

10.2. Legal framework

International law

Thailand acceded to the Convention against Torture (CAT)⁹⁵⁹ in 2007, which remains its most significant international commitment in relation to the prevention of torture. It has not ratified the Optional Protocol to CAT, and it is yet to enact legislation that fully implements the Convention into domestic law. Thailand is also a party to the Geneva Conventions since 1954, but has not ratified any of the Additional Protocols.⁹⁶⁰

Thailand is also a party to numerous other treaties that protect against torture or related violations. These include the International Covenant on Civil and Political Rights (ICCPR),⁹⁶¹ the International Covenant on Economic Social and Cultural Rights (ICESCR),⁹⁶² the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol,⁹⁶³ and the Convention on the Rights of the Child (CRC).⁹⁶⁴ It has also signed the Convention for the Protection of All Persons from Enforced Disappearance (CED).⁹⁶⁵

Section 82 of the Thai Constitution stipulates that “the State ... shall adhere to the equal treatment principle and comply with treaties related to human rights to which Thailand becomes a party”. At the first cycle of the Universal Periodic Review, in October 2011, Thailand was commended for the detailed national report it submitted, and for its contribution to the review of the Human Rights Council.⁹⁶⁶ The Thai Government agreed to implement 134 of 172 recommendations, with the remaining 38 rejected because they relate to politically sensitive issues such as the conflict in the South.⁹⁶⁷

National legal system

The Thai Constitution, as amended in 2007, provides that “a person shall enjoy the right and liberty in his or her life and person” and “torture, brutal act, or punishment by cruel or inhumane means shall not be permitted.”⁹⁶⁸ Despite this constitutional prohibition, torture is yet to be classified as an offence under Thai criminal law. Nevertheless, there are provisions in the Criminal Code⁹⁶⁹ governing crimes such as assaults,⁹⁷⁰ malfeasances,⁹⁷¹ and crimes against liberty⁹⁷² that can be theoretically

⁹⁵⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁹⁶⁰ The Four Geneva Conventions of 1949. Thailand ratified the Conventions on 29 December 1954.

⁹⁶¹ International Covenant on Civil and Political Rights. Thailand became a party on 29 October 1996 through accession.

⁹⁶² International Covenant on Economic, Social and Cultural Rights. Thailand acceded on 5 September 1999.

⁹⁶³ Convention on the Elimination of All Forms of Discrimination against Women. Thailand acceded to the convention on 9 Aug 1985 and ratified on 14 June 2000 the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

⁹⁶⁴ Convention on the Rights of the Child. Acceded to by Thailand on 7 March 1992.

⁹⁶⁵ Thailand signed the Convention on 9 January 2012.

⁹⁶⁶ U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand*, UN Doc. A/HRC/19/8, 8 December 2011, paras. 12-13, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf?OpenElement>.

⁹⁶⁷ Kavi Chongkittavorn, Ending Thailand's impunity for real, *The Nation*, 2 July 2012, available at: <http://www.nationmultimedia.com/opinion/Ending-Thailands-impunity-for-real-30185269.html>.

⁹⁶⁸ Constitution of the Kingdom of Thailand, B.E. 2550 (2007), s. 32, available at: http://www.senate.go.th/th_senate/English/constitution2007.pdf.

⁹⁶⁹ Criminal Code, B.E. 2499 (1956), as amended until Criminal Code (No.17) B.E. 2547 (2003), available at: <http://www.thailandlawonline.com/Laws/criminal-law-thailand-penal-code.html>.

⁹⁷⁰ Ibid., ss. 295, 297.

⁹⁷¹ Ibid., s. 157.

applicable to those who commit acts of torture although they do not fully capture all elements of the crime of torture.

Thailand has not incorporated the principle of non-refoulement enshrined under Article 3 of CAT in its domestic legislation. Furthermore, Thailand is not party to the UN Refugee Convention⁹⁷³ and the treatment of refugees within the jurisdiction of Thailand has been questionable, with numerous reports of actions by the authorities that are in contravention of Article 3 of the CAT. Thailand has a history of deporting Burmese migrants⁹⁷⁴ and there have been repeated assertions by the Thai authorities that they will continue to do so, despite the risk of persecution on their return.⁹⁷⁵ Ethnic Hmong people, who claim they face persecution for their support of US forces during the Vietnam War, have also been the subject of deportations, in their case back to communist-run Laos.⁹⁷⁶ The repatriation of asylum seekers back to countries where they are at risk of persecution, including torture, continues to be reported.⁹⁷⁷ With regards to human trafficking however, legal protection⁹⁷⁸ is afforded to victims whose “security and welfare” would be under threat upon return to their country of residence or origin.⁹⁷⁹

The Thai legal system does not provide for the exercise of universal jurisdiction. Crimes committed abroad can only be tried before Thai Courts if either the victim or the offender is a Thai national.⁹⁸⁰

10.3. Safeguards and complaint mechanisms

Limits to and supervision of pre-trial detention

The Constitution confers the right of individuals “to have easy, expeditious, speedy and comprehensive access to justice,” as set out in section 40 (1), in addition to the right to have their case tried “in a correct, speedy and fair manner” through section 40 (3).

The Criminal Procedure Code⁹⁸¹ sets out the rights of arrested persons. Section 7(1) entitles an arrestee to take legal advice and receive medical treatment, and section 87 sets out the requirement that he or she be brought before a court within 48 hours of the arrest if he or she has not been granted provisional release. The right to trial within a reasonable period of time is guaranteed under section 8, and arrestees are able to appear via videoconference if necessary under section 87 (1). Such measures, in principle, help to ensure that detention is lawful and can reduce the risk that detainees are tortured. Successive twelve-day periods of detention can be authorised by a court in circumstances where the offence being investigated is punishable by a term of imprisonment of at least ten years, up to a maximum period of detention of eighty-four days.⁹⁸² For offences subject to

⁹⁷² Ibid., ss. 309-312.

⁹⁷³ United Nations Convention Relating to the Status of Refugees 1951.

⁹⁷⁴ Migrant Assistant Programme, *No Human Being is Illegal, No Migrant Worker is Illegal: 1996-2006*, 11 December 2006, pp. 36-55, available at: http://www.mapfoundationcm.org/pdf/eng/eng_map10years.pdf.

⁹⁷⁵ Amnesty International, *Annual Report 2012: Thailand*, 2012, available at: <http://www.amnesty.org/en/region/thailand/report-2012>.

⁹⁷⁶ Thailand deports thousands of Hmong to Laos, *BBC*, 28 December 2009, available at: <http://news.bbc.co.uk/1/hi/8432094.stm>.

⁹⁷⁷ Amnesty International, *Annual Report 2012: Thailand*

⁹⁷⁸ See; ECPAT International, *Thailand: Country Progress Card*, pp. 11-12, available at: [http://www.ecpat.net/TBS/PDF/2010 Thailand Progress Card.pdf](http://www.ecpat.net/TBS/PDF/2010%20Thailand%20Progress%20Card.pdf).

⁹⁷⁹ Anti-Trafficking in Persons Act, B.E. 2551 (2008), s. 38, available at: <http://www.unhcr.org/refworld/docid/4a546ab42.html>.

⁹⁸⁰ Criminal Code, s. 8.

⁹⁸¹ Criminal Procedure Code of Thailand, as promulgated by Act Promulgating the Criminal Procedure Code, B.E. 2477 (1934), and amended under Amendment No.29 B.E. 2551 (2008), available at: http://en.wikisource.org/wiki/Criminal_Procedure_Code_of_Thailand/Provisions#D1-T4-C2-P1.

⁹⁸² Ibid., s. 87.

shorter sentences, the maximum detention period is reduced. For an offence punishable by imprisonment for no more than six months, the court cannot order a detention period exceeding seven days.⁹⁸³ For offences that carry a punishment of more than six months, but no more than ten years imprisonment, the court can order successive pre-trial detention periods of up to twelve days each, up to a total period of forty-eight days.⁹⁸⁴ In practice however, arrestees are sometimes denied access to legal counsel and are rarely brought before a court within the forty-eight hour time limit.⁹⁸⁵ Detainees are also not always held at a police station as required under the Criminal Procedure Code – instead being kept at unofficial facilities.⁹⁸⁶

Both state bodies and independent organisations conduct monitoring of prisons and other detention facilities. The National Human Rights Commission of Thailand⁹⁸⁷ (NHRC) has conducted visits to official detention centres; however, such visits are subject to prior approval and tend to be in reaction to complaints rather than being systematic.⁹⁸⁸ The NHRC's composition also raises some doubts regarding its independence.⁹⁸⁹ Occasionally, visits by legislative committees are organised in response to allegations of abuses in detention facilities.⁹⁹⁰ Visits are also undertaken by the International Committee of the Red Cross.⁹⁹¹ However, these are often restricted to official detention facilities, and are subject to prior approval.

Arrest and detention under the emergency laws

Provisions under the emergency laws applicable in the Southern provinces offer less protection to arrestees and detainees than the Criminal Procedure Code, and are open to abuse. The 2005 Emergency Decree allows suspects to be kept in preventive detention for an initial period of seven days subject to a judicial approval.⁹⁹² The period can be extended to thirty days on obtaining authorisation from a court.⁹⁹³ The Criminal Procedure Code is to apply thereafter, should the officials find that further “restraint” is required.⁹⁹⁴ However, detainees are often moved to different locations before the expiry of the period provided under both the Emergency Decree and the Criminal Procedure Code, at which point the authorities re-start the clock.⁹⁹⁵ The same person can be detained for 30 days and a seven-day holding period is conferred to the military authorities under the Martial Law Act.⁹⁹⁶

Section 11 of the Emergency Decree has been the basis upon which the Internal Security Operations Command (ISOC) – the unit of the Thai military responsible for national security – has issued

⁹⁸³ Ibid.

⁹⁸⁴ Ibid.

⁹⁸⁵ US Department of State, *Country Reports on Human Rights Practices for 2011: Thailand*, pp. 10-11.

⁹⁸⁶ Amnesty International, *Thailand: Time to end human rights violations – Amnesty International Submission to the UN Universal Periodic Review*, p. 5.

⁹⁸⁷ As established under the National Human Rights Commission Act, B.E. 2542 (1999); see also Office of the National Human Rights Commission of Thailand website, available at: <http://www.nhrc.or.th/2012/wb/en/index.php>.

⁹⁸⁸ Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 26.

⁹⁸⁹ Civil Society and Human Rights Coalition of Thailand (CHRC) joint submission, *A Universal Periodic Review of Thailand For the 12th Session of Universal Periodic Review on October 2-14, 14 March 2011*, para. 13; see also s. 256 of the Constitution, which requires the Commission to be appointed by the King with the advice of the Senate.

⁹⁹⁰ The Committee on Violence in the South visited several detention facilities in response to allegations of torture between September 2006 and early 2008 – see Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 26.

⁹⁹¹ International Committee of the Red Cross, *Thailand: nearly four decades of ICRC presence*, 14 May 2010, available at: <http://www.icrc.org/eng/resources/documents/interview/thailand-interview-140510.htm>.

⁹⁹² Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005), ss. 11 (1) and 12.

⁹⁹³ Ibid. ss. 12.

⁹⁹⁴ Ibid.

⁹⁹⁵ Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 23.

⁹⁹⁶ Martial Law Act B.E. 2457 (1914), s. 15bis

regulations⁹⁹⁷ on how duties may be discharged during states of emergency. Paragraph 3.1 of the Regulations permits the arrest of a person “believed to act as [an] accomplice ... [or] supporter of the act that has led to states of emergency ... with the aim to give explanation and instil correct attitude so that the person quits the behaviour or stops abetting the act.”⁹⁹⁸ The scope for abuse in applying this provision is obvious, due to its highly subjective wording. Furthermore, in order to extend the detention period the custodian is not required to bring the detainee to court thereby excluding an opportunity for judicial oversight over the conditions of detention.⁹⁹⁹

Section 12 of the Emergency Decree stipulates that arrested suspects are to be taken into custody at “a designated place which is not a police station, detention centre, penal institution or prison.” The ISOC has issued a directive¹⁰⁰⁰ stating that there are only two official detention facilities that can hold suspected insurgents in the South, however there are reportedly many more. The use of unofficial facilities or “secret places” can facilitate the occurrence of torture,¹⁰⁰¹ due to a lack of opportunity for supervision and falling outside the scope of legal safeguards. The Emergency Decree has been in force since 2005, and continues to be periodically renewed in the provinces of Yala, Narathiwat and all but one district in Pattani.¹⁰⁰²

The Internal Security Act,¹⁰⁰³ which came into force in February 2008, essentially sets out a modified legal basis for the operation of ISOC.¹⁰⁰⁴ A notable rule that could clearly be prone to abuse is section 21, which stipulates that a court can order a person “to undergo training at a designated place for a period not exceeding six months” if that person is deemed by an investigating officer to have committed an offence that affects internal security.¹⁰⁰⁵ Although the consent of the accused is required for the training,¹⁰⁰⁶ it has been reported that detainees who refused such an offer on the expiry of the 37-day detention period under the emergency laws, were subjected to further detention.¹⁰⁰⁷

⁹⁹⁷ ‘Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per Section 11 Of the Emergency Decree on Government Administration in States of Emergency, B.E. 2548 (2005)’, from Annex II of: Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, 2011, available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS8-JointSubmission8-eng.pdf>.

⁹⁹⁸ ISOC Regulations, para. 3.8.

⁹⁹⁹ The law only provides that the “necessities for the extension must be proven.” Ibid., para.3.7.

¹⁰⁰⁰ Directive No. 11/2550 ‘Detention facilities under the 2005 Emergency Decree on Government Administration in States of Emergency’ 24 January 2007, cited in: Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 25.

¹⁰⁰¹ See: Office of the High Commissioner for Human Rights, *Resolution 2005/39*, available at: <http://www.unhcr.org/refworld/category/LEGAL/UNCHR/45377c550,0.html>.

¹⁰⁰² Cabinet extends emergency decree in southern border provinces, *Pattaya Mail*, 19 June 2012, available at: <http://www.pattayamail.com/news/cabinet-extends-emergency-decree-in-southern-border-provinces-13824>.

¹⁰⁰³ Internal Security Act, B.E. 2551 (2008) available at: http://thailaws.com/law/t_laws/tlaw0342.pdf.

¹⁰⁰⁴ See Internal Security Act, s. 5 onwards.

¹⁰⁰⁵ The UN Special Rapporteur, reporting on the protection of human rights while countering terrorism, held concerns over the application of the emergency laws and in particular the six month “training” period that an official can confer on a suspect under the Internal Security Act. See: U.N. Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin– Communications with governments: Thailand*, UN Doc. A/HRC/10/3/Add.1, 24 February 2009, paras. 278, 287-290, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.3.Add.1_EFS.pdf.

¹⁰⁰⁶ In 2007, provincial courts ruled that it was in fact unlawful unless truly voluntary: see Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 27; In spite of this, a number of detainees were prevented from returning home: Asian Human Rights Commission, *Update (Thailand): Hundreds released from army detention prevented from going home*, UP-143-2007, 2 November 2007, available at: <http://www.humanrights.asia/news/urgent-appeals/UP-143-2007>.

¹⁰⁰⁷ Working Group on Justice for Peace, “Human Rights under Attack:” *Overview of the human rights situation in Southern Thailand*, March 2008, p. 6, available at: <http://www.protectionline.org/IMG/pdf/HRUnderAttack.pdf>.

Persons detained under the Martial Law Act of 1914, which also confers to the military authorities the power to detain a suspect for seven days,¹⁰⁰⁸ cannot claim compensation for “any damage which may result from the exercise of powers of the military” pursuant to Section 16.¹⁰⁰⁹ The power to invoke martial law, as under the Act, rests with a battalion commander within the armed forces “in his or her responsible area.”¹⁰¹⁰

The judiciary has limited opportunity to satisfy itself about the security and safety of detainees, as officials are not required to present them before a court when seeking an extension under the paragraph 3.7 of the ISOC Regulations. Furthermore, there does not appear to be sufficient opportunity for detainees to challenge the basis of their detention under the emergency laws. In addition, allegations of torture or ill-treatment taking place in detention must be communicated through complaints submitted to the police – who are usually the perpetrators.¹⁰¹¹ Detainees and their relatives are not always able to present petitions before a court challenging the detention, as they may be unaware of their rights or are afraid to challenge the authority of the officers. In most habeas corpus proceedings, the courts will grant extensions of detention periods without exercising a substantive review of a detainee’s request.¹⁰¹²

Access to legal advice and compulsory medical assistance upon arrest

Section 40 (7) of the Constitution provides for the right of a suspect in a criminal case to “legal assistance from an attorney.” Detainees are afforded the right to have counsel present during an interrogation, and the right to obtain “expeditious medical treatment” if necessary. The right to legal advice under the ISOC Regulations however, does not appear to be as forthcoming. The second amendment to the Regulations stipulates that for visits from persons other than the detainees’ relatives, permission must be sought from an authorised official and the conversation of any such visit can be observed.¹⁰¹³

There are reports that access to a lawyer is often denied, with detainees being held incommunicado, and that temporary bail is routinely and unreasonably refused.¹⁰¹⁴ Furthermore, the allocation of funding and resources towards legal aid in Thailand has been criticised as being not significant enough, with the provider of the scheme – the Law Council of Thailand – receiving 0.06% of the total budget allocated for justice facilitation.¹⁰¹⁵ Access to legal aid is by and large insufficient and ineffective, and lengthy delays are common in the process on the part of the public prosecutor and the courts.

During states of emergency, the ISOC Regulations indicate that “medical treatment must be provided when needed.”¹⁰¹⁶ However, medical assistance was allegedly denied to some detainees

¹⁰⁰⁸ Martial Law Act B.E. 2457 (1914), s. 15bis.

¹⁰⁰⁹ See also Emergency Decree, s. 17.

¹⁰¹⁰ Martial Law Act, s. 4.

¹⁰¹¹ Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 24.

¹⁰¹² Working Group on Justice for Peace, “*Human Rights under Attack: Overview of the human rights situation in Southern Thailand*”, p. 6.

¹⁰¹³ Section 2 of the 2nd Amendment; see also Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, p. 14.

¹⁰¹⁴ *Universal Periodic Review (UPR) Thailand: Joint CSO Submission to the Office of the High Commissioner of Human Rights*, March 2010, para. 14, available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/JS9-JointSubmission9-eng.pdf>. See also Human Rights Watch, *Descent into Chaos: Thailand’s 2010 Red Shirt Protests and the Government’s Crackdown*, p. 125.

¹⁰¹⁵ Civil Society and Human Rights Coalition of Thailand (CHRC) joint submission, *A Universal Periodic Review of Thailand For the 12th Session of Universal Periodic Review on October 2-14*, para. 23.

¹⁰¹⁶ ISOC Regulations, para. 3.9.4.

prior to being transferred to official prisons during the political protests in 2010,¹⁰¹⁷ and there is a similar situation regarding the unrest in the South, where medical personnel “do not have regular access to detainees.”¹⁰¹⁸ For those who are tortured during interrogation, only victims with the most severe injuries are likely to receive medical attention.¹⁰¹⁹ Even then, many doctors refuse to examine victims and issue medical reports “out of fear.”¹⁰²⁰ If detainees are charged under the Criminal Procedure Code, they will be sent to court and eventually held at a provincial prison. Under the prison regulations, an authorised person will examine the detainees and if medical treatment is needed, the Department of Corrections will provide as necessary.¹⁰²¹ Yet, reportedly, the medical care is often inadequate¹⁰²² and there is usually no expert on torture induced injuries.

Admissibility of evidence obtained under torture

The Criminal Procedure Code prohibits the use of torture and other forms of coercion and inducement by investigators. Section 135 of the Criminal Procedure Code states that “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.” The admission of evidence obtained through such means is dealt with under section 226. The use of evidence in order to prove a defendant’s guilt or innocence is permissible, if “it is not obtained by an act of inducement, promise, threat, deception or any other unjust act.” However section 226 (1) appears to qualify this protection by reaffirming the court’s duty to exclude such evidence, except in cases where it would be “more beneficial to the carriage of justice than detrimental to the... fundamental rights and liberties of the people.”

10.4. Accountability

The NHRC has a mandate to “to examine and propose remedial measures ... for the commission or omission of acts which violate human rights”, provided the matter is not already subject to court proceedings.¹⁰²³ The right to lodge a written petition in event of a violation of human rights is conferred to a victim through section 23 of the Act, and the option to report the matter in the first instance to a private human rights organisation is set out in section 24. As has been noted, however, the efficiency of the NHRC has been called into question due to its perceived lack of independence, thereby often rendering its investigative duties ineffective.¹⁰²⁴

Victims are able to report abuses or file complaints directly to the relevant authorities, including the military. The inadequacies of such procedures are obvious, not least because most allegations would be reported to the same institutions implicated in the violation. Furthermore, the Emergency Decree, pursuant to section 17, exempts those officials enforcing the state of emergency from criminal, civil and disciplinary liability, provided they were acting “in good faith”.¹⁰²⁵

¹⁰¹⁷ Human Rights Watch, *Descent into Chaos: Thailand’s 2010 Red Shirt Protests and the Government’s Crackdown*, p. 128.

¹⁰¹⁸ Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 24.

¹⁰¹⁹ Working Group on Justice for Peace, “*Human Rights under Attack:*” *Overview of the human rights situation in Southern Thailand*, p. 8.

¹⁰²⁰ *Ibid.*

¹⁰²¹ Department of Corrections Prisoner Handbook, p. 9, available at: <http://bp.correct.go.th/document/handbook.pdf>.

¹⁰²² US Department of State, *Country Reports on Human Rights Practices for 2011: Thailand*, p. 5.

¹⁰²³ See s.s22 and 15(2) of the National Human Rights Commission Act.

¹⁰²⁴ Civil Society and Human Rights Coalition of Thailand (CHRC) joint submission, *A Universal Periodic Review of Thailand For the 12th Session of Universal Periodic Review on October 2-14*, para.74-76.

¹⁰²⁵ The UN Human Rights Committee has expressed its concern regarding this issue. See Human Rights Committee, *Concluding observations of the Human Rights Committee: Thailand*, UN Doc. CCPR/CO/84/THA, 8 July 2005, para.13, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/435/04/PDF/G0543504.pdf?OpenElement>.

Consequently, there is a persisting culture of impunity in relation to allegations of ill-treatment and torture at the hands of many actors, especially in the areas affected by the conflict. The Muslim Attorney Centre reported 113 cases of torture used to obtain confessions in 2007-2008, and a further 130 cases in 2009-2010.¹⁰²⁶ Concerning complaints in the South, the NHRC issued a report documenting 34 torture petitions from 2007 to 2010.¹⁰²⁷ Although these figures may not represent the true extent to which torture takes place, they nevertheless demonstrate the fact that there are numerous leads of enquiry for prosecutors to follow. In spite of this, no government official has been found guilty of committing ill treatment or torture in the southern border provinces.¹⁰²⁸ Even high-profile incidents have seen no action being taken, such as that concerning the alleged torture and eventual death of Muslim Imam Yapha Kaseng, and Sulaiman Naesa among others.¹⁰²⁹

Reports also suggest that complaining about torture can lead to serious repercussions, resulting in a situation whereby most complainants do not proceed to court or are simply withdrawn for fear of reprisals.¹⁰³⁰ The disappearance of a prominent human rights lawyer, Somchai Neelapaijit, in 2004 and the subsequent conviction of one of his clients for filing a false complaint highlight notable obstacles in efforts to hold perpetrators to account. Mr Neelapaijit was investigating the alleged torture by security officials against five of his clients, when he was reportedly abducted on 12 March 2004 by five plainclothes police officers and he remains missing thereafter.¹⁰³¹ Only one of the officers was convicted for his disappearance, however, he was later acquitted on appeal.¹⁰³² Suderueman Malae, Mr Neelapaijit's client, claimed to have been tortured following his arrest for stealing weapons from an army base. The complaint was investigated by the Department of Special Investigation (DSI) and the National Anti-Corruption Commission (NACC), and was eventually dismissed due primarily to inconclusive physical examination reports.¹⁰³³ One of the officers being investigated for torture lodged a counter-claim against Mr Malae for issuing a false complaint, which resulted in the conviction and sentencing of Mr Malae in August 2011 to a two-year term of imprisonment.¹⁰³⁴

The investigation and prosecution of human rights violation committed by both sides during the political clashes in 2010 seem to be conducted along partisan political lines. Following the protests, government forces enjoyed impunity whilst leaders, protesters and militants from the opposition UDD were subject to prosecution.¹⁰³⁵ However, since the arrival of a new government backed by the

¹⁰²⁶ Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, para. 18.

¹⁰²⁷ National Human Rights Commission, *Right to Judicial Process in Relation to the Examination of the Complaints Concerning Torture and Other Inhuman Treatment or Punishment in the Southern Border Provinces*, Report No. 275-308/2553, 2010, cited in Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, para. 21.

¹⁰²⁸ Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, para. 30. See also US Department of State, *Country Reports on Human Rights Practices for 2011: Thailand*, p. 4.

¹⁰²⁹ Ibid.

¹⁰³⁰ Asian Human Rights Commission, *Thailand: Consolidating internal security State, complaisant judiciary*, AHRC-SPR-012-2011, 2011, p. 8, available at: <http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-012-2011.pdf/view>.

¹⁰³¹ Asian Human Rights Commission, *Thailand: Continued impunity for enforced disappearance in Thailand*, 21 February 2012, available at: <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc19/ALRC-CWS-19-05-2012>.

¹⁰³² Ibid. The case is pending on appeal before the Supreme Court as at this writing.

¹⁰³³ NACC public Statement, released 20 December 2010.

¹⁰³⁴ 'Black Case No. 2161/2552, translated excerpts available in, the 'Thailand: Persecution of torture victims and the legalization of impunity in Thailand', A written Statement submitted by the Asian Legal Resource Centre (ALRC) to the Human Rights Council, Eighteenth session, September 2011, available at: <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc18/ALRC-CWS-18-03-2011>.

¹⁰³⁵ Human Rights Watch, *Descent into Chaos: Thailand's 2010 Red Shirt Protests and the Government's Crackdown*, p. 7.

UDD in August 2011, “the focus of criminal investigations has been entirely on the cases in which government soldiers were implicated.”¹⁰³⁶

Applicability of statutes of limitation, amnesties and immunities

There are no general amnesty laws in place in Thailand. However, there is an on-going initiative to grant an amnesty to high-ranking officials, members of the security forces and politicians for abuses committed during the 2010 political unrest, which has been criticised by human rights groups.¹⁰³⁷ As noted earlier, official acting “in good faith” are accorded immunity under Section 17 of the Emergency Decree.

The statute of limitation for grievous bodily harm, which is punishable with a maximum sentence of 10 years imprisonment, is fifteen years.¹⁰³⁸ The same limitation period, arguably applies to section 157 of the Criminal Code, which provides for up to 10 years imprisonment for a wrongful exercise of official functions resulting in injury to any person.¹⁰³⁹

Protection of victims and witnesses

Effective victim and witness protection is essential to ensure that torture suspects are brought to justice. The Constitution affirms the right to appropriate treatment, protection and assistance to victims and witnesses under sections 40 (4) and (5). In addition, the Witness Protection Act requires “a competent official from criminal investigation, interrogation prosecution or the Witness Protection Bureau”, as appropriate, to protect a witness in a case where he “loses his security”.¹⁰⁴⁰ Protection under this Act extends to family members where necessary.¹⁰⁴¹

However, the Witness Protection Act has been criticised for its lack of detail and for excluding defendants from its scope, among other things. This presents an obvious problem for those tortured to induce a confession and wish to raise the matter in court.¹⁰⁴² Victims or their families sometimes fail to register a complaint concerning violations perpetrated by state officials for fear of reprisals.¹⁰⁴³ Furthermore, human rights defenders and lawyers have reportedly faced intimidation and threats for their efforts to investigate human rights violations.¹⁰⁴⁴ Despite the fact that responsibility for witness protection in principle lies with the Witness Protection Office, the practical authority and overwhelming influence remains with the police.¹⁰⁴⁵ This has led to a situation whereby the Witness Protection Office rarely questions whether it is appropriate for the police to protect witnesses, and instead focuses on training them for the task.¹⁰⁴⁶

¹⁰³⁶ Human Rights Watch, ‘Thailand: Don’t Block Accountability for Political Violence’, 30 March 2012, available at: <http://www.hrw.org/news/2012/03/30/thailand-don-t-block-accountability-political-violence>.

¹⁰³⁷ Human Rights Watch, *Thailand: Don’t Block Accountability for Political Violence*, 30 March 2012. The move has provoked renewed public protests with demonstrators blocking parliament in June 2012. See Thanyarat Doksone, Protesters block Thai Parliament over amnesty bill, *Associated Press*, 1 June 2012, available at: <http://finance.yahoo.com/news/protesters-block-thai-parliament-over-amnesty-bill-151407511.html>.

¹⁰³⁸ Criminal Code, ss. 95 and 297. It must be noted, however, s. 297 defines grievous bodily injury in such a restrictive way as to require permanent injury or bodily pain causing infirmity for over twenty days, which makes it inapplicable to most instances of Torture and ill-treatment.

¹⁰³⁹ *Ibid.*, s. 157.

¹⁰⁴⁰ Witness Protection Act, B.E. 2546 (2003), s. 6, unofficial translation available at: <http://www.Article2.org/mainfile.php/0503/235/>.

¹⁰⁴¹ *Ibid.*, s. 7.

¹⁰⁴² *Protecting witnesses or perverting justice in Thailand*, Asian Legal Resource Centre, June 2006, pp. 13-14, available at: <http://www.Article2.org/pdf/v05n03.pdf>.

¹⁰⁴³ Working Group on Justice for Peace, “*Human Rights under Attack*”: Overview of the human rights situation in Southern Thailand, p. 7, at footnote [19].

¹⁰⁴⁴ *Ibid.*, p. 10.

¹⁰⁴⁵ Article 2, *Protecting witnesses or perverting justice in Thailand*, p. 18.

¹⁰⁴⁶ *Ibid.*

10.5. Reparation

The Constitution provides victims with the right to seek a remedy and to obtain a court order to stop the violation. In the context of criminal cases, the right to obtain reparation is set out in the Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act.¹⁰⁴⁷ Seeking reparation through this mechanism has not proved to be satisfactory, as many victims do not trust the witness protection programme and are afraid to file charges against offending officials.¹⁰⁴⁸ Moreover, it often takes a long time to receive compensation and, in financial terms, the amount is often insufficient.¹⁰⁴⁹ This echoes concerns raised by the UN Human Rights Committee in 2005¹⁰⁵⁰ that Thai reparation falls short of the standard set in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.¹⁰⁵¹ Another avenue through which torture victims can seek reparations from a perpetrator is by claiming for damage under the Civil and Commercial Code,¹⁰⁵² which fall within the jurisdiction of the civil or administrative courts. However, such remedies are curtailed by sections 16 and 17 of the Emergency Decree, which exempt government officials from civil or criminal proceedings as well as from proceedings before the administrative courts.

Although some victims have received compensation for violations carried out by state actors, arrangements are often made out of court to avoid the prospect of criminal prosecutions.¹⁰⁵³ For instance, the family of the aforementioned Imam who died in custody, Yapha Kaseng, was reportedly encouraged to settle out of court.¹⁰⁵⁴ Further questions have been raised over the amount of compensation paid. The compensation awarded often does not reflect the harm suffered, and the time to obtain reparations through the existing procedure is overly lengthy.¹⁰⁵⁵

The availability of physical and psychological care is integral to the rehabilitation of torture victims. In Thailand, there are notable obstacles to the effective provision of such services, which includes lack of publicly funded treatment facilities, denial of access to medical treatment and the reluctance of health professionals to treat certain categories of torture victims because of fear of reprisal from state actors.¹⁰⁵⁶

¹⁰⁴⁷ Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case Act, B.E. 2544 (2001), unofficial translation available at:

<http://www.thailawforum.com/laws/Damages%20for%20the%20injured%20person.pdf>.

¹⁰⁴⁸ See Muslim Attorney Centre Foundation and Cross Cultural Foundation (MACF), *Report to UPR: Human Rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State*, para.22.

¹⁰⁴⁹ Ibid.

¹⁰⁵⁰ Human Rights Committee, *Concluding observations of the Human Rights Committee: Thailand*, para.15.

¹⁰⁵¹ '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 and proclaimed by General Assembly Resolution 60/147 of 16 December 2005, available at: <http://www2.ohchr.org/english/law/remedy.htm>.

¹⁰⁵² Civil and Commercial Code, B.E. 2551 (2008), s. 420, first part available at: <http://www.samuihorsale.com/law-texts/thailand-civil-code-part-1.html>.

¹⁰⁵³ Asian Human Rights Commission, *Thailand: Compensation without criminal liability is no solution to the killings in Southern Thailand*, AS-24-2004, 4 August 2004, available at: <http://www.humanrights.asia/news/ahrc-news/AS-24-2004>.

¹⁰⁵⁴ Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, p. 12.

¹⁰⁵⁵ Article 2, *Institutionalised torture, extrajudicial killings & uneven application of law in Thailand*, Asian Legal Resource Centre, 15 April 2005, para.11(x), available at: <http://www.Article2.org/mainfile.php/0402/186/>.

¹⁰⁵⁶ Human Rights Committee, *Considerations of Reports Submitted by States Parties under Article 40 of the Covenant Initial report: Thailand*, 2 August 2004, UN Doc No. CCPR/C/THA/2004/1, para. 154, available at: [http://www.unhcr.ch/tbs/doc.nsf/0/3feaf356b22ca8cc1256f1800499748/\\$FILE/G0443072.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/3feaf356b22ca8cc1256f1800499748/$FILE/G0443072.pdf)

10.6. Conclusion

The protection of human rights in Thailand, including the right not to be tortured, is safeguarded by the Constitution. In practice, however, torture continues to be a serious problem, with endemic levels of abuse reported in the Southern border provinces in particular.

Draconian measures under the emergency laws have effectively encouraged violations by weakening procedural safeguards and virtually guaranteeing impunity for the actions of state officials. Despite numerous reports documenting torture and ill-treatment by the authorities in a variety of contexts, there appears to be little desire to investigate and prosecute those responsible. Intimidation of both victims and witnesses has proved to be another major obstacle in holding perpetrators to account. These conditions provide a sense of added urgency to calls from the variety of NGOs and international bodies for the Government to criminalise torture.

The weakness of both the judiciary and the National Human Rights Commission has resulted in there being limited opportunity for victims to seek redress for their suffering. Access to medical treatment at all stages is either insufficient or denied for a variety of reasons, including undue state influence on health professionals. Although torture victims and their families are sometimes provided with compensation, it is often paid after a long delay as part of an out of court settlement and fails to reflect the gravity of the abuse that has taken place.

Whilst compared favourably in some respects to many of its Asia-Pacific neighbours, the issue of torture in Thailand remains to be fully addressed. It would appear that offering better legislative protection, enhancing the independence of the judiciary and other oversight bodies as well as curtailing the use of emergency laws in volatile areas would be important first steps in tackling the problem.



**REDRESS TRUST
87 VAUXHALL WALK
LONDON SE11 5HJ
UNITED KINGDOM**

TEL: +44(0)20 7793 1777; FAX: +44(0)20 7793 1719

**info@redress.org
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