



**“MAKE HIM SPEAK BY  
TOMORROW”:**

TORTURE AND OTHER ILL-TREATMENT IN THAILAND

**AMNESTY  
INTERNATIONAL**



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# EXECUTIVE SUMMARY

**“They asked, ‘*Did you do it?*’ Whoever said ‘*no*’, they shocked. We were all crying and screaming. They shocked my genitals, chest and ears. They did the same with the others. I was shocked more than 20 times... Then they covered my face with plastic garbage bags and tightened them so I couldn’t breathe, until I fell down... They kept telling us to confess. I feared I would die. I was thinking about my wife, my children. I didn’t want to lose them.”**

A 47-year-old *Lahu* man describing torture by police officers after being stopped at a roadside checkpoint in Chiang Mai province.

In recent years, soldiers and police officers in Thailand have routinely used torture and other ill-treatment against individuals in their custody, despite repeated assertions by authorities to the contrary. Torture has often occurred behind closed doors: at military bases, detention centres, police stations and unofficial places of detention. At other times, torture has occurred in public view: on a street or at a police roadblock. Victims have been suspected insurgents, government critics, and migrant workers, suspected drug users, ethnic minorities and others from various walks of life. These abuses have been facilitated by a legal and institutional framework that, on the one hand, inadequately safeguards against torture and other ill-treatment and, on the other, fails to ensure accountability for perpetrators or justice for victims.

This report describes 74 cases of torture or other ill-treatment documented by Amnesty International during six visits to Thailand between 2014 and 2015. The report reviews and analyses the failures in Thailand’s laws, policies and practices that have facilitated these appalling human rights violations and provides detailed recommendations to the Thai authorities on the steps needed to put an end to torture and other ill-treatment in the country.

On 22 May 2014, military leaders overthrew a caretaker government in a bloodless coup in Thailand, ending months of political uncertainty and street protests. The National Council for Peace and Order (NCPO), as the military government is known, promised to reform government before restoring democratic rule. The timeline for elections and political transition has been repeatedly extended. At the time of writing, it appears the

NCPO will remain in power until elections are held in late-2017, at the earliest, and a new government is installed.

The NCPO inherited a host of challenges beyond Thailand's longstanding political crisis. In southern Thailand, ethnic-Malay separatists have waged a bloody insurgency that has left thousands dead and deeply scarred the civilian population in the region. Regional migration crises, drug trafficking, and threats to national security have also demanded the NCPO's attention. In responding to these challenges, Thai authorities have often resorted to torture and other ill-treatment, in violation of Thailand's obligations under international law.

## **TORTURE FACILITATING LAWS AND PROCESSES**

Thailand is a state party to the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the key international treaty concerning torture. The Convention bans torture and other ill-treatment absolutely, in all circumstances and without exception. Thailand is also a party to other international treaties that prohibit torture and other ill-treatment. The Royal Thai Government is therefore obligated to act effectively to prevent and remedy torture and other ill-treatment. As described in this report, there is much more that the Thai authorities could be, and should be, doing.

Thailand's legal framework insufficiently protects individuals from torture and other forms of ill-treatment. The 2014 Interim Constitution, promulgated by the NCPO shortly after the coup, is silent on the issue of torture. Moreover, Thailand's Penal Code does not define torture as a distinct criminal offence, nor does Thai law unequivocally prohibit the use in court of evidence obtained through torture or other ill-treatment.

Thai law establishes several key legal safeguards against torture, including the duty to bring detainees before a court within 48 hours of arrest and the right of detainees to have legal counsel present during questioning. However, several laws and government orders override these protections, including the Martial Law Act of 1914 and Head of NCPO Orders No. 3/2558 (2015) and 13/2559 (2016) (hereafter Order No. 3/2558 and 13/2559). These laws and orders give military officers the right to detain individuals in unofficial places of detention – “premises other than police stations, detention facilities, or prisons”, according to the two orders – without judicial oversight for periods of up to seven days. In other words, detainees may be held in unacknowledged, unregulated, and unsupervised detention, stripping them of key safeguards against torture and other ill-treatment.

The Martial Law Act has been applied continuously in conflicted affected areas of southern Thailand since 2006, alongside an Emergency Decree on Public Administration in State of Emergency (hereafter Emergency Decree), which allows for a further 30 days of military detention with court approval. Two days before the coup, the military imposed martial law throughout Thailand. In April 2015, martial law was repealed – except in the southern provinces – and replaced by Order No. 3/2558, which grants military officers powers to detain individuals for alleged offenses against the monarchy and serious security threats. Order No. 13/2559, issued in March 2016, expanded the military's powers of detention to cover a broad range of criminal activities.

Amnesty International found that torture and other ill-treatment by soldiers overwhelmingly occurred during the seven day period of unaccountable detention authorized by these laws and orders. Amnesty International also found that police officers regularly circumvented safeguards against torture and other ill-treatment provided by Thai law by, for example, interrogating detainees outside police stations and by using violence, intimidation and humiliation to secure bribes instead of processing cases within the criminal justice system.

These deficiencies in Thailand's legal framework, policies and practices have had grave consequences for individuals and communities throughout the country.

## TORTURE IN THAILAND'S "DEEP SOUTH"

In southern Thailand, soldiers have routinely tortured suspected insurgents and others in military camps during the seven days of unaccountable detention authorized by Martial Law. Victims described being kicked, beaten with fists, sticks and the butts of guns, choked, strangled, suffocated with plastic bags, and subjected to waterboarding, among other types of abuses. These forms of torture and other ill-treatment were often applied in an attempt to force detainees to confess to crimes or provide information to support counter-insurgency efforts. After seven days of detention and abuse, most detainees were transferred to Ingkayuthboriharn Army Camp (hereafter Ingkayuth), where the conditions of detention improved significantly for most individuals. However, a few of those interviewed by Amnesty International also described being tortured or ill-treated at Ingkayuth.

"Fisal" (not his real name), a man in his late 20s who was arrested in southern Thailand in late 2013, told Amnesty International about how he was tortured by soldiers immediately following his arrest:

*"They asked me to identify myself in a photo. I said it wasn't me. They repeated the question and after I denied it for the third time they started kicking me. Then they handcuffed my hands behind my back with steel cuffs. They used a scarf to choke me from behind, asking me: did you [commit the crime]? There were six of them. Whenever I ran out of breath they'd stop, then do it again. They repeated it three times. I felt I would die at any moment. Then they used a plastic bag that they found and put it over my head and tightened it from behind with a scarf. They also slapped and kicked me, and beat me with the butts of their guns on my back and chest. I couldn't breathe from all of this. I was crying and saying, 'I didn't do anything', but they didn't stop. This lasted about half an hour. Then I passed out. They poured water on me to wake me up."*

"Fisal" told Amnesty International that he was subsequently transferred to a Taskforce base, where he was held and tortured for a week before being released without charge. In addition to further physical abuse, "Fisal" was humiliated and subjected to a mock execution.

## TORTURE OF THOSE ACCUSED OF "POLITICAL" CRIMES AND ACTS OF POLITICALLY-MOTIVATED VIOLENCE

In the contentious post-coup environment, martial law and Order No. 3/2558 have facilitated the detention of hundreds of political figures, activists, journalists, academics and others at army bases and elsewhere. Often these periods of detention took the form of "attitude adjustment" sessions in which detainees were held for up to seven days, questioned about their activities and motives, and "encouraged" to refrain from future political activities. In many cases, the conditions of their detention and treatment by officials – including incommunicado detention, exertion of psychological pressures, prolonged blindfolding, and restrictive conditions of release – could constitute cruel, inhuman or degrading treatment or punishment.

For others, these were seven days of torture, often using the same methods employed in the counter-insurgency context in southern Thailand. "Lert" was summoned for questioning by the army soon after the coup. He told Amnesty International about his experience of being blindfolded and severely beaten while he was interrogated at an army camp in Bangkok:

*"They interrogated me from noon – or maybe 11am – to 8 or 9pm every day for four consecutive days. They would not give me water during this time. There were two or three strong men who would attack and beat me during the interrogation. They'd hit me with their fists or kick me with their feet. I could tell there were*

*different people because their voices were different. They wanted me to confess and they said they had recorded me on camera.*

*I never said no; I always had to say yes to their questions. I'd fall down from the beating, and then they would pull me up. I would fall off the chair; sometimes I just could not breathe. They would put me back on the chair to carry on with the interrogation. I was hit on the chest, sometimes with a solid weapon or object that made a clunking noise. It made my muscles tense up. If I tensed my body when they hit me, the impact of the beating would be more painful, so I tried to relax my muscles. They said to me on the second day, 'Today you have to speak or your family will be in trouble. I know where [they] live'. They threatened that they would abduct members of my family and make them disappear."*

The extensive use of torture in southern Thailand and in the context of political and security-related cases – as described in this report, and documented by Thai NGOs – as well as the serious shortcomings in Thailand's legal framework relating to torture, have led Amnesty International to conclude that torture and ill-treatment by military officers in Thailand is systematic, as defined by Article 20 of the UN Convention against Torture.

## **TORTURE IN THE CONTEXT OF LAW ENFORCEMENT OPERATIONS**

Torture and other ill-treatment are not limited to just the counter-insurgency operations in southern Thailand or political and security cases arising since the coup. In recent years, police officers and soldiers have regularly tortured or otherwise ill-treated suspected drug users, migrant workers, members of ethnic minorities, indigenous peoples and others as part of routine law enforcement operations. Police officers and soldiers who inflicted torture or other ill-treatment in the context of law enforcement or routine security operations are generally not exercising powers granted by the Martial Law Act or Order No. 3/2558. Rather, they routinely circumvent the safeguards against torture provided in the Criminal Procedure Code and elsewhere in ordinary Thai law, including by perpetrating abuses away from police stations at locations such as temporary roadblocks, city streets or other public spaces. However, Amnesty International is deeply concerned that Order No. 13/2559, providing military officers powers of unregulated detention in relation to a wide range of criminal offences, will facilitate abuses within a broader context.

The use of public humiliation is a hallmark of the police response to suspected drug users in Thailand. Amnesty International found that police officers often force drug users to urinate in public at roadblocks or on city streets, ostensibly for the purpose of a drug test. Additionally, police officers have often used the enforcement of drug laws as a pretext for extorting money from vulnerable individuals, using violence, humiliation and threats to ensure that bribes are paid.

Migrant workers in Thailand, many of whom are undocumented and unregistered, are similarly susceptible to abuses of power by government officials. In particular, the authorities' power to summarily deport individuals without providing access to judicial or administrative processes makes migrants particularly vulnerable to violence, coercion and extortion. Most of the encounters documented by Amnesty International ended with detained migrant workers paying a bribe.

## **ENDING THE USE OF TORTURE IN THAILAND**

Victims of torture face numerous challenges in securing redress. The Interim Constitution, Martial Law Act, Emergency Decree, and Order No. 3/2558 and Order No. 13/2559 each contain immunity provisions that could be – and have been – used to shield military and other authorities from accountability for acts of torture and other ill-treatment. Moreover, Amnesty International found that police officers, prosecutors and courts, when confronted with allegations of torture or other ill-treatment are often unable or unwilling to investigate such allegations promptly, independently, impartially and effectively, as required by international

law and standards.

In reports submitted to the UN Human Rights Committee and the UN Committee against Torture, the Thai government has committed to upholding its international obligations regarding the prohibition of torture and other ill-treatment. Additionally, in recent years, the Thai government has held promising consultations with local and international NGOs, including Amnesty International, regarding the introduction of anti-torture legislation. At the time of writing, the draft Prevention and Suppression of Torture and Enforced Disappearance Act (hereafter “Torture and Enforced Disappearance Act”) is being considered by the National Legislative Assembly. If additional amendments are made to ensure full compliance with the UN Convention against Torture, this law would represent a significant step towards preventing torture in the country. Amending and passing the bill should be one of the government’s top priorities.

Ending the use of torture and other ill-treatment by officials will require a concerted, sustained and multifaceted effort that incorporates the establishment of new bodies and processes, the training of soldiers, police officers, judges and civil servants, cooperation with the international community, and additional legislative reform beyond passing the aforementioned bill. Moreover, to end torture, Thai authorities will need to reverse the widespread impunity enjoyed by the security services and establish military and police cultures that respect and protect individuals from all sectors of society.

## KEY RECOMMENDATIONS

- **End unaccountable detention:** Repeal or amend the 1914 Martial Law Act, the Emergency Decree of 2005 and Orders No. 3/2558 and 13/2559 to ensure compliance with international human rights law and standards, including by ensuring that individuals are only detained in official places of detention with prompt access to lawyers, family members and independent courts, and by ensuring that all questioning takes place in the presence of an independent lawyer.
- **Criminalize torture:** Ensure that the draft Torture and Enforced Disappearance Act fully complies with the requirements of the UN Convention against Torture and then pass it into law without delay.
- **Ban the use of evidence obtained by torture or other ill-treatment:** Ensure in law and practice that “confessions” and other statements obtained through torture or ill-treatment are never admitted as evidence in courts, including by amending section 226(1) of the Criminal Procedure Code.
- **Investigate and prosecute:** End impunity by creating or assigning, as part of the Torture and Enforced Disappearance Act, an independent, accessible, civilian body to promptly, impartially and efficiently investigate all complaints and other reports of torture and ill-treatment, and where sufficient admissible evidence is found, prosecute suspected perpetrators, irrespective of rank or status, in fair trials.
- **Create a monitoring body:** Ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by establishing an independent, efficient and well-resourced National Preventive Mechanism with powers to conduct unimpeded and unannounced visits to all places of detention and all persons deprived of their liberty.
- **Provide remedies to victims of torture and other ill-treatment:** Institute a systematic and comprehensive range of effective and accessible measures, in consultation with victims of torture and their representatives, to grant all victims of torture and other ill-treatment reparations in accordance with international standards, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.



## METHODOLOGY

This report builds on concerns raised by Amnesty International and other non-governmental organizations at the UN Committee against Torture's (CAT) first review of Thailand's implementation of commitments under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 2014. It is based on research conducted by Amnesty International during six visits to Thailand in 2014 and 2015. The report also draws from desk research, from evidence shared with Amnesty International by local partners, and from a variety of other sources, including government officials.

Amnesty International documented 74 cases of torture or other ill-treatment. Amnesty International delegates interviewed 57 survivors of torture or other ill-treatment and 19 family members or lawyers who met victims during or shortly after their interrogation.<sup>1</sup> Reliance on second-hand testimony was necessary because government officials often denied Amnesty International access to places of detention. In some cases, Amnesty International reviewed letters written by victims describing their experiences, which were provided to Amnesty International by Thai Lawyers for Human Rights (TLHR), an NGO. This report also draws from discussions with members of human rights and community-based organizations, as well as judges, prosecutors and commissioners from the National Human Rights Commission.

When possible, Amnesty International analysed legal and medical records and other documents relating to cases described in the report. However, in the majority of cases, victims did not file complaints about acts of torture, and it has not been possible to obtain documentary evidence to corroborate the testimonies of the victims themselves, their family members and their lawyers. This is due in large part to the fact that many victims fear reprisals should they complain; doctors hesitate to document injuries sustained in detention and to attribute them to torture, and authorities seldom investigate reports of torture.

Amnesty International is grateful to Thai authorities for granting access to the country and to local officials – including a military interrogation unit, a prosecutor, and policemen – who agreed to meet the delegates. On multiple occasions in 2015, Amnesty International requested the Thai authorities' permission to access detention centres and prisons. The authorities often refused on the basis that suitable facilities were not available for meetings with detainees. Police and military authorities allowed the delegates to speak to students detained at the Bangkok Remand Prison in July 2015 and to visit Ingkayuth army camp, although no access was provided to the interrogation facilities or to detainees held there. On one occasion, police allowed delegates to visit persons detained in a police station for suspected drug-related offences.

Government officials have not responded to a December 2015 letter requesting a meeting to discuss the findings of Amnesty International's research. However, Amnesty International met with representatives of the Ministry of Justice's Department of Rights and Liberties and other government officials to discuss the Draft Prevention and Suppression of Torture and Enforced Disappearance Act.<sup>2</sup>

More generally, Amnesty International's research was impeded by restrictions on freedom of expression and the Thai government's increasing intolerance of criticism and dissent. These trends have caused deep apprehension and fear in Thai society, particularly among torture victims and their families. For this reason, Amnesty International has withheld or altered the names of many victims and other interviewees. Details that could help identify interviewees – including places, dates, and distinctive facts – have also been omitted in many cases. The date and location of interviews have also been withheld from many footnotes.

Despite the evidentiary challenges described above, the consistency of evidence in various forms – including first-hand testimony by torture victims, second-hand accounts from family members, lawyers, journalists,

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<sup>1</sup> These numbers overlap as in 13 of the cases Amnesty International interviewed both the detainees and their family members.

<sup>2</sup> Meetings took place in October 2014, April 2015 and March 2016.

and NGO representatives, and documentary evidence – supports Amnesty International's conclusions regarding Thai authorities' complicity in acts of torture.

Amnesty International would like to thank organizations in Thailand that provide legal assistance and support to detainees, including by assisting them to seek official redress. In particular, Amnesty International is grateful to the Cross-Cultural Foundation, the Muslim Attorney Centre, and other partner organizations that facilitated interviews and provided support in gathering and verifying the information contained in this report.

# 1. TORTURE- FACILITATING LAWS AND PROCESSES

**“The Committee is concerned about the absence of a definition of torture and that torture is not recognized as an offence, in accordance with the Convention, in the State party’s legal system.”**

UN Committee against Torture, concluding observations on Thailand, 20 June 2014.

Amnesty International has extensively documented Thailand’s failure to provide adequate safeguards against torture and other ill-treatment and has consistently called for the reform of laws and institutions to prevent and remedy such conduct.<sup>3</sup> Thailand is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).<sup>4</sup> However, the Thai authorities’ failure to introduce legislation that ensures compliance with the Convention has contributed to the persistence of these violations. Not least, the Thai government’s actions since the 2014 coup – including the nationwide declaration of martial law and the imposition of NCPO Orders granting military officers sweeping powers to arrest and detain individuals without judicial oversight – have further undermined protections against torture within Thailand’s legal and administrative framework.

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<sup>3</sup> See, for example, Amnesty International, *Thailand: Widespread abuses in the administration of justice* (ASA 39/003/2002), June 2002, [www.amnesty.org/en/documents/asa39/003/2002/en/](http://www.amnesty.org/en/documents/asa39/003/2002/en/) (accessed 19/09/2016)

<sup>4</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted by General Assembly resolution 39/46, 10 December 1984, entered into force 26 June 1987. Thailand’s accession on 2 October 2007 was accompanied by interpretative declarations on Articles 1, 4, and 5, and a reservation to Article 30. Thailand also declared that it is not bound by Articles 21 and 22.

# THAILAND'S OBLIGATIONS UNDER INTERNATIONAL LAW

International law prohibits torture and other cruel, inhuman or degrading treatment or punishment (hereafter, "other ill-treatment") absolutely, in all circumstances and without exception.

In addition to the Convention against Torture, Thailand is also a party to the International Covenant on Civil and Political Rights (ICCPR), which, like the Convention against Torture prohibits torture and other ill-treatment in all circumstances and without exception, as well as other treaties that apply to specific contexts.<sup>5</sup> The prohibition against torture and other ill-treatment is also a rule of customary international law binding on all nations.<sup>6</sup>

According to Article 1(1) of the UN Convention against Torture, an act constitutes torture if four elements are present: (1) intention, (2) infliction of severe physical or mental pain or suffering, (3) a purpose such as coercion, intimidation, obtaining information or a confession, or discrimination and (4) a degree of official involvement.<sup>7</sup>

In contrast, cruel, inhuman or degrading treatment or punishment is not defined under international law. In line with the position of many international and regional human rights monitoring bodies, Amnesty International considers that cruel, inhuman or degrading treatment or punishment may be defined negatively in relation to torture in that it lacks one or more of the above-mentioned elements of the torture definition.<sup>8</sup>

The Convention against Torture obliges Thailand to take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".<sup>9</sup> Thailand's obligations include the duty to criminalize torture, to investigate allegations of torture and other ill-treatment promptly and impartially, to bring suspected perpetrators to justice, to provide remedies to victims, to train all officials involved in the handling of detainees regarding the prohibition of torture and other ill-treatment, to implement safeguards to prevent torture and other ill-treatment, and to refrain from sending or returning (*refouler*) a person to a state where she or he risks being subjected to torture, ill-treatment or other prohibited treatment.<sup>10</sup>

In its 2013 report to the CAT, Thailand outlined steps taken to comply with its obligations under the Convention against Torture.<sup>11</sup> After considering the report in 2014, the Committee recognized certain positive

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<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, Article 7; The Geneva Conventions, 12 August 1949; Convention on the Rights of the Child, adopted by General Assembly resolution 44/25, 20 November 1989, entered into force 2 September 1990, Articles 37(a) and 39; Convention on Rights of Persons with Disabilities, adopted by General Assembly without vote, 24 January 2007, entry into force 3 May 2008, Article 15.

<sup>6</sup> See, for example, International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundžija*, Trial Chamber Case No. IT-95-17/1-T (Judgement), 10 December 1998, paras. 153-154; International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Judgement of 30 November 2010, para. 87.

<sup>7</sup> For the full definition, see Convention against Torture, Article 1(1).

<sup>8</sup> See Convention against Torture, Article 16. See also Committee against Torture, General Comment 2, *Implementation of Article 2 by States Parties*, 24 January 2008, UN Doc. CAT/C/GC/2 (2008), para. 10. For example, an act of ill-treatment would constitute cruel, inhuman or degrading treatment or punishment rather than torture if it lacks the required intention or the required purpose, or if the pain or suffering it causes is not "severe".

<sup>9</sup> Convention against Torture, Article 2(1).

<sup>10</sup> Convention against Torture, Articles 3-16. See also Committee against Torture, General Comment 2, para. 25 ("Articles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention.").

<sup>11</sup> Committee against Torture, *Consideration of reports submitted by States parties under Article 19 of the Convention: Thailand* (Thailand's Initial Report to CAT), 9 July 2013, UN Doc. CAT/C/THA/1.

steps taken by Thailand, but highlighted numerous areas in which Thailand had failed to fulfil its obligations, including on emergency legislation and the investigation and prosecution of allegations of torture.<sup>12</sup>

Thailand has also not taken further steps to benefit from international cooperation in preventing torture and other ill-treatment. For example, Thailand has so far neither signed nor ratified the Optional Protocol to the Convention against Torture, which authorises both international and national bodies to visit all places of detention, despite affirming its intention to do so.<sup>13</sup> Thailand has also failed to facilitate a visit to the country by the UN Special Rapporteur on Torture, who was scheduled to travel to Thailand in 2014, but whose visit the government has repeatedly postponed.<sup>14</sup>

## INSUFFICIENT CONSTITUTIONAL SAFEGUARDS

Thailand's 2007 Constitution contained extensive and wide-ranging human rights provisions, including an explicit prohibition of "torture, brutal act[s] or punishment by cruel or inhumane means".<sup>15</sup> In contrast, the interim constitution promulgated by the NCPO in the wake of the 2014 coup contains only a cursory reference to rights and Thailand's obligations under international law and is silent on the issue of torture.<sup>16</sup> These shortcomings have not only impacted human rights on a declaratory level, but have also denied redress to victims of torture.<sup>17</sup>

Beyond failing to prohibit torture, the Interim Constitution also undermines safeguards against torture in a number of important ways, most concretely in Article 44. This Article provides the Head of the NCPO unchecked power to "order, restrain, or perform any act, whether such act has legislative, executive, or judicial force" in order to advance a number of vaguely-defined interests, including "promoting unity, national security, the monarchy, the economy" or "State affairs".<sup>18</sup> As discussed below, the use of Article 44 to issue Order No. 3/2558 – which replicates many aspects of martial law – has facilitated torture by military officials throughout the country.

On 29 March 2016, the Constitutional Drafting Commission released the final draft of a new constitution, scheduled to be voted on in a national referendum in August 2016. The draft prohibits torture and other ill-treatment under Article 28.<sup>19</sup> On 7 August 2016, the draft constitution was passed in a nationwide referendum, with 61 percent of voters approving the charter.<sup>20</sup> The new constitution states that NCPO orders, unless repealed, will continue to have the power of law under subsequent governments.<sup>21</sup>

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<sup>12</sup> Committee against Torture, *Concluding observations on the initial report of Thailand* (CAT Concluding Observations on Thailand), 20 June 2014, UN Doc. CAT/C/THA/CO/1.

<sup>13</sup> Committee against Torture, *Information received from Thailand on follow-up to the concluding observations* (Thailand Follow-Up Report to CAT), 16 June 2015 UN Doc. CAT/C/THA/CO/1/Add.1, para. 34.

<sup>14</sup> UN General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 23 September 2014, UN Doc. A/69/387 (2015), para. 4.

<sup>15</sup> Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Articles 26-69.

<sup>16</sup> Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), Article 4 ("Subject to the provisions of this Constitution, human dignity, rights, liberties and equality previously enjoyed by the Thai people with the protection under Thailand's administrative conventions of the democratic regime of government with the King as Head of State and Thailand's existing international obligations shall be protected under this Constitution.").

<sup>17</sup> For example, on 7 October 2014 the Pattani Provincial Court ruled that Hasan Useng was not entitled to judicial remedies or reparation because his request had been made under Article 32 of the 2007 Constitution, which had been revoked at the time of the judgment. See Amnesty International, "Thailand: Alleged torture victim denied redress", press release, 13 October 2014; <https://www.amnesty.org/en/press-releases/2014/10/thailand-alleged-torture-victim-denied-redress/>.

<sup>18</sup> Constitution of the Kingdom of Thailand (Interim), Article 44.

<sup>19</sup> English translation of the Draft Constitution Chapter 1-3, Pakorn Nilprapunt, 29 April 2016, [http://lawdrafter.blogspot.co.uk/2016/04/translation-of-draft-constitution.html?\\_sm\\_au\\_=iVVvWqVs6qHjw2gr](http://lawdrafter.blogspot.co.uk/2016/04/translation-of-draft-constitution.html?_sm_au_=iVVvWqVs6qHjw2gr).

<sup>20</sup> Thailand votes for a new constitution", *The Economist*, 8 August 2016, <http://www.economist.com/news/asia/21704593-charter-further-consolidates-power-army-thailand-votes-new-constitution>. Voters also approved an additional provision permitting the appointed Senate to take part in the selection of the Prime Minister.

<sup>21</sup> Constitution of the Kingdom of Thailand, B.E. 2559 (2016), Section 279.

## KEY LEGISLATION RELEVANT TO TORTURE AND OTHER ILL-TREATMENT BY MILITARY OFFICIALS

LEGISLATION	GEOGRAPHIC APPLICATION	RELEVANT PROVISIONS (SUMMARISED)
INTERIM CONSTITUTION (2014)	Throughout Thailand (currently)	44 – Unfettered legislative powers for NCPO Head irrespective of human rights considerations;  48 – Absolute impunity for anyone acting on behalf of NCPO.
MARTIAL LAW ACT (1914)	Southern Thailand (currently)  Throughout Thailand (May 2014-March 2015)	15 (ii) – Power of military authorities to detain anyone deemed an “enemy” of found to violate military orders with no safeguards for up to seven days;  16 – No right to make claims against the military personnel for actions performed under this Act.
HEAD OF NCPO ORDER 3/2558 (2015)	Throughout Thailand (April 2015-present)	6 – Power of military officers, appointed as “peacekeeping officers”, to detain persons suspected of a wide range of political and security-related offences in unofficial places with no safeguards for up to seven days;  14 – Impunity for anyone acting under the act “in good faith” and “without bias or undue severity”.
HEAD OF NCPO ORDER NO. 13/2559 (2016)	Throughout Thailand (March 2016 – present)	4 – Power of military officers, “prevention and suppression officers”), to detain persons suspected of a wide range of criminal offences <sup>22</sup> in unofficial places with no safeguards for up to seven days;  9 – Impunity from criminal liability for anyone acting under the act “in good faith, without discrimination, and not disproportionately and not unnecessarily”.
EMERGENCY DECREE ON PUBLIC ADMINISTRATION IN EMERGENCY SITUATIONS (2005)	Southern Thailand (2005 - present)	2 – Detention by army in unofficial places for first seven days;  12 – Further detention by army for 30 days;  17 – Immunity for act under the

<sup>22</sup> The Order lists 27 offences including gambling, immigration, tax evasion, custom, narcotics, and “prostitution”.

Decree performed “in good faith”.

## MARTIAL LAW, EMERGENCY DECREE, AND NCPO ORDERS

International law requires that an individual who is arrested or detained be promptly brought before a judge and be given the opportunity to challenge his or her ongoing detention.<sup>23</sup> The Human Rights Committee has clarified that detainees should be physically brought before a judge within “a few days” and that delays beyond 48 hours “must remain absolutely exceptional”.<sup>24</sup> Failure to comply with this obligation puts detainees at a greater risk of torture or other ill-treatment and indicates a failure to take necessary legislative, administrative and judicial measures to prevent torture.<sup>25</sup>

In Thailand, the Martial Law Act of 1914, the 2005 Emergency Decree for Public Administration in Emergency Situations (hereafter “Emergency Decree”),<sup>26</sup> and Orders No. 3/2558 and 13/2559 issued by the Head of the NCPO all provide for prolonged periods of detention by military authorities without judicial oversight or access to other safeguards provided by Thai law. As described in this report, the unchecked powers granted by these laws have facilitated torture and other ill-treatment of individuals in the custody of military personnel.

When invoked, the Martial Law Act grants sweeping powers to the army, including the power to conduct warrantless searches, try civilians in military courts and occupy or destroy property.<sup>27</sup> The Martial Law Act authorises military authorities to arrest and detain “enemies” or individuals who disobey military orders for up to seven days without bringing them before a court.<sup>28</sup> The Martial Law Act does not specify where individuals may be detained. In practice, because of the overlap with the Emergency Decree (see below), detainees have frequently been held at army camps or other locations controlled by the army.

Whereas the Martial Law Act allows for warrantless arrests, arrests made under the Emergency Decree require a warrant issued by a civilian court.<sup>29</sup> Officials may detain individuals for an initial period of seven days under the Emergency Decree and apply for additional seven-day periods of detention up to a total of 30 days.<sup>30</sup> Each seven-day period requires approval by a civilian court. However the approval may be obtained without the detainee physically appearing at the court.<sup>31</sup> After the 30-day period expires, further detention is governed by the Criminal Procedure Code.<sup>32</sup>

<sup>23</sup> See, for example ICCPR, Article 9(3)-(4). The requirement that a detainee be promptly brought before a judge applies explicitly to those detained on suspicion of criminal activity. However, the Human Rights Committee has also clarified that “security detention” not involving prosecution “presents severe risks of arbitrary deprivation of liberty”, and indeed “would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would not be available.” Human Rights Committee, General Comment No. 35, *Article 9: Liberty and security of person*, 16 December 2014, UN Doc. CCPR/C/GC/35, para. 15. Amnesty International is opposed to administrative detention in all circumstances.

<sup>24</sup> Human Rights Committee, General Comment 35, paras. 31-38.

<sup>25</sup> Human Rights Committee, General Comment 35, paras 31-38; Committee against Torture, General Comment 2, para. 13. When considering Thailand’s 2004 report to the Human Rights Committee, a member of the Committee clarified to Thai representatives that this period must be calculated as starting from the moment of arrest, not the moment when the person arrives at the place of detention. Human Rights Committee, *Summary Record of the 2293<sup>rd</sup> meeting*, 19 July 2005, UN Doc. CCPR/C/SR.2293, para. 30.

<sup>26</sup> Emergency Decree on Public Administration in State of Emergency (Emergency Decree), BE 2548 (2005).

<sup>27</sup> Martial Law Act, B.E. 2457 (1914), Articles 7 and 8. Amnesty International considers that military courts should not have the jurisdiction to try civilians, owing to the nature of these courts and because of concerns about their independence and impartiality. See Amnesty International, *Fair Trials Manual* (second edition) (AI Index: POL 30/002/2014), 9 April 2014, p. 225, <https://www.amnesty.org/en/documents/POL30/002/2014/en/>.

<sup>28</sup> Martial Law Act, Article 15(ii).

<sup>29</sup> Emergency Decree, section 12.

<sup>30</sup> Emergency Decree, section 12.

<sup>31</sup> Emergency Decree, section 12; Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per section 11 of the Emergency Decree on Government Administration in States of Emergency (ISOC

The Emergency Decree explicitly provides that detainees be held at a location “which is not a police station, detention centre, penal institution or prison” during the first seven days of detention.<sup>33</sup> In effect, this provision mandates that the military hold detainees in unofficial places of detention, in blatant violation of international law, which requires that anyone deprived of their liberty must only be held in a place of detention that is officially recognized.<sup>34</sup>

In Thailand’s southern provinces, where the Martial Law Act and Emergency Decree have applied concurrently since 2006, the periods of detentions authorized by these laws have nearly always been applied consecutively, allowing for up to 37 days of continuous detention without any effective judicial oversight.<sup>35</sup> As described in Chapter 2, in all cases documented by Amnesty International, the acts of torture and other ill-treatment in southern Thailand occurred during these periods.<sup>36</sup>

As noted above, on 20 May 2014, two days before the coup, the military imposed martial law throughout Thailand. On 1 April 2015, martial law was repealed – except in the far south – but immediately the Head of the NCPO and Prime Minister, General Prayuth Chan-O-cha, issued Order No. 3/2558 using the far-reaching powers granted to him by section 44 of the Interim Constitution. In practice, Order No. 3/2558 changed very little, transferring most of the powers exercised by soldiers under the Martial Law Act to “peacekeeping officers”, who are NCPO-appointed military officers.

Crucially, Order No. 3/2558 grants these authorities the right to detain individuals for violations of NCPO orders, certain security-related offenses, or offenses against the monarchy.<sup>37</sup> Detention may last up to seven days without judicial oversight, and other safeguards against torture do not apply until authorities have decided to charge the individual.<sup>38</sup> Like the Emergency Decree, Order No. 3/2558 provides that detainees are not to be held at police stations, prisons, or other official detention centres. As described in Chapter 3, the use of martial law and Order No. 3/2558 in the wake of the 2014 military coup have facilitated the arrest and torture or ill-treatment of persons suspected of security offences as well as persons apparently held on the basis of their perceived opposition to authorities, including activists, journalists and other critics of the military government.

Order No. 13/2559, promulgated on 29 March 2016, further extended the power of military authorities nationwide by permitting military officers appointed as “prevention and suppression officers” to detain persons suspected of a wide range of criminal offences in unofficial places with no safeguards for up to seven days.<sup>39</sup>

Amnesty International, like the CAT,<sup>40</sup> has raised concerns that the Martial Law Act and Emergency Decree facilitate torture and undermine safeguards provided by the Convention against Torture.<sup>41</sup> Amnesty

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Regulations), B.E. 2548 (2005), section 3.7.

<sup>32</sup> Emergency Decree, section 12.

<sup>33</sup> Emergency Decree, section 12.

<sup>34</sup> See, for example, International Convention for the Protection of All Persons from Enforced Disappearances, adopted by General Assembly resolution 61/177, 20 December 2006, entered into force 23 December 2010, Article 17(2)(c); Human Rights Committee, General Comment 20, *Article 7*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1992), para. 11.

<sup>35</sup> Amnesty International, *Torture in the Southern Counter-Insurgency* (AI Index: ASA 39/001/2009), January 2009, p. 25.

<sup>36</sup> In 2007, Internal Security Operations Command Region 4, the military command responsible for the southern provinces, issued a set of “Guidelines” for implementing the Emergency Decree. The Guidelines prohibit torture, threats and humiliation of individuals in military custody, but do not – in law or in practice – appear to have the same authority as the Decree itself. Moreover, as described in this report, the implementation of the rules relating to the treatment of detainees has been highly inconsistent. Other aspects of the Guidelines, such as ensuring visits by family members within three days, appear to be implemented more consistently. ISOC Regulations.

<sup>37</sup> Head of NCPO Order No. 3/2558 (2015) (Order No. 3/2558), Article 6.

<sup>38</sup> *Ibid.*

<sup>39</sup> Head of NCPO Order No. 13/2559 (2016) (Order No. 13/2559), Article 4. The Order lists 27 offences including gambling, immigration, tax evasion, custom, narcotics, and “prostitution”.

<sup>40</sup> CAT Concluding Observations on Thailand, paras. 4 and 12.

<sup>41</sup> Amnesty International, “Thailand: Submission to the United Nations Committee against Torture” (AI Index: ASA 39/003/2014), 11 April 2014, <https://www.amnesty.org/en/documents/ASA39/003/2014/en/>, pp. 16-17.



International and others have additionally criticised Orders No. 3/2558 and 13/2559.<sup>42</sup>

## INVESTIGATIONS, REPARATIONS AND THE ISSUE OF IMPUNITY

The right to a remedy for human rights violations is a bedrock principle of international law.<sup>43</sup> The Convention against Torture requires that states parties initiate “a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed”.<sup>44</sup> States parties must also ensure that individuals have the right to complain about acts of torture and have such complaints promptly and impartially examined.<sup>45</sup> In addition, states parties must ensure that perpetrators of torture are brought to justice and that their legal systems provide for an enforceable right to fair and adequate compensation.<sup>46</sup> Both the Human Rights Committee and the Committee against Torture have explained that the obligations to investigate, prosecute and ensure reparations extend to cruel, inhuman or degrading treatment or punishment.<sup>47</sup>

In communications to the UN Committee against Torture, the Thai government has committed to investigating and prosecuting officials who engage in acts of torture and providing compensation and other remedies to torture victims.<sup>48</sup> Nevertheless, structural impediments hinder accountability, and, in practice, officials enjoy widespread impunity for torture.

Thailand’s Interim Constitution, Martial Law Act, Emergency Decree and Head of NCPO Orders No. 3/2558 and No. 13/2559 all contain immunity provisions that could be used to shield military and other officials from accountability for torture. Article 48 of the Interim Constitution provides a sweeping immunity clause that “absolutely exempt[s] from any wrongdoing, responsibility and liabilities” individuals exercising power on behalf of the NCPO, regardless of the legality of their actions. The Martial Law Act, Emergency Decree, and Orders 3/2558 and 13/2559 also provide immunity for individuals exercising powers under those laws and orders.<sup>49</sup> These provisions significantly impede the ability of authorities to investigate or prosecute perpetrators of torture and other ill-treatment as well as victims’ ability to seek reparation.

In addition, Amnesty International found that police, prosecutors and courts, when confronted with allegations of torture or other ill-treatment, are often unable or unwilling to investigate such allegations in good faith. As described below, the Criminal Procedure Code grants judges the discretion to decide whether to use evidence obtained through torture or other unlawful means. In practice – and as described in more

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<sup>42</sup> See, for example, Amnesty International, *Report 2015/16: The State of the World’s Human Rights* (AI Index: POL 10/2552/2016), Thailand, February 2016, <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>, p. 359; Human Rights Watch, “Letter to Thailand Prime Minister on UN Security Council Candidacy”, 21 June 2016, <https://www.hrw.org/news/2016/06/27/letter-thailand-prime-minister-un-security-council-candidacy>; Amnesty International, et al, “Thailand: Human Rights Groups Condemn NCPO Order 13/2016 and Urge for It to Be Revoked Immediately” (AI Index: ASA 39/3783/2016), 5 April 2016, <https://www.amnesty.org/en/documents/asa39/3783/2016/en/>.

<sup>43</sup> Universal Declaration of Human Rights, adopted by General Assembly resolution 217 A(III), 10 December 1948, Article 8; ICCPR, Article 2(3); UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, 21 March 2006.

<sup>44</sup> Convention against Torture, Article 12. The Human Rights Committee has elaborated on the obligation of states to investigate alleged acts of torture through independent and impartial bodies, stating, “A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy” and that the same holds for failure to bring to justice perpetrators of such violations. Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2005, UN Doc. CCPR/C/74/CRP.4/Rev.6, paras. 15 and 18.

<sup>45</sup> Convention against Torture, Article 13.

<sup>46</sup> Convention against Torture, Articles 5-9 and 14.

<sup>47</sup> See, for example, Human Rights Committee, General Comment No. 31, paras. 15, 18; Committee against Torture, General Comment 2, para. 2; Committee against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, 19 November 2012, UN Doc. CAT/C/GC/3, para.1.

<sup>48</sup> Thailand Follow-Up Report to CAT, paras. 46-49 and 64-66.

<sup>49</sup> Martial Law Act, 1914, Article 16; Emergency Decree, section 17; Order No. 3/2558, Article 14; Order No. 13/2559, Article 9.

detail in subsequent chapters of this report – it appears that Thai judges very rarely conduct or order investigations into allegations of torture affecting criminal trials. A senior member of the Thai judiciary told Amnesty International:

*“We wouldn’t initiate an investigation into torture even if we’re convinced there was torture. If we have a suspicion that there’s something wrong we do have the power to investigate but we’re quite passive.”<sup>50</sup>*

Courts also invariably reject appeals to dismiss “confessions” or other statements on the grounds that they were obtained through torture. See Chapter 3 for a description of some of these cases.

Torture victims also told Amnesty International that prison doctors did not usually register torture complaints or report torture or other ill-treatment as a cause of injuries. One victim told Amnesty International:

*“After I left detention, I went to a hospital and the doctor refused to diagnose me. A doctor touched and pressed my side and asked if I was hurt. Then they said ‘No, you are okay, if not, this will become a problem for us.’”<sup>51</sup>*

Both in its initial report and in its follow-up report to the CAT, Thailand listed a wide array of bodies to which detainees can complain of torture or other ill-treatment, including the National Human Rights Commission of Thailand (NHRC), the Office of the Ombudsman, the Department of Rights and Liberties Protection of the Ministry of Justice, the Legal Assistance Office in the Office of Attorney General, and the Office of the Prime Minister.<sup>52</sup> Unfortunately the overwhelming majority of detainees find it very hard, if not impossible to access most of these institutions. Neither of the State’s two reports to the CAT details how in practice detainees (as opposed to convicted prisoners<sup>53</sup>) can reach any of these institutions with complaints, nor do either of the reports provide any statistics on the number of complaints and their outcome. It is unlikely that detainees are aware of available avenues for complaint.

The NHRC exercises a certain degree of independence and has, on a number of occasions, investigated allegations of torture, including in cases described in this report. However, it appears that investigations have been hampered by a lack of cooperation from government institutions. On two separate occasions, Amnesty International met with Commissioner Dr. Niran Pitakwatchara, who at the time headed the NHRC’s Sub-Committee on Civil and Political Rights. He described the NHRC’s approach to torture investigations as follows:

*“Our steps in working are as follows: The first step is that the government units who are not stubborn will listen to us but this is usually a failure; such as in the case of [Sansern Sriounreun – see below – in which] they put us off for a week so that the wounds had healed. For the second step, we submit a report to relevant authorities within 30 days, as is our legal responsibility. For the third step, we submit the report to the government and parliament. Most of the time, these steps fail as the authorities are not interested in human rights.”<sup>54</sup>*

Worryingly, the repeal of Thailand’s 2007 Constitution by the military government in 2014 curtailed the NHRC’s mandate, which was partly grounded in the Constitution. In practice this has meant that the NHRC faces decreased official cooperation. Human rights lawyers also told Amnesty International that the institution has become less proactive in pursuing cases in recent years.<sup>55</sup>

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<sup>50</sup> Interview with Amnesty International, Bangkok, July 2015.

<sup>51</sup> Interview with post-coup victim, February 2015, name and other details withheld to protect the interviewee.

<sup>52</sup> Thailand’s Initial Report to CAT para. 137; Thailand follow-up report to CAT, para. 24.

<sup>53</sup> It appears from the reports that (post-conviction) prisoners do have access to complaint mechanisms. This issue is beyond the scope of the current report.

<sup>54</sup> Meeting with Amnesty International, Bangkok, 29 June 2015.

<sup>55</sup> Meetings with Amnesty International conducted 2014-2015.

Several torture victims told Amnesty International, however, that they were reluctant to make a complaint to courts, the NHRC, or other institutions. These individuals cited fear of reprisals, lack of understanding about appropriate channels for lodging complaints, and a sense of futility about the potential outcome as reasons for not making complaints. Such fears are compounded by the State's failure to protect individuals who have alleged wrongdoing by officials and to hold those responsible for acts of reprisal against them to account.

Those reporting acts of torture in Thailand face grave risks. For example, human rights lawyer Somchai Neelapaijit was subjected to an enforced disappearance in 2004, one day after he filed an official complaint about the alleged torture of five of his clients.<sup>56</sup> One of the alleged victims of torture was abducted in 2009 and his whereabouts are still unknown.<sup>57</sup> Another was convicted for "maliciously providing false information" to inquiry officers and sentenced to two years imprisonment.<sup>58</sup> Despite a prolonged campaign by the human rights community, no government officials have been successfully prosecuted for the alleged acts of torture or the disappearance of Somchai or his client.

Amnesty International is concerned about the use of criminal defamation charges against human rights defenders, and about public threats by officials to charge individuals – including survivors of torture, their lawyers, and human rights defenders reporting on torture – with criminal defamation.<sup>59</sup> For example, on 17 May 2016, military authorities filed complaints against three individuals involved in the production of a report describing 54 alleged cases of torture in Southern Thailand.<sup>60</sup> One of the defendants in this case faced a previous criminal defamation charge relating to torture allegations, which was eventually dropped by the Public Prosecutor.<sup>61</sup> Amnesty International also notes increasing public threats by officials to initiate criminal defamation charges against individuals. This includes survivors of torture, lawyers and organisations raising concerns about allegations of human rights violations, including torture.<sup>62</sup> Authorities have been quick to dismiss allegations of torture or suggest that they are being made solely to discredit authorities or for personal gain.<sup>63</sup>

In recent years, there have been a small number of successful prosecutions of officials for offences relating to torture or other ill-treatment, but the prevailing environment leaves victims very well aware of the severe risks associated with reporting acts of torture.<sup>64</sup>

## LEGISLATIVE FRAMEWORK AGAINST TORTURE

As a state party to the Convention against Torture and other treaties, Thailand must make torture an offence under criminal law.<sup>65</sup> Thailand's Penal Code currently does not specifically criminalise acts of torture. In its

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<sup>56</sup> Amnesty International, "Thailand: Sad Day for Justice as Police Officers Acquitted and Family Denied Right of Co-Plaintiff in the Enforced Disappearance of Leading Human Rights Defender" (AI Index: ASA 39/3132/2015), public statement, 29 December 2015, <https://www.amnesty.org/en/documents/asa39/3132/2015/en/>;

<sup>57</sup> Justice for Peace Foundation, "Enforced Disappearances in Thailand", May 2012, [https://issuu.com/wgjp/docs/enforced\\_disappearances\\_in\\_thailand\\_03/17?e=1384216/3934180](https://issuu.com/wgjp/docs/enforced_disappearances_in_thailand_03/17?e=1384216/3934180), p. 46;

<sup>58</sup> Amnesty International, "10 years on, Find Truth and Justice for Family of Somchai Neelapaijit" (AI Index: ASA 39/001/2014), public statement, 14 March 2014, <https://www.amnesty.org/en/documents/ASA39/001/2014/en/>.

<sup>59</sup> See, for example, Amnesty International, "Activists Face 5 Years for Reporting Torture" (AI Index: ASA 39/4292/2016), Urgent Action, 21 June 2016, <https://www.amnesty.org/en/documents/asa39/4292/2016/en/>; PEN International, "Thailand: British rights activist goes on trial for defamation", press release, 16 May 2016, <http://www.pen-international.org/newsitems/thailand-british-rights-activist-goes-on-trial-for-defamation/>; Amnesty International, *Attitude Adjustment*, pp. 40-41; Sasiwan Mookhasen, "Police Deny torturing Bangkok Bomb Suspect", *Khaosod English*, 17 February 2016, <http://www.khaosodenglish.com/detail.php?newsid=1455713644>.

<sup>60</sup> Amnesty International, "Activists Face 5 Years for Reporting Torture", 21 June 2016

<sup>61</sup> Amnesty International, *Attitude Adjustment*, p.40, 11 September 2014

<sup>62</sup> See Amnesty International, *Attitude Adjustment*, pp. 40-41; Sasiwan Mookhasen, "Police Deny torturing Bangkok Bomb Suspect", *Khaosod English*, 17 February 2016, <http://www.khaosodenglish.com/detail.php?newsid=1455713644>.

<sup>63</sup> See "Opposition activist fabricated torture allegations, says Thai junta", *Reuters*, 5 August 2014, <http://www.reuters.com/article/us-thailand-torture-idUSKBN0G51FN20140805>; "Thai junta 'denies torturing grenade attack suspects'", *Associated Press*, 20 March 2015, <https://asiancorrespondent.com/2015/03/thai-junta-denies-torturing-grenade-attack-suspects/>.

<sup>64</sup> See, for example, the four cases mentioned in Thailand's Initial Report to the CAT, paras. 38 and 81.

<sup>65</sup> Convention against Torture, Articles 2 and 4.

2013 report to the CAT, the Thai government asserted that acts of torture could be prosecuted using various provisions in the Penal Code relating to the crime of battery.<sup>66</sup> However, the CAT has consistently emphasised that under the Convention, torture must be defined as an offence distinct from common assault or other forms of ill-treatment.<sup>67</sup> The Committee responded to Thailand's report by urging Thailand to "include torture as a separate and specific crime in its legislation and ensure that penalties for the crime of torture are commensurate with the gravity of the crime."<sup>68</sup>

Furthermore, Thailand has also failed to ensure that statements obtained through torture are not admitted as evidence in legal proceedings, as required by the Convention.<sup>69</sup> Although the Criminal Procedure Code prohibits the use of torture to obtain a statement from an accused person, it does not categorically prohibit the use of evidence obtained by methods prohibited by law.<sup>70</sup> Rather, section 226(1) of the Criminal Procedure Code gives courts the discretion to decide on a case-by-case basis whether to admit evidence. It states:

*"Where it appears to the court that any evidence is just per se but it has been obtained by an unjust act or by result of information produced or obtained through an unjust act, the court shall exclude it, save where the admittance of such evidence would be more beneficial to the carriage of justice than detrimental to the criminal justice standard or fundamental rights and liberties of the people."<sup>71</sup>*

This opens the door for statements obtained through torture or other ill-treatment to be admitted as evidence. A senior member of the Thai judiciary confirmed in an interview with Amnesty International that this provision is, in judicial practice, understood to mean that "a court has discretion to weigh the evidence even though the detainee was tortured into providing it".<sup>72</sup> Allowing courts to admit evidence obtained by torture or other ill-treatment based on a cost-benefit analysis violates Thailand's obligations under the Convention and encourages the recourse to such practices during interrogations.

Despite these shortcomings, Thailand's Criminal Procedure Code includes several relevant provisions that, if implemented, reduce the risk of torture of individuals in state custody. These include:

- The requirement that detained persons be brought before a court within 48 hours of their detention;<sup>73</sup>
- The right of a detained person to be present in court and challenge his or her detention (habeas corpus);<sup>74</sup> and
- The right of a detained person to have legal counsel present during questioning.<sup>75</sup>

These provisions are essential, and when effectively and universally enforced, can serve as important safeguards against torture and other ill-treatment.<sup>76</sup>

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<sup>66</sup> Thailand's Initial Report to CAT, para. 36.

<sup>67</sup> Committee against Torture, General Comment 2, paras. 8-11. Specifically, the Committee states that it "recognizes that most States parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes. The Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture are also present." The Committee adds, "By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment." *Ibid*, paras. 10-11.

<sup>68</sup> CAT Concluding Observations on Thailand, para. 9.

<sup>69</sup> Convention against Torture, Article 15 ("Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.").

<sup>70</sup> Criminal Procedure Code of Thailand, section 135 ("In interrogating an accused, the inquirer shall not perform or cause to be performed an act of promising, threatening, deceiving, torturing, forcibly compelling, or, by unlawful means, encouraging the accused to give any statement in respect of the charge against him."). For an English version of Thailand's Criminal Procedure Code, see [http://en.wikisource.org/wiki/Criminal\\_Procedure\\_Code\\_of\\_Thailand/Provisions](http://en.wikisource.org/wiki/Criminal_Procedure_Code_of_Thailand/Provisions).

<sup>71</sup> Criminal Procedure Code of Thailand, section 226(1).

<sup>72</sup> Interview with Amnesty International, Bangkok, July 2015.

<sup>73</sup> Criminal Procedure Code of Thailand, section 87.

<sup>74</sup> Criminal Procedure Code of Thailand, section 90.

<sup>75</sup> Criminal Procedure Code of Thailand, section 7/1.

<sup>76</sup> The CAT has commended Thailand for a number of law reform initiatives relevant to the prevention of torture, including amendments

However, as described above, Thailand's current constitutional framework and various laws and orders undermine or pre-empt these provisions in relation to individuals under military custody, facilitating the torture and other ill-treatment of detainees. Moreover, when it comes to the treatment of criminal suspects, especially if they are from poor and marginalized communities (see Chapter 4), police officers often either ignore these safeguards or bypass them by torturing or otherwise ill-treating individuals outside of police stations.

In 2014, Thailand developed a draft Prevention and Suppression of Torture and Enforced Disappearance Act (hereafter Torture and Enforced Disappearance Act) that would, among other things, establish torture and enforced disappearances as distinct criminal offenses. At the time of writing, the bill was before the Council of State and seemed likely to be passed into law.

Amnesty International welcomes the incorporation of several of its recommendations on the draft law made to authorities both in person and in writing during 2014 and 2015. The text of the draft law to a large extent accords with the UN Convention against Torture. Among other elements, the draft law utilizes the definition of torture provided by the Convention against Torture, prohibits *refoulement*, and prohibits unequivocally the admission as evidence of statements obtained by torture.<sup>77</sup> Its adoption – if remaining flaws could be rectified – would be a significant step towards preventing torture and ensuring compliance with Thailand's obligations under the Convention against Torture and international law more generally.

A significant shortcoming of the draft Torture and Enforced Disappearances Act is that it provides for investigations into torture to be led by a committee headed by, and partly staffed with, politicians and political appointees, in direct contrast to requirements of impartiality in Articles 12 and 13 of the Convention. Unless the text is revised to provide for an investigating body that is impartial, independent and efficient, the proposed Act will do little to address the prevailing culture of impunity for torture and other ill-treatment.

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to the Penal Code and Criminal Procedure Code. CAT Concluding Observations on Thailand, para. 6.

<sup>77</sup> The Committee against Torture has emphasised that this obligation extends to statements obtained by cruel, inhuman or degrading treatment or punishment. See Committee against Torture, General Comment 2, para. 6.

## 2. TORTURE IN THAILAND'S "DEEP SOUTH"

**“They looked at me and said: are you still standing? One soldier slapped me hard and I was dazed, I didn’t know where I was and then I fainted. I woke up on the floor and one of the soldiers stamped on my body for about 15 minutes. I tried to use my hands to cover my head, then I became weak and couldn’t defend my head anymore.”**

“Nazar”, a young man who was arrested by the Royal Thai Army soldiers in southern Thailand in early 2015.<sup>78</sup>

In January 2004, violence escalated in Thailand’s “Deep South”, the southern-most provinces of Thailand, where conflict has intermittently ebbed and flowed for over a century. The violence speaks to longstanding disenfranchisement of the area’s population, which is predominantly Muslim and ethnically and linguistically Malay. The area is also one of the poorest and least developed in Thailand, and some sectors of the ethnic Malay population have long resisted efforts at assimilation by the country’s central government and Thai Buddhist majority. Attempts at mediation and reconciliation, notably led by the Malaysian government, have so far resulted in little progress.<sup>79</sup>

According to Deep South Watch, an organization which monitors the conflict in southern Thailand, more than 6,400 people were killed in more than 15,000 violent incidents between 2004 and 2015.<sup>80</sup> Human rights organizations, including Amnesty International have documented widespread human rights abuses and violations of international humanitarian law by all sides during this time period. Insurgents have often attacked “soft targets”, including teachers, students, monks, civil servants, and others perceived to be affiliated with the Thai government, using improvised explosive devices, drive-by shootings, and other

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<sup>78</sup> Interview with Amnesty International, 2015.

<sup>79</sup> For more background information on the conflict in southern Thailand, see Amnesty International, *Torture in the Southern Counter-Insurgency*.

<sup>80</sup> Deep South Watch, Deep South Incident Database, <http://www.deepsouthwatch.org/DSID>.

methods.<sup>81</sup> Civilians have also been collateral casualties in attacks on soldiers and police officers.<sup>82</sup> Insurgents have additionally carried out arson attacks on schools and targeted killings of teachers and have beheaded ethnic Thai Buddhists and burned their bodies.<sup>83</sup>

Amnesty International has consistently condemned violations of international humanitarian law and human rights abuses committed by all sides in the conflict, including unlawful killings and the systematic use of torture by Thai security forces.<sup>84</sup> Under international humanitarian law, all sides are obliged, among other things, to treat all persons not taking active part in the hostilities, including non-combatant civilians and captured combatants, with humanity, refrain from torture and cruel treatment, and under no circumstances attack civilians, either directly or indiscriminately.<sup>85</sup>

Amnesty International documented 28 individual cases of torture or other ill-treatment by the military authorities in Southern Thailand, occasionally with the participation of police. 24 of the cases occurred between 2013 and 2015. Four additional cases occurred earlier and are used for comparison and as useful points of reference. All victims were male Muslims, mostly from rural areas working in agriculture or agriculture-related jobs, and the vast majority of them were under 30 years of age. All those who provided testimony to Amnesty International did so at their home or village, as Amnesty International delegates were not allowed to meet detainees in military custody.

Although it is hard to reliably estimate the scale of the use of torture in southern Thailand, reports from other sources suggest that the problem extends well beyond those cases documented in this report.<sup>86</sup>

## ARREST AND DETENTION

As described above, the Martial Law Act and Emergency Decree – applied concurrently in southern Thailand since 2006 – together authorise military personnel to detain an individual for up to 37 days without presenting the detainee before a court. All victims of torture or other ill-treatment who spoke to Amnesty International said that they were abused entirely, or mostly, during the initial seven-day period of detention without judicial oversight or any other safeguards against torture.

Torture victims told Amnesty International that soldiers usually gave suspected links to insurgents as the reason for their arrest. Moreover, all of the individuals interviewed by Amnesty International were arrested under the Martial Law Act and executive orders relating to national security, and therefore their arrests are officially linked to alleged security-related offenses.

Amnesty International found that suspected insurgents were typically arrested at their homes by military, police or combined forces. Detainees were usually taken to a police station where their arrests were officially

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<sup>81</sup> Benjamin Zawacki, “Politically Inconvenient, Legally Correct: A Non-international Armed Conflict in Southern Thailand”, *Journal of Conflict & Security Law*, 18 September 2012, p. 152-153; Human Rights Watch, “*Targets of Both Sides*”: Violence against Students, Teachers, and Schools in Thailand’s Southern Border Provinces, September 2010, <https://www.hrw.org/report/2010/09/20/targets-both-sides/violence-against-students-teachers-and-schools-thailands>.

<sup>82</sup> Human Rights Watch, “*Targets of Both Sides*”.

<sup>83</sup> Amnesty International, “Thailand: Teachers and Students Targeted”, Urgent Action, 14 December 2012; <https://www.amnesty.or.jp/en/get-involved/ua/ua/2012ua340.html>; Human Rights Watch, “Thailand: Southern Separatists Target Women - Burning, Beheadings of Bodies Mark Renewed Terror Campaign”, 4 April 2014, <https://www.hrw.org/news/2014/04/04/thailand-southern-separatists-target-women>.

<sup>84</sup> See Amnesty International, *Torture in the Southern Counter-Insurgency*.

<sup>85</sup> See, for example, Article 3 common to all four Geneva Conventions of 1949; The International Committee of the Red Cross (Jean-Marie Henckaerts and Louise Doswald-Beck, eds), *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005), Vol. I, Rule 1.

<sup>86</sup> See, for example, Patani Human Rights Group, and Cross-Cultural Foundation, and Hearty Support (Duay Jai Group), *Torture and ill treatment in The Deep South Documented in 2014-2015*, February 2016, <https://voicefromthais.files.wordpress.com/2016/02/torture-report-english-as-of-10-feb-2016-released-version.pdf> (drawing from interviews with 54 alleged victims of torture).

registered before being transferred to unofficial places of detention within military camps, where they were interrogated for up to the seven days of unaccountable detention allowed under the Martial Law Act. These camps are in various locations in the conflict-affected southern provinces and are affiliated with a variety of different military units, including Army battalions, “Special Taskforce” units and “Ranger” military units.<sup>87</sup> In many cases, victims stated that they were held at a Taskforce base within the sprawling Ingkayuthboriharn Army camp (hereafter, “Ingayuth”) in Pattani Province, or elsewhere in the vicinity of Ingkayuth during this period. Other victims were not sure where they were held during the initial period of detention. During the up to seven days that individuals were held in these locations, they said they were interrogated primarily by soldiers from “Special Taskforce” and “Ranger” units.

After the seven-day period expired, detainees, unless released, were typically transferred to the official military interrogation centre within Ingkayuth camp.<sup>88</sup> At Ingkayuth, interrogation was typically conducted by Army soldiers of various ranks, although some wore civilian clothes at the time. Victims stated that after they arrived at the official interrogation centre at Ingkayuth, they were treated much better. Only a few individuals who spoke with Amnesty International reported ill-treatment while being held at Ingkayuth.

Family members of detainees were typically allowed to meet detainees within 24 to 48 hours of their arrest, and daily thereafter. Most visits took place at a family visiting centre at the outskirts of the Ingkayuth military base.<sup>89</sup> Both individuals detained elsewhere within Ingkayuth and those detained at unofficial detention centres in the vicinity of the camp were brought to the visiting centre in military vehicles. Lawyers told Amnesty International that, unlike families, they are barred from visiting detainees during their initial seven days of detention, and are seldom able to access detainees before the full 37 day period of detention under the Martial Law Act and the Emergency Decree has expired.<sup>90</sup>

## TORTURE AND OTHER ILL-TREATMENT IN MILITARY CUSTODY

According to victims, their family members, lawyers and NGO staff working with detainees, torture and other ill-treatment predominantly occur during the seven-day period of initial, unaccountable interrogation in unofficial places of detention. Soldiers have tortured or otherwise ill-treated detainees while demanding that they confess to crimes or provide information on attacks and other activities by insurgents and the identity of other insurgents.

Amnesty International’s research did not uncover any dedicated torture-chambers with specialized equipment or instruments. Rather, military interrogators employed methods of torture and other ill-treatment using items available in perpetrators’ immediate environment including their own hands, fists, knees and feet, guns, sticks, plastic bags, scarves, and pieces of clothing.

“Fisal”, a man in his late 20’s who was arrested in late 2013, told Amnesty International about the many different forms of abuse used by soldiers as they tried to extract a confession from him immediately after his arrest, while still at his family home:

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<sup>87</sup> For a list of unofficial detention centres in the southern provinces see Amnesty International, *Torture in the Southern Counter-Insurgency*, p. 7.

<sup>88</sup> Amnesty International delegates visited the family visiting centre at Ingkayuth camp in February 2015. The centre includes a shaded area with tables and benches for families and detainees to meet.

<sup>89</sup> When Amnesty International visited, there were many soldiers present where families were meeting detainees. The atmosphere was quiet but not relaxed, and Amnesty International delegates decided not to talk to detainees and families at the visiting centre under the circumstances.

<sup>90</sup> Meetings in southern Thailand, February 2015.



*“They asked me to identify myself in a photo. I said it wasn’t me. They repeated the question and after I denied it for the third time they started kicking me. Then they handcuffed my hands behind my back with steel cuffs. They used a scarf to choke me from behind, asking me, ‘Did you [commit a specific crime]?’ There were six of them. Whenever I ran out of breath they’d stop, then do it again. They repeated it three times. I felt I would die at any moment. Then they used a plastic bag that they found and put it over my head and tightened it from behind with a scarf. They also slapped and kicked me, and beat me with the butts of their guns on my back and chest. I couldn’t breathe from all of this. I was crying and saying, ‘I didn’t do anything’, but they didn’t stop. This lasted about half an hour. Then I passed out.”<sup>91</sup>*

On the same day, “Fisal” was transferred to a police station, then to a military Taskforce base, where he was held for seven days. The torture continued:

*“When I arrived at the camp they tied my hands at the front, led me by a rope<sup>92</sup> and made me crawl on the ground for about 50 meters. I requested food and drink, but they gave me the food that they give to their dogs. I was crying from the humiliation.”*

After forcing “Fisal” to re-enact his alleged crime, military officers took him to a shooting range and performed a mock execution.<sup>93</sup> “Fisal” was subsequently released by the army without charge or trial. He showed Amnesty International photographs taken about two weeks into his detention. In the photographs, his face was severely swollen and one of his eyes was half-shut.

Beatings were by far the most prevalent form of torture and other ill-treatment described by victims and others, occurring in all 23 cases documented by Amnesty International.<sup>94</sup> Beatings were carried out with bare hands, rifle butts, sticks and, in one instance, a chair. Soldiers also punched, kicked and stamped on the heads and bodies of detainees.

“Ameen”, a man in his thirties who was arrested at the beginning of 2014, told Amnesty International that he was beaten and humiliated immediately following arrest in his village:

*“Two soldiers caught me and tied my hands behind my back with two plastic handcuffs and another one made of metal. The soldiers kicked me and dragged me to the main road. One of them was holding me under the shoulder while the other was kicking me and they were both pulling me towards the mosque where all the soldiers were. . . . They tortured me until my sarong fell off and I was left with only my t-shirt on and the bottom half of my body completely naked. They were hitting me and kicking me and also hitting me on the back with the butts of their guns. I felt hurt and humiliated, because there were women among the soldiers, and I asked for anything to cover me but the soldiers refused. I felt very ashamed and also powerless, like I didn’t have the energy even to stand up. A lot of blood came out of my face and head, my face was swollen. I don’t know how many soldiers hit me. It lasted for about 45 minutes.”<sup>95</sup>*

A scar on “Ameen’s” wrist, the result of him being dragged while handcuffed, was still visible when Amnesty International delegates interviewed him around a year later. “Ameen” told Amnesty International that his subsequent interrogation at a Taskforce base within the Ingkayuth army camp also included choking with a plastic bag, strangling with electric cables and exposure to cold. He was released after seven months in detention.

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<sup>91</sup> Interview with Amnesty International, location withheld, 2015.

<sup>92</sup> See similar use of rope in Amnesty International, *Torture in the Southern Counter-Insurgency*, pp. 17 and 19.

<sup>93</sup> Interview with Amnesty International, location withheld, 2015.

<sup>94</sup> These facts are consistent with earlier findings by Amnesty International and more recent reports by Thai NGOs. See Amnesty International, *Torture in the Southern Counter-Insurgency*, pp. 14, 16-22 and, example, Cross Cultural Foundation, et al, *Torture and ill treatment in the Deep South Documented in 2014-2015*, pp. 6-10, 12-14, 16-18, 20-1, 23-6; Coalition of Thai Civil Society Organizations, *Shadow Report to CAT*, p. 22.

<sup>95</sup> Interview with Amnesty International, location withheld, 2015.

According to several torture survivors, beatings by soldiers were so routine during interrogation that they were considered hardly worth mentioning. “Kasem” said, “But slaps and kicks happened all day, it was normal”. While describing other methods or abuses, “Rutkee”, who was arrested at the end of 2014, said, “And of course there was a lot of kicking and beating.”<sup>96</sup>

## ARE BEATINGS TORTURE?

Beatings, in their various forms, are in Amnesty International’s experience the most common form of torture, not only in Thailand but around the world.<sup>97</sup> Under international law torture is not limited to highly sophisticated or manifestly atrocious acts.<sup>98</sup> If officials beat detainees during interrogations, as in the vast majority of cases described in this report, such conduct would invariably amount to cruel, inhuman or degrading treatment or punishment. Since the other elements of torture, as defined by the Convention against Torture – intentional act, purpose (including obtaining information or a confession), and official involvement – are present, whenever beatings during police or military interrogations cause pain or suffering that is “severe”, the action would amount to torture.<sup>99</sup>

Amnesty International documented nine cases in which detainees were choked or strangled, often with a plastic bag, rope or scarf. In some of these cases, water was poured on a bag or wet cloth held over the mouth and nose of the victim, blocking the airways and simulating suffocation (a procedure commonly known as “waterboarding”). In almost all cases documented by Amnesty International, suffocation was used several times in a row, with short pauses in between.<sup>100</sup>

“Rutkee” told Amnesty International how he experienced both strangulation and waterboarding:

*“They’d sit me on a chair, wet a towel and hold it to my face until I couldn’t breathe, or they would put a towel on my face and tie it behind my head, then pour water on the towel until it went into my nose and I would choke. Then the soldier would remove it, and then do it again... Another method they used was that they would put a plastic bag – a garbage bag – on my face. They’d wet it a bit so it clung to my skin, and use a wide cable to strangle me from behind.”<sup>101</sup>*

“Rutkee” was also beaten, threatened with guns and grenades, deprived of sleep, and left for hours in a room with the air-conditioning set to a low temperature, a method reported both to Amnesty International and other NGOs.<sup>102</sup> Soldiers also pulled his penis during interrogation, causing both pain and humiliation. He was released without charge after 35 days of detention.

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<sup>96</sup> Interviews with Amnesty International, location withheld, 2015.

<sup>97</sup> See, for example, Amnesty International “Welcome to Hell Fire”: *Torture and Other Ill-Treatment in Nigeria* (AI Index: AFR 44/011/2014), September 2014, <https://www.amnesty.org/en/documents/AFR44/011/2014/en/>, p. 7; Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico* (AI Index: AMR 41/020/2014), September 2014, <https://www.amnesty.org/en/documents/AMR41/020/2014/en/>, p. 10; Amnesty International, *Above the Law: Police Torture in the Philippines* (Index: ASA 35/007/2014), December 2014, <https://www.amnesty.org/en/latest/news/2014/12/above-law-police-torture-philippines/>, p. 26.

<sup>98</sup> Nigel S. Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, 3<sup>rd</sup> edn. (Oxford: Oxford University press, 2009), p. 97 (“[I]t is clear that crude physical battery in the form of sustained beatings will suffice... to make a finding of torture.”).

<sup>99</sup> See, for example, Committee against Torture, *Ali Ben Salem v. Tunisia*, Communication No. 269/2005, views adopted 7 November 2007, UN Doc. A/63/44 (2007-8), Annex XI; Inter-American Court of Human Rights, *Lysias Fleury et al. v. Haiti*, Series C No. 236, Judgment of 23 November 2011; European Court of Human Rights, *Selmouni v. France*, Reports 1999-V, Judgment of 28 July 1999. These cases involved mainly, though not exclusively, beating.

<sup>100</sup> Amnesty International’s documentation of suffocation accords with the organization’s previous findings, as well as that of other NGOs. See, for example, Amnesty International, *Torture in the Southern Counter-Insurgency*, pp. 14, 16-20, 22-3; Cross-Cultural Foundation, et al, *Torture and ill treatment in the Deep South Documented in 2014-2015*, pp. 6-8, 16-18, 22, 25, 30; Coalition of Thai Civil Society Organizations, *Shadow Report to CAT*, p. 22.

<sup>101</sup> Interview with Amnesty International, location withheld, 2015.

<sup>102</sup> See, for example, Cross-Cultural Foundation, et al, *Torture and ill treatment in the Deep South Documented in 2014-2015*, pp. 17, 20, 21, 25-6, 47-8; Amnesty International, *Torture in the Southern Counter-Insurgency*, pp. 17, 19.

Amnesty International documented seven cases in which soldiers used a variety of methods to degrade and humiliate detainees, conduct which may, in some cases, have amounted to torture. Similar findings were described in reports by other NGOs.<sup>103</sup> In four of the cases, the acts had a sexual nature, such as stripping the victim naked or, as in “Rutkee”’s case, hitting or pulling on the victim’s penis.

“Abdullah” was arrested in mid-2013 and interrogated by a soldiers from a Taskforce unit. He told Amnesty about how soldiers attempted to humiliate him on two separate instances:

*“The thing I’m really angry about is that I asked to pray and they said I could but I only had five minutes, and they said that first I had to walk like a duck, humiliating me. And it was so far to do wudu [washing before prayer] that it was already five minutes and they said, ‘Time is up.’ So they didn’t let me pray because I had been too slow. On the third or fourth day they were still asking the same questions and I wouldn’t answer. They got angry and said, ‘Fine, if you don’t want to talk to us you can talk to the dog.’ They brought a dog into the room and they took a stone from the floor and stuffed it in my mouth. They said I had to talk to the dog and they kept asking the same questions and I had to try and answer them with this stone in my mouth.”<sup>104</sup>*

The soldiers also beat “Abdullah” and threatened him with death while a gun was pressed against his neck. They released him without charge or trial after 35 days of detention.

Victims and their family members also told Amnesty International about other methods of torture and ill-treatment used by soldiers in Southern Thailand. These included exposure to extreme heat or cold, the burning of victims with hot wires and other objects, and extended periods of solidarity confinement in pitch-dark rooms.

“Atheb” told Amnesty International:

*“[My interrogator] sent me to the dark room, a dirty room with nothing in it. It was about 3 metres by 3 metres; no toilet, just an empty room. When I needed to go to the toilet, I just did it in there. I was left in there from 5pm until 9am. No food. No water. No contact with anyone. No lights. I felt hopeless. Like I was already dead.”<sup>105</sup>*

Soldiers also beat “Atheb”, strangled him with a scarf, stripped him naked, and exposed him to cold temperatures during his interrogation. Additionally, they threatened to arrest his parents. “Atheb” was released on bail after 35 days of detention and all charges were dropped approximately two months later.

Many of the torture victims who spoke to Amnesty International have recurring pain or injuries from the abuses they suffered. Some told Amnesty International of the lasting psychological impact of their experiences, including the inability to sleep, avoidance (for instance of revisiting certain places or experiences), flashbacks and extreme fear or anxiety.<sup>106</sup>

Unfortunately, the cases described in this chapter are not isolated events. Rather, they reinforce a long-standing pattern of abuse by Thai authorities in southern Thailand. However, political events in Thailand, in

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<sup>103</sup> See, for example, Cross-Cultural Foundation, et al, *Torture and ill treatment in the Deep South Documented in 2014-2015*, pp. 21-2, 25-6.

<sup>104</sup> Interview with Amnesty International, location withheld, 2015.

<sup>105</sup> Interview with Amnesty International, location withheld, 2015.

<sup>106</sup> These symptoms are among the most salient elements of what the ‘Istanbul Protocol’ describes as “common psychological responses” to torture. Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“Istanbul Protocol”), 2004, UN Doc. HR/P/PT/8/Rev.1, para. 240.

particular the 2014 coup and subsequent legal developments, have created conditions that have given rise to torture and ill-treatment in other contexts.

# 3. TORTURE OF THOSE ACCUSED OF “POLITICAL” CRIMES AND ACTS OF POLITICALLY-MOTIVATED VIOLENCE

**“I slept with fear. I was afraid of death. I have never felt anything like this in my life. I lost all hope. I thought they would kill me, so I just asked them to shoot me because I could not bear it anymore. On the worst day, I said to them ‘Please shoot me and send my corpse to my family.’”**

“Tul”, a young man detained by the army in mid-2014.<sup>107</sup>

Amnesty International has documented widespread human rights violations in the wake of the 2014 coup.<sup>108</sup> The army has used the Martial Law Act, and, since 1 April 2015, the NCPO Order No. 3/2558, as well as other laws and orders, to restrict “political” gatherings throughout the country, stifle free speech, detain individuals without charge or trial, and prosecute activists and political opponents. Since the coup, the Royal Thai Army has progressively expanded its control over and involvement in the administration of justice by,

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<sup>107</sup> Interview, February 2015.

<sup>108</sup> See, for example, Amnesty International, *Attitude Adjustment*.

among other measures, granting military courts jurisdiction to try civilians for violations of their orders and certain crimes under the Penal Code.<sup>109</sup>

Amnesty International gathered and reviewed testimony and documents concerning the torture or other ill-treatment of 20 individuals detained in relation to political activities or alleged involvement in acts of politically-motivated violence. In some of the cases, including those relating to fatal attacks on peaceful demonstrations during late 2013 and early 2014, the alleged perpetrators committed acts of violence prior to the 2014 military coup, but were arrested – and tortured – after the coup.<sup>110</sup>

In 18 of these cases, military officers were the alleged perpetrators, at times jointly with police officers. Two other cases involved acts of brutality by the Royal Thai police when dispersing peaceful protesters. Given Amnesty International's inability to access most of the victims, this chapter draws largely from other sources, including interviews with relatives and lawyers who visited the victims, letters written by victims describing their interrogation, court documents and medical reports. Many of these documents were provided to Amnesty International by Thai Lawyers for Human Rights (TLHR), and NGO which represented many of the victims.

## **“ATTITUDE ADJUSTMENT” AND POLITICALLY-MOTIVATED ARRESTS**

Since the coup, the NCPO has arbitrarily detained hundreds of journalists, activists, academics, students and other real or suspected political opponents.<sup>111</sup> Many of these individuals were detained for the seven day period authorised under martial law or Order No. 3/2558 and then released without charge. Most were subjected to “attitude adjustment” sessions, during which they were interrogated and “encouraged” to refrain from further political activities.<sup>112</sup> Other individuals were arrested for their alleged involvement in acts of political violence or other criminal activities, including attacks on protesters or government buildings using grenades and rifles. Many detainees, in particular those from the latter category, were subjected to torture or other ill-treatment. In all of the cases described in this chapter, torture or other ill-treatment occurred within the initial seven day period of detention when detainees do not benefit from any judicial oversight or other safeguards provided by Thai law.

Prior to their arrest, individuals were often summoned to appear at a military base near their residence or were arrested at their homes or other locations by soldiers, at times in collaboration with police.<sup>113</sup> Many of those who were arrested outside of Bangkok were transported to the capital for detention and interrogation. Soldiers usually blindfolded detainees while they transported them between bases, and many detainees were unaware of the location or name of their place of detention.<sup>114</sup> Information provided by torture victims, family members and lawyers indicate that many of those accused of violent offences were held and interrogated at the 11<sup>th</sup> Military Circle Base in Bangkok.

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<sup>109</sup> Head of NCPO Announcement Nos. 37/2557 (2014), 38/2557 (2014) and 50/2557 (2014). See also Thai Lawyers for Human Rights, “Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014 – 15 January 2015)”, 2 February 2015, <http://humanrightsinasean.info/system/files/documents/TLHR%20report-Civilians%20in%20Military%20court.pdf>.

<sup>110</sup> See, for example, Amnesty International, “Martial Law Detainees at Risk of Torture” (AI Index: ASA 39/1266/2015), Urgent Action, 20 March 2015, <https://www.amnesty.org/download/Documents/ASA3912662015ENGLISH.pdf>.

<sup>111</sup> According to iLAW, a Thai NGO monitoring, among other things, politically-motivated arrests, as of December 2015 829 individuals had been summoned or visited at their homes by military personnel since the 2014 coup.<sup>111</sup> iLaw, Review of the Situation in 2015: Justice Made to Order, Freedom Still Out of Stock, December 2015, <http://freedom.ilaw.or.th/en/report/review-situations-2015-justice-made-order-freedom-still-out-stock>.

<sup>112</sup> Amnesty International, *Attitude Adjustment*.

<sup>113</sup> Interviews with Amnesty International, location withheld, 2015; Amnesty International, *Attitude Adjustment*, p. 21.

<sup>114</sup> Interviews with Amnesty International, location withheld, 2015; Amnesty International, *Attitude Adjustment*, p. 22.

# NAKHON CHAISRI DETENTION FACILITY

In September 2015 – subsequent to most of the incidents described in this report – the Ministry of Justice issued a directive establishing a temporary detention facility named Nakhon Chaisri within the 11<sup>th</sup> Military Circle Base.<sup>115</sup> Human rights organizations raised concerns that the establishment of the facility would allow the detention of civilians at a military base beyond the seven days authorized by Order No. 3/2558.<sup>116</sup> In October and November 2015, two suspects in a high-profile *lese majeste* (insulting the monarchy) case died while under custody in Nakhon Chaisri.<sup>117</sup> Although the authorities reported that one had committed suicide by hanging and the other died from a blood infection, human rights organizations raised concerns about the lack of transparency regarding the deaths and the failure to independently investigate the cases.<sup>118</sup> A suspect in the 17 August 2015 bombing of a popular shrine in Bangkok claimed in court that he was tortured at Nakhon Chaisri in late 2015 and early 2016.<sup>119</sup>

Individuals detained in relation to political activities and alleged acts of political violence did not enjoy the same protections as those detained in southern Thailand in two key respects. Firstly, unlike in the south, military officers have not been obligated to register detainees with the police prior to transferring them to unofficial places of detention. Secondly, detainees whose treatment by the army is described in this chapter were more likely to have experienced incommunicado detention authorized by the Martial Law Act and Order No. 3/2558. In almost all cases reviewed by Amnesty International, detainees were not allowed to meet or communicate with family members, lawyers, or others during their detention. In three of these cases, incommunicado detention went far beyond the seven days permitted by law, and since no information was provided, at least on their whereabouts, these cases may have constituted enforced disappearances.

Official registration of arrests and the ability of family members and lawyers to visit detainees are important components of any torture prevention system. Conversely, incommunicado detention is a key facilitator of torture and other ill-treatment. Thus the UN Special Rapporteur on Torture has stated that “torture is most frequently practised during incommunicado detention” and called for such detention to be made illegal.<sup>120</sup> Moreover, under international law, incommunicado detention can itself amount to torture or ill-treatment.<sup>121</sup> Incommunicado detention may also violate the rights of family members.<sup>122</sup>

## TORTURE AND OTHER ILL-TREATMENT IN POLITICAL OR SECURITY CASES

Torture and other ill-treatment of persons detained by the army on political or security grounds since the 2014 coup assumed many of the same forms employed in southern Thailand. Beatings were the most

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<sup>115</sup> Order by Ministry of Justice, <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/E/215/7.PDF>.

<sup>116</sup> Human Rights Watch and International Commission of Jurists, “Joint Letter to Permanent Mission of Thailand to the UN, Re: Nakhon Chaisri Facility”, 24 November 2016, <https://www.hrw.org/news/2015/11/24/joint-letter-permanent-mission-thailand-un>.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> Human Rights Watch, “Thailand: Investigate Alleged Torture of Bombing Suspect”, press release, 19 May 2016, <https://www.hrw.org/news/2016/05/19/thailand-investigate-alleged-torture-bombing-suspect>.

<sup>120</sup> UN General Assembly, *Question of torture and other cruel, inhuman or degrading treatment or punishment*, 3 July 2001, UN Doc. A/56/156, para. 39(f).

<sup>121</sup> See for instance UN General Assembly, *Special Rapporteurs’ Joint Study on Secret Detention*, 19 February 2010, UN Doc. A/HRC/13/42, paras. 28, 32; UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, 3 July 2001, UN Doc. A/56/156, para. 14; Inter-American Court of Human Rights, *Velásquez Rodríguez v Honduras*, 29 July 1988, para. 187.

<sup>122</sup> Human Rights Committee, *Bashasha v Libyan Arab Jamahiriya*, Communication No. 1776/2008, 2 November 2010, UN Doc. CCPR/C/100/D/1776/2008, paras. 7.4-7.5; Human Rights Committee, *Concluding Observations of the Human Rights Committee: USA*, 18 December 2006, UN Doc. CCPR/C/USA/CO/3/Rev.1, para. 12; Inter-American Court of Human Rights, *De La Cruz-Flores v Peru*, Judgment, 18 November 2004, paras. 125-136; African Commission on Human and People’s Rights, *Amnesty International and Others v Sudan*, Communications Nos. 48/90, 50/91, 52/91 and 89/93, African Commission 13th Annual Report (1999), November 1999, para. 54.

common form of torture and other ill-treatment. Amnesty International also reviewed cases involving strangling, choking, waterboarding, electroshocks and burns, prolonged and painful handcuffing, humiliation (including through acts of a sexual nature), prolonged blindfolding, threats, including death threats, and exposure to cold.

In southern Thailand, blindfolding primarily occurred while detainees were being transported from one location to another. In contrast, military interrogators in the cases described in this chapter used blindfolding systematically, often for prolonged periods of time. In 16 cases reviewed by Amnesty International, the victims described being blindfolded for multiple hours or days without reprieve. In the vast majority of cases, victims were also blindfolded during interrogation sessions involving violence, threats and humiliation. In at least four of the cases, the victims were blindfolded continuously for the full seven day period of detention.

A former junior commander in the Royal Thai Army told Amnesty International that the culture within the Thai army facilitates and encourages resort to torture and other forms of violence:

*“In the military you have discretion to use whatever method you want to get people to speak. They are under pressure: ‘You have to make him speak by tomorrow’. The time threat creates problems. An officer gets punished if he doesn’t get results. In the army, people use force to control, not thought. An order is final. If a colonel slaps a captain, no one says anything. People just want a result, not to know if the order is right or wrong. If you don’t follow orders, you will be punished.”<sup>123</sup>*

In two cases reviewed by Amnesty International involving a total of five detainees, courts admitted “confessions” as evidence despite the fact that the defendants in each case later retracted their “confessions” in court, claiming that they had been obtained through torture. In both cases, the courts failed to investigate the torture allegations and admitted the statements as evidence. The cases accord with a more general picture, as painted by NGOs and a judge who told Amnesty International that judges are often reluctant to investigate or order investigations into complaints of torture, without which defendants’ claims of torture remain un-addressed. For defendants to allege torture in court is atypical. As described in this chapter and elsewhere in the report, in most cases torture is not raised before the courts, in part because victims and their legal representatives are afraid to complain, do not know how to complain, or else do not see any point in complaining, or because police or prosecutors dismiss torture complaints before they reach courts.

“Lert” was summoned by the army in late 2014, detained and interrogated for seven days, and then released. He described to Amnesty International how he was blindfolded while a group of soldiers interrogated him over several days:

*“They interrogated me from noon — or maybe 11am — to 8 or 9pm every day for four consecutive days. They would not even give me water during this time. There were two or three strong men who would attack and beat me during the interrogation. They’d hit me with their fists or kick me with their feet. I could tell there were different people because their voices were different. They wanted me to confess and they said they had recorded me on camera. I never said no; I always had to say yes to their questions. I’d fall down from the beating, and then they would pull me up. I would fall off the chair; sometimes I just could not breathe. They would put me back on the chair to carry on with the interrogation.*

*I was hit on the chest, sometimes with a solid weapon or object that made a clunking noise. It made my muscles tense up. If I tensed my body when they hit me, the impact of the beating would be more painful, so I tried to relax my muscles. They said to me on the second day, ‘Today you have to speak or your family*

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<sup>123</sup> Interview with Amnesty International, February 2015.



*will be in trouble. I know where [they] live'. They threatened that they would abduct members of my family and make them disappear.*"<sup>124</sup>

"Tul" told Amnesty International that he was arrested by the army in mid-2014 and held for seven days in a cement cell with no furnishings, blankets, or changes of clothing. He was only permitted to remove his blindfold when he went to the toilet, and he was severely beaten and kicked while handcuffed. He told Amnesty International how soldiers suffocated him and electrocuted him:

*"The worst day was when I fainted and was passed out for hours. They put a plastic bag on my head until I fainted, and then poured a bucket of cold water on me. I felt cold water on my skin. Before I fainted they forced me to say that I received money from a man... They applied electro-shock to my penis and chest. I was restrained, my legs tied, and my face covered with tape and a plastic bag."*<sup>125</sup>

On 23 February 2014, during the height of the political unrest preceding the coup, a grenade was fired from an M-79 grenade launcher at an anti-government demonstration, killing three, including two children, and injuring 21.<sup>126</sup> Between 6 and 8 July 2014, shortly after the coup, the army arrested four men suspected of involvement in this attack. All four were interrogated under the authority granted by the Martial Law Act, most likely at the headquarters of the 11<sup>th</sup> Military Circle in Bangkok. On 15 July 2014, the police announced that the men had been arrested and charged, and that all four had confessed to carrying out the attack. Media reports included photos of the suspects re-enacting the attack.<sup>127</sup>

At their trial at the South Bangkok Criminal Court, lawyers for the four defendants contested the admission as evidence of their clients' "confessions", arguing that they had been obtained through torture. All four defendants made statements to the court describing how they were tortured. They claimed that they had confessed to the crimes because they feared for their lives and wanted to avoid further torture.<sup>128</sup>

In a letter shared with Amnesty International by TLHR, one of the defendants, Chatchawan Prabbhumrung, described what happened after he arrived at an army camp believed to be the 11<sup>th</sup> Military Circle:

*"The cell was covered by canvas. I could not see the outside. Thirty minutes later, four soldiers blindfolded me using a balaclava, tied my hands behind my back and tied my body and feet with ropes. I was placed on the floor, then the soldiers physically beat me, hitting and kicking [me].*

*After that, I was taken into a car where soldiers sat on top of me and beat me for about 30 minutes. Then I was taken downstairs inside a building. I was stripped naked. Then the soldiers inserted a wire into my anus and put another wire around my genitals. The soldiers then splashed me with water and took turns electrocuting and hitting me. When I cried loudly, soldiers placed a plastic bag around my head to stop me from breathing and making noises."*<sup>129</sup>

Chatchawan Prabbhumrung also described how soldiers threatened him with execution. Amnesty International spoke to Sangwan Rakrian, Chatchawan Prabbhumrung's wife, and a relative, who saw him

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<sup>124</sup> Interview with Amnesty International, February 2015.

<sup>125</sup> Interview with Amnesty International, February 2015. Being blindfolded throughout his interrogation, "Tul" could not tell Amnesty International delegates what instruments were used in his electrocution.

<sup>126</sup> See Terry Fredrickson, "2 PDRC rally sites bombed, 4 killed, dozens injured (updated)", *Bangkok Post*, 24 February 2014, <http://www.bangkokpost.com/learning/easy/396553/2-pdrc-rally-sites-bombed-4-killed-dozens-injured-updated>.

<sup>127</sup> See Jon Fenquest, "Four suspects in M79 attack arrested", *Bangkok Post*, 15 May 2014, <http://www.bangkokpost.com/learning/learning-from-news/420654/four-suspects-in-m79-attack-arrested-photos> and <http://www.komchadluek.net/detail/20140715/188251.html>.

<sup>128</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also raised concerns about this case. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, 5 March 2015, UN Doc. A/HRC/28/68/Add.1, para. 554.

<sup>129</sup> Letter by Chatchawan Prabbhumrung shared with Amnesty International by TLHR, July 2014.

shortly after his arrest.<sup>130</sup> Both described his poor physical condition and said that he had described being tortured in the days immediately following his arrest. Sangwan Rakrian, who was arrested along with Chatchawan Prabbumrout, told Amnesty International that she was also physically ill-treated, including being humiliated, interrogated while blindfolded and subjected to a mock electrocution.

A second defendant in the case, Taweechai Wichakham, told TLHR that during his interrogation he was handcuffed 24 hours a day and beaten while blindfolded until he lost consciousness.<sup>131</sup> A relative of Taweechai Wichakham, who visited him in detention about a month after his arrest, told Amnesty International that he also described electrocutions, death threats and being placed naked in a barrel with a large water monitor (a large lizard) and being rolled across the floor.<sup>132</sup> The two other defendants in the case, Sunthorn Pipuannok and Somsri Marit described similar methods of torture. Amnesty International spoke with family members of the two men, who confirmed seeing them in poor physical condition in the days and weeks after they were allegedly tortured. Their account of the torture methods was consistent with the description they subsequently independently gave to Amnesty International.<sup>133</sup>

Although the Court included the defendants' descriptions of torture in its judgment,<sup>134</sup> it took no steps to investigate or order an investigation into those claims, either by questioning the defendants or their alleged torturers or by ordering a medical examination of the defendants. Instead, the court concluded that the confessions were given by the defendants "with their consent" and admitted them as hearsay evidence supporting factual findings in the case.<sup>135</sup> On 4 September 2015, the Court found the four men guilty of premeditated murder and other charges and sentenced them to death. However, the Court immediately went on to commute the sentences to life imprisonment based on the defendants' confessions, "which were found useful during the trial".<sup>136</sup>

In another case, Sansern Sriounreun, a 62-year-old taxi driver from Bangkok, was arrested on 9 March 2015 on suspicion of involvement in a hand-grenade attack at the Criminal Court on Ratchadapisek Road in Bangkok two days earlier.<sup>137</sup> In the days that followed, he and several other suspects were interrogated while being held incommunicado in military detention at an unknown location. On 18 March, a doctor at the Police General Hospital in Bangkok examined Sansern Sriounreun, finding "several bruises on chest and abdomen" and "several burn marks on the upper part of right thigh".<sup>138</sup>

Sansern Sriounreun later told lawyers from THLR and journalists that soldiers punched and kicked him in his ribs, chest and head, applied electric shocks to his upper right thigh, and issued death threats. He also stated that he was stripped naked and humiliated during the interrogation.<sup>139</sup> Family members and others who visited Sansern Sriounreun in detention shortly after his interrogation independently repeated these claims to Amnesty International, adding that when they saw him, he looked "fatigued" and "apathetic" and said he had described his time in military detention as "hell".<sup>140</sup> Three other men arrested with Sansern Sriounreun also stated that they had been tortured.<sup>141</sup> Photographs of Sansern Sriounreun's body taken during the first court hearing on 19 March by defence lawyers from TLHR clearly show injuries including a number of small marks on his right thigh, which he alleges came from the electric shocks.<sup>142</sup> In March 2016,

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<sup>130</sup> Interview with Amnesty International by Skype, 9 July 2015.

<sup>131</sup> Firsthand testimony by Taweechai Wichakham provided to Amnesty International by TLHR.

<sup>132</sup> Interview with Amnesty International, Bangkok, 2015.

<sup>133</sup> Interviews with Amnesty International, June and July 2015.

<sup>134</sup> *Prosecutor v. Mr. Chatchawan "Chat" Prabbamrout, Mr. Somsri "Yao" Marit, Mr. Sunthorn "Thorn" Pipuannok and Mr. Taweechai "We" Wichakham*, Black Case no. 03734/2557, Red Case no 02994/2558, South Bangkok Criminal Court, verdict of 4 September 2015 (*Chatchawan and others case*, verdict. Unofficial translation).

<sup>135</sup> This was done in accordance with section 226/3 para. 2 of the Criminal Procedure Code, giving it relatively low evidentiary weight but not nullifying it. See *Chatchawan and others case*, verdict.

<sup>136</sup> *Chatchawan and others case*, verdict.

<sup>137</sup> See Thai Lawyers for Human Rights, "The 10 Most Highlighted Military Court Cases of Year 2015", December 2015, <https://tlhr2014.wordpress.com/2015/12/31/the-10-most-highlighted-military-court-cases-of-year-2015/>.

<sup>138</sup> Dr. Manop Srisuwanthawon, Correctional Hospital Physician's Note, 20 March 2015.

<sup>139</sup> Firsthand testimony by Sansern Sriounreun provided to Amnesty International by TLHR.

<sup>140</sup> Interviews with Amnesty International, Bangkok, 2015.

<sup>141</sup> Thai Lawyers for Human Rights, "10 Most Highlighted Military Court Cases".

<sup>142</sup> These photographs were subsequently widely shared on in public media. See, for example, "Exclusive: Bomb suspect reveals details

Bangkok Remand Prison officials initially denied a NHRC commissioner access to the prison to document Sansern's injuries.<sup>143</sup>

An NHRC commissioner told Amnesty International that the Commission later managed to investigate the case, and had found that seven individuals related to this case were tortured.<sup>144</sup> In relation to the torture allegations, army commander General Udomdej Sitabutr stated, "We strictly do not do that".<sup>145</sup> He further threatened to take legal action against those alleging torture.<sup>146</sup>

Perhaps due to the attention generated by the case, the Royal Thai Police's Crime Suppression Division (CSD) opened an investigation into the torture allegations. During the course of the investigation, the inquiry officer did not meet Sansern Sriounreun or his lawyers, though its report cites the allegations made in his complaint<sup>147</sup>. A medical record from the physician who examined Sansern Sriounreun notes "bruises on chest and abdomen" and "burn marks on the upper part of right thigh".<sup>148</sup> However, in a letter dated 13 May 2015 and addressed to Sansern Sriounreun, the head of the CSD Police General Sriwara Ransibrahmanakul dismissed the torture claims.<sup>149</sup> The letter described the findings of the investigation without much detail, stating, among other things that bruises on Sansern's body, "*might have been caused by impact or by falling on to some blunt object*".<sup>150</sup> The letter failed to explain why the inquiry officer chose not to meet Sansern Sriounreun or his legal representatives.<sup>151</sup>

For these reasons, Amnesty International is concerned about the superficial nature of the investigation and believes that it failed to meet the requirements of international law and standards. As both the Human Rights Committee and the Committee against Torture have explained, the burden is on states to ascertain that no torture took place and prove that statements made by the accused have been given of their own free will.<sup>152</sup>

Amnesty International also documented the use of violence by police to disperse peaceful protesters in Bangkok on 22 May 2015, the one year anniversary of the military coup, and at a subsequent protest on 22 June 2015. At least two of those arrested suffered serious injuries requiring medical treatment.<sup>153</sup> Student Songtham Kaewpranpuk, arrested in 22 June, required emergency medical treatment after being found unconscious. He told Amnesty International:

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of torture allegations, 'They tortured me until I won', *Prachatai*, 19 March 2015, <http://www.prachatai.com/english/node/4880>.

<sup>143</sup> Amnesty International, *Annual Report 2015/2016*, Thailand, February 2016, <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/>.

<sup>144</sup> Interview with Dr. Niran Pitakwatchara, Bangkok, 29 June 2015.

<sup>145</sup> "Army Chief Threatens Legal Action Over Torture Allegation", *Khaosod English*, 20 March 2015, <http://www.khaosodenglish.com/detail.php?newsid=1426854962&section=00>.

<sup>146</sup> *Ibid.*

<sup>147</sup> The letter from Sriwara Ransibrah refers to a letter from Sansern Sriounreun, dated 9 April 2015.

<sup>148</sup> Dr. Manop Srisuwanthawon, Correctional Hospital Physician's Note, 20 March 2015.

<sup>149</sup> Letter from Pol Gen Sriwara Ransibrahmanakul, Commander of the Crime Suppression Division, to Mr. Sansern Sri-Ounreun, TJ 0015.183/110, 13 May 2015. Quotations are from an unofficial translation.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> Human Rights Committee, General Comment 32, *Article 14: Right to equality before courts and tribunals and to fair trial*, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 41; Committee against Torture, *G.K. v Switzerland*, 12 May 2003, UN Doc. CAT/C/30/D/219/2002, para. 6.10; Committee against Torture, *P.E. v. France*, 19 December 2002, UN Doc. CAT/C/29/D/193/2001, (2002), para. 3.4. The European Court of Human Rights, *Nalbandyan v. Armenia*, Applications Nos. 9935/06 and 23339/06, Judgement of 31 March 2015, para. 98 ("Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation. Similarly, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention.").

<sup>153</sup> A medical report seen by Amnesty International states that Chonthicha Jaengraew suffered from "motor shoulder abduct Lt", "tender at Lt trapezius area", "suspected central cord syndrome" and "decrease sensation below Lt shoulder area and Lt flank" - all pointing to injuries often caused (among young people) by high-force trauma. Amnesty International interview at Correctional Hospital, Bangkok Prison complex, 3 July 2015.

*“The police were wearing plain clothes. One plain clothes officer punched me in the head twice. I was then grabbed by around ten officers. They carried me away, with someone holding each of my legs and each of my arms. I fell on the ground and they punched and kicked me until I had to go to the hospital. It affected my retina but it is healing now.”<sup>154</sup>*

The cases described in this chapter demonstrate the grave consequences of a post-coup legal order that circumvents the ordinary protections against torture provided by Thai law. Moreover, the increasing prominence of the military in responses to political development and security threats has created an environment where torture and other ill-treatment can proliferate. However, in Thailand, it is not only soldiers who torture. As the final case in this chapter demonstrates police officers are often involved in abuses against those in their custody.

The cases described in the chapter that follows, which concerns abuses in the context of law enforcement operations, are recent examples of a longstanding problem.

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<sup>154</sup> Interview with Amnesty International, Bangkok Remand Prison, 2 July 2015.

# 4. TORTURE IN THE CONTEXT OF LAW ENFORCEMENT OPERATIONS

**“Many people think that torture is primarily the fate of political and other ‘high-ranking’ prisoners. In reality, most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society...”**

Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2009. <sup>155</sup>

Torture and other ill-treatment have not been limited to counter-insurgency operations in southern Thailand and political or national security cases arising since the coup. Rather, police officers, soldiers and other government officials have frequently employed torture and other ill-treatment as part of routine law enforcement operations. Individuals from marginalized communities that are highly likely to come in contact with soldiers or police officers during law enforcement operations – including suspected drug users, migrant workers and members of ethnic minorities – have been particularly vulnerable to torture and other ill-treatment.

Amnesty International documented 31 cases of the torture or other ill-treatment of individuals by state security forces in the context of “ordinary” law enforcement operations from 2013 to 2015.<sup>156</sup> Unlike the situations described in previous chapters, police officers were responsible for the majority of these cases. Soldiers were also involved in some cases, reflecting the Royal Thai Army’s wide and broadening

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<sup>155</sup> UN General Assembly, *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 3 August 2009, UN Doc. A/64/215, para. 29.

<sup>156</sup> One case dates from late 2012.

involvement in the administration of justice. In these cases, police officers and soldiers were not exercising powers granted by the Martial Law Act or Order No. 3/2558. Rather, they routinely circumvented the safeguards against torture provided by ordinary Thai law.

To this end, torture and other ill-treatment by police and military officers were often carried out for short periods of time and at locations other than police stations or other official places of detention where violations of law were more likely to be noticed and challenged. Instead, most torture or other ill-treatment in this context occurred at temporary roadblocks, on city streets, in other public spaces or at improvised places of detention.

As in the previous chapters, beatings were the most common form of torture or ill-treatment used in cases described in this chapter. Police officers and soldiers used suffocation, electric shocks, threats, humiliation and denial of medications during detention and interrogation of these individuals from poor and marginalized communities.

## SUSPECTED DRUG USERS

Thailand has enacted extensive legislation criminalizing the possession, trafficking, sale and use of narcotic drugs, with punishment including the death penalty.<sup>157</sup> Torture and other ill-treatment are commonly employed by police officers enforcing anti-drug laws in Thailand. A detailed study carried out among people who inject drugs in Bangkok during 2009-11 found that 240 of the 639 participants (37.6%) reported having been beaten by police.<sup>158</sup> Amnesty International has also documented beatings, threats, suffocation and electric shocks used against individuals suspected of drug-related offenses.<sup>159</sup>

The use of public humiliation is a hallmark of the police treatment of suspected drug users in Thailand. Drug users and NGOs working with drug users told Amnesty International that police officers often force suspected drug users to urinate in public, ostensibly for the purpose of a drug test. This has often occurred on city streets or at temporary roadblocks. Requiring an individual to urinate in public is deeply humiliating and a violation of the international legal prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Amnesty International documented five cases of forced public urination and viewed video footage of other similar incidents.<sup>160</sup>

Police officers forced “Chai”, a man in his 30s from Northern Thailand, to urinate in public for a drug test twice within a six-month period, and on the second occasion they kicked him in the back until he confessed to possessing drugs.<sup>161</sup> The first time he was released after his mother paid a bribe, the second time he was convicted and sent by a court to rehabilitation.<sup>162</sup> Another man, “Kai”, told Amnesty International that he is afraid to travel after being forced to provide a urine sample in public and being kicked and bullied into making a “confession”.<sup>163</sup>

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<sup>157</sup> Key laws are the Act on Measures for the Suppression of Offenders in Offences Relating to Narcotics, B.E. 2534 (1991); the Narcotics Act, B.E. 2522 (1979); and the Psychotropic Substances Act, B.E. 2518 (1975). The Narcotic Addict Rehabilitation Act of B.E. 2545 (2002) authorizes courts, in certain circumstances, to refer drug users to rehabilitation centres instead of imprisoning them.

<sup>158</sup> Kanna Hayashi, et al, “Reports of police beating and associated harms among people who inject drugs in Bangkok, Thailand: a serial cross-sectional study”, *BioMedCentral Public Health*, 13:733, 11 April 2013, <http://www.biomedcentral.com/1471-2458/13/733>. The study did not cover other forms of torture or other ill-treatment.

<sup>159</sup> Interviews with Amnesty International, May – November 2015.

<sup>160</sup> Interviews with Amnesty International, May – November 2015.

<sup>161</sup> Interview with Amnesty International, Chiang Mai area, October 2015.

<sup>162</sup> *Ibid.*

<sup>163</sup> Interview with Amnesty International, Chiang Mai area, October 2015.

Enforcement of drug laws has often been used as a pretext for extortion, with violence, humiliation, and threats being used to ensure that bribes are paid. Drug users, and staff of NGOs working with them, told Amnesty International that after police make an arrest and establish a suspicion of drug use – either through a urine test or through a confession, forced or voluntary – they very often demand a bribe in exchange for a quick release, with no charges being brought against the individual.<sup>164</sup>

“Aaper” was arrested by police in September 2014. He told Amnesty International that he was beaten and knocked down by police officers, who stamped on his back. They demanded a bribe before releasing him a few hours later:

*“They told me to pay 10,000 baht (USD 280). I said I only had 3,000. They said they needed more, so I asked my mom. My brother brought the money to the permanent police checkpoint at [name of location]. He paid 5,000. When they arrested me in the past, I had to pay a fine at the court [following conviction] and it was 13,000 baht. So the bribe is cheaper.”<sup>165</sup>*

NGOs working with drug users in northern Thailand also told Amnesty International that the number of military checkpoints has risen dramatically since the 2014 coup, with some roadblocks being staffed by both police officers and soldiers.<sup>166</sup> The army is actively involved in enforcing anti-drug laws in other ways as well. Under Head of NCPO Order No. 23/2558, military officers from the rank of Second Lieutenant and above designated by the Ministry of Justice have the authority to search houses, search persons for drugs, and detain persons for up to three days, all without a warrant.<sup>167</sup> NGOs told Amnesty International that army officers also use these powers to force suspected drug users to do odd jobs in military bases as part of their “rehabilitation”.<sup>168</sup>

In February 2015, “Ai” was detained by local police in Northern Thailand on suspicion of involvement in drug trafficking. He was subsequently handed over to the army, for reasons unknown to him. He told Amnesty International how soldiers tortured him for about one hour after he was delivered to a nearby army camp:

*“They forced me to sit down. They beat my face with a wet cloth. They used electric shocks in my ear and inside my nostril and also on my collarbone and my lips. They’d attach it, then deliver the shock. It was so shocking. I felt darkness, like a boxer punched my head. First I felt nothing, and then I lost consciousness. Then they would apply it again.*

*They shouted at me, ‘Where did you get the drugs from? Who sold them to you?’ I had no answer. I told them, ‘I haven’t used drugs for a long time, I just go to [name of NGO] and get methadone and I don’t know who sells drugs.’ So they shocked me again. They kicked me on my side and my mouth with their military shoes. They punched me. They said, ‘We will shoot and kill you.’”<sup>169</sup>*

An activist working for an NGO helping drug users told Amnesty International that police violence against drug users is “normal”.<sup>170</sup> Another explained:

*“For our clients it’s very difficult to travel, even for medical check-ups at the hospital, because they get stopped at checkpoints, harassed and asked for bribes.”<sup>171</sup>*

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<sup>164</sup> Interviews with Amnesty International, in Bangkok area and Chiang Mai region, May – October 2015; Amnesty International meetings with NGOs, 2015.

<sup>165</sup> Interview with Amnesty International, Chiang Mai area, October 2015.

<sup>166</sup> Amnesty International meetings with NGOs, 2015.

<sup>167</sup> Head of NCPO Order No. 23/2015: Enhancement of the Enforcement of the Narcotic Prevention and Suppression Act B.E. 2519.

<sup>168</sup> Amnesty International meetings with NGOs, 2015.

<sup>169</sup> Interview with Amnesty International, Northern Thailand, October 2015.

<sup>170</sup> Interview with Amnesty International, November 2014.

<sup>171</sup> Interview with Amnesty International, October 2015.

# MIGRANT WORKERS

Thailand is home to an estimated 3 to 3.5 million migrant workers, an estimated 1.3 to 2 million of whom are unregistered, with the majority originating from neighbouring Myanmar, Lao PDR and Cambodia.<sup>172</sup> For decades, the majority of migrant workers in Thailand have been unregistered, lacking official permission to reside or work in Thailand.<sup>173</sup> Since 1996, the Thai Ministry of Labour has intermittently implemented migrant registration drives and “nationality verification” processes.<sup>174</sup> Despite a renewed push for registration under the NCPO, progress on registering migrants has been encumbered by political and administrative hurdles.<sup>175</sup>

Migrant workers in Thailand – both registered and unregistered – have suffered a host of human rights violations by the authorities as well as abuse by non-state actors. Human rights organizations have highlighted concerns affecting migrant workers, some of whom are persons fleeing persecution in neighbouring countries. These include extrajudicial killings by security forces, human trafficking, forced labour and other violations of labour rights, particularly in the fisheries sector.<sup>176</sup> Additionally, Thai authorities’ power to summarily deport migrants without providing access to judicial or administrative processes makes migrants vulnerable to Refoulement, as well as ill-treatment, coercion and extortion.<sup>177</sup>

As in the case of drug users, torture and other ill-treatment of migrant workers is often linked to suspected use of drugs or other drug-related offences and frequently involves public humiliation and the extortion of bribes. According to NGOs working with migrant workers, torture and other ill-treatment of migrant workers have increased since the 2014 coup.<sup>178</sup>

“Sai Sai”, a 29 year old Karen man from Myanmar, works for the Migrant Workers’ Rights Network (MWRN), an NGO supporting migrant workers. On 19 April 2015, he went to a police station in Samut Sakhon, outside Bangkok, to report the loss of identity documents by two migrant workers. A police officer stopped “Sai Sai” outside the police station, took his passport, and searched his bag. “Sai Sai” told Amnesty International that the officer took him into the police station and abused him:

*“The policeman emptied my pockets and found nothing. I even showed them that there was nothing in my pockets and that I wasn’t hiding anything. The policeman then slapped me in the face. I told the policeman, ‘You should treat me well and I will cooperate with you, there is no reason to treat me badly.’”*

<sup>172</sup> See International Labour Organization, “Global supply chains: Insights into the Thai seafood sector”, ILO Asia–Pacific Working Paper Series, April 2016, citing Department of Employment estimates, [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_474896.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_474896.pdf); Jerrold W. Huguet (ed.), “Thailand Migration Report 2014”, United Nations Thematic Working Group on Migration in Thailand, 2014, [http://th.iom.int/images/report/TMR\\_2014.pdf](http://th.iom.int/images/report/TMR_2014.pdf), p. XIV, and table 1.1 on p. 2; “Migrant workers in Thailand: The exodus”, *The Economist*, 21 August 2014, <http://www.economist.com/news/asia/21604585-rumours-drive-hundreds-thousands-cambodians-back-home-exodus>.

<sup>173</sup> The Thai Ministry of Labor, Department of Employment stated in 2013 that 1,174,900 foreigners held work permits. National Health Commission Office of Thailand, 28 October 2012, <http://en.nationalhealth.or.th/node/294>, pp. 2-3 (see table 1.2).

<sup>174</sup> Jerrold W. Huguet (ed.), “Thailand Migration Report 2014”, pp. 15-16; Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand (From the Tiger to the Crocodile)*, February 2010, <https://www.hrw.org/report/2010/02/23/tiger-crocodile/abuse-migrant-workers-thailand>, p. 72.

<sup>175</sup> Jon Fernquest, “Longer stay for migrant workers proposed”, *Bangkok Post*, 16 February 2016, <http://www.bangkokpost.com/learning/work/866176/longer-stay-for-migrant-workers-proposed> (stating that 1.4 million migrants are waiting for nationality verification and that 1.5 million foreigners work in Thailand); Nyan Lynn Aung, “Verification program begins but most migrants frozen out”, *Myanmar Times*, 23 July 2015, <http://www.mmtimes.com/index.php/national-news/15625-verification-program-begins-but-most-migrants-frozen-out.html>; Nyan Lynn Aung, “Government targets restart of migration registration”, *Myanmar Times*, 24 November 2015, <http://www.mmtimes.com/index.php/national-news/17786-government-targets-restart-of-migrant-registration.html>.

<sup>176</sup> See, for example, Human Rights Watch, *From the Tiger to the Crocodile*; Ian Urbina, “‘Sea Slaves’: The Human Misery that Feeds Pets and Livestock”, *New York Times*, 27 July 2015, [http://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html?\\_r=0](http://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html?_r=0).

<sup>177</sup> See, Human Rights Watch, *From the Tiger to the Crocodile*, p. 68-71; Human Rights Watch, “Letter to Prof. Amara Pongsapich Re: Labor Minister’s Plan to Deport Pregnant Migrant Workers”, 17 July 2015, <https://www.hrw.org/news/2012/07/17/letter-prof-amara-pongsapich-re-labor-ministers-plan-deport-pregnant-migrant-workers>.

<sup>178</sup> Amnesty International meetings with NGOs, 2015.



*... Then the same policeman punched me in the chest. I fell to my knees. The policeman grabbed the back of my shirt and told me to get up, while holding his fist back like he was going to hit me again. As he did this he shouted, 'I am a police officer, just stay still'. He slapped me once again. I stumbled back but didn't fall."<sup>179</sup>*

"Sai Sai" was forced to pay a bribe before being released.

In early 2015, "Kyaw", a migrant worker from Myanmar, went to a police station in Samut Sakhon to inquire about his brother, who had been detained. At the station, where he found his brother, the police officers forced "Kyaw" to squat on the floor and took his passport. "Kyaw" told Amnesty International what happened next:

*"The officer kicked me around ten times, hitting me in the same place shouting, 'What are you doing?' after each kick. I fell from a squatting position to the ground after the first kick and was on the ground for each of the subsequent kicks. The kicks were directed at my back and ribs and I was trying to block each kick."<sup>180</sup>*

"Kyaw" said he found it hard to communicate with police as he does not speak Thai and no translation was provided. He and his brother were released after paying a 4,000 baht (USD 115) bribe.

Migrant workers suspected of serious offences have often faced more severe abuses. Amnesty International spoke to two migrant workers who, along with another migrant, were arrested in early 2013 on suspicion of a serious crime. While being taken to a local police station, the arresting officer slapped them repeatedly. One of them, "Joe", told Amnesty International that he was severely beaten after arriving at the police station. Soon afterwards, he was subjected to other forms of torture:

*"They handcuffed me with my hands behind my back. The handcuffs were tight. They also blindfolded me with a piece of cloth. Then I guess the man [who had previously beaten me] came back in. I didn't see him and then he used a tazer on the top of my back several times.*

*He kept asking me questions, saying, 'What did you do? Just admit to it, it will be over'. Other people were asking questions also. It must have been more than 10 times they tasered me in the back. It was so many times I can't really remember. And then they did the same on my thigh, through my jeans."<sup>181</sup>*

The police officers then tried other tactics in an attempt to obtain a "confession" from "Joe", including placing a plastic bag over his head.<sup>182</sup> Having been suffocated multiple times until he was close to losing consciousness, eventually, "Joe" "confessed" his guilt to end the abuse:

*"I confessed to the charge. I was scared. I just wanted the pain to end. I just said, 'Khrap, khrap, khrap [Yes, yes, yes]' to everything... [They asked a factual question] and I tried to guess what the right answer was, I said [answer], and he hit me again."<sup>183</sup>*

The other victim, "Tem", told Amnesty International that he had also been suffocated and beaten severely.<sup>184</sup> Both have been released on bail and their trials are pending. The vulnerability underlying their abuse was summed up by "Tem" at the end of his testimony to Amnesty International:

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<sup>179</sup> Interview with Amnesty International, Samut Sakhon, July 2015.

<sup>180</sup> Interview with Amnesty International, Samut Sakhon, July 2015.

<sup>181</sup> Interview with Amnesty International, 2015. The victim, while blindfolded throughout, managed to see much of the scene as the blindfolds gradually loosened.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Interview with Amnesty International, 2015.

*"If I was a Thai citizen, I would really want to get justice. But I'm not considered to be Thai. We are not Thai so they won't listen to us, and we have no money."<sup>185</sup>*

## OTHER COMMUNITIES IMPACTED BY TORTURE AND OTHER ILL-TREATMENT

Throughout Thailand, there are other marginalized individuals and communities that often come into contact with police officers and soldiers and may be vulnerable to torture and other ill-treatment. In particular, those engaged in protests or other forms of collective action have been exposed to such abuses.

Amnesty International documented the ill-treatment of community activists and villagers from northern Thailand who had opposed the operations of a gold mine. A group of villagers of Na Nong Bong village in Loei Province have had a longstanding dispute with Tungkum Limited, a gold mining company, over the environmental impact of the mine.<sup>186</sup> In September 2013, members of the *Khon Rak Ban Koed* (People Who Love their Home), a group drawn from six neighbouring villages, which monitors the impact of the gold mining project and opposes its planned expansion, erected three roadblocks to prevent company trucks from travelling through the village.

According to villagers who spoke with Amnesty International, at about 10pm on the night of 15 May 2014,<sup>187</sup> two army officers led a group of about a dozen armed men – presumed by victims to be mostly soldiers because of their haircuts and central Thai dialect – and dozens of civilians in an attack on the roadblocks.<sup>188</sup> Some of the men identified themselves as police but none were wearing uniforms. The villagers felt that the attackers were clearly trying to hide their identity. The group dismantled the roadblocks, and trucks from the gold mine immediately moved through the village. The attackers detained a few dozen villagers, including those who had been manning the roadblocks. At around 4am on 16 May, the attackers left the village and released all the villagers in their custody.

Several of those detained suffered violence and humiliation, amounting at least to cruel, inhuman or degrading treatment or punishment. Some were handcuffed and forced to lie face down against the asphalt of the road for as long as six hours. At least five were beaten, including with rifle butts and sticks.

Viron Rujichaiwat, a 43-year-old farmer, told Amnesty International that one of the attackers was an army officer he knew and believed that most other attackers, who wore black balaclavas, were residents of villages in the area recruited to assist in the actions. He described his experience to Amnesty International as follows:

*"One guy came to me and said: 'I'm police, I'm arresting you.' He tied my hands behind my back with police handcuffs. They sat me down under the hut. One guy came and kicked my right eye. I was knocked over. Only one kick. But later I needed stitches... Two guys with faces exposed and with guns dragged me to the forest, hitting me with the butts of their guns and saying, 'Walk quickly!' Then they forced me to lie down with my face to the ground around 30 meters from the others. Two of them stayed with me. They stamped on my shoulders and my neck so that I would stay on the ground. My brother was beside me and they beat him. Then I was kicked in the same eye for the second time. I was held from 10pm to*

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<sup>185</sup> Ibid.

<sup>186</sup> See "Field of Mine: Na Nong Bong, Thailand", *The Isaan Record*, 30 September 2011, <http://isaanrecord.com/2011/09/30/fields-of-mine-na-nong-bong-thailand/>.

<sup>187</sup> The date coincided with the expiry of a court order temporarily suspending company trucks from travelling through the village.

<sup>188</sup> Interviews with Amnesty International, October 2015. See also Amnesty International, "Fears for Villagers After Attack in Thailand" (AI Index: ASA 39/006/2014), 19 May 2014, <https://www.amnesty.org/en/documents/asa39/006/2014/en/>; Amnesty International, "Threats to the Lives of Village Leaders" (AI Index: ASA 39/009/2014), Urgent Action 2 June 2014, [http://www.amnestyusa.org/sites/default/files/fu13014\\_0.pdf](http://www.amnestyusa.org/sites/default/files/fu13014_0.pdf).

*4am... I was very scared at the time, but also worried for the other villagers. I thought I would die, and I thought I would not see my child being born. My wife was pregnant at the time. In my life I've never seen anything like this before.*"<sup>189</sup>

Yon Kunna, a 44-year-old farmer, told Amnesty International how his attackers treated him once he was detained:

*"They kicked me so I lay down on my stomach, then they tied my hands behind my back using some cloth. They didn't allow us to talk or raise our heads. If we did, they'd stomp us on our backs. I was kicked three times: first on my eyes, then my chin, and the third time they stomped on the right side of my face against the ground. I don't know the reason. I wasn't resisting them in any way.*

*There was blood and a lot of pain but they didn't provide any treatment... They threatened, 'I'm going to kill you!' They said to each other, 'We are going to take them and bury them alive'. I thought at the time they were going to kill me one way or another. I didn't think I would survive.*"<sup>190</sup>

Several women were among those arrested, and they were subjected to violence, humiliation and threats, including threats of sexual violence. Phattraporn Kaengjumba, a 35-year-old woman, told Amnesty International that she was detained and ordered to sit on the ground with other, older women, whom she referred to as "mothers":

*"We sat for 20 minutes or half an hour. Then a pickup truck with 5 to 6 men came our way from checkpoint three. They shouted to the females, 'You are women, you should be at home'. One of the men pulled the mothers by their hair to the tarmac and stamped on their faces. Then I was forced to lie on my face too. There was a guy, a commander, and he shouted for me to lie down. When you lie down, if you raise your face they stamp on your face and use the bamboo stick on your back.*

*This happened to mother Ning and mother Montri. Then the commander ordered his subordinates to tie us. There was one guy there who said he was going to rape me. They focused on me because the other women were old. They said they would take people in the truck, dig a big hole and bury them alive. There was a bamboo hut with a straw roof over there; they said they'd take us there and burn us. I was seriously panicked because this never happened before in our village or in my life.*"<sup>191</sup>

It is quite clear, from victims' testimonies and from court records, that military officers and personnel were deeply involved in the attack at Na Nong Bong village. The extent to which the army as an institution was involved is less clear.<sup>192</sup> On 31 May 2016, the Loei Provincial Court convicted two military officers – one retired and one active duty – for their involvement in the attack.<sup>193</sup> However, despite the numerous eyewitnesses identifying a large number of attackers, no additional suspects have been identified or prosecuted. The role of Tungkom Limited, the mine operator, in the attack has never been precisely ascertained. However, the company has filed numerous criminal defamation suits against villagers and others criticising its environmental record.<sup>194</sup>

Poor rural communities, including ethnic minorities and indigenous peoples, are also vulnerable to torture

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<sup>189</sup> Interview with Amnesty International, Loei province, October 2015.

<sup>190</sup> Interview with Amnesty International, Loei province, October 2015.

<sup>191</sup> Interview with Amnesty International, Loei province, October 2015.

<sup>192</sup> States parties' obligations under Articles 1(1) and 16 of the Convention against Torture extend not only to acts by officials but also acts "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". See Committee against Torture, General Comment 2, para. 18. See also Human Rights Committee, General Comment 20: Article 7: *Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1992), para. 2.

<sup>193</sup> Achara Ashagayachat, "Father, son convicted in mine assault case", *Bangkok Post*, 1 June 2016, <http://www.bangkokpost.com/news/general/996629/father-son-convicted-in-mine-assault-case>.

<sup>194</sup> See Fortify Rights, "Thailand: Drop Defamation Cases Against Schoolgirl, Journalists, Villagers", 12 February 2016, <http://www.fortifyrights.org/publication-20160212.html>.

and other ill-treatment in the context of routine law enforcement operations, including narcotics control activities. They face various forms of discrimination and often lack official government documents.<sup>195</sup> For these reasons and others, individuals from ethnic minority communities are more likely to be arrested or held by police officers or soldiers and are therefore vulnerable to torture and other ill-treatment. Amnesty International documented 11 cases of torture and other ill-treatment of Lahu people – a linguistically distinct ethnic group spread across Thailand, China, Vietnam, Myanmar, and Laos<sup>196</sup> – perpetrated by both police officers and soldiers.

One morning in September 2014, Chatae Sepa, a 46-year-old Lahu gardener, was detained by Thai soldiers outside his village of Kaeng Tun in Chiang Mai province and forced to “assist” in searches for contraband within the village for about two hours.<sup>197</sup> He told Amnesty International:

*“One soldier told me, ‘Go search this house.’ As I took off my shoes outside, they kicked my back so as to push me into the house, then punched my chest until I couldn’t breathe. I begged them to stop, but a soldier put his pistol in my mouth. I didn’t know what I did wrong. I was scared. I was beaten, and I was confused because I didn’t know why I was beaten. I thought I was going to die because I couldn’t breathe.”<sup>198</sup>*

Five Lahu men from Pong Hai village in Chiang Mai province were stopped at a police checkpoint while returning from a festival on the night of 24 March 2013. One of the five, 47-year-old Thongchart Panphakharin, told Amnesty International how he and the others were handcuffed and driven to a house about 180 km from the checkpoint, where they were interrogated from 3am to 6am about alleged drug possession:

*“There were two policemen in the room. They chained us together. We were sitting on the floor. They showed photos of seven people and asked, ‘Do you work in drugs with these people?’ I said I didn’t know them; I didn’t do anything wrong. Then they took off my clothes and applied electric shocks to my genitals. The appliance they used looked like a flashlight. It hurt awfully. I screamed. They shocked each of us. They asked, ‘Did you do it?’ Whoever said ‘no’, they shocked. We were all crying and screaming. They shocked my genitals, chest and ears. They did the same with the others.*

*I was shocked more than 20 times... I was so weak I could hardly sit. Then they covered my face with plastic garbage bags and tightened them so I couldn’t breathe until I fell down. Then they released me, made me sit up again and said, ‘Are you going to confess now?’ I suffered terribly. It was absolute torment. They kept telling us to confess. I feared I would die. I was thinking about my wife, my children. I didn’t want to lose them.”<sup>199</sup>*

Thongchart Panphakharin told Amnesty that at 6am, the police officers left the room. Twelve hours later, they returned and continued to torture the men, beating and kicking them and telling them to confess to involvement in drug trafficking. The police subsequently transferred the men to a jail in Chiang Mai, where they were beaten further before being sent to Bangkok. They were taken to the National Thai Police Headquarters, where police then presented them as heroin traffickers at a press conference.<sup>200</sup> However,

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<sup>195</sup> See, for example, Committee on the Elimination of Racial Discrimination, *Concluding observations on the first to third periodic reports of Thailand*, UN Doc. CERD/C/THA/CO/1-3 (2012); Coalition on Racial Discrimination Watch, *Shadow Report on Eliminating Racial Discrimination: Thailand* (2012), [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/INT\\_CERD\\_NGO\\_THA\\_13686\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/INT_CERD_NGO_THA_13686_E.pdf).

<sup>196</sup> Approximately 150,000 Lahu live in Thailand, primarily as farmers in the north. Kongpob Areerat and Thaweepon Kummetha, “Rubbing salt on open wounds: enforced disappearance, torture and discrimination among the Lahu people”, Prachatai, 12 September 2015, <http://prachatai.org/english/node/5488>.

<sup>197</sup> Interview with Amnesty International, Pong Hai Village, Chiang Mai province, October 2015.

<sup>198</sup> Interview with Amnesty International, Pong Hai Village, Chiang Mai province, October 2015.

<sup>199</sup> Interview with Amnesty International, Pong Hai Village, Chiang Mai province, October 2015.

<sup>200</sup> See, for example, “Lisu drug smugglers arrested with Bt600 million in drugs”, Chiang-Mai Mail, 26 March 2013, [http://www.chiangmai-mail.com/Update2013-News/news\\_Mar6.shtml](http://www.chiangmai-mail.com/Update2013-News/news_Mar6.shtml). For video footage of the event see <https://www.youtube.com/watch?v=TIte7H4MRdk>. For reports in Thai, see, for example,

after 20 months of detention, the men were acquitted of all charges and released. Thongchart Panphakharin is pursuing compensation for his detention and torture.

Sila Jahae, the head of Development Quality of Life Lahu Association (Lahu Association), has worked with these victims and others like them to obtain redress for torture, including by raising complaints at the local and national level. According to Sila Jahae, some of the police officers involved in this case have been transferred to other areas, but none have been prosecuted for their involvement in alleged acts of torture and other ill-treatment.<sup>201</sup>

Routine and longstanding patterns of abuse against individuals from vulnerable or marginalized communities underscore Thailand's failure to address the root causes of torture and ill-treatment. Amnesty International believes that a comprehensive program of reform, addressing both legal and institutional shortcomings, is needed to address this problem. The chapter that follows provides recommendations to the Royal Thai Government that contribute to the goal of eradicating torture and other forms of ill-treatment in Thailand.

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<http://m.dailynews.co.th/News.do?contentId=49620>; <http://www2.manager.co.th/CyberBiz/ViewNews.aspx?NewsID=956000036735> and <http://www.innnews.co.th/shownews/show?newscode=442755>. (Accessed 19/09/2016)

<sup>201</sup> Meeting with Amnesty International, Pong Hai Village, Chiang Mai province, October 2015.

# RECOMMENDATIONS

Torture and other ill-treatment by military and police authorities threaten individuals and communities throughout Thailand. The persistence of torture and other ill-treatment in Thailand can be attributed, in part, to a legal and institutional framework that fails to adequately safeguard against, and ensure accountability for, such practices.

In southern Thailand, the Martial Law Act and Emergency Decree have facilitated the detention of individuals in unofficial places of detention without access to any judicial oversight or other safeguards provided by Thai law, resulting in torture and other ill-treatment by military personnel. In the wake of the 2014 coup, the nationwide application of the Martial Law Act and, subsequently, Order No. 3/2558 has empowered soldiers to detain individuals suspected of security related offences as well as political figures, activists, journalists, academics, students and others for up to seven days in unofficial places of detention without access to lawyers, judges, or family members.

Together, these laws and orders facilitate the unacknowledged, unregulated, and unsupervised detention of individuals in unofficial places of detention and denies detainees key protections against torture and other ill-treatment. In recent years, Amnesty International and other NGOs have consistently documented the use of torture by military personnel while interrogating detainees during these periods of detention. Amnesty International has therefore concluded that torture by military officers in Thailand is systematic.

Police officers and soldiers have often employed torture and other ill-treatment in the context of routine law enforcement and security operations by circumventing the safeguards provided by Thai law. Suspected drug users, migrant workers, and individuals from other marginalized communities that are highly likely to come into contact with police officers or soldiers are particularly vulnerable to torture and other ill-treatment.

There is no single simple remedy to the problem of torture in Thailand. Rather, preventing torture and other ill-treatment by government authorities will require political will and a concerted, sustained and multifaceted effort that incorporates legislative reform, the establishment of new bodies and processes, the training of soldiers, police officers, judges and civil servants, and cooperation with the international community. Moreover, to uproot torture, Thai authorities will need to reverse the widespread impunity enjoyed by the security services and establish military and police cultures that respect and protect people from all sectors of society without discrimination.

# RECOMMENDATIONS TO THE THAI AUTHORITIES

Thai authorities must lead the effort to stamp out torture and other ill-treatment by publicly condemning all forms of torture and other cruel, inhuman or degrading treatment or punishment and declaring that such acts will not be tolerated, whatever the circumstances, and that those suspected of being responsible will be brought to justice, irrespective of their rank or position.

Additionally, the following specific measures should be adopted as a matter of priority:

## LEGAL FRAMEWORK

- Ensure that the Draft Prevention and Suppression of Torture and Enforced Disappearance Act fully complies with the UN Convention against Torture, and then pass it without delay. The law should, among other things, create or assign an independent, accessible body comprised of persons with experience in criminal investigations, human rights and forensic medicine, to promptly, impartially and efficiently investigate all credible complaints or other reports of torture and other ill-treatment;
- Ensure that Thai law prohibits torture and other cruel, inhuman or degrading treatment or punishment absolutely, at all times and in all circumstances, including in any future Constitution;
- Repeal or amend the 1914 Martial Law Act, the Emergency Decree of 2005, Order No. 3/2558 and Order No. 13/2559 to ensure compliance with international human rights law and standards, including by ensuring that individuals are only detained in official places of detention with prompt access to lawyers of one's choice, family and independent courts, and by ensuring that all questioning takes place in the presence of one's lawyer of choice;
- Ensure in law and practice that "confessions" and other statements and evidence obtained through torture and other ill-treatment are never admitted as evidence in courts<sup>202</sup> including by amending section 226(1) of the Criminal Procedure Code;
- Ensure in law, policy and practice that military personnel can only be tried in a civilian court for acts of torture and similar human rights related offences;
- Ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by establishing an independent, efficient and well-resourced body with powers to conduct unimpeded and unannounced visits to all places of detention and all persons deprived of their liberty;
- Ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ratify and incorporate into domestic law the Rome Statute of the International Criminal Court; and
- Facilitate a visit to Thailand by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and ensure that the Rapporteur has access to all detention facilities and detainees in Thailand, including all unofficial places of detention and all detention centres in southern Thailand.

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<sup>202</sup> Except against suspected perpetrators as evidence that such statements were given.

## **SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT:**

- Establish, in law, policy and practice, safeguards against torture and other cruel, inhuman or degrading treatment or punishment, including in the contexts described below.

### **AT ARREST**

- Ensure that arrests are made only on grounds permitted under international human rights law;
- Promptly inform each individual of their rights and the reason for their arrest;
- Respect and facilitate the right of every arrested person to notify family and others of their arrest;
- Prevent torture and other ill-treatment during transport of detainees, including between places of detention and to and from courts; and
- Keep official records of all arrests, without exception.

### **IN DETENTION:**

- Ensure individuals are only detained in official places of detention, and keep official records of all instances of detention, from the outset and without exception;
- Ensure all detainees have access to independent lawyers from the outset of detention;
- Ensure all detainees have prompt access to relatives, medical care, legal counsel and courts, thus putting an end to the practice of incommunicado detention;
- Ensure all detainees are treated humanely and held in conditions that are dignified and conducive to detainees' mental and physical wellbeing; and
- Ensure all detainees have easy access to independent, impartial and efficient complaints mechanisms without suffering any adverse consequences.

### **IN THE JUDICIAL PROCESS**

- Ensure that detainees are promptly brought before an independent judicial authority;
- Respect and facilitate the right to prompt access to a lawyer of one's choice; and
- Respect and facilitate the right of all detainees to challenge the lawfulness of their detention.

### **DURING QUESTIONING:**

- Prohibit all interrogation techniques and coercive measures that amount to torture or other ill-treatment;
- Videotape and audiotape all interrogation sessions;
- Ensure the presence of the detainee's lawyer of choice at all interviews;
- Provide an interpreter to detainees during interviews, as necessary;
- Keep detailed records of all interviews;



- Ensure access to medical examinations and services at the time of admission into detention, throughout the period of detention, including upon and following transfers, and at the time of release; and
- Ensure that, should detainees be placed on remand instead of being released, the authorities responsible for interrogating detainees are distinct from the authorities responsible for detention.

## MILITARY

- Repeal or amend the Martial Order Act and Head, NCPO Order No. 3/2558 and NCPO Order No. 13/2559 to remove the army's power to detain individuals for a week without any safeguards and instead ensure that detainees are handed over to civilian custody as promptly as possible;
- Ensure that all instances of detention comply with international human rights law and standards, including by detaining individuals only in official places of detention with prompt access to lawyers of their choice, their family, adequate medical care and independent courts and by ensuring that all interviews are monitored and take place in the presence of the detainee's lawyer;
- Ensure that in all instances of arrests of civilians by the army is unavoidable, they should be handed over to the civilian authorities without delay;
- Ensure that law enforcement duties are carried out primarily by the Royal Thai Police. In the exceptional circumstances when military officials are tasked with law enforcement duties, ensure they fully comply with Thailand's obligations under international law, including the prohibition against torture and international law enforcement standards; and
- Thoroughly train all soldiers – at the outset of their service and regularly thereafter – on international humanitarian law, human rights law and their application in practice, including:
  - The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
  - The absolute prohibition against extracting “confessions” and other evidence through torture and other ill-treatment, as well as against admitting such evidence in any proceedings;
  - The right to freedom from discrimination; and
  - The right to equality of all before the law.

## POLICE

- Restrict the use of roadblocks to situations where they are clearly necessary to ensure public order and safety and are proportionate to such legitimate aims, and increase monitoring and supervision of all roadblocks;
- Ensure that suspected drug users are not stopped, searched or detained without reasonable suspicion of involvement in a criminal offence and are never subjected to harassment, torture or other ill-treatment or extortion;
- Prohibit all urine tests that would contravene the prohibition of degrading treatment, such as when conducted outside of police stations or medical centres, and ensure such tests are always conducted by trained staff, in circumstances where the rights to privacy and freedom from degrading treatment are respected; and
- Thoroughly train all police officers – at the outset of their service and regularly thereafter – on domestic and international law relevant to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the application of such law in practice, including:

- The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
- The absolute prohibition against extracting “confessions” or other evidence through torture and other ill-treatment, as well as against admitting them in any proceedings;
- The right to freedom from discrimination; and
- The right to equality of all before the law.

## **COMPLAINTS, INVESTIGATIONS, PROSECUTIONS AND REPARATIONS**

- Establish by law an accessible and efficient mechanism for receiving complaints regarding torture and other ill-treatment, and ensure that such a mechanism adequately safeguards the confidentiality and security of complainants;
- Wherever there are reasonable grounds to believe torture or other ill-treatment has occurred, including upon receipt of complaints or other reports, carry out a prompt, independent, impartial and efficient investigation, with a view to ensuring accountability for such acts. Ensure that the scope, methods and findings of such investigations are made public;
- Suspend, for the duration of any such investigation, all officials suspected of torture or other ill-treatment from any duties that involve dealing with possible or actual detainees or that may influence the investigation;
- Where such investigations produce sufficient and admissible evidence, prosecute all those suspected of being responsible for torture and similar offences, irrespective of rank or position, in proceedings which meet international fair trial standards and without recourse to the death penalty;
- Ensure, in law, policy and practice, that complainants, witnesses and other at risk individuals are protected from intimidation and reprisals including by an efficient and adequately resourced witness protection programme;
- Institute a systematic and comprehensive range of effective and accessible measures, in consultation with victims of torture and their representatives, to grant all victims of torture redress, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition; and
- Promptly provide reparations to victims, including families of those who died in custody. Reparations must include restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation, in accordance with international standards.

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# “MAKE HIM SPEAK BY TOMORROW”:

## TORTURE AND OTHER ILL-TREATMENT IN THAILAND

In Thailand, senior government officials have declared their commitment to ending the use of torture. Nevertheless, Amnesty International has found, through a two year investigation, that torture remains shockingly common.

Legislators are considering a new law that, if passed, would explicitly criminalise torture and further protect against torture and other forms of ill-treatment. Adopting and implementing an anti-torture law that fully complies with the UN Convention against Torture are essential steps that Thailand must take to end these grave violations.

*“Make him Speak by Tomorrow”* describes the findings of a two year investigation by Amnesty International into the use of torture and other ill treatment by Thai authorities. With the help of local human rights NGOs, Amnesty International collected first-hand testimony of survivors, court documents, medical records and various other forms of evidence relating to 74 cases of torture perpetrated in a variety of contexts. In southern Thailand, soldiers have tortured individuals with suspected links to insurgent groups. Elsewhere, authorities have tortured or otherwise ill-treated individuals accused of politically-related offences or acts of political violence, suspected drug users, migrant workers and others. This report identifies the legal and institutional failures that facilitate torture and other ill-treatment in Thailand and offers recommendations to such abuses once and for all.