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The Emergency Decree and absolute impunity in southern Thailand

1. Nobody knows the number of victims of torture, killing and forced disappearances by the security forces in the south of Thailand, but what can be certain is the unlikelihood of the perpetrators ever being held to account. This is by virtue of the impunity granted to state officers under by the Emergency Decree B.E. 2548 (2005).

2. After a military regime headed by General Sonthi Boonyaratglin took power in Thailand on September 19, it stressed its interest in addressing the problems in the south with sincerity. However, on October 18 the emergency decree over the southern provinces--which was initiated by the preceding government--was renewed for a further three months, and again subsequently after that. It is due for renewal again on 17 April 2007.

3. The Emergency Decree encourages extrajudicial killings, forced disappearances and torture:

a. In July 2006 the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Human Rights Council 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.

b. For instance, 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 Tanyeenoo 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 of Thailand and a local human rights group about the treatment of local villagers by security forces.

c. In 2006, the sister organisation of the Asian Legal Resource Centre, the Asian Human Rights Commission, 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 Working Group on enforced and involuntary disappearances. 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.

d. 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 officers under the Ministry of Justice visited relatives to make some inquiries, but said nothing more.

e. The Human Rights Committee in its 2005 report to the government of Thailand (CCRP.CO.84.THA) expressed concern about "widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called 'safe houses'". It called upon the government to "guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention", access to family members and "prompt and effective remedies to allow detainees to challenge the legality of their detention", including by being brought before a judge. In fact, the Emergency Decree is an extraordinary step in the opposite direction because it has legalised what before was simply customary, and has removed even the limited safeguards that exist in police lockups and jails in Thailand. This is by virtue of its section 12, that

"Competent officials shall be empowered to arrest and detain suspects for a period not exceeding seven days. Suspects shall be detained in a designated place which is not a police station, detention centre, penal institution or prison and shall not be treated as a convict."

f. The rationale for this section is that the person in question is being called to assist the army or police with their inquiries, and is not (yet) a suspect or an accused, so he should not be kept in jail or police custody. In practice, what it means is that soldiers and police are to set up ad hoc detention centres outside of conventional facilities and regulations. These are places that by their very nature are run beyond the ordinary functioning of law, where anything can be done without the scrutiny of other government agencies and officials, lawyers, human rights defenders and others. In short, they are torture chambers.

g. For example, a group of soldiers took Muhamud Arming Usuh from near his home on 30 October 2006, as he returned from work at a rubber plantation. They didn't produce any arrest warrant or evidence, or tell him where they were taking him or why. The emergency regulations in force over the southern provinces didn't require this of them. At an unidentified army camp, they allegedly kicked and hit him in the

face and over the head with a steel bar; burnt cigarettes onto his neck, chest, ear and genitals; and, smashed beer bottles across his knees. Where the physical torture ended the psychological abuse continued: Arming, a Muslim, was allegedly chained to a dog for the night, before being taken to a bigger camp the next day. After the week was up, he was handed to the police and charged with murder and firearms offences.

4. In 2005 the government of Thailand established the National Reconciliation Commission ostensibly to come up with solutions to the conflict in the south, 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.

5. 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.

6. The Asian Legal Resource Centre calls upon the Government of Thailand to honour its mouthed commitments to human rights by:

a. Lifting the Emergency Decree over the southern provinces without delay, as well as the martial law that remains in effect in other parts of the country subsequent to the September 19 coup;

b. Establishing independent agencies to investigate and prosecute all allegations of extrajudicial killing, forced disappearance and torture in the south;

c. Compensating and protecting victims and their families; and,

d. Adopting the recommendations of the National Reconciliation Commission and United Nations agencies on institutional and legal changes needed, especially judicial reforms, to end the impunity and violence in the south.