Enhancing the Administration of Justice in the Border Provinces of Southern Thailand

By
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Preface

As a liberal democracy, Thailand should hinge on two foundational principles, namely, the principle of democracy as derived from the concept of freedom and equality and check and balance and the rule of law (Rechtsstaat)[1] or the state governed by the righteous law. The aim is to provide for, uphold and protect rights and liberties, equality and human dignity of people and restrictions on the power of executive as provided for in the Constitution of the Kingdom of Thailand, Chapter I "General Provisions", Section 3 Section 4 and Section 5 and specifically in Chapter III "Rights and Liberties of Thai People" including Section 32 that provides against the arbitrary infringement of personal rights and liberties in life and person, etc.

At present, the unrest that has caused much damage to life and property of people and the state in the Southern border provinces of Yala, Pattani, Narathiwat and four or five districts in the province of Songkhla has been cited as the compelling reason for enforcing two special laws such as the **Martial Law Act B.E.2457 (1914)** and the **Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005)** (Emergency Decree). The laws have been in force for five years until now.[2]

Muslim Attorney Center and Cross Cultural Foundation are non-profit non-governmental organizations and have been giving legal aid to people. They aim to assist and promote access to justice and the rule of law in Thailand, particularly in the Southern border provinces. It should be noted that though special reasons including the claim of "for the sake of security in the restive situation" have been cited for the enforcement of the special laws, it is also undeniable that the enforcement of the two special instruments and its consequences have also affected and/or led to the restrictions of people's rights and liberties in the Southern border provinces in the past five years.

As per the Constitution, restrictions of people's rights and liberties can only be imposed by 'virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substance of such rights and liberties." (Section 29 of the 2007 Constitution). Further such restrictions should confirm with the basic principles governing administrative

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[1] Including nine principles a) upholding of fundamental rights, b) separation of powers, c) the judicature and the executive are bound by law, d) the act of the executive, e) the upholding of rights by the judiciary, f) state liability, g) fundamental principles of the criminal law and the criminal procedure code, h) stability of the law and i) principle of the proportionality of state action

[2] During early 2004, the **Martial Law Act B.E.2457 (1914)** was enforced and used as a tool by the governmental officials to suppress and prevent insurgent action. On 19 July 2005, Martial Law was revoked and replaced by the enforcement of the **Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005).** However, after the coup on 19 September 2006, the Martial Law Act has been put in place again making the Southern border provinces come under the two special instruments until present.

acts,[3] and Thailand's obligations under International Covenant on Civil and Political Rights-ICCPR) and other human rights instruments.

The organizations have found that the enforcement of the special laws have resulted in the violations of the fundamental rights and liberties of the people, specially, with regard to access to justice, thus deviating from the rule of law principle. This happens in light of the roles of the judiciary, as one of the three pillars of democracy and their roles in review the executive power according to the rule of law.

The report is made possible by collaboration of the Muslim Attorney Center (MAC) and the Cross Cultural Foundation (CrCF) with the aim to portray facts, legal provisions and legal opinions which can be useful to promote the role of the judiciary. In the end, the common goal is to ensure the upholding of personal rights and liberty, peace and the interest of justice.

In this report, concrete cases are cited to provide factual background and to support the observations and suggestions by MAC and CrCF. Though these cases may not represent the whole range of rights violations in the Deep South, the organizations believe that attempts to uphold justice even in one case can be taken as a very important step toward the establishment of peace and stability in the Southern border provinces.

Observations on the roles of justice process under special laws and amidst the intense conflicts

1. Basic issues as a result of the enforcement of special laws in the restive situation

As said, special laws such as the Martial Law Act B.E.2457 (1914) and the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) (Emergency Decree) "for the sake of security in the restive situation" has been in force in Deep South since the last five years. However the enforcement of these laws has led to restrictions in the rights and liberties of people in numerous ways such as;

1.1 Under Martial Law, the power of the military officials supersedes that of civilian authorities in terms of searching, enlisting, prohibiting, seizing, residing, destroying, or expelling (Section 8), and detaining a person for inquiry for up to seven days without the court order (Section 15 bis). The right of the detainees to be visited by relatives or legal counselor is also restricted during the period and damage incurred from the act invoking Section 8 and 15 shall not be used to initiate action against the military officials (Section 16).

Meanwhile, the Emergency Decree authorizes the officials to carry out the search, arrest and holding a person in custody for up to 30 days without the court order (Section 11) and another regulation has been issued to prohibit the visit and access to legal counselors in the first three days of the detention, etc.

1.2 Impact on the rights and/or the circumvention of people's basic rights and liberties including access to justice which is the most fundamental guarantee of their rights

1.2.1 From the time, the process of the search and arrest to hold in custody the *'suspects'* commences, the relatives or families of the detainees have to go through various difficulties to track down the detainees as they are not informed, or insufficiently informed about the whereabouts of the persons held in custody.

[3] Including a) proportionality to the reasons, b) certainty and predictability of the administrative act, c) rule against arbitrary discrimination, d) rule to uphold trust and credibility and e) rule to uphold public interest

1.2.2 A detainee or person in custody faces a variety of restrictions including the right to have legal counselor present during the interrogation, or visit by relatives. In the beginning, the state put in place a regulation to prohibit the visit by relatives in the first three days of the detention. But as many cases of torture during detention, particularly during the first three years were reported, the army agreed to revoke the prohibition against the visit during the first three days. However access to lawyer during this period is still barred.

1.2.3 That the laws and regulations provide for the authorities to hold the *suspects* in custody for up to 37 days (seven days under Martial Law Act and 30 days under the Emergency Decree) is a known fact and it has led to infringement on rights and liberties. This detention period also gives rise to the "circumstances" in which extensive human rights abuse may take place including the torture of the 'suspects' during the arraignment or detention, enforced disappearance, unlawful detention and extrajudicial killing. According to MAC, from 2007 to July 2008, 78 complaints regarding torture during the detention were received. And during January to March 2009, 15 complaints were received by MAC alleging that the search operations had caused damage to property, particularly, the seized property. On further investigations it was learnt that the owners of the properties have been unable to retrieve their belongings afterwards as many officers are involved in the search and cordon operations and it is difficult to identify which officer confiscated the properties.

1.2.4 As per the Emergency Decree, the officer has to request the Court for a warrant of arrest. Permission of the Court has to be acquired for extension of detention as well.

But in reality, it is impossible for the relatives or attorneys to trace the process for the request of the court warrant, the situation of which is different from the detention invoking the Criminal Procedure Code carried out by other justice officials. Also, the officials are not requested to bring the suspects before the judge to seek the extension of the detention and the fact that the person held in custody is not allowed to meet the legal counselor makes it impossible for him to argue against or object the request for the extension before the Court.

2. Review of the executive power is not possible in certain cases since the laws and regulations provide for the officials to infringe on people's rights

It is generally known that under the enforcement of special laws in the Southern border provinces, the competent officials have abused their power and taken advantage of the legal loopholes including;

2.1 Regarding Martial Law Act which authorizes the officials to search, arrest and hold in custody a person without having the court order, it simply impedes the chance or makes it impossible for the judiciary to review and check the executive power under the rule of law.

2.2 Regarding the invoking of the Emergency Decree, the law provides for the judiciary to review the executive power invoking the Emergency Decree, including the requirement to seek court warrant before the arrest and the extension of the detention (Section 12), the practice of which is in compliance with the Criminal Procedure Code and the President of the Supreme Court's Regulation on the criteria and procedure concerning the issuance of court writ or criminal warrants B.E. 2548 (2005) and the Constitution.

But in reality, it turns out that loopholes exist and make it possible for the officials to act otherwise. Instead, they tend to invoke 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). In other word, they choose not to present the person held in custody to the Court during the request for the extension of the detention. As a result, the judiciary is unable to review and check the power of the administrative and military authorities.

It should be noted further that the ISOC Regulation is lower in the legal linage than the Emergency Decree, Criminal Code and particularly the Constitution and should not supersede them.

3. Problems during the request for the arrest warrant and the dubious termination of the Emergency Decree warrants (please see case study no. 1: *Mr. Maromali Awang*)

In addition to 2.2, the organizations have found that the administrative officials tend to refrain from enforcing Section 12 of the Emergency Decree, and it has given rise to ramifications including;

3.1 Regarding Article 3.1 of the ISOC Regulation which requires the officials to seek the arrest warrant from the Court for the "suspect"[4], the organizations note the "insufficient" evidence cited for the request of the warrant. In certain cases, the evidence was so weak, and there was just supporting material provided by officials from the three agencies (military, police and administrative authorities), but the warrant has been issued. It has given rise to suspicion that the person issued with the warrant might not be involved with the insurgency as claimed by the officials.

It should be noted further that the issuance of the warrant should comply with the President of the Supreme Court's Regulation whereby the "summonses" should be issued as well, in order to prevent the arrest warrant issued against and the arrest of innocent person.

3.2 In practice, the organizations have found the authorities often invoke Martial Law Act and arrest the suspects, and then request for the Emergency Decree warrant, which in effect enables them to extend the detention period. This should be considered a legal redundancy since according to the Emergency Decree, it is definitely required that the holding of a person in custody can be done only after the Court issues the warrant. But in reality, the officials invoke Martial Law and arrest the person and seek the court order later.

It is noted that since the Emergency Decree provides for the roles of the judiciary to review the executive power, therefore, the exercise of power under Martial Law should be carried out restrictively. That the warrant is issued by the Court even when the person has already been held in custody invoking Martial Law Act may give rise to doubts over the ability of the Court to review and check the power of the military and administrative authorities.

As a result, it shall make people live in fear and a lack of trust in the justice process since according to Martial Law, the person held in custody should be released after seven days. But in reality, after the initial arraignment for seven days, during which, no guilt of the person has been established, the officials seek to obtain an arrest warrant as suspect of insurgency cases instead. The warrant is issued under the Emergency Decree and simply reinforces the belief that *the officials may invoke two laws concurrently to hold a person in*

[4] "....the person to be arrested and held in custody must be a person suspected to act as an accomplice to..."

custody for up to 37 days, though it should either be seven days or 30 days depending on the case.

In order to restore trust in the justice process, the judiciary should act in compliance with the Criminal Procedure Code and the President of the Supreme Court's Regulation and consider if the person for whom the officials requests the warrant has already been held in custody under Martial Law or not. If so, it is not necessary for the Court to issue the arrest warrant since the person has already been held in custody.

3.3 If a person is arrested by a warrant and is subject to the extension of the detention in a normal procedure according to the Criminal Procedure Code, his relatives shall be able to trace as to when the arrest takes place, on what charges or incidences, etc. The serial number of the warrant shall match the number of the request for extension of the detention. The information is useful for ascertaining the facts and preparing the defence at the inquiry level. But under the arrest made by the Emergency Decree, the relatives are not able to trace information of the request for the warrant and the extension of the detention, since the serial number shall be changed every seven days making it impossible to trace as to who the person held in custody is, the serial number of the warrant and why the arrest.

3.4 The termination of Emergency Decree warrant, in principle, the judiciary should apply the Criminal Procedure Code (Section 68) with cases in the South. But in reality, the organizations have found that the Emergency Decree warrants have never expired and in several cases, the old Emergency Decree warrants have been reused to arrest the same person time and again (please see case study no. 3 : *Mr. Subri Barataya*).

Regarding the Criminal Procedure Code warrant, once approved by the Court, the police officials shall make a copy of the warrant and furnish it to the Affairs Division, Royal Thai Police and then the copy shall be distributed to various agencies including the Immigration Offices, Passport Division, embassies, etc. When the person under warrant is arrested, the arresting officials or the chief investigator shall inform the Affairs Division asking them to terminate the warrant.

But as for the Emergency Decree warrants, in reality, it is found that the officials continue to keep the warrant in its electronic database though the person has already been arrested and then released. As a result, the person (without knowing that the warrant has not been terminated) is blocked at various checkpoints while travelling. And he shall be detained until the confirmation was sent down from the in charge offices that he had been arrested and then released.

In cases where the confirmation did not arrive from the in charge agencies, the person shall be deprived of his rights and liberties to travel. In addition, the officials often use the old warrants to force people whose names are listed in the warrants to participate in state training and activities. They are promised that after they have joined the activities, the warrants against them shall be immediately terminated.

The organizations propose that the judiciary should initiate a guideline for terminating the Emergency Decree warrant. The arresting officials should be required to report the status of the warrants to various security agencies and the report should be done so within 24 hours after the person under warrant has been arrested or released.

4. Failure to bring the person held in custody to appear in the Court while requesting for the extension of the detention under Emergency Decree (please see case study no. 2 **:** *Mr. Amine Musaw*)

As coherently provided for by the Criminal Procedure Code, the Constitution, Article 42 of the Supreme Court's Regulation, and Section 12 of the Emergency Decree, it

is a fundamental right for the person held in custody to be brought in front of the judge when a request is being made to extend his detention.

But in reality, the officials tend to refrain from upholding the minimum standard guaranteeing the detainee's rights and liberties. They often invoke Section 3.7 of the ISOC Regulation that provides that "in order to apply for an extension of detention, it is not necessary to bring forth the person held in custody to appear in the court…" This is a rather common than exceptional practice. As a result, there have been reports of the person held in custody by the special laws are subject to torture and forced to confess to the charges.

5. Checking if a person held in custody is subject to torture during the detention (please see case study no. 4: *Torture of the person held in custody in Rueso district)*

As said earlier, there are several contributing factors toward torture of a person while being held in custody under the special laws (including that the relatives and legal counselors do not know the detention place and are not allowed to visit the person held in custody, that the legal counselors are not allowed to be present during the interrogation, failure to bring the person held in custody to appear in the Court while the request is being made for extending the detention, etc.)

Though habeas corpus motions have been submitted to the Court asking them to review the lawfulness of the detention as per Section 90 of the CPC and Section 32 of the Constitution, but in reality, the judiciary holds that the officials are authorized by the special laws to hold the person in custody and fails to rule whether the detention is lawful or not. Though it has been proven that the person held in custody has been subject to physical abuse during the detention, the Court hardly pays attention to the fact *(please see case study no. 10: Mr. Yapha Kaseng).*

6. Enforced disappearance *(please see case study no. 5: Mr. Mayateng Maranor)*

Enforced disappearance happens in Thailand, particularly in the Southern border provinces and is considered a grave human rights abuse including the deprivation of personal life. Internationally, calls have been made for countries to sign the Convention against Enforced Disappearances and Thailand is preparing to become a signatory of the instrument.

An important case regarding the issue is the disappearance of Mr. Mayateng Maranor in June 2007 after he was summoned and held in custody for interrogation by the military officials. The officials claimed that Mr. Mayateng has been released after a couple of days of interrogation. But until now, Mr. Mayateng has not returned to his family. To the Provincial Court of Yala, (Black Case no. Kor Por1/2008 and Red Case no. Kor Por1/2008), the family of Mr. Mayateng has submitted a habeas corpus motion asking for the release of Mr. Mayateng Maranor invoking Section 90 of the Criminal Procedure Code. The Court simply ruled that there was no evidence to prove the whereabouts of Mr. Mayateng Maranor, and the petitioner was also unaware of where he was held in custody, coupled with statement made by an eye witness that a Muslim man was seen to have left Taskforce 41 at Bannang Sata Intharachat School, thus the motion was dismissed.

It could be said that attempts to examine/investigate to trace how a person has disappeared, by whom, and to hold responsible persons liable for the deprivation of one's life do not just bother the judiciary alone, but all agencies in the Thai justice process and Thai public as well.

7. Extension of detention as per the Criminal Procedure Code (please see case study no. 6 : *Mr. Jaeyi Hayi*)

After the initial detention of 37 days (seven days under Martial Law Act and 30 days under Emergency Decree), in principle, the suspects shall be handled fully under normal procedure, whereby the Criminal Procedure Code shall apply.

One point to note here is regarding the request for extension of detention citing the CPC, there have been cases of suspects who have been issued with the warrants for up to three years, and later they were arrested. Yet, the request for the extension of the detention is still made citing CPC and the officials claim the extension is necessary for acquiring the evidence.

8. Taking of evidence derived from the enforcement of special laws

A few observations regarding the taking of evidence are as the following;

8.1 Credibility of the evidence acquired during the detention at the offices of the requesting inquiry officials (please see case study no. 7: *Mr. Danniya Sani and Mr. Rosamae Sani*)

Though the interrogation may take place at any place requested by the inquiry officials (CPC's Section 87/1 in conjunction with Supreme Court's Regulation no. 47) and the practice has become more common, but the holding of a suspect in custody at the place requested by the inquiry officials and the result of the "examination" taking place at the place requested for by the officials may give rise to a lack of trust in the justice process, particularly considering the intense conflicts in the Southern border provinces.

For example, in Narathiwat province alone, there are "inquiry centers" in which the officials conducting the inquiry are not the inquiry officials and the examination may not comply with the requirement of the inquiry as per the Criminal Procedure Code since legal counselors are not allowed to be present during the examination. But it occurs that the result of the examination has often been taken as evidence during the court hearings.

Remarks and concerns about the evidence and how it has been derived from are related to whether or not the operation of the "inquiry centers" is authorized by any law and why the result from the examination which is not an inquiry according to the CPC is taken as evidence during the court hearings.

8.2 In justice process concerning security cases, it occurs that the result from the examination to incriminate the defendant whereby the result of the examination is derived from a statement made by a person who is not actually present in the Court and confession made during at the inquiry level has been used. In Fact, such an evidence should be treated as a hearsay evidence, and shall not be admissible. Or if it is admitted by the Court, the Court must do so carefully and should not believe only in such an evidence for punishing the accused person, unless there is a strong reason, a special circumstance of case or other supporting evidence (Section 226/3 and Section 227/1, CPC, prohibition against the taking of a hearsay evidence, Section 227/1).

But in reality, it has been found that while in certain cases, the Court treated the *result of the examination* as a hearsay evidence which was inadmissible, but in other cases, whereby the accused stood for charges concerning insurrection, being part of a secret society or a criminal association, and he was convicted by the Court for the charges based on the taking of the result of the examination and the confession at the inquiry level (please see case study no. 11-14).

9. The post mortem inquest

The post mortem inquest required by Section 150 of the Criminal Procedure Code gives some hope to the surviving families whose family members died during official custody and Thai society in general. For cases that affect the feeling and trust of public toward the state, the hope is still there that the judiciary may exercise its power to review the case and restore justice based on the acquisition of facts and evidence.

In reality, however, a number of the results of the post mortem hearings as required by Section 150 and the relevant court orders have failed to answer the questions from the surviving families and Thai society in general. It has even led to doubts concerning the purpose of Section 150 itself. (Please see case study no. 8 : *post mortem inquest of Mr. Yakariya Paomani and the post mortem inquest in Takbai case)*

10. Other issues

Apart from the above, other observations and concerns the organizations would like to express include;

10.1 In practice, it has been found that the accused was pressed with severe charges while the supporting evidence was weak (i.e. description as to how the insurgency could be abetted by just the accused alone claiming that the other accomplices have not been arrested....please see case study no. 9: *Mr. Malusi Matiyao)*

10.2 In practice, it has been found that lately, the accused in security cases are not granted bails and the temporary release criteria used by the judiciary in different provinces seem to be inconsistent to each other.

10.3 In practice, in a number of cases, the Court dismissed charges against the accused citing the “benefit of the doubt”. But as the accused wanted to request from competent agencies for remedy for victims in criminal proceedings, their request has been turned down with the reason that though they were acquitted, the Court did not rule that they were “innocent”.

Appendix
Statistics of security cases in the three Southern border provinces and four districts in Songkhla

(2004 – 31 May 2009)

Province	Criminal case	Security cases						Result							
		Total	Unidentified culprit	Identified culprit				Inquiry official level (total 6,559 cases)				Court level (518 cases) (175 cases decided, 284 accused)			
				Total	Percentage	Arrested	At large	Stayed	Prosecuted	Dismissed	Pending investigation	Convicted	Accused (person)	Dismissed	Accused (person)
Pattani,	13,861	2,058	1,628	430	20.89	276	154	1,432	352	37	237	33	63	21	44
Yala,	16,168	2,099	1,652	447	21.30	279	168	1,394	367	47	291	25	35	10	16
Narathiwat	17,793	2,205	1,674	531	24.08	393	138	1,537	461	25	182	51	77	30	40
Songkhla	6,191	197	127	70	35.53	46	24	118	64	0	15	5	9	0	0
Total	**54,007**	**6,559**	**5,081**	**1,478**	**22.53**	**994**	**484**	**4,481**	**1,244**	**109**	**725**	**114**	**184**	**61**	**100**
Percentage		**12.24**	**77.47**	**22.53**	**25.45**	**15.15**	**7.38**	**68.32**	**18.97**	**1.66**	**11.05**	**65.14**		**34.86**	

Background: Legal Affairs and Investigation Center, Forward Royal Thai Police Operations Center

Case study no. 1: *Mr. Maromali Awang*

On 16 September 2006, a bomb exploded in Hat Yai district, Songkhla. Mr. Maromali and friends, altogether 10, were studying at a Pondok School in Yala. They learned that the officials were looking for them suspecting that they were involved with the bomb explosion in Hat Yai district. Therefore, they decided to go to the Yaha Police Station to show their genuine cooperation. All of them were held in custody at the Forward Royal Thai Police Operations Center in Yala for interrogation invoking the Emergency Decree. On 16 October 2006, the police officials filed a charge against Mr. Maromali accusing him of being involved with the bomb explosion in Hat Yai district. At present, Mr. Maromali's case is pending in the Provincial Court of Songkhla (Black Case no. 0019/2007). Examination of the prosecuting witnesses is going on, and Mr. Maromali has been temporarily released to fight the charge.

Later, on 17 May 2009, while traveling to Yala, Mr. Maromali was intercepted by the police officials at a checkpoint before the city of Yala. He was asked to produce his ID card. Then the officials claimed the Emergency Decree arrest warrant against him was still active, though the warrant cited by the police was the same warrant used to hold Mr. Maromali in custody three years ago. It occurred as well that the Emergency Decree warrant cited by the police to arrest Mr. Maromali was based on the claim that he was involved with the bomb explosion in Yala, the circumstance of which was not identical with the reasons cited for arresting him earlier. Thus, the issuance of the warrant was simply a tactic which the officials used for holding a person in custody for interrogation and to acquire evidence before arresting Mr. Maromali using the normal procedure of the Criminal Procedure Code. After verifying the facts, the police officials allowed Mr. Maromali to continue on his journey.

Previous action
On 27 May 2009, Mr. Maromali submitted a motion to the Provincial Court of Yala asking for the revocation of the Emergency Decree warrant against him.

Results
The Court dismissed his request claiming that since Mr. Maromali was arrested as per the Emergency Decree warrant, the warrant and the arrest shall terminate as per Section 68 of the Criminal Procedure Code. That Mr. Maromali was intercepted by the officials and was not allowed to leave the country was due to the fact that his warrant had not been cleared from the state database.

Case study no. 2: *Mr. Amine Musaw*

Background
During 16-27 July 2008, Mr. Amine Musaw and friends were held in custody invoking the Emergency Decree. During that time, it did not appear that the competent officials made any attempt to examine them and simply had the detainees sign the examination report. Still, the officials asked for the Court to extend the detention and the Court agreed to the request.

Previous action

On 30 July 2008, relatives of the person held in custody submitted a petition to object the request to extend the detention invoking the Emergency Decree claiming that the examination report signed by the detainee and was attached to the extension request was unlawful.

Results of the petition
It was heard to the Court that the examination of the person held in custody had been completed since 27 July 2008, and it was not legally necessary to continue the examination. The order to hold in custody the suspects shall cease at the order of the Court and the request to extend the detention was rejected as of 29 July 2008, and this should become immediately effective after the order of the Court is made.

Case study no. 3: *Mr. Subri Barataya*
Background
On 28 April 2008, Mr. Subri Barataya was arrested by the police officials and held in custody while travelling. The officials claimed Mr. Subri was wanted by an Emergency Decree warrant and he was then transferred to the Ingkhayudh Borihan Army Camp, Pattani, for interrogation. During the time, the officials failed to ask him a question. His relatives complained that during the arrest this time, the officials produced the warrant that had been used for arresting Mr. Subri already once.

Previous action
Submit a petition to object the request to extend the detention for the second time to the Provincial Court of Yala, since the officials no longer asked any question concerning the involvement in the insurgency. Therefore, the request to have the second Emergency Decree warrant issued was not lawful.

Results of the petition
The request for the second Emergency Decree warrant could not be found as claimed by the arresting officials. It was ascertained that the arrest was indeed made based on the old Emergency Decree warrant. Therefore, the Court dismissed the petition against the request, since there had not been any submission of such a request and Mr. Subri was then released.

Case study no. 4: *Torture of the persons held in custody in Rueso district*

Background
On 19 March 2008, the combined forces of military and police conducted operation cordon and search and the suspects were arrested invoking Martial Law. As a result of the operation, seven villagers were rounded up,[5] but later one of them was released. The other six suspects were held in custody at a Taskforce in Rueso district invoking Martial Law and Emergency Decree. During the first three days of the detention, they were not allowed

[5] The list of persons arrested from Torkor Village includes;

1. Mr. Rayou Kador, 2. Mr. Yapha Kaseng, 3. Mr. Anan Kaseng, 4. Mr. Aming Kaseng, 5. Mr. Sukri Salae, 6. Mr. Masakri Layee, and 7. Mr. Sama with unknown last name, janitor at the mosque

to have relative's visit. It has been ascertained also that the three persons held in custody were subject to physical abuse and one of them was tortured until death.

Previous action
On 8 April 2008, relatives of the remaining persons held in custody asked the Court to review the lawfulness of the detention involving torture to force the detainees to confess. The preliminary hearing was scheduled for the Court to decide if the complaint invoking Section 32 of the Constitution and Section 90 of CPC was actionable or not.

Results of the petition
The Court found the persons were held in custody by officials who were authorized by Section 12 and Section 11(1) of the Emergency Decree to do so and therefore considered the detention lawful. The complaint was not considered a prima facie case as per CPC's Section 90 and therefore dismissed.

Case study no. 5: *Mr. Mayateng Maranor*
Background

During 18-28 June 2007, military, police and civilian officials carried out the Operation Victory Bannang Sata in Ban Tueroh, Ban Kampongbaru and Ban Sanambu, Tambon Banglang, Tambon Bajao and Tambon Bannang Sata, Bannang Sata district, Yala.

On 24 June 2007, while Mr. Mayateng Maranor was residing in his home with his wife and two children, 50 rangers from Taskforce 41 arrived and conducted the cordon and search operation and held Mr. Mayateng Maranor in custody. His Mazda pickup truck with the license plate no. Bor Jor 4769 Yala and other belongings were also seized. The military officials told the petitioner that Mr. Mayateng shall be brought over to a military camp in Banglang Dam for a couple of days for interrogation. The arrest and holding in custody of Mr. Mayateng by the military officials took place when the Operation Victory Bannang Sata was implemented.

Since 24 June 2007 until present, Mr. Mayateng has not been released nor returned by the arresting officials. The petitioner kept searching for him and complaining to various agencies to ask for their help to track down Mr. Mayateng Maranor. The arresting military officials denied knowing his whereabouts and no one can tell for sure if Mr. Mayateng is still alive.

Previous action

On 20 August 2008, Mr. Mayateng's wife invoked Section 90 of the Criminal Procedure Code asking the Provincial Court of Yala to have Mr. Mayateng Maranor released, as per the Black Case no. Kor Por1/2008 and Red Case no. Kor Por1/2008.

Results

On 16 December 2008, the Court ruled that since there is no evidence to ascertain where Mr. Mayateng Maranor has been held in custody and the petitioner has no idea where Mr. Mayateng is, and coupled with a statement by an eye witness that a Muslim man was seen while leaving Taskforce 41 located in Bannang Sata Intharachat School, the petition was then dismissed.

Case study no. 6 : *Mr. Jaeyi Hayi*
Background

On 21 April 2009, invoking Martial Law, the combined forces of the military and police conducted operation cordon and search and informed Mr. Jaeyi Hayi, the house's owner that he was wanted by the Criminal Procedure Code warrant issued by the Provincial Court of Yala, but the officials failed to produce the warrant to Mr. Jaeyi. Nevertheless, Mr. Jaeyi was taken away and held in custody for seven days and then transferred to the inquiry officials at the Bannang Sata Police Station where he was to face criminal proceedings as per the Criminal Procedure Code warrant.

Previous action
Objection to the second extension of the detention request invoking CPC was made on 7 May 2009. In fact, the CPC warrant was issued since 2006, more than three years ago, and therefore, the evidence that may incriminate the person should have been collected. However, the police officials insisted on requesting for the extension of the detention relying on an oral evidence from a police official. The extension was requested even though until then, the alleged offender had been living in local are and been cooperative to the officials and had never been arrested before.

Results of the petition
Realizing the necessity since the investigation had not been completed and the alleged offender needed to be inquired further and his record was being cross-checked with the Royal Thai Police's database, the Court granted the permission for the extension of the detention. The inquiry officials were, however, told to expedite the investigation process.

Case study no. 7: *Mr. Danniya Sani and Mr. Rosamae Sani*

Background
On 12 April 2009, the inquiry officials of the Rueso Police Station requested for the extension of detention of Mr. Danniya Sani, 23 years, a rubber tapper and Mr. Rosamae Sani, 23 years. They were arrested based on the Black Case no. For 399/2009 at the Provincial Court of Narathiwat. The first phase of detention requested for shall last 12 days, which would be due by 23 April 2009.

On 23 April 2009, the inquiry officials of the Rueso Police Station requested for the second extension of detention claiming the investigation was not completed; eight more witnesses needed to be examined; the evidence was being put for verification; fingerprints were being cross-checked with database of the Criminal Records Division, Royal Thai Police, etc. Therefore, another 12 days of detention was requested. The officials also claimed that the alleged offender appeared to be involved with insurgency in various areas and in a number of incidences. Therefore, the inquiry officials found it necessary to hold him in custody at an inquiry center in Muang district, Narathiwat for further interrogation in order to find the lead to other accomplices.

Previous action
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Case study no. 8: *Post mortem inquest of Mr. Yakariya Paomani*

Background
On 27 June 2007, around 04.00 am, the combined forces of officials arrested Mr. Yakariya Paomani and brought him over to Ranger Forces Regiment 41. Later, Mr. Yakariya was

transferred from Ranger Forces Regiment 41 to the Bannang Sata Police Station. En route, he was found dead while being held in custody by the rangers. Bruises and gunshot wounds were found on his body.

Previous action
The public prosecutor of Yala asked the Court to conduct the post mortem inquest as required by Section 150 of the CPC with lawyers of the deceased's relatives to conduct cross-examination. Based on the witness examination, it was found that;

Medical examination Mr. Yakariya was found to have died from three gunshot wounds of four bullets shot. He sustained many bruises and a 23x20 cm abrasion on his chest, bruise on his neck and two hands and under the back of his left thigh. The doctor found that the blunt trauma on his chest, though it made several bones broken, it was not strong enough to cause pulmonary contusion, but bleeding. The injuries should have been caused by physical torture and should have taken place less than seven days before the death.
Inquiry level The inquiry officials did not bring over the military officials' guns to verify if they matched the bullets fired since they believed the guns used belonged to the assailants.
Preliminary hearing The inquiry officials had no idea who the shooters were and how the shooting took place. They only knew some AK47 guns were used at the crime scene.

Results
The Court ruled that the dead person was Mr. Yakariya Paomani and he died on the bed of the pickup truck on 28 June 2550, around 20.00. Regarding the cause and circumstance of the death, Mr. Yakariya died while being held in custody by officials from Ranger Forces Regiment 41 during the transfer to the inquiry officials at the Bannang Sata Police Station. At the crime scene, some perpetrators used AK47 and pistols to shoot Mr. Yakariya down, and it was not known who they were.

Case study no. 9: *Mr. Malusi Matiyao*
Background
Mr. Malusi Matiyao lived in Sabayoy district, Songkhla and was a student of the Walailak University, Nakhon Si Thammarat. He was pressed with charges concerning different insurgencies for which he denied. He was studying in Nakhon Si Thammarat and his advisor agreed to sign to guarantee his innocence. Later, five cases against him were brought to the Provincial Court of Nathawee.

1. Black Case no. 877/2008, the Nathawee public prosecutor filed a charge on 9 June 2008 accusing him of committing a premeditated murder, having in possession firearms and ammunitions, and carrying them in public places without permission and without proper reasons. The incidence took place on 3 July 2006 when the accused was shooting to kill two injured persons, but failed to make them die.
2. Black Case no. 1029/2008, the Nathawee public prosecutor filed a charge on 8 July 2008 accusing him of committing a premeditated murder, having in possession firearms and ammunitions, and carrying them in public places without permission and without proper reasons. The incidence took place on 13 July 2006 when the accused was shooting down the persons.

3. Black Case no. 1462/2008, the Nathawee public prosecutor filed a charge on 12 September 2008 on a premeditated murder, armed robbery using vehicle and causing death to other person, having in possession firearms and ammunitions, and carrying them in public places without permission and without proper reasons. The incidence took place on 4 November 2006 when the accused was shooting down other person and robbed the person.
4. Black Case no. 1463/2008, the Nathawee public prosecutor filed a charge on 12 September 2008 accusing him of committing a premeditated murder, having in possession firearms and ammunitions, and carrying them in public places without permission and without proper reasons. The incidence took place on 18 July 2007 when the accused was shooting to kill two injured persons, but failed to make them die.
5. Black Case no. 1464/2008, the Nathawee public prosecutor filed a charge on 12 September 2008 accusing him of committing a premeditated murder, having in possession firearms and ammunitions, and carrying them in public places without permission and without proper reasons. The incidence took place on 29 January 2007 when the accused was shooting down the other person.

Previous action
On 29 September 2008, the defendant lawyer submitted motions asking the Court to conduct preliminary hearings on five cases and asked for merging the five cases into one.

Results of the petition
The Court decided to dismiss all five cases after considering that the existing evidence was too weak for preliminary hearings.

Case study no. 10: *Mr. Yapha Kaseng*
Background On 19 March 2008, at 06.00 am, about 60 military officials conducted operation cordon and search at Ban Chaoborngor, Rueso district, Narathiwat. Invoking Martial Law, they held in custody Mr. Yapha Kaseng, Mr. Anan Kaseng and Mr. Amin Kaseng, the two sons of Mr. Yapha and other villagers, altogether six. They were then taken to the press conference in the city of Narathiwat as the officials claimed they have arrested the insurgents in the three Southern border provinces. Then, they were taken to Taskforce 39 and stayed there during 20-21March 2008. During the time, the military officials brought Mr. Yapha Kaseng and other for interrogation and tortured them in a police six-wheeled truck. On 21 March 2008, Mr. Yapha Kaseng was found dead in the truck used for detention.

Previous action
On 8 April 2008, Ms. Nomi Kaseng, Mr. Yapha Kaseng's daughter complained to the Provincial Court of Narathiwat about the unlawful detention and torture (for Mr. Anan and Mr. Aming Kaseng, her brothers).
On 15 May 2008, the public prosecutor submitted the post mortem inquest motion.

Results *On 10 April 2008*, without deliberating on the alleged torture, the Court skipped to rule on the alleged torture, but only ruled whether or not the detention was lawful. But since the persons were held in custody invoking the Emergency Decree and with the Emergency Decree warrants, the Court dismissed the complaint. On *21 December 2008,* the Provincial Court of Narathiwat ordered the post mortem inquest hearings.

On 19 March 2009, Mr. Yapha Kaseng's daughter filed a civil complaint against the Ministry of Defence, as defendant no. 1, the Royal Thai Army, defendant no. 2, and the Royal Thai Police, defendant no.3 for tort claim and remedies as per the Act on Liability for Wrongful Acts of Officials B.E. 2539 (1996). On *3 August 2009,* the Court decided to settle the issues in court (the public prosecutor has not submitted his opinion).

Case study no. 11: *Dismissal as a result of the taking of evidence derived from the detention by the enforcement of special laws* *The case of Mr. Ammari Toha*

Background

The Provincial Court of Narathiwat, in Black Case no. 215/51, ruled that the police officials submitted their inquiry report and examination report, which was considered a hearsay evidence. The note taken during interrogation at the inquiry level was considered a hearsay evidence and according to Section 226/3 and Section 227/1 of CPC, a hearsay evidence has to be approached carefully and the Court should not believe only in such an evidence for punishing the accused person, unless there is a strong reason, a special circumstance of case or other supporting evidence. In this case, the plaintiffs failed to bring the intelligence source to make the statement in the Court. Coupled with the weak evidence submitted, for benefits of the doubt, the Court decided to acquit the defendant.

Case study no. 12: Mr. Suhaiming Loema

Background

The Provincial Court of Narathiwat ruled on 21 November 2008 in Black Case no. 338/2008 and Red Case no. 2273/2008 with Narathiwat provincial public prosecutor as the plaintiff and Mr. Suhaiming Loema as defendant on charges concerning insurrection, being a member of a secret society or a criminal association, murder, robbery, and offence concerning the Firearms Act.

On 12 June 2007, the defendants and his accomplices were assigned to operate as a small mobile operation unit (RKK) to instigate violence and unrest in the province of Narathiwat.

On 12 June 2007, the defendant and other accomplices had in possession M 16 guns for unknown number and ammunitions and carrying them around the village. They were accused of instigating insurrection, committing robbery and murder, the charges of which were denied by the defendant.

The plaintiff described that on 12 June 2007, a beheading incidence happened on the road between Ban Pupay and the rice field, in Moo 1, Tambon Sammakkhi. It prompted the officials to cordon off Ban Tonaepa, Moo 1, Tambon Sammakkhi and arrested Mr. Mayaki Hayikaji for inquiry. During the inquiry, he admitted to be cooperating in the incidence together with the accused.

On 8 November 2007, the accused was arrested and taken to the Ingkhayudh Borihan Army Camp for inquiry. He confessed during the inquiry.

- The inquiry officials who originally made the inquiry report could not confirm if the accused were the offenders. He was only informed about the three names after he had moved to other position. So he could not confirm if they were perpetrators in this case.
- The inquiry officials who took over the charge simply relied on confessions made by the accused during the inquiry. No other supporting evidence has been collated.

- The inquiry reports and records of inquiry in all cases contain much of the same content. It looks like the reports were simply copycats without substantial change. It believable that the records of inquiry were simply made up and the inquiry officials did not actually ask Mr. Mayaki and the accused, and both did not actually answer the questions. But the material was simply made up in several copies with the same content. Many flaws in the material made it credible that Mr. Mayaki and the accused did not voluntarily answer the questions made by the inquiry officials.
- The statement read out by the official was not the statement he made himself. The statement was simply based on information from the intelligence unit and thus not credible.
- The accused has not been informed of the charges.
- As a result, the accused would have no idea if the statement he made shall be used to incriminate against him.
- During the inquiry, no guarantee was made to provide for protection of the accused; he was not entitled to the rights an alleged offender should have in a normal procedure.
- The records of inquiry were simply a hearsay evidence and it is unlawful to take the evidence.
- The inquiry took place while the accused was held in custody under Martial Law, during which time no evidence had been procured to incriminate him.
- None of the hearsay evidences or circumstantial evidences presented by the plaintiff was strong enough and not admissible.
- The Court decided to acquit the accused, but ordered that he be jailed pending the Appeal Court.

Case study no. 13*: Conviction stemming from the taking of evidence derived from interrogation by the inquiry officials while the special laws are in place, the case of Mr. Sorlae or Sobri Mankem, the first defendant and Mr. Muhammad Sa-I, the second defendant*

Background

The Provincial Court of Nathawee ruled on 10 March 2009 in Black Case no. 1087/2007 and Red Case no. 460/2009 with Narathiwat provincial public prosecutor as the plaintiff and Mr. Sorlae or Sobri Mankem as defendant on charges concerning insurrection, being a member of a secret society or a criminal association, and offence concerning the Firearms Act.

The plaintiff described that on 5 September 2007, the two accused including other more than five persons upwards planned and conspired to commit an act of violence or threaten to commit an act of violence separate the Kingdom or seize the power in any part of the Kingdom, murder state officials and ordinary persons, and rob or cause damage to properties for public interest. The accused denied the charges.

It was described that on 5 September 2007 at 16.30, the combined forces of military, police and civilian raided a house with no number in Moo1, Tambon Thungpor, Sabayoy district, Songkhla and found both accused. The first accused declared himself as owner of the house and agreed to have the officials search his house. The officials found two licensed firearms belonging to the state and two mobile phones and other belongings.

The plaintiff had Corporal Suriwong Somsong to look for lead among the insurgency movements. Before the arrest, Mr. Niloh Arsae, a member of an insurgent group was arrested. Intelligence source informed the officials that one male member of the insurgent group resides in Ban Khoksilong, which referred to the first accused. The first accused used to assemble for some unlawful purpose at Mr. Phuma's house, where Mr. Noiloh was arrested. When shown with the picture of the first accused, he confirmed the identity. Thus on 5 September 2007, 30 officials went to arrest the two accused. During the inquiry, the two accused stated that the guns had been given to them by Mr. Abdulroning, who wanted them to use the guns to kill an ice-cream seller. It appeared that the prosecuting witnesses could describe the incidence systematically, reasonably and flawlessly. The statement made was very credible, particularly after some inspection was made on the seized guns, which has confirmed that the firearms had been used to commit violence in Thepha district and Sabayoy district for five times already. It thus supported the belief that the two accused were part of the movement.

In addition, the statement made by the two accused during the inquiry level was confirmed by the statement of the inquiry officials. The two accused basically admitted to being members of the Pattani Liberation Organization. The prosecuting witness examination sounded credible. Regarding the two accused arguing that they were tortured and forced by the officials to make the confession at the Ingkhayudh Borihan Army Camp, the Court did not rely on the evidence to incriminate the two accused. And during the inquiry level, the accused admitted to having the firearms and being members of the Pattani Liberation Organization. Since it did not appear that two accused were physically abused (while making the confession), the statement was admissible.

The Court ruled that the two accused was guilty for breaches against Firearms Act, being a member of a secret society, conspiring to commit insurrection, and having in possession firearms and ammunition without permission.

Case study no. 14: *Mr. Buraheng or Heng Arsae*

The Provincial Court of Nathawee's Red Case no. 769/51: There simply was no direct witness evidence to support the claim that the defendant and others were committing an act tantamount to being members of a secret society, and a criminal association as well as being a part of the Pattani Liberation Movement. The Court simply relied on the hearsay based on the testimony of Pol.Sen.Sgt.Maj. Chamroen Inkaew, the police official who interrogated Mr. Abdullah. The Court ordered that though, the plaintiff's evidence was simply an accomplice witness's testimony and the defendant's testimony at the inquiry level and the inquiry report was simply hearsay evidence, but considering the circumstances in which the defendant committed the crime by shooting the injured person, and that both the injured person and the defendant had never had any conflict before, it was probable that that the defendant shot at the injured person was prompted by a desire to instigate breach of the peace in local area as affirmed by the defendant's testimony.

since the plaintiff failed to provide evidence as to the fact that the firearm had no license and that the defendant had not been granted a permission to have in possession firearm and ammunition, thus though the defendant actually had in possession the firearm, it could not be established that the defendant and other co-principals have committed an offence related to having in possession non-licensed firearm and ammunition. As for the offence of unauthorized carriage of firearm, it is ascertained from facts that the defendant and other co-principals used the gun to shoot the injured person, thus the defendant is found guilty for unauthorized carriage of firearm.