



Human Rights First Memorandum to the Human Rights Committee

On its Consideration of the Initial Report by the Government of Thailand under the International Covenant on Civil and Political Rights
July 19-20, 2005

Human Rights First submits this document for the consideration of the Human Rights Committee in anticipation of its discussion of Thailand's initial report (CCPR/C/THA/2004/1) on July 19-20. We would like to make some general observations before commenting on the question of human rights defenders and counterterrorism legislation.

We are pleased with the Government of Thailand's assessment that "Thailand has considered and found that under the present political legal and governmental system of Thailand, it can follow the Covenant without any obstacle."¹ However, the focus of the initial report is on constitutional and other protections written into law, with little information on implementation. There was widespread agreement at the 61st Human Rights Commission meeting that the international community is moving to an "era of implementation." It is also an essential element of the CCPR review process to consider the realities of human rights promotion and protection.

Key inconsistencies of the report include:

- The description of constitutional protections on media censorship contrasts with recent libel suits and other efforts to pressure journalists and their publications.
- The report notes that the Corrections Act created an independent commission to investigate torture, and that torture victims have "the right to receive protection, proper treatment and necessary and appropriate remuneration from the State as provided by law (section 245 of the constitution)." But recent years have seen numerous incidents of torture, some of them described below, without accountability or protection of victims.
- The initial report refers to articles 148-156 of the Criminal Procedure Code, which provides for the investigation of extra-judicial killings. But a related table on page 33 of the report reveals an alarmingly low prosecution rate of under 3%.

In addition, there is also still room for improvement in the legal framework, such as the lack of a clear and effective framework on forced or involuntary disappearances.

This memorandum reviews the context and latest developments in relation to two questions included in the List of Issues,² human rights defenders and counterterrorism laws. While not addressed here, we are

¹ *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Thailand*, U.N. Doc. CCPR/C/THA/2004/1, August 2, 2004, paragraph 2.

² *List of Issues: Thailand*, U.N. Doc. CCPR/C/L/THA, April 28, 2005.

also encouraged by the Committee's requests for important topics such as the status and implementation of martial law and the treatment of Burmese asylum seekers and other migrants.³

Human Rights Defenders

16. Please inform the committee about the steps undertaken by the State party to investigate allegations of threats to and attacks on non-governmental human rights organizations and human rights defenders, and to bring to justice those found responsible. Please provide individual outcomes of each case.”⁴

There has been a noticeable decline in the security of human rights defenders. As a number of organizations have reported, at least 18 human rights defenders have been killed or disappeared in the last few years. Many were environmental activists who challenged businesses, officials, or other local power-holders.⁵ In those few cases where police made arrests, defendants were typically gunmen rather than masterminds of the killings. As recently as June 17, a Buddhist monk who had been challenging illegal loggers was stabbed to death in Chiang Mai’s Fang district. Phra Supoj Suvajano had been receiving death threats for years but could not obtain government protection.⁶

Thailand deserves recognition for its invitation to the Special Representative of the Secretary General on Human Rights Defenders. Ms. Jilani had a productive visit, after which she expressed alarm over deteriorating human rights conditions and noted with concern statements by government officials attacking NGOs, and human rights advocates.⁷

Human rights organizations must be able to monitor and report on abuses in order to promote respect for human rights by the Government of Thailand. The Preamble of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration on Human Rights Defenders) states that governments must “Acknowledg[e] the important role of ... the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”

The treatment of human rights defenders is especially worrying considering Thai government efforts to undermine the official National Human Rights Commission and to exclude the Special Rapporteur on Extrajudicial Executions following the Tak Bai incident. Members of the National Human Rights Commission have even received death threats after raising the spate of killings tied to anti-drug measures in 2003, and again for addressing the violence in the southern states the following year.⁸ Such

³ For a more comprehensive review, see Asian Legal Resource Centre, “Institutionalised torture, extrajudicial killings & uneven application of law in Thailand: An alternative report to the initial report of Thailand to the Human Rights Committee.” March 2005, revised April 2005.

⁴ *List of Issues: Thailand*, U.N. Doc. CCPR/C/L/THA, April 28, 2005.

⁵ *Fah Diew Kan*, October 2004.

⁶ “Lost Protectors Of Human Rights: ‘Misguided policies’ blamed for killings,” *The Nation* (Bangkok), June 24, 2005.

⁷ *Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani: Mission to Thailand*, U.N. Doc. E/CN.4/2004/94/Add.1, March 12, 2004.

⁸ National Human Rights Institutions Forum, “Thailand Human Rights Commissioner under threat,” March 10, 2003; U.S. Department of State, “Country Reports on Human Rights Practices - 2004: Thailand,” February 28, 2005.

a multi-faceted effort to prevent investigation or critique fosters an atmosphere of impunity and inevitably leads to further abuses. In such a climate, domestic human rights defenders play an extremely important role in bringing abuses to light.

The disappearance of Somchai Neelaphaijit

The disappearance of Somchai Neelaphaijit is important in its own right, and also illustrates several patterns relevant to the work of the Committee:

- A human rights defender speaking out against torture reportedly received numerous threats before disappearing.
- Since his disappearance, a weak legal framework has impeded meaningful prosecution of the crime.
- The government has failed to live up to its obligations to fully investigate the crime, by refusing to cooperate with investigations and providing contradictory information on whether the Department of Special Investigation was looking into the disappearance. Article 9(5) of the 1998 U.N. Declaration on Human Rights Defenders states that the State shall ensure that a prompt and impartial investigation takes place whenever there is reason to believe that a violation of human rights has occurred.

As is now well-known, Somchai, chair of the Muslim Lawyers Group and vice chair of the Law Society of Thailand, was representing several groups of men in the aftermath of the violence in the southern region of Thailand. One group of five clients had been detained on February 23, 2004, on charges involving “national security, conspiracy to commit rebellion, to recruit people and gather arms to commit rebellion, to function as secret society and to act as criminal gang.”

On March 4, Somchai sought a court order for the five to receive a physical examination for effects of torture. His application 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, hand-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 piece of fork charged with electrical currents, on the back of his torso and right shoulder. As a result, the Suspect had to make a confession.⁹

Just two weeks earlier, Somchai delivered a speech on police torture and impunity that one journalist described as “a powerful, bitter, outraged speech.”¹⁰ Somchai alleged torture by members of the police

⁹ “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).

¹⁰ Kavi Chongkittavorn, “The politics of disappearance - Thai-style,” *The Nation* (Bangkok), March 29, 2004.

Crime Suppression Division and called for an end to martial law. Finally, on March 11, Mr. Somchai wrote a letter to government authorities detailing the torture his clients received at the hands of police. He wrote:

I would like to present the truth to you. I truly hope that there will be further investigation into the abuse of power and torture of the suspects by inquiry officials. And finally, I sincerely hope that there will be improvement in the treatment of suspects in the future.

He disappeared the next day. Somchai was last seen at the Chaleena Hotel in the Ramkamhaeng area. His car was later found abandoned with a fresh dent in the back, suggesting it had been rammed from behind.

Following international and domestic outcry, five policemen were indicted in June 2004 in connection with his disappearance. But progress in the case has been disappointing. The trial, which will not begin until August 2005, will be based on charges of gang robbery of Mr. Somchai's car, watch, pen, and cell phone, and "coercion by threatening bodily harm or death." Under current Thai law, the absence of a body is an obstacle to more serious charges, while provisions on kidnapping only apply where there are efforts to obtain a ransom. These loopholes place an extra burden on investigators, and also point to the need for a new legal framework on forced disappearances.

The combination of the inadequate legal framework and the failure to support a truly independent investigation raises fears that those responsible for the crime will not be adequately punished. Thai human rights organizations have questioned if it was appropriate for the police force to be trusted to investigate its own members.

There are ample reasons for concern. The United States Department of State, in its 2004 human rights report, cited Thai prosecutors that the police were often an obstacle to the prosecution of members of the force, leading to a "climate of impunity that persisted in preventing any major change in police behavior."¹¹

Perhaps recognizing the lack of public confidence in the police, government officials claim to have launched a formal inquiry by the Justice Ministry's Department of Special Investigations. But these statements were then followed by conflicting statements that indicate no such probe is underway. The Asian Legal Rights Center received a letter from the Minister of Justice stating that "an ad hoc committee under the responsibility of the Special Investigation Department" had been set up and had made "a lot of progress." But the Minister of Justice later claimed that no steps had been taken because no request to his ministry had been made, despite the fact that Somchai's wife (a co-plaintiff in the case against the policemen charged in his disappearance) and colleagues at the Law Society of Thailand had made such a request.¹²

In a May 2005 communication to Human Rights First, an official with the Thai Government's Department of Rights and Liberties Protection stated that the case was the responsibility of the Royal

¹¹ U.S. Department of State, "Country Reports on Human Rights Practices - 2004: Thailand," February 28, 2005.

¹² Asian Legal Resource Centre, "Institutionalised torture, extrajudicial killings & uneven application of law in Thailand: An alternative report to the initial report of Thailand to the Human Rights Committee." March 2005, revised April 2005.

Thai Police, but added that “the Ministry of Justice has given an order to the Department of Special Investigation to take further investigation.” The government should clarify once and for all whether the DSI has in fact taken any such action. While the trial of the police suspects will commence in a few weeks, an adequate investigation might allow the filing of more appropriate charges, possibly identify further suspects, and set a precedent for how the government intends to address future attacks on human rights defenders.¹³

Government officials have also failed to cooperate with efforts by legislators to investigate the case. A Senate committee announced in May that it had little hope of solving Somchai’s disappearance due to poor cooperation from the police and government officials. Somchai’s wife, Angkhana Wongrachen, successfully fought for the right to call witnesses as a co-plaintiff in the case. Ms. Wongrachen was reportedly telephoned on the morning of April 18 by a man she identified as an intelligence official she had previously met. The caller asked her about her activities related to the United Nations. Several weeks earlier an unidentified man had visited and warned her not to advocate too publicly for justice in her husband’s case.¹⁴ These incidents threaten to further undermine the justice process.

While the trial does not begin until next month, the government’s handling of the case has already fostered impunity for torture and sent a message of indifference, if not outright hostility, to human rights defenders, especially those working with Muslim victims. The conduct of the trial will be a matter of close concern to the international human rights community.

The investigation of another slain defender, Charoen Wat-aksorn, has been even less effective. Charoen, an environmental and human rights activist from a Bo Nok fishing village, is known for leading a ten-year campaign against government plans to build two power plants.¹⁵ On June 21, 2004, Charoen was returning to Prachuap Khiri Khan from Bangkok when two men on a motorcycle gunned him down.¹⁶ Charoen had testified before a Senate committee regarding locally powerful figures allegedly involved in an attempt to grab public land.

Last month, Thai officials were reportedly wrapping up the one-year investigation into Charoen’s death.¹⁷ The Special Investigation Department (SID) had apprehended five suspects. The SID released three alleged masterminds on bail, but detained two suspected gunmen, who told investigators their motive was a personal grudge. The murder trial is on next year’s court docket. Meanwhile, community members, Charoen’s widow, and religious leaders are calling for a new investigation into Charoen’s death.¹⁸

Neither case is mentioned in the initial report of the State party.

¹³ We would draw the attention of the Committee to the recent example of Indonesia, where a fact-finding team appointed by the president following the murder of human rights activist Munir has made substantial contributions to the investigation.

¹⁴ Electronic communication, April 18, 2005.

¹⁵ “How a Fisherman Became a Hero,” *The Nation* (Bangkok), June 23, 2004.

¹⁶ “Charoen Killing: Govt Urged to Speed up Inquiry,” *The Nation* (Bangkok), June 23, 2004.

¹⁷ “Slain Activist Charoen: Will Justice Ever Be Served?” *The Nation* (Bangkok), June 21, 2005.

¹⁸ See: “Charoen Murder: Rally Demands New Probe,” *The Nation* (Bangkok) June 22, 2005; “Charoen’s Widow Fast Losing Faith in SID,” *The Nation* (Bangkok), June 25, 2005; “Thailand: Government Criticised [sic] for Putting Money Ahead of Human Rights,” Global News Wire - Asia Africa Intelligence Wire, June 28, 2005.

Counterterrorism and Human Rights

5. Please provide information about the anti-terrorism laws adopted in the State party, if any, and their compatibility with the Covenant, in particular articles 6,7,9, and 14.¹⁹

Human Rights First appreciates the Committee's interest in the human rights implications of counterterrorism legislation. As part of that assessment, we urge the Committee to look at the law as one element of a broader regional trend to use counterterrorism as an excuse to clamp down on human rights defenders and restrict rights more broadly.²⁰

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. The decrees were issued under Section 218 of the 1997 Constitution, which states:

For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force as an Act.

Human rights organizations have argued that a decree was unnecessary given provisions in the Penal Code and the law on anti-money laundering.²¹ Moreover, the decrees were rushed through in advance of the October 2003 Asia-Pacific Economic Cooperation (APEC) meetings in Bangkok, and on the heels of attacks in Indonesia.²² There are also indications that the decrees were meant to facilitate the arrest of international terrorism suspect Hambali, who was then handed over to U.S. authorities. His whereabouts remain unknown.

It is troubling that such broad decrees, which include provisions carrying the death penalty, were enacted without prior parliamentary debate or approval. Article 218 does include provisions for the review of such a decree by the Senate and House of Representatives "without delay," as well as by the Constitutional Court. The legislature referred the issue to the Constitutional Court for a decision on the decrees' constitutionality, and in early 2004, the Court ruled to uphold them.²³

The substance of the law

The decree amends the Thai Penal Code to provide that individuals who commit "terrorist acts" will be punished by death, imprisonment or fines. Section 135/1²⁴ defines a terrorist act as (1) violence against a

¹⁹ *List of Issues: Thailand*, U.N. Doc. CCPR/C/L/THA, April 28, 2005.

²⁰ See Human Rights First, *The New Dissidents*, February 2005, and *Reformasi and Resistance*, May 2005, the first in a series of reports on human rights defenders and counterterrorism.

²¹ Marwaan Macan-Markar, "Thai Gov't Faces Political Storm Over Anti-Terrorism Law," Inter Press Service, August 13, 2003.

²² Samantha Brown, "Rights Groups Baffled by Speed of New Thai Anti-Terrorism Law," Agence France-Presse, August 12, 2003.

²³ The Asia Pacific Forum of National Human Rights Organizations, "Reference on the Rule of Law in Combating Terrorism: Final Report," May 2004, p. 125.

²⁴ "Whoever commits any of the following criminal offences:

(1) an act of violence or any act to cause death or serious injury to the life and freedom of an individual;

person, serious damage to public infrastructure, or damage that causes major economic loss to State or private property that is (2) designed to intimidate a group or threaten the national or foreign governments. Section 135/2²⁵ 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 135/3²⁶ creates liability for any “supporter” of an individual who commits a terrorist act under sections 135/1 and 135/2. Section 135/4²⁷ grants jurisdiction to imprison and fine any individual who is part of a terrorist group as designated by the United Nations and endorsed by the Thai government.

These provisions raise several concerns:

- **Overly broad definition of a “terrorist act”:** It is possible that some criminal offenses resulting in injury to a person or property could be considered terrorist acts under this provision, exposing ordinary criminals 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

(2) an act causing serious damage to a public transportation system, a telecommunication system, or an infrastructure facility of public use;

(3) an act causing damage to property belonging to a State or an individual, or the environment, resulting or likely to result in major economic loss,

if the commission of the offence is intended to threaten or coerce the Royal Thai Government, or any foreign government, or an international organisation, to do or abstain from doing any act which causes serious damages, or is intended to raise unrest so as to intimidate a population, that person is said to commit a terrorist act and shall be punished with death, imprisonment for life of three to twenty years and fine of sixty thousand to one million baht. 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.” Source: Sanjay Gathia and Calum Crozier, “Mapping of Definitions of ‘terrorism’,” Forum Asia, November 2004.

²⁵ *Ibid.* “Whoever:

1) threatens to commit a terrorist act by demonstrating behaviour which leads to a reasonable belief that the person will do as threatened;

2) collects forces or arms, provides or compiles any assets, gives or receives training relating to terrorism, makes preparations or conspires to commit a terrorist act, or commits any offence which is part of the plot to commit a terrorist act, or instigate the people to partake in committing a terrorist act or does any act to conceal the knowledge of a terrorist act, shall be punished with imprisonment of two to ten years and fine of forty thousand to two hundred thousand baht.”

²⁶ *Ibid.* “Whoever being a supporter to commit any offence mentioned in Section 135/1 or 135/2 shall be liable to the same punishment as a principal in such offence.”

²⁷ *Ibid.* “A person who is a member of a group designated by a United Nations Security Council resolution or declaration as a group committing an act of terrorism, which resolution or declaration has been endorsed by the Royal Thai Government, shall be liable to imprisonment not exceeding seven years and to fine not exceeding one hundred forty thousand baht.”

of freedom of expression that should not be subject to criminal sanctions. Restrictions on freedom of assembly in Thailand violate Article 5 (a) of the UN Declaration on Human Rights Defenders as well as Article 21 of the Covenant.

The need for a definition of terrorist crimes in the Penal Code is clear, as well as 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.

Implementation

It is unclear to what extent these decrees have been used to date in Thailand, and we hope the discussion before the Committee will help shed some light on the subject. There are indications that the joint U.S.-Thai capture of Hambali (alias Riduan Isamuddin) was facilitated by the anti-terrorism decrees issued just prior to the arrest.²⁸ Prime Minister Thaksin cited both APEC and the arrest of Hambali as reasons for urgency: "If we wait the two laws to be passed by the parliament in normal procedures, it will take much more time; while the threat caused by Hambali must be urgently dealt with."²⁹ As noted above, Hambali's location remains unknown, and he has never been charged by either Thailand or the United States. He is assumed to be in U.S. custody, although the United States and Britain have denied press reports indicating that he has been detained on the island of Diego Garcia.³⁰

Other cases thought to have been brought under the new provisions include:

- In December 2004, four Islamic teachers suspected of separatist violence in Southern Thailand were charged with terrorism and treason. Four additional Islamic teachers were arrested in January 2005. Thai military officials have deemed the eight masterminds behind theft of government firearms and attacks on civilians. On April 11 2005, a court delayed the trial to allow the suspects more time to prepare a defense.³¹
- Zakaria Mohamad Saffie, 27, was accused of assisting a February 12, 2004 attack on a police station in Betong, Yala, by ferrying suspects wanted by Thai police. The driver claimed he did not know who the passengers were. Saffie faced the death penalty under the terrorist law. The status of his case is unknown.³²

²⁸ Paul Chambers, "U.S.-Thai Relations after 9/11: A New Era in Cooperation?" *Contemporary Southeast Asia*. Singapore: December, 2004. Vol.26, Iss. 3.

²⁹ "Prime Minister Reveals Reasons Behind Enactment of New Anti-Terrorism Laws," *Global News Wire*, August 18, 2003

³⁰ Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations; 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *Washington Post*, Dec. 26 2002; Mark Seddon, "Is There Another Guantanamo Bay on British Soil," *Independent*, Dec. 13, 2003, in Human Rights First, *Ending Secret Detentions*, June 2004.

³¹ The eight are: Waeyuso Waeduramae, Muhamad Kanafi Doloh, Abdul Roseh Hayidoloh, Ahama Bula, Toreh Disaeh, Saleh Deng, Masugree Hari, and Hama Jeahteh. "Islamic Teachers Face Terrorism Charges as Thai Capital Is Warned of Threat," *Agence France-Presse*, December 17, 2004; "Trial Delayed for Eight Islamic Teachers Accused in Thai Unrest," *Agence France-Presse*, April 11, 2005.

³² "Malaysian Cabbie in Thai Court for Abetting Terrorists," *Kyodo News Service*, April 15, 2004.

It is also important to look beyond the legislative arena to see how the language of counterterrorism is used. Thai authorities have characterized the worsening conflict in southern Thailand as a product of either criminal gangs or terrorism. Human rights activists who have sought to defend apparent victims of governmental repression have been criticized as terrorist sympathizers. For example, Somchai was told shortly before he disappeared that he was on a “terrorist blacklist” for his work representing suspected militants and terrorists. Another defender told Human Rights First he was warned he was on the same list just prior to Somchai’s death.³³

Human Rights First urges the Committee to follow up on its communications with the Government of Thailand on this important issue, including the questions below.

Questions on Human Rights Defenders

What is the status of the Special Investigations Division involvement in the Somchai Neelaphaijit case?

What plans are there to address the weak legal framework on forced disappearances?

What steps have been taken to implement the recommendations of the Special Representative on Human Rights Defenders Hina Jilani?

What measures are in place to protect human rights defenders whose safety has been threatened?

Questions on Counterterrorism Laws

How many cases have been brought under the revised penal code provisions and what is their status?

What was the nature of the review by the legislative branch and the Constitutional Court?

To what extent have the counterterrorism provisions been applied in southern Thailand? How have they been affected by martial law, including the Prime Minister’s recent assumption of additional emergency powers?

³³ Human Rights First interview, November 2004.