

Extract from CAT alternative report  
dated 11 April 2014 submitting to UN CAT committee:  
by The Coalition against torture<sup>1</sup>

- 1) Under the Martial Law, major concerns are related to section 15 *bis*, which enables the military authorities to detain any persons when “there is a reasonable ground to suspect that [this] person is the enemy or violates the provisions of this Act or the order of the military authority.”<sup>2</sup>
- 2) The omission of any legal obligation to request and issue an arrest warrant provides a wide liberty of action to the military authorities acting under these dispositions. Thus, any person may be arrested and detained up to seven days for interrogation or for any ‘other necessities of the military’.<sup>3</sup>
- 3) The Martial Law allows the military to detain when there is sufficient reason to suspect any individual of being an enemy, to suspect that an individual violated provisions under the Martial Law, or the order of the military authority<sup>4</sup>
- 4) The guarantees laid out in these instruments are significantly weaker than the ones enshrined in the Criminal Code and more particularly the Constitution
- 5) While the Guidelines under the Martial Law expressly indicates that when an individual is deprived of his/her liberty, physical abuse, verbal threat, any humiliation and torture is absolutely prohibited,<sup>5</sup> the right to visit and inquire about the wellbeing of the detainee is subject to the discretion of the detaining agencies.<sup>6</sup>
- 6) When Martial law has been applied in the south in the last 10 years, no effective measures has been adopted to ensure that all detainees enjoy in practice all fundamental legal safeguards at the outset of their detention.
- 7) Under the constitution and criminal procedure code, those detained in administrative detention must be provided with all legal safeguards, in particular, the right to promptly appear and be brought physically before a judge and the right to a lawyer of his/her choice. The Court should be able to assess the legality of detention under Martial law and provide compensation if there is violation.
- 8) All detention facilities should be made public through official lists. It should be ensured that made public as official list to ensure all regulations and guidelines aiming at

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<sup>1</sup> The Coalition comprises of Non-Governmental Organizations that participated in the drafting of this submission, namely : Cross Cultural Foundation (CrCF), Muslim Attorney center Foundation (MAC), Duayjai Group, Songkla Province (Duayjai), Justice for Peace (JOP), Thai Committee for Refugees Foundation (TCR), and Patani Human Rights Network (HAP). Other Non-Governmental Organizations are supporting this submission: Mekong Migrant Network (MMN), Human Rights Lawyer Association (HRLA), Community Resources Centre (CRC), Stateless Watch, Human Rights and Development Foundation (HRDF), Institute for Jurist and Human Rights Development (just rights), Highland Peoples Taskforces, Inter-Mountain People’s Education and Culture in Thailand Association, and Prorights Foundation.

<sup>2</sup> Martial Law B.E. 2457 (1974), section 15*bis*. [unofficial translation]. Available online: <<http://www.thailawforum.com/laws/Martial%20Law.pdf>> (last consultation: 06.04.2014) (hereinafter “Martial Law”)

<sup>3</sup> *Ibid.*

<sup>4</sup> Martial Law, section 15*bis* .

<sup>5</sup> Guidelines on the Detention Invoking the Martial Law Act B.E.2457, para.3.

<sup>6</sup> *Ibid.*

implementing the Martial law is in line with international standards and are followed in practice. Make those regulations and guidelines available to the public to foster awareness and understanding.

- 9) As per article 4 of the International Covenant on Civil and Political Rights (ICCPR) relating to states of emergencies,<sup>7</sup> notify the United Nations Secretary General when proclaiming a state of emergency and provide explanations on the rationale of having simultaneous special laws in force in some areas of the country, notably in the southern border provinces.
- 10) As regarding the procedure for criminal prosecution,<sup>8</sup> an injured person in a criminal case can choose to file a complaint to an inquiry official, following which the case will be instituted by the public prosecutor.<sup>9</sup> However, the law also allows victims to institute a criminal prosecution without filing a complaint. In the latter case, the court has to conduct a preliminary investigation in order to assess if it is *prima facie* well grounded.<sup>10</sup>
- 11) However, according to section 13 of the Act on the Organization of Military Court B.E. 2498 (1955) (hereinafter “Military Court Act”)<sup>11</sup>, if an alleged perpetrator is a military personnel, the case is subject to the jurisdiction of the military court.<sup>12</sup> Victims, as civilians, are not entitled to institute a criminal prosecution before the military court or to submit additional evidence to the case; rather they have to turn the case over to a military prosecutor.<sup>13</sup>
- 12) The situation becomes even more concerning when one considers that the southern border provinces are under Martial Law, which the Military Court Act recognizes as an “abnormal period”, defined as: “(...) periods of conflict or war or during the enforcement of martial law”.<sup>14</sup> During this “abnormal period”, judgments and orders from the military court cannot be appealed.<sup>15</sup>
- 13) Related to immunity clauses under Martial law, there are immunity clauses articulated under martial law implying that officials may not be held liable for damages. For example, section

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<sup>7</sup> See also: CCPR/C/21/Rev.1/Add.11, para.17.

<sup>8</sup> Country Report, CET/C/THA/1, paras. 40-42.

<sup>9</sup> Criminal Procedure Code, section 28: “The following persons are entitled to institute the criminal prosecution in the Court (1) The Public Prosecutor; (2) The Injured Person”. [unofficial translation]

<sup>10</sup> Criminal Procedure Code, section 162.

<sup>11</sup> Act on the Organization of Military Court B.E. 2498 (1955) (hereinafter “Military Court Act”).

<sup>12</sup> Military Court Act, section 13: “A military court shall be competent to try and adjudicate and inflict punishment to any person who violates military law or other laws of criminal nature in the case which the offender is under the jurisdiction of the military court at the time of committing of offence, and the court shall be competent to give order inflicting punishment or any person who commits contempt of court as provided in the Civil Procedural Code”. [unofficial translation]

<sup>13</sup> Military Court Act, section 49: “In a military court in a normal period, a military prosecutor or an injured person who is under the competency of military court shall be entitled to institute a criminal prosecution. If the injured person is not under the competency of military court, he shall have to turn the case over to a military prosecutor for action”; For example, see: Annex IV, Case 2. [unofficial translation]

<sup>14</sup> Military Court Act, section 36: “In abnormal period, that is, in periods of conflict or war or during the enforcement of Martial Law, military courts shall have jurisdiction to try and adjudicate all criminal cases, but if the person authorized to proclaim the Martial Law has proclaimed it, or the Supreme Commander has issued an order under the law on Martial Law, authorizing military courts to have jurisdiction to try and adjudicate any criminal cases, military courts shall also have jurisdiction to try and adjudicate criminal cases under such proclamation or order.” [unofficial translation]

<sup>15</sup> Military Court Act, section 61, para.2: “Neither appeal nor dika appeal shall be lodged against judgments or orders of military court in an abnormal period, or against judgments of a court adjudicating cases in place of a court martial under Section 40 and 43”. [unofficial translation]

16 of the Martial Law stipulates that “[n]o compensation or indemnity for any damage which may result from the exercise of powers of the military authority as prescribed in sections 8 to section 15 may be claimed from the military authority by any person (...)”.<sup>16</sup>

14) The Songkhla Administrative Court has notably interpreted the scope of application of section 16 in Red Case No.235/2554. The court explained that this section only protects officials when they exercise their powers as stipulated under sections 8 to 15, but does not cover powers under section 15 *bis* which allows military officials to detain a person for inquiry or for other necessities. If state officials exercise powers under section 15 *bis* and commit an unlawful act, s/he shall not be exempted from liability.

15) The Songkhla Administrative Court further emphasized this point in Red Case No. 14/2555 by considering that section 16 only protects military personnel who lawfully exercise their powers. It cannot be construed that they could be exempted from liability when engaging in unlawful conduct which is in violation of the fundamental rights of individuals under their control even when in the course of their duties.

16) These two judgments from the court marked a positive development and strongly established that state officials cannot claim immunity for their wrongful actions. However, by the wordings expressed under these two special laws, one might understand that state officials are granted immunity from civil lawsuits and criminal prosecution. This becomes obvious when government agencies cite these immunity clauses as their arguments in civil lawsuits.<sup>17</sup>

17) In addition, to the best of its knowledge, the coalition is unaware of any cases where legal action to demand criminal accountability of officials for torture has occurred, or where an official has received a guilty verdict. Although victims are entitled to file their own complaints and initiate prosecution, the State is directly obliged to bring to trial the alleged perpetrators of acts of torture or ill-treatment, as well as to ensure sentences with penalties that are consistent with the gravity of their acts<sup>18</sup> as a preventive measure in order to deter future violations.

18) However, there is suggestion to abolish section 16 of the Martial Law given that it creates confusion in appearing to grant criminal and civil immunity to State officials.

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<sup>16</sup> Martial Law, section 16. [unofficial translation]

<sup>17</sup> Red Case No. 235/2554, Songkhla Administrative Court; Red Case No.14/2555, Songkhla Administrative Court.

<sup>18</sup> CAT, article 7.