

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# THAILAND: THAI AUTHORITIES MUST ACT NOW TO DELIVER JUSTICE FOR VICTIMS OF THE BRUTAL PROTEST DISPERSAL IN TAK BAI

On 25 October 2004, approximately 2,000 people gathered peacefully in front of the Tak Bai Police Station in Narathiwat Province, one of Thailand's insurgency-ridden southern border provinces (SBPs), to demand the release of six Malay Muslim village defense volunteers held in detention.<sup>1</sup> In response to the peaceful gathering, military and police officers attempted to disperse the crowd by firing tear gas, water cannons and live ammunition.<sup>2</sup> Seven protesters were killed on the spot and many other people were injured. Following that crowd dispersal, the authorities arrested 1,370 protesters, tied their hands to their backs and forced them to lie on top of each other on the back of army trucks to transport them to a military camp for detention. Seventy-eight of them died as they were crushed or suffocated during the transportation.

Ahead of the 19th anniversary of the brutal protest dispersal in Tak Bai District, Amnesty International calls for Thai authorities to exhaust all efforts to hold accountable state officials responsible for the incident before the 20-year statute of limitations expires on 25 October 2024. We also call for the Thai government to reform all relevant laws, regulations, official guidelines and practices to ensure that authorities protect and facilitate public assemblies in line with international human rights law and standards.

This statement relies on the interviews conducted in October 2023 of nine individuals, including three men who attended the protest and got detained by Thai authorities and six women whose male family members were killed or put in detention. Five of the women were also eyewitnesses to the brutal violence during the protest dispersal.<sup>3</sup> In addition, Amnesty International spoke with a human rights lawyer who was one of the leading figures in the coalition of legal professionals providing support to all court cases relating to the Tak Bai incident. Amnesty International further corroborated the information gathered during the interviews with official documents, news reports and testimonies previously documented by other civil society organizations and academic researchers. For security reasons, this public statement uses pseudonyms for all the interviewees.

## BACKGROUND

The brutal protest dispersal that took place in October 2004 in Tak Bai must be understood in the wider context of the intense militarization of Thailand's SBPs. Around 2004, Thailand saw the rise of insurgent attacks carried out by armed Malay Muslim groups against the predominantly Buddhist Thai state in the SBPs.<sup>4</sup> This region covers the provinces of Pattani, Yala and Narathiwat, as well as four districts of Songkhla (Saba Yoi, Tepha, Chana and Natawee). Local think tank Deep South Watch reported that at least 7,520 individuals have been killed over the past 19 years between January 2004 and August 2023.<sup>5</sup>

On 5 January 2004, the government invoked the Martial Law Act in a bid to combat the insurgency.<sup>6</sup> The law, which has been in place since then, provides military officials with sweeping powers, including the ability to prohibit public gatherings under Article 11(1).<sup>7</sup> Under this law, military officials can detain any individuals suspected of violating the law, including

<sup>1</sup> Thai Rath Plus, "18 ปี สลายการชุมนุมตากใบ 25 ตุลาคม 2547 โศกนาฏกรรมของมลายูปัตตานี", 25 October 2022, <https://plus.thairath.co.th/topic/politics&society/102294>

<sup>2</sup> Independent Fact-Finding Committee on the Deaths during the Tak Bai Incident in Narathiwat Province on 25 October 2004 (Tak Bai Fact-Finding Committee), Finding report, <https://prachatai.com/sites/default/files/special/takbai.pdf>, p. 19

<sup>3</sup> Amnesty International staff conducted a research mission for gathering information regarding the protest crackdown and its impacts from 2 to 4 October 2023 in the provinces of Narathiwat and Pattani in southern Thailand and interviewed a human rights lawyer involved in court cases related to the Tak Bai incident on 12 October 2023.

<sup>4</sup> Amnesty International, "They took nothing but his life": Unlawful killings in Thailand's southern insurgency (Index: ASA 39/002/2011), 27 September 2011, <https://www.amnesty.org/en/documents/asa39/002/2011/en/>, p. 5.

<sup>5</sup> Deep South Watch, Facebook post, 11 September 2023, <https://www.facebook.com/photo?fbid=684567500376313&set=pcb.684567563709640>: "Summary of Incidents in Southern Thailand, August 2023."

<sup>6</sup> Secretariat of the Thai Parliament, "การบังคับใช้กฎหมายพิเศษในจังหวัดชายแดนใต้: กรณีศึกษาพระราชบัญญัติการศึก พระพุทธศักราช 2457," January 2020, [https://www.parliament.go.th/ewtadmin/ewt/parliament\\_parcy/ewt\\_dl\\_link.php?nid=63405&filename=index](https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_dl_link.php?nid=63405&filename=index), p. 7.

<sup>7</sup> Thailand, Martial Law Act, 1914, [https://www.unodc.org/roseap/uploads/archive/documents/2009/02/TOC/14.2\\_Martial\\_Law\\_Act\\_B.E.\\_2457.PDF](https://www.unodc.org/roseap/uploads/archive/documents/2009/02/TOC/14.2_Martial_Law_Act_B.E._2457.PDF), Article 11 (1).

the ban on public gatherings, for interrogation in unofficial places of detention for up to seven days without charge.<sup>8</sup> Article 16 of the Martial Law Act provides for legal immunity for any harms caused by state officials in the name of national security under this law. Currently, the Martial Law still remains in force specifically in this region alongside other two national security laws, the 2005 Emergency Decree and the 2008 Internal Security Act.<sup>9</sup>

## WHAT HAPPENED DURING THE TAK BAI INCIDENT?

Amid the rise of insurgent activities in the SBPs, on 12 October 2004, six Malay Muslim village defense volunteers of Narathiwat Province reported to the police that their guns were stolen.<sup>10</sup> Despite the complaint, the police concluded that the six volunteers actually stole the guns and gave it to insurgent militants.<sup>11</sup> The police charged the defense volunteers with providing false information to the authorities and misappropriation in public office under Articles 137 and 147 of the Criminal Code, respectively. On 25 October, approximately 2,000 people gathered in front of the Tak Bai Police Station in Narathiwat to demand the release of these men, in the belief that they had been wrongfully detained.<sup>12</sup>

All of the nine interviewees informed Amnesty International they did not see any protesters carrying weapons or using any form of violence against the authorities during the protest. Masayu, a Malay Muslim woman who lost her 19-year-old son in the tragic incident said: “Honestly, I don’t know if any protesters had weapons on that day, but I did not see anyone using weapons. Of course, there were people shouting in anger at the authorities.”<sup>13</sup> Human rights lawyer Songkiat, who reviewed evidence in all related court cases, confirmed to Amnesty International that the protest was largely, if not entirely, peaceful.<sup>14</sup> Even though authorities on the ground, including the Fourth Region Division of the Internal Security Operations Command, claimed that the protesters were armed, the official investigation revealed there was little credible evidence to substantiate such a claim.<sup>15</sup>

During the protest, the security forces sought to negotiate with the participants and end to the protest. However, after those efforts failed, military and police officers attempted to disperse the crowd by firing tear gas, water cannons and live ammunition.<sup>16</sup> Official records show that seven protesters were killed on the spot during that massacre, five of which the official forensic analysis revealed had gunshot wounds to the head.<sup>17</sup> Many other people were injured as a result of the violent crowd dispersal, including a 12-year-old boy who got shot in the foot at his home located approximately 300 meters away from the police station.<sup>18</sup> 68-year-old Iffaan said, “I saw another protester get shot in the forehead right in front of me. He immediately collapsed. I was really scared and did not know what to do.”<sup>19</sup>

Puteri, who was only 19 years old when she attended the gathering and lost several of her classmates to this incident, explained to Amnesty International, “I look back and realize how the authorities blew things out of proportion. The people were just calling out the injustice against the village defense volunteers. They did not have any arms to fight back. I kept wondering why the officers had to use force against us.”<sup>20</sup>

Following the violent crackdown of the protest, authorities rounded up approximately 1,370 male protesters. Official records indicated that all of them were Malay Muslims.<sup>21</sup> “They [military and police officers] separated women and children from the crowd and ordered all the men to take off their shirts. They used the shirts to tie our hands behind our backs. While that was happening, one military officer beat me on the back with a big stick for no reason,” said Ahmad.<sup>22</sup> Subsequently,

<sup>8</sup> Amnesty International, “Thailand: Submission to the United Nations Human Rights Committee,” (Index: ASA 39/5624/2017), March 2017, p. 4

<sup>9</sup> Affan Tunyasak, “The Impact of Implementation of Security Laws on Civilians in the Deep South of Thailand”, <https://kyotoreview.org/trendsetters/the-impact-of-implementation-of-security-laws-on-civilians-in-the-deep-south-of-thailand/>

<sup>10</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 8-9

<sup>11</sup> S.P. Harish and Sabrina Chua, “Carnage in Southern Thailand: Is there recourse?": Institute of Defense and Strategic Studies, 3 November 2004, <https://www.rsis.edu.sg/wp-content/uploads/2014/07/CO04056.pdf>, p. 1.

<sup>12</sup> Work Point Today, “อธิบายให้เข้าใจเหตุการณ์หรือชะตากรรม ที่ถูกขโมยมาตามใน Clubhouse”, 24 February 2021, <https://workpointtoday.com/explainer-clubhouse/>

<sup>13</sup> Interview in person with Masayu, family of a protester killed, 2 October 2023, Narathiwat.

<sup>14</sup> Interview in person with Songkiat, human rights lawyer, 12 October 2023, Bangkok.

<sup>15</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 43

<sup>16</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 19

<sup>17</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 19

<sup>18</sup> Amnesty International spoke with the father of the boy on 3 October 2023. This incident can be corroborated with the following news report. Bangkok Business News, “เหยื่อแผนร. 7 พิ นาทิวกฤตติศาภาโม” 29 October 2004, [https://wbns.oas.psu.ac.th/shownews.php?news\\_id=13383](https://wbns.oas.psu.ac.th/shownews.php?news_id=13383)

<sup>19</sup> Interview in person with Iffaan, former detainee, 3 October 2023, Narathiwat.

<sup>20</sup> Interview with Puteri, family of a protester killed, 2 October 2023, Narathiwat.

<sup>21</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 19.

<sup>22</sup> Interview in person with Ahmad, former detainee, 3 October 2023, Narathiwat.

the authorities took the male protesters into custody for interrogation to the Ingkayut Borihan Military Camp in Pattani, which is roughly 150 kilometers away from the location of arrest.<sup>23</sup>

To transport the protesters, the authorities forced them to lie horizontally on top of one another in the back of army trucks. Iffaan told Amnesty International that he survived the incident because he was put on top of other protesters.<sup>24</sup> He said, “there were three others who were lying beneath me. They were crying for help because they could not breathe. There was also a military officer walking on our back. Every time someone made a noise or moved their body too much, the officer would hit them with their gun.” This brutal method of transportation led to the tragic death of 78 people who were crushed or asphyxiated to death on the way to the military camp.<sup>25</sup> Many of them suffered from serious injuries, including liver failure that resulted in permanent disabilities.<sup>26</sup>

In addition to the gross human rights violations committed during the incident, hundreds of protesters continued to be held in military custody and were later transferred to army camps in the provinces of Chumporn and Surat Thani in upper southern Thailand for seven days.<sup>27</sup> On 24 January 2005, the Narathiwat Provincial Public Prosecutor indicted 59 detainees under various charges, including coercing state officials to fail to perform their duty and gathering in an assembly of ten or more people to commit an act of violence under Articles 139 and 215 of the Criminal Code, respectively.<sup>28</sup> On 6 November 2006, the public prosecutor dropped all charges on the grounds that the lawsuits would not be in the public interest.<sup>29</sup>

## EMPTY PROMISE OF JUSTICE

After the events unfolded, the then-government set up an “independent fact-finding committee” tasked to investigate the incident. The committee released its findings on 17 December 2004, concluding that the violence used by the authorities against the protesters, including the use of live ammunition, was “inappropriate and inconsistent with internationally recognized standards and practices.”<sup>30</sup> Additionally, the committee pointed out that the way in which the protesters were transported while in custody reflected “extremely poor judgement from the part of relevant commanding officers.”<sup>31</sup>

The committee advised the judiciary to ensure justice for those killed or injured during the massacre,<sup>32</sup> and identified three key responsible commanding officers, the then-Fourth Region Army Commander, the then-Fourth Region Army Deputy Commander and the then-Commander of the Fifth Infantry Division.<sup>33</sup> Following the September 2006 coup d'état in Thailand, military-appointed then-Prime Minister General Surayud Chulanont, publicly apologized for the Tak Bai killings. He further committed to conducting a prompt, independent and thorough investigation into the incident and holding the responsible officers to account by due process of law.<sup>34</sup> Despite this promise, Thai courts have regrettably failed to deliver justice for the victims and their families.

Only one case relating to the killings and injuries was brought to court. On 29 May 2009, the Songkhla Provincial Court ruled in the post-mortem inquest into the 78 deaths during the transportation of protesters in military custody. The court only concluded that the protesters died due to suffocation without any further elaboration on other factual circumstances, including identifying who made the protesters suffocate.<sup>35</sup> Relatives of the victims challenged the ruling at the Criminal Court, the Appeal Court and the Supreme Court of Thailand in Bangkok.<sup>36</sup> On 1 August 2013, the Supreme Court upheld

<sup>23</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 23.

<sup>24</sup> Interview in person with Iffaan, Former detainee (previously cited).

<sup>25</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 29

<sup>26</sup> See, for example, Chanatip Tatiyakaroonwong, “15 ปีตากใบ: แผลกดทับในใจที่ไม่เคยได้รับการรักษา”, 25 October 2019, Prachatai, <https://prachatai.com/journal/2019/10/84901>.

<sup>27</sup> Prachatai, “เปิดคำพิพากษาคดีตากใบ คดีตากใบจนแล้วจริงหรือ,” 11 June 2009, <https://prachatai.com/journal/2009/06/24625>

<sup>28</sup> Prachatai, “เปิดคำพิพากษาคดีตากใบ คดีตากใบจนแล้วจริงหรือ,” (previously cited).

<sup>29</sup> Isranews Agency, “Tak Bai incident: Six years on and justice remains elusive”, 25 October 2010, <https://www.isranews.org/content-page/item/2058-tak-bai-incident-six-years-on-and-justice-remains-elusive.html>.

<sup>30</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 45.

<sup>31</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 47.

<sup>32</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 45.

<sup>33</sup> Tak Bai Fact-Finding Committee, Finding report (previously cited), p. 51.

<sup>34</sup> Asian Human Rights Commission, “Thailand: Apology for Tak Bai must be followed by prosecutions,” 2 November 2006, <http://www.humanrights.asia/news/ahrc-news/AHRC-OL-060-2006/>.

<sup>35</sup> International Commission of Jurists (ICJ), “Thailand: Court delivers disappointing post-mortem inquest findings in Tak Bai incident,” 29 May 2009, <https://icj2.wpenginepowered.com/wp-content/uploads/2012/04/Thailand-Court-delivers-disappointing-post-mortem-inquest-findings-Press-release-2009.pdf>

<sup>36</sup> Amnesty International, “Thailand: Government fails to provide justice for the victims of Tak Bai killings” (Index: PRE 01/383/2013) , 1 August 2023, <https://www.amnesty.org/en/latest/news/2013/08/thailand-government-fails-provide-justice-victims-tak-bai-killings/>.

the Songkhla Provincial Court's ruling concluding that the security forces were blameless as they were only performing their duties.<sup>37</sup>

Up until today, none of the responsible officers identified by the committee's report have been prosecuted. Reportedly, the then-Fourth Region Army Commander was simply forced to move to a different post outside of the region.<sup>38</sup> The government has utterly failed to live up to its promise of securing justice for the victims and their families, instead ensuring that impunity for the military and police officers involved persists.

Under Article 95 of the Thai Criminal Code, all offences punishable with death, imprisonment for life or imprisonment of 20 years prescribe after 20 years. In this case, the 20-year statute of limitations for the crimes committed against the protesters will expire on 25 October 2024 unless any person, including the public prosecutor, decides to bring this case to court. While some of the victims' families could initiate a criminal proceeding, many interviewees told Amnesty International that they felt disempowered to do so after decades of disappointments with the justice system. Nazra, a 60-year-old woman whose son died in the incident, stated, "I think we are all burned out and no longer have the mental energy to pick up yet another fight after so many years. I want justice, but what can I do? I am just an ordinary person. I don't have the power to fight with those in power on my own."<sup>39</sup>

## FAILURE TO GO BEYOND COMPENSATION

Some victims and their family members have received monetary compensation. After the incident, families of those killed during and after the protest crackdown filed a civil lawsuit against the Ministry of Defense and the Royal Thai Army for compensation. The Ministry and the Army negotiated a settlement and paid 42 million THB to the 79 plaintiffs on 20 March 2007.<sup>40</sup> In the settlement agreement, the plaintiffs were required to declare that they are "satisfied with the compensation [...] and no longer wish to pursue any further civil and criminal lawsuits."<sup>41</sup> Human rights lawyer Songkiat told Amnesty International that most victims' families were pressured to accept this condition and felt that it would have adverse impacts on their ability to pursue justice.<sup>42</sup> However, under the Thai criminal procedure, the right of a victim to pursue a criminal case cannot be limited by any such agreement.

In 2012, the Cabinet approved additional compensation,<sup>43</sup> which amounted to 7.5 million THB for the families of those who died during the incident.<sup>44</sup> Those whose injuries resulted in permanent disabilities received 4.5 million THB. Other victims received compensation within the range of 225,000 and 1,125,000 THB depending on the severity of their injuries. Further, those who were put in detention and subsequently charged received 30,000 THB.

However, Amnesty International found a concerning lack of holistic reparations for the human rights violations that the officers committed, as the government only focused on monetary compensation without enabling access to justice for the victims and their family members who received the compensation. While monetary compensation is a critical step in providing redress to survivors, many victims told Amnesty International that they still longed for justice. "No amount of money was worth his life," said Esah, "I still think about the injustice until today. I keep wondering why they had to do this to my son and when we would be able to hold someone responsible for what happened."<sup>45</sup>

## LONG-TERM IMPACT

The use of force has had long term psychological impact on the survivors. Iffaan, one of the 59 men indicted by the public prosecutor in 2005, said, "for almost two years, I had to live in fear and isolation. People in my village were afraid of me. They thought I was part of an armed group because I was facing trial. I could barely sleep because of the stress during that time. Sometimes, the authorities visited me at home and I would feel a lot of anxiety."<sup>46</sup> Ahmad also spent multiple years

<sup>37</sup> Amnesty International, "Thailand: Government fails to provide justice for the victims of Tak Bai killings", (previously cited).

<sup>38</sup> Manager Online, "“ทักษิณ”ชนะแม่ทัพภาค 4” ชัยออก-เปิดทางสอบ“ตากใบ”", 3 November 2004, <https://mgronline.com/politics/detail/9470000076603>.

<sup>39</sup> Interview in person with Nazra, family of a protester killed, 2 October 2023, Narathiwat.

<sup>40</sup> MCOT news, "ปิดฉากคดีม็อบตากใบ รัฐยอมจ่ายค่าเสียหาย 42 ล้าน." 20 March 2007, [https://wbns.oas.psu.ac.th/shownews.php?news\\_id=50282](https://wbns.oas.psu.ac.th/shownews.php?news_id=50282).

<sup>41</sup> Prachatai, "ญาติเหยื่อตากใบ ขอมติชงรื้อคดีแพ่งขึ้น "ไม่คิดใจดำเนินคดีอาญา" ทั้งที่มีความข้องใจ" 21 December 2006, <https://prachatai.com/journal/2006/12/11015>.

<sup>42</sup> Interview in person with Songkiat, human rights lawyer (previously cited).

<sup>43</sup> Manager Online, "क्रम.ไฟเขียวเยียวยา "ทานชสมชาย-ตากใบ" รายละเอียด 7.5 ล้าน หรือชะรัน 4 ล้าน", 12 June 2007, <https://mgronline.com/politics/detail/9550000072173>.

<sup>44</sup> Isranews Agency, "17 ปีตากใบ...เหตุการณ์เดียวที่ชายชา 641 ล้าน กระทั่ง 987 ชีวิต", 25 October 2021, <https://www.isranews.org/article/south-news/south-slide/103636-takbaiheal.html>.

<sup>45</sup> Interview in person with Esah, family of a protester killed, 2 October 2023, Narathiwat.

<sup>46</sup> Interview in person with Iffaan, former detainee (previously cited).

trying to recover from his trauma. “I had to ask my wife to work in a rubber plantation because I was paranoid and afraid to go out to work. It took me a long time to feel better.”<sup>47</sup>

Many women also suffered socioeconomic impact from the incident. Haryati, one of the women whose husband died in the crackdown, said to Amnesty International: “I felt as if I was left completely alone in this world. I have never worked a day in my life, but after my husband died, I had to do everything in my power to earn some money to feed my son – that is not easy for a woman.”<sup>48</sup> Esah also shared that she lost a 19-year-old son who was about to graduate and help earn a living for the family.<sup>49</sup> The two women’s stories aligned with existing testimonies from many other women who had to become breadwinners for their families after the male members of their family died in the incident.<sup>50</sup>

In 2006, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted in the Concluding Observation for Thailand’s fourth and fifth periodic reviews that women in the southern border provinces still “lack[ed] access to education, social security, health care and economic opportunities [...]”<sup>51</sup> Similarly, for the sixth and seventh periodic reviews, the CEDAW Committee echoed similar concerns and recommended the government adopt “special measures targeting Muslim women in the southern border provinces so as to ensure their substantive equality with men in all areas, in particular widows and women heads of household, including by providing sufficient financial and social support.”<sup>52</sup> In this context, women affected by the Tak Bai crackdown have experienced multiple and intersectional challenges due to their gender and ethno-religious identities, as well as socioeconomic status.

## THAILAND’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Thailand has been a State Party to the International Covenant on Civil and Political Rights (ICCPR) since 29 October 1996.<sup>53</sup> The ICCPR guarantees the right to non-discrimination (Article 2), the right to life (Article 6), the right to freedom from torture and other ill-treatment (Article 7), the right to freedom from arbitrary arrest or detention (Article 9) and the right to freedom of peaceful assembly (Article 21). All these rights are interconnected especially in the context of violence against protesters. According to the Human Rights Committee (HRC), the UN body responsible for reviewing State Parties’ compliance with the ICCPR and interpreting the implementation of the treaty, the State’s use of unnecessary and disproportionate force during an assembly may constitute a violation of Articles 21, 6, 7 and 9.<sup>54</sup> Even though the SBPs have been under a prolonged state of emergency, the Thai government cannot derogate from its treaty obligations relating to the rights to life and to freedom from torture and other ill-treatment.<sup>55</sup>

Under international human rights law, Thailand has the obligation to promote an enabling environment for peaceful assemblies without discrimination, even in a situation of armed conflict.<sup>56</sup> According to the HRC, any restrictions on this right must be provided by law, necessary and proportionate.<sup>57</sup> Restrictions must also not be discriminatory or “aimed at discouraging participation in assemblies or causing a chilling effect.”<sup>58</sup> In addition, according to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990, law enforcement officials “shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary,” even when dealing with unlawful or violent assemblies.<sup>59</sup>

<sup>47</sup> Interview in person with Ahmad, former detainee (previously cited).

<sup>48</sup> Interview in person with Haryati, family of a protester killed, 2 October 2023, Narathiwat.

<sup>49</sup> Interview in person with Esah, family of a protester killed (previously cited).

<sup>50</sup> See, for example, the testimonies of “Ka Ya,” “Nung” and “Yah” documented by researchers from Mahidol University in Mattanee Juenara and others, “ตากใบ ในอากาศ ความทรงจำที่ปลิดปลิวจากความรุนแรง”, January 2007, [https://k4ds.psu.ac.th/k4ds\\_search/pdf/books/takbai\\_in\\_the\\_air.pdf](https://k4ds.psu.ac.th/k4ds_search/pdf/books/takbai_in_the_air.pdf), p. 55- 63, p.93-99, and p. 115-123.

<sup>51</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding Comments: Thailand, 3 February 2006, UN Doc. CEDAW/C/THA/CO/5, Para 36.

<sup>52</sup> CEDAW Committee Concluding Comments, 24 July 2017, UN Doc. CEDAW/C/THA/CO/6-7, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/228/03/PDF/N1722803.pdf?OpenElement>, para 23(a).

<sup>53</sup> UN Human Rights Treaty Database, Ratification Status of Thailand, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN)

<sup>54</sup> UN Human Rights Committee (HRC), General Comment 37, The Right of peaceful assembly (Article 21 of the ICCPR), UN Doc. CCPR/C/GC/R.37 (HRC General Comment 37), Para 98.

<sup>55</sup> HRC General Comment 37 (previously cited), para 96.

<sup>56</sup> HRC General Comment 37 (previously cited), para 97.

<sup>57</sup> HRC General Comment 37 (previously cited), para 39.

<sup>58</sup> HRC General Comment 37 (previously cited), para 36.

<sup>59</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), Principles 12-13.

In addition, international law prohibits the use of military to police assemblies. An exception may apply under “exceptional circumstance and on a temporary basis.”<sup>60</sup> In such a case, they must receive appropriate training and comply with the same international human rights law and standards as other law enforcement officials.

The principle of accountability for authorities using force to disperse public assemblies has also been enshrined under international law. Law enforcement officials, including all supervisors and commanders, have the legal responsibility to refrain from excessive force.<sup>61</sup> State Parties to the ICCPR have the obligation to investigate any allegations about unlawful use of force by law enforcement officials and bring officers responsible to justice for both intentional and negligent acts leading to human rights violations during protests.<sup>62</sup> The HRC has also emphasized that survivors must be able to access effective remedies.<sup>63</sup>

UN bodies repeatedly raised concerns regarding the “widespread impunity” of security forces in the southern border provinces including those involved in the protest crackdown in Tak Bai. During the 2005 review cycle, the HRC noted the “widespread instances of extrajudicial killings and ill-treatment by the police and members of armed forces,” citing the specific example of the Tak Bai incident. The Committee further recommended that the Thai government “conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against perpetrators.”<sup>64</sup> Similar concerns were echoed by the HRC’s 2017 review<sup>65</sup>, as well as the 2022 review by the UN Committee on the Elimination of Racial Discrimination.<sup>66</sup> Even though the government-appointed fact-finding committee was able to identify at least some of the responsible officers, Amnesty International is deeply alarmed the government has not followed the UN recommendations and has failed to hold the responsible officers to account over the past 19 years.

It is important to note that the unlawful use of force at the Tak Bai protest crackdown was not isolated. Rather, Thai law enforcement’s approach to policing public assemblies has historically, and to this day, been characterized by both unnecessary and disproportionate violence against protesters.<sup>67</sup> In April 2010, Amnesty International documented how Thai soldiers used live ammunition during the “Operation Rachaprasong” in Bangkok and killed unarmed protesters affiliated with the United Front for Democracy against Dictatorship (UDD) movement and medics.<sup>68</sup> Eleven years later, in July 2021, Amnesty International released a report which demonstrated showed how the Thai police used excessive force to disperse peaceful protests between late 2020 and early 2021, including the unlawful use of water cannons, tear gas and rubber bullets resulting serious injuries of the protesters, including of children.<sup>69</sup> These repeated instances indicate the continuous failures by the Thai government to guarantee non-repetition of violence against peaceful protesters in line with international human rights law.

## RECOMMENDATIONS

Amnesty International calls for the Thai government to seize the opportunity to deliver justice for victims of the Tak Bai protest crackdown before the statute of limitations expires in October 2024. We urge that the Thai authorities undertake the following actions:

### To the Royal Thai Police

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<sup>60</sup> HRC General Comment 37 (previously cited), para 80.

<sup>61</sup> Amnesty International Netherlands, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2016, [https://www.amnesty.nl/content/uploads/2017/01/ainl\\_guidelines\\_use\\_of\\_force\\_short\\_version\\_0.pdf?x79902](https://www.amnesty.nl/content/uploads/2017/01/ainl_guidelines_use_of_force_short_version_0.pdf?x79902), p 17

<sup>62</sup> HRC General Comment 37 (previously cited), para 90.

<sup>63</sup> HRC General Comment 37 (previously cited), para 90.

<sup>64</sup> HRC, Concluding Observations, UN Doc. CCPR/CO/84/THA, 8 July 2005, para 10.

<sup>65</sup> HRC, Concluding Observations, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 21.

<sup>66</sup> UN Committee on the Elimination of Racial Discrimination, Concluding Observations, UN Doc. CERD/C/THA/CO/4-8, 10 February 2022, para 23.

<sup>67</sup> Emmy Sasipornkarn, “Thailand’s cycle of police brutality concerns activists,” DW, 12 July 2022, <https://www.dw.com/en/thailands-cycle-of-police-brutality-concerns-activists/a-64015625>.

<sup>68</sup> Amnesty International, “Thailand: Accountability must prevail in political crisis” (Index: ASA 39/003/2010), 19 April 2010, <https://www.amnesty.org/es/wp-content/uploads/2021/07/asa390032010en.pdf>

<sup>69</sup> Amnesty International, “Thailand: “My face burned as if on fire”: Unlawful use of force by Thailand’s police during public assemblies” (Index: ASA 39/4356/2021), 2 July 2021, <https://www.amnesty.org/en/documents/asa39/4356/2021/en/>. See also Amnesty International, “Thailand: “We are reclaiming our future”: Children’s right to peaceful assembly in Thailand” (Index: ASA 39/6336/2023), 8 February 2023, <https://www.amnesty.org/en/documents/asa39/6336/2023/en/>.

- Immediately restart the investigation into unlawful acts by state authorities during this incident and file charges against the responsible officers, including those in command during that time. The investigation can draw upon existing findings from the government-appointed committee, and testimonies of civil society organizations, independent experts and most importantly, victims and their families.
- Ensure that the approaches and practices adopted for protecting and facilitating public assemblies are in line with international human rights law and that any use of force is a last resort and limited to that which is strictly necessary in the circumstances.

#### **To the Office of the Attorney-General**

- Prosecute responsible officers, including those with command responsibility for policing the protest in Tak Bai. The prosecution should follow international human rights law and standards on fair trials.

#### **To the Ministry of Justice**

- Provide any necessary support to facilitate access to justice for the victims and their family members, including financial resources and information related to the avenues for holding perpetrators to account.
- Provide training for all law enforcement officials, including relevant military officials in the SBPs (for as long as they remain deployed), on relevant international human rights law and standards, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Human Rights Guidance on the Use of Less Lethal Weapons in Law Enforcement

#### **To the Thai government**

- In the context of the southern border provinces, amend or repeal security laws in force, including the Martial Law Act and the Emergency Decree, and the Internal Security Act, to ensure full human rights protection in the region and address impunity.
- Ensure that military officers are not involved in the policing of public assemblies in the SBPs.
- Reform all relevant laws, regulations, official guidelines and practices to ensure that authorities protect and facilitate public assemblies in line with international human rights law and standards.
- Identify past mistakes and acknowledge wrongdoing and incorporate such learning, along with relevant international human rights law and standards (including on the use of force) into lessons for training relevant state officials, including law enforcement officials.
- Carry out a comprehensive, human rights-based assessment of the impacts of the protest crackdown in Tak Bai to determine any potential additional measures for effective remedies. Such an assessment must ensure a gender perspective to identify the specific needs of Malay Muslim women.
- Ensure the overall approach in policing assemblies is to protect and facilitate the right to freedom of peaceful assembly based on the presumption that demonstrations are peaceful, to de-escalate situations that might result in violence and thus to guarantee non-repetition of the unlawful use of force against protesters.