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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement\* submitted by the Asian Legal Resource Centre (ALRC), a non-  
governmental organization in general consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2007]

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\* This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

## **Defective criminal justice institutions cause systemic and widespread rights abuse in Thailand**

1. In October the then head of the Department of Rights and Liberties Protection under the Ministry of Justice in Thailand 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."

2. 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:

a. 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.

b. 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?

c. 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.

d. 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.

3. 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. Although in November the interim administration imposed by a military regime that came to power on September 19 had the charges against the 58 dropped, it has neatly avoided 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?

4. The Asian Legal Resource Centre (ALRC) is of the opinion that prosecution in Thailand does not have to be this way. 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 an infamous case: the 'Saudi gems' scandal. 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.

5. The Asian Legal Resource Centre is aware that the United Nations Office on Drugs and Crime (UNODC) has offered to assist the government of Thailand in reforming its police force, and in

February it communicated with the office on the same, pointing out that police reform has been a subject of debate in Thailand since at least the 1970s and that the office should first pay serious consideration to some of the key obstacles to police reform there:

a. No command responsibility:

The notion of command responsibility, although an integral part of policing anywhere in the world, is absent from policing in Thailand. Superior officers are not held liable for the acts or omissions of their subordinates. On the contrary, they invariably act to defend their men against accusations of alleged criminal acts: a senior forensic scientist was charged with criminal libel by a police station commander after implying that in her professional opinion his officers may have killed someone whom they said committed suicide; one of five police officers accused of abducting and disappearing a human rights lawyer was reappointed to his position and even promoted while the criminal trial against him was ongoing; a former head of the immigration police in a television interview defended the use of torture by his subordinates as the only way to deal with "bad people". Without command responsibility being enforced within the police hierarchy, superior officers are untouched by allegations that their subordinates have tortured suspects, falsified evidence, doctored records, and otherwise ignored procedure. Without command responsibility, there is no way to combat the intimate relationships between the police and organised crime in Thailand, the line between which has been described as being so fine as to be non-existent. Without command responsibility it will be impossible to introduce the notion of accountability into the police force, and without accountability there can be no reform. The key issue for all police reform must therefore be command responsibility.

b. No complaints mechanism:

No one in Thailand can make an effective complaint against a state officer for alleged abuse. For this reason, to the knowledge of the ALRC, no police officer in Thailand has in recent years been prosecuted over an alleged human rights violation with the exception of the five accused in the case of abducted human rights lawyer, Somchai Neelaphaijit. Given the size of the police force in Thailand and the scale of alleged abuse, this is truly remarkable. The ALRC recalls the Human Rights Committee's recommendation to Thailand (CCPR/CO/84/THA) that it "actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials", and suggests that meaningful police reform must take this into account.

c. Non-compliance with international law:

Institutional changes must be accompanied by legal reforms to lend them support. The government of Thailand has indicated for years that it would ratify the UN Convention

against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and introduce it into domestic law but has so far failed to do so. Although section 31 of the abrogated 1997 Constitution of Thailand held torture to be an illegal act, it remained unenforceable for want of an enabling law and measures to permit complaints. A law to prohibit the commission of forced disappearances in accordance with the new international convention is also necessary. Existing domestic laws too require reform--such as section 143 of the Criminal Procedure Code, which allows only for the director general of the Public Prosecution Department to instigate legal action against a state officer accused of killing someone in the course of his official duties. Other laws that permit impunity, especially the Emergency Decree over the southern provinces, must be lifted without delay.

6. 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. So too the aim of any police reform in Thailand must be much more than to break the links between the police and politicians. It must be informed by serious understanding of the deep problems in policing, prosecution and the judiciary there that have developed over the last century--not merely the last few years--and aim to break the links between the police, organised crime and the military that have been forged and multiplied throughout this period. The success or failure of any work on these issues must be measured in these terms.

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