

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/THA/CO/1)

THAILAND

(...)

C. Principal subjects of concern and recommendations

(...)

Special Laws

12. While noting that the delegation of the State party cited 2,889 bombing incidents in the south and thousands of civilian and military personnel casualties, the Committee remains seriously concerned about the numerous, ongoing and consistent allegations about the routine use of torture and ill-treatment by security and military officials in the southern border provinces to obtain confessions. That situation is exacerbated by the application of three special laws, namely the 1914 Martial Law Act, the 2005 Emergency Decree and the 2008 Internal Security Act, which provide broad emergency powers to the security and military forces outside of judicial control and reinforce a climate of impunity for serious human rights violations. The Committee is gravely concerned that:

(a) The special laws provide for enlarged executive powers of administrative detention, without adequate judicial supervision, and weaken fundamental safeguards for persons deprived of their liberty. Under section 15 of the Martial Law Act and section 12 of the Emergency Decree, a suspect can be held for as long as 37 days, without a warrant or judicial oversight, before being brought before a court. Also, there is no requirement for a detainee to be brought before a court at any stage of his or her detention, nor is the location of detention always disclosed;

(b) Safeguards against torture, which are provided by the law, and regulations are allegedly not respected in practice and, in particular, detainees are often denied the right to contact and receive visits by family members promptly after their deprivation of liberty; also, some necessary safeguards, such as the right to contact a lawyer and to be examined by an independent doctor promptly upon deprivation of liberty, are not guaranteed in law or in practice;

(c) The special laws, in particular section 7 of the Martial Law Act and section 17 of the Emergency Decree, explicitly limit the accountability of officials enforcing the state of emergency by granting immunity from prosecution for serious human rights violations, including acts of torture, in violation of the provisions of the Convention.

The Committee is concerned at the death in custody of Imam Yapa Kaseng and Sulaiman Naesa, which highlights the obstacles to bringing perpetrators to justice (arts. 2, 4, 12, 13 and 15).

The State party should, as a matter of urgency, take vigorous steps to review without delay its existing emergency laws and practice and repeal those incompatible with its obligations under the Convention, in particular by ensuring that:

(a) Detainees held without charge under security laws are brought in person before a court;

(b) Detainees taken into custody are permitted to contact family members, lawyers and independent doctors promptly following deprivation of liberty, both in law and in practice, and that the provision of these safeguards by the authorities is monitored effectively.

(c) No immunity from prosecution is granted to officials who commit offences associated with human rights violations, including torture and ill-treatment. Furthermore, the State party should carry out prompt, impartial and thorough investigations, bring the perpetrators of such acts to justice and, if convicted, impose sentences commensurate with the gravity of the acts committed;

(d) No one is coerced into testifying against themselves or others or confessing guilt and no such confession is accepted as evidence in court, except against a person accused of torture or other ill-treatment, as evidence that the confession or other statement was made.

Fundamental legal safeguards

13. The Committee is seriously concerned that, in practice, all arrested and detained persons are not provided with all the fundamental legal safeguards from the very outset of their deprivation of liberty. Such legal safeguards include, but are not limited to, maintenance of an official register of detainees, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and independent medical assistance and to contact relatives, impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability of judicial and other remedies to detainees and persons at risk of torture and ill-treatment that would allow them to have their complaints promptly and impartially examined, to defend their rights and to challenge the legality of their detention or ill-treatment. The Committee is further concerned that information requested on monitoring safeguards was not provided, including information on the success of habeas corpus petitions (art. 2).

The State party should take effective measures to ensure, in law and in practice, that all detainees are afforded all fundamental legal safeguards from the very outset of their detention, including the rights to have prompt access to an independent lawyer and an independent medical doctor, to notify a relative, to be informed of their rights at the time of

detention, including about the charges laid against them, to be registered at the place of detention and to appear before a judge within a reasonably period of time, in accordance with international standards. The State party should also take the necessary measures to provide an effective free legal aid system and put in place measures to monitor the practice of all law enforcement and security officials to ensure that those safeguards are provided in practice as well as in law. The State party should take disciplinary or other measures against officials responsible in cases where those safeguards are not provided to persons deprived of their liberty.

(...)

Impunity

15. While noting the State party's position that current Thai laws are adequate for punishing public officers who commit acts of torture, the Committee remains deeply concerned at the climate of de facto impunity for acts of torture committed in the State party in view of the following:

- (a) The lack of prompt and impartial investigation of allegations of torture and ill-treatment committed by law enforcement personnel. When torture allegations are investigated, the agency of the accused usually conducts the investigation and charges are often dismissed;
- (b) Delays in investigating cases of torture;
- (c) Discrepancies regarding the numerous allegations of torture and ill-treatment by State officers and the very low number of complaints brought to the authorities, which might indicate a lack of confidence in the police and judicial authorities and a lack of awareness of their rights on the part of victims;
- (d) The almost total absence of criminal sanctions against responsible officers, public prosecutors. Furthermore, on occasion, judges disregard defendants' claims that they have been tortured or classify the acts in question as less serious offences (arts. 2, 4, 12 and 13).

In view of widespread impunity, the State party should, as a matter of urgency:

- (a) Publicly condemn practices of torture and give a clear warning that anyone committing such acts, or otherwise complicit, acquiescent or participating in torture, will be subject to criminal prosecution and upon conviction, appropriate penalties;**
- (b) Take all necessary measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated by a fully independent civilian body, that perpetrators are duly prosecuted and, if found guilty, convicted with penalties that are commensurate with the grave nature of their crimes;**

(c) **Suspend officers suspected of committing acts of torture during the investigation of allegations of torture and ill-treatment;**

(d) **Ensure that military personnel are tried in civilian courts for acts of torture and similar offences;**

(e) **Establish an independent complaints system for all persons deprived of their liberty.**

(...)

Human rights defenders

18. The Committee is concerned at the numerous and consistent allegations of serious acts of reprisals and threats against human rights defenders, journalists, community leaders and their relatives, including verbal and physical attacks, enforced disappearances and extrajudicial killings, as well as by the lack of information provided on any investigations into such allegations (arts. 2, 12, 14 and 16).

The State party should take all the necessary measures to: (a) put an immediate halt to harassment and attacks against human rights defenders, journalists and community leaders; and (b) systematically investigate all reported instances of intimidation, harassment and attacks with a view to prosecuting and punishing perpetrators, and guarantee effective remedies to victims and their families. In that regard, the Committee recommends that the Thai authorities provide the family of Somchai Neelaphaijit with full reparation and take effective measures aimed at the cessation of continuing violations, in particular by guaranteeing the right to truth (general comment No. 3, para. 16).

31. The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations relating to: (a) ensuring or strengthening legal safeguards for detained persons; (b) conducting prompt, impartial and effective investigations of allegations of torture by law enforcement personnel; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12, 13, 15 and 18 of the present concluding observations.

(...)
