



ศูนย์ทนายความมุสลิม
MUSLIM ATTORNEY CENTRE

English version released on 25 July 2011

**Progress of the Case on the Death of Imam Yapha Kaseng:
Civil case and Criminal case
As of 20 July 2011**

- 1) According to the Civil Court's docket on the Black Case no. 1084/2552 dated 20 July 2011, Mrs. Nima Kaseng and three other plaintiffs and the Ministry of Defence (1st), Royal Thai Army (2nd) and the Royal Thai Police (3rd), three agencies as defendants, met in a mediation pre-trial hearing. An agreement was reached during the mediation by the Court, and the three defendants declared that the act that has caused the death of Mr. Yapha Kaseng was collectively carried out by the officials under the three defendants within the legal framework when the incidence happened. After examining the crime scene and exhorting other information, it was found that Mr. Yapha Kaseng and his family were not at all involved with any insurgency. The three defendants felt sorry for what happened. The first and second defendants agreed to provide compensations to the plaintiffs, as mediated by the Civil Court and as accepted by the plaintiffs including the amount of 500,000 baht for the impairment done to the reputation of Mr. Yapha Kaseng, the deceased; 87,000 baht for the funeral rite; and 4,624,000 baht for the alimony of the first to the fourth plaintiffs, The compensations amount to 5,211,000 baht and the accord and satisfaction is made herewith (Attachment 1)
- 2) Previously, Mrs. Nima Kaseng and her children, altogether four plaintiffs, filed a damage claim in a case related to Imam Yapha Kaseng who was held in custody, shown at a press conference, and later tortured to death. The first mediation hearing on 14 June 2011 failed to yield any result as the plaintiffs insisted that the alleged governmental agencies have to advertise in the press and send out circulars to security agencies in a gesture of apologizing Imam Yapha Kaseng's family. Also, the compensations offered were way too low.
- 3) The cases stem from the order made by the Provincial Court of Narathiwat in the post-mortem trial of Mr. Yapha Kaseng as required by Section 150 of the Criminal Procedure Code on 25 December 2008. It was declared by the Court that the deceased person was Mr. Yapha Kaseng, and he died at Narathiwat Taskforce 39 located in Wat Suan Tham, Moo 2, Tambon Rueso-ok, Reuso district, Narathiwat, on 21 March 2008 and the cause of death is being physically abused by military officers until the ribs broke and pneumothorax was sustained on his right chest during the time the deceased was held in custody by the military officers who were competent officers.
- 4) In the criminal suit at the preliminary hearing, on 12 July 2011, Mrs. Nima Kaseng, Imam Yapha Kaseng's wife, as a plaintiff, filed a case against the military and police officials for their abusing of Imam Yapha and now appealed with the Supreme Court. She is represented by Mr. Preeda Nakphew, an attorney who works for the Access to Justice and Legal Protection Project under the Cross-Cultural Foundation (CrCF). The legal representation is

also shared by the Foundation of Muslim Attorney Centre (MAC). The complaint was already signed by the provincial judges or a judge of the Appeals Court Reion 9, and tendered to the Supreme Court.

- 5) The complaint aims to request the Supreme Court to reverse the orders made by both the Lower Court and the Appeals Court which dismissed the case against the sixth defendant and refused to accept the case against the first to fifth defendants, the military officials claiming that the jurisdiction over the case falls outside the Courts' mandate and instead the case should be filed with the Court Martial. The plaintiffs disagree with the orders since they deem Imam Yapha Kaseng died in the custody of the police and military officials who combined their forces to arrest, held him in custody and brought him to a press conference. And later, the Imam was tortured by the officials to death. Thus, the police and military officials were accused of abusing their office and committing the offence against life, body and freedom. And since police officials who are civilian officials cooperated in committing the offence with the military officials, the case should fall under the jurisdiction of the Court of Justice, not the Court Martial.
- 6) In addition, the Court-Martial Procedure Act B.E. 2498 prescribes that only a judge advocate can be the plaintiff in a case filed against a military official. Any damaged party has to allow the judge advocate to be the sole plaintiff of their case and no other parties are allowed to be co-plaintiffs. It is deemed that criminal procedure in the Court Martial makes it impossible for the damaged parties to have access to genuine justice process, the right of which is provided for in the Constitution.
- 7) **Since it is a criminal offence involving an abuse of office, the inquiry officials at the Rusoe Police Station have submitted the case to the National Counter Corruption Commission (NACC) since June 2008. More than three years passed, the investigation by NACC has not been completed and no progress has been made public. It does not seem that justice will be served for the late Imam Yapha Kaseng and his family.** Therefore, Mrs. Nima Kaseng, Imam Yapha Kaseng's wife, decided to file the case herself. **Nevertheless, the relatives and attorneys feel confident that the civil court (the Court of Justice) can serve them justice and address the problems faced by people whose human rights have been severely violated.** Only in the civil justice process can the damage parties have access to and fully enjoy the right to defence from the Lower Court, the Appeals Court through to the Supreme Court. They want to set it a precedent for an attempt to protect the rights and freedom of people as prescribed by the Constitution and the rule of law, despite their having to live under the enforcement of Martial Law.
- 8) Meanwhile, the complaint lodged with the National Counter Corruption Commission (NACC) has made no progress since it was submitted by Rusoh District Police, Narathivath province, three years ago.

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