



มูลนิธิศูนย์ทนายความมุสลิม
MUSLIM ATTORNEY CENTRE FOUNDATION

Report to UPR Human rights in Criminal Justice Systems in Southern Conflict & counter-insurgency policies of the State

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1. Cross Cultural Foundation (CrCF)¹ and Muslim Attorney Center Foundation (MAC)² are gravely concerned about the approach adopted by the Royal Thai Government (RTG) since 2004 to address the situation in the restive southern provinces in Thailand. Since 2004 to the present, MAC has received 2,099 complaints from affected people. These include complaints of torture, extrajudicial killings, arbitrary arrests and forced disappearances. We present the following human rights concerns and recommendations as below;

Enforcement of Special Laws

2. In 2005, Martial law was declared in Pattani, Yala, Narathiwat and four districts of Songkla, including Chana, Sabayoi, Thepa and Nathawee. Two other special laws, Emergency Decree on Government Administration in States of Emergency 2005³ and the Internal Security Act 2008,⁴ are also in force in the area.
3. Since 2004 the government has not made any notification to the UN Human Rights Committee about the declaration of the area to be under Martial Law.

Detention under Emergency Decree

¹Cross Cultural Foundation (CrCF) aims at promoting understanding across different cultures. CrCF was registered under Ministry of Culture in Thailand in 2002. Since then it has been working closely with its partners such as National Human Rights Commission of Thailand, Lawyer Council of Thailand, Thai Volunteer Services towards facilitating vulnerable groups to access justice through legal aid and test case litigations and promoting understanding amongst diverse groups through studies, research and information dissemination. The project on access to justice and legal protection in the southern border provinces of Thailand started since 2007.

²Muslim attorney center foundation (MAC) was established in 22 February 2007 as a body of individuals and organizations to address of justice, human rights and provide free legal aid to the people who have been affected by the special laws which are in force in the three provinces of southern Thailand. The objectives of MAC are to 1) provide knowledge about law, Constitution and international human rights law standard to the communities and civil society organization; 2) to provide free legal aid to the people so that they can access to justice; 3) to create networks for cooperation with lawyers and NGOs at national and international level and 4) to provide legal training for paralegals so that they can assist the lawyers in their work.

³ In 2004, the government imposed Martial Law 1914 to suppress and prevent insurgency. On 19 July 2005, the Martial Law was replaced with the Emergency Decree 2005 enforced in the Southern border provinces. After the coup d'etat on 19 September 2006, the Martial Law had been declared again. Till date the three southern border provinces; Yala, Pattani and Narathiwat, the Southern border provinces are under the two special laws.

⁴ The Internal Security Act was imposed on the four districts of Songkla since November 2009 after the Martial Law was lifted. In Mae Lan district of Pattani, the Internal Security Act was lifted in January 2011 but the Martial Law is still effective. The Internal Security Act is also another new problematic law that might cause severe damage to rule of law and human rights in criminal justice system.

4. Under the special laws, ISOC (Internal Security Operation Command) has issued regulation (signed 24th January 2007) that violates fundamental human rights. Section 11 of Emergency Decree is widely used to arrest and detain suspected persons for a maximum of 30 days. Though under the law, the judiciary needs to authorize the extension of detention after every 7 days, yet, in most cases the judiciary does not exercise substantive review over the requests for extension of detention. In many cases the detainees are not produced before the court at the time of requesting extension of detention. Till date there are more than 5000 persons who are being detained under the Emergency Decree.
5. Under the amendment to the ISOC regulation mentioned in paragraph 4 (signed on 1st February 2008), doctors and lawyers cannot visit the detainee unless they obtain permission from the Army Commander of the 4th Region. Close relatives can visit the detainee but such visits are held under the supervision of Army Officers. The visits by members of the National Human Rights Commission are also supervised.

Recommendation

6. The regulations (signed 24th January 2007, signed on 1st February 2008) issued by ISOC commander region 4 under Article 11 of Emergency dated 1st February 2008 must be revoked.

Issues on detention under Martial law

7. Martial law has been in force in the provinces of Yala, Pattani, Narathiwat since 2004. The enforcement of martial law has resulted in widespread human rights violations. Under the law, ISOC Region 4 has powers to supervise law enforcement. Operations to search, arrest and detain suspected persons have caused human rights violations in many cases. Atleast 4 detainees have died in such operations; Mr. Assari Sama-ae died in 2007, Mr. Yakariya Pao-mani died in 2007, Mr. Yapha Kaseng died in 2009 and Mr. Sulaiman Naesa died in 2010.

Recommendations

8. The State must revoke the application of martial law in the three southern border provinces.
9. If it is not yet revoked, the state must lay down clear rules for arrest and detention of persons. These rules must be in conformity to national law and international human rights standards. The detainees must be detained in authorized places of detention which are open for inspection. There must be clear records of arrests and release of detainees. Such records must be available for examination. The families of detainees must be informed about the arrest, place of detention and cause of detention immediately. The detainees must be able to access lawyers and their families.

Extra judicial Killing

10. Till date no action has been taken against any officers for extra judicial killings.
11. In the incident of Krue Se Mosque, 28th April 2004, where 32 persons were killed during the attack, the public prosecutor decided not to pursue any legal action against the officers who were involved in the killing.
12. In the Tak bai incident, where 78 protestors died in official custody, the post-mortem inquest decision was given six years after the date of incident. The post mortem inquest only stated that the persons had died of suffocation but did not give any ruling against the persons responsible for the deaths. No further action has been taken in this case to seek accountability from officials who were in charge of the custody of protestors.

13. In another case, Mr. Yakariya Paohmani died in the custody of the paramilitary in June 2007. In June 2008, 6 civilians – Mr. Muhamhad Sakri Kaboh, Mr. Ismaae Ali Mamah, Mr. Maromli Akraj, Mr. Koseng Apibanbae, Mr. Wae-Ali Samaae, Mr. Dalee Dolor were killed in arrest operations.
14. In the southern most provinces, from the record of police from 2004 - Nov2010, a total of 82 insurgent suspects under arrest warrant were extra-judicially killed by officials. In most of the post mortem inquests relating to these deaths, no cross examination was conducted by lawyers representing the relatives. Page | 3
15. From the primary data retrieved from Yala Provincial court, during 2003-2010, a total of 77 Post mortem inquest trials were heard in the court. These included 50 cases of 114 individuals involving more than 37 identified officers. These post mortem inquests are conducted only as matter of procedure. There is no substantive enquiry into the circumstances of the death, whether the deaths were caused by officers in self-defense or whether there was disproportionate use of force by the officers.

Recommendations

16. The state must enforce strict measures to investigate and identify officials who engage in arbitrary exercise of power and punish the violators before the law. The relatives of the deceased must receive appropriate redress.
17. Armed officials must be trained to minimize loss of lives and properties of civilians during their use of force, according to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Torture, Inhuman Treatment and Punishment

18. In 2007-2008, MAC received 113 cases of torture to obtain confession and during 2009-2010, MAC received 130 cases of torture for obtaining confessions.
19. The first case of torture was reported by some of the persons accused of the gun robbery on 4th January 2004. The allegations of torture were investigated by the Department of Special Investigation – Ministry of Justice. After identifying a police general and 18 officers responsible for the torture, the DSI referred the case to the National Anti-Corruption Commission (NACC). In 2010, the NACC announced that there was no evidence to prove the allegations of torture.
20. Even in very high-profile cases, such as Imam Yapha Kaseng, no action is taken against the wrong doers. Imam Yapha died because of torture in official custody. In the post mortem inquest, the Court concluded that the officers were authorized under the special laws to detain the victim. The court did not make any ruling on the torture inflicted on Imam Yapha.
21. In September 2010, National Human Rights Commission (NHRC) issued report No. 275 – 308 / 2553, titled ‘Right to Judicial Process in Relation to the Examination of the Complaints Concerning Torture and Other Inhuman Treatment or Punishment in the Southern Border Provinces’. This report relates to the 34 complaints of torture received by the NHRC From 2007 until July 2010, from Songkhla, Yala, Pattani and Narathiwat Provinces. The report was sent to concerned agencies including PM office, security officials in the Southern Border Provinces and the complainants. No action has been taken by the State with respect to the recommendations given by NHRC.
22. In 2011, we have received information of at least 10 persons who were tortured for extracting confessions. Statistics show an increase in the number of complaints concerning torture. Thailand has not enacted any specific law to protect against torture. The Criminal Code and the

Criminal Procedure Code do not have any provision that focuses on torture. There is no mechanism to seek accountability against officials alleged to have committed torture. The redress of torture victims under the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, in terms of financial compensation, is often insufficient. Most often victims do not trust the witness protection program and are afraid to take any charges against the officials. It often took a long time to receive the compensation.

23. The special laws also hinder the realization of justice and reparations for victims (compensation, restitution, rehabilitation, satisfaction and guarantees of non repetition) by obstructing the investigation into and documentation of torture by the National Human Rights Commission and other stakeholders. The laws prevent or limit access of lawyers to detainees and restrict even more greatly the access of independent medical examiners. Contemporaneous physical and psychological evidence of torture thereby cannot be documented or only is reported by family or recorded principally by lawyers, although they lack medical expertise.
24. The rules and prejudices of government medical institutions present additional barriers to documentation and reparations. As noted above in the paragraphs on extrajudicial killings, government medical examiners are predisposed to provide inconclusive or vague reports on abuses. Some of these professionals have privately opined that they believe they would lose their jobs if they did otherwise. Certain mental health professionals in prison facilities have also refused to treat detainees who are accused of terrorism, but have suffered torture. In the alternative, sympathetic health professionals working in government institutions in Southern Thailand report that they are forbidden by institutional regulations from traveling to detention sites to visit detainees.

Recommendations

25. Torture victims must be entitled to prompt and appropriate redress. As it is a sensitive matter, an expert in physical and psychological therapy should also be provided.
26. The torture cases require an understanding from judicial personnel in order to ensure protections of victims. The State must provide training for staffs at both NACC and the Royal Thai Police officers. Officials of both agencies at all levels must understand the principles and obligations that Thailand has under the CAT. Till Thailand adopts a specific law that complies with CAT, NACC and Police force must set up a mechanism for investigation into complaints of torture.
27. Preventive measures, such as inspection of detention centers or potential premises where torture might take place should be imposed. Despite the presence of the National Human Rights Commission, its authority to inspect the premises was not exercised continuously and regularly and it must receive permission for visiting.
28. Human Rights Lawyers Association – Thailand has drafted a bill on torture. The Royal Thai Government should support the initiatives of enacting a law on anti-torture, not only amendment to criminal code and criminal procedure code.
29. The court shall issue regulations on the order of remedies under Section 32 of Thai Constitution, if the case it appears the fact that such person has been injured, tortured, ill treated by state officials, despite the fact that such person be released or detained.

Culture of Impunity

30. No persons responsible for human rights violations in southern provinces have been found guilty. No action has been taken against officers in charge in cases such as Takbai, Krue Se, SabaYoi or disappearance cases of Mr. Mayuni Lohniya, Mr. Mayateh Maranor case, death in custody of Mr. Assari Sama-ae, Mr. Yakariya Pao-mani, Imam Yapha Kaseng and Mr.

Sulaiman Naesa. In the well known case of Somchai Neelaphaijit, the appeals court in its decision on 11 Mar 2011, found all five police officials related to the abduction of Lawyer Somchai Neelaphaijit 'not guilty'.

Issues on the detention of children in the southern provinces

31. The martial law should not be applied to children under the age of 18 years old in any circumstances. The measures to search arrest, detention and questioning of children under the age of 18 are strictly prohibited unless the minimum standard according to Thai law on juvenile criminal justice is followed.

Please see the clip on Juvenile Justice in the Deep South at
<http://www.youtube.com/watch?v=vk0IkeTxxAQ>

Role of judges and prosecutors in the conflict situation

32. Judiciary is a vital mechanism for ensuring check and balance of power and protecting human rights. Judicial regulations must set out procedure on issuing arrest warrant related to national security charges, the procedure to apply for extension of detention and the rules of evidence such that human rights are respected and promoted. Under the present administration of justice, there is a long delay in the completion of trials. Justice delayed is justice denied. As of October 2010, there are more than 440 under-trial prisoners related to national security cases in provincial prisons in Southern Thailand. It is not easy for the under trial prisoners to secure bail. Only 100 under-trial prisoners received bail recently.

33. A total of 3897 arrest warrants for 2143 persons were issued by four provincial courts in the southern most provinces on national security cases since 1 January 2004 to November 18, 2010. These arrest warrants by prosecutors and courts need to be reviewed to examine the use of evidence in the process of issuing an arrest warrant. The process of issuing the warrant must be in strict accordance with the regulations of the Supreme Court judge of Thailand. Hearsay evidence shall not be used as a ground for any arrest warrants relating to national security cases. The use of arrest warrants in the situation of southern conflict have led to other types of human rights violation by security agencies such as re arrests or forcing people to participate in the military camps and arbitrary detention.

Please view related two documentaries on Re-arrested and Endless effect of Emergency Decree warrants at <http://www.youtube.com/watch?v=xTVUfnOQ-cQ> and <http://www.youtube.com/watch?v=IEEDRDTdMSg>

Access to Justice: availability of legal aid

34. Referring to the official documents of the 2011 Budget Bureau of the year, out of the total budget for administration of justice, a very disproportionate amount of the budget is allocated to free legal aid. The total budget granted to administration of justice is 100,000 million Baht or 3,200 million U.S. dollars. Out of this total amount, the National Police Office receives 75%, Ministry of Justice receives 17%, Attorney General Office received 6%, the Court office received 2%, the Human Rights Commission of the National receives 0.2% and Law council of Thailand receives 0.06%.

Recommendation

35. The state must allocate an appropriate amount to support free legal aid and public defender works, specifically for the criminal case. The accused and the defendant are entitled to choose their own legal representative.

**Annexes to the submission by
the Cross Cultural Foundation (CrCF) and Muslim Attorney Center(MAC) Foundation
to the Human Rights Council's Universal Periodic Review on human rights in Thailand**

Annex I

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Highlight brief details of cases documented by CrCF and MAC

Extra-Judicial Killing

Kruesae Incident in 2004

On 28 April 2004, 32 people were shot to death at the Kruesae mosque, Pattani Province by the security forces during the enforcement of Martial law.

The post mortem inquest started in November 2004-14 September 2006. On 28 November 2006 the Pattani Provincial Court read out the inquest that cause and circumstance of death was fighting with the soldiers and police officers with gun and knives. The performance of soldiers and police officer under the command of *General Pallop Pinmanee, Colonel Manas Kongpan, Lieutenant Colonel Naphat Nakchaiya*. All the persons died from injuries to important organs caused by the bullets and bomb explosives.

10 February 2009 the public prosecutor has opinion not to file the criminal lawsuit against the commander.

Death in Custody

Takbai Incident

On 25 October 2004, more than 1300 peaceful protesters in front of Takbai Police station in Narathivath province were taken into custody. 78 persons died in custody. The post mortem inquest with respect to the death of 78 persons started in 2007 and was completed in 2009. The post mortem inquest did not pin point responsibility on anybody with regard to the death of the 78 persons.

Case of Imam Yapa Kaseng

Imam Yapa Kaseng was taken into the custody of Special Taskforce 39 of Ruesor District, Narathiwat province together with his two sons and another villager, 18 years old named Mr. Rayu on 19 Mar 2008.

Imam Yapa died on March 21 (early morning). Immediately after his death, the Army unabashedly came up with all kinds of excuses and possibilities.

The imam had passed out and fell heavily to the ground, thus cracking his ribs, was one of the initial explanations. Another explanation was that a soldier was trying to resuscitate the dead imam and accidentally cracked his ribs.

The lawyers from CrCF and MAC submitted a writ habeas corpus under section 90 of the criminal procedure code and section 32 of Constitution law requesting the Court to conduct an enquiry with regard the torture of Imam Yapa and other detainee. The Court dismissed the motion of the lawyers since the officials were authorized to detain the suspects under the Martial law and Emergency Decree.

The post mortem inquest which concluded in 2008 did not give any ruling as to who was responsible for the death of Imam Yapa.

On 19 March 2009 the lawyers on behalf of wife of Imam Yapa and his four children filed a civil lawsuit against the Ministry of Defense, the Army and the police to demand 15 million THB in compensation. On 12 October 2010 the civil court has decided that the Civil Court has its jurisdiction to review this case

In 2009 family of Imam Yapa filed the criminal lawsuit against the military and police who responsible of the dead of Imam Yapa. In 2010 the Court dismissed all charges against the police and also dismissed all charged against all of whom are military officials, because the case fall under jurisdiction of the Military

Court. Therefore the family of Imam Yapa has to file the case with the Military Court with jurisdiction. However the family does not respect the order of the Provincial Court of Narathiwat, but decided to appeal the order with the Court of Appeal.

Mr.Sulaiman Naesa

Mr. Sulaiman Naesa was arrested while he was fixing windows for his friend in his village on 22 May 2010. During the morning on that day, there was a shooting incidence in Kuwae Village, about four kilometers away. The combined force of military and other officials came to the village to look for the culprits. Mr. Sulaiman Naesa found death in an authorized detention facility in Ingkhayuth Army Camp in Pattani on 30 May 2010. The officers said he committed suicide by hanging himself in his solitary room and the relatives including public still have suspicious over his death and possible ill treatment before the death. The family did not allow autopsy by a state hospital in Songkla province. The post mortem inquest will start in April 2011.

Disappearance

Mr.Mayateng Maranoh

Mr. Mayateng Maranoh, a school keeper of Banglang School, in Bajoh sub-district, Bannangsta District Yala Province, was arrested on 24th June 2007 by Paramilitary Unit 41 and has not been seen since then.

On 20th August 2008, lawyers on behalf of the family of Mr. Mayateng Maranoh, submitted a Habeas Corpus petition under Article 90 of the Criminal Procedure Code requesting the Court to conduct an enquiry with regard to the whereabouts of Mr. Mayateng Maranoh. A total of four hearings were held by the Provincial Court in Yala, during which Mayateng's wife, officers of the Paramilitary Unit 41 and Director of the Bannangsta Intacharat School where the paramilitary unit 41 was based, gave their testimony. The authorities stated that Mayateng Maranoh had been invited to the Paramilitary Unit 41 to give information regarding a case of arson in Banglang School and that Mayateng had left the premises of the paramilitary unit after a conversation with the authorities on the same day. This was corroborated by the testimony of the Director of the School.

On 16 December the Court delivered its opinion and stated that it believed that the alleged missing person had left the premises of the paramilitary unit as stated in the testimonies of the authorities and the Director of the School. The Court thus dismissed the Habeas Corpus petition since the alleged person was not in the custody of the Paramilitary Unit 41.

The lawyers acting on behalf of Mayateng's wife filed an appeal against the decision of the Provincial Court on grounds of irregularities in the conduct of one of the hearings which had a bearing on the fairness of the trial. The lawyers submitted appeal on 4th December 2008.

The lawyers submitted appeal on 4th December 2008. The appeal court delivered the decision on 1 Oct 2009 that Mr. Mayateng was not in the custody of the Paramilitary Unit 41 since he was released on the same day he was arrested. The lawyers submitted the appeal to Supreme Court on 29th Oct. 2009. The result of Supreme Court is pending.

The Yala Provincial Court ruled on the disappearance of Mr. Mayateng on 8 October 2009. It said that it shall be deemed that Mr. Mayateng is legally considered to be dead and his wife and descendant could inherent his rights including rights to remedy and pension from the government. However till now his wife has not yet received remedy, pension or any compensation from any administrative authority.



**Regulation of Internal Security Operations Command Region 4
Concerning Guidelines of Practice for Competent Official
as per Section 11 Of the Emergency Decree on
Government Administration in States of Emergency B.E. 2548 (2005)**

Pursuant to the Notification for the Extension of States of Emergency in the provinces of Narathiwat, Pattani and Yala dated 16 January 2007 and the Notification issued under Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) dated 20 July 2005;

In order to provide for proper execution of functions of competent official according to Section 11 (1) (2) of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), by the virtue of No.3 of the Order of the Office of Prime Minister No. 1/2550 concerning the appointment of Chief of the Response Team to States of Emergency dated 16 January 2007, the Fourth Army Area Commander, as Director of the Internal Security Operations Command Region 4 and Chief of the Response Team to States of Emergency, deems it expedient to issue the following regulation;

1. This regulation is called “Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005)”.

2. The regulation will become effective since 20 January 2007 onward. 3. Arrest and detention of person as per Section 11 (1)

3.1 Person to be arrested and held in custody must be believed to act as accomplice to the commission of states of emergency or to be employer, or promoter or supporter of the act that has led to states of emergency, or those involved in concealing information related to the commission of states of emergency. The arrest is permitted if necessary to prevent the person from committing or abetting in the commission of any act that may lead to violent incidence or in order to seek cooperation to preempt such violence.

3.2 Prior to the submission of motion to the Court to ask for arrest and detention warrant, the competent official must have verified correctly first name, family name, ID number and other relevant personal information of the person. In case where the name is unknown, picture and description of the identity of the person must be sufficiently established to avoid the arrest of a wrong person. In this case, there must be a collective agreement among administrative official, the police, the ,military in charge of Forward

Internal Security Operations Command Region 4 or Provincial Internal Security Operations Command or Operation Center of District Internal Security Operations Command, as deemed fit. The report that contains names of the person to be arrested or held in custody must be created and signed by officials from the three sections according to the form annexed to this regulation. The report must be kept the office of the agency that applies for the arrest or detention warrant and must be made available for examination by the commander of the agency.

3.3 Authorized person to ask from the Court the arrest or detention warrant is competent official including a civilian government officer at the equivalent of C3, a military officer at the rank of Second Lieutenant, Sub-Lieutenant, Pilot Officer, or police officer at the rank of Sub-Lieutenant and higher.

The application must be made using the form annexed to this regulation which will be submitted together with the motion for the arrest and detention warrant, inquiry report and reasons for the arrest or detention warrant as per the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), as well as pictures and description of identity of the person.

In case of emergency and with appropriate reasons that the applicant is not able to go and meet the judge in person, he may apply for the warrant via phone, fax, electronic mail, or other appropriate communication technology. In this case, the applicant must have the rank of Major or higher. The phone call must be made directly to the judge for him to make inquiry. If the judge agrees, the warrant will be sent via fax for the use in emergency situation. And after the arrest or detention, the applicant shall promptly submit to the judge all evidence needed for the application.

3.4 After permission from the court has been given for the arrest and detention, the designated person must be arrested and held into custody promptly.

The arrest and detention method has to be planned in accordance to the situation and behavior of each designated person. No act can be done on the presumption that the person is already an alleged offender and all violence and action that may bring about damages are to be avoided. Safety of the arrester and his convenience has to be the first priority and cooperation of the target of arrest must be taken into account.

To establish the court warrant, a copy with certifying signature, a copy of facsimiled warrant, a printout of electronic copy, or a copy sent via other telecommunication technology or a telegram indicating that the warrant has been issued, can be shown. But the original copy of the warrant or the certified copy must be promptly submitted to the arresting authority.

A copy of the warrant must be submitted to Forward Internal Security Operations Command Region 4 or Provincial Internal Security Operations Command, each copy for each unit, within three days after the permission has been given by the court. The original copy must be kept at the agencies in 3.2 which apply for the arrest or detention warrant in a report. The records must also include applications for warrant which are disallowed by the court as well as per annex of this regulation. In that case, other orders may be issued to summon the person to report himself or give oral statement instead.

In case where the person under the warrant has fled from the area of states of emergency, a copy of the warrant can be sent to administrative official in the area where the person remains at large to conduct the arrest. The local official must be thoroughly informed of the guidelines of practice and must adhere to them stringently.

3.5 After the person has been held in custody, he must be promptly brought to the detention facility designated in the warrant without delay. During the custody, he must not be handcuffed, shackled, detained in a cage, or transferred in cage carrier, or treated with violence. He cannot be held in custody at the police station, corrective department's facility, or prison.

In case where the detainee commits a criminal offence during or after the arrest, and he must be held in custody of an inquiry official, an arrest report must be written and given to the inquiry official at the locality where the offence is committed for due legal process.

If the detainee is found to have in possession material or objects suspected of having been used or will be used for committing or abetting an act that gives rise to states of emergency, the material or object must be given to the official applying for the arrest warrant for further action.

The person can be held in custody at most seven days since the day of the arrest. The arresting official must create an arrest report as per the form annexed to this regulation and submit it to the court promptly. A copy of the report must be kept each at the Forward Internal Security Operations Command Region 4 and the Provincial Internal Security Operations Command or the Provincial Authority Office where the arrest takes place and shall be made available for relatives of the person held in custody so that they can have convenient access and be made aware of detail of the arrest and the place where the person is held in custody during the course of the detention.

3.6 Access to the original copy of the arrest and detention report must be made available as well as a copy of the arrest warrant at the designated detention facility. Both the deliverer and recipient of the person held in custody must sign in their names, date and time of the delivery and reception date in the reception form (Sor Sor Sor 48-1) annexed to this regulation. Two identical copies of the form must be made with exactly the same detail and a copy is kept by the deliverer and another at the detention facility.

Change of the designated detention facility as indicated in the arrest and detention warrant can be done so, in case it is appropriate and needed in response to states of emergency without having to seek prior permission from the court, but the court must be promptly informed.

3.7 An extension of the detention must be applied for at least three days before the end of the detention period. Competent official must inquire and make an inquiry report. The report will be written based on information from the inquiry made to the detention facility concerning the attitude and behavior of the suspects and then submitted as an important evidence for application for extension. The police officer in liaison with the detention facility must coordinate and submit an inquiry report to the official who applies for the arrest warrant in the first place or to the competent official who applies for an extension to the court of jurisdiction.

To apply for an extension of detention, it is not necessary to bring forth the person held in custody to the court, but the necessities for the extension must be proven to the court explaining how the extension is related to the response to states of emergency. The form annexed to this regulation can be used for the submission along with an preliminary inquiry report. After permission is given by the court, the applicant shall send a copy of the court writ to the detention facility and the Forward Internal Security Operations Command Region 4. However, the whole duration of the detention since the arrest must not exceed 30 days.

3.8 The arrest and detention is to be carried with the aim to give explanation and instill correct attitude so that the person quits the behavior or stops abetting the act that may give rise to violence in states of emergency. And if it is believed so that the person agrees to denounce the behavior, he must be released immediately to return to his domicile. In case the duration of 30 days of the detention is reached, the person held in custody must be released and no arrest and detention as per this application shall be further made.

If deemed necessary, a person who has caused violence must be criminally prosecuted, and ~~the~~ arrest and detention method as per this regulation shall not be applied. Instead, the person must be pursued with criminal prosecution in accordance to the Criminal Procedure Code and laws concerning the establishment of district court and criminal procedure code of the district court whereby the person must be informed of charges and their rights. The suspension of prosecution, or detention, or prosecution must be applied according to the juvenile and family justice procedure in case the person is a minor.

3.9 During the course of detention at the detention facility, the person in charge must issue regulation following the guidelines;

3.9.1 Suspects who are children and youth and adults must be separated. Children and women must be provided separate living quarter.

3.9.2 Accommodation, food and other facilities must be made available at the government's expenses to the person held in custody. Appropriate accommodation and food must be provided with sanitation, in accordance with one's religious belief and in sufficient quantity.

3.9.3 Visiting time, after the first threes of detention, visit by relatives must be allowed everyday between 09.00-10.00 and 14.30-15.00. The person held in custody is allowed to meet his relative not exceeding 30 minutes per day.

3.9.4 Medical treatment must be provided when needed, or in case the person has congenital disease.

3.9.5 The person held in custody must be treated according to the Peace Enhancement Scheme.

3.9.6 Where the necessity for the detention is no longer valid, or when the detention limit is reached, the person must be released immediately. And if detention is no longer necessary, the court must be informed promptly.

4. Issuance of order to summon any person to report oneself, or to give an oral statement or submit any documents or evidence as per Section 11 (2)

4.1 Official authorized to issue an order to any person to report oneself, or to give an oral statement or submit any documents or evidence a relevant to the emergency situation must be authorized official who is assigned to execute the function, or official with relevant responsibilities and must hold the rank at the equivalent of those mentioned in 3.3.

4.2 The action as per 4.1 has to be done so based on good reasons. The order must be made in written form as per the form annexed to this regulation. In emergency case, the authorized official may issue the order verbally asking the person to come along with him to his office. Upon arrival at the office, the order can be made in written form.

Records of orders issued must be made and kept at office of the units indicated in 3.2 which issue the orders as per the form annexed to this regulation.

4.3 The order must be issued heeding to the rule of law and with assurance that it will cause minimum inconveniences to innocent people. The status of the person summoned, distance to his place, amount of time needed for taking him to report or give oral statement and the accommodation while having to stay with the official have to be taken into account and the order must be made to cater to necessities of each person. Order to summon a person at night time should be avoided except in case where it is necessary, and without which the situation can get extremely damaged. In case where the summoned person is a woman, it is not permitted so to ask her to come during night time, or to ask her to come to a private area.

4.4 Authorized official include official or administrative official or police officer in the area where the order shall be sent from.

The order must be delivered to the designated person as per the order. If he or she cannot be found, the order must be delivered to husband, or wife, or a relative, or a custodian, or any person who is older than 18 years and lives or works in the residence or workplace belonging to the person whose name is in the order.

In case the designated person refuses to take the order, the official who brings the order to him may ask for company of respectable persons in the area such as subdistrict chief, or village headman, or spiritual leader or other leader who can be witness. And if the person still refuses to take the order, the official may leave the order there and has witness sign to confirm this.

In case where it is impossible to deliver the order as per the former clause, the order has to be put out in a place where it can be easily visible in the domicile or workplace of the designated person and a respectable person indicated in the former clause has to sign as witness.

Record of the delivery of order must be made to include detail of the delivery method, date and time of delivery, signature of recipient, and signature of deliverer, and related witnesses.

To deliver the order to a person who lives outside the area where the order is issued, the order must be sent to competent official or local administrative official or police officer who will execute the delivery as per detail in the former clause and must report the results to the issuing official promptly.

4.5 Order made for the submission of a large number of documents or evidence, a list must be annexed to the order.

5. Issuance of order for search as per Section 11 (4)

5.1 Competent official who wants to issue an order for search places related to states of emergency must be authorized official who is assigned to execute the function, or official with relevant responsibilities and must hold the rank at the equivalent of those mentioned in 3.3. Page | 13

5.2 Execution of function as per 5.1 must be done so appropriately in order to promptly terminate a serious situation where a delay might render the situation beyond control;

5.3 The search must be carried out gently, based on the rule of law, and may causes the least inconveniences to innocent people. Religion, traditional belief, culture and tradition of local people must be treated as most important and unity among believers of different religions must be taken into account. An exception can be made where it is deemed necessary if the avoidance of the search may render the situation beyond control.

5.4 For every search made, the chief of the search team must produce a report a list of properties identified as evidence as per the form annexed to this regulation. All of them must be kept at the office as per 3.2, which issues the search order.

6. Execution of duties in this regulation must be carried out according to strategic plan or action plan laid out by the Internal Security Operations Command Region 4.

7. The Director of Internal Security Operations Command Region 4 is assigned as in-charge officer for this regulation.

Issued on the 24th day of January 2007

Lieutenant General Wirote Buacharoon
Chief of the Response Team to States of Emergency/ Director of Internal Security Operations
Command Region 4
Law Enforcement Division



**Regulation of Internal Security Operations Command Region 4
Concerning Guidelines of Practice for Competent Official
as per Section 11 of the Emergency Decree on
Government Administration in States of Emergency B.E. 2548 (2005)
(2nd Amendment)**

Pursuant to the Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent Official as per Section 11 of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) dated 24 January 2007, and the Regulation of Internal Security Operations Command Region 4 concerning Guidelines of Practice for Competent official as per Section 11 of Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) amended on 1 January 2008, in order to ease worry of the detainee's family and express honesty of competent officials in treating detainees, by the virtue of NO.3 of the order of the office of Prime Minister no.1/2550 regarding the appointment of Chief of the Response Team to States of Emergency dated 16 January 2007, the 4th Army Area Commander, as Director of the Internal Security Operations Command Region 4 and Chief of the Response Team to States of Emergency, deems it expedient to issue the regulation as follows:

1. The text stated in Section 3.9.3 of Regulation of Internal Security Operation Command Region 4

Concerning Guidelines of Practice for Competent official as per Section 11 of The Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) and another on in Section 3.9.3 of the regulation of ISA region 4 concerning Guidelines of Practice for competent official as per Section 11 of the Emergency Decree are to be cancelled.

2. The following text will be used in lieu of the cancelled one:

“3.9.3 Visiting time, visit by the detainee's grandparents, parents, husband or wife, husband's or wife's parents as well as children and brothers or sisters must be allowed every day after the detention. The visiting time shall begin immediately on the first day of detention done according to the Regulation from 9 am. to 10 am. and from 2.30 pm” to 3pm. Detainees can meet their relatives not exceeding 30 minutes per day. In case the detainee is a military official , police officers civil servant or the one serving for the Internal security operations command region 4 and/or an official from other government sectors whose work is related to the internal security, visit shall not allowed, except the one made under permission of the Director of Internal security operations command region 4 .

Other visit made by the detainee's relatives, apart from the one stated in the above paragraph, shall be allowed every day after the first three days of detention from 9am to 10 am and from 2.30 am to 3 pm and the detainees is allowed to meet his/her relatives for no more than 30 minutes per day.

In case of a visit made by other person than the one mentioned in the two paragraphs above, prior permission must be made from the Director of Internal security operations command region 4. The visit made in accordance with those mentioned in the paragraphs earlier shall be under supervision of authorized officials who will be able to observe the conversation during the visits.”

The amendment regulation shall be formulated and imposed henceforth.

Issued on the 9th day of February 2008

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