Muslim lawyer and human rights defender, disappeared in Bangkok on the night of 12 March 2004 and is presumed dead; he was investigating complaints by two southern Muslims that they had been tortured by police in detention.

In March 2008, during the UN Human Rights Council's Seventh Session in Geneva, five non-governmental organizations (NGOs) delivered a Joint Oral Statement to the Council on torture in Asia, stating that "In Thailand, recent reports reveal that torture is systematic and

widespread and is being carried out by the military as well as paramilitary groups and the Special Forces in secret detention locations, notably in the South".²⁶ The Thai delegation to the Council replied that Thailand "fully intend[s] to adhere to our commitments and obligations under the Convention [Against Torture]", "does not in any way condone acts that constitute the use of torture", and that any "alleged wrongdoing or abuse by state authorities or personnel will not be taken lightly and will be fully investigated in accordance with due process".²⁷

Later that month, the government's reply was tested when Yapha Kaseng, a Muslim imam (teacher) in Narathiwat, died in the custody of Special Taskforce 39 at their camp at Wat Suan Tham.²⁸ His family filed a complaint and took the matter to court, steps which various authorities, including representatives of the military, unsuccessfully requested them to discontinue by visiting them on several occasions and encouraging them to accept compensation rather than pursue the court case.²⁹ After Gen. Anapong Paojinda, Commander-in-Chief of the Royal Thai Army and Deputy Director of ISOC, stated that a swift public inquiry would commence, followed by a trial and punishment for those found responsible, at least three officers were placed under investigation for abuse of power. It was determined that there was sufficient grounds to refer them to the National Counter-Corruption Commission, which at the time of this writing was determining whether there was sufficient evidence to refer the soldiers to a public prosecutor and/or to order the Army to discipline them. In addition, in April 2008 a post-mortem inquest into the death of the imam was commenced.³⁰

In June 2008 at the UN Human Rights Council's Eighth Session, an international NGO questioned the Royal Thai government's commitment to bringing officials to justice for the imam's death and for two other recent deaths in custody.³¹ The Thai delegation, exercising its right of reply, stated that "investigations on these cases are underway and those found responsible will be prosecuted according to the law. The Thai government reiterates that it will not tolerate any abuse of authority by state personnel".³² A doctor testified in court in August during the post-mortem inquest into the imam's death, that he had died from "blunt force trauma" causing broken ribs, punctured lungs, skin abrasions, and facial wounds.³³

In another publicized case, in February 2008 a group of Islamic 'pondok' schools in Songkhla province, known as the Committee for Justice and Reconciliation, filed a complaint on behalf of Arminudeen Kachi for mental and physical damages. They claimed that he had been tortured in custody on 5 February 2008 and demanded that legal action be taken against the soldiers who had acted illegally.³⁴ Kachi was provided compensation out of court.

3.2. TORTURE AND ILL-TREATMENT IN SOUTHERN THAILAND

In June 2008, Amnesty International obtained testimonies, a representative sample of which are outlined below, concerning the treatment in detention of at least 34 persons between March 2007 and May 2008. The organization interviewed 13 torture survivors directly and spoke with relatives or witnesses to the torture or ill-treatment of the other persons. These persons were divided almost equally among the three provinces most affected by the insurgency: Narathiwat, Pattani, Yala and to a lesser extent Songkhla. All of the victims were tortured or ill-treated by security forces in an effort to obtain information from them, to extract confessions to compensate for poor intelligence and evidence-gathering, to intimidate them into withholding or withdrawing perceived support for the insurgency, or to punish

them. The most common torture techniques were beatings, kicking and stomping on victims, and plastic bags placed over detainees' heads to nearly suffocate them. Four of the victims died in detention from their treatment.

3.2.1. NARATHIWAT PROVINCE

"Two lower-level soldiers then took me out by a pond and made me dig a hole. The superior came and told me that if I did not provide information. . . , I would be buried there. They then made me strip again and stand in the hole, while they filled it up to my neck with the dirt and told me to confess."

- Middle-aged construction worker from Pattani

Narathiwat, one of Thailand's two southern-most provinces, bordering Malaysia, was the site of the raid by anti-government militants on 4 January 2004 that marked the onset of the current insurgency. Narathiwat is also the site of the Tak Bai incident in October 2008, where 78 demonstrators were crushed or suffocated to death after being taken into custody, and an additional seven died when the security forces violently suppressed the demonstration. The demonstration occurred outside a police station in Narathiwat province, where relatives had gathered to call for the release of village defence volunteers detained under suspicion of handing arms to insurgents. The province remains a centre of insurgent activity and, thus, of heavy counter-insurgent tactics by Thai security forces. Amnesty International documented 11 incidents of torture or other ill-treatment in the province since March 2007, including three incidents where torture was so severe that it led to the victims' death. Amnesty International also documented a very serious incident involving the torture of a woman and her six-year-old son as a means of gathering information about the woman's husband. The incidents indicate that torture and ill-treatment occurred openly in some military and police centres, though those involved appeared to be aware that they were violating applicable laws and policies, and that at least on some occasions, officers actually participated in the unlawful action.

In June 2007, a young man from Narathiwat died as a result of torture at the hands of soldiers. The young man was chased by soldiers from an unknown unit into a mosque in Narathiwat around 9:00 pm. He was part of a procession that the soldiers had disrupted earlier in the day, and he had run to escape gunfire. A witness told Amnesty International that the soldiers insulted those in the mosque, telling them that it was better to feed dogs than Muslims. The young man became angry at this and at other insults, and so the soldiers pushed his head into a large basin and poured water in it, before repeatedly dunking his head in the water. They then pulled him to the floor and stomped on him until he died.

Family members of a young rubber tapper told Amnesty International that in December 2007, police from Rue-Sor police station arrested him after a bomb had exploded. Ten policemen took him to Rue-Sor police station, where they handcuffed him and asked him if he was involved in the insurgency. They covered his head with a plastic bag and scratched his face when he said he was not. He explained to them that a bomb had exploded the day before, and that he had been walking close by when it went off. The police then told the young man to confess to the bombing, before kicking him, hitting his head with a telephone, and choking him. After being temporarily transferred to Ingkharayuthboriharn Army Camp in Pattani, the young man was then taken back to Rue-Sor police station, where he was detained in a locked room with the air conditioner set to a very low temperature.

February 2008 seems to have been a particularly active time for torture in Narathiwat. A middle-aged construction worker from Pattani told Amnesty International that a joint military-police force of over 100 troops surrounded his house that month while he was asleep.

They knocked on the door, but as I was too frightened to answer, a few troops climbed through the window. They told me that they had reports that I had guns in the house; they searched the house but found no weapons. After being taken to a police station and asked general questions, I was then taken to Chulaporn military camp in Narathiwat, where two non-uniformed soldiers or police took me to a barber shop deep in the camp during the evening.

At about 1:00 am I was ordered by the superior officer to get up. This officer punched me in the face, called me a terrorist, and broke my national identification card, while another soldier kicked me from behind; there were three soldiers in addition to the superior. As I was then on the floor, the superior told me that he wanted to test his new sandals and so stepped on me. The other three kicked me in the head with their boots, which caused my head to bleed and made me dizzy. The soldiers then allowed me to shower, but as I had to be gentle with the water on account of my wounds, this took a long time, causing the soldiers to become impatient. They refused to give me a towel, so I used my shirt to dry off. The soldiers then gave me two cigarettes and told me to sing the national anthem, but since I could hardly stand upright, they kicked me into a ditch containing rubbish. The soldiers then asked me about a bombing in a market, but when I said I knew nothing about it, they hit me with bamboo and told me to do push-ups; when I could not do so, the soldiers stood on my back for about ten minutes. They then told me to take my trousers off, but I was reluctant since I wasn't wearing any underwear; they still made me do so and just laughed at me.

Again the soldiers asked me about the same incident, but because my reply was the same, three soldiers held me while the other burned my foot with a lighter until it was out of fluid. They kicked my leg with their boots. Two lower-level soldiers then took me out by a pond and made me dig a hole. The superior came and told me that if I did not provide information on the incident, I would be buried there. They then made me strip again and stand in the hole, while they filled it up to my neck with the dirt and told me to confess. They left me there for 30 minutes with a guard dog nearby to frighten me, and as a Muslim, offend me [as Muslims consider dogs ritually unclean].

However, I then heard the soldiers express fear among themselves that others in the nearby kitchen might see what they were doing, and so they dug me out of the hole and told me to go shower. They did not allow me to pray, telling me I should do it at home, and asked me if I had ever been to a religious school. I was left to sleep in the barber shop until the next day when the same four soldiers came with a doctor to examine me. Later that day, a letter arrived via a non-uniformed soldier saying that I should be transferred to another location, but the soldiers were afraid of letting me go there on account of how they had treated me, and so kept me in Chulaporn military camp for two more days. The four soldiers eventually took me to Ingkharayuthboriharn Army Camp, threatening to kill me if I said anything about the torture.

This case is particularly illustrative because it demonstrates the involvement of officers in torture, at the same time as showing that those involved in the torture were fully aware that they were violating the law and tried to hide their action.

In February 2008, another man from Narathiwat died as a result of torture. According to the man's sister, he received a letter saying that he had to report to a four-month vocational training program. According to his sister, after reporting to the authorities, he was beaten badly and shot in the right shoulder, before being taken to a hospital. He was kept there in handcuffs until he died four months later in June 2008. Soldiers from an unknown unit told his sister that he was a terrorist.

Another particularly alarming incident, this time involving the torture of a woman and a six-year-old child, occurred in February 2008. Soldiers from a Special Taskforce in Narathiwat detained a young woman from Narathiwat and her six-year-old son. The woman told Amnesty International that the soldiers claimed to be looking for her husband but he was not there at that time. They were taken to a military camp where in the evening the soldiers took her son from her and did not allow her to pray or use the toilet while they interrogated her on the whereabouts of her husband. The woman said that the soldiers used "offensive" words with her, while interrogating her in a hut at the back of the camp. After an hour, the soldiers moved her to another place where she could not use the toilet or eat and was told to confess to knowledge of the insurgency.

Her son was brought back to her, but the soldiers did not allow her to touch him even though he was visibly ill. Two female officers had taken the son to the bathroom and he came out all wet, having been dunked in a water basin. He was then shown a photo of a naked boy with a rifle and asked, "Is this you?" before being taken away from his mother again. The woman was finally allowed to shower in the presence of a female paramilitary ranger who did not allow her to dry off, but took her to a room with the ceiling fan turned on. Soldiers then placed a needle on the table to scare her and struck her in the back with a stick three times, still asking her where her husband was.

The woman did not sleep that night but was reunited with her son at about 8:00 am the next morning. His hair was wet and he had a fever. According to the woman, even now her son tells his friends what happened to him in detention and tells her he can remember the faces of the soldiers.

Again in February 2008, Special Taskforce soldiers from Tonmaisung village in Narathiwat - known locally as the "DTAC unit" since the DTAC mobile phone service office is in the village - arrested a young rubber farmer from Narathiwat at his house. According to his relatives, Special Taskforce "Ror 15111 Mor Vor 1" took him to a military camp at Ba Ngo Aor Mor village, Kawa subdistrict, Sukhaipadee district. The man told his family that he was tortured at this camp but he provided no details and was there only for a short while.

He was then moved to Pi-Leng military camp in Jor Ai Rong district in the evening. Four paramilitary rangers told him to dunk his head in sewage, threatening to harm him if he surfaced for too long or stopped. Then they made him get on the floor and crawl over and lie on spiky plants, while they stepped on him. One soldier then sodomized the man with a stick. Another soldier pointed a gun at him and told him to confess to a bombing in December 2007. He was kicked in the stomach and fell to the floor. Soldiers then placed a black plastic bag over his head and again told him to confess. He was similarly tortured each day for two more weeks.

Amnesty International documented another incidence of torture leading to the death of a detainee. In March 2008, a joint military-police force of over 100 troops came to the house of a rubber farmer from Narathiwat at about 5:00 am. Police from Rue-Sor district entered his house while soldiers waited outside. The man and two other farmers were all made to lie on the ground for about an hour. The three were taken to two police stations and then on to Special Taskforce 39 in Rue-Sor, where they were held for three days but were given no water to prepare themselves for prayer.

Their families told Amnesty International that on the evening of the third day, the rubber farmer was kicked repeatedly for 90 minutes until he could not walk. He was then left alone for about ten minutes, beaten again for half an hour, and left alone again for another ten minutes. Finally, soldiers took him to a tree where they kicked him on the ground and struck him with an iron bar on the head and body for an hour. He was dragged naked back to his room at about 2:00 am, where he was kicked to the ground again. He died later that night.

On the second day, five soldiers from a Special Taskforce took the first of the other remaining farmers to a room at the back of the camp and asked him if he had shot anyone. They beat him for one hour, covered his head with a plastic bag and tied it so that he could not breathe. When the man tore it off he was kicked for doing so and had another plastic bag secured around his head and his hands tied. The soldiers then asked him whether he was right or left-handed, and threatened to cut his fingers if he did not confess to knowledge of or involvement in the insurgency. They also hit his head three times with the handle of a knife. He was finally blindfolded and taken to the truck. The next morning he was taken away again by 15 soldiers who were drinking alcohol. Their leader asked him if he had ever shot anyone. When the farmer said 'no', he was hanged upside-down with his shirt off and his hands tied behind his back with his shirt. When he failed to answer questions satisfactorily, he was kicked in a manner that resembled Thai kick-boxing. This lasted for 90 minutes, until he was then let down but still had his legs tied.

The soldiers then stuck a sewing needle into his fingertips. He was hanged upside down again, and had a needle stuck under his eyes and on his cheeks. They also took off his pants while he was upside-down and stuck the needle into his genitals. They struck and kicked him repeatedly on the chest with their boots, splashed water on him, pepper-sprayed his face four times, and drenched him in beer, an act offensive to Muslims, for whom alcoholic beverages are considered sinful. He was similarly tortured again by 15 soldiers for about 30 minutes during the evening. They beat, kicked, and suspended him again, asking the same questions. Late at night he was taken by the same 15 drunk soldiers to a tree with his hands tied behind his back and tied to the tree while the soldiers played cards. The loser would kick him. This lasted two hours into the morning. They told him that he had shot the relative of a soldier. He told Amnesty International that he could hear the rubber farmer who eventually died being tortured from there.

Also on day two, soldiers told the second of the other farmers that he would be killed within a week if they released him. He was tortured in the same manner as his neighbour above, and the soldiers also hit his head against metal bars and dragged him by a rope around his neck until he fell unconscious. They then cut his arm and stuck a needle in the wound. He was also forced to drink alcohol [in violation of Muslim strictures], and asked, "Where is your God? If he exists, why doesn't he come and help you?"

3.2.2. PATTANI PROVINCE

“Four soldiers kicked me and told me to tell the truth. I agreed to do so, but when I still claimed I was innocent, they choked me, pulled my hair, and told me to choose my burial place - which I did.”

- Young man from Pattani

Ingkharayuthboriharn Army Camp Pattani province is a major centre of the counter-insurgency campaign and one of only two officially recognized detention centres for those detained in southern Thailand. Amnesty International has documented several violations at Ingkharayuthboriharn Army Camp, including efforts to hide the torture or to limit injuries so that they fell short of killing the victim. Detainees were tortured or ill-treated at least once on 12 separate occasions in Pattani. The cases below are from December 2007 through April 2008.

A young man from Pattani told Amnesty International that he was detained in December 2007 by a joint military-police force of over 100 troops at about 4:00 am.

I was initially taken to a police station, and afterwards to a Special Taskforce unit at Wat Changhai Battalion 24 Army Camp. That evening, drunk soldiers interrogated me, but when I professed my innocence, they got angry and took me off to a dark area. Four soldiers kicked me and told me to tell the truth. I agreed to do so, but when I still claimed I was innocent, they choked me, pulled my hair, and told me to choose my burial place - which I did. I was then placed in a chair until 2:00 am, at which point I was kicked and beaten again for several hours. This continued for three days. When the soldiers asked me questions, they put their boots against my face, tied my hands behind my back, and kicked me if they did not find my answers satisfactory. Sometimes I was placed in the sun or the rain. The soldiers also gave me meals with pork in them [which violates Muslim dietary restrictions], and I could not pray properly and so had to pray in the toilet. The soldiers kicked my tent at night so I could not sleep properly, and allowed me to shower only every other day. On the final day the soldiers struck me once very hard on my upper back and lower neck.

Also in December 2007, three young men from Pattani were arrested by a joint military-police sweep of between 70 and 80 troops. After being taken to two other places, the three were detained at Ingkharayuthboriharn Army Camp, where they were beaten on the face, shoulders, and back. The soldiers applied electric shocks to the hands of one of the detainees, and tied a rope around the neck of another, telling him that they would arrest his younger brother if he did not confess to knowledge of or involvement in the insurgency. They also placed a plastic bag over his head. All were kept naked in a room in which the air-conditioner was turned on very high. Their families explained to Amnesty International that the detainees were later told several times to sign a paper saying that they were not tortured, but all three refused to do so.

A middle-aged man from Pattani told Amnesty International that in January 2008, about 200 soldiers from Special Taskforce 4310, known as the “Chor Kor Maela” or “Ror Tor Phor 4310”, from Maela district, came to his house at about 5:00 am.

Around 20 soldiers surrounded my house while the others waited on the road or in the woods behind it. They took me to their base in Maela, formerly a school, where they told me to confess to planting a bomb. The soldiers asked me how I would feel if militants killed my

family and asked about my friends. The soldiers then tied my hands behind my back, slapped me on the ears, and beat me on the stomach so that I fell to the floor, where I was then kicked. Three soldiers then struck me on the face with a gun and kicked me in the back. After an hour, a superior came and took me to a dark room to interrogate me. The police also came to the base to ask me questions. I was kept in the dark room and was told that harsher treatment would come if I did not confess. At around 2:00 am, the superior officer took me to Ingkharayuthboriharn Army Camp, where I was placed in a dark room with the air conditioner turned to a very cold temperature. I was questioned there and asked to confess.

Two young men from Pattani told Amnesty International that in January 2008, 15 soldiers from Special Taskforce 11 arrested them and asked them if they were part of the insurgency. When they denied this, the soldiers tied their hands behind their backs, made them stand against a wall, and hit and kicked them. The soldiers then took the young men to the Special Taskforce, where they asked them more general questions and took their photos. Soldiers then beat them with sticks, and told them to identify persons in photographs who belonged to the RKK insurgent group. One soldier with only his eyes exposed threatened them with a gun and made them sit in the sun for two hours. When it began to rain, they were made to sit outside where they were given food. They were then taken to Ingkharayuthboriharn Army Camp that same day, where soldiers there referred to them as “new customers”, took their valuables, and photographed them. The next day, one of the young men had to take off his shirt, had his hands tied behind his back with his shirt, and was kicked and hit. Soldiers asked him about his village and told him to confess to knowledge of or involvement in the insurgency. At night, soldiers took him outside and beat him with a water hose and drenched him in water, before placing him in a very cold air-conditioned room with the other man. Later, the soldiers tied a rope around his neck and then tied it to the chair. They poured water on him and gave his feet electric shocks. A Muslim soldier then told him to confess. Soldiers struck him again, but eventually permitted him to pray. The other man was also beaten.

In February 2008, police arrested a young teacher from Narathiwat and took him to a police station where they threatened him. Then they took him to Ingkharayuthboriharn Army Camp, where they called in soldiers and told them not to torture the man to death. He was kept in a cold air-conditioned container for five days, which was difficult because he had asthma. Soldiers told him to confess to being connected to bombs. His mother told Amnesty International about his treatment.

Also in February 2008, a joint police-military force of between 30 and 40 troops arrested a construction worker from Pattani and initially took him to two police stations. The man told Amnesty International that he was unsure of what Special Taskforce unit the soldiers were from, but as he was then taken to Wat Changhai Battalion 24 Army Camp, it was likely the unit known as “Shockor 24” which is based there. The soldiers bent the man’s hands back until he lost feeling in them, and struck his head with a gun barrel, causing his skull to crack. He was kicked and choked, and the soldiers struck him in the stomach so hard that he continues to feel pain. This torture took place every day for a week and was designed to force the man to confess to knowledge of or involvement in the insurgency.

In March 2008, a joint military-police force of over 300 troops, consisting of Special Taskforce soldiers based in Wat Leab and police from Saiburi Police station, detained a young farmer from Pattani, according to his relatives. They tied his hands behind his back,

threw him to the floor, and kicked and stepped on him. Soldiers accused him of trying to escape, and then struck him on the back with a gun, before firing it so close to his ear that he could not hear for some time. The farmer was first taken to a police station where he was beaten while in handcuffs. In the afternoon, he was taken to Wat Changhai Battalion 24 Army Camp. Soldiers placed a plastic bag over his head and kicked and beat him. The man's nose was broken and the cuffs on his wrists cut him and left his arms numb. This torture lasted for three days, during which he could hardly eat or sleep, and was not allowed to pray.

3.2.3. YALA PROVINCE

"The next day, I was made to lie on the ground naked, while the rangers burned my body with a candle until it burned all the way down."

-Young man from Yala

Detainees were tortured or ill-treated at least once on 14 separate occasions in Yala. The cases below are from July 2007 through January 2008.

In July 2007, a joint military-police force of at least 20 troops arrested three young men from Yala outdoors. They were handcuffed and kicked; then forced to lie down and stepped on by soldiers and police, who asked them if they had a gun. Two of the young men were burned with cigarettes and were stuck in the toe with a sharp object. They both had to lie on the ground with their hands tied behind their backs while the soldiers and police stepped on their stomachs. They also had to kneel and were kicked on the shoulders until they fell over. They were hit harder if they said "Allah". The soldiers seemed to remember the third young man from a previous encounter, and beat him unconscious. All three were made to lie in a waterless ditch for 30 minutes in the hot sun, but the soldiers took their cuffs off when they caused their wrists to bleed. The soldiers told the three young men that they would kill another man whom they had also detained - and who they tied to a tree with a plastic bag over his head - if they did not confess to knowledge of or involvement in the insurgency. However, it was the young man who had been beaten unconscious who died later that day. One of the survivors told Amnesty International that "Torture is never OK. Arrest us and take us to court, that is acceptable. But torture is not. What happened to us will remain with us for the rest of our lives."

In October 2007, police from the Crime Suppression Division in Yala arrested two young men from Yala on the road. At a nearby police barracks, three plain-clothed police beat the two young men on the arms with a plastic water pipe and on the back with a metal stick. They also kicked them so that they could hardly walk. This lasted for about four hours in the afternoon, during which the young men were permitted to pray but were called "stupid Muslims" by the police. The police placed the two detainees in separate rooms, telling them that only a confession for a recent killing would win their release and that the torture was "just for fun". At about 5:00 pm, the police placed plastic bags over their heads and told them that if they didn't confess, they would be tortured for three days and then killed. The police later warned them not to say anything about their treatment in the event they later received visitors. At the time of the interview with Amnesty International, one of the young men said that he continued to see blood in his stools, while the other still had an injured knee. "I tell you this for the sake of others", he said. "If this continues, there will never be peace in this region".

A middle-aged farmer from Yala told Amnesty International that in December 2007, paramilitary rangers and soldiers from Special Taskforce Unit 41 arrested him at his house and took him to Unit 41 in Wangphaya subdistrict, Raman district.

There a ranger mocked me with three choices: "Death, death, or death". The rangers and soldiers questioned me about the insurgency, but as a native Malayu speaker, I only partly understood the questions in Thai. They told me to confess. At noon, I was permitted to pray, but upon being taken to a small room in the afternoon, I was hit on the head, kicked, and called a terrorist. While detained there, the rangers sometimes delayed my meals, telling me, "Let's see if Allah will give you food". Ten days later, I was interrogated by three rangers, one of high rank, who asked me if he had anything to say. When I said 'no', the ranking soldier left, while the other two continued to question me. They told me that Islam was a bad religion that teaches people to kill. They made me take my shirt off, and told me to hold my hands behind my back at penalty of being strangled or punched in the stomach. Despite obeying, the rangers struck me in the stomach and arms, and said that if I did not confess, they would tie me upside-down from a tree with my head under water. The next day the soldiers moved me to a hot garage and warned me to be prepared for the night's interrogation; however, the night passed uneventfully. The following day, rangers showed me another detainee who had clearly been beaten, and claimed that he had told them that I was part of the insurgency. They then threatened me with a hand-saw.

In January 2008, a joint military-police force of over 300 troops from Bannangsta Police station and Special Taskforce 15 from Yeelapan subdistrict, Bannangsta district, surrounded the house of a young man from Yala at about 6:30 am. The young man told Amnesty International that soldiers pulled him and another man aside and told the others to look away.

They asked me if I knew the wanted man in a photo they showed me. When I answered that did, but that I didn't know he was wanted, a soldier kicked me in the back of the neck. I was then taken to the Banglang para-military ranger camp in Bannangsta. On the third day paramilitary rangers asked me if I was a terrorist. After replying 'no', I was kicked in the head and stomach for about one hour. The next day, I was made to lie on the ground naked, while the rangers burned my body with a candle until it burned all the way down. This lasted about 10 minutes, during which they asked me if I had been trained by insurgents. Four days later, the rangers blind-folded me and placed me in a metal tank which was large enough for me to sit but not lie down, placed a lid on it, and cut a hole in the side of it. The rangers then lit a fire around the tank and asked me if I knew a particular person; I said 'yes' but that he was not a terrorist. As I initially had shoes and clothes on, my feet were protected but my arms and shoulders got burned. I was then made to take my shoes off, which blistered my feet. When I stuck my head out of the hole and asked to be freed, the rangers hit me with a gun. This lasted for over an hour. Taken out of the tank, I was beaten for another 30 minutes with no questions asked.

Two days later, rangers placed me in a tub of ice for 20 minutes and asked me if I had beheaded anyone. When it became too cold, I tried to get out, but was cut above the right eyebrow and had my head forced under water. However, the rangers seemed to become frightened when they noticed I was bleeding and so gave me basic first-aid. The next day a new group of rangers tried to torture me, but those from the day before stopped them, saying that their superior would not tolerate any more. However, one new ranger did kick me in the stomach and asked me, "Who killed my father?"

Also in January 2008, two young men from Yala were arrested at about 3:00 am by at least 40 soldiers from Special Taskforce 11. They were taken to the taskforce camp and initially asked only general questions. The next day, however, four soldiers asked one of the young men if he knew anything about bombs. When he replied that he did not, they said that such was impossible and began kicking him and did so harder if he called out to Allah. The soldiers then took his shirt off and struck him very hard on the back, causing him to have trouble breathing, and twice he lost control of his bodily functions and urinated. The soldiers then tied his hands to a chair. Ten soldiers beat him in turn, sometimes with rifles. He told Amnesty International that when he asked for water he was given motor oil. They placed 'evidence' on the table and told him that if he did not confess, they would frame him with trying to escape and shoot him in the process. They showed him a gun, but when he denied recognizing it, they struck the back of his head with it, causing his face to fall into his rice bowl. Then a superior to the others came in and struck him on the knees and collar bone with a golf club. He also pointed an M-16 at him and said that "sometimes accidents with guns happen". He then covered the young man's head with a plastic bag, which caused him to fall off of his chair. Another man, not in uniform and claiming to be a Thai boxer, kicked him very hard in the arm. This lasted until the evening, at which point he was given food and allowed to pray for the first time.

Likewise, according to his family, the other young man was struck on the ear and with greater force when he said "Allah". Four soldiers told him that he was responsible for 40 bombs, asked if he was a leader of RKK, and hit him with a golf club. He was also kicked off his chair, causing his head to hit the floor. The soldiers then remarked that this was no fun for them, so they put him back on the chair and hit him with a rifle, cracking his skull. On the second day, he had a tooth knocked out by a punch and had his hair pulled. He was taken by the superior officer who threatened him with an M-16 rifle.

3.2.4. SONGKHLA PROVINCE

Four districts of Songkhla, the northern-most province affected by the insurgency, are covered by martial law. Two detainees were tortured or ill-treated on two separate occasions in Songkhla in February 2008.

Family members told Amnesty International about the treatment of a young farmer from Songkhla. In February 2008, a joint military-police group of over 40 troops, mostly paramilitary rangers, surrounded his house and took him to Special Taskforce 43. In the evening, rangers struck the farmer on his right shoulder so hard he could not lift his arm. They also kicked him, covered his head with a plastic bag, and hit him with a wet towel. The rangers told him to confess to killing villagers, and did not allow him to pray. This continued intermittently for three days.

Similarly, a young teacher from Songkhla told Amnesty International that in February 2008, a joint police-military group of over 100 troops, comprising soldiers from Special Taskforce 43, paramilitary rangers, and police, arrested him at his house. He refused to sign a form consenting to be detained, but was detained anyway and taken to Special Taskforce 43. In the evening, three plain-clothed soldiers, or possibly police, asked him some questions and allowed him to pray, but later kicked and beat him when they were not satisfied with his answers. He was asked if he was involved in a recent shooting and bombing, and was kicked three times in the neck for saying that he was not. He fell to the floor when the men struck

his ear, and was then made to stay on the floor. Another officer came and threatened to bury him alive, while others kicked him or offered him a gun and told him that he would be free if he could escape. Then they forced him to take his clothes off and sit naked on the floor, before kicking him and telling him to put his pants back on. One man pointed a gun at the young farmer's head and told him to confess. Others struck him with a rolled up blanket and covered his head with a plastic bag and tied around neck. This treatment lasted several hours.

4. LEGAL FRAMEWORK

4.1. TORTURE UNDER INTERNATIONAL LAW

International law absolutely prohibits torture and other cruel, inhuman or degrading treatment or punishment. There are no circumstances under which states can be justified or excused for perpetrating either. This prohibition appears explicitly in human rights treaties - including in article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand acceded in 1996, and the UN Convention against Torture (CAT), which Thailand ratified on 1 November 2007.³⁵ Freedom from torture and other ill-treatment is a non-derogable human right; it cannot be infringed or restricted even “in time of emergency which threatens the life of the nation”.³⁶ Public opinion on the use of torture also has no bearing on its legality.³⁷

This right is also provided in international humanitarian law treaties, which apply to situations of external and internal wars (armed conflict) - including the four 1949 Geneva Conventions, to which Thailand is also a state party since 1954. Under both branches of international law, a state which has a person responsible for torture under its jurisdiction must either prosecute him or extradite him to a state or an international tribunal to be prosecuted.³⁸ Evidence obtained through torture and other ill-treatment cannot be admissible in any proceedings, the only exception being its use as evidence that ill-treatment has taken place.³⁹

In the most general terms, the definition of torture in Article 1(1) of the UN Convention against Torture contains four salient elements:

- *The element of intention.* The act (causing pain and suffering) was intentional;
- *The element of severe pain or suffering.* The act caused the victim “severe⁴⁰ pain or suffering, whether physical or mental”;
- *The element of purpose (or discrimination).*⁴¹ The act was performed for a certain purpose - including obtaining information, punishment, intimidation and coercion;
- *The element of official involvement.* The act was performed or instigated by officials, or at least with official consent or acquiescence.

The definition excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

“Cruel, inhuman or degrading treatment or punishment” has not been similarly defined in international law, perhaps because it was not meant as a narrow or strict concept. However, from the practice of international and regional human rights monitoring bodies these acts may roughly be described negatively, as ill-treatment which does not involve all of the key elements of the torture definition described above.⁴² Thus conditions of detention may cause severe pain or suffering, but in the absence of a purpose (or discrimination) of the type contained in the torture definition, would constitute, instead, cruel, inhuman or degrading

treatment.⁴³ Abusive interrogation methods - which clearly have a prohibited purpose ("obtaining... information or a confession") - but which inflict pain or suffering that is not judged to be "severe", would similarly constitute cruel, inhuman or degrading treatment.⁴⁴ It must be emphasised that, just like torture, cruel, inhuman or degrading treatment or punishment is prohibited at all times and in all circumstances under international law. At least deliberate acts of ill-treatment, such as "inhuman treatment" under international humanitarian law,⁴⁵ constitute international crimes.

4.2. LAWS FACILITATING TORTURE IN SOUTHERN THAILAND

Amnesty International has obtained no positive evidence to suggest that it is an express policy of the Thai security forces to torture or otherwise ill-treat detainees in their counter-insurgency work in southern Thailand, and believes that written and verbal policies prohibiting torture under penalty have been promulgated in good faith. Nonetheless, torture and other ill-treatment have become systematic, in significant part due to provisions of martial law and the Emergency Decree in effect in the south. These provisions effectively facilitate the practice of torture by creating circumstances under which it can go virtually undetected by superior officers in the short term, and by codifying immunity from prosecution for officials who perpetrate, permit, or refuse to punish human rights violations, including torture and other ill-treatment. These circumstances include lengthy periods of pre-charge detention, the failure to bring detainees physically into a court and before a judge, the absence of judicial review of arrest warrants and requests to extend detention, the denial of requests for personal visits to detainees, the use of unofficial detention centres, and the lack of consistent, unfettered, and independent monitoring of the detention centres.

4.2.1. MARTIAL LAW AND THE EMERGENCY DECREE

The Royal Thai government invoked the Martial Law Act for all of Narathiwat, Pattani, and Yala provinces, and for four districts of Songkhla province in January 2004, and re-imposed it via a *coup d'état* in September 2006, after a 14-month period during which it was not in effect. The Emergency Decree on Government Administration in States of Emergencies was issued on 19 July 2005, temporarily replacing martial law and applicable to Narathiwat, Pattani, and Yala. A three-month decree, it has been renewed twelve times. Both martial law and the Emergency Decree remain in effect.

Under martial law, the authorities can detain for interrogation any person on grounds of "suspicion" for seven days.⁴⁶ Under the Emergency Decree, all "police officers, civil officials, or military officers" (subsequently defined as "competent officials")⁴⁷ can detain any person as a preventative measure for an initial seven days, with possible extensions up to a maximum of 30 days.⁴⁸ Thus, a person in the south can lawfully be detained by the authorities for a maximum of 37 days. However, on some occasions the detaining authority has restarted the seven-day clock one or more times by transferring the detainee before the expiry of seven consecutive days, making the overall period longer than 37 days. The Emergency Decree provides that if detention is still required after the maximum 30-day period expires, the Criminal Procedure Code applies.

Under martial law, arrests can be made without warrant and are not subject to judicial review. In contrast, under the Emergency Decree arrests can only be made with warrants issued by a Provincial court, which is required to review the detention order every seven

days.⁴⁹ However, a Regulation issued by ISOC Region 4 in January 2007 makes clear that it is not necessary to bring forth the person held in custody to the court, only that the need for extension be “proven”.⁵⁰ As few detainees have lawyers to challenge the application to extend their detention, most applications are approved. The UN Human Rights Committee, which oversees compliance with the ICCPR, informed Thailand in 2005 that “Detention without external safeguards beyond 48 hours should be prohibited”.⁵¹

Article 9 of the International Covenant on Civil and Political Rights provides, in relevant part:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

Provincial courts have stated that they theoretically can consider torture allegations in deciding whether to allow a person to be detained (or further detained), but that such allegations have to reach the court via a complaint by the detainee to the police. This procedure thus requires the detainee to formally complain of torture or ill-treatment while in custody - often to the very agents of the state mistreating him. The only other option is a complaint made on the detainee’s behalf by relatives.⁵²

Neither martial law nor the Emergency Decree prohibits visits to detainees, but requests to visit are sometimes denied, and no visits are permitted on public holidays (despite those being the most convenient days for potential visitors). A Regulation by ISOC Region 4 in January 2007 denied visits during the first three days of detention,⁵³ and although it rescinded this prohibition in February 2008, compliance has reportedly been inconsistent. While there is no publicly available regulation denying access to lawyers, lawyers 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.

Section 12 of the Emergency Decree provides that the arrest report must be made available to relatives and potential visitors of the detainee so that they can be aware of “where the person is held in custody during the course of the detention”.⁵⁴ However, Section 12 also provides that detainees are to be held “in a designated place which is not a police station,

detention centre, penal institution, or prison”.⁵⁵ In a Joint Oral Statement issued at the Human Rights Council in March 2008, five NGOs cited the Regulation as “permit[ting] incommunicado detention in places” during the first three days of detention.⁵⁶

In 2005, having expressed concerns over “reports of the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials” in Thailand, the UN Human Rights Committee recommended that:

The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families.⁵⁷

According to another directive of ISOC Region 4 also issued in January 2007, there are only two detention facilities designated for suspected insurgents in the south: Ingkharayuthboriharn Army Camp in Pattani province and the Forward National Police Officer Operations Centre in Yala province.⁵⁸ In addition to this appearing to be contradictory to Section 12’s prohibition of the use of police stations, reports suggest that there are at least 21 other unofficial detention sites being used, 11 of which had held or were holding detainees (or witness or relatives thereof) interviewed by Amnesty International.

They are: (in Narathiwat province) Pi-Leng Camp, Wat Suan Tham Special Taskforce Camp 39 (until mid-2008), Chulaporn Military Base, Ba Ngo Aor Military Camp, Rueso District Police Station; (in Pattani province) Wat Changhai Battalion 24 Army Camp, Plakalu Song Battalion Army Camp, Banglan Army Camp, the Police Coordination Centre, Wat Lak Muang Army Camp, Nong Chik Police Station; (in Yala province) Region 9 Police Training Academy, Chor Kor/Taskforce 11, Banglang para-military ranger Camp, Special Taskforce Camp 39 (since mid-2008), para-military ranger Regiment 41; (in Songkhla province) Rattanaon Camp, Special Forces Unit 43; (in Chumporn Province) Ket-udomsak Army Camp; (in Ranong province) Rattana-Rangsang Army Camp; and (in Surattani province) Wipawadee-Rangsit Army Camp.

The UN Human Rights Committee has noted the importance of ensuring official places of detention in its authoritative General Comment on the prohibition of torture and other ill-treatment under the ICCPR.⁵⁹ In September 2007, doctors at state hospitals in three provinces (not including Songkhla) complained that their image of impartiality had been adversely affected by, among other things, the use by security forces of health stations as temporary places of detention.⁶⁰

The aforementioned Regulation issued by ISOC Region 4 in January 2007 contained an express provision prohibiting ill-treatment of detainees: “... all violence and action that may bring about

damages are to be avoided”, and “During custody, he must not be handcuffed, shackled, detained in a cage, or transferred in a cage carrier, or treated with violence”.⁶¹ It also made clear that appropriate food must be provided to the detainee in accordance with his religious beliefs, and that medical treatment must also be provided when needed.⁶² As Amnesty International's findings show, however, these provisions have not always been adhered to.

Article 10 of the International Covenant on Civil and Political Rights provides, in relevant part:

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

Further, 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.⁶³ Amnesty International is deeply concerned that this provision is being used, either directly or indirectly, to provide sweeping impunity to officials who torture or otherwise ill-treat detainees in southern Thailand. This concern is substantiated by the fact that not a single individual has been successfully prosecuted for torturing or ill-treating a detainee in counter-insurgency southern Thailand.

Neither official nor unofficial detention facilities are subject to regular independent monitoring. Although the Committee on Violence in the South appointed by the legislature of the military government made a number of visits to detention centres from late September 2006 through early 2008, such visits were made only to investigate ad hoc complaints of torture. Likewise, the NHRC's Subcommittee against Torture conducted several visits to the two official detention centres in 2007, but they also took place only after detainees complained, and ISOC Region 4 refused all requests for visits in 2008. Several military officers told Amnesty International that family members of detainees or village or religious leaders were permitted to witness security forces interrogate detainees, but this information was not substantiated by any other primary or secondary research by the organization.

The International Committee of the Red Cross (ICRC), part of whose core mandate is to monitor detention facilities, only has access to jails and prisons in the south pertaining to the pre-existing/non-emergency criminal justice system. While former detainees are sometimes held in these correctional facilities after the expiry of the 37 days - and in some cases, after they have been tortured or ill-treated - they receive no visits by the ICRC until that critical period has passed.

Article 2 of the Convention against Torture provides that:

“1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3) An order from a superior officer or a public authority may not be invoked as a justification of torture.”

4.2.2. THE ACT ON INTERNAL SECURITY OF 2008

The Act on Internal Security (ISA) of 2008 was passed by the National Legislative Assembly on 20 December 2007 and came into force in February 2008. Aside from providing a new legal basis for ISOC and the fact that the security forces' command and deployment to the south is under the ISOC structure, its application to the southern insurgency/counter-insurgency is contradictory and unclear. Militating against its substantive application is primarily its explicit provision that it applies only in "any matter aris[ing] which affects internal security but *which does not yet require the declaration of a state of emergency*" (italics added).⁶⁴ As the Emergency Decree has been in effect in the relevant southern provinces since July 2005, the ISA is not applicable. Moreover, a senior ISOC Region 4 officer told Amnesty International that, in his view at least, both martial law and the Emergency Decree would have to be revoked in the south for the ISA to apply.

However, Section 21 codifies the use of six-month voluntary camps as an alternative to detainees being charged with and potentially convicted of criminal acts.⁶⁵ Such camps were originally introduced in the south in 2005, but were ruled by a court in 2007 to be unlawful unless truly voluntary. Further, Section 25 of the ISA states that both SBPAC and the CPM are the "operation centre or the unit with another name", explained in Section 17 of the law, "to operate on one or more particular tasks". Whether this merely reflects the existing command and deployment structure under ISOC present in the south or further contradicts the ISA's provision on its application is unclear.

Amnesty International is concerned with the prospect of the ISA being substantively applied to ISOC's counter-insurgency efforts in the south, for its language is sufficiently broad and vague as to potentially permit torture or other ill-treatment: "... ISOC shall have the powers and duties as follows: (1) to prevent, suppress, suspend, inhibit and overcome or mitigate the situation".⁶⁶ Moreover, the ISA contains restrictions on the rights and liberties of persons provided in various sections of the Thai Constitution, including Section 32 on the prohibition against torture.⁶⁷

4.3. THE ROYAL THAI GOVERNMENT AND SECURITY FORCES

4.3.1. DEPLOYMENT AND COMMAND STRUCTURE

Approximately 45 percent of the soldiers that make up the Royal Thai Army are located in the four southern provinces. In addition to the Royal Thai Police, which are also independently engaged in counter-insurgency work in the south, Border Patrol Police, consisting of military, police, civilians, and paramilitary rangers, recruited from both the military and the civilian spheres, are operational under ISOC command. The Prime Minister holds the position of Director of ISOC, formed in the late 1960s but re-codified as an organization in the Act on Internal Security of 2008 (ISA). ISOC's Deputy Director and Secretary-General are the Commander-in-Chief and Chief of Staff, respectively, of the Royal Thai Army. However, in 2008 then Prime Minister Samak Sundaravej placed Commander-in-Chief Anapong Paojinda in charge of ISOC on his behalf. ISOC is both advised and managed by the Internal Security Operations Board⁶⁸ and the Cabinet. The Secretary-General (currently General Prayuth Chan-ocha) holds responsibility for the management and administration of all ISOC matters, including SBPAC, the Civilian-Police-Military (CPM) Taskforce, and the Regional Internal

Security Operations Commands (RISOC).⁶⁹ Each RISOC is headed by the Commander of the regional army assigned to it, which in turn is in charge of the Provincial Internal Security Operations Commands (PISOC).

The Royal Thai Army is split into four regions: the 1st Region Army oversees West and Central Thailand; the 2nd Region Army oversees the Northeast; the 3rd Region Army the North and Northwest; and the 4th Region Army the South. Lieutenant General Pichet Wisaijorn is the current Commander of the 4th Region Army, which includes the 5th Infantry Division and 15th Infantry Regiment, and of ISOC Region 4.

However, in response to the escalation in violence in southern Thailand, four separate taskforces have been created, each run by a Deputy Commander from the four regional armies. The 1st Region Army is in charge of a taskforce in Narathiwat, the 2nd of a taskforce in Pattani, the 3rd in Yala, and the 4th in Songkhla. Each Taskforce Commander, alongside the provincial governor, supervises security operations in the province to which the taskforce has been assigned. Each taskforce has two Deputy Commanders: a police officer and an official from the provincial administrative office.

There are reportedly plans for the 15th Infantry Division, headquartered in Pattani province, to take charge of combating the insurgency in 2009 by assuming the taskforce responsibilities of the 1st, 2nd, and 3rd Region Armies; the 4th Region Army would retain its taskforce in Songkhla.

4.3.2. OFFICIAL VIEWS AND RESPONSES

Amnesty International met 13 officials of the Royal Thai government or the security forces in the south, all of whom asked to be referenced only by their position and affiliation. All 13 stated unequivocally that there is no policy to torture or ill-treat detainees in the context of the counter-insurgency campaign, and that in fact it is policy to prevent and punish such unlawful actions. Several officials expounded upon the policy and upon the non-confrontational ways and means by which the government and security forces are trying to end the insurgency. However, all but two senior ranking officials of the paramilitary rangers stated or conceded that torture and ill-treatment does sometimes occur.

A senior officer of Army Force 15 and ISOC's Civilian-Police-Military (CPM) Taskforce in Yala province told Amnesty International that, while there is no policy to torture or ill-treat detainees, in the past especially, the security forces tortured detainees because they had poor intelligence regarding the insurgency; detainees would be tortured to extract information and confessions. He stated that the situation on torture or ill-treatment has improved, as security officials have learned from their mistakes at Krue Se mosque and in Tak Bai district, and from the death in custody (likely from torture) of Yapha Kaseng, the imam in Narathiwat.

The officer said that for almost two years there has been a three-pronged open channel through which torture victims can complain by: 1) calling "1341" on a telephone, 2) writing a letter to an address publicized in the media, and/or 3) coming to Sirindhorn military base in Pattani province. He said that officials have in fact been prosecuted for torture - citing the ongoing case relating to Yapha Kaseng - but that local people are simply not aware of this, and so are rightly angry at the apparent impunity and slowness of the justice process. In other instances, high-ranking officials have opted to merely transfer the offender(s) to another

duty station - a reality that has not, in his view, contributed to a just resolution. The officer conceded that torture or ill-treatment continues to occur, but stated that the security forces try to do it more covertly because of both its official prohibition and the ability of local people to find out and report it. Regarding the paramilitary rangers, the senior officer said that their conduct would improve with better training prior to deployment.

Echoing this view, a high-level representative of a southern provincial governor's office told Amnesty International that the paramilitary rangers have improved on account of training already provided prior to their deployment.

A high-ranking officer of Special Taskforce 15 told Amnesty International that soldiers only torture or ill-treat detainees when detainees try to escape. He also stated that claims of torture are often false, and sometimes even knowingly so; several students told the press that their friends were tortured while in detention simply to attract the attention of NGOs, but they were subsequently proven wrong.

Two senior officers of ISOC's Civilian-Police-Military (CPM) Taskforce in the south told Amnesty International that there is no policy to torture or ill-treat detainees, but that complaints of such, primarily in relation to Ingkharayuthboriharn Army Camp, have been received. They also stated that the CPM has guidelines on the treatment of detainees that explicitly prohibit torture, and that the CPM's Civilian unit monitors the detention centres to ensure compliance. Members of civil society and judges and prosecutors are also permitted to monitor detention centres upon request, primarily in Ingkharayuthboriharn. The CPM officials stated that it was not in their interests to torture or ill-treat detainees, as it would only benefit the insurgency and embarrass the government and security forces.

A high-ranking officer of the Border Patrol Police in the south told Amnesty International that torture or ill-treatment of detainees occurred in the past, but has stopped because regulations prohibit it and forensic techniques are increasingly used in the south to gather evidence; the BPP tortured people previously to obtain confessions. He also stated that the re-emergence of the insurgency in 2004 took the security forces by surprise, and that troops were rotated and replaced too frequently to become accustomed to the initial danger and deal with the trauma. These circumstances led them to torture or ill-treat detainees. Since then, intelligence has improved and security troops remain for longer durations. He said further that torture has also proven counter-productive, as it strengthens the insurgency.

Operational officers of a Special Taskforce in Yala province told Amnesty International that, pursuant to policies received from the CPM, they are not permitted to torture or ill-treat detainees. A senior officer visits the Taskforce once each month to talk about human rights and has reminded them that perpetrators of violations will be punished. However, they have received no complaints, and so no one has in fact been punished. They have also been trained by the Ministry of Foreign Affairs, as recently as October 2008 in Sirindhorn military camp in Pattani province, with both oral and written guidance. The officers said that they invite family members or the village headman to witness interrogations, as well as a doctor to examine the detainees, to ensure that torture or ill-treatment does not occur.

A high-ranking officer of ISOC Region 4 told Amnesty International that there is no policy to torture or ill-treat detainees, and that in fact it is policy to not torture them. He stated that

every detention centre contains a phone number which detainees can call to complain, and that many high-ranking officers provide detainees with their mobile numbers for the same purpose. Relatives or village or religious leaders are permitted to witness interrogations to ensure that torture and ill-treatment does not take place, but he acknowledged that this was only true after the first three days of detention had passed. A small number of complaints of ill-treatment have been received, which have been followed by investigations. Where there has been reason to believe that the complaint was valid, the perpetrator has been punished internally and/or via the court system, according to the officer. However, Amnesty International could not verify any such successful proceedings.

Two high-ranking officers in charge of para-military rangers in the south told Amnesty International that torture or ill-treatment are not permitted and that detainees can complain if this occurs. If there is evidence that the complaint is true, the ranger(s) will be punished. However, given that rangers typically come from the local villages, he said that detainees have a disincentive to complain since they would be accusing their own neighbours, which could make them vulnerable to retaliation. The officers said that the only feedback they have received from detainees and villagers has been positive.

Finally, a senior officer of the Judge Advocacy General's (JAG) office in Bangkok, Ministry of Defence, told Amnesty International that soldiers sometimes torture or ill-treat detainees out of revenge or under pressure. The JAG trains military units in human rights, the rule of law, and rules of engagement before they are deployed to the south, based on the unit's request. The prohibition against torture or ill-treatment is part of the training. He stated that alleged violators are tried according to their affiliation: if the perpetrators are a mixed group of both military and civilians, they are tried in a civilian court; if strictly military, they are tried in a military court. No soldier in the southern counter-insurgency has been tried in a military court, according to the senior officer.

5. CONCLUSIONS

Bearing in mind the UN Committee against Torture's assertion that "Torture may in fact be of a systematic character without resulting from the direct intention of a Government", and that "its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration," Amnesty International concludes that torture or other ill-treatment is being practised systematically against suspected insurgents in Thailand's southern provinces, and that torturers almost invariably enjoy impunity. Amnesty International acknowledges that some significant steps have been taken by the Royal Thai government against torture and other ill-treatment in the southern provinces, in particular since the state ratified the UN Convention against Torture in November 2007. The organization's research has not uncovered any positive evidence of a written or verbal policy to torture or otherwise ill-treat detainees in the counter-insurgency, and believes that assurances provided by government officials to its delegates that no official policy of torturing detainees exists have been given in good faith. Nevertheless it is clear that the steps by the government to prevent, stop and punish torture and other ill-treatment have been inadequate.

The prevalence of torture is attributable, in significant part, to provisions of martial law and the Emergency Decree that effectively facilitate the practice of torture by creating circumstances under which it can go virtually undetected in the short term, and by codifying immunity from prosecution for officials who perpetrate, permit, or refuse to punish the wrongful and illegal treatment. These circumstances include lengthy periods of pre-charge detention, the failure to bring detainees physically into a court and before a judge, the absence of judicial review of arrest warrants and requests to extend detention, the denial of requests for personal visits to detainees, the use of unofficial detention centres, and the lack of consistent, unfettered, and independent monitoring of the detention centres.

6. RECOMMENDATIONS

The Thai authorities must take immediate steps to halt all acts of torture and other ill-treatment in the southern provinces. In the longer term, they must take effective legislative, administrative, judicial and any other measures to prevent, halt, punish and ensure reparations for acts of torture and other ill-treatment. All of these measures should be made in compliance with international law and standards. The following detailed recommendations are structured along Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman Or Degrading Treatment or Punishment by Agents of the State,⁷⁰ a programme developed by Amnesty International on the basis of the organization's decades-long struggle against torture and other ill-treatment throughout the world.

6.1. TO THE THAI AUTHORITIES

CONDEMN TORTURE AND OTHER ILL-TREATMENT:

- Publicly condemn all torture and other cruel, inhuman or degrading treatment or punishment, and clarify that no such acts will be tolerated, whatever the circumstances, and that all those responsible for torture or similar offences will be prosecuted.

ENSURE ACCESS TO PRISONERS:

- Ensure that under the Emergency Decree of 2005, there is judicial review of arrest warrants and requests to extend detention;
- Allow visits by lawyers to the detainees immediately following their detention;
- Allow family visits to detainees;
- Allow detainees access to adequate medical care, including, where needed, by external and independent physicians and institutions;
- Allow the NHRC and the ICRC immediate and unfettered access to all places of detention and all detainees;
- Invite the UN Working Group on Arbitrary Detention to visit the country, including the south;
- Invite the UN Special Rapporteur on Torture to visit the country, including the south;
- Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and establish a national preventive mechanism in accordance with this Protocol.

NO SECRET DETENTION:

- Ensure that all reports of the existence of secret detention locations operated by the security forces are investigated promptly, independently, impartially and effectively. If found true, take immediate steps to end all secret and unlawful detentions;
- Amend the Emergency Decree of 2005 to expressly prohibit unofficial places of detention;
- Ensure that all detainees have an unqualified right to *habeas corpus*;
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

PROVIDE SAFEGUARDS DURING DETENTION AND INTERROGATION:

- Take legislative, administrative and practical steps to ensure that all prisoners are immediately informed of their rights, including to complain about their treatment without fear of retaliation, and to have a judge rule without delay on the lawfulness of their detention;
- Ensure, in law and in practice, that judges investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful;
- Ensure, in law and in practice, that a lawyer is present during interrogations;
- Ensure that conditions of detention conform to international standards for the treatment of prisoners;
- Ensure, in law and in practice, that the authorities responsible for detention are separate from those in charge of interrogation.

PROHIBIT TORTURE AND OTHER ILL-TREATMENT IN LAW:

- Adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and other relevant international standards;
- In particular, pass legislation expressly criminalizing torture and implementing the provisions of UN Convention against Torture not already covered by existing Thai law;
- Ensure that the prohibition against torture and other ill-treatment and the essential safeguards for their prevention are not be suspended under any circumstances, including states of war or other public emergency.

INVESTIGATE:

- Upon receiving complaints or any other reports of torture or other ill-treatment, carry out a prompt, independent, impartial and efficient investigation;
- Ensure that the scope, methods and findings of such investigations are made public;
- Suspend all officials suspected of committing torture or other ill-treatment from active duty during the investigation;
- Ensure, in law and in practice, that complainants, witnesses and others at risk are protected from intimidation and reprisals.

PROSECUTE:

- Prosecute all those responsible for torture and similar offences, irrespective of rank, in proceedings which meet international standards of fairness;
- Amend Section 17 of the Emergency of 2005 to ensure that there is no immunity from prosecution for officials who commit offences associated with human rights violations or international crimes, including but not limited to torture and similar offences in the counter-insurgency.

NO USE OF STATEMENTS EXTRACTED UNDER TORTURE OR OTHER ILL-TREATMENT:

- Put an immediate and total halt to the practice of using confessions obtained through torture and other ill-treatment to convict persons for any criminal offences whatsoever;
- Ensure that no statements or other material obtained through torture or other ill-treatment are used in any proceedings, except as proof that the ill-treatment took place.

PROVIDE EFFECTIVE TRAINING:

- Make clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that 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.

PROVIDE REPARATION:

- Promptly provide reparations to victims, including families of those who died in custody. Reparations must include restitution, fair and adequate financial compensation, and appropriate medical care and rehabilitation, in accordance with international standards.

RATIFY INTERNATIONAL TREATIES:

- In addition to the treaties mentioned above, Thailand should ratify the Rome Statute of the International Criminal Court;
- Thailand should help ensure that the human rights mechanisms now being developed within the Association of Southeast Asian Nations (ASEAN) are vested with the powers, expertise and resources needed to tackle effectively human rights violations, including torture and other ill-treatment, in the region.

 ENDNOTES

¹ According to Deep South Watch, a credible organization monitoring events in southern Thailand, as of mid-October 2008 there were 8,443 violent incidents and 3,214 deaths since January 2004. <http://www.deepsouthwatch.org/>

² See Nonviolence International, Southeast Asia, "Charged! Updates from Southern Thailand", January/February 2008.

³ See Nonviolence International, Southeast Asia, "Charged! Updates from Southern Thailand", March/April 2008.

⁴ See Kangkan, Puttanee, "Understanding and the Practice of Torture in the Thai Context", Working Group on Justice for Peace, June 2008, p. 6.

⁵ Article 32 of Thailand's Constitution states that "a person shall enjoy the right and liberty in his life and person. Torture, a brutal act, or punishment by cruel or inhuman means shall not be permitted". Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Article 32.

⁶ Report of the Committee against Torture, UN Doc. A/48/44/Add.1 (1993), para. 39. The Committee repeated this formulation in later reports.

⁷ See Directive No. 11/2550, "Detention facilities under the 2005 Emergency Decree on Government Administration in States of Emergency", 24 January 2007.

⁸ In August 2008, a group claiming to represent the southern insurgency publicly called for negotiations with the Thai army, but was almost immediately dismissed as a hoax. In September 2008, five representatives from the south (reportedly members of the separatist Pattani Malay Consultative Congress) and General Kwanchart Klaharn, a former southern army commander and adviser to the Ministry of Defence, met in Indonesia to discuss the ongoing violence in the region with Indonesian Vice President Jusuf Kalla, Indonesia's ambassador to Thailand, and analysts. However, when news of the talks became public the Foreign Ministry said that General Kwanchart was not there in an official capacity, and that the Royal Thai government would not set up any talks with the insurgents. The two-day negotiations were inconclusive.

⁹ Thailand is divided into 76 provinces.

¹⁰ See the Martial Law Act, 27 August B.E. 2457 (1914). The four districts are Natawi, Sabayoi, Thepa, and Chana.

¹¹ See the National Reconciliation Commission, "Overcoming Violence through the Power of Reconciliation". Led by former PM Anand Panyarachun, the report identified the existing justice system and process as a cause of injustice, and therefore of violence, in the south, and suggested that the justice process be carried out in strict accordance with the rule of law.

¹² See Emergency Decree on Government Administration in States of Emergency, B.E. 2548 (2005). The Emergency Decree was last renewed for the twelfth three-month period in October 2008 effective through January 2009.

¹³ The coup d'état on 19 September 2006 entailed the re-imposition of martial law for all of Thailand. It has been kept in place in all three southern-most provinces, as well as in part of Songkhla Province, even

as it has since been lifted nearly everywhere else in the country. SBPAC was originally established in 1981, but was abolished in May 2002.

¹⁴ See Working Group on Justice for Peace, Factsheet: "Arbitrary Detention: Four months compulsory occupations training without consent", 23 August 2007.

¹⁵ The three camps are located in Chumphon, Ranong, and Suratthani provinces, more than 600 km away from the four southern provinces covered in all or part by martial law. The camps are set up under Section 8 of the Martial Law Act.

¹⁶ The order cites Articles 8 and 11(7) of the Martial Law Act.

¹⁷ See Human Rights Watch, "'It Was Like Suddenly My Son No Longer Existed': Enforced Disappearances in Thailand's Southern Border Provinces", 20 March 2007. By September 2008, at least 90 cases of enforced disappearances, 23 of which the government acknowledged and 12 of which were reported to the UN Working Groups on Involuntary and Enforced Disappearances, had been documented since January 2004.

¹⁸ See Nonviolence International, "Charged! Updates from Southern Thailand", March/April 2008.

¹⁹ Approximately US \$228 million.

²⁰ See Working Group on Justice for Peace, "Human Rights under Attack", March 2008, p. 8.

²¹ See *Ibid.* and see Kangkan, Puttanee, "Understanding and the Practice of Torture in the Thai Context", Working Group on Justice for Peace, June 2008, p. 6.

²² See Nonviolence International, "Charged! Updates from Southern Thailand", July/August 2008

²³ See Nonviolence International, "Charged! Updates on Southern Thailand", September/October 2007.

²⁴ See Asian Human Rights Commission, "THAILAND: Alleged torture of two men in southern Thailand", Asian Human Rights Commission Urgent Appeals Programme, Urgent Appeal Case: AHRC-UAC-005-2008, 14 January 2008, <http://www.ahrchk.net/ua/mainfile.php/2008/2715/>

²⁵ See Working Group on Justice for Peace, "Human Rights under Attack", March 2008, p. 10.

²⁶ A Joint Oral Statement to the 7th Session of the UN Human Rights Council by the Asian Legal Resource Centre (ALRC), Lawyers Rights Watch Canada, the Asian Forum for Human Rights and Development (FORUM-ASIA), and Pax Romana-ICMICA/MIIC, "ASIA: The ongoing deep divide between discourse and implementation", ALRC-COS-07-002-2008, 13 March 2008.

²⁷ Right of reply by Sihasak Phuangketkeow, Royal Thai government, UN Human Rights Council, 7th Session, 13 March 2008, <http://www.un.org/webcast/unhrc/archive.asp?go=080313>.

²⁸ Special Taskforce 39 has since moved to Yala province.

²⁹ Private correspondence with trial observer from the International Commission of Jurists.

³⁰ See Nonviolence International, "Charged! Updates from Southern Thailand", March/April 2008, and private communication with Cross Cultural Foundation.

³¹ See Oral intervention presented by the Asian Legal Resource Centre (ALRC) at the 8th Session of the UN Human Rights Council, 3 June 2008.

³² Right of reply by Royal Thai government, UN Human Rights Council, 8th Session, 3 June 2008, <http://www.un.org/webcast/unhrc/archive.asp?go=080603>.

³³ Nonviolence International, "Charged! Updates from Southern Thailand", July/August 2008.

³⁴ See TJA News, "Association of Pondok Schools in Songkhla making complaints in Bangkok concerning the case of torture of an Uztaz in Chana district", http://www.isranews.org/cms/index.php?option=com_content&task=view&id=3215&Itemid=47, 18 February 2008.

³⁵ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) (1984). Accession on 2 October 2007 was accompanied by interpretive declarations on Articles 1, 4, and 5, and a reservation to Article 30. Thailand also declared that it is not bound by Articles 21 and 22.

³⁶ ICCPR, Articles 4(1) and 4(2).

³⁷ A WorldPublicOpinion.org poll released in June 2008 found that a plurality of Thais (44%) agreed that governments should allow some degree of torture against terrorists. WorldPublicOpinion.org, "World Public Opinion on Torture", 24 June 2008, http://www.worldpublicopinion.org/pipa/articles/btjusticehuman_rightsra/496.php?lb=bthr&pnt=496&nid=&id=

³⁸ See for instance Articles 5-9 of the CAT; Articles 146 and 147 of Geneva Convention IV.

³⁹ See for instance Article 15 of the CAT.

⁴⁰ All relevant international and regional treaties which define torture require that the pain or suffering be 'severe' in order to constitute torture, with the exception of the definition of torture in Article 2 of the Inter-American Convention to Prevent and Punish Torture.

⁴¹ This non-exhaustive list of purposes is followed by "or for any reason based on discrimination of any kind".

⁴² In the case of cruel, inhuman or degrading punishment this is obvious, since this term includes the purpose of "punishment," and if it were to meet all other Article 1(1) criteria, this provision would have been duplicitous and therefore redundant.

⁴³ See the Report of the United Nations Special Rapporteur on Torture on his Visit to the Russian Federation, UN Doc E/CN.4/1995/34/Add.1, 16 November 1994, para 71, where the Rapporteur, commenting on conditions of detention in certain prison cells, states: "The conditions are cruel, inhuman and degrading; they are torturous. To the extent that suspects are confined there to facilitate the investigation by breaking their wills with a view to eliciting confessions and information, they can

properly be described as being subjected to torture.” Prof. Sir Nigel S. Rodley, who was the Special Rapporteur, later explained that without evidence of purpose, he could not make a finding of torture, and legally described the conditions as cruel, inhuman and degrading, “torturous” being a description of the Special Rapporteur’s revulsion rather than a legal finding. See Nigel S. Rodley, “The Definition(s) of Torture in International Law”, 55 *Current Legal Problems* 465 (2002).

⁴⁴ See for instance *Tomasi v. France*, Series A, No. 241-A (1993), judgment of 27 August 1992, para. 115 (in the European Court of Human Rights). Tomasi, a suspected terrorist, was beaten during interrogation, and the Court found that he had been subjected to “inhuman or degrading treatment.” In a subsequent case, involving severe beatings and humiliation, the Court found that “the physical and mental violence, considered as a whole, committed against the applicant’s person caused “severe” pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention.” See *Selmouni v. France*, European Court of Human Rights, judgment of 28 July 1999, Reports 1999-V, para. 105.

⁴⁵ See for instance Geneva Convention IV, Article 147; Rome Statute of the International Criminal Court, Article 8(2)(ii).

⁴⁶ See Martial Law Act, 27 August B.E. 2457 (1914), Article 5 (amended 13 December 2515 (1972)).

⁴⁷ Emergency Decree on Government Administration in States of Emergency, B.E. 2548 (2005), Sections 5 and 7, respectively.

⁴⁸ See *Ibid.* at Section 12.

⁴⁹ Provincial courts have both civil and criminal jurisdiction.

⁵⁰ Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), Section 3.7, 24 January 2007.

⁵¹ Report of the Human Rights Committee, UN Doc. A/60/40 (2004-5), Vol. I, para. 95(13).

⁵² Private communication with Cross Cultural Foundation, May and December 2008.

⁵³ Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), Sections 3.9.3 and 3.5, 24 January 2007.

⁵⁴ Emergency Decree on Government Administration in States of Emergency, B.E. 2548 (2005), Section 12.

⁵⁵ *Ibid.*

⁵⁶ A Joint Oral Statement to the 7th Session of the UN Human Rights Council by the Asian Legal Resource Centre (ALRC), Lawyers Rights Watch Canada, the Asian Forum for Human Rights and Development (FORUM-ASIA), and Pax Romana-ICMICA/MIIC, “ASIA: The ongoing deep divide between discourse and implementation”, ALRC-COS-07-002-2008, 13 March 2008.

⁵⁷ Report of the Human Rights Committee, UN Doc. A/60/40 (2004-5), Vol. I, para. 95(15).

⁵⁸ See Directive No. 11/2550, "Detention facilities under the 2005 Emergency Decree on Government Administration in States of Emergency", 24 January 2007.

⁵⁹ Human Rights Committee, General Comment No. 20: Article 7 [concerning prohibition of torture and cruel, inhuman or degrading treatment or punishment], UN Doc. A/47/40, Annex VI, 10 October 1992, para. 11.

⁶⁰ See Nonviolence International, "Charged! Updates from Southern Thailand", September/October 2007.

⁶¹ Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), Section 3.5, 24 January 2007.

⁶² Ibid. at 3.9.2 and 3.9.4, respectively.

⁶³ Article 17 of the Emergency Decree provides, in relevant part: "A competent official and a person having identical powers and duties as a competent official under the Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act provided that such act is performed in good faith, is non-discriminatory, and is not unreasonable in the circumstance of exceeding the extent of the necessity".

⁶⁴ Act on Internal Security, B.E. 2551 (2008), Section 15.

⁶⁵ Section 21 of the ISA provides, "If the Court thinks it fit, the Court may order to submit the accused to the Director to obtain the training at the designated place for a period not exceeding 6 months and comply with other conditions that may be specified by the Court. To proceed under paragraph two, the Court can order only if the accused has agreed to attend the training and comply with such conditions".

⁶⁶ ISA, B.E. 2551 (2008), Section 16(1).

⁶⁷ See Ibid., Preamble.

⁶⁸ The Board is made up of 22 committees, and members include the defence permanent secretary, the Supreme Commander, the commander of the armed forces, and high-ranking officials from the Royal Thai Police.

⁶⁹ The insurgency in southern Thailand is only one of six main issues ISOC is addressing. The others are the 'war on drugs', illegal migrant workers, terrorism and transnational crime, the royal project to protect and preserve forests and the natural environment, and special security concerns.

⁷⁰ AI Index: ACT 40/001/2005, 22 April 2005.

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