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THAILAND: The Human Rights Situation in 2006

The return of the army & the maintenance of impunity

Respect for human rights and the rule of law in Thailand were set back many years with the return to power by the military on September 19.

The coup, led by General Sonthi Boonyaratglin, abruptly ended the aggressive caretaker government of Pol. Lt. Col. Dr. Thaksin Shinawatra, a civilian autocracy which respected neither human rights nor democratic principles. And so Thailand went from bad to worse. Within hours of taking power, the army abrogated the 1997 Constitution, abolished a superior court, banned political assemblies, restricted movement and authorised censorship.

The military regime insisted that it had taken over to avert a national crisis, but in the following two months had failed to produce any evidence to show that widespread violence was imminent, as it had said in order to justify its actions.

Similarly, it claimed that the overwhelming majority of people in Thailand supported the coup. It evidently felt safe in making this assertion, as there was no way to verify it. The coup group pointed to images of people in Bangkok giving flowers and food to soldiers as evidence of support, but banned opponents from organising. A taxi driver who sprayed his vehicle with protest slogans and drove it into a tank at high speed later said from hospital that he was not a strong supporter of the previous government, but he had been upset at all the flowers and smiling troops giving the impression that there were not many people who disagreed with the coup. He subsequently committed suicide after one senior officer belittled his protest. Talk shows, community radio stations, websites and other avenues for free public expression were shut down or closely monitored. The media was ordered to “cooperate” with the regime, and largely complied. One journalist travelling abroad with the entourage of the new interim prime minister, General Surayud Chulanont, likened herself to a North Korean assigned to write glorious reports about the Dear Leader Kim Jong-Il.

Koreans protest coup in Thailand

Fictional constitutionalism vs. genuine constitutionalism

Writing in 1993, Professor Ted McDorman of the University of Victoria in Canada observed that constitutions in Thailand have been seen as nominal rather than normative. That is, they have served to validate the power of the ruling group, rather than lay down ground rules that everyone must obey. “Most political commentators have accepted that the role of a constitution in Thailand has been to legitimate the authority exercised by the then-dominant political forces,” McDorman said. This is one reason why the country has had a new constitution virtually every time that power has changed hands.

But the 1997 Constitution broke from this tradition. It was the first to be written by the people of Thailand for the people of Thailand. The assembly that wrote the draft was itself elected by popular vote, not handpicked by some general. Hundreds, if not thousands of independent civic groups were organised with the purpose of raising particular interests, widening public involvement and monitoring progress after the charter was enacted. In 2001 Dr Thanet Aphornsuvan of Thammasat University wrote that

“The new Constitution reflected the crystallization of 67 years of Thai democracy. In this sense, the promulgation of the latest constitution was not simply another amendment to the previous constitutions, but it was a political reform that involved the majority of the people from the very beginning of its drafting. The whole process of constitution writing was also unprecedented in the history of modern Thai politics. Unlike most of the previous constitutions that came into being because those in power needed legitimacy, the Constitution of 1997 was initiated and called for by the citizens who wanted a true and democratic regime transplanted on to Thai soil.”

Among other things, the 1997 Constitution made significant changes to the management of criminal justice in Thailand. For the first time, the rule of law truly became a part of the supreme law. On this, Dr Kittipong Kittayarak, a former director general of the Department of Probation has written that

“The Constitution has put great emphasis on overhauling the criminal justice system. The timing of the drafting of the Constitution also coincided with public sentiments for reform, triggered by public dissatisfaction of criminal justice as a result of the wide media coverage on the abuse of powers by criminal justice officials, the infringement of human rights, the long and cumbersome criminal process without adequate check[s] and balance[s], etc. The public also learned of conflicts in the judiciary and other judicial organs which at times were spread out and, thereby, deteriorated public faith in the justice system. With such [a] background, the members of the Constitutional Drafting Assembly used the occasion to introduce a major overhaul of Thai criminal justice.”

The constitution initiated extensive changes to all branches of government and their procedures, alongside strong affirmations of constitutional rights. These were to be furthered through new institutions and laws, and were upheld by the courts. When protestors against the Thai-Malaysian gas pipeline project were prosecuted, they were

acquitted after asserting their rights to assemble and express their opinions freely under the constitution, as were local administrative officers sued by a company for organising meetings against a proposed phosphate mine. Officials of the Anti-Money Laundering Office were found guilty of breaching the constitutional right to privacy of five social activists whose bank accounts and other personal financial details they had illegally investigated. A lawyer sued the public prosecutor for denying him a job because of a physical disability; the court decided that he had suffered discrimination in breach of the constitution.

There were also many innovations. Radio and television broadcasting were identified as national resources to be used in the public interest (section 40): the ground upon which media rights campaigner Supinya Klangnarong successfully stood in court against the huge resources of the former prime minister's telecommunications empire. In March 2006 the Criminal Court in Bangkok threw out the defamation charges lodged against her by the corporation of the former prime minister for comments she had made pointing to the economic advantages it had obtained since he took office. Government departments also had to inform people of any project that may affect their local environment or quality of life before giving it approval (section 59): the basis for a 2004 judgment against the industry minister and overturning of a mining concession in Khon Kaen that had not first been subject to public debate.

Supinya Klangnarong

New innovations encouraged new thinking and behaving. Jinthana Kaewkhao, the organiser of a protest against a power plant concession in Prachuab Kiri Khan, won her case after the court defended not only her rights to free assembly and speech but also her right to participate in the management and preservation of natural resources under section 46 of the new constitution. The court went on to observe that this and other new provisions in the law were specifically intended to develop a democratic administration that obliged greater involvement by ordinary persons in public and political life than had earlier charters.

The 1997 Constitution marked a great advance in the thinking of people in Thailand on constitutional issues and the management of their society. It enriched the behaviour of millions. It also constituted a great advance in the notion of consensus. Whereas "consensus" had earlier been understood in terms of patronage--what the elite decided on behalf of everyone else--it was now understood as mature agreement among the general public. Ordinary people throughout the country soon demonstrated a better grasp of the true meaning of consensus than had the traditional authorities.

The 1997 Constitution was also of importance to many far beyond Thailand. It set an example to a region plagued by authoritarianism and the un-rule of law. As Professor Andrew Harding from the University of London has written, "Thai public law reform

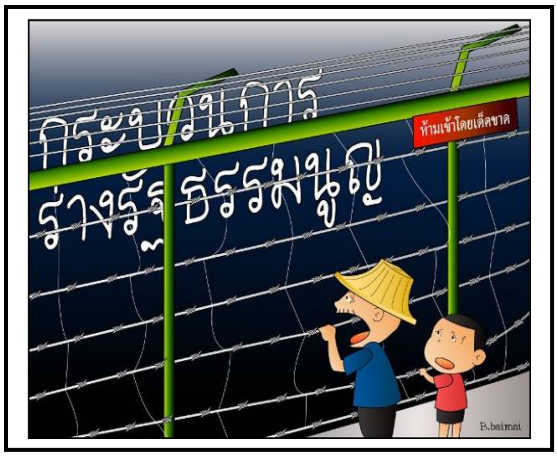
should be regarded as being of great significance in the context of the development of the new constitutionalism in Asia and the developing world generally."

So the new constitution both validated the power of the people of Thailand as the new ruling group, and also began the long process of laying down some ground rules. It wrested a measure of authority away from conventional forces--the army and established elite--and attempted to place it in the hands of the public through autonomous agencies and new laws. Unfortunately, inadequate safeguards meant that it struggled to protect its institutions and stay its course in the face of the unrestrained aspirations of an elected tyrant and his supporters. But to deal with such problems under the terms laid down by the law is the challenge of a constitutional system of government.

By contrast to the 1997 charter, the October 1 interim constitution has returned Thailand to its fictional constitutional order, re-securing power for the military elite while trying to give the opposite impression. The charter granted the remodelled junta authority of appointment and decision making over the heads of any new government. Apart from appointing the prime minister--himself a career military general and close colleague of the coup leaders--and chairperson and deputy chairperson of the temporary parliamentary assembly, the junta is appointing a 2000-member body which will select 200 persons from among its ranks, among whom the generals will again select 100, who will be responsible for setting up a 35-person constitution drafting group, among whom 25 will be drawn from the 100 and ten will be handpicked by, yet again, the junta. That process is expected to take most of 2007.

Meanwhile, the interim legislature has been rightly named "the assembly of generals". Out of 242 members named in October, 76 are serving or retired generals and senior officers. Most other members are bureaucrats, businesspeople and some academics. By contrast, there is one labour representative, and four from political parties.

Suggestions from law experts to make changes to the interim charter while it was still in draft, which had as its main author the same person as the 1991 interim constitution, were ignored. It is not surprising that academics and other legal professionals have expressed grave concerns. Of section 34, which allows the junta to call the council of government ministers for a meeting in which to air its views any time it pleases, former senator and human rights lawyer Thongbai Thongpao wrote that it was "not very clever" as it "spoils the pledge of non-interference in the civilian administration". A cartoon on the independent news website Prachatai put the situation more simply: the constitution drafting assembly is sealed off by a barbed wire fence; two ordinary citizens are left to cling to the fence and shout from the outside.



Constitution drafting assembly: No Entry
(Source: Prachatai)

Military rule of law?

A few years ago, some senior United Nations staff in Cambodia met with a government minister to discuss the state of the country's courts. They expressed concern about their lack of independence, and asked what intentions the government had to address this problem. "Don't worry," the minister told them simply, "I will make them independent."

Apparently suffering similar confusion, in November 2006 the interim prime minister said that his government "is committed to restoring the rule of law" through reforms to administration of justice, the police and anti-corruption agencies.

One of the key features of the rule of law is that every person is equal before the law. This notion entails that no person is above the law. It implies that all persons, without regard to rank or other conditions, are subject to the ordinary law under the jurisdiction of the ordinary courts.

However, under section 37 of the interim constitution, the September 19 coup leaders and all persons assigned or ordered by them--General Surayud included--are exempt from any form of legal sanction for any actions before, during or after the coup:

"All matters that the Leader and the Council for Democratic Reform, including any related persons who have been assigned by the Leader or the Council for Democratic Reform or who have obtained orders from the persons assigned by the Leader or the Council for Democratic Reform pursuant to the seizure of State administration on 19 September B.E. 2549 (2006) to take actions prior to or after said date for enforcement of legislative, executive, judicial purposes, including meting out punishment and other administrative acts, whether as principal, supporter, instigator or assigned person, which may be in breach of the law, shall be absolutely exempted from any wrongdoing, responsibility and liabilities."

Equivalent sections can be found in previous constitutions of Thailand, with the important exception of the 1997 Constitution. Any permanent constitution approved by the current junta is also bound to adopt such provisions.

Section 37 of the interim constitution is a direct contradiction to the rule of law. It places the coup group and its people beyond the reach of the ordinary laws and courts. It also contradicts the junta's commitment to United Nations treaties. UN experts have in recent times made plain that the granting of immunity through a blanket amnesty is contrary to international law. Domestic courts also are increasingly overturning such amnesties later. The very essence of article 2 of the International Covenant on Civil and Political Rights, to which Thailand is a party, is the even application of law and ending of sweeping impunity for criminal offences. Thailand has already been harshly criticised for shielding soldiers and police who commit human rights violations while operating under emergency regulations. The amnesty therefore flies in the face of the country's obligations and does nothing to abate fears that army officers and police in Thailand are above the law.

Another remark by the interim prime minister in November seemed to have an unintended meaning. He said that on the one hand, “I am not a politician and I am not bound by special interests.” On the other, he added that, “I have the authority and the power that comes with being an appointed prime minister to act quickly and decisively.” General Surayud has made a virtue out of a vice: the fact that he is unencumbered by any political parties and an elected parliament, he says, is a good thing.

Inseparable from the rule of law is the notion of parliamentary sovereignty. This means that an independent parliament alone has the power to pass acts, free from interference, with effect in law. Those acts may then fall within the exclusive purview of the courts. In this way the judiciary too is strengthened, and its role reaffirmed as the arbiter of the law.

The prime minister’s assertion that he is free to do what he needs to do to uphold the rule of law is a non sequitur. Only a head of government bound by the institutions of the rule of law, among them a functioning parliament and courts, can uphold the rule of law. The prime minister’s very position, and his assertion of his authority to act upon it, is itself a violation of the rule of law.

In the absence of a sovereign parliament, who is making the law in Thailand? Certainly no one answerable to its people: an unelected assembly of military and police officials, bureaucrats and academics is acting on their behalf. No evidence of the rule of law there, either.

Nor is there any to be found in the generals’ understanding of the meaning of judicial “independence”. They appear to think that having abolished the constitution and disbanded one of the country’s three highest courts, ordering the establishment and composition of a new tribunal in its stead, judges can be made independent by virtue of saying that it is so.

Section 18 of the interim constitution of Thailand, which was signed into law by the head of the military junta, reads: “Judges are independent in the trial and adjudication of cases in the name of the King and in the interest of justice in accordance with the law and this Constitution.” Section 35 goes on to order the appointment of a new tribunal in place of the Constitutional Court, comprising of judges from the two remaining senior courts.

These provisions in fact do nothing to ensure the independent functioning of courts in Thailand. The independence of judges cannot simply be declared. It is by the effective functioning of institutions and maintenance of safeguards that judges obtain true independence. The declaration in this so-called constitution is also itself directly contradicted by the order to replace a superior court with a tribunal, and stipulation of its membership, on the signature of a military officer who obtained power by force.

Above all else, the independence of judges is ensured by security of tenure. This means that judges cannot be removed and appointed on the whims of the executive or any other part of government. It means that courts cannot be opened and closed on the prerogative

of any one person or agency outside of the judiciary. It means that judges, once appointed, are not easily or quickly removed.

Innumerable commentaries and precedents established around the world recognise security of tenure as vital to the integrity of the courts and maintenance of the rule of law. In the Federalist Papers, three framers of the United States constitution note that "nothing will contribute so much as this to that independent spirit in the judges". It follows that the 1985 UN Basic Principles on the Independence of the Judiciary have declared: "Judges, whether appointed or elected, shall have guaranteed tenure."

The 1997 Constitution laid down clear guidelines with checks and balances designed to protect judges' independence, through procedures for appointment and maintenance of tenure. It recognised the principle of independence through serious efforts to see it obtained via institutional arrangements. It also gave the higher courts unprecedented authority. In a 2003 paper Dr. James Klein described how,

"Thailand's fifteen previous constitutions had been subservient to code and administrative law designed by the bureaucracy to regulate individuals in society by restricting their fundamental rights and liberties... Thai politicians, the military and senior civilian bureaucrats had always reserved for themselves the power to interpret the meaning of law and the intent of the constitution."

By contrast, the 1997 Constitution sought to make itself the basis of law, with government agencies subordinate to it, rather than vice versa. This was nothing short of a revolutionary change, and it was bound to bring conflict and problems. So the Constitutional Court and some independent agencies--notably the Election Commission--became mired in controversy. Why should this be surprising? The development of new institutions, particularly where they challenge established authority, is by its very nature provocative. And before September 19 Thailand's senior courts were addressing this conflict: a conflict that in essence was over whether society should be founded upon the rule of law or the rule of lords. They had public support and the backing of His Majesty the King. So what changed?

As opposed to the 1997 Constitution, the interim constitution offers no guarantees for judicial independence. Nor does the junta have any genuine interest in such matters. Its appointing of a new constitutional tribunal instead defies the very notion of judicial independence. Its orders to various government agencies to go after members of the former government have revealed that its interests are limited to the exercise of "justice" as justification for its own illegal acts, rather than to uphold any notions of the rule of law.

Professor Worachet Pakeerut of Thammasat University has rightly said that coups will continue in Thailand for so long as the courts there recognise the amnesties that perpetrators pass for themselves. Worachet has said that there is "a discrepancy in the Thai judicial system that recognised law written by people in power even though the law was against morality and people's common sense".

In fact this “discrepancy” is the crux of Thailand’s problems. For as long as its higher judiciary legitimises illegal takeovers of power, there will be illegal takeovers. For as long as the orders of generals are written into law through new constitutions, there will be fictional constitutionalism.

Empty promises to the south

In the days after the September 19 coup in Thailand there was some expectation that the bloodshed in the south may lessen. Like a lot of other things, it did not happen. Bombings and shootings have continued, and the scale of incidents has perhaps escalated.

Among them, in October two human rights defenders were killed in incidents that have again raised grave concerns for the security of others working in the region. Muhammad Dunai Tanyeeno was shot dead near his house in Tak Bai, Narathiwat province. According to his family, Dunai was killed soon after he went out on his bicycle having received a phone call. A village headman, he had been assisting villagers suffering unwarranted prosecution and harassment by state officers. Hassan Yamalae, another headman, in Raman, Yala province, was shot dead with a friend after lodging complaints with the National Human Rights Commission (NHRC) of Thailand and a local human rights group about the treatment of local villagers by security forces.

The warring in the south was greatly inflamed by the prior administration. The use of emergency regulations; alleged abduction, torture and killing of local residents by security forces; slaughters in April and November 2004 and wanton mismanagement of government agencies and personnel in the region all exacerbated it. The cynical use of political appointees to investigate cases that should have been handled by judicial agencies guaranteed impunity to army officers and police responsible for deaths in custody, mass killings and other gross abuses. The malicious pursuit of innocent persons by the public prosecutor in their stead, which continues to this day, has damaged confidence among local people in the impartiality of the courts.

In 2005 the government established the National Reconciliation Commission ostensibly to come up with solutions to the conflict, and in fact as a means to deflect growing public criticism of its policies. The commission did its work thoroughly and in May 2006 submitted a 132-page report. It clearly explained that the problems in the south were essentially the same as those facing rural communities throughout the country, heightened due to tensions produced by the overwhelming presence of security forces in response to the separatist agenda of a small number of persons. Among the primary causes of the conflict, the commission identified unconstrained abuses of administrative power and violent measures by state authorities, together with injustices arising from the existing judicial process and administrative system. Its recommendations included that the judicial system in the south should be reconfigured through coherent administration, improved efficiency, greater monitoring and changed attitudes.

The government and security establishments mouthed appreciation about the report, but did nothing to implement it. A deputy prime minister was assigned the task of looking at ways to realise its recommendations, which came to naught. General Sonthi, who at that time was directly responsible for the region, also expressed support for the findings but apparently did not attempt to put them in to practice.

After taking power in September, the new government stressed its interest in addressing the problems in the south with sincerity. However, on October 18 the emergency decree over the southern provinces of Thailand was renewed for a further three months. This decree offers the highest level of systemic immunity for gross human rights abuses committed by state officers in Thailand. In July the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Philip Alston, had already said that, "The emergency decree makes it possible for soldiers and police officers to get away with murder." He went on to say that, "Impunity for violence committed by the security forces has been an ongoing problem in Thailand, but the emergency decree has gone even further and makes impunity look like the official policy." He also again requested, for at least the fourth time, to be allowed to visit Thailand. There is no evidence so far as to whether or not that request is likely to be honoured, or when the emergency decree will be lifted from the southern provinces.

Another United Nations human rights agency that has taken a strong interest in events in the south of Thailand is the UN Working Group on enforced and involuntary disappearances. In 2006, the Asian Human Rights Commission (AHRC) together with the Bangkok-based Working Group on Justice for Peace lodged the details of some 18 forced disappearance cases in southern Thailand with the United Nations. These are just a few of an unknown number--believed to be in the hundreds--of such cases that have occurred in the south during recent times, out of many more across the country as a whole.

Among the cases submitted was that of a group of five, including one child, who allegedly disappeared together in October 2005. Wilailak Mama went together with her husband, 4-year-old son, and two friends to collect a new car from Hat Yai and come back home. None ever arrived. A family friend called the next day and said that Crime Suppression Division police officers had arrested Wilailak and the others. An officer at Hat Yai told relatives that the group had disappeared due to a "personal" conflict. Like other similar cases in the south, to date nothing is known about what happened to them and no proper investigation has ever been conducted. Department of Special Investigation (DSI) officers visited relatives to make some inquiries, but said nothing more.

Five disappeared: Wilailak Mama & others

WHERE ARE THEY?

Ya Jaodohlaoh
Disappeared: 26 March 2002
Place: Parkview Hotel, Yala
Disappeared after meeting police

Waeharong Rorhing
Disappeared: 26 March 2002
Place: Parkview Hotel, Yala
Disappeared after meeting police

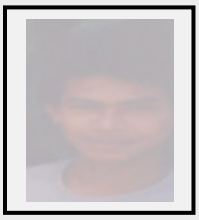
Imrohim Gayo
Disappeared: 8 January 2004
Place: Bannansata, Yala
Taken from house by men in uniform

Adduloh Hayimasaleh
Disappeared: 5 June 2005
Place: Yala Train Station
Allegedly pulled into pick up truck on street

Wae Addul Waheng Baning
Disappeared: 15 October 2005
Place: Between Pattani & Yala
Circumstances unknown

Ku-amad Ahmeeden
Disappeared: 1 November 2005
Place: Pattani
Allegedly followed by police

Muhamad Senren
Disappeared: 1 November 2005
Place: Pattani
Allegedly followed by police



Adduloh Salam
Disappeared: 1 November 2005
Place: Pattani
Allegedly followed by police

When police or soldiers abduct and kill someone and then dispose of the body they are carrying out what is both the most heinous and most secretive of crimes. Forced disappearances necessitate methodical and extreme violence. They combine raw brutality with detailed organisation: the use of informants; making of lists; allocating of personnel, vehicles, weapons and premises; falsifying of records; disposing of remains, and making or modifying of laws to protect the perpetrators. They are accompanied by other forms of gross human rights abuse, including torture, incommunicado detention, and arbitrary extrajudicial killing. The expression “forced disappearance” is anyhow just a euphemism for kidnapping and detaining with intent to kill.

All of this can go on only under conditions of very deep denial. It can only go on where institutions to protect the rule of law are perverted, destroyed or ignored. This denial is not limited to the practice of forced disappearances alone: over time it becomes the standard reaction to any suggestion of wrongdoing. Eventually, it impedes the possibility of any solution to any problem. Above all, it denies the possibility of redress for the victims, as state agencies are organised not to afford remedies but rather to conspire against the public and keep secrets.

The scale of denial over what has been happening in the south of Thailand was evident at the end of May when two prominent and involved persons called for special investigations of hundreds of unidentified bodies there. Dr Porntip Rojanansunan, acting director of the Central Institute of Forensic Science, has been leading preliminary investigations into some sites, and has said that she would exhume and examine hundreds of bodies in cooperation with international experts. She has said that most of the bodies may be those of migrant workers from neighbouring countries, not local people. Meanwhile, Caretaker Senator Kraisak Choonhavan said that the government had completely failed to do anything about hundreds of unidentified graves in the south. The reaction of government officials, including ministers and provincial governors, was to dismiss the reports out of hand. The interior minister was reported as saying that he was not taking the allegations seriously. The justice minister said that it was an “old story” and nothing to get excited about.

Porntip Rojanasunan

All of this speaks to the persistence and prevalence of denial among government officials about the alleged widespread abductions and killings by government officers in the south. Attempts are made to deny that bodies exist, then that they exist in large numbers, then that they are the bodies of local people, then that they may have anything to do with the security forces and enduring conflict and allegations of abductions there. The emphasis

on numbers of bodies, and whose bodies, misses the point. The fact that all of this is going speaks to a situation in which the rule of law has all but collapsed.

Where institutions for the rule of law are functioning, there would be no uproar about whether or not there are bodies, how many there are, who they were or how they died before there was even a proper investigation. Instead, ordinary criminal procedure would be followed to open graves, identify remains, submit findings to concerned agencies and report to the courts, upon which there would be decisions about whether or not to proceed with inquiries, and if so, how. But where emergency regulations and martial law have superseded ordinary criminal law and where the police and military have been free to arrange and commit atrocities with impunity, it is denial--not law--that rules.

The consequences of this denial are felt daily, in myriad ways, by victims and their relatives. Among them, the families of the disappeared struggle not only with psychological and emotional burdens but also with unsympathetic state agencies and day-to-day practical problems that arise from having a son, father, uncle or brother abducted. As there is no simple and non-threatening established procedure to lodge a complaint over a disappeared person, most victims are in the eyes of the ordinary administration still alive and accessible. Inevitably, this creates practical difficulties for the families. One disappeared man was sent a conscription order by the army; when he failed to appear, an arrest warrant was issued. Similarly, a man who was released on bail pending trial has since disappeared; the bail is now forfeit, and again an arrest warrant is being issued. Another family lost possessions during a raid on their house by state officers and now has nothing left with which to identify the missing person when making complaints. Others may have problems associated with joint bank accounts, property title deeds and other documentation and records where the disappeared person’s authorisation or involvement is somehow required to permit an inquiry or transaction.

It is for these reasons that a specialised agency is needed in Thailand, with the sole purpose of recording complaints of forced disappearance which, after preliminary inquiries, can issue a document with the legal effect of recognising that prima facie the concerned person has disappeared. The documents it issues could then be used in courts of law, government offices, banks and other premises to free the disappeared person from any immediate obligations--pending further inquiries--and entitle a close relative to act on his behalf. The same agency could expedite arrangements for disappeared persons to be declared legally dead.

Thailand already has a clear precedent upon which to base this work. After the December 2004 Indian Ocean tsunami, it became apparent that a large number of bodies would never be recovered and that the victims could be presumed dead. Ordinarily, under article 61 of the Civil Code, the relatives of persons missing in a disaster or war must wait two years before they can apply to a court for their loved ones to be declared legally dead, placing an enormous and unreasonable obstacle on people trying to go on with their lives. The cabinet in May 2005 took the sensible and praiseworthy decision to amend the law in order to exempt tsunami victims from this provision. Other countries whose nationals were victims of the wave made similar arrangements.

The victims of killings and disappearances in the south of Thailand, or those brought to the area from elsewhere and killed or buried there, are the victims of a man-made tsunami. It has swept silently over their homes and towns, leaving a different kind of death and destruction in its wake. In fact, this man-made disaster is far more catastrophic than the natural one. It is doing much more than causing death and mayhem. It is also destroying the very institutions that allow for society to function. It is damaging beyond repair all areas of social life and basic human relations. The first step for any government body concerned with ending this tragedy and reintroducing the notion of justice to people in the south is to acknowledge the extent and nature of the real problem. That problem is the forced disappearance of an as yet unknown number of persons. It is in the national interest that they be entitled to the same considerations as the victims of the tsunami.

One of the characteristics of abductions and killings of persons in the south of Thailand, as elsewhere, is the use of "lists". General Sonthi in April indicated that such lists existed and had been misused to settle personal grudges, but did not give details of what he knew about the lists and their management. In November the interim prime minister acknowledged the use of blacklists in the south by ordering the authorities there to "tear up" the lists.

The use of such lists had been a widely known secret, and in fact is a practice that has been employed by security forces in Thailand for many years.

However, many questions remain concerning the use of such lists in the south, including:

1. Who made the lists? How many lists did they make?
2. Who ordered that they make the lists? Why did they order that they make the lists?
3. How were the lists distributed and used? How were they used to abduct and kill people?
4. How many names were on the lists? Whose names were they?
5. How many persons were abducted and killed because they were on a list? Who were they? Who abducted and killed them?
6. What investigations have there been of state officers who allegedly abducted and killed persons whose names were on the lists? How many investigations have there been? What were the outcomes of these investigations?
7. How will the public know that the lists have been torn up? How will the government know? What methods will be used to ensure that the order to tear up the lists is followed?
8. What measures will be put in place to ensure that new lists are not made? How will the public obtain assurances of this?

While acknowledging the use of such lists, so far the authorities in Thailand have failed to accept the implications of this acknowledgment.

No evidence, no problem

In October the then head of the Department of Rights and Liberties Protection (DRLP) under the Ministry of Justice was quoted as saying that,

"I would like to call on state officials involved in investigating the cases to collect clear evidence before making arrests, because wrongfully charged people, to whom the government has to pay compensation, account for more than 30 per cent of the cases deliberated."

Where large numbers of serious criminal cases can be clearly identified as resting on false charges, something has gone awfully wrong. It is not just a matter of compensation. Rather, the claims for compensation are symptomatic of deeper ailments in the entire criminal justice system. These demand many more serious questions. They include the following:

1. What is wrong with the supervisory system of the police?
Criminal investigation is central to policing. Where large numbers of persons are being arrested, charged and tried without evidence, it means that there are serious defects in the police. The organisational structure of the police should guarantee supervision of investigators by superiors, and scrutiny of their work before it is used to deprive someone of his or her liberty. If the problem of false charges in Thailand is to be addressed, it is necessary to deal with this failure of supervision. It is also necessary to address long-recognised structural problems in the police force that have arisen due to its being built on principles of self sufficiency rather than centralised state support and control.

2. What percentage of cases is deliberately fabricated?
Among the wrongful serious criminal charges, while a certain number may simply be due to careless police work, others will have been deliberately concocted against innocent people, in exchange for cash or other favours. The police in Thailand are almost universally recognised as thoroughly corrupt and frequent users of torture and other means to extract confessions and falsify material evidence. They also have strong links with the crime world. Under these circumstances, it is not sufficient to urge investigators to check the facts before submitting a case. This may simply lead to more sophisticated falsification of evidence, particularly where the charges are serious, as in the cases demanding compensation from the government. The real issues go to the nature of justice and society in Thailand. Is the level of criminal intimidation in the society so high that the guilty persons cannot be prosecuted and innocent ones used instead? Are the police so heavily influenced by criminals that they will sooner falsify cases than seek to locate and charge the culprits? How can these deep institutional and social problems be addressed?

3. What is wrong with the laws and procedures on evidence?
The 1997 Constitution brought with it many reforms aimed at improving the delivery and management of criminal justice in Thailand. It contained specific provisions on the getting of evidence before arrest and inadmissibility of confessions obtained through torture or other illegal means. Notwithstanding, the judicial system in Thailand has still

tended to rely disproportionately on police and witness testimony. This makes it easy for police to lodge wrongful charges against innocent persons. One important way to address this imbalance is to place a greater emphasis on forensic evidence, particularly when obtained by independent professionals. In Thailand, the Central Institute of Forensic Science has been a pioneer in this field; however, as it has challenged the established authority of the police it has been subject to heavy attacks and its work unnecessarily hampered. Much more needs to be done to develop the institute and the laws and procedures to admit and utilise reliable forensic evidence from reputed experts in conjunction with testimony. As Thailand is a modern and advanced society with more resources compared to many other countries in Asia, there is no acceptable reason for its criminal justice system to be left behind. Much more attention must be paid to scientific methods of investigation and the bringing of specialist testimony into the courts in Thailand.

4. What is wrong with the public prosecution?

The responsibility of the public prosecutor is to review cases before taking them to trial. However, it is widely known that in Thailand the prosecutor acts with little independence and relies almost exclusively upon whatever is given by the police or other criminal investigators. The prosecutor is not involved in the investigation work, except in some special cases. One person working for the office has described it as a “meatball factory”: whatever it gets, it grinds up and serves to the courts without question. The unprofessional behaviour and lack of independence of the prosecutor’s office also is a serious barrier to addressing the high number of false cases going to the courts.

One of the recent notable examples of how the public prosecutor in Thailand can be used for any purpose is the malicious prosecution of 58 victims of the crackdown by security forces outside Tak Bai police station, Narathiwat on 25 October 2004 that ended with some 84 deaths--78 in army custody--and many more permanent physical injuries.

Those military and police officials responsible for the mass killing at Tak Bai, just like those at Krue Se in April of the same year, have never been punished. In fact, they have been promoted. By contrast, the victims were hauled before the court on allegations of having incited the military and police violence that led to the deaths and injuries that day.

Justice was played for a fool in the Narathiwat courtroom where the public prosecutor has consistently failed to ensure that witnesses appear, and where the chief investigating officer--the former Tak Bai police chief--could not identify even one of the defendants (two of whom have died), or tell what evidence had been brought against them. It was as if the prosecutor and police are between them doing their best to botch the case. And why not botch it? As the men were charged in order to distract attention from the real guilty parties of 25 October 2004 and somehow justify the excessive violence of that day, it wouldn’t really matter to the state whether they are found guilty or not. The case had already served its real purpose: to ensure that there are no penalties for generals.

It is not surprising, then, that the interim administration had the charges against the 58 dropped this November. Although welcome, the withdrawal of charges neatly avoids the

real issues: why were the men were charged in the first place, and how has the case against them been dragged on by police and the public prosecutor for two years without any evidence? This is a question not only for the court in Narathiwat, not only for the south: it is a question for the entire justice system in Thailand.

Prosecution in Thailand doesn't have to be like in Narathiwat. Contrary to complaints by public prosecutors and police that they lack money, time and other precious resources with which to perform their jobs more admirably, the main obstacle to the effective handling of criminal cases--against persons of any stature--is the political and administrative will to do it. That was most clearly illustrated by the recent conviction of former police chief Pol. Lt. Gen. Chalor Kerdthes to 20 years in jail over the infamous 'Saudi gems' theft case. One of the significant characteristics of that case, which is ongoing, has been that a public prosecutor has been assigned to handle the prosecution full time for over 13 years. Just one competent and determined prosecutor full time on the job has yielded results that stand in stark contrast to countless other cases in the courts.

In Thailand, as in other countries in Asia, whether or not someone is investigated and prosecuted is a political decision; whether they are investigated and prosecuted well or badly also is a political decision. It is a political decision not in the narrow sense of the word, but in its widest sense: the police and public prosecutor are subject to the whims, demands and influences of one another, soldiers, administrators, businesspeople and mafia figures, in addition to politicians.

No way to complain

In July the AHRC described how a victim of alleged abduction, torture, armed robbery, illegal detention and extortion by Thai police has over three years been unable to excite any genuine interest or attention in his case by any government agency. As there is no part of the government with the purpose of receiving and investigating complaints of gross abuses by the police in Thailand, none feels the responsibility to do anything about them.

According to Uthai Boonnom, he and his partner were taken--at gunpoint and blindfolded--to a house in the forest of Saraburi where the police assaulted him and took all their possessions before settling down to an evening of drinking and gambling. That night they forced them to sign documents that later served as confessions that they had been buying and selling drugs. Uthai was offered a way out in exchange for cash, but as he could not produce the money immediately, they were detained.

All that happened in March 2002. But it is only the first part of the story. The second part began when Uthai and his partner started complaining that they had been assaulted and had confessions taken by force. They had some evidence to back their claims: for instance, the medical report of the prison nurse that recorded evidence of the assault on Uthai, later backed by the nurse's testimony in court. A police investigator from the same police station as the alleged perpetrators--in effect, a subordinate of at least one of the

accused police--came to visit and document their complaints while in prison. But the court went with the police version, and the two were sentenced to long jail terms, which they are now appealing.

Meanwhile, Uthai began writing. From 2002 to 2005 he wrote complaints to the prime minister, justice minister, privy councillor, National Counter Corruption Commission (NCCC), courts, chief of police, attorney general, ombudsman and DSI, among others. In 2006 his case was also submitted to the NHRC. In fact, he wrote to anyone whom he thought might be able to do something to open an investigation into his alleged illegal arrest, torture and imprisonment.

The results of Uthai's complaints were not commensurate with his efforts. Most of the offices to whom he wrote never bothered to reply. And the replies that he did get were not promising. The prime minister's office replied that it had referred the case to Police Region 1 headquarters. But Police Region 1 never contacted Uthai. The justice ministry replied that the case had been referred to its rights and liberties department, which replied that it had checked with the police and they had said that the arrest was legal. It indirectly blamed Uthai for not making a complaint with the investigating officer immediately following his arrest, or launching criminal proceedings against the alleged perpetrators. The ombudsman replied that he could do nothing as the case is still in court. The DSI replied that the case did not come within its criteria for investigation. Somehow, the alleged illegal arrest, detention, torture, armed robbery, attempted extortion and rape and a host of other offences committed by a group of Saraburi police did not fall within the purview of any of Thailand's many government and policing agencies. In short, everyone passed the buck, or just ignored the case altogether.

This is the reality of making complaints against police in Thailand. It is not in any way an exceptional case. In this reality, it is impossible to make a complaint about Thai police and expect that it will be handled credibly, effectively and seriously.

The AHRC has itself over a number of years observed how the system in Thailand works to apparently, but not actually, respond to complaints. Communications with various government agencies have revealed the same pattern of inaction in all cases where the accused are police. The following are further examples:

1. The alleged attempted rape of Ma Thet Thet by a policeman in Mae Sot, Tak was inquired into by the DRLP. In a letter of 11 April 2006 one of its deputy directors informed the AHRC that the department "had contacted Provincial Police Region 6 in order to verify this case and was informed that... this incident really occurred as claimed.... but by persons who falsely claimed to be police officers by dressing [in] similar outfits".

2. The alleged brutal torture of Urai Srineh by police in Chonburi was inquired into by the Ministry of Interior. Through a letter of 3 November 2005 it informed the AHRC that it had instructed provincial authorities to investigate and that they had found that the

victim had been tortured but “Mr. Srineh said that he was *not* tortured brutally by the Police and confirmed that the group of men were *not* the Police”.

3. The alleged illegal raid and confiscation of documents from a migrant workers union in Mae Sot by immigration and police officials was inquired into by the DRLP, which informed the AHRC through a 25 October 2005 letter that “Immigration Division 3 has investigated the matter and revealed that... all concerned officials followed the prescribed procedures without the use of violence or damage of any personal properties”.

4. The alleged extrajudicial killing of Sunthorn Wongdao by police in Nonthaburi was inquired into by the Ministry of Interior, which informed the AHRC through a letter of 25 August 2005 that provincial authorities were instructed to investigate and had found that “Bang Yai District Police had performed the autopsy and concluded that it was a suicide”. The police said that the victim killed himself by shooting five bullets into his chest and head. The DSI said that it could not take up the case.

5. The alleged brutal torture cases of Anek Yingnuek and three others and also Ekkawat Srimanta by police in Ayutthaya were inquired into by both the DRLP and Ministry of Interior, which informed the AHRC in turn that the cases had been passed to the NCCC. Attempts by the AHRC to point out that as the allegations related to torture the NCCC was not an appropriate investigating agency fell on deaf ears. There is also no evidence that the NCCC ever investigated any of the complaints. The AHRC also found out that statements that the concerned police had been removed from duty were either false or that the police had resumed their duties after a short period of suspension. The Ombudsman declined to take up the case because it was in court, even though the complaint to the Ombudsman and matter before the court were different. The victims testified in court that they had been tortured but their testimony was overlooked by the court on procedural grounds. A family member of one of the victims has since herself been sued for defamation by one of the accused police.

The AHRC is not aware of a single genuine complaint of police abuse by an ordinary person in Thailand that has led to a satisfactory investigation and prosecution of the alleged perpetrators. Even high-profile cases struggle to get into the courts and obtain a fair hearing.

The reason for this failure, which has been pointed to by many concerned agencies and experts, is the absence of an independent unit to receive and investigate complaints.

In Thailand it has been known for some 30 years that there is a drastic need for reforms of the police. As far back as 1980 the parliamentary Administrative Committee recognised that “the police department is hated and despised by all people outside of it” for reason of its corrupt practices and rampant abuses. Nothing has been done since then to change this miserable situation. Repeated attempts at change have been blocked by the power of the police themselves. That power has been steadily entrenched and has reached a new level under the current administration, with police or former police occupying senior posts from prime minister down, in practically every part of government.

Ultimately, the possibility of justice and human rights in any society depends upon there being the means through which genuine complaints of illegality and wrongdoing by state officers can be received, investigated and, where necessary, prosecuted. In some well-established jurisdictions, existing agencies are sufficiently robust and trusted by the population as to be able to do this work themselves. In other places, it is necessary to establish completely new and independent bodies to do this work: the Independent Commission against Corruption in Hong Kong is a good regional example. The 1997 Constitution of Thailand opened the door for the creation of many such bodies, but to date many have not performed as had been expected by the public. The DSI is a case in point: whereas many human rights defenders and organisations had hoped that it may be the starting point for objective investigations of police, with a police officer in charge it only served as another layer of protection for alleged perpetrators in uniform.

The concluding remarks of the UN Human Rights Committee in 2005, when it assessed Thailand's compliance with a core human rights treaty, the International Covenant on Civil and Political Rights, deserve recollection:

"The Committee is concerned at the persistent allegations of serious human rights violations, including widespread instances of extrajudicial killings and ill-treatment by the police and members of armed forces [in Thailand]... any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity. The Committee further notes with concern that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3, of the Covenant (arts. 2, 6, 7). The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress... The State party should actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials."

An independent civilian body to investigate complaints filed against law enforcement officials: were such an agency to exist, the victims in any one of the cases mentioned above would be able to make their grievances heard with some reasonable expectation of a response. It would no longer be necessary to designate each of the cases as "alleged", because the complaints could be appropriately scrutinised and addressed. Unfortunately, Thailand has shown no inclination to implement any of the suggestions made by the UN committee, let alone this one.

Still no law to prohibit torture

Ekkawat Srimanta was arrested on 2 November 2004 by officers in Ayutthaya province, just north of Bangkok, on allegations of robbery. Officers at Phra Nakhon Si Ayutthaya

Provincial Police Station took him into detention where they allegedly covered his head with a hood and beat him all over his body to force him to confess to robbery. Then they transferred him to the Uthai District Police Station, where officers allegedly electrocuted him on his penis and testicles. Unusually, he was released shortly after, and rushed to hospital by friends.

Media reports and images showed Ekkawat with burns all over his testicles, penis, groin, and on his toes. He had injuries from beatings all over his body, including the marks of combat boots on his back, swollen thighs, swollen cheeks, face and throat, and blood in his eyes. He was visited at the hospital by a string of senior police and government officials. Two police officers were assigned to protect him for thirty days.

The twenty-three officers recorded on the case record were transferred to Bangkok while investigations were opened. The regional commander stated on November 9 that criminal proceedings would follow, and the case was transferred to the DSI on November 29. But no officer is known to have faced criminal charges, despite these commitments and the overwhelming circumstantial evidence. All the accused police have retained their posts.

Many human rights and legal groups were involved in the case. Ekkawat spoke at a seminar on torture organised by the NHRC. He was represented by the Lawyers Council of Thailand.

Despite the case receiving enormous publicity and being classified as “special”, Ekkawat is not known to have received any long-term special protection measures. Finally, he withdrew his lawsuit against the police prior to the case opening in the Ayutthaya Provincial Court on 11 November 2005, without informing his lawyer. Almost a year passed between the time of the incident and the time of trial. After media and public attention moved elsewhere, the defendants had apparently coerced and threatened the victim to withdraw his case. Unprotected, Ekkawat was an easy target.

Thailand has failed Ekkawat, and an unknown number of others like him. It has not introduced any domestic law to prosecute alleged perpetrators of torture or cruel and inhuman treatment, despite the fact that these acts are prohibited under section 31 of the country’s 1997 Constitution. Nor have its authorities ever been able to cite a single case of a law-enforcement officer facing any form of criminal action in a court of law over allegations of torture.

Thailand has still not ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This is despite a growing chorus of calls from inside and outside the country pressing for ratification as a matter of urgency, and greater recognition of the damage to Thailand’s international reputation being caused by its non-ratification.

No cogent reason has been given for the failure to ratify the treaty. Notwithstanding repeated assurances from some quarters that ratification is imminent, that there would be new studies done to finalise arrangements, it is clear that some powerful agencies or

persons are working against it. This comes as no surprise. Any agreement to comply with an international law against torture and cruel or inhuman treatment will be a challenge to law-enforcement agencies that have been accustomed to using violence as a means of extracting confessions and punishing “bad people”. That is why state security officers do not have the authority to make decisions about signing up to international laws. That authority lies with the government. The responsibility for ratification rests with the country’s top leadership, as does the blame for Thailand’s failure to ratify after years of procrastination.

Drug war killings remembered

On September 18, a day before the military coup that overthrew the caretaker government, one of the Thailand’s human rights commissioners called for the authorities to pay serious attention to the findings of his investigations into killings during the first phase of this “war”. Vasant Panich said that the victims in cases that he had investigated for the NHRC were mostly innocent persons whose deaths in 2003 had never been properly investigated. Some of the murders had patently been set up by the police.

For his outspokenness, Vasant has himself been made the target of threats, and of at least one attempted abduction in June, when after a series of strange calls to both of his mobile phones, his house phone and his wife’s phone his vehicle was followed. As Vasant had worked on the case of abducted human rights lawyer Somchai Neelaphaijit in detail he was sensitive to the use of phone calls and vehicles to track a target. However, despite his official position, there was no acknowledgment by the government of the threat against him or attempts to give protection.

The effort to get the cases reopened was thwarted by the timing of the coup; however, the human rights commission in November resumed its efforts. Together with the Lawyers Council of Thailand it lodged a petition with the justice ministry concerning some 40 cases that have been thoroughly examined by the two groups and found to have been killings of innocent persons by police or their agents, out of at least 2500 in total.

There are many serious persistent questions over the drug war killings and how state institutions in Thailand are used to kill.

Undoubtedly the former prime minister and his cabinet took the decisions that led to the murder of thousands of people on the streets, in their houses and in restaurants over a few months in 2003. The prime minister explicitly ordered the hunting down of alleged drug dealers at all costs, imposing extensive rewards and sanctions in response to performance. The public language used by the government repeatedly made clear that alleged drug dealers should be killed. Local authorities obliged with their own added encouragement, incentives and initiatives.

But how could the prime minister give orders that contravened all standards of both domestic and international law and expect that they be carried out? Who organised and

did the killing? Not the prime minister himself; rather, local police and administrative officials, and hired guns acting on their behalf. These people drew up lists, called victims to bogus meetings, coerced them to confess, arranged for the killers, and failed to investigate afterwards. All this required the involvement of tens of thousands of people using the material, skills and money of the state not to protect fellow citizens but to murder them.

In societies established in accordance with the rule of law, state institutions will not readily respond to the demands of legislative or executive authorities that they exceed or violate their authority. This is not for reasons of morality or intellect, but because state officials are aware that later they may be implicated in wrongdoing and the excuse that they were simply following orders will not save them from punishment. By contrast, in societies where institutions are part of a modernised version of the feudal order, as in Thailand, executive or legislative officials can give illegal and illegitimate orders and expect them to be followed. This is because their subordinates are reassured that they will not be investigated or suffer any consequences for their actions. On the contrary, the only punishment they are likely to face is if they fail to do what they have been told.

More than three years have passed since the first phase of the "war on drugs", and more than 16 months. In that time, an unknown number of other persons have lost their lives at the hands of state officials in Thailand due to the failure of the authorities there to take seriously their commitments to international law, as well as the law of their own state. Half-hearted investigations and apologies do not satisfy their obligations. Nor does the paying of compensation and dropping of charges against wrongly-accused persons. The UN Human Rights Committee in 2005 made clear to the government of Thailand what is required: full and impartial investigations, instituting of proceedings against perpetrators, adequate redress to victims and families, and institutions to receive and follow complaints. No progress has yet been made on any of these requirements.

Can't get no witness protection

Witness protection is all about the fight against impunity that is at the heart of human rights struggles worldwide. Without witness protection, victims of human rights abuses who complain and seek justice must face serious threats leading to physical harm and possibly death of themselves or their loved ones. This violence is brought onto them by powerful people, whose power invariably comes from the uniforms they wear.

A legal system that promotes justice but does not set in place the means to protect witnesses is a fraud. When victims of human rights abuses understand this, they do not come forward to assert their rights against the perpetrators. No attempt is even begun to make complaints and assert rights. The victims remain silent, inert and fearful.

Just as the outcome of a case depends upon the quality of evidence presented to the court, the quality of evidence depends upon the investigation, from its earliest stages. If a complainant is unafraid and comes forward shortly after a crime, describes in detail what

happened, points to other persons and materials that substantiate this account, is supported by other witnesses and does not change the account, the case will probably be a success. By contrast, if a complainant is fearful and has low expectations of the courts, coming forward only much later--if at all--reluctantly giving details of what happened and who else may be able to substantiate the story, and under pressure changes the account, the case is unlikely to succeed. In human rights cases especially, the determining factor between one outcome and the other is protection.

The authority of a court and respect for fair trial are put to the greatest test when state officers are the accused. A law enforcement officer has many more means than an ordinary person to ensure that complaints against him are never heard by a judge. Where they are heard, he has still many other means to reduce a trial to farce. In most cases against law enforcement officers in Asia, witnesses are afraid to appear in court. Where they do appear, they deny earlier testimonies or lie blatantly in a desperate attempt to escape retribution. At such times, the perpetrator is laughing loudly at the court and its judge.

Protecting witnesses is a duty of the state. This is a fundamental and globally-established principle. Where the state declines to protect witnesses, it denies justice to society. The state must find the people, money and means to do this. A state that talks about witness protection but does not allocate funds and resources for that purpose fails in its duty. But the real problem in setting up a witness protection programme is not money; it is about the place of witness protection in state policy. Where the importance of protecting witnesses to obtain justice is understood and articulated, an authority to give effect to this policy can be quickly established and developed. There are many available resources for such work these days.

Thailand is among those countries in Asia that has gone through a long history of heavy military and police control. This history has created a deep and enduring fear among victims of human rights abuses there. That fear is the heritage of all countries with long traditions of social repression.

So it is that despite the establishment of the Witness Protection Office under the Ministry of Justice, in practice the police in Thailand control most aspects of witness protection. As the police in Thailand are the main violators of human rights, the notion that they can be responsible for protecting victims is both unreasonable and contradictory.

A special report released in June 2006 by the Asian Legal Resource Centre noted that despite its existing severe limitations, Thailand’s witness protection scheme is an extremely important initiative, and among the few of its kind in Asia. It deserves much stronger encouragement. If it gets the interest and support it deserves, it could become an outstanding example for the region. If it does not, it will be swallowed up by the perpetrators, not defenders, of human rights.

Unfortunately, little has been done to make the Witness Protection Office into an effective agency. At present it does not have even half of the meager staff it was

promised. It obviously needs more personnel and resources before there can be any talk of it doing effective work. This is a matter of policy decisions on the part of a minister and the cabinet, not a question of availability of money with which to do the job. The principle of witness protection, although written into the national constitution, is still foreign to the political leadership of Thailand. This must change.

International bodies, bilateral agencies and overseas missions should all be offering support for the office. Governments with established witness protection programmes could be providing technical and material assistance. They have much to offer. Such exchanges would be very much in their own interests, as foreign nationals in criminal cases in Thailand also suffer from miscarriages of justice caused by the lack of witness protection and attendant problems. And for international agencies, Thailand has the right qualities for a successful witness protection model which could be advertised and replicated elsewhere.

International and local human rights organisations, university departments, scientific and professional groups, members of parliament, the NHRC and above all, the witnesses and victims themselves, should all contribute to the much-needed discussion on witness protection in Thailand, and offer whatever means they have to make it a reality.

Where is Somchai?

The story of the case of Somchai Neelaphaijit is in many respects the story of Thailand. From the time of the abduction of the human rights lawyer by the police on 12 March 2004 the case has attracted immense national and international interest. It has also evolved into a story of successive insincere mouthing of commitments by state officials to their obligations.

Somchai Neelaphaijit

The wife of Somchai, Angkhana Neelaphaijit, has worked to obtain some answers and a modicum of justice. In the course of her personal struggle, during which time she has received death threats, she has become an outstanding human rights defender in her own right, who has now established an organisation to fight for the rights of other families of disappearance victims in Thailand. On the second anniversary of her husband's abduction, both her struggle and his were acknowledged when he was awarded the 2nd Asian Human Rights Defender Award of the AHRC. Angkhana herself has also received an award from the NHRC of Thailand and is a 2006 joint recipient of the Gwangju Prize for Human Rights, from Korea.

Angkhana Neelaphaijit

In January 2006, after the Criminal Court in Bangkok sentenced one of the five accused police to three years in prison and stated that state officers had been responsible for Somchai's disappearance, the then prime minister insisted that the DSI would lay fresh charges within a month. It never happened. Nor have any other promises by one government official after another been fulfilled. These include numerous written commitments by senior government officials since 2004 that various high-level investigation teams were hard at work on the case.

The police defendants in court

Then at the end of October, the head of the new military junta said that he had information that the mastermind of the disappearance of Somchai was a close aide of the former prime minister. The revelation came as little surprise to persons who have followed the case. It was alleged from the start that there was evidence linking someone in the prime minister's office to the abduction. It was also widely agreed that the five police who stood trial in connection with his disappearance--one of whom was convicted--were acting on orders from higher up. However, the DSI has again said that it lacks evidence to lay further charges.

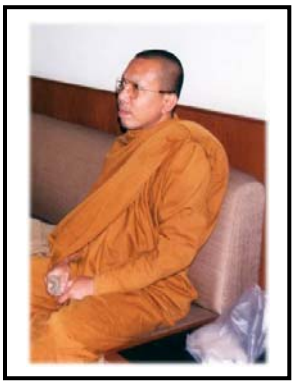
The DSI's constant excuses for its inability to solve the case have no credibility. Under the Special Case Investigation Act BE 2547 (2004) it has extensive authority to investigate any case it has been assigned. Under section 22 it can oblige other government agencies to cooperate. Under section 23 its officers have full investigative powers in accordance with the Criminal Procedure Code. Under section 24 further specific powers are described. These are considerable. They include the power to search a place or person without a warrant, summon any agency or person to come for investigation or give information, and seize evidence. Under section 25 the DSI can obtain a court order to open mail, tap telephones, and intercept faxes, email messages or other communications in connection with an offence being investigated. Under other sections it can issue fake documents, exempt its staff from ordinary regulations on use of firearms, and appoint special consultants and public prosecutors to cases where necessary. Together with the resources that the DSI is known to have at its disposal this array of powers makes nonsense of claims that it is having trouble uncovering witnesses or evidence. It has used these powers in other instances with good result, particularly relating to financial crimes: so why have human rights cases, and especially that of Somchai Neelaphaijit, not been given equal respect?

The DSI has failed miserably in this and all other human rights cases, including those of murdered environmentalists Charoen Wat-aksorn and Phra Supoj Suwajo. Many attributed this to the placing of a senior police officer at the head of the department, which is under the justice ministry. Many more believe that Pol. Gen. Sombat

Amornvivat and his senior colleagues personally thwarted the investigation of Somchai's disappearance. It was in view of this that in 2006 the AHRC launched a petition calling for the removal of the director and reform of the department. Finally, at the start of November 2006 Sombat was removed by the new military administration. However, to date the DSI, including his subordinates still at work there, continues to pose a hindrance to solving this case, and indeed all other human rights cases in Thailand.

Charoen Wat-aksorn

Apart from the resurgence of questions about who ordered Somchai's abduction, many more questions must also be asked about the failure of the DSI to solve the case. These include the following: what attempts have been made to follow the chain of command from the five accused officers upwards? Which senior officers have been questioned directly over the lawyer's disappearance? Why were the former prime minister and members of his cabinet not themselves summoned for questioning after admitting that they had heard things about the case? Was there any attempt by investigators to learn what they had heard? If so, what further steps did they take?



Phra Supoj Suwajo

Beyond the questions for the DSI chief, there are many more lasting institutional questions for Thailand. These pertain to the keeping of secrets and telling of lies that is at the heart of government there. They are questions that relate as much to the army as to the police and other parts of the state apparatus. In this, the disappearance of Somchai Neelaphaijit is about much more than the presumed death of a single courageous human rights defender. It is about the deep defects that run throughout state institutions in Thailand that permit disappearances to occur.

It is also about the sense of obligation and public ritual in Thailand's administrative institutions. The trail of ministers, government officials and officers that have given reassurances about the case leads towards the root of the problem. What happens in a society where any commitment can be made without a corresponding sense of obligation? Everywhere in the world politicians and bureaucrats are known for making hollow promises. But there is a difference between an election pledge to tackle crime and a guarantee from a person with a specific mandate that an incident will be properly investigated. When a criminal investigator, departmental head or government minister does not feel obliged to fulfil a responsibility that comes with the job, he, his subordinates and their institutions are degraded. Even the most basic official exchanges among functionaries, or between functionaries and the public, are undermined. As a substitute for good service and effective administration, the state is reinforced by propaganda. The rule of law is denied and authoritarian governance predominates.

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