

# Losing Ground

Human Rights Defenders and  
Counterterrorism in Thailand

Edited by Eric Biel, Neil Hicks and Michael McClintock

[WEB VERSION]



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Counterterrorism Series No. 4

## About Us

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, DC. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. We accept no government funds.

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This report is fourth in a series focusing on counterterrorism and the situation of human rights defenders, an area of special concern for the Human Rights Defenders Program of Human Rights First.

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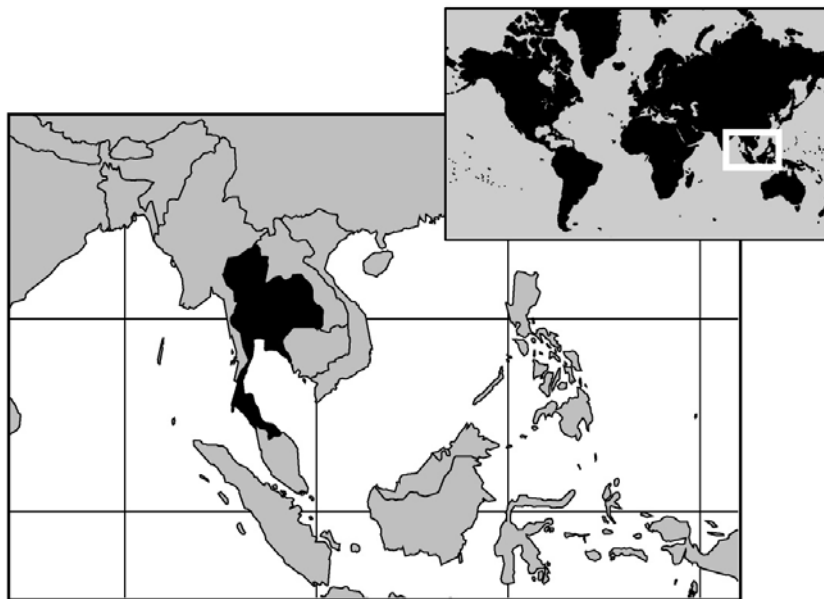
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# Losing Ground

## *Human Rights Defenders and Counterterrorism in Thailand*



In the 1990s, Thailand led the way in democracy and human rights in Southeast Asia. The military largely withdrew from politics, allowing a stable democracy to develop in place of a succession of coups and military governments. The government strengthened its commitment to human rights through a new constitution in 1997 and ratification of four key international human rights instruments.

But in recent years the government has become increasingly authoritarian, displaying a growing disregard for human rights. In February 2003 the announcement of a war on drugs was followed by the fatal shootings of more than two thousand suspected drug traffickers in apparent extrajudicial executions. Local and international human rights groups warned that police would become accustomed to killing with impunity. Journalists and opposition figures who criticized government policies were harassed with defamation suits and human rights defenders, including members of the National Human Rights Commission, increasingly

became subject to violence and harassment as they carried out their work.

Human rights defenders under threat in Thailand fall into two main categories: activists targeted by local political and economic elites for their work defending land rights and the environment in their own communities, and those at risk for their criticism of abuses by the state, especially in the conflict area of the southern provinces.

In the three southernmost provinces of Songkhla, Pattani, and Narathiwat, a violent insurgency involving a number of armed groups from Thailand's ethnic Malay Muslim minority has led to more than a thousand deaths. The conflict in the south has escalated as attacks have been met by government reprisals in the form of human rights abuses including extrajudicial executions, "disappearances," arbitrary detention, and torture and ill-treatment. Such abuses further fuel local grievances, creating a downward spiral of violence. This report examines in particular the effect of

obstacles to the work of human rights defenders and denial of access to justice more broadly in exacerbating the conflict.

Defenders experienced an increase in violence and intimidation during Prime Minister Thaksin Shinawatra's administration, which began in 2001. (Elections in April 2006 were boycotted by opposition parties and later nullified by the courts. Even before the court's decision, Thaksin agreed to step aside following intervention by the King, although he remains caretaker Prime Minister pending elections tentatively scheduled for October 2006.) More than twenty human rights defenders have been killed or "disappeared" in the last five years. A noted Muslim lawyer named Somchai Neelaphaijit went missing soon after filing a torture complaint against the police. A local activist named Charoen Wataksorn was shot multiple times while returning home after giving testimony before a parliamentary committee. A young woman named Chaweewan Pueksungnoen was shot and killed after joining the fight against corruption in her community. In these and other cases there has been little or no accountability.

The increasingly authoritarian approach of the Thaksin government coincided with the global response to the September 11, 2001 terrorist attacks in the United States. Throughout Southeast Asia, governments that are confronting national security threats are responding in ways that exacerbate existing conflicts and tensions, often at the expense of respect for human rights. Thailand was no exception to this regional trend. While reluctant to admit a problem with terrorism within Thailand, the government cooperated regionally as well as bilaterally with the United States. Thailand contributed troops to the wars in Iraq and Afghanistan, helped capture a top fugitive named Hambali who had been linked to al Qaeda and Jemaah Islamiyah, and otherwise earned praise from the U.S. government for its cooperation in counterterrorism efforts.

But the Thai government also took steps that undermined respect for human rights and democratic values that had underpinned Thailand's promising move away from authoritarianism over the previous decade. An anti-terrorism decree issued in 2003 amending the Penal Code was followed by the declaration of martial law in the conflict-ridden southern provinces and then by an emergency decree in July 2005, which gave the executive branch greater power to detain suspects without charge. These measures significantly weakened human rights safeguards.

The causes of the conflict in the south are primarily local, and the government response was also driven largely by domestic political and social factors. But a regional and global environment emphasizing security over rights, as well as the goodwill gained by the government from cooperation on counterterrorism, largely insulated Thailand from criticism for its actions and appears to have encouraged authoritarian trends.

These trends have in turn fueled a dangerous escalation in violence in southern Thailand, exacerbating sectarian conflict and increasing tensions with other countries in the region, such as Malaysia and Indonesia. Southeast Asia has much to gain from a stable and rights-respecting Thailand.

This report is based on interviews with lawyers and other human rights defenders, government officials, victim's relatives, and witnesses to abuse and other incidents. It also draws on impressions gained while monitoring the trial of policemen charged in connection with the disappearance of Somchai Neelaphaijit.

Map of Thailand showing the three Southern Border Provinces



# *Human Rights Defenders and Access to Justice in Southern Thailand*

*With the flame of nationalism burning, pro-human rights groups have been branded as unpatriotic. Further, they have become targets of criticism and a mudslinging campaign by right-wing groups, both official and unofficial.*

“A Bad Omen for Human Rights,” *Nation* (Bangkok), December 10, 2004

The heightened conflict in Thailand's three southern provinces cannot be separated from the lack of access to justice in the area. Victims of the violence see neither government forces nor armed groups held accountable for killings and other abuses. At the same time, the government response to the violence has included abuses such as arbitrary detention and torture or other ill-treatment in custody. Emergency measures have weakened essential protections limiting detention without charge and requiring access to legal counsel. These failures feed a downward spiral of abuses and violence. What appear to be isolated incidents are often part of a chain of arrests, abuses, reactions (both armed and unarmed), and further abuses.<sup>1</sup>

Any effective response will require a combination of economic, political, and law enforcement measures, with enhanced legal protections as an essential element to help break the cycle of escalation. Human rights defenders play a crucial role in this process, by encouraging fair treatment and an end to impunity. However, physical threats, defamatory accusations, and limited access to detainees make it increasingly difficult for them to conduct their important work. The disappearance of prominent Muslim lawyer Somchai

Neelaphaijit in March 2004 was seen as a warning to those who defend suspects accused of involvement in the conflict.

## *The Context of Violence in the South*

At the start of the twentieth century, the 500-year-old Muslim kingdom of Patani, in what is now southern Thailand, came under the direct rule of Siam. Roughly 80% of the region's current population of 1.8 million are ethnically-distinct Malays who practice Islam rather than Buddhism and speak a local form of the Malay language known as Melayu Patani.<sup>2</sup>

After the government in Bangkok began enforcing assimilation in language, dress, and education in 1939, and especially since the 1960s, Thailand's three southernmost provinces of Narathiwat, Pattani, and Yala became home to dozens of armed groups, including Muslim activists, separatists, communists, and criminal gangs operating along the border with Malaysia, as well as hybrids and splinter groups.<sup>3</sup>

While many groups have drawn on Muslim ideas and networks, most analysts identify grievances about

political and cultural marginalization by Thailand's Buddhist majority, rather than radical Islamist ideology, as a primary driver of the movements. After two years of renewed violence, explanations for the conflict remain multiple, complex, and often contradictory. However it is clear that abuses by police and military stationed in the area have exacerbated conditions, and that a commitment to human rights principles and the rule of law must be part of any solution.

Decades of intermittent attacks and government crackdowns, including long periods with little activity, formed a backdrop to a sharp escalation of the conflict in 2004. That one year saw a 27-fold increase in political violence, with over 1800 incidents, compared to the annual average of the previous decade.<sup>4</sup> In the two years since January 2004, more than 1300 people have been killed, including teachers, monks, farmers, and other Buddhist and Muslim civilians targeted by militants. Several hundred Muslims were killed by security forces, most of them in two controversial incidents in 2004 discussed below.

The victims come from all religions and ethnic groups. According to a study by an academic based in Pattani who maintains a database of violent incidents, while Buddhist fatalities in the almost daily attacks outnumbered Muslims in 2004, in early 2005 Muslim victims began to make up the larger percentage.<sup>5</sup> A local academic told Human Rights First, "More and more Muslims are dying in the daily killings, imams and ordinary people alike."<sup>6</sup> This observation is backed by official government figures.<sup>7</sup>

### *Escalating Abuses in the Name of National Security*

There are a number of explanations for the surge in violence since January 2004, and most point to government policy as an important factor. A Thai academic who has tracked a decade of violent incidents, found a direct connection between the government's approach and surges in violence:

The level of violence went down in January, February, and March, but after April 2005 it increased. Why? Government policy. Early this year there was a turn to the National Reconciliation Commission. After that—June, July— there was a military campaign and a surge in killing, very high in local areas. The "drain the swamp" approach causes a chain reaction as the government's heavy hand leads to reaction by the other side.<sup>8</sup>

Analysts such as the International Crisis Group found that a primary factor in the escalation of violence was the government's decision to disband two effective agencies, the Civil-Police-Military joint headquarters and the civilian-run Southern Border Provinces Administrative Centre. The creation of the two bodies in the 1980s helped reduce violence by improving community relations and ensuring that officials accused of corruption and rights violations were removed from their posts.<sup>9</sup>

The Thaksin administration's 2002 decision to dismantle these bodies, and the political settlement they represented, signaled a shift to a more aggressive approach. The move increased the authority of the police while shutting down channels of intelligence and mechanisms to air grievances. There were also reports that police killed ex-insurgents and informants who had been working with the military, further hampering intelligence efforts.<sup>10</sup>

Resentment of arbitrary arrests and other abuses by security forces was a second major factor in the escalation of tensions. Past efforts to reduce abuses such as killings, "disappearances", and corruption had some effect in reducing the violence. As the violence mounted, the Minister of Justice warned that abuses would hurt reconciliation efforts, urging that authorities "should not use the violence as a pretext to justify the use of measures outside the rule of law. . . . This will only lead us to lose our allies in the area."<sup>11</sup>

But the government did not heed this warning. Each major insurgent attack was followed by a combination of arrests, disproportionate use of force,

torture in custody, and a further erosion of rights and protections, first under martial law, then through the implementation of an emergency decree.

There were three major incidents in 2004 that contributed to further mistrust and violence:

**The January 4, 2004 raid:** Unknown attackers mounted a well-coordinated raid on an army base in Joh I Rong, Narathiwat Province. Four military guards were killed and 300 guns were reported stolen. The same day twenty schools were set on fire, possibly as a diversion from the main attack.

Thai security forces faced enormous pressure from the government to respond aggressively. Martial law had long been in effect in districts along the Malaysian border, and on January 5 it was enacted in much of the three Muslim-majority provinces of Pattani, Yala, and Narathiwat.<sup>12</sup> Police investigators were sent from Bangkok to investigate the gun robbery and arson attacks, together with thousands of troops to enforce martial law and guard the borders. Numerous local residents and several politicians were swept up in a wave of arrests. Several admitted to involvement in the raid, but later claimed to be innocent and to have confessed under torture. After a long legal process none were convicted of involvement in the attack.

**Krue Se Mosque and other attacks on April 28, 2004:** On the anniversary of a 1948 uprising, large groups of young men armed with machetes and some firearms mounted 11 simultaneous attacks on police and army posts throughout the South, killing five security officers. At least 107 young men were then killed by security forces at various locations, including 32 killed when security forces ended a standoff at the historic Krue Se mosque in Pattani by attacking with rockets and grenades as a large crowd watched. People from the region criticized the tactics used for causing many more fatalities than necessary to subdue the lightly armed attackers.<sup>13</sup> Nineteen men killed at the Saba Yoi market in Songkhla reportedly had gunshot wounds to the back of the head and signs that their hands had been tied, raising fears of extrajudicial executions.<sup>14</sup>

**The Tak Bai Demonstration:** On October 25, six members of a civilian defense unit created by the government to guard their village were arrested under martial law provisions, accused of giving their weapons to militants. Several thousand people came to the police station in Tak Bai, Narathiwat. Some knew they were there to protest, others said they were told to gather for a mass prayer for peace or a political speech.<sup>15</sup>

Some said they were prevented from leaving by either protest organizers or security forces. Ultimately security forces fired into the crowd, killing seven people. Unable to determine who were the ringleaders, police and military forces arrested more than 1,300 people, forcing them to crawl with their hands bound behind their backs, hitting them with rifles, and then stacking them in layers in trucks for the 90-mile trip to Inkayut military camp in Pattani.<sup>16</sup> When the first truck arrived it was discovered that one man had died en route. No actions were taken to quickly unload or even inform those in charge of the other vehicles, some of which did not arrive until many hours later. By the time all the trucks were unloaded, 78 men were dead from suffocation or being crushed to death. In the end, most of the survivors were released, although 58 were charged with destruction of state property and possession of weapons (in connection with arms found nearby in the river). The case against them is ongoing.

Spikes in violence followed these incidents. The local political scientist explained, "The impact of Krue Se and Tak Bai is directly related to the increase of violence. After these incidents there were leaflets saying 'This is revenge.' You can see an increase in violence after a crackdown."<sup>17</sup>

In an effort to halt the deteriorating relations with the Muslim community, the government took several positive measures. Official investigative committees examined both Tak Bai and Krue Se. More importantly in April 2005 the government created the National Reconciliation Commission, which included many well-respected academics and politicians, among them former Prime Minister Anand Panyarachun. One of the commission's first moves



was to arrange for the release of edited versions of the official reports on the Tak Bai and Krue Se incidents. However, rather than driving policies in the south, the Commission is merely a less influential structure that runs in parallel to the harsher legal, military, and political measures that dominate the government's strategy.<sup>18</sup>

Other efforts range from a sizeable economic development budget with provisions for civic participation to the prime minister's poorly-received project to airdrop 60 million origami cranes on the south as a sign of peace. In another step, the Southern Border Provinces Peacebuilding Command was created in October 2004 as a partial replacement of the successful bodies that had been dismantled in 2002. The new interagency structure has a stated goal of increasing trust and understanding, but lacks many key features of its predecessor, such as civilian control and effective mechanisms for removing abusive officials. There continues to be confusion over who is in charge and to whom citizens can submit complaints or report information.

## The Emergency Decree

Following coordinated militant attacks in the town of Yala in July 2005, the cabinet approved an executive decree, which took effect on July 19. It was an unusual step to use a decree to replace an existing law, the State of Emergency Act, bypassing the need for prior parliamentary approval (although it was formally approved the following month). The "Emergency Decree on Public Administration in Emergency Situations" gave power to the cabinet to declare a state of emergency in any area under threat or otherwise requiring emergency measures.<sup>19</sup>

Government officials pointed out that the decree shifted authority from the military to the prime minister, who was more accountable to parliament.<sup>20</sup> But the decree included some worrisome provisions, such as an unusual one requiring that detainees not be held in police detention centers, increasing the chance of secret detentions. Section 17 of the decree shields security forces from prosecution for any human rights abuses committed in the line of duty,

which some critics, including Anand Panyarachun, chairman of the National Reconciliation Commission, described as a "license to kill."<sup>21</sup> The decree empowers the government "to prohibit publication and distribution of news and information that may cause the people to panic or with an intention to distort information." The decree flouted constitutional guarantees on access to a lawyer of choice and the need to inform family members of an arrest.<sup>22</sup> The decree also allowed authorities to arrest and detain suspects for up to 30 days without charge, an increase from the seven days allowed under martial law or 48 hours under the criminal procedure code. A judge must approve extensions every seven days, but that does not require a court appearance by the detainee.

Using the new powers granted by the decree, the prime minister immediately declared an emergency in the south, and has renewed it every three months since.<sup>23</sup> Following considerable public outcry, some provisions, such as those relating to the press, were not implemented. But most elements were, and all remained on the books.

Critics pointed out that the violence in the south would not be solved by increasing the use of force by the government, but by improving intelligence and addressing widespread grievances. "Justice, not power, is the root of problem," said one prominent law professor.<sup>24</sup> An analyst who has written extensively on terrorism in Southeast Asia had a dim view of the decree's effectiveness, noting that "there is little evidence that these powers, that will devastate human rights and the rule of law, already eroded under Thaksin, will do anything to help stem the insurgency."<sup>25</sup>

One survey supported these concerns, finding an increase in violence in the first three months after the decree was passed.<sup>26</sup> By exacerbating problems of arbitrary detention and other abuses, there is a strong likelihood that the decree has increased mistrust and other factors fueling the violence, while undermining positive measures such as the National Reconciliation Commission.

## Detention

Even before the 2005 decree, arbitrary detention was a significant problem, as well as detention based on law but without adequate regard for standards of evidence.<sup>27</sup> A number of factors combined to increase the problem of arbitrary detention: pressure from Bangkok to make arrests; the increasingly confused nature of the conflict; lack of concern for physical evidence or credible witnesses; and a more permissive environment for detention without charge and without access to counsel. Interviews with lawyers and detainees indicate that some arrests are based purely on proximity to an attack, with no evidence or eyewitness testimony.

After the January 2004 weapons raid there was enormous pressure from Bangkok to capture those responsible. In mid-2004 Acting National Police Chief Sunthorn Saikwan announced a “clear progress plan” that granted rewards of 100,000 baht [U.S. \$2,500] for each insurgent killed in a “clear exchange of gunfire” or arrested.<sup>28</sup> One political analyst explained, “Thaksin sought to employ the same strategy in his war on drugs in the south. This only resulted in alienating the Muslim population even more. His CEO style has engendered an environment where immediate results are expected—no matter what the cost, legally or politically.”<sup>29</sup>

Deputy Prime Minister Chavalit Yongchaiyudh later cited the problem of forced testimony when urging patience in the case of disappeared Muslim lawyer Somchai Neelaphajit: “Most Thai police are competent, and decent,” he said. But “when bad police are pressured, they are likely to abduct witnesses.”<sup>30</sup>

In addition, police investigators frequently fail to consider physical evidence essential to detaining, prosecuting, and convicting the right parties. Angkhana Neelaphajit, wife of the disappeared human rights lawyer Somchai Neelaphajit, explained to Human Rights First that this problem long predated the recent upsurge in violence:

Somchai got involved with helping in the South years ago. In most cases, ordinary people got no

justice and came to seek justice from Somchai. One day more than 30 schools were set on fire. Four or five people were arrested—the only evidence was jute sacks or tins available to every family. Somchai said that false evidence was fabricated to set up villagers. When the case went to court, Somchai knew immediately how each witness would testify because in most cases they tend to present the same witnesses. . . . I want to emphasize, for more than 20 years Somchai has been involved in cases in the South. He said you don’t need to do much to mount a defense. They use the same witnesses over and over and there is no forensic evidence, not much evidence of any kind.<sup>31</sup>

A doctor in Yala who has worked with the police confirmed the hostility of security forces to collecting physical evidence: “The police don’t accept forensics. Local authorities, the military and police, they don’t respect or recognize forensic information.”<sup>32</sup>

There is a forensics agency within the Ministry of Justice, headed by the prominent forensic pathologist Dr. Pornthip Rojanasunan. However the Central Institute of Forensic Science only has jurisdiction in four districts and must be invited to participate by the police, who view it with hostility. According to Dr. Pornthip,

The biggest obstacle to my work is the police. If my institute is shut down, no one can work in this field, so they try to discredit me, try to blame me for problems after the tsunami, or say I have no authority to do the job. Now the police are suing me . . . I have been sued by police three times. The first two times I was found not guilty—I don’t care any more.<sup>33</sup>

There are also indications that prosecutions are based on false testimony. In an ongoing case against eight Muslim teachers (*ustaz*) accused of terrorism and insurrection, defense lawyers presented a video recording of a witness, later murdered, receiving instructions by phone from the key prosecution witness on what he should tell the police to implicate the defendants.<sup>34</sup>

With little attention to forensic evidence or credible witnesses, the police rely heavily on confessions. Where detainees often lack access to a lawyer and other guarantees, local advocates report that confessions are obtained through torture and other forms of abuse.<sup>35</sup> After Somchai Neelaphaijit disappeared within days of filing a torture complaint on behalf of clients arrested in connection with the January 4 gun robbery, there was increased attention to the problem of torture and ill-treatment. But continued impunity means there is little incentive to stop the practice.

In addition to pressure from above and failure to consider physical evidence, another factor that contributed to harsh police tactics was the increasing difficulty in identifying the shadowy groups responsible for the violence. While the south has always been a complex environment, the older armed groups that often claimed responsibility for attacks have been replaced by a complex web of factions operating through dispersed cells.<sup>36</sup> In the absence of clearly defined armed groups, religious teachers, farmers, university students, and bystanders all became suspects.

As one human rights lawyer working in the south has explained:

When talking about cases related to violence in the south, in the past they were made with reference to organized . . . movements, like PULO, or Jemaah Islamiyah. But after the [January 4] Narathiwat attack, cases are increasing and these cases are not clearly related to organized groups. So anyone can be accused.<sup>37</sup>

Police appear frustrated by the nature of the conflict, in which shootings by masked or unknown gunmen riding motorbikes are common, making it difficult to identify perpetrators. And southerners are reluctant to provide information due to the insular nature of Malay society and the very real fear of retribution by militants.

Human rights groups have increasingly been monitoring the extent of detention in the south. One

community leader who has visited many of the prisons estimated that as of December 2005 in Yala there were almost 50 detainees held on national security grounds, another 40 in Narathiwat, 35 in Pattani, and 30 in Songkhla who were transferred after being convicted. Many others were charged but released on bail, and an unknown number were detained for several weeks and then released without charge, or invited in for extended questioning without being formally arrested.<sup>38</sup> It is difficult to determine the cumulative number of detainees, but they may number in the thousands. In 2006 government officials cited a cumulative figure of 500 arrests.<sup>39</sup>

Considering the scale of the violence, these numbers are not alarming in and of themselves.

The problem is that local communities and their advocates have little confidence that the right people are being detained, and this phenomenon may be fueling further dissatisfaction and even violence. One community leader told Human Rights First, "Talking to witnesses, maybe 70 to 80 percent [of the national security detainees] are innocent. Maybe 20 percent have some involvement. If 70 to 80 percent are innocent, imagine the social and psychological impact on relatives!"<sup>40</sup>

The pattern of arbitrary arrests can be seen in several key incidents, including the January 2004 raid, the Tak Bai incident later that year, and 2005 incidents at Tanyong Limo and another case in Yala.

The January 4, 2004 gun robbery sparked not just a new round of violence, but also a wave of arrests. Police investigators were sent from Bangkok to investigate the robbery and arson. The team included officers from the Central Police Division and the Crime Suppression Division (CSD) and was led by Kovit Whattana, who was then Deputy Police Commissioner and was later promoted to Police Commissioner. Local lawyers told Human Rights First that these police had little understanding of local language and culture, which increased the likelihood of arbitrary arrest and abuse in detention.<sup>41</sup>

The declaration of martial law across most of the south in January 2004 empowered security forces to make arrests without a warrant (although some arrest warrants were issued and rewards posted for senior separatist leaders). Among the first to be arrested for the January 4 attack were five men accused of cutting down trees to block efforts to pursue the attackers. These suspects were arrested in February and charged with violations involving “national security, conspiracy to commit rebellion, to recruit people and gather arms to commit rebellion, to function as a secret society and to act as a criminal gang.” The five men were represented by Somchai Neelaphaijit, who soon filed a torture complaint on their behalf.<sup>42</sup> One of them, Abdullah Abukaree, later reported:

While being questioned, I was kicked, slapped and punched. They yelled at me and told me to confess that I took part in the camp raid. I didn't know anything about it, so I denied it. . . .When I denied involvement, I was tied to a chair and someone in the group [of interrogators] poked my body with a live electric wire. It was very painful. At those moments I wanted to die. I never felt pain like that before.<sup>43</sup>

The five detainees were one link in a chain of arrests. Their interrogations were followed by the arrest of four others linked to the school arson and another man for murdering a police officer in Narathiwat. Anupong Pantachayangkul, the head of the To'deng tambon (subdistrict) administration, Sungai Padi district, Narathiwat, was arrested in the murder of a police sergeant. His confession (made at a press conference called by the Deputy Police Commissioner) led to 11 more arrest warrants for treason and separatism, as well as at least one fruitless search of an imam's house for the stolen guns.<sup>44</sup> Among those Anupong named was a Member of Parliament named Najmuddin Umar, who was accused of being a mastermind of the January 4 attack and charged with treason in April 2004.

After dozens of arrests, prosecutors dropped charges against at least 26 suspects accused of involvement in the raid.<sup>45</sup> Najmuddin Umar and another man were tried for the gun robbery; on December 15, 2005,

both were found not guilty. In court, the local official Anupong retracted his allegations against Umar, saying that police had beaten him and threatened his family to make him testify.<sup>46</sup> A senior police official told the International Crisis Group that Anupong was threatened with being thrown out of a helicopter if he did not confess.<sup>47</sup>

The fact that there were no convictions is not in itself evidence that the arrests were arbitrary or without basis, and does indicate that the judicial system is not a rubber stamp of government policies and practices. However, the case also demonstrates that the risk of arbitrary detentions has increased due to a number of factors, including indications of torture and coerced confessions, pressure to make arrests, and weakening of constitutionally and internationally recognized protections of detainees.

A second case, from September 2005, illustrates the way in which each incident contributes to the cycle of mistrust and violence. On the evening of September 20, unknown gunmen opened fire on a tea shop in Tanyong Limo subdistrict, Rangae district, Narathiwat province. Two people died and four were injured in the attack.

One villager who arrived at the scene just after the attack told Human Rights First that a military truck and several police cars were on the scene within minutes of the attack and appeared to be collecting evidence. But the situation quickly deteriorated:

Then we heard drums from the mosque. That refers to the death of someone in the village. But when the drums started the police and army felt insecure. They didn't know our customs, and started hiding in their trucks and cars.

The last car was a blue Toyota Soluna, and there were two marines in that car. They said they were working in a nearby village. The other cars left because of the drumming, but this car didn't. Villagers detained and questioned them: “Who is the owner of the car?” We told them to move the car to where there was light—it wasn't safe in the dark. But they couldn't start it, so villagers pushed it to the lighter area. We didn't hurt them, just took

their guns, because they were not in uniform, were not like the other cars. . . . They were in shorts, but with guns. And it was not a service car, which was suspicious. They were not locals—why were they out at night? When I saw no uniform, I asked, “What are you doing here?” They answered “We heard there was a shooting, so we came.” But we were suspicious why they came. They never come here from that base.<sup>48</sup>

The two marines were held as hostages by locals who blocked the roads. People came from the surrounding areas, and an 18-hour standoff followed. Villagers refused to talk to the Thai media, saying they only trusted Malaysian journalists to provide an accurate account.<sup>49</sup> A witness confirmed that angry relatives of the young shooting victims were among those present, but also that many of those involved in the roadblocks were from other villages, and that he could only recognize one in ten members of the crowd.<sup>50</sup>

Village officials contacted provincial officials but were only able to arrange a visit by the district head that night. The provincial governor came early the next morning but departed soon after, leaving a low-level official on the scene. Villagers told local government officials that the marines would be released if authorities investigated the tea shop attack to determine whether the gunmen were from a government “death squad.”<sup>51</sup> The government’s failure to designate one person to act as negotiator may have been due to the overlapping lines of authority that emerged following the elimination of the effective coordinating bodies created in the 1980s.<sup>52</sup>

Some time the next day, a group of masked people entered the hut the two marines were being kept in and killed them. Autopsies showed that the marines were stabbed and beaten and had bruises all over their bodies.

In the national outcry that followed, the villagers were questioned by local and provincial police and eventually 12 were named as suspects and detained. One man told Human Rights First:

I was not arrested. They asked me, do I know any youths in my community? I said I have a son. They said he should come in under the emergency decree. I did not agree until September 26. They said he would be detained one week and then will be released. But they kept him under the emergency decree for 15 days at the police academy for Region 9.<sup>53</sup>

The man’s son was still in detention more than two months later. He is one of 12 detainees charged under sections of the criminal code that governs accomplices (article 83), multiple offences (article 91), group violence (article 215), obstruction of a public way (article 229), unlawful detention (article 310), gang robbery (article 340), and destruction of property (article 358). None were charged with the actual killings. The 12 and two additional suspects were released on bail; their trials have not yet begun.

According to a local resident, in the past people were more typically detained at the Region 9 Police Headquarters in Songkhla. The decision to detain them at the police academy may be linked to the provision in the emergency decree requiring that detainees not be held in normal police detention facilities, or to the small size of the headquarters.

Defense Minister General Thammarak Isarangura Na Ayuthaya said the first two to be arrested included a village official detained while washing blood stains from his clothes. But according to a man from the village, the twelve included some with no links to the crime, such as a man who sold a kind of bean found at the scene of the crime, someone falsely accused of making inciting announcements over the loudspeaker in the local Melayu language, a disabled man who set up a tent for the women and children from other villages, a dressmaker who gave scraps of cloth to a third party who used them to tie up the marines, and three women who cooked food for the gathered crowd.<sup>54</sup>

There is clearly a need to identify and prosecute those responsible for the murder of the marines and other violent acts. But sweeps that pick up many residents with little or no connection to such crimes will only further the sense of mistrust that contributed

to the hostage situation in the first place. The residents of Tanyong Limo are still demanding a full investigation of all the events, including the attack on the teashop. A local man told Human Rights First, “We want justice. I want to know what happened in my village. . . I don’t know what will happen. But I hope in this world there is still some justice.”<sup>55</sup>

A third incident illustrates the problem of arbitrary detention following an attack. Human Rights First spoke to several individuals at Yala Provincial Prison who had been detained under the emergency decree after a militant attack on a police station in Banangsta district in Yala Province on November 11. After that attack, 15 suspects were locked in a truck overnight before being detained first at a police station and later at the Yala prison, where they remained until their release in late December 2005. As one detainee explained:

It was after prayer at the mosque. I left home to go to the tea shop, heard gunfire and hid behind the shops with the others. We took three motorcycles and were driving by the police station when the police told us to stop and get down on the ground. We heard shooting—it was not clear where it was coming from. It felt like rain. We were told to strip and crawl like a baby from the street to the gate of the police station. We were locked in a pickup with chain-link sides overnight, with no water, not allowed to talk.<sup>56</sup>

In the morning they were taken to the prison. Others in the group included a man driving by with his children, and the owners and customers of a tea shop next to the police station. When visited just past the 30-day deadline after their arrest, none had seen a lawyer or been charged with a crime. They were later released without charge.

Finally, in the Tak Bai incident, the 78 victims of suffocation in the trucks were among more than 1,300 detained at the protest. This figure indicates a failure to discriminate between nonviolent participants in a demonstration and those guilty of violent or criminal acts.<sup>57</sup> In fact, the government inquiry found “mistakes and flaws in the detention, because state officials had wanted to detain only

protest leaders. But after protesters removed their shirts, officials could not identify the leaders. They then decided to detain all the protesters.” The inquiry found that the fatalities were linked to the fact that only four trucks had been sent to transport detainees because authorities had intended to arrest just the leaders.<sup>58</sup>

Most detained in that incident were released after a short period, but 58 defendants remained in detention under martial law provisions at the Pattani Military Prison. They were later charged with leading people to create disorder, weapons possession, injuring the officers, and causing damages to government property.<sup>59</sup> The trial began in March 2006.

### **Reinforcing the cycle of violence**

In each of these cases, mistrust of the security forces and an indiscriminate process of investigating acts of violence helped transform a single incident into an expanding web of violence and retribution. Instead of breaking the cycle through credible investigations and prosecutions, and fair treatment of detainees, the government reinforced it. The killing of the marines sparked a strong nationalist reaction throughout the country, and it reinforced the Thaksin government’s strong-arm approach to the south. Thaksin even blamed the killings on the reaction to the Tak Bai incident, arguing that such criticism made security forces reluctant to use force to rescue the two men. He had urged them to do anything necessary, later telling a press conference: “I instructed the officials to do what they should do. Don’t be afraid of anything, otherwise they would die like the two marines. All blame, if any, should come directly to me.”<sup>60</sup>

Thaksin also used language that dehumanized the perpetrators, and by extension, anyone suspected of supporting the militants, stating in a weekly radio broadcast: “The people who create unrest are cruel and inhuman; they are worse than beasts. I have to order tough action against these cruel killers and bring them to justice.” If necessary, he added, the government would use the emergency decree to suspend civil liberties.<sup>61</sup> Supreme Commander General Chaisit Shinawatra reinforced these views,

as well as appearing to echo comments by President Bush after the September 11 attacks, saying, “Normal laws should not be used for them. In foreign countries they would be caught dead or alive.”<sup>62</sup>

Trying to stop the cycle of violence, the Deputy Chairman of the National Reconciliation Commission, Prawase Wasi, warned that the militants may have been trying to provoke a harsh crackdown by killing the marines, and urged the government not to take the bait. He also unsuccessfully urged the government to take the teashop attack as seriously as the marine killings.<sup>63</sup>

### **Blacklists and “peace-building trainings”**

Another factor in the problem of arbitrary detention is the “blacklist” that authorities maintain of suspected militants. The defense lawyer Somchai Neelaphajit was reportedly told he was on a terrorist blacklist shortly before he disappeared.<sup>64</sup> But the practice apparently expanded after the emergency decree, as numerous residents (especially young men) were identified as militants or supporters, or simply as members of high risk groups. Suspects on the blacklist are frequently visited by soldiers and ordered to surrender without being shown a warrant. In April 2006 the Army chief admitted that security forces were using such blacklists to target militants. He ordered them to be reviewed, admitting that some of those listed may have been named due to personal grudges. He denied they were being used to identify targets for summary execution, as rumored. The Nation newspaper viewed one such list of 300 and found that some had been arrested and killed, “many under questionable circumstances.”<sup>65</sup>

A related tactic is compulsory “peace-building trainings” and re-education programs that appear to have increased in number since the emergency decree was enacted. Critics claim the government is forcing young men to attend in order to create a false record of insurgent surrenders. After 137 young men were forced to attend a “surrender ceremony” on December 10, 2005, more than 100 said they planned to file complaints with the National Human Rights Commission, saying they had done nothing wrong.<sup>66</sup> Those ordered to attend such trainings fear

arrest if they fail to appear, and retaliation by militants if they do attend. One 22-year-old from Raman district in Yala described his difficult position after local officials sent him a letter advising him he was on a list of those required to report to the town hall:

Throughout the past month, officers have constantly raided and searched my house, even though I have never taken part in any violent act or rebellion against the government. So when the letter of invitation came, I was compelled to go, for fear of being framed for some kind of crime I had not committed.<sup>67</sup>

One human rights activist who has worked in the south told Human Rights First:

If they refuse to provide information, it could be a criminal offense. People are worried to get invited—they have to come. But if they report, they get detained, and they lose their livelihood. And less often, but very importantly, the view that they are cooperating with police could lead to them being killed by militants. There are many incidents of Muslims who cooperate being murdered.<sup>68</sup>

### **Disappearances**

Although Thai NGOs and United Nations bodies addressed the issue of enforced or involuntary “disappearances” dating to prior periods of military rule, recent “disappearances” in the south have just begun to be explored. Grudging acknowledgement by public officials, the high-profile Somchai disappearance trial, and preliminary work by local human rights organizations indicate a significant if largely invisible problem. One journalist working in the south identified targets of “disappearance” as primarily suspected current or former militants, including military informants abducted by police due to the rivalry with the army.<sup>69</sup>

The issue of “disappearances” came up publicly in a July 2005 televised discussion between Thaksin and National Reconciliation Commission head Anand. After Anand cited reports from the south of hundreds of “disappearances”, Thaksin disputed the figure but acknowledged a smaller number of cases. More

recently media reports stated that the National Reconciliation Commission had identified 23 local men aged 20-50 missing in the South since 2002.<sup>70</sup> A government committee has reportedly paid the families of 21 of the victims 100,000 baht each after verifying the complaints were legitimate, and a small number of other cases are being verified.<sup>71</sup>

While compensation is an important step in the process, it has not been accompanied by public acknowledgement or effective efforts to determine the fate of the missing or ensure accountability. According to a researcher who has looked into the 21 cases, in only one of the incidents did the police carry out a formal investigation and forward the findings to the prosecutor's office. The provincial prosecutors office decided not to pursue the case, and the policeman was reportedly transferred.<sup>72</sup>

Furthermore, this figure is thought to be a minimum range, with estimates ranging up to the hundreds. A member of the National Human Rights Commission, Pradit Charoenthaitawee, estimated that more than 200 people had disappeared in the south at the hands of security forces between the start of 2004 and April 2005.<sup>73</sup> The International Crisis Group cited an estimate by religious leaders that more than 100 people had been abducted and killed in just the four months after January 4, 2004, while noting that this figure was difficult to confirm.<sup>74</sup>

A resident of Sungai Padi district in Narathiwat told a journalist about one such case from early 2004:

My son was with me at around 11 o'clock on March 19. Three cars came to our watermelon stall on Sungai Padi and Sungai Kolok street. Then men wearing black tee-shirts grabbed my son's hand, saying [it's alright, it's alright]. Without a word of explanation, my son was taken away. I held his hand tightly when those men dragged him, but they pushed me, and they only said *mai pen rai* [it's alright].<sup>75</sup>

There were media accounts of others disappearing soon after the January 4 raid. A man named Sata disappeared several days after the attack, one day after being visited by police but refusing to go with

them without a warrant.<sup>76</sup> A mobile phone repairman named Mustasidin Maming was taken from his shop by men in black T-shirts driving a truck without license plates on February 11. Another man named Ibroheam Che was taken from his home on January 26 by men in matching white T-shirts who spoke Melayu Patani but not as native speakers.<sup>77</sup> Others went missing in the context of crackdowns and major incidents of violence; for example, the official inquiry report found that seven people were missing after the Tak Bai incident.<sup>78</sup>

Those who try to investigate the problem of "disappearances" meet with a number of obstacles.<sup>79</sup> A Pattani lawyer told a journalist, "People follow me everywhere, and they come up to me and tell me, 'If you want to live in peace, don't take cases [of people who disappeared].'"<sup>80</sup> In an effort to address the problem from another angle, the nationally known forensic pathologist Dr. Pornthip Rojanasunan recently started testing the DNA of unidentified remains. In Pattani province alone, there were 300 unidentified remains in one year, 80 percent of them homicides. Dr. Pornthip reported that police objected to her work, and that as of May 2006 she was still awaiting funding to carry out the investigation. Dr. Pornthip has also advocated for a number of years for a national center for "disappearances", but has not been able to get the necessary government funds or the support of the Ministry of Justice.<sup>81</sup>

The failure to investigate these cases helps fuel additional suspicion and distrust throughout the southern provinces.<sup>82</sup> Human rights activists, a member of the National Human Rights Commission, journalists, and National Reconciliation Commission officials with whom Human Rights First spoke identified the question of "disappearances" as a priority issue. But they also characterized it as a sensitive question that would meet with resistance from police and fear from the victims' communities.

The Somchai Neelaphaijit case was the first trial related to a disappearance (although the actual charges were robbery and coercion) and it drew national and international attention to the problem. A journalist who has covered the south extensively



explained that the “Somchai case is one among many. You have to look at the others. . . . Why are we paying so much attention to Somchai? This is the first case to end impunity. It could be a precedent to end impunity.”<sup>83</sup>

But the case also highlights the difficulties of prosecuting “disappearances”, as the weak legal framework (which fails to recognize enforced or involuntary disappearance as a crime) and poor investigation led to weak charges and ultimately to the acquittals of four out of five defendants.<sup>84</sup>

### *Threats to Defenders Working in the South*

Arbitrary detention and disappearance are just two of numerous forms of abuse the citizens of the southern provinces face. They highlight the need for human rights defenders who can provide legal assistance and help victims seek redress. But the same forces that put average citizens at risk also restrict the work of activists and place them in danger.

The emphasis on national security brought about by the violence in the south, and to some extent by the global focus on fighting terrorism, has narrowed the space for defenders to work. One human rights lawyer told Human Rights First in November 2004: “If someone objects to the policies he is seen as not nationalist, and accused of supporting groups who want to divide the country. . . . Even during the dictatorship we could criticize, for example about torture or ask how [the 1973 shooting of student protesters on] October 14 could happen. It’s worse now.”<sup>85</sup>

Defenders in the south face particular challenges. “The police see lawyers as unwanted people,” explained Dej-Udom Kraitit, president of the Lawyers Council. “They view lawyers as an obstacle to their success of getting guilty verdicts whether through direct or indirect means.”<sup>86</sup>

The problem of arbitrary detention is compounded by restrictions on access to legal counsel, especially since the emergency decree passed in July 2005.

Lawyers and other activists working in the south told Human Rights First that under the emergency decree they have seen several new trends, including an apparent decrease in incidents of torture, most likely due to greater awareness of the problem and better access by relatives than under martial law. But lawyers also noted that their access to clients has become much more curtailed. By the time clients see a lawyer, many have already confessed to a crime under pressure and there are few options to defend them or keep them out of jail. One community leader noted: “In the space of one month under police custody anything can happen.”<sup>87</sup>

A possible motive for Somchai’s disappearance was that his torture complaint was challenging the standard police practice of coerced testimony. “This is the pattern of police practice: arrest one or two or three people, torture them, get more names, arrest them and torture again,” a Muslim lawyer active in the south told Human Rights First. “I know Khun Somchai very well. If Somchai knew about a torture case, he would do anything for them, including a lawsuit against police. So the plan to identify a chain of suspects would be stopped.”<sup>88</sup>

Lawyers assisting those detained after the Tak Bai incident were at first refused entrance to Pattani Military Prison and only allowed in after media attention. They reported receiving harassing phone calls and claimed to have been put under surveillance.<sup>89</sup>

Students, many of them at Prince of Songkla University, have also served as volunteer human rights monitors for local organizations and for the National Reconciliation Commission. After the Krue Se mosque incident in April 2004 some began monitoring the status of victims’ families and the status of compensation from the government for abuses. They have been arrested, searched, and closely monitored. One student told Human Rights First: “Government authorities do not trust students. They discriminate and try to find evidence tying them to violence, especially Islamic studies students. . . . I am both Muslim and Malay, but the government only sees Islam.”<sup>90</sup>

Authorities are weakening existing protections even further through a section of the emergency decree, which provides that anyone who defies a summons is subject to imprisonment for two years or a fine of 40,000 baht (\$1,000). Suspects are invited to report to the authorities as witnesses, and are then held in detention without any time limit or other protections they would be entitled as criminal suspects, until they are eventually either charged or released. A local lawyer told Human Rights First that he thought many innocent detainees were admitting guilt under pressure without realizing the consequences:

The emergency decree has had a lot of impact. Under the decree a suspect is invited to “give information.” He’s not called a suspect, because suspect status requires some evidence. Then they are released if they are not connected. . . . The problem is they talk after seven days. We come back and some have “confessed” in connection with other cases.

After an “intensive [re-education] course” they come out to the media, a press conference saying they’ve changed their minds and are good citizens. . . . It is a major obstacle because their public statements are used in court. I don’t think they know about the consequences. They don’t meet legal representatives, so it’s very difficult to help them. If they ask us to be their legal representatives for a trial and change their mind [about admitting guilt], it’s difficult to do anything.<sup>91</sup>

The creation of the National Reconciliation Commission helped the work of defenders in several ways. A crucial function of the NRC is to lend its credibility and backing to human rights work. Several researchers reported that this high-level support was essential to their work. One field staffer described the NRC as “a buffer, building confidence between the state and people.” But he explained that playing this role also opens the NRC to accusations of supporting separatists:

Sometimes public opinion is that the NRC is helping bandits. The civilians affected by arbitrary arrest are mostly Muslim, so when we help them we are called sympathizers. We are actually non-

denominational—we help Buddhists too, but most people affected by the authorities are Muslim.<sup>92</sup>

Even NRC staffers are at risk. On September 1, 2005, Chatopa Awaë, who had conducted research for the NRC, was shot while riding his motorcycle in Pattani. Although the police concluded that the motive was personal or related to party politics rather than his human rights work, Awaë’s colleagues questioned whether the police had fully investigated the matter before arriving at this conclusion.

Working with the Lawyers Council, and the National Human Rights Commission, the NRC created a Rule of Law and Reconciliation Center in September 2005 at Prince of Songkla University. The Center has a goal of reducing the violence through the provision of legal aid and monitoring of judicial systems and government bodies. (As of early 2006 the Center was still wrestling with administrative obstacles and figuring out the nature of the cooperation and mandate.)

In January 2006 the government also announced formation of a commission, the Independent Commission on Justice and Civil Liberties for the Southern Border Provinces (ICJC), to monitor the justice system in the south. The ICJC has also been entrusted with reviewing the NRC’s recommendations. It is headed by a former Senate president and two deputy prime ministers will serve as deputies. While still new, some observers fear the commission is not independent or credible enough to serve as the desperately needed follow-on mechanism to the National Reconciliation Commission.<sup>93</sup> Furthermore, in another example of the government’s contradictory strategy in the south, the same day the government announced this commission it also extended emergency status for three more months under the Emergency Decree.<sup>94</sup>

## *Failure to Ensure Accountability*

The other half of the rule of law equation is the question of accountability for human rights abuses. The lack of accountability for militants responsible for

much of the violence is certainly part of the problem. But the failure to prosecute those responsible for massive loss of life in the course of military and police operations, particularly on April 28, 2004 and later that year at Tak Bai, stand out as important examples of impunity. In both cases there have been multiple inquiries that have led to some identification of responsibility, but no concrete progress on accountability.

After first describing the participants in the April 28 attacks as drug addicts, Thaksin appointed an independent commission in May 2004. The panel's final report, made public in April 2005, concluded that security forces had used disproportionate force at Krue Se Mosque, but did not recommend that anyone be held accountable. One general was recalled to Bangkok for disobeying orders to resolve the standoff peacefully, but no one was punished.

A similar pattern of inquiry without accountability took place after the Tak Bai incident in October 2004. Officials, including the prime minister, once again initially blamed the detainee deaths on the victims, saying that fasting or drugs had contributed to their deaths (drug tests later discredited that claim). Phillip Alston, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions for the U.N. Commission on Human Rights, was denied permission to visit Thailand following Tak Bai, but the government pledged to investigate.

The independent panel carried out a 45-day inquiry and identified those responsible for crowd control and transport, but did not recommend any penalty. The panel's chair explained, "The report has not touched on punishment because the panel deems it appropriate for the government to decide the matter. . . No one should draw a hasty conclusion because the military has argued that it operated under extreme pressure."<sup>95</sup>

As one of its first tasks the NRC arranged for the release of edited versions of the government inquiry reports on Tak Bai and Krue Se. Released in April 2005, the Tak Bai inquiry found that "[h]igh-ranking officials who oversaw the transport of protesters were

guilty of dereliction of duty, as they failed to ensure it was carried out sensibly," but stopped short of calling for their prosecution. The report noted that "state officials carried out their work under limitations that led to flaws and mistakes, but there was no deliberate act to cause death and injury."<sup>96</sup>

There were other efforts to look into the incident as well. On May 4, 2005, the National Human Rights Commission recommended compensation to Tak Bai victims, concrete measures to prevent a recurrence, and efforts to bring those responsible to justice. A Senate committee's inquiry was hampered by what the *Bangkok Post* called "government stonewalling."<sup>97</sup> Finally, a wrongful death civil suit has been filed by victims' families but has not yet been decided. The efforts of the independent panel, the Human Rights Commission, and the Senate committee demonstrate that while Thailand has mechanisms in place to address human rights issues, they are limited and unable to ensure genuine accountability.

In many lower-profile cases there were no inquiries at all. Instead, the police were entrusted to investigate their own colleagues. The State Department's 2005 Country Report notes that "senior prosecutors and NGO legal associations claimed that most cases against police or military officers accused of extrajudicial killings eventually were dismissed because regulations outlined in the criminal code require public prosecutors to rely exclusively upon the recommendations of the police . . ."<sup>98</sup>

The same ineffective investigations that lead to wrongful arrests also contribute to impunity when security forces are involved. The Somchai case is the most prominent, where a weak police investigation failed to tie the police suspects to the crime scene. A doctor in Yala told Human Rights First about a similar problem in a lower-profile incident:

My expert opinion is used in court, even though my expertise is not forensics but surgery. I have no forensic expertise. I was part of a police investigation as a doctor. A girl was crying, her husband shot dead. The police covered it up as an accident. I found that he was shot dead and

she got 300,000 baht compensation. But what about cases I don't handle? The practice is that any doctor can participate in a police investigation. Sometimes they are students who only listen to what the police say.<sup>99</sup>

## *National Security, Foreign Policy, and Southern Thailand*

There is a running debate about whether international terrorist organizations such as al Qaeda or its regional affiliate Jemaah Islamiyah are a factor in the violence in the south. The Wall Street Journal editorialized in December 2004 of “the danger that southern Thailand is becoming another front in the terror campaign being waged by Jemaah Islamiyah (JI), al Qaeda's Asian affiliate, to topple the region's secular governments. . . [Australian] Foreign Minister Alexander Downer told us recently in an interview that more people have now died at the hands of Muslim terrorists in southern Thailand than anywhere else in Asia.” The paper cited Singapore's Straits Times as documenting “that terror-training camps have been established in southern Thailand, although there is no definitive evidence of JI involvement as yet.”<sup>100</sup>

There is evidence that Thailand has been used by groups like al Qaeda, but primarily as a place to meet or go into hiding. A senior Jemaah Islamiyah figure, the Indonesian known as Hambali, was captured in Thailand in 2003. In a January 2002 Bangkok meeting, Hambali, reportedly the link between JI and Al Qaeda, is said to have convened a planning session that resulted in the decision to attack softer targets. This decision led to the Bali bombings that killed more than 200 people in October of that year.<sup>101</sup>

While conditions in Thailand are conducive to a JI presence, there is little evidence that they are actively building a base in the area. The attacks in Southern Thailand, whether shootings or bombings, have been largely local matters. There have been virtually no militant bombings or shootings outside the three southern provinces and nearby Songkhla,

in contrast to the attacks on tourist areas or major hotels by JI-linked terrorists in Indonesia.<sup>102</sup>

Despite the Thai government's reluctance to acknowledge the presence of Jemaah Islamiyah or related groups, the country has become an important part of U.S. counterterrorism efforts in the region. The United States has been close to Thailand on security issues for more than forty years, relying on it as a base for logistics during the Vietnam War and as a strategic ally in the region throughout the Cold War.

When the strategic vacuum of the post-Cold War was replaced with a new counterterrorism framework after September 11, 2001, the United States again turned to Thailand as a key ally. The United States had identified Southeast Asia as a “second front in the war on terror” due to signs of terrorist training and operations in the Philippines and Indonesia and the emergence of Jemaah Islamiyah.

As part of its counterterrorism efforts in the region, the United States encouraged Thailand to open a joint counterterrorism center, to crack down on terrorist financial networks, and to provide access to its military bases. Thailand also sent military engineers to Afghanistan and later 450 troops to Karbala, Iraq, as part of the U.S.-led “coalition of the willing.” There have been media reports, denied by the Thai government, that the United States used facilities in Thailand until 2003 to secretly hold terrorism suspects as part of its “extraordinary rendition” program.<sup>103</sup>

Thailand was granted “major non-NATO ally” status, allowing even greater access to U.S. aid and military assistance, including arms transfers. The U.S. Congressional Research Service has described the relationship as “one of the closest bilateral intelligence relationships in the region,” noting that the CIA reportedly assigned some 20 agents to the joint counterterrorism center there and provided \$10 to 15 million to the center in 2002 alone.<sup>104</sup>

Thailand's cooperation with the United States may have helped insulate it from U.S. government criticism on human rights and democracy issues

even as the Thaksin government became increasingly authoritarian and abusive. The Washington Post summed up the views of a senior State Department official, noting that the “bottom line

is that Thailand has supported the invasion of Iraq, including providing troops for humanitarian tasks, and has been helpful in the war on terrorism.”<sup>105</sup>

### The Counter-terrorism Decree (2003)

After long denying that terrorism was a problem in Thailand, at midnight on August 11, 2003 the Thai government adopted executive decrees amending the 2003 Penal Code and the Money Laundering Control Act of 1999. Human rights organizations argued that a decree was unnecessary given provisions in the Penal Code and the law on anti-money laundering. The Prime Minister explained that the decrees had to be rushed through in advance of the October 2003 Asia-Pacific Economic Cooperation (APEC) meetings in Bangkok, and on the heels of attacks in Indonesia. There are indications that the decrees were meant to facilitate the arrest of international terrorism suspect Riduan Isamuddin, *aka* Hambali, who was then handed over to U.S. authorities. His whereabouts remain unknown.

The decree amends the Thai Penal Code to provide that individuals who commit “terrorist acts” will be punished by death, imprisonment, or fines. The decree defines a terrorist act as (1) violence against a person, serious damage to public infrastructure, or damage that causes major economic loss to State or private property and that is (2) designed to intimidate a group or threaten the national or foreign governments (Section 135/1). Section 135/2 criminalizes demonstrating behavior that reasonably indicates the person will commit a terrorist act, or taking steps to commit, conspire or conceal a terrorist act. Section 135/3 creates liability for any “supporter” of anyone who commits a terrorist act.

These provisions raise several concerns:

- **Overly broad definition of a “terrorist act”:** Some ordinary criminal offenses resulting in injury to a person or property could be considered terrorist acts under this provision, subject to severe penalties, including death, life imprisonment, and fines up to 1,000,000 Baht.
- **Broad scope of those who can be linked to a crime:** This concerns the question of what constitutes behavior “reasonably” believed to show a person will commit a terrorist act, or how nascent “preparation” can be. The term “supporters,” moreover, is left undefined and could plausibly include those with no direct links to a crime.
- **Possible restrictions on freedom of expression and association:** The amended Penal Code includes a provision that “any demonstration, gathering, protest, objection or movement that calls for the government’s assistance or for fair treatment, as an exercise of the freedom under the Thai Constitution, shall not be regarded as a terrorist offence.” However, some types of demonstrations may not fit this restrictive definition but are nonetheless legitimate exercises of freedom of expression that should not be subject to criminal sanctions.

The need for a definition of terrorist crimes in the Penal Code is clear, as is Thailand’s responsibility to comply with U.N. Security Council resolutions. However, Human Rights First is concerned that this provision was rushed through and is broad enough to undermine Article 9 of the ICCPR on arbitrary arrest and detention.

In March 2002, Assistant Secretary of State for East Asian and Pacific Affairs James A. Kelly described the many ways Thailand supported the U.S. in the months after September 11:

As the world grieved and tried to respond to the attacks of September 11, the State Department went to work with the same intensity as the rest of the U.S. national security community and our partners around the globe. That meant looking closely at every nation, asking our friends and allies "are you with us?" . . . Of course, some of the assistance and support Thailand has provided is best left undescribed. But I can tell you what I have told Secretary Powell and what I have told the President: in the global war on terrorism, Thailand has been among the leaders.<sup>106</sup>

While primarily citing the growing awareness of a terrorism problem in Southeast Asia, and Bangkok's role as a regional hub for transportation and finance, Assistant Secretary Kelly made the connection to the violence in the south:

We will continue to put counterterrorism at the top of our list in our interactions with other countries, including Thailand. . . . We know we can count on Thailand to continue to fulfill its important role in the next phase of the global war on terrorism. The war on terrorism should draw the nations of the world together once it hits home how terrorism is a genuine threat to all of us. Thailand has faced it with violence in the south and bomb attacks in Bangkok.<sup>107</sup>

One researcher wrote in a newsletter for the Washington-based Center for Strategic and International Studies that "senior Thai officials complained that the U.S. was pushing them to arrest and interrogate terror suspects in ways that violated civil liberties under Thai law, including military-style abduction, detention without trial, and unrestricted wire tapping."<sup>108</sup> If true, such pressure may also have been a factor in the escalation in abuses that marked the military approach to the violence in the south.

International pressure may also have led to prosecutions. In 2003 prosecutors charged four Thai Muslims with being members of Jemaah Islamiyah.

Defense lawyer Somchai Neelaphaijit, who went missing the following year, obtained acquittals for the men, one of whom was elected to the Senate in April 2006.

The most high-profile example of counterterrorism cooperation was the joint operation to detain the Indonesian known as Hambali. While his capture was an important step for counterterrorism efforts in Southeast Asia, Hambali's open-ended, incommunicado detention by the United States has raised concerns. In addition to concerns about due process and torture or ill-treatment, his secret detention has angered countries in the region—notably Indonesia, which has been denied access to him, hampering its own efforts to investigate and prosecute domestic terrorist groups.<sup>109</sup>

The United States also has not publicly linked the violence in the south to its broader international counterterrorism strategies.<sup>110</sup> While cooperating in efforts to identify and detain those alleged to be linked to al Qaeda and others groups, Thaksin initially downplayed links between the violence in the south and international terrorism, preferring to label those involved as criminals or thugs. The Thai foreign minister, during a visit by U.S. Secretary of State Rice to Bangkok in June 2005, also stressed the lack of connection to international terrorism or even to religion, stating that "we have received no information on any linkages between what's happening in the southern part of Thailand and international terrorism. . . . Some are just common criminals. Some are separatists. And they're using violence and holding religion down to be used as a justification. So it's important that—it's not a conflict of religion."<sup>111</sup>

Emphasizing that the violence in the south was a purely internal problem, Thaksin threatened to walk out of the 2004 ASEAN summit if anyone even raised the recent deaths in Tak Bai. Deputy Prime Minister Chidchai Vanasatidya also told the press that failure to control the situation in the south could be a "recipe for disaster" because it would invite intervention from groups such as the Organization of the Islamic Conference (OIC), which had earlier sent a mission.<sup>112</sup> (In one departure from this approach

Thaksin alleged that there were training camps in Malaysia and cited the influence of Indonesian radicals, which strained bilateral ties despite his caveat that the governments in question were not involved.)<sup>113</sup>

In a speech to the Thai military during his visit in October 2003, President Bush also praised Thailand's contribution of troops to Iraq and Afghanistan. Citing the capture of Hambali, he noted, "Thailand pledged to fight the war on terror, and that pledge is being honored in full."<sup>114</sup> President Bush also affirmed the importance of upholding human rights and democracy: "Earlier today I met with Prime Minister Thaksin, and I was proud to reaffirm the great friendship between our nations. We share a belief in democracy and human rights and ethnic and religious tolerance. We also share a willingness to defend those values in times of danger." But neither country has taken the necessary steps to convert these vague aspirations into concrete policies that effectively protect human rights in Thailand.

As elsewhere, poorly-conceived counterterrorism efforts may exacerbate the problem. Thai Senator Kraisak Choonhavan reported advising U.S. officials: "If we don't stop these methods of punishing entire communities in the south, Thailand will actually become a less secure place, which the United States will not want. . . . [Thaksin's] polices are actually creating more jihadists."<sup>115</sup> Malaysian opposition figure and former Muslim youth leader Anwar Ibrahim similarly warned, "If [violence] is allowed to go on and you leave it purely to security forces to handle the situation, this is certainly going to be a base for extremism."<sup>116</sup>

While much of the U.S.-Thai military relationship focuses on joint exercises and training, the U.S. does also supply some material support. On May 8, 2006, President Bush announced that he had authorized the Defense and State Department to utilize a new Pentagon fund worth up to \$200 million to "build the capacity of foreign military forces" under section 1206 of the National Defense Authorization Act. Thailand will receive as much as \$11 million of this money. It is unclear how the funds will be used, but there is a risk that such U.S. support could further militarize complex conflicts such as that in southern Thailand and send the signal to Thai authorities to continue business usual.

# *Attacks on Human Rights Defenders in other parts of Thailand*

*Since Thaksin became Prime Minister how many of us have been killed?  
This is government by force, not democracy. Defending our rights, we started  
with a small issue and began to fight, and found big men behind it.*

Chair of a community organization in Nakhon Ratchasima province,  
Human Rights First interview, December 10, 2005

From 2001 to 2005, at least 20 human rights defenders have been killed, most of them shot by unknown assailants or hired gunmen. Most were involved in local disputes over land and resources, with many of the perpetrators thought to be linked to “influential figures” such as local and national politicians, and businessmen.<sup>117</sup> In a small number of cases the gunmen have been charged, but virtually none of the masterminds have been prosecuted.

Thailand was one of the first Southeast Asian countries to be visited by the Special Representative of the U.N. Secretary General on the Situation of Human Rights Defenders. In May 2003, Special Representative Hina Jilani affirmed that human rights defenders in Thailand live in a “climate of fear.” She expressed deep concern around the special situation of Burmese refugees in particular, noting: “Many of the Burmese human rights defenders feel very insecure with regard to their freedom of movement inside Thailand.”<sup>118</sup>

Among these defender cases, that of prominent Muslim lawyer Somchai Neelaphaijit stands out. Neelaphaijit disappeared in Bangkok on March 14, 2004. On the previous day he had filed a complaint alleging his clients had been tortured by police.

Following outcry over his disappearance, five policemen were arrested, and were tried in late 2005 on charges of coercion and robbery, but not murder or kidnapping. In January 2006, citing inadequate evidence, the judge acquitted four of the defendants and sentenced the fifth to three years in prison.

Human Rights First observed the trial and found that the failure to carry out a rigorous forensic examination of the scene or follow promising leads, as well as strong indications that prosecution witnesses had been intimidated, undermined the proceedings. Investigators have recently been looking in Ratchaburi and Petchaburi provinces for new evidence of the murder, but it is unclear if Thaksin’s February 2006 pledge that new charges were imminent will be kept.<sup>119</sup>

Other cases have received little attention outside their communities. A 35-year-old woman named Chaweewan Pueksungnoen, who was shot and killed on June 21, 2001, had been active in a local community organization and was also a staff member of the elected subdistrict council known as the Tambon Administrative Organization (TAO), working to fight corruption in her community in Nakhon Ratchasima province. The chair of the community



organization, himself a survivor of a previous shooting, gave Human Rights First the background to the killing:

Ten years ago we began to be politically active. The local administration was lent 10 million baht, and we wanted to monitor this. So we had Chaweewan take the test, and she became secretary of the Tambon Administration Organization (TAO), and learned about corruption. . . . After Thaksin came to power the budget allocated the transfer of funds from the central government to the subdistrict level. When this money came we started to monitor it again . . . . This is very important work, monitoring construction bidding. We found corruption, and started getting threats. Chaweewan found evidence of illegality, a company that failed the bidding but got a contract. During the session she got a threat: "You or your boss will be dead." The community never believed that there would be violence against women, so protection went to me.

Earlier that night there was a meeting . . . . She was escorted home and left alone; her sister was inside. She went into the first gate and the villagers left her, but the gunman was waiting between the two gates. She was killed with one shot to the head.

The village is not so big. I heard the gunshot and saw a man running. I never thought this would happen to Chaweewan. . . . She didn't die on the spot, but during the trip to the hospital. The bullet exploded; there was lots of damage to her body. They know who was involved but no one was arrested.<sup>120</sup>

Chaweewan's sister thinks the killing was meant to intimidate the whole community: "This is a case of killing a chicken to show the monkey. So villagers will know what is what. Now they do not dare to act collectively because they worry about the risks of doing so."<sup>121</sup>

## *Patterns of Attacks on Defenders*

### **Impunity**

None of the killings have been investigated effectively. Local police frequently concluded that a killing was due to a personal dispute and, at most, charged only the gunmen but not those who planned or ordered the attacks.

As described in Human Rights First's trial monitoring report on the disappearance of Somchai Neelaphajit and elsewhere in this report, Thailand faces a fundamental problem in its investigative processes, especially the failure to collect and process physical evidence consistently. Charoen Wataksorn's family and neighbors were so concerned that local police would not be effectively investigated, they brought his body to Bangkok themselves to demand an autopsy and DSI investigation.

Where there is political pressure to make arrests, such as in the south, this flaw can lead to coerced testimony and unfair trials. Where there is no political will, or possible pressure from influential figures not to proceed, it means that defender killings are dismissed as personal criminal acts with no connection to prior threats or long-running conflicts.

In a number of cases this failure has led to the call for the Justice Ministry to assign the Department of Special Investigations (DSI) to the case. However, the DSI is staffed largely by former policemen and in those defender cases in which they have mounted investigations, the Department has not produced results.

### **Harassment of survivors**

Friends and family members who press for justice or continue the work of slain defenders often themselves face threats, intimidation, and legal challenges. Neelaphajit's wife Angkhana told Human Rights First:

We are always threatened, for a long time. An intelligence official called me and asked if I was going to the U.N. 'Are you planning to go to U.N.?

Are you sending a letter?' Then a man came to my house, said he was working with detainees and that I wasn't safe anymore, I could be shot.<sup>122</sup>

In addition to these events from April 2005, the headlight of Angkhana's car was smashed while she was listening to the verdict of the policemen's trial on January 12; as she is a co-prosecutor in the case, these threats can be seen as direct interference in the legal process.

Chaweewan's fellow activist, a shooting victim himself, found himself the target of criminal proceedings. He told Human Rights First in December 2005, "I'm also facing charges related to corruption. I protested in front of the governor's house, went home, and learned about the warrant."<sup>123</sup>

Murdered environmental activist Charoen Wataksorn and his wife Korn-uma Pongnoi also faced criminal charges that seemed to be a form of retaliation by the company that was locked in a land conflict with her community:

The company organized a party. The community decided not to join, and put smelly fish from the sea on the tables. I didn't do the operation but I did submit a letter saying they should not organize such a party. That night my house was targeted by gunshots. This was on January 11, 2001.

Then the company sued us for trespassing, for going on company property to submit the letter! The arrest warrant came one year after the incident. I was not arrested, and didn't report to police because they were reported to be regular visitors to the company. Then new policemen were assigned and I felt I should present myself to the police. The criminal court found I was not guilty, said I had a constitutional right to defend my community and acknowledged irregularities and influence in the case. But on appeal, I was judged guilty.<sup>124</sup>

The trial concluded in August 2005 with suspended sentences for Charoen's wife and three others.<sup>125</sup> Cases such as this led to U.N. Special Representa-

tive Hina Jilani's conclusion that legal action seemed intended to "deter defenders from taking public action and to exhaust their time and finances, rather than to enforce the rule of law."<sup>126</sup> The progress of such legal actions also stand in stark contrast to the slow or absent prosecution of those responsible for ordering or carrying out attacks on defenders.

## Failure to Provide Effective Protection

Most of the murdered defenders had endured years of harassment and overt threats before their deaths. In many cases they were returning from meetings with officials or with their community groups when they were killed.

In an effort to combat this lack of protection, in 2003 the Office of Witness Protection was created under the Witness Protection in Criminal Cases Act, which put into operation guarantees set out in the 1997 Constitution.<sup>127</sup> The program is housed in the Department of Rights and Liberties Protection in the Ministry of Justice, and coordinates the work of seven agencies. However, its staff and budget are limited, and it plays primarily a coordinating role.

In roughly 90 percent of cases the protection is provided by the police.<sup>128</sup> When police are alleged to be involved in the crime, the witness protection program tries to bring in police from different regions or departments. However, the fact that the defendants in the Somchai case were from the Crime Suppression Division, which has a presence throughout the country, makes this solution especially difficult. His widow Angkhana's unease with having police monitor her activities is a typical complaint:

I told friends [about the threats], who told the newspaper. The Minister of Justice contacted me, said he wants to meet me, and has a duty to protect me. But the problem was surveillance. They were in our house, they asked for our phone numbers. I signed a two month protection contract, but did not extend it.<sup>129</sup>

Similarly, Charoen's wife told Human Rights First:

After the killing two cops came to protect me. Two local cops, so I knew them and knew they had connections with the suspect. I did not feel safe with them, I felt they were spying. The witness protection program sent protection right after the incident, then no further protection, even though we were going to court to testify. Seems like witness protection is only when there is media attention, then nothing. . . . We are protecting each other. We cannot travel alone any more. We have a guesthouse, so everyone comes to stay if a strange car comes through or anything else. If there's a meeting we use escorts, a number of people travel together.<sup>130</sup>

A monk named Phra Supoj Suvacano was killed in June 2005 after challenging efforts by local businessmen to clear and control forest lands belonging to the local community and the temple. According to a senior monk from the monastery, when they started receiving threats they paid local policemen to visit them daily. But once it appeared that a senior policeman might be involved in the threats and violence, "police we thought of as our friends stopped coming or cooperating with us."<sup>131</sup>

The Thai Government deserves credit for creating a witness protection program, but should take steps to increase its effectiveness. Options other than police protection must be made available, including personnel from other agencies, and forms of remote monitoring that do not excessively violate the privacy of those under protection should be made available. This will require an increase in financial resources for the program and regular evaluation of its effectiveness.

## Government responsibility

The Somchai case involved suspects, one now convicted, who were members of the Royal Thai Police. However, in most of the remaining cases the apparent perpetrators were hired gunmen and local business interests—although in some cases elected officials or civil servants may have been involved as well.

This raises the fundamental question of the extent to which the government bears responsibility for these violations. In a conversation with Human Rights First a senior Thai Government official even questioned whether these were human rights violations rather than ordinary crimes.<sup>132</sup> But the number of victims indicates a systemic problem that the government must address, both by ensuring accountability and by increasing protection of defenders and of the economic rights of local communities.

Thailand is also required by international human rights instruments, most notably the Declaration on Human Rights Defenders and the International Covenant on Civil and Political Rights, to provide remedies and protection to victims of human rights abuses, including those engaged in the promotion and protection of human rights.<sup>133</sup> The 1997 Thai Constitution also states broadly that the "State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently."<sup>134</sup>

A final category of vulnerable defenders are Burmese activists. There are several hundred thousand Burmese refugees in Thailand, including many human rights and pro-democracy activists. After years of harsh crackdowns in Burma, the survival of Burmese civil society depends largely on the ability of activists to live and work in Thailand. However, they have been frequently harassed, restricted in their movements, targeted for extortion by security forces, and in some cases returned to Burma. Thai citizens expressing sympathy or support toward Burmese groups have also been harassed.

## Conclusion and Recommendations

*If people don't have justice it means more trouble, more trouble and fighting. When people can't have it they will take things into their own hands. Like the south and Somchai. . . . That's why we fight for justice and human rights.*

Interview with Senator and veteran human rights lawyer Thongbai Thongpao, Bangkok, December 5, 2005

After a period of democratic development in the 1990's, the protection and promotion of human rights in Thailand have lost ground over the last five years. Two trends stand out during this period: human rights abuses arising from the conflict in the southern provinces, and the murder of more than 20 human rights defenders, with virtually no accountability for either.

Lawyers and other advocates working in the south are under particular pressure, although most of the murdered defenders were local community activists from throughout the country who challenged influential figures over land, forests, and other resources. The Thai government has shown a marked failure to protect defenders, investigate their deaths, or effectively prosecute those responsible.

A review of the violence in the south and attacks on defenders throughout the country, including interviews with human rights activists, politicians, members of the National Human Rights Commission, victims and witnesses, indicates that access to justice is severely limited. Furthermore, the failure to ensure justice and accountability is fueling a cycle of violence and further abuses.

In each of the cases from Thailand's southern provinces described in this report, what seem like isolated acts of violence were in fact part of a longer chain, one that might be broken by greater access to justice. In the Tak Bai incident, village defense force members were arrested, leading to protests, then arrests and deaths, and further violence. In the Tanyong Limo case an attack on a tea shop, attributed by local people to government forces, was followed by vigilantism by an untrusting population, leading to the deaths of two marines, apparently indiscriminate arrests, and further mistrust and violence.

An emphasis on national security became the basis for martial law and then an emergency decree that contributed to widespread detentions based on inadequate evidence, as well as an increasingly evident pattern of "disappearances." A global emphasis on counterterrorism, and Thailand's role as an ally in these efforts, have partly insulated the country from international criticism despite this erosion of rights protections.

Domestically, many human rights groups have spoken out on this subject, and there are a number of voices inside the government that recognize the

role of justice in any solution to the violence. In May 2004 Thailand's National Security Council determined that the "local population has a feeling of insecurity and distrust [of] state officials because of the abductions, disappearances and killings which they feel have not been addressed by the state." The proposed solution was to provide security as well as justice, and in particular, that "officials must treat suspects or anyone connected with criminal proceedings in a fair and transparent manner." In both its public statements and its policies, however, the Thai government has not taken these recommendations to heart.

On June 5 the National Reconciliation Commission created to address the violence in the south released its final report and was dissolved. The report recommends the creation of a several new agencies to replace the body dissolved by Thaksin in 2002 and to encourage economic development and reconciliation. The report also suggests addressing underlying grievances, such as by making Melayu Pattani a working language in the southern provinces. The Prime Minister and other officials responded positively but said they would have to study the recommendations. Unfortunately the political uncertainty that followed the April elections continues to occupy much of the attention in Bangkok. The Thai government should give full consideration and backing to the report's recommendations and if necessary create a credible, independent follow-up body to ensure the implementation of the NRC's recommendations and to continue the work of addressing grievances, building trust, and providing solutions.

Thailand has many mechanisms that other countries lack, including a well-established judiciary, a National Human Rights Commission, and Senate panels that strive to carry out oversight and inquiries. However, these bodies all generally lack the influence and sometimes the autonomy necessary to effectively address human rights abuses. Even the most productive government efforts to address the conflict have been undermined by a continuing pattern of abuses and widespread impunity. Until these matters are

addressed fundamentally, efforts to reduce the violence in the south, and to protect defenders as they seek to expand the public's access to justice, will continue to fail.

### *Recommendation to all armed opposition groups operating in southern Thailand*

Most of those killed in southern Thailand to date appear to have died at the hands of armed groups opposed to the government. All armed opposition groups should immediately cease any use of force that targets non-combatants or otherwise violates international human rights and humanitarian law.

### *Recommendations to the Royal Government of Thailand*

#### Protecting Human Rights Defenders

1. Commit to effective investigations into all attacks on defenders and bring the perpetrators to justice, including not just for Somchai Neelaphaijit, but also Charoen Wataksorn, Phra Supoj Suvacano, Chaweewan Pueksungnoen, and at least 17 others killed or "disappeared." In many of these cases, a credible investigation by the Department of Special Investigations under the Ministry of Justice is a prerequisite for an effective trial on appropriate charges. Because the DSI has proven ineffective in some of these cases, this investigation must be backed by the full support of the Minister of Justice and the Prime Minister.
2. Provide the resources and autonomous operating structure necessary to allow an effective witness protection program that does not rely on police protection in cases where police are implicated in the crime.
3. Committees of the Senate and the National Human Rights Commission should undertake an examination of the causes of attacks on human rights defenders and identify solutions.

4. Cease intimidation, extortion, and unwarranted restrictions on Burmese activists and their Thai supporters.

### Addressing arbitrary detention and other abuses under the Emergency Decree

5. The UN Human Rights Committee has asked to be informed of the effects of the Emergency Decree in the government's next report on implementation of the International Covenant on Civil and Political Rights. The Thai government should use this opportunity to assess and respond to negative consequences of the decree.
6. The government should repeal the Emergency Decree. If this is not possible in the current political climate, at a minimum it should use the above assessment to review the decree and its implementation and make the following changes:
  - Repeal section 17 of the Emergency Decree granting government officials immunity from prosecution.
  - Amend Sections 11 and 12 on arrest and detention, reaffirming essential rights guaranteed in the 1997 Constitution, such as access to a lawyer at every stage of detention, especially during interrogation.
  - Immediately end use of the decree's provisions to detain those for whom there is no evidence of responsibility for violence or other criminal acts. Eliminate the use of "blacklists," of suspects, supported by little or no evidence of involvement in criminal activity, which have proven to be prejudicial and indiscriminately punitive.

### Addressing "Disappearances"

To address a systemic failure to effectively investigate "disappearances," the government should adopt an integrated strategy. This strategy should include:

7. Full funding and support for a proposed center on "disappearances" under the Ministry of Justice.
8. Enforcement of clear, consistent, and effective guidelines to police on investigating all forms of "disappearances," whether politically motivated or tied to trafficking and other ordinary crimes.
9. Legislative measures to ensure that enforced "disappearances" are recognized in the Criminal Code as a specific offense under Criminal law, in conformity with the U.N. Declaration and the Draft International Convention on the Protection of all Persons from Enforced Disappearances.
10. The government should be commended for initial steps to compensate a small number of families of those "disappeared" in the south. These measures should be expanded and complemented by prompt and effective efforts to determine the fate of those missing. In particular the government should provide funding and other support to efforts by the National Human Rights Commission and the Central Institute for Forensic Science to identify several hundred unclaimed bodies in the three southern provinces.

# Endnotes

- <sup>1</sup> For more discussion of human rights abuses in southern Thailand, see Amnesty International, *Thailand: If You Want Peace, Work for Justice*, January 4, 2006, and International Crisis Group, *Thailand's Emergency Decree: No Solution*, November 18, 2005, Asia Report No. 105.
- <sup>2</sup> References to the former sultanate located in southern Thailand use the spelling "Patani," while the modern Thai province that occupies a portion of this area is written as "Pattani."
- <sup>3</sup> The most active groups are thought to include BRN-C (*Barisan Revolusi Nasional-Coordinate*, or National Revolutionary Front-Coordinate) a splinter group from the older BRN, which dated to the early 1960s and focused on political organizing and recruitment within Islamic schools; *Pemuda*, a semi-autonomous youth movement connected to BRN-C and linked to many of the small-scale shootings and bombings; GMIP (*Gerakan Mujahidin Islam Patani*, Patani Islamic Mujahidin Group), established in the 1990s by veterans of the conflict in Afghanistan; and New PULO, also established in the 1990s. In addition, an umbrella group known as *Bersatu* was created in 1989 to unify diverse groups and decrease reliance on foreign material support. For a profile and history of the armed groups, see International Crisis Group, *Southern Thailand: Insurgency, Not Jihad*, Asia Report No.98, May 18, 2005.
- <sup>4</sup> Srisompob Jitpiromsri with Panyasak Sobhonvasu, "Unpacking Thailand's Southern Conflict," *Critical Asian Studies*, Vol. 38, No. 1, March 2006.
- <sup>5</sup> Ibid.
- <sup>6</sup> Human Rights First interview with political scientist, Pattani, December 12, 2005.
- <sup>7</sup> Police records indicate that the majority of non-security personnel assassinated in the three provinces in the two years since January 2004 are Muslims. Supalak Ganjanakhundee and Don Pathan, "From Guerrillas to Terrorists," *Nation* (Bangkok), January 9, 2006.
- <sup>8</sup> Human Rights First interview with political scientist, Pattani, December 12, 2005.
- <sup>9</sup> International Crisis Group, *Insurgency, Not Jihad*. From 1998 to 2001 the Southern Border Provinces Administrative Centre received complaints about 1322 officials, and 51 were transferred from the region. Supara Jantchitfah, *Violence in the Mist: Reporting on the Presence of Pain in Southern Thailand*, (Bangkok: Kobfai Publishing Project, 2005), p. 37.
- <sup>10</sup> International Crisis Group, *Insurgency, Not Jihad*.
- <sup>11</sup> Supara Jantchitfah, "Don't Make Justice a Crime," *Bangkok Post*, January 1, 2006.
- <sup>12</sup> Announcement of the Fourth Army Area Command, "The Use of the Martial Law in Certain Areas of the Conflict," January 5, B.E. 2547 (2004).
- <sup>13</sup> These events and the Tak Bai incident that followed indicate that the Thai security forces are not adhering to the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The latter set of non-binding but widely-used standards states that "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms."
- <sup>14</sup> International Crisis Group, *Insurgency, Not Jihad*, p. 24.
- <sup>15</sup> International Crisis Group, *Insurgency, Not Jihad*; "Extreme Crowd Control," in *Violence in the Mist*, p. 259. There was a similar incident the prior year, in October 2003, when 400 residents in Yala protested at the police station, claiming the three suspects arrested for attacks on a military unit were just scapegoats. "Southern Key is Justice," November 5, 2003, reprinted in Supara Jantchitfah, *Violence in the Mist*, p. 142.
- <sup>16</sup> Video of arrests on file with Human Right First.
- <sup>17</sup> Human Rights First interview with political scientist, Pattani, December 12, 2005.
- <sup>18</sup> The commission has nine subcomponents: truth revealed, justice, accountability, forgiveness, dialogue, non-violence, memory, imagination, and risk-taking.
- <sup>19</sup> Under Article 4(1) of the International Covenant on Civil and Political Rights (to which Thailand is a party), derogation of selected rights is permitted in the event of a "public emergency which threatens the life of the nation" to the extent strictly required and in accordance with other international legal obligations. Some rights, such as the right to life and freedom from arbitrary deprivation of life (Article 6) and freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 7) are non-derogable. Derogation of other rights is subject to strict requirements, including: 1) The State Party must report derogations to the U.N. Secretary-General and the reasons for the derogations. In July 2005 the Human Rights Committee noted Thailand's failure to comply with this requirement; 2) The measures implemented by the State must be proportionate to the threat. The Committee specifically noted that, "Detention without external safeguards beyond 48 hours should be prohibited."; and 3) The State must provide remedies for any violation of the Covenant. Although not listed as a non-derogable right, it "constitutes a treaty obligation inherent in the Covenant as a whole" (see the Human Rights Committee's General Comment No. 29). Section 17 of Thailand's Emergency Decree, which grants immunity from prosecution to those implementing the decree, undermines the requirement of a remedy. (See "Concluding Observations of the Human Rights Committee—Thailand," paragraph 13, July 8, 2005, CCPR/CO/84/THA.)
- <sup>20</sup> "Emergency Decree: PM takes absolute power," *Nation* (Bangkok), July 16, 2005.
- <sup>21</sup> "Army chief admits agencies are using 'blacklists' in South," *Nation* (Bangkok) April 26, 2006.

- <sup>22</sup> Section 239, paragraph 3 and Section 241, paragraph 2 of the 1997 Constitution. See Lawyers Council of Thailand, "Declaration of Lawyers Council of Thailand on the Emergency Decree on The State Administration in the Emergency Situation B.E. 2548," July 21, 2005.
- <sup>23</sup> The emergency decree did not preclude the implementation of martial law in nearby areas. In November martial was declared in two districts of relatively calm Songkhla province where the military claimed militants were hiding weapons. "Thailand Takes Emergency Action," Associated Press, November 4, 2005.
- <sup>24</sup> Dr. Parinya Devanaruemitrakul, Thammasat Law Faculty, in "Overwhelming vote approves emergency decree for Deep South," Thai News Agency, August 25, 2005.
- <sup>25</sup> Zachary Abuza, The Counterterrorism Blog, July 15, 2005, available at <http://counterterrorismblog.org/2005/07/>.
- <sup>26</sup> "Consensus: Emergency Decree Can't Quell Violence in the South," Thai News Agency, October 18, 2005.
- <sup>27</sup> Article 9 of the ICCPR states "1. 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." International law does not clearly define arbitrary detention. The U.N. Working Group on Arbitrary Detention defines it broadly as detention contrary to the major international human rights instruments, identifying three main categories: 1) deprivation of liberty with no legal basis 2) detention as a result of exercising the rights and freedoms guaranteed in the UDHR and the ICCPR, or 3) Deprivation of liberty after an unfair trial. While some of the detentions described in this section have a formal legal basis in the emergency decree, as noted in footnote 16 and described further in this report, these legal provisions and their implementation do not adequately protect internationally recognized human rights.
- <sup>28</sup> Supara Jantchitfah, "The Circle of Loss," July 18, 2004, in *Violence in the Mist*, p. 231. In June 2006 the governor of Pattani proposed cash rewards for civilians who injured or killed insurgents.
- <sup>29</sup> Somphon Wongchanglaw, in Karim Raslan, "Religious resentment in Thailand," May 5, 2004.
- <sup>30</sup> "Warrants in Somchai Case Due Next Week," *Nation* (Bangkok), April 4, 2004. A senior police officer confirmed this problem: "One senior police general in the Ninth Police Region has publicly admitted that the tremendous pressure from political leaders in Bangkok, who often overlook the capability of units on the ground, has forced many officers to make premature judgments and arrests before gathering sufficient evidence. This only adds to the sense of mistrust among the local communities." Editorial, *Nation* (Bangkok), December 8, 2005.
- <sup>31</sup> Human Rights First interview with Angkhana Wongrachon, Bangkok, November 30, 2005. It is possible that Neelaphajit's success in identifying weaknesses in these earlier cases made him a target when he took on sensitive cases in early 2004.
- <sup>32</sup> Human Rights First interview with doctor, Yala, December 12, 2006.
- <sup>33</sup> Human Rights First telephone interview with Dr. Pornthip Rojanasunan, May 18, 2006.
- <sup>34</sup> Personal observation, Human Rights First, Bangkok Criminal Court, June 28, 2006. Case No. 716/2548 (2005).
- <sup>35</sup> Human Rights First interview with two local lawyers, Pattani and Bangkok, December 12, 2005.
- <sup>36</sup> Don Pathan and Supalak Ganjanakhundee, "Battling for Peace Without a Plan," *Nation* (Bangkok), December 13, 2005.
- <sup>37</sup> Human Rights First interview with a Muslim lawyer active in the south, December 2005.
- <sup>38</sup> Human Rights First interview with community leader, December 12, 2006, Yala.
- <sup>39</sup> "Thailand to extend emergency rule in south," Agence France-Presse, April 18, 2006 .
- <sup>40</sup> Human Rights First interview with community leader, December 12, 2006, Yala.
- <sup>41</sup> Human Rights First interview with human rights lawyer, Bangkok, December 5, 2005.
- <sup>42</sup> The complaint included the following remarks: "While under police custody and during the interrogation conducted at the provincial police station of Tanyong subdistrict, the 4th Suspect was blindfolded by police officer(s) and physically assaulted; strangled and choked, hands tied behind his back and beaten with pieces of wood on the back and head, suffering some head wounds. In addition, he was also hanged from the toilet door with a piece of rope and was then electrocuted with a fork charged with electrical currents, on the back of his torso and right shoulder. As a result, the suspect had to make a confession." "Official Request Form for Seeking Court Order to Send the Suspect to Have Physical Examination," March 4, 2004 (unofficial translation on file with Human Rights First).
- <sup>43</sup> "Suspect from Army raid: I was tortured," June 1, 2004. Abdullah was later released, while the other four were rearrested on new charges.
- <sup>44</sup> "Muslim TRT Members Plot the Barrack Raid: Allegation," *Nation* (Bangkok), March 22, 2004, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=1&id=95766&usrssess=>; "Missing voices," March 28, 2004, in *Violence in the Mist*, p. 166.
- <sup>45</sup> "Faces several charges in connection with bloody attack on Narathiwat Army base," *Nation* (Bangkok), July 16, 2004.
- <sup>46</sup> "About-turn at Najmuddin Trial," Bangkok Post, December 27, 2004.
- <sup>47</sup> International Crisis Group, *Insurgency, Not Jihad*.
- <sup>48</sup> Human Rights First interview with resident of Tanyong Limo, Pattani, December 11, 2005.
- <sup>49</sup> In an effort to address the roots of this mistrust, Issara News Service opened in 2005 to help Thai newspapers cover the story from all sides. Its director told Human Rights First, "The Bangkok media does what, when, who, and where; Isara focuses on the why. Before it was



just one side, the story from the government. Its not news. You have to read more, get different perspectives. If news comes from one side—either side—it will lead to more violence.” Human Rights First interview with Ayub Pathan, Pattani, December 12, 2005.

<sup>50</sup> Human Rights First interview with resident of Tanyong Limo, Pattani, December 11, 2005.

<sup>51</sup> “Police deny ‘death squad’ charge,” *Nation* (Bangkok), September 28, 2005, available at <http://www.nationmultimedia.com/specials/south/280902.php>.

<sup>52</sup> Supalak Ganjanakhundee and Don Pathan, “Strategic confusion,” *Nation* (Bangkok), January 05, 2006, available at <http://www.nationmultimedia.com/specials/south2years/south3.html>.

<sup>53</sup> Human Rights First interview with resident of Tanyong Limo, Pattani, December 11, 2005.

<sup>54</sup> Human Rights First interview with resident of Tanyong Limo, Pattani, December 11, 2005.

<sup>55</sup> Human Rights First interview with resident of Tanyong Limo, Pattani, December 11, 2005.

<sup>56</sup> Human Rights First interview with resident of Banangsta, Yala Provincial Prison, December 2005. See HRF letter on file.

<sup>57</sup> The High Commissioner for Human Rights stated that “Thailand has the obligation to refrain from making arbitrary arrests, to guarantee a fair trial to all detained persons within a reasonable period of time or to release them, to conduct a swift and independent investigation into each death, to refrain from excessive use of force and from the use of cruel, inhuman or degrading treatment or punishment.” She called for a swift, thorough and impartial investigation that would “bring to justice people that may be responsible for violations as well as in preventing a climate of impunity from taking hold.” Office of the High Commissioner for Human Rights, “High Commissioner for Human Rights Says Investigation into Violence in Southern Thailand Must Be Swift and Impartial,” news release, October 28, 2004. Available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/EAECB5FB6F6A2F0CC1256F3B00718DAF?opendocument>

<sup>58</sup> Tak Bai Report, English summary printed in *The Nation* (Bangkok), April 26, 2005, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=114930&usrsses>.

<sup>59</sup> Public Prosecutor of Narathiwat Province, Narathiwat Provincial Court, No. 96/2548 against Arsamee Arleeluwee et al, January 24, 200 [translation on file with Human Rights First]. The 58 are charged with obstructing the work of officials (section 138), breaching the peace (section 215), and related provisions of the criminal code, as well as martial law provisions giving the military the right to prohibit public gatherings (section 11).

<sup>60</sup> “Hunt For Marines’ Killers: Get tough, orders Thaksin,” *Nation* (Bangkok), September 23, 2005.

<sup>61</sup> “Killing of Marines: ‘Beasts’ will be caught, PM vows,” *Nation* (Bangkok), September 25, 2005.

<sup>62</sup> *Ibid.* In remarks to Pentagon employees a week after the September 11 attacks, President Bush said “I want justice. There’s an old poster out west, as I recall, that said, “Wanted: Dead or Alive.” Transcript available at <http://www.whitehouse.gov/news/releases/2001/09/20010917-3.htm>.

<sup>63</sup> “Hostage Killings: Do not retaliate, NRC warns,” *Nation*, (Bangkok), September 27, 2005.

<sup>64</sup> Human Rights First interview with member of the Muslim Lawyers Association, Bangkok, November 2004.

<sup>65</sup> “Army chief admits agencies are using ‘blacklists’ in South,” *Nation* (Bangkok), April 26, 2006.

<sup>66</sup> Interior Minister Kongsak Wantana defended the program: “The project encourages local youngsters to prove their innocence in order to clear their names and pledge that they have not and will not become involved in terrorist activities.” “Surrender Ceremonies: Southern Youths Shun Re-education,” *Nation* (Bangkok) December 12, 2005. The Southern Border Provinces Peacebuilding Command in Pattani said that the lists were carefully drawn up and militants were spreading rumors that participants were innocent. “Ong-art: Don’t Force Young into Training,” *Bangkok Post*, December 13, 2005.

<sup>67</sup> Assan, quoted in Tul Prinkaew, “Peacebuilding training slammed,” *Bangkok Post*, December 12, 2005.

<sup>68</sup> Human Rights First interview with human rights researcher, Bangkok, December 13, 2005.

<sup>69</sup> Human Rights First interview with local journalist, Pattani, December 12, 2005.

<sup>70</sup> “Angkhana: Govt must help in hunt,” *Bangkok Post*, June 6, 2006, available at [http://www.bangkokpost.com/060606\\_News/06Jun2006\\_news08.php](http://www.bangkokpost.com/060606_News/06Jun2006_news08.php).

<sup>71</sup> Issara News Service, June 5, 2006, available at [http://www.tjanews.org/cms/index.php?option=com\\_content&task=view&id=957&Itemid=58](http://www.tjanews.org/cms/index.php?option=com_content&task=view&id=957&Itemid=58).

<sup>72</sup> Human Rights First interview, Bangkok, June 30, 2006.

<sup>73</sup> Nick Cumming-Bruce, “Letter From Bangkok: Thai leader’s promise on rights unfulfilled”, *International Herald Tribune*, April 22, 2005, available at <http://www.ihf.com/articles/2005/04/21/features/letter.php>

<sup>74</sup> International Crisis Group, *Insurgency, Not Jihad*. A journalist estimated the number at 100-200. Marwaan Macan-Markar, “Case Of ‘Disappeared’ Lawyer Raises Rights Issues,” Inter Press Service, August 10, 2005.

<sup>75</sup> “Missing voices,” March 28, 2004, in *Violence in the Mist*, p. 168.

<sup>76</sup> A journalist confirmed that the man was still missing as of December 2004, nearly a year later. Electronic communication, May 10, 2006.

<sup>77</sup> “Missing,” June 6, 2004, in *Violence in the Mist*, p. 212-215.

- <sup>78</sup> “Army chiefs deemed responsible,” *Nation* (Bangkok), April 26, 2005, available at <http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=114930&usrssess>.
- <sup>79</sup> Nirmal Ghosh, “Huge number of unidentified bodies in Thailand,” *Straits Times*, January 23, 2006.
- <sup>80</sup> Joshua Kurlantzick, “Thai Breakdown: Paradise Lost,” *The New Republic*, February 21, 2005.
- <sup>81</sup> Human Rights First telephone interview with Dr. Pornthip Rojanasunan, May 18, 2006.
- <sup>82</sup> The ICG concluded that “. . . until rumors of abuses and disappearances can be properly investigated, the growing alienation among Thailand’s Malay Muslims may turn into sympathy, support and even recruits for the insurgency.” International Crisis Group, *Thailand’s Emergency Decree: No Solution*, November 18, 2005, Asia Report No. 105.
- <sup>83</sup> Human Rights First interview with journalist, December 2005.
- <sup>84</sup> For a complete account of the trial, see “Trial Monitoring Report: The Disappearance of Somchai Neelaphaijit,” a Human Rights First White Paper, February 21, 2006, available at [http://www.humanrightsfirst.org/defenders/hrd\\_thailand/alert102804\\_Neelaphaijit.htm](http://www.humanrightsfirst.org/defenders/hrd_thailand/alert102804_Neelaphaijit.htm).
- <sup>85</sup> Human Rights First interview with human rights lawyer, Bangkok, October 2004.
- <sup>86</sup> Marwaan Macan-Markar, “Case of ‘Disappeared’ Lawyer Raises Rights Issues,” Inter Press Service, August 10, 2005.
- <sup>87</sup> Human Rights First interview with community leader, Yala, December 12, 2006.
- <sup>88</sup> Human Rights First interview with member of the Muslim Lawyer’s Association, Bangkok, December 5, 2005.
- <sup>89</sup> Electronic communication, November 3, 2004.
- <sup>90</sup> Human Rights First interview with student volunteer, Pattani, December, 2005.
- <sup>91</sup> Human Rights First interview with local lawyer, Pattani, December 11, 2005. Lawyers also reported an increase in political charges, such as separatism, rather than ordinary criminal charges, following the decree.
- <sup>92</sup> Human Rights First interview with National Reconciliation Commission staff, Yala, December 12, 2006.
- <sup>93</sup> Human Rights First interview with human rights lawyer, May 25, 2006.
- <sup>94</sup> “Panel to Monitor Justice in South,” *Nation* (Bangkok), January 18, 2006.
- <sup>95</sup> Sathien Wiriyapanpongsa, “Official Tak Bai Inquiry: Report stops short of blame,” *Nation* (Bangkok), December 18, 2004.
- <sup>96</sup> Tak Bai Report (English summary), *Nation* (Bangkok), April 26, 2005.
- <sup>97</sup> “Tak Bai calls for urgent action,” *Bangkok Post*, February 1, 2005.
- <sup>98</sup> U.S. State Department, Country Report on Human Rights Practices 2005: Thailand, released March 8, 2006.
- <sup>99</sup> Human Rights First interview with doctor, Yala, December 12, 2005.
- <sup>100</sup> Editorial: “Tackling the Thai Terror Threat,” *Wall Street Journal*, November 30, 2004.
- <sup>101</sup> Jay Solomon and James Hookway, “Bali Bomb Suspect Used Thailand as Staging Area,” *Wall Street Journal*, November 7, 2002.
- <sup>102</sup> One of the largest, most coordinated incidents, the Krue Se Mosque and related attacks on April 28, 2004, featured amulets and other mystical elements that reflected local beliefs rather than the more orthodox Salafist concepts associated with international terrorist groups. International Crisis Group, *Insurgency, Not Jihad*, p. 32.
- <sup>103</sup> Dana Priest, “CIA Holds Terror Suspects in Secret Prisons,” *Washington Post*, November 2, 2005.
- <sup>104</sup> Congressional Research Service, *Terrorism in Southeast Asia*, updated August 13, 2004, p. 22.
- <sup>105</sup> Joshua Kurlantzick, “Thai Breakdown.” A leading Thai human rights activist similarly told the journalist, “When I brief U.S. diplomats in Bangkok, they care only about security concerns.”
- <sup>106</sup> James A. Kelly, Assistant Secretary of State for East Asian and Pacific Affairs, “U.S.-Thai Relations After September 11, 2001,” Remarks to Asia Foundation Luncheon, Washington, DC, March 13, 2002. <http://www.state.gov/p/eap/rls/rm/2002/8806.htm>
- <sup>107</sup> *Ibid.* Kelly does raise human rights in Burma and press freedom in Thailand.
- <sup>108</sup> Sheldon W. Simon, “Terrorism Perpetrated and Terrorists Apprehended” *Pacific Forum CSIS Comparative Connections*, 3rd Quarter 2003, Vol. 5, No. 3.
- <sup>109</sup> Some analysts from the region have criticized the U.S. overly military approach, including the concept of Southeast Asia as a “second front in the war on terror,” as counterproductive, arguing that “the American response to the war on terror may not be at all adequate in neutralizing the terror threat within Southeast Asia; in fact, it may even backfire. The embers of radical Islamist terrorism can only be doused by the adoption of a comprehensive approach that addresses a host of real or perceived social, economic, political and ultimately, ideological challenges.” See Seng Tan and Kumar Ramakrishna, “Interstate and Intrastate Dynamics in Southeast Asia’s War on Terror,” *SAIS Review* vol. IV no. 1 (Winter–Spring 2004), p. 91.
- <sup>110</sup> For example, on a July 2005 visit to Bangkok, Secretary of State Condoleezza Rice similarly played down the link to terrorism and emphasized respect for Thailand’s sovereignty, noting “we trust the Thais to watch for any links that there might be to international terrorism,

but my understanding is that the—belief is that this is a situation that is, in a sense, contained within the South. But this is a domestic issue for Thailand from our point of view. It is also an issue that Thailand seems to be moving ahead to try and deal with.” U.S. Department of State, “Joint Press Availability with Thailand Foreign Minister Khantathi Suphamongkhon and Secretary Condoleezza,” July 11, 2005. Available at <http://www.state.gov/secretary/rm/2005/49292.htm>.

<sup>111</sup> Ibid.

<sup>112</sup> “US envoy briefed on South,” *Nation* (Bangkok), January 24, 2006, available at [http://www.nationmultimedia.com/2006/01/24/national/index.php?news=national\\_19731079.html](http://www.nationmultimedia.com/2006/01/24/national/index.php?news=national_19731079.html). After vigorous lobbying by the Thai Government, the OIC’s final report on southern Thailand was fairly muted.

<sup>113</sup> Matthew Clark, “Thai Govt. Claims Proof of Malaysian Militant Camps,” *csmonitor.com*.

<sup>114</sup> President Bush’s Remarks to Thai Troops, Royal Thai Army Headquarters, Bangkok, October 19, 2003 available at <http://www.state.gov/p/eap/rls/rm/2003/25352.htm>

<sup>115</sup> Joshua Kurlantzick, “Thai Breakdown.”

<sup>116</sup> Jasbant Singh, “Thai South Ripe for Extremism: Anwar,” Associated Press, November 1, 2004.

<sup>117</sup> In Thai political culture, “influence” (*ittiphon*) is distinct from power (*amnat*) in that it is a form of authority without a legal basis. Influential figures may include local business elites, relatives of elected representatives, civil servants, and elected officials operating in their own interests. In most of the cases discussed in this section, such figures have been either linked to the crimes or are thought to be behind the failure to effectively prosecute those responsible. See Yoshifumi Tamada, “*Ittiphon* and *Amnat*: An Informal Aspect of Thai Politics,” *Southeast Asian Studies*, Volume 28, Number 4 (March 1991) in Thai Working Group on Human Rights Defenders, “In Struggle and Sadness: The Lives and Deaths of Eighteen Human Rights Defenders Under the First Thai Rak Thai Government, January 2001 – January 2005,” (submission to the United Nations Human Rights Committee).

<sup>118</sup> Kazmin, Amy. “Rebuke for Bangkok over Human Rights,” *Financial Times*, May 27, 2003.

<sup>119</sup> See Human Rights First, “Trial Monitoring Report: The Disappearance of Somchai Neelaphajit.”

<sup>120</sup> Human Rights First interview with chair of a village environmental organization in Nakhon Ratchasima province, December 10, 2006.

<sup>121</sup> Pradap Wai Nai Lokaa, “Adorning the World” *Fa Dieu Kan* magazine, Volume 2, Number 4 (October–December 2004), pages 42-87. Edited translation included in Thai Working Group on Human Rights Defenders, “In Struggle and Sadness.”

<sup>122</sup> Interview with Korn-uma Pongnoi, Bangkok, November 30, 2005.

<sup>123</sup> Human Rights First interview with chair of a community organization, December 10, 2006.

<sup>124</sup> Human Rights First interview with Korn-uma Pongnoi, Bangkok, December 10, 2005.

<sup>125</sup> “Suspended jail term for widow of activist,” *Nation* (Bangkok), August 18, 2005.

<sup>126</sup> Addendum, Report submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders (E/CN.4/2004/94/Add.1), March 12, 2004, p. 14.

<sup>127</sup> Section 244 states: “In a criminal case, a witness has the right to protection, proper treatment, necessary and appropriate remuneration from the State as provided by law.”

<sup>128</sup> Human Rights First interview, Department of Rights and Liberties Protection, Bangkok, December 2005.

<sup>129</sup> Human Rights First interview, Bangkok, November 30, 2005.

<sup>130</sup> Human Rights First interview with Korn-uma Pongnoi, Bangkok, December 10, 2005.

<sup>131</sup> Human Rights First interview with Phra Kittisak Kittisophano, December 2005.

<sup>132</sup> Human Rights First interview with senior Thai government official, October 2005.

<sup>133</sup> The Declaration on Human Rights Defenders asserts that anyone engaged in human rights work has the right to both remedy and protection. Article 9 states, “In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.” The government is also required to provide a remedy to such violations by its treaty obligations. Article 2 of the International Covenant on Civil and Political Rights, which Thailand signed in 1997 requires governments to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

<sup>134</sup> Article 75, Constitution of the Kingdom of Thailand, 1997.



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