



General Assembly

Distr.
GENERAL

A/HRC/7/NGO/40
22 February 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement^{*} submitted by Asian Legal Resource Centre,
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.

[20 February 2008]

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

GE.08-10846

**THAILAND: Continued threats to rule of law & human rights under
elected government**

1. On February 9, the new prime minister of Thailand, Samak Sundaravej, made a number of startling statements before international television audiences that amounted not only to a denial of history but to an affront to the global human rights movement.
2. In an interview broadcast on CNN, he claimed that only “one unlucky guy” was beaten to death in a brutal rightwing militia attack at Thammasat University in Bangkok on 6 October 1976 in which over 40 were in fact confirmed dead; hundreds more went unaccounted for, an incident in which the Prime Minister has himself been implicated.
3. In another interview with Aljazeera, the Prime Minister repeated this claim and also denied that there had been anything wrong in the handling of a protest outside the Tak Bai police station in Narathiwat on 25 October 2004 in which over 85 persons died; 78 of them in army custody: an incident regarding which the Special Rapporteur on extrajudicial executions had expressed his serious concern and sought unsuccessfully to visit Thailand. The Prime Minister claimed that the Tak Bai victims had “just fall(en) on each other” due to weakness caused by fasting during Ramadan, when it is known from video footage and the findings of staff from the Central Institute of Forensic Science, which have been presented at an ongoing inquest into the deaths, that most died as a result of asphyxiation after being packed on top of each other in trucks.
4. These shamelessly and patently false remarks are indicative of the continued decline in respect for human rights, principles of the rule of law and constitutionalism in Thailand that were slowly being built up during the previous decade but were eroded under the former government of Pol. Lt. Gen. Thaksin Shinawatra and then frontally attacked by the coup of General Sonthi Boonyaratglin in September 2006.
5. Despite the return of an elected government, it cannot be said that Thailand is now moving away from autocratic rule.
6. The military regime made a vast number of administrative and superficially legal changes during the time that it was in power in order to ensure that the armed forces and elite bureaucracy will have dominant roles in the government through the foreseeable future. These include the reassembling of the Internal Security Operations Command and moving of vast sums of money into parts of the military without any accountability; introduction of a National Security Law and a host of other repressive measures; and, downsizing of the National Human Rights Commission and appointing, rather than electing, of half of the Senate under the new 2007 Constitution, which was only passed through a referendum by less than 60 percent of the population, despite enormous funds and effort spent on Yes vote campaigns, and constant harassment of its opponents.
7. The coup group’s abrogating of the 1997 Constitution, the only genuinely constitutionalist charter that Thailand has had in its history, and the recent comments of the Prime Minister are in fact parts of the same anti-human rights approach to government and social control that trivialise notions of crime and law to the perceived advantage of powerful sections of society as against the overwhelming majority of the population.

8. Where gross offences such as the 1976 massacre and Tak Bai killings are not treated as crimes, impunity is guaranteed and the notions of law upon which the defence of human rights depends are made meaningless. The fair operation of law becomes less and less visible. Criminal prosecution is reduced to a legal ritual that for the most part is performed only against the poorest and least powerful. The concept of abuse of power is lost altogether.

9. Where constitutions are displaced, removed and replaced at will by military dictators and persons acting at their behest the consequences are the same. The displacement of constitutional law affects public law. Citizens' rights to challenge government actions depend upon constitutional protections. Where these are repeatedly altered, as they are in Thailand, the practical use of the law and courts to defend human rights are undermined. People, including legal professionals, become confused and over time lose interest and confidence in the capacity of lawyers and judges to protect their interests as against those of the executive.

10. The practical implications of this trend can be understood with reference to two among a number of serious crimes allegedly committed by police in Thailand and reported during the first months of 2008.

a. In January, three men were found shot dead in Ayutthaya Province, just north of Bangkok, apparently after the police had captured them. The three, Akkharapol "Bank" Sampao, 22; Mongkol Yatra, 20, and Nakhon Kwaenkhetgun, 18, were wanted for the killing of three officers in a shootout on December 31 when police had come to arrest Akkharapol at a relative's home. Akkharapol's family had negotiated with the police for their surrender, and had made a deal that they would hand themselves over at Ban Nong Lai in Phetchabun on January 9. Instead, the three men disappeared suddenly from a restaurant in Phetchabun that day and were found dead, all shot in the back, on a road in Uthai district the following morning. The police claim to know nothing and say that it was a case of "killing to cut the link" between criminals; the family believes that it was revenge.

b. At least 14 Border Patrol Police have so far been arrested, have surrendered or are wanted for allegedly abducting and torturing people for ransom and in order to fabricate cases. The police had brought their victims to Bangkok and held them in an apartment there. They were arrested after a woman whom they had held with her children reported what had happened to her. Since then, over 60 other persons have lodged similar complaints and at least 180 people who are currently in jail have sought to get their cases reviewed. The types of torture allegedly performed by the group include electrocution, including of a pregnant woman, beatings and extended periods of hooding. The alleged ringleader, Pol. Capt. Nat Chonnithiwanit, has defended himself by saying that he was only doing his job and that senior officers knew of his unit's activities.

11. These, along with numerous other cases that the Asian Legal Resource Centre has documented and that have been reported in the media, speak to the same problems of abuse of power, failed constitutionalism and declining rule of law that are inherent in the current administration of Thailand as well as its predecessors. Where army generals overturn constitutions at will and heads of government openly deny that gross abuses of human rights have ever occurred, such killings, abductions and torture by state agents are guaranteed.

12. In light of the above, the Asian Legal Resource Centre calls for

- a. Condemnation of the international human rights and diplomatic communities of the recent remarks by the Prime Minister of Thailand and calls for him to issue apologies to the victims of the 1976 massacre and Tak Bai killings.
- b. Prompt investigations and prosecutions of the three army officers identified by a government-appointed commission as responsible for the deaths at Narathiwat in 2004.
- c. The repeated requests of the Special Rapporteur on extrajudicial killings to be allowed to visit Thailand to be acknowledged and for an invitation to be extended without any further delay.
- d. Investigation, arrest and prosecution of all police and other state officers alleged to have been responsible for abductions, killings, torture and other gross abuses of human rights in Thailand, including those implicated in the recent killings in Ayutthaya and the Border Patrol Police conspiracy, along with disciplinary action against their superiors, and the granting of protection to victims and witnesses in accordance with the Witness Protection Act (2003) and payment of compensation in accordance with the Compensation for Victims of Crime Act (2001).
- e. The setting up of an independent civilian body to investigate complaints filed against law enforcement officials and ensure that there be prompt and effective remedies to allow detainees to challenge the legality of their detention, in accordance with the recommendations of the Human Rights Committee in 2005 (CCRP.CO.84.THA).
- f. The establishing of legal measures to ensure command responsibility in cases of human rights abuses by police, soldiers and paramilitaries so that senior officers are also held responsible for the acts and omissions of their subordinates.

13. The enormous obstacles to the building of an authentic respect for human rights in Thailand are deeply connected to the long-term denial of the rule of law and genuine constitutionalism there. While measures such as these will not go so far as to displace these obstacles, they are integral if any progress is to be made towards this goal.

***About the ALRC:** The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*
