



**THAILAND'S INTERNAL SECURITY ACT:
RISKING THE RULE OF LAW ?
FEBRUARY 2010**



® Thailand's Internal Security Act : Risking the rule of law?, February 2010

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The legal analyses and recommendations in this report are those of the ICJ alone and should not be taken to reflect the position of any of the individuals who provided us with the benefit of their knowledge and experience.

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EXECUTIVE SUMMARY

OVERVIEW

This report by the International Commission of Jurists (“ICJ”) presents a comprehensive assessment of Thailand’s Internal Security Act (“ISA”) from the perspective of international law and standards. The report is timely in that the ISA is increasingly being invoked to address a variety of potential security issues. Seven times in the second half of 2009 alone, Cabinet declared exceptional powers under the ISA to be in force – in four districts of Songkhlain response to the insurgency in the Deep South, and in other parts of the country to control or prevent anti-government demonstrations.

The increased use of the ISA raises important issues of human rights and democratic governance, especially given the current realities of political polarisation in the country. The Royal Thai Government is justified in enacting and enforcing laws to protect the security of its citizens. Indeed, this is one of the crucial responsibilities of any government. However, such security measures must be taken in compliance with the rule of law and international human rights obligations. Experience from around the world, including Southeast Asia, shows that these laws are often used to empower executive authority and security forces, suppress political opposition and undermine the rights of citizens. As a result, the ICJ is concerned about how Thailand intends to strike a balance between security and rights protection through the ISA.

The ICJ has reported that the ISA incorporates a number of significant improvements from previous draft versions of the law, and also recognises that the exceptional powers provided by the ISA are more limited in scope and less restrictive of rights than those under the Emergency Decree or Martial Law. The ICJ welcomes these important improvements that increase protection for rights established under domestic and international law.

At the same time, this report details a number of ongoing concerns with the legal framework established by the ISA. Recognising the Royal Thai Government’s obligation to provide security throughout the country, the ICJ does not advocate wholesale repeal of the ISA, but rather addresses specific problem areas within the Act and proposes amendments and safeguards in accordance with Thailand’s international law commitments.

The ICJ has three primary concerns:

1. that many definitions and provisions are vague and overbroad, potentially criminalising a wide range of behaviours that pose no security threat;
2. that fundamental rights are at risk of being violated, especially related to liberty and security of the person, fair trial and due process, and freedom of movement, association and expression; and,
3. that sweeping powers granted to security forces risk undermining the principle of civilian authority that is at the heart of democratic governance.

Given the historical fragility of Thailand's rule of law institutions, in particular the frequency of constitutional change and military interventions in politics, these concerns are not abstract or illusory. The report therefore concludes with a set of specific recommendations, including proposed amendments to the ISA aimed at ensuring that Thailand is able to maintain internal security while also protecting human rights.

I. THE ISA IN CONTEXT

Created to combat the communist uprisings of the 1960s and 1970s, the military-dominated Internal Security Operations Command ("ISOC") has been a key player in Thai national security policy-making and enforcement action for many years. Former Prime Minister Thaksin Shinawatra significantly reduced the role and powers of ISOC, and the influence of the Army within the organisation, in 2001-2002. Following the 2006 coup, ISOC was given significant additional powers and was reorganised to provide a greater role for the Army under an Order from the Prime Minister's Office.¹ The ISA now provides a legal basis for the activities of ISOC.

The immediate context for the ISA's emergence was the ousting of Prime Minister Thaksin Shinawatra's elected government by the military in September 2006 – Thailand's tenth military coup since the abolition of the absolute monarchy in 1932. Abrogating the 1997 Constitution and temporarily banning political party activity, a military-led junta installed an interim civilian administration, headed by Retired General Prime Minister Surayud Chulanont, pending general elections that eventually took place in late 2007. The interim government approved an initial draft of the ISA in June 2007. The final version of the Act was passed just prior to general elections.

The Internal Security Act B.E. 2551 (2008) was passed by the National Legislative Assembly of Thailand on 20 December 2007 and came into force on 28 February 2008. Part 1 of the ISA gives ISOC broad powers to monitor, examine and evaluate information relevant to internal security. Part 2 of the ISA, when in force, gives a wide range of ISOC officials the full complement of coercive police powers, including powers to use both lethal and non-lethal force, including firearms, to arrest and detain individuals, conduct searches enter onto premises overtly and covertly, and lay criminal charges.

The Act's drafting, revision and eventual promulgation reflected a political debate, still continuing in Thailand, about the appropriate role of civilian and military authorities in government. The ISA is destined to play a central role in this debate, particularly in the context of the ongoing insurgency in the Deep South and the colour-coded political polarisation at the national level.

Since 2005, Thailand has experienced intense political conflict, centred around the person of former Prime Minister Thaksin Shinawatra, but involving deeper divisions that are manifested by mass popular mobilisations. Popular opposition to Thaksin is led by the People's Alliance for Democracy (PAD), known as the Yellow-Shirts. The PAD played a key role in organising mass protests that preceded the 2006 military coup, and subsequently demonstrated against elected governments led by political parties loyal to Thaksin. Opposition to the coup is led by the United Front for Democracy against Dictatorship (UDD), known as the Red-Shirts, who are now involved in a popular campaign to oust the current coalition government, led by the Democrat Party. In the course of their various protests, both political movements have caused severe disruptions, for example, blocking critical transportation routes (the PAD blockaded Bangkok's two airports in 2008 and the UDD blocked major streets and intersections in the capital in 2009).

Since 2004, Thailand's three southernmost provinces, Pattani, Yala and Narathiwat, and parts of Songkhla province, have been wracked by a violent insurgency, resulting in over 3,800 deaths. This region, known as the Deep South, is ethnically distinct from the rest of the country, with Malay Muslims making up the majority of the population. Seeking to establish a separate state of "Patani",² the insurgents have launched violent attacks on Thai military targets, and also targeted civilian administrators, police officers, teachers monks and villagers. Successive Thai governments have treated the insurgency as a national security threat, invoking emergency laws and currently deploying over 60,000 military and security personnel in the Deep South. Although State forces are accused of serious human rights violations, including extrajudicial killings, enforced disappearances and torture or other ill-treatment, none of the alleged perpetrators have been brought to justice, contributing to local distrust of and anger at the Thai authorities. The ICJ has not made any determination as to whether the unrest in the Deep South meets the threshold of an "armed conflict" under international humanitarian law. Accordingly, this report uses the framework of international human rights law to analyse the compatibility of the ISA with Thailand's international obligations, including as it relates to the southern insurgency.

II. INTERNATIONAL LEGAL FRAMEWORK

Thailand is a party to the International Covenant on Civil and Political Rights (“ICCPR”) and other core UN human rights treaties, which means that it owes a legal duty to observe the guarantees provided for under those treaties.³ A state that is party to an international treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation. The Thai Constitution protects a wide range of internationally recognised human rights, and must be interpreted in conformity with the international obligations that Thailand has voluntarily undertaken in human rights treaties.

Thailand has not declared a state of emergency for purposes of derogation from the ICCPR and therefore remains bound to observe the ICCPR provisions in their full scope. Where rights are limited outside a properly declared state of emergency, States must ensure that any restrictive measures are strictly proportionate to the legitimate aims pursued. The restrictions and limitations must be provided by law, must meet one of the aims stated in the relevant ICCPR article, and must be necessary to achieve a legitimate purpose. Limitations and restrictions may not be implied or invoked in a way that would impair the essence of a protected right, and must be consistent with other international obligations, including other rights protected in the ICCPR, peremptory norms of international law, and the right to an effective remedy. A mechanism to challenge limitations and restrictions, and to provide an effective remedy for any abusive application, must be provided.

States have an obligation under international law to protect the human rights of people within their jurisdiction, including their right to security. Providing security is one of the key responsibilities of any government. Wherever violence is committed in order to advance a political agenda, States must take steps to prevent it and to punish the perpetrators according to law. The ICJ recognises that the Royal Thai Government faces complex security challenges, especially in relation to the violent insurgency in the South and the potential disruption from mass political protest. These situations, however, must be tackled in accordance with domestic and international human rights obligations.

The need to protect human rights, to maintain strong legal safeguards, and to provide remedies for violations is often perceived as running counter to the need to take strong measures to protect national security. International experience, however, shows that that human rights protections and accountability mechanisms are an integral component of successful efforts to preserve security and achieve a peaceful and just society.⁴

III. THE ISA COMPARED TO THAILAND'S EMERGENCY LAWS

With respect to compliance with human rights norms, the 2008 ISA is significantly improved over the initial version proposed by the interim government after the coup. The original draft in 2007 provided the military, through ISOC, with command over civilian government agencies; authority to restrict freedom of expression, assembly, movement and privacy; and powers to conduct arrests and preventive detentions.⁵ The jurisdiction of the Courts to oversee the exercise or abuse of these powers was unclear, and immunity was effectively ensured for ISOC personnel responsible for human rights violations while acting in accordance with the ISA.⁶ The ICJ recognises and welcomes the significant improvements in the final legislation, including:

- Under Part 1, the Prime Minister rather than the Army Commander-in-Chief is the Director of ISOC;
- Under Part 2, arrest and detention is regulated by the Criminal Procedure Code and subject to the scrutiny of the Courts of Justice;
- Immunities from criminal and civil liability for crimes committed under the Act were removed; and,
- Powers to ban assemblies or conduct searches and seizures were restricted.

Compared to Martial Law and the 2005 Emergency Decree, both of which are currently in force in Pattani, Yala and Narathiwat provinces,⁷ Part 2 of the ISA provides a more restricted range of exceptional powers. Important improvements include:

- the removal of exceptional detention powers that require a lower standard of proof of wrongdoing than does the Criminal Procedure Code in connection with criminal conviction;
- the application of Criminal Procedure Code standards to criminal investigations, detentions and arrests in most circumstances;
- the removal of civil and criminal immunities for officials (as provided under the Emergency Decree);⁸
- the removal of civil immunities for individual soldiers (as provided under the Martial Law Order);⁹
- the absence of any provision authorising military occupation or use or appropriation of private or public property (as provided under the Martial Law Order);

- civilian court scrutiny of actions taken under Part 2 of the Act by the Courts of Justice; and,
- greater civilian involvement in decision-making, including by means of designating the Prime Minister as the Director of ISOC and requiring Cabinet approval for the use of extraordinary powers under Part 2.

Nevertheless, the ICJ remains concerned that the ISA fails to provide sufficient protection for internationally protected human rights, particularly the right to liberty and security of the person, privacy rights, rights to freedom of opinion, expression, association and movement, and the right to a remedy and reparation where a person's rights are violated. The ICJ also has concerns regarding the scope of ISOC's activities and the fragility of civilian control. This report focuses on the flaws in the ISA. The report makes recommendations to the Royal Thai Government to bring the ISA into line with its international human rights obligations, many of which are also reflected in the 2007 Constitution of Thailand. In contrast to our position with respect to the 2005 Emergency Decree, however, the ICJ is not advocating the wholesale repeal of the Act.¹⁰ Nevertheless, we believe that it is important for the Royal Thai Government to amend or repeal certain provisions that violate or risk violating its international human rights obligations.

IV. SUMMARY OF ICJ CONCERNS

The weakness of the rule of law is an important contributing factor to the continuation of unrest in the Deep South, and to the recent political conflicts that have affected the entire country. Therefore, strengthening, not undermining, the rule of law must be central to any governmental strategy to deal with unrest and social divisions in the Deep South and throughout Thailand as a whole. Vague and overbroad security legislation has the potential to normalise and entrench limitations on human rights, to undermine fundamental human rights protections, and to increase the abuse of power outside the law.

The ICJ is particularly concerned about the ISA's failure to clearly define the concept of a threat to internal security. Under international law, only a very limited range of acts intended to destroy or damage lives or property would amount to a threat to the nation justifying the type of emergency-style powers in Part 2 the Act. The vague and overbroad concept of a "threat to internal security" in the ISA gives wide discretion to Cabinet to invoke the exceptional powers under Part 2 of the Act in situations that do not constitute a threat to the nation within the meaning of Article 4 of the ICCPR. As a result, Cabinet is able to invoke emergency-style powers without having to take the momentous political decision of declaring an official state of emergency and facing the intense domestic and international scrutiny that such a step would entail.

Part 2 of the ISA gives Cabinet authority to formulate regulations prohibiting a variety of activities and to delegate the powers of other government agencies to ISOC in order to counter threats to internal security. The ICJ is concerned that the announcement of Part 2 regulations by Cabinet excludes the role of parliamentary consideration and threatens to undermine the principle of separation of powers between the legislative and executive branches of government. The ISA does not provide concrete legal limits on the prohibitions that may be set out in Cabinet regulations. To date, Cabinet has adopted regulations that allow ISOC to determine what activities will be prohibited, while at the same time giving ISOC the power to enforce those prohibitions.

The ISA gives ISOC primary responsibility for monitoring and suppressing threats to internal security, thereby affording to it both intelligence gathering and law enforcement responsibilities. The lack of a clear definition of “internal security” in the Act gives ISOC discretion to determine the limits of its own jurisdictional competence, as well as the authority to decide which activities will be monitored or suppressed under the Act. Since it is not clear which actions may constitute a threat to internal security that can be suppressed by ISOC under the ISA, it becomes virtually impossible for individuals to know in advance what actions are legal or illegal. In the context of ISOC’s broad powers to monitor any internal security threats, the legal uncertainty created by the ISA is likely to have a chilling effect on freedom of association and expression and to negatively impact on privacy rights and rights to freedom of movement.

At a time of political conflict when the space for public dialogue should be extended, it is instead being restricted, leading to a climate of self-censorship. Since the permissible scope of ISOC activity is unclear, and no specific level of violence or proximate threat of violence is required in connection with internal security threats, the ISA also risks blurring the line between security threats and legitimate political dissent.

The use of law enforcement powers in investigations related to intelligence gathering for security purposes raises risks to human rights above those encountered in traditional police investigations. Security forces around the world tend to prioritise the mitigation of risk over respect for human rights. As a result, the ICJ considers it imperative that security laws be drafted to provide strong and explicit protection for human rights. Such laws must set out any limitations with precision and must ensure that any limits on rights are strictly necessary and proportionate to the threat faced. Part 2 of the ISA provides broad discretionary powers to ISOC to limit the application of human rights, and fails to include explicit, legislated parameters for the application of such powers. As a result, there is an increased risk that rights guaranteed under the Thai Constitution and under international law will be violated by officials acting under the ISA. For example, when Part 2 of the ISA was used in Phuket during the ASEAN summit in July 2009, a blanket ban was imposed on all protests. Defence Minister General (Ret.) Prawit Wongsuwan was quoted in the media as saying:

“

Phuket must have no protests whatsoever. We will designate no areas for demonstrations. No road blockade, no submission of a protest letter, and not even a peaceful gathering is allowed.¹¹

”

This ban on any form of peaceful gathering or expression of dissent was disproportionate and represents a violation of the rights to freedom of expression and association guaranteed under the ICCPR. Clearer language in the Act is needed to prevent the recurrence of such violations.

Existing weaknesses in the criminal justice system in the Deep South demonstrate the need for strong and explicit human rights guarantees in Part 2 of the ISA and related legislation, where exceptional enforcement powers are provided to ISOC. The ICJ is particularly concerned by the inclusion of an administrative detention regime in Part 2 of the Act. This scheme would offer individuals suspected of criminal activity the option of attending a custodial re-education camp for up to six months as an alternative to facing criminal charges and trial. According to international standards, the involuntary detention of individuals for the purpose of re-education in the absence of a criminal conviction is inappropriate.¹²

The ICJ therefore stresses the need for robust judicial scrutiny of the entire process. The full range of fair trial rights must also be accorded to the potential trainee, including the presumption of innocence, the right to counsel, the right to be present in court, the right to make submissions to the Court and the right to have access to incriminating evidence. Where the military requests an individual to participate in such training, the concept of consent is problematic: an implicit element of coercion will often be present. Therefore, it is particularly important that a judge ensure the voluntariness of an individual's consent to undergo training. The ICJ is also concerned that no criteria are set out regarding the content of training programmes, which will be administered by the military.

While the ISA strengthens judicial scrutiny of official actions relative to Martial Law and the 2005 Emergency Decree, gaps in accountability remain. In order to meet its international obligation to afford an effective remedy for human rights violations, the ICJ recommends the strengthening of powers of judicial review, as well as the powers of existing institutions that provide administrative remedies such as the National Human Rights Commission. It is critical that the independence of judges, prosecutors and the National Human Rights Commission be explicitly guaranteed in the ISA and practically safeguarded from formal or informal interference or influence by ISOC.

Under Part 2 of the ISA, to date, military personnel have been delegated authority for the implementation of a wide-range of legislation normally administered by civilian authorities, including civilian policing and law enforcement functions. The ICJ considers that the military is not an appropriate institution to be exercising such powers outside of

a properly declared state of emergency under international law. Outside of such extraordinary situations, properly trained civilian personnel should exercise these powers. Under no circumstances should non-specialised forces be given such authority. Internationally, the involvement of military forces in law enforcement activities has often led to human rights abuses and military intervention in the political sphere.

The risks to human rights posed by military involvement in law enforcement activities are compounded by the lack of any explicit criteria for the use of force in either the Act itself or in the Cabinet regulations issued to date, particularly in relation to crowd control and dispersal. International standards relating to the use of force should be incorporated into the Act, and should be explicit in the declarations and regulations issued by Cabinet under Part 2 of the ISA. The ICJ considers that affording to ISOC such a wide range of powers normally exercised by the civilian administration undermines the essential functions of Parliament and the primacy of civilian authority in Thailand, which are fundamental to the maintenance of the rule of law and the protection of human rights.

The ICJ is concerned that the ISA fails to guarantee civilian authority over ISOC by allowing the Prime Minister to delegate his powers as Director to the Commander-in-Chief of the Army. Civilian control thus depends on the relative strength, negotiating power and will of the Prime Minister in a country where coups are frequent and civilian governments often short-lived. This risk is not merely theoretical: Former Prime Minister Samak Sundaravej reportedly delegated his authority as Director of ISOC to Army Commander-in-Chief General Anupong Paochinda.¹³ The ability of the Prime Minister to delegate his powers to the commanders of Regional and Provincial ISOCs and the directors of special centres and agencies has the potential to allow a variety of military and civilian officials to determine the scope of their own powers and responsibilities. To mitigate the risk of human rights violations in this context, stronger civilian control and independent civilian review of ISOC actions under the ISA are necessary.

V. CONCLUSIONS

The nature of the ISA as a quasi-emergency law highlights the need for robust democratic accountability and effective limits on the exercise of ISOC powers. The vague and over-broad definitions found in the ISA, in combination with the wide and discretionary powers provided to ISOC, create a significant risk that ISOC's activities under the Act will violate domestically and internationally protected human rights. The same factors, in the context of the overall fragility of civilian control of ISOC, also give rise to the possibility that the military may step in and take effective control in a wide variety of situations that fall short of a national emergency. Additional checks and balances on the exercise of discretion by the executive branch of government and on the delegation

of civilian authority and responsibilities are required, as are checks on the exercise of ISOC's monitoring, investigatory and other powers under the ISA.

Accountability is not an obstacle to countering terrorism and other security threats: it provides the crucial underpinning of security measures if the latter are to secure the necessary public support and legitimacy to be effective. Authorities must be prepared to account fully for the use of their powers, and to submit themselves to adequate independent scrutiny.

In Thailand and throughout the world, human rights and the rule of law have been undermined in favour of expedient action by security officials to address real or perceived threats. Such a course has in the past, and will continue in the future, to hamper the achievement of justice and democratic reconciliation in Thai society. The International Commission of Jurists, therefore, calls on the Royal Thai Government to amend the Internal Security Act of 2008 in order to comply with international human rights law and standards.

The ICJ recommends that the language of the Act be revised to ensure that the limits of ISOC's jurisdiction and powers are clearly defined, and to incorporate international standards for the protection of human rights into the legislation. The ICJ also recommends that existing administrative and judicial remedies for human rights violations be strengthened and made explicit in the ISA and related legislation. In particular, the ability of the National Human Rights Commission to conduct public advocacy must be guaranteed. The range of law enforcement powers delegated to ISOC should be curtailed and clear rules of engagement should be adopted that conform to international standards on the use of force. Finally, the ICJ recommends that civilian control be strengthened by removing the possibility for the Prime Minister to delegate his authority as Director of ISOC to active-service members of the military; by increasing the role of Parliament in the adoption and review of Part 2 powers; and, by implementing some form of independent civilian review of ISOC activities under the ISA.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
1. BACKGROUND	1
1.1 The history of ISOC	1
1.2 Political Turmoil and the Drafting of the ISA	2
1.3 Use of Extraordinary Powers Under the ISA	3
2. THE ISA: OBJECTIVES, MECHANISMS AND POWERS	4
2.1 Rationale for the ISA	4
2.2 The ISA in International Context	5
2.3 Structure of the ISA	6
2.4 Provisions of the ISA	7
2.4.1 <i>ISA Part 1 – Powers regularly available</i>	7
2.4.2 <i>ISA Part 2 – Exceptional Powers</i>	8
2.4.3 <i>Authority and Control</i>	11
3. INTERNATIONAL LEGAL FRAMEWORK	12
3.1 Thailand's international human rights obligations	12
3.2 States of Emergency Under International Law	14
3.2.1 <i>Non-derogable rights</i>	14
3.2.2 <i>Permissible derogation of rights during properly declared emergencies and other limitations</i>	16
3.3 Restrictions or Derogations of Rights and Liberties under the ISA	17
3.4 The ISA: An Emergency Law by Another Name	18
4. THE DEFINITION OF INTERNAL SECURITY AND THE SCOPE OF APPLICATION OF THE ISA	20
4.1 Vague definition of “internal security”	20
4.2 Overbroad Scope of Application	22
4.2.1 <i>Part 1</i>	22
4.2.2 <i>Part 2</i>	22
5. RIGHTS AT RISK	24
5.1 The Principle of Legality	24
5.2 Freedom of Movement, Assembly and Association	24
5.3 Freedom of Opinion, Expression and Access to Information	27
5.4 Right to Privacy	32
5.5 Arrest, Detention and Due Process	32
5.5.1 <i>Applicable International Legal Standards</i>	36

5.5.2	<i>Inadequate Procedural Protections for Individual Liberty, Security and Fair Trial</i>	38
5.5.3	<i>ISA Section 21</i>	44
5.6	Judicial Supervision and the Right to a Remedy	58
5.6.1	<i>Administrative Institutions with Investigative and Remedial Powers</i>	61
5.6.2	<i>Judicial Remedies</i>	69
5.6.3	<i>Compensation by ISOC</i>	74
6.	THE ROLE OF ISOC	75
6.1	Broad operational activities	75
6.2	Overbroad Enforcement Powers under Part 2	77
6.3	ISOC involvement in criminal investigations	80
6.4	Civilian Authority Superseded	83
6.4.1	<i>The Role of Advisory Boards</i>	83
6.4.2	<i>Fragility of Civilian Control</i>	84
6.5	The Need for Democratic Oversight and Independent Review	85
7.	INTERACTION WITH OTHER EMERGENCY LEGISLATION IN THAILAND	87
7.1	Comparison of Powers	88
7.2	Comparison of Civilian Control and Accountability Mechanisms	91
8.	CONCLUSIONS AND RECOMMENDATIONS	94
8.1	List of Recommendations	97
9.	ENDNOTES	108
ANNEX I: INTERNAL SECURITY ACT, B.E. 2551 (2008)		135
ANNEX II: CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007), SELECTED PROVISIONS		147
ANNEX III: EXAMPLES OF CABINET DECLARATIONS, REGULATIONS AND SPECIAL OPERATIONS CENTRE (CAPO) ANNOUNCEMENTS ISSUED UNDER PART 2 OF THE ISA		163

THAILAND'S INTERNAL SECURITY ACT: *RISKING THE RULE OF LAW ?*

1. BACKGROUND

The Internal Security Act of B.E. 2551 (2008) (“ISA”) was passed by the National Legislative Assembly of Thailand on 20 December 2007 and came into force on 28 February 2008.¹ The Act’s drafting, revision and eventual promulgation reflected a political debate, still continuing in Thailand, about the appropriate role of civilian and military authorities in government. The Act was also a response to the view that increasing security challenges, particularly in the Deep South² of the country, called for review and reform of existing and at times overlapping security laws and agencies. Recently, the use of exceptional powers under the ISA has become a focal point for conflict between political factions.

1.1 THE HISTORY OF ISOC

The Internal Security Operations Command (“ISOC”) was established in the early 1970s as the successor agency to the military Communist Suppression Operations Command (“CSOC”), which was created in the late 1960s to coordinate nationwide anti-communist operations. When it was created, ISOC was a military-led national security body, mandated to combat communist and other leftist insurgencies. Over the intervening years, CSOC, ISOC and the Thai military have been implicated in serious human rights abuses, including torture and other ill-treatment, unlawful killings, and large-scale arbitrary detention.³ ISOC has also provided the military with an administrative mechanism to engage directly in combating a range of other perceived security threats, including drug trafficking, illegal migration and illegal logging. Up until the end of the 1990s, ISOC had primary responsibility for maintaining peace and security in the Deep South. In 2001-2002, under the administration of former Prime Minister Thaksin Shinawatra, the role and powers of ISOC were significantly reduced, as was the influence of the Army within the organisation.⁴ Following the 2006 coup, however, ISOC was given important additional powers and was reorganized to provide a greater role for the Army under an Order from the Prime Minister’s Office.⁵ Since 2008, the ISA has provided a legal basis for the activities of ISOC.

1.2 POLITICAL TURMOIL AND THE DRAFTING OF THE ISA

The immediate context for the ISA's emergence was the ousting of Prime Minister Thaksin Shinawatra's elected government by the military in September 2006 – Thailand's tenth military coup since the abolition of the absolute monarchy in 1932. Abrogating the 1997 Constitution and temporarily banning political party activity, a military-led junta installed an interim civilian administration, headed by Retired General Prime Minister Surayud Chulanont, pending general elections that eventually took place in late 2007.

The interim government approved an initial draft of the ISA in June 2007. The draft was presented as a more moderate alternative to harsh emergency legislation, rather than a response to recent political events.⁶ With respect to compliance with human rights norms, the 2008 ISA is significantly improved over the initial version proposed by the interim government after the coup. The original draft in 2007 provided the military, through ISOC, with command over civilian government agencies; authority to restrict freedom of expression, assembly, movement and privacy; and powers to conduct arrests and preventive detentions.⁷ The jurisdiction of the Courts to oversee the exercise or abuse of these powers was unclear, and immunity was effectively ensured for ISOC personnel responsible for human rights violations while acting in accordance with the ISA.⁸

National and international civil society organisations, including the ICJ, expressed grave concerns that the Bill granted excessive, vaguely defined emergency powers to the Army Commander-in-Chief, as Director of ISOC.⁹ In response to these concerns the Bill was revised and subsequently presented to the National Legislative Assembly ("NLA"), which had been appointed by the military junta, in November 2007. The ICJ recognizes and welcomes the significant improvements in the final legislation.

Significant Improvements on 2007 Draft in the 2008 Internal Security Act

- Under Part 1, the Prime Minister rather than the Army Commander-in-Chief is the Director of ISOC.
- Under Part 2, arrest and detention is regulated by the Criminal Procedure Code and be subject to the scrutiny of the Courts of Justice;
- Immunities from criminal and civil liability for crimes committed under the Act were removed; and,
- Powers to ban assemblies or conduct searches and seizures were restricted.

The junta-appointed NLA passed the Bill on 20 December 2007, three days before general elections led to the return to power of a civilian coalition government led by allies of ousted Prime Minister Thaksin. Since fewer than half of the NLA representatives cast a vote on the Act, the ISA was passed in an unconstitutional manner.¹⁰ This constitutional defect can no longer be challenged, however, since the ISA received Royal Assent in February 2008.¹¹

Anti-Thaksin protestors, known as the People's Alliance for Democracy ("PAD" or the "Yellow Shirts") staged protests throughout 2008, culminating in a takeover of Bangkok's two airports. Only after the Constitutional Court dissolved the ruling pro-Thaksin party and two coalition partners for electoral fraud in December 2008 did the PAD protests end. A new coalition government was formed in early 2009, led by the Democrat Party, under Prime Minister Abhisit Vejjajiva.

1.3 USE OF EXTRAORDINARY POWERS UNDER THE ISA

Through early 2009, protests by the pro-Thaksin United Front of Democracy against Dictatorship (the "UDD", known as the "Red Shirts") swelled. The UDD protests turned violent in April 2009 in Bangkok and Pattaya, leading to the cancellation of the ASEAN summit in Pattaya and the evacuation of heads of state, and prompting the Prime Minister to declare a state of emergency in Bangkok. The Red-Shirt faction continues to protest against the current government, with the aim of forcing new elections.

ISOC has been entrusted with exceptional powers to maintain internal security several times since the passage of the ISA. A Cabinet declaration was issued on 9 July 2009, bringing Part 2 of the ISA into force from 10-24 July 2009 in and around Phuket, during the period of the re-scheduled and re-located ASEAN summit.¹² Part 2 of the ISA has also been declared in force three times in the Dusit district of Bangkok, between 29 August - 1 September 2009¹³, between 18-22 September 2009,¹⁴ and again between October 15-25 in Dusit District,¹⁵ to control planned protests by the Pro-Thaksin Red Shirts. Cabinet also declared Part 2 of the ISA in force from 12-27 October 2009 around the resort town of Hua Hin in order to provide security for the fifteenth ASEAN summit, which took place between 21-25 October 2009.¹⁶ Part 2 of the ISA continues to be used prospectively to control UDD protests.¹⁷ Cabinet has also declared Part 2 of the ISA in force in four districts of Songkhla Province from 1 December 2009 – 30 November 2010.¹⁸

This report examines Thailand's ISA, and assesses its compatibility with rule of law principles, which are reflected in the 2007 Constitution of Thailand, and with international human rights law and standards, particularly the International Covenant on Civil and Political Rights ("ICCPR"). In light of past experiences with extraordinary national security legislation in other countries¹⁹ and in the Deep South of Thailand over the last six years, it is clear that vague and overbroad extraordinary legislation has the potential to normalise and entrench limitations on human rights, to undermine fundamental human rights protections and to increase the abuse of power outside the rule of law. The weakness of the rule of law is an important contributing factor to the continuation of unrest in the Deep South, and to the recent political conflicts that have beset the entire country. Strengthening, not undermining, the rule of law must be central to

any governmental strategy to deal with unrest and social divisions in the Deep South and throughout Thailand as a whole.

For these reasons, additional checks and balances on the exercise of Executive discretion, as well as on the sub-delegation and exercise of monitoring, investigative and other powers by ISOC under the ISA are necessary. The ICJ recommends that the language of the Act should be revised to ensure that the limits of all exceptional powers are clearly defined and that international standards for the protection of human rights are incorporated into the legislation.

2. THE ISA: OBJECTIVES, MECHANISMS AND POWERS

2.1 RATIONALE FOR THE ISA

The enactment of the ISA and the strengthening of ISOC have been presented as necessary “modernising” responses to increasingly complex challenges to Thai security, both national and international.²⁰ The Act is said to represent an institutional rationalisation of various overlapping agencies involved in security issues.²¹ Its proponents argue that it provides a more flexible, measured way to prevent and respond to security challenges that do not meet the threshold for a declaration of a state of emergency.²²

The Act was also presented as a less draconian alternative to existing emergency legislation,²³ specifically the Emergency Decree of 2005²⁴ and the Martial Law Order of 1914, both currently used to combat an ethno-nationalist insurgency in Thailand’s Deep South, where the majority of the population are Malay Muslims.²⁵ The application of these special security laws in the southern border provinces, criticised by the ICJ and others, have led to violations of human rights and allowed the broad exercise of exceptional powers by the military, including extrajudicial executions, enforced disappearances, torture and other ill-treatment, arbitrary arrest, and administrative detention with limited or no supervision by the courts.²⁶ The ICJ continues to advocate for the repeal of the special laws in the Deep South. While the ISA does not pose threats to human rights and the rule of law on the same scale as Martial Law or the 2005 Emergency Decree, the ICJ recommends that significant amendments be made to the ISA for it to constitute a human-rights compliant alternative to the special laws.

2.2 The ISA in International Context

The ISA has been justified by comparing it to the USA Patriot Act of 2001 and the Homeland Security Act of 2002, which established the US Department of Homeland Security.²⁷ Both of these United States laws have been heavily criticised by human rights proponents, including the International Commission of Jurists.²⁸ However, neither the PATRIOT Act nor the Department of Homeland Security allow for the introduction of military command and control structures over civilian government agencies.²⁹ The Federal Bureau of Investigation (FBI), the civilian police agency that retains jurisdiction over the investigation and prosecution of internal threats to national security, remains independent of the Department of Homeland Security and the US military. In addition, there is more civilian oversight of the national security activities of US agencies than is provided for in the Thai legislation, through independent Inspectors General and by the US Congress.³⁰ These fundamental differences fatally undermine any comparison between the American PATRIOT Act and Homeland Security Act and the Thai Internal Security Act.

The Eminent Jurists Panel, convened by the International Commission of Jurists to conduct hearings on security laws around the world, heard no persuasive evidence that the tried-and-tested framework of international law was inadequate to deal with current security threats, whether exceptional or not. In different parts of the world terrorism and political violence pose real and substantial threats that must be effectively countered in accordance with international law. Internationally, some governments seem to have decided that the threat of terrorism justifies exceptional responses that are at risk of seriously undermining the rule of law. The legal framework explicitly negotiated to ensure international, national, and personal security is under attack. In relation to security laws adopted around the world, the Eminent Jurists Panel unanimously concluded that no adequate justification was provided for this rollback in protection.³¹

The quest for intelligence has broadened and led to unlawful practices by some States that violate international law, including the use of torture and cruel, inhuman and degrading treatment to extract information from detainees, often held incommunicado and without charge or trial. This intelligence, sometimes faulty, is being used in an increasing array of administrative procedures, in which more often than not the information relied on is not disclosed to the individuals concerned or their legal representatives. Raw intelligence then begins to be substituted for evidence, to the detriment of individuals and the criminal justice system.³²

Principles of fairness and due process, which should be at the heart of any system of criminal justice, are frequently ignored by some countries in light of the supposed exceptional nature of new security threats. In place of tried and tested procedures, extraordinary measures are proposed as the way forward. Some governments are merely using the excuse of counter-terrorism to justify repressive laws and practices to strengthen their power, but others are genuinely struggling to respond effectively to the threats, as they perceive them. The problem is often not a lack of law, but a rush to ill-considered new laws. Weak criminal justice systems need to be strengthened and resourced, not by-passed.³³

Accountability is not an obstacle to countering terrorism and other security threats: it provides the crucial underpinning of security measures if the latter are to secure the necessary public support and legitimacy to be truly effective. Authorities must be prepared to account fully for the use of their powers, and must be prepared to submit themselves to adequate independent scrutiny.

Globally, the discourse on terrorism and security has led, in some instances, to stoking a climate of fear in which minority groups and human rights defenders, in particular, are marginalised. The space for public dialogue should be extended, but is instead being restricted. When governments insist on being trusted, and rely upon this trust to introduce ever-more invasive measures to counter security threats without providing a sober and proportionate assessment of the threat, they instil fear in the public and put the possibility of short term gains above the more enduring long term harm that they cause to values on which free and democratic societies are based.³⁴

2.3 STRUCTURE OF THE ISA

The ISA seeks to provide a codified national security administrative structure, ISOC, directed and staffed primarily by military officers, with potential to command civilian agencies at national, regional and provincial levels in certain specified circumstances. ISOC is responsible for the maintenance of national security through monitoring, preventive planning, and through the exercise, when authorised by the Cabinet, of exceptional powers to suppress actual or potential security threats.³⁵

Part 1 of the ISA sets out the structure of ISOC, which is created as a government agency within the Office of the Prime Minister. This framework is currently in force at all times throughout Thailand, including in the three southern border provinces. The Act also creates an Internal Security Operations Board with consultative powers, which is made up of civilian and military officials.³⁶ The Board also may establish Regional ISOCs.³⁷ The Commander of the relevant Regional Army is the Director of any Regional ISOC, and he may establish Provincial ISOCs, led by the Governor of the province in question, with the consent of the Minister of the Interior and the Director of ISOC.

Part 2 of the ISA comes into force only after the Cabinet makes a declaration. Part 2, which includes special preventative and enforcement powers, is triggered by any event, occurrence or circumstance that affects internal security, but which is not sufficiently serious to meet the threshold for a declaration of a state of emergency under the 2005 Emergency Decree.³⁸ The legislation has been interpreted to allow Part 2 to be invoked pre-emptively, where a future event has the potential to affect internal security, even if the event has not yet occurred and no threat has yet materialised.³⁹

2.4 PROVISIONS OF THE ISA

2.4.1 ISA PART 1 – POWERS REGULARLY AVAILABLE

ISOC, designated a special state agency under the command of the Prime Minister as Director, is assigned the “power and responsibility for the maintenance of internal security”.⁴⁰ The “maintenance of internal security” is defined as:

“...operations to prevent, control, resolve, and restore any situation which is or may be a threat arising from persons or groups of persons creating disorder, destruction or loss of life, limb or property of the people or the State, in order to restore normalcy for the sake of peace and order of the people, or the security of the nation.”⁴¹
(Unofficial translation)

”

The Act makes ISOC the focal point of internal-security policy-making. ISOC has a mandate to monitor, investigate and evaluate situations that may give rise to internal security threats and to advise Cabinet on future actions.⁴² Thus, the section grants ISOC preventative powers; there is no need for an actual threat to internal security to materialise. As a result, any “situation” that could potentially be threatening, including activities by political opposition groups or peaceful dissenters, can be monitored or actively investigated by a body that accords a powerful role to senior Army commanders.

ISOC shall also encourage people to do their duty to uphold “nation, religion, and King” and to “build love and unity among people in the nation”.⁴³ This provision of the ISA transforms adherence to a set of values into an issue of internal security.⁴⁴ Such a broad definition of security interests gives the Executive Branch and the military the power to monitor and investigate virtually any form of political dissent, including dissent that is entirely peaceful.⁴⁵ The concepts of “national security” and “internal security” in Thailand are intertwined and have been interpreted over-broadly in other contexts.

ISOC also has the power to “undertake other operations” as assigned in other legislation, or by the Prime Minister, Cabinet or the National Security Council. There are no limits on the other types of duties that may be assigned.⁴⁶ The Director of ISOC may transfer the responsibilities of government departments or agencies to the Director of a Regional ISOC, a Provincial ISOC or to the director of another centre or head of an agency named by him.⁴⁷ ISOC is currently operating in the following areas:⁴⁸

- The insurgency in the Deep South
- Narcotics prevention and suppression (including running rehabilitation training camps for alleged juvenile drug offenders)
- Illegal immigration
- Human trafficking
- Natural resources and environmental protection

ISOC also runs six centres that coordinate efforts dealing with pressing issues, including narcotics enforcement, illegal immigrant workers, terrorism and trans-national crime, “special security concerns”, the unrest in the Deep South, and Royal development projects.⁴⁹

2.4.2 ISA PART 2 – EXCEPTIONAL POWERS

The enforcement powers of ISOC are laid out in Part 2. These powers are triggered by a Cabinet declaration under section 15. The language in section 15 is mandatory, requiring that Cabinet “shall” pass a resolution to have ISOC take “responsibility for the prevention, suspension, and eradication or mitigation of this occurrence” “any matter” which:

- affects internal security but “which does not yet require the declaration of a state of emergency”;⁵⁰ and,
- has a tendency to persist for a long time; and,
- engages the powers and duties of several government agencies.

The Cabinet resolution declaring Part 2 of the ISA in force must be announced publicly, must relate to a specific event or occurrence, and must define the area of application and the duration for which it will be in force.⁵¹ There is no requirement in the ISA that any threat of disorder or threat of loss to public or private property involve violence, or that a particular threat meet any other threshold of seriousness before the extraordinary powers under Part 2 of the ISA may be invoked.

Part 2 grants broad and vaguely defined powers to ISOC to prevent, suppress, eradicate, overcome or mitigate occurrences that affect internal security.⁵² In effect, once Part 2 is in force, ISOC has preventative powers to halt any activities that have the potential to cause disorder, including property damage or danger to human life or health. In order to carry out these responsibilities, ISOC oversees the activities of all government agencies and officials in the geographic area specified in the Cabinet resolution during the time Part 2 is in force.⁵³

Section 16 gives ISOC the power and responsibility to prepare an operational security implementation plan⁵⁴ for approval by ISOC Committee, and gives ISOC⁵⁵ oversight and direction of any government agency or official needed to implement the plan. When and where Part 2 of the ISA is in force, Cabinet may also give ISOC officials powers normally reserved for civil servants in other government agencies, or transfer wholesale the powers, duties and responsibilities of a government department or agency to ISOC. ISOC may also prevent any state official from entering a designated area if the individual is considered to be a threat to internal security, or “an obstruction to the maintenance of internal security”.⁵⁶ In practice, section 16 would allow ISOC to suspend any civil servant or employee of any government office, state enterprise, public organisation, or local government body, including employees of the National Human Rights Commission and the Department of Special Investigations, if ISOC considers that the individual’s actions impede ISOC from carrying out its responsibilities under the Act.⁵⁷

Part 2 of the Act also gives the Director of ISOC the ability to assign police investigative powers to designated military and other officials.⁵⁸ It also creates a procedure whereby individuals can be sent to “training” camps for up to six months and other restrictions may be placed on their liberty, with the approval of a judge, if these individuals are suspected of having committed a range of regulatory or criminal offences affecting internal security identified by Cabinet regulation.⁵⁹

Special operations centres or agencies can be established to exercise ISOC’s Part 2 powers and to carry out any other duties specified by the Director.⁶⁰ Such centres have been established to implement Part 2 powers under the ISA each time the extraordinary powers have been used to date.⁶¹

Although these special operations centres and agencies are created under Part 2 of the Act, which can only be triggered by a Cabinet Declaration relating to a specific area for a specific time period, the Southern Border Provinces Administration Centre (“SBPAC”) and the Joint Civilian-Police-Military Command in the three southern border provinces have been transformed into Part 2 centres of operations in the absence of any Cabinet Declaration invoking Part 2 of the Act. In practice, both centres appear to operate according to the Cabinet resolutions under which they were created, which empower them to take any action as directed by the Region 4 ISOC.⁶² Since Martial Law is in force throughout the Deep South and the 2005 Emergency is in force in Pattani, Yala and Narathiwat provinces, the Fourth Regional Army has already been afforded broad powers to direct Thailand’s on-the-ground security response to the southern insurgency. Therefore, the discrepancy may have little practical impact. It remains unclear, however, whether this provision could provide a basis to expand the powers of the two centres in the event that the 2005 Emergency Decree or Martial Law cease to apply in the Deep South.

Regulations aimed at restricting or monitoring movement, assembly and the use of electronic devices may be adopted by the Director of ISOC, with Cabinet approval,⁶³ and violations of these regulations are punishable by a fine or imprisonment for up to one year.⁶⁴ Regulations may require relevant government officials to implement (or withhold the implementation of) “any action”; prohibit entry or exit from designated areas, localities or buildings; impose curfews; and, regulate the use of communication routes, vehicles, or electronic equipment considered a possible security risk.⁶⁵

Finally, rights to compensation and judicial remedies for people affected by actions taken under the Act are limited.⁶⁶ The Administrative Courts, which would normally have the power to review the legality of decisions and regulations made by government agencies and to cancel the general application of those found to be unlawful,⁶⁷ have no jurisdiction in relation to actions taken by ISOC under Part 2 of the ISA. The Courts of Justice, however, shall hear civil or criminal cases regarding these actions and are empowered to make binding determinations of legality in individual cases.⁶⁸

2.4.3 AUTHORITY AND CONTROL

The ISA appears to establish civilian control over ISOC by subordinating the Army Commander-in-Chief to the Prime Minister. The Prime Minister is the Director of ISOC and commands all government officials, officers and employees within ISOC. The Army Commander-in-Chief is the Deputy Director and the Army Chief of Staff is ISOC Secretary.

However, the Prime Minister may delegate his or her powers as Director to the Army Commander-in-Chief in writing,⁶⁹ and may also assign his or her powers and duties under the Act, orally or in writing, to Regional Army Commanders in their role as Directors of Regional ISOCs, to Provincial Governors in their role as Directors of Provincial ISOCs, or to the Director of any centre or agency established under Part 2 of the ISA.⁷⁰ There is no requirement in the ISA that these delegations of power be made public. This delegation of powers could include the granting of wide discretion over the staffing and administration to the heads of these subordinate bodies,⁷¹ including the power to assign civil servants to work under military command.⁷²

An Internal Security Operations Board is created under the Act, chaired by the Prime Minister. The Board also includes the Ministers of Defence, Interior, Justice, Information and Communications Technology; the Permanent Secretaries for Defence, Foreign Affairs, and Interior; the Attorney General, Director-General of the National Security Council, Director of the National Intelligence Agency, Director of the Budget Bureau, Secretaries of the Civil Service Commission and Public Sector Development Commission; the Comptroller General; the Director of the Department of Special Investigations; and, the Commissioner-General of the Royal Thai Police. The military High Command is also represented on the Board by the Supreme Commander, and the Commanders-in-Chief of the Royal Thai Army, Navy and Air Force. This Board has some input into ISOC's operations, but the extent to which ISOC may be accountable to it is unclear.⁷³

3. INTERNATIONAL LEGAL FRAMEWORK

3.1 THAILAND'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Thailand has a dualist constitutional system, which means that international treaty obligations must be brought into domestic law through national legislation. However, the Thai Constitution protects a wide range of internationally recognised human rights, and must be interpreted in conformity with the international obligations that Thailand has voluntarily undertaken in human rights treaties. Thailand is a party to the International Covenant on Civil and Political Rights and other core UN human rights treaties,⁷⁴ which means that it owes a legal duty to observe the human rights guarantees provided for under those treaties. In this respect, Thailand remains responsible under international law, and must take necessary measures at the domestic level to ensure that its human rights obligations are implemented in domestic law. A state that is party to an international treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation.⁷⁵ Thailand's international treaty obligations can be understood by reference to authoritative non-treaty declarative international legal standards and commentaries.

International legal instruments of particular relevance to this report are:

- International Covenant on Civil and Political Rights
- Convention Against Torture
- Convention on Rights of the Child
- Universal Declaration of Human Rights⁷⁶
- Declaration on the Protection of all Persons from Enforced Disappearance⁷⁷
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷⁸
- UN Standard Minimum Rules for the Treatment of Prisoners⁷⁹
- UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment⁸⁰
- UN Code of Conduct for Law Enforcement Officials⁸¹
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁸²

- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions⁸³
- UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸⁴
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁸⁵
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁸⁶
- Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity⁸⁷
- UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)⁸⁸
- UN Guidelines for the Regulation of Computerized Personal Data Files⁸⁹
- UN Guidelines on the Role of Prosecutors⁹⁰
- Draft Principles Governing the Administration of Justice through Military Tribunals⁹¹

These declarations, principles and guidelines, while not treaties, have strong persuasive force, having been negotiated by governments and adopted by international bodies including, in some instances by agreement of all states in the UN General Assembly.⁹² Moreover, many of their provisions reaffirm and elaborate legal principles already established by legally binding treaties.

International customary law protecting human rights⁹³ also binds Thailand. Certain human rights norms are peremptory (*jus cogens*),⁹⁴ including freedom from torture⁹⁵ and extrajudicial or summary execution.⁹⁶ Peremptory norms are absolute and must be applied unconditionally.⁹⁷

The obligation to uphold and protect the rights protected under customary international law and under the human rights treaties to which Thailand is a party, including the ICCPR, is incumbent on all branches of the Thai State (legislative, executive and judicial). Thailand is responsible for any actions of public or government authorities that breach international law,⁹⁸ regardless of whether international obligations have been incorporated into domestic law. Moreover, domestic legislation cannot unilaterally modify Thailand's international human rights obligations and internal political constraints do not excuse non-compliance.⁹⁹

3.2 STATES OF EMERGENCY UNDER INTERNATIONAL LAW

Thailand has not declared a state of emergency for purposes of derogation from the ICCPR and therefore remains bound to observe the ICCPR provisions in their full scope. Nonetheless, in setting the overall legal framework, it is useful to review briefly a State's obligations pursuant to a declared and notified state of emergency.

States have an obligation under international law to protect the human rights of people within their jurisdiction, including their right to security.¹⁰⁰ International law allows governments to take exceptional measures to respond to an emergency that constitutes a "threat to the life of the nation". Article 4 of the ICCPR sets out basic guidelines applicable to rights protected under that treaty. The UN Human Rights Committee, which is mandated under the ICCPR to monitor states' compliance with their obligations under that treaty,¹⁰¹ has stressed that not every violent act or disturbance constitutes a "threat to the life of the nation" under Article 4. Local and isolated law and order disturbances or the commission of grave crimes alone are insufficient.¹⁰² The duration, geographical coverage and material scope of a declared state of emergency must be proportional to the actual threat.¹⁰³ If a State seeks to derogate from protected rights, it must publicly proclaim the state of emergency and officially notify the UN Secretary General of its existence, as well as the rights derogated from and reasons for those derogations.¹⁰⁴

3.2.1 NON-DEROGABLE RIGHTS

Even during a properly declared state of emergency, including during situations of internal or international armed conflict, the ICCPR allows for no derogation in respect of certain rights. Other rights, which may be subject to limited derogation, contain core elements from which no derogations are permitted.¹⁰⁵

Non-Derogable Right under Article 4 of the ICCPR

- The right to life (Art. 6 ICCPR);
- The prohibition on torture or cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR);
- The prohibition on slavery, the slave trade and servitude (Article 8 ICCPR, paragraphs 1–2);
- The prohibition on imprisonment for failure to fulfil a contractual obligation (Article 11 ICCPR);
- The principle of legality in the field of criminal law (Article 15 ICCPR);
- The right to recognition as a person before the law (Art. 16 ICCPR);
- The right to freedom of thought, conscience and religion (Art. 18 ICCPR).

The principle of legality in criminal law refers to the requirement that both criminal liability and punishment are limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty.¹⁰⁶ Thus, even during properly declared emergencies, states may not impose criminal liability on individuals for vague or ill-defined offences.

Certain procedural safeguards and judicial guarantees, including the right to have the legality of one's detention reviewed by a Court,¹⁰⁷ are also necessary to protect non-derogable rights (see box below). As a result, these basic safeguards are also non-derogable. States are also obliged to provide a right to an effective remedy for any violation of provisions of the ICCPR, even during properly declared emergencies.¹⁰⁸

Non-derogable fair trial guarantees¹⁰⁹

- Only a court of law may try and convict a person for a criminal offence
- The presumption of innocence must be respected
- The right to have reviewed by a court the lawfulness of one's detention (*habeas corpus*)

A state also cannot use a state of emergency to limit or avoid other obligations under international law, including international humanitarian law or peremptory international norms that must be applied at all times.¹¹⁰ For example, torture, hostage taking, and abduction and unacknowledged detentions (also known as enforced disappearances) are also absolutely prohibited.¹¹¹

3.2.2 PERMISSIBLE DEROGATION OF RIGHTS DURING PROPERLY DECLARED EMERGENCIES AND OTHER LIMITATIONS

During properly declared emergencies certain rights may be subjected to temporary derogation, but only to the extent strictly necessary to meet a specific threat to the life of the nation. There is a heavy burden on the state to justify each and every derogating measure. Derogations must be proportionate to the specific threat: that is, they must be “strictly required by the exigencies of the situation”.¹¹² This requirement applies to the duration, geographical coverage and material scope of any derogation from protected rights, and to any specific measure taken under a given derogation.¹¹³ The State must show, based on an objective consideration of the actual situation, that no lesser measures are adequate to meet the specific threat.¹¹⁴ A State is prohibited from taking emergency measures that discriminate on the grounds of race, colour, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status.¹¹⁵ During an emergency, a State must continue to protect against human rights abuses. In particular, it must ensure that people have a right to challenge the legality of emergency measures taken.¹¹⁶

Outside of properly declared states of emergency, certain rights can be limited or restricted in order to ensure the rights and freedoms of persons within the jurisdiction of a State.¹¹⁷ A limitation or restriction narrows the scope of application of a right, and is distinct from a derogation during a period of emergency.¹¹⁸

Certain rights protected by the ICCPR contain limitation clauses within the text of the article itself.¹¹⁹ These permissible limitations generally may be made for the protection of national security, public order, public health or morals, and the rights and freedoms of others. The remaining ICCPR rights, including both derogable and non-derogable rights, are expressed in absolute terms and do not permit of any limitations or restrictions.¹²⁰

As with derogations in states of emergency, States must ensure that any restrictive measures are strictly proportionate to the legitimate aims pursued.¹²¹ The restrictions and limitations must be provided by law, must meet one of the aims stated in the relevant ICCPR article, and must be necessary to achieve a legitimate purpose.¹²² Limitations and restrictions may not be implied or invoked in a way that would impair the essence of a protected right,¹²³ and must be consistent with other international obligations, including other rights protected in the ICCPR, peremptory norms of international law, and the right to an effective remedy. A mechanism to challenge limitations and restrictions, and to provide an effective remedy for any abusive application, must be provided.¹²⁴

3.3 RESTRICTIONS OR DEROGATIONS OF RIGHTS AND LIBERTIES UNDER THE ISA

Rights guaranteed under the Thai Constitution can only be restricted by a specific law of general application, and only if the restrictions are necessary and do not affect the substance of those rights.¹²⁵ Therefore, any Thai legislation enacting limitations on constitutional rights must specify the provisions of the Constitution that are limited by the legislation. The ISA's Preamble refers to restrictions on rights and liberties guaranteed in the following sections of the Constitution of Thailand B.E 2550 (2007):

- Section 32: right to life and to liberty; prohibition of torture, brutal acts or punishment by cruel or inhumane means; prohibition of arrest, detention without court order or as provided by law; prohibition of searches or acts affecting life and liberty unless provided by law; right to seek judicial remedy for violations of right to life, liberty and prohibition of torture and other ill-treatment;
- Section 33: security of dwelling; prohibition on unlawful entry into dwelling;
- Section 34: freedom of movement and residence;
- Section 36: freedom of communication by lawful means;
- Section 41: right to property; and,
- Section 43: freedom of occupation and enterprise.¹²⁶

By failing to distinguish between rights that are subject to permissible restrictions in non-emergency situations (e.g. freedom of movement), those that can be derogated from during genuine emergencies (e.g. right to privacy of home and correspondence), and those that are non-derogable (e.g. freedom from torture), the Preamble of the ISA threatens to weaken protection for individual rights.

Lack of clarity as to what rights can or cannot be limited or derogated from is unhelpful to ISOC in ensuring that its operations are lawful. On the other hand, any ambiguity in the ISA will not be an acceptable justification for the unlawful violation of rights. It is therefore crucial for both the protection of rights and the protection of military officials that the Preamble is clarified.

The ICJ is concerned that the wide range of responsibilities assigned to the military-dominated ISOC and the vagueness and over-breadth of the exceptional powers under Part 2 of the Act will limit or restrict human rights in a manner that is disproportionate or otherwise in violation of international law and standards. The provisions of the Thai Constitution that allow for the limitation of rights must be

interpreted in conformity with Thailand's international obligations in this respect.

To date, Cabinet has not carefully tailored the powers of ISOC under Part 2 of the ISA to meet these requirements. For example, the prohibition on forced labour was removed from the list of rights that could be restricted under the Preamble before the 2007 draft Bill was passed into law. However, several of the Cabinet Declarations enforcing Part 2 of the ISA have purported to restrict the prohibition on forced labour in Article 38 of the Constitution.¹²⁷ The right to be free from forced labour, protected in Article 8 of the ICCPR, is an absolute right not subject to derogation. The ICJ is concerned that the repeated error in the drafting indicates a degree of carelessness by Cabinet in relation to the impact of Part 2 of the ISA on protected rights, and a failure to ensure that any regulations, as drafted or applied, do not go beyond what is strictly necessary in the situation.

3.4 THE ISA: AN EMERGENCY LAW BY ANOTHER NAME

Thailand has a duty to protect and to ensure the human rights of all persons within its jurisdiction. However, while the State has a duty to protect the rights and freedoms of persons in its territory, the measures it takes must not themselves undermine respect for human rights. Whether justified in terms of national security, emergency or anti-terrorism, such measures must operate within a framework of the rule of law and in compliance with international human rights and humanitarian law.

The ISA is conceived as providing the legal basis and administrative structure for a response to a gradation of security threats that do not amount to a national emergency,¹²⁸ and therefore side-steps the strict threshold requirements provided by international law for a legitimate and properly declared emergency. The Act establishes a nationwide security apparatus tasked with monitoring and taking preventive measures to counter threats to "internal security" at all times, and provides an exceptional range of enforcement powers to control, alleviate or resolve a situation where a specific threat to internal security has materialised or may occur in future. The exceptional powers under Part 2 of the Act also give rise to the apprehension that the ISA is in fact an emergency law – only under a different guise.

The ICJ is concerned that the ISA's vague definitions, overly broad objectives and grant of sweeping powers do not meet the strict tests required under international law before human rights may be subject to derogations in properly declared states of emergency.¹²⁹ As discussed above, limitations or restrictions on internationally protected rights outside of a state of emergency must be provided by law, must meet one of the aims stated in the relevant ICCPR article and must be necessary to achieve a legitimate purpose.¹³⁰ Other internationally-required safeguards, such as the availability of an effective remedy for violations of rights, must always be respected. The ISA has the potential to disproportionately restrict human rights or lead to violations of international standards.

RECOMMENDATIONS:

Thailand does not appear to be invoking a state of emergency under international law in relation to the use of powers under either Part 1 or Part 2 of the ISA. Should Thailand consider that a state of emergency, which threatens the life of the nation, justifies derogations from protected human rights, it must:

- publicly declare the state of emergency, the geographical scope and duration of which must be strictly proportional to the actual threat;
- notify officially the other States Parties to the ICCPR, through the UN Secretary General, of the existence of the state of emergency, as well as the rights derogated from and reasons for those derogations;
- strictly fulfil its obligation to observe rights not subject to derogation in their full scope, and to observe the essence of those rights subject to derogation;
- ensure that any derogating measure is strictly necessary and proportional to the specific threat to the life of the nation;
- ensure that emergency measures do not discriminate on the grounds of race, colour, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status;
- ensure the right to challenge the legality of emergency measures taken is respected.

The ICJ recommends that the Preamble make clear that non-derogable rights, such as the prohibition against torture and other cruel, inhuman and degrading treatment or punishment, and minimum fair trial guarantees, cannot be restricted or derogated from under any circumstances, and, therefore cannot be restricted or derogated from by powers under the ISA.

The ICJ recommends that the Preamble to the ISA be amended to specify precisely which rights protected under the Constitution are subject to restrictions or limitations, and the specific provisions and powers under the Act intended to limit each particular right.

The ICJ recommends that the restriction on constitutional rights in the Preamble of the ISA be amended to specify explicitly that all restrictions and limitations on rights, and their application, must be clearly defined and must not be arbitrary. Such measures must be strictly necessary in the situation to protect national security, public order, and the rights and freedoms of others. They also must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they

must be the least intrusive instrument amongst those which might achieve the necessary objective; and they must be proportionate to the interest to be protected.

The ICJ recommends that Cabinet ensure that only those rights listed in the Preamble of the ISA are restricted in the regulations issued under Part 2 of the ISA, or in the application of powers under section 16(1).

4. THE DEFINITION OF INTERNAL SECURITY AND THE SCOPE OF APPLICATION OF THE ISA

4.1 VAGUE DEFINITION OF “INTERNAL SECURITY”

The ISA does not define the term “internal security” or provide any parameters for determining what may constitute a “threat”. Nor does the Act provide specific powers that may be used to maintain internal security. Instead, the ISA contains an overbroad and vague definition of the legislation’s objective (the “maintenance of internal security”):

“ In this Act ‘the maintenance of internal security’ means operations to prevent, control, resolve, and restore any situation which is or may be a threat arising from persons or groups of persons creating disorder, destruction, or loss of life, limb or property of the people or the state, in order to restore normalcy for the sake of the peace and order of the people, or the security of the nation. (Unofficial translation)

”

The interpretive note appended to the end of the Act states that the Act’s purpose is to “guard against threats which may arise in times of normalcy, and to lay down measures and mechanisms for use at times when a security threat has arisen in any area in order to regulate the use of power for the specific purpose according to the level of seriousness of the situation, so that the situation may be resolved efficiency and with unity”.¹³¹

The breadth of the definition of maintenance of internal security contrasts with the more specifically defined offences against internal security found in the Criminal Code, which generally require some connection to violence or illegal activity.¹³² Similarly, the ordinary crime of terrorism under Thai law includes only acts that cause “serious” damage to property or “important economic injury”.¹³³

The definition of “maintenance of internal security”, underpinned by the broad and vague purposes for which the ISA was enacted, effectively gives ISOC *carte blanche* to determine both the applicable standards and the facts in relation to the maintenance of

internal security. ISOC, therefore, appears to have effective power both to create law and to determine when violations have occurred. The following key elements would have to be defined with greater precision in the Act to meet the requirements of legality:

- **“Situation”** – The Act would need to specify which types of acts would amount to a “situation.” It should indicate whether and to what extent violence or the threat of violence is required to constitute a “situation.”
- **“Threat”** – The Act would need to identify to whom or what the threat pertains.
- **“Disorder”** – The Act would need to establish a threshold of “disorder” required before a Cabinet declaration could be made enforcing Part 2. A threshold under which “disorder” includes peaceful advocacy for political, economic or social change would be problematic from a human rights perspective. The present definition could be used or misused to encompass such otherwise lawful activities.
- **“Destruction”** – The Act would need to identify the objects destruction and the threshold that must be reached.
- **“Loss of limb”** – In case of threat of injury, the Act would have to identify the degree of proximity of the threat.
- **“Loss of property of the people or the state”** – The Act would have to identify the threshold of property damage needed to constitute a threat to internal security. This threshold would need to exclude petty amounts.
- **“Normalcy”** – The Act would have to identify what is meant by “normalcy” and, in the case of uncertainty, who would make this determination.
- **Threats arising in any area** – The Act would have to indicate whether the term denotes a geographical area, or a subject area, or both.

It is inappropriate for an enforcement agency that is tasked with determining when violations of the law have occurred also to have the power to establish the meaning of the definitions above, and thus to prescribe the scope of its own authority. In effect, the vagueness of the definition of internal security in the ISA cedes lawmaking authority to ISOC and its Director. This dual competence is made even more problematic because final decision-making authority lies primarily in the hands of the military and the executive branch of government.

4.2 OVERBROAD SCOPE OF APPLICATION

4.2.1 PART 1

Since the ISA fails to define clearly the central concept of “internal security”, or the acts or events that constitute a “threat to internal security”, it is difficult to determine precisely what parameters or threshold a set of factual circumstances must meet before ISOC’s powers in Part 1 of the Act are triggered. Thus, ISOC’s powers in relation to the maintenance of internal security under Part 1 of the ISA¹³⁴ could extend to cover situations where there is merely a possibility of a threat to public safety or, for example, where incidents of violence, criminal activity or public disorder threaten to cause damage to property in any degree.

4.2.2 PART 2

Under international law, only a very limited range of acts intended to destroy or damages lives, bodies or property would amount to a threat to the life of the nation justifying the type of emergency-style powers in the Act. However, the notion of a threat to internal security under the ISA gives wide discretion to Cabinet in invoking the exceptional powers under Part 2 of the Act in situations that do not constitute a threat to the nation within the meaning of Article 4 of the ICCPR. The exceptional powers can be invoked “[i]n the event of an occurrence which affects internal security but which does not yet require the declaration of a state of emergency”.¹³⁵ Thus, not only does the ISA allow extraordinary emergency powers to be used in situations that do not meet the required threshold under international law; in addition, the language of section 15 fails even to set an objective threshold of non-emergency disorder that justifies the use of Part 2 powers (other than to say that the disorder must persist for a long period of time and require coordinated efforts from different government agencies to be countered). The ISA, then, provides Cabinet with almost entirely discretionary recourse to a somewhat more restricted set of powers than would be available under the 2005 Emergency Decree.¹³⁶

In practice, the ISA has been invoked by Cabinet to ensure order during large protests in Bangkok by the Red-Shirts, following violent protests in April 2009. It has also been invoked during two ASEAN summits, in July and October, in Phuket and near Hua Hin, respectively, following a violent disruption of the April 2009 ASEAN summit in Pattaya, near Bangkok, which forced the summit’s cancellation. The official reasons for invoking Part 2 of the ISA, however, go beyond a real risk of violence. For example, Part 2 of the ISA was invoked in and around the resort area of Hua Hin from October 12-27, 2009 partly on the basis that authorities suspected that protestors would again attempt to disrupt the summit, but also on the basis

that the previous violence had damaged Thailand's international reputation and that potential protests in Hua Hin could harm Thailand's tourism industry and economy.¹³⁷ No official justification was provided for extending Part 2 of the ISA for 11 days prior to the beginning of the summit. Cabinet's broad interpretation of the types of threats that constitute an internal security risk demonstrate clearly the need for a more precise definition in the Act of the following elements:

- "threat", including the types of interests that may be threatened and the scope of a "threat";
- "internal security";
- "destruction";
- "damage to property";
- "disorder"; and
- "normalcy"

A coordinated security effort involving clearly defined, strictly necessary, and proportionate limits on certain rights, such as freedom of assembly, may be necessary to protect visiting heads of state during an international summit. However, the least restrictive measures possible must be used toward this end. The blanket ban on all peaceful protests in Phuket,¹³⁸ for example, was considerably more restrictive than necessary under the circumstances and, therefore, in breach of Thailand's obligations under Article 21 of the ICCPR. The protection Thailand's reputation and its tourist industry, cited by Cabinet as factors contributing to a threat to internal security in the Announcements enforcing Part 2 of the ISA in advance of ASEAN summits,¹³⁹ cannot justify restrictions on human rights. Such restrictions are permitted under international law only to the extent strictly necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. The use of the exceptional powers under Part 2 of the ISA to restrict human rights for illegitimate purposes beyond what is strictly required by the exigencies of the situation and, therefore, in violation of Thailand's international legal obligations, demonstrates the necessity for strong, timely and independent judicial review of the legality of Cabinet declarations enforcing Part 2 of the ISA.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to include a clear definition of the concepts of “internal security” and “threats to internal security”. The ICJ also recommends that a clear minimum threshold of property damage, the proximity of the threat of injury, and disruption of public order should be required before a situation may constitute a threat to internal security.

The ICJ recommends the ISA be amended to require explicitly that Cabinet provide a report to the House of Representatives and the Senate justifying the basis on which any prospective application of the ISA was made. Both Houses should have the opportunity to debate the report and to make recommendations to Cabinet regarding the past and future implementation of Part 2 of the ISA.

The ICJ recommends that the ISA be amended to provide either the Administrative Courts or the Courts of Justice with explicit jurisdiction to review the legality of Cabinet declarations enforcing Part 2 of the ISA.

5. RIGHTS AT RISK

5.1 THE PRINCIPLE OF LEGALITY

The principle of legality requires that criminal liability not be applied unless the conduct in question was legally defined as criminal at the time it was committed.¹⁴⁰ Laws that create or govern the application of criminal liability must be precise, unambiguous and unequivocal¹⁴¹ to allow individuals to know what acts can lead to criminal responsibility. Ambiguity in the definition of criminal offences creates opportunities for the abuse of power.¹⁴² This obligation must be respected at all times, including in the context of properly declared states of emergency.¹⁴³ These standards apply to the ISA, which sets out a procedure to place significant restrictions on individual liberty¹⁴⁴ and penalties of up to one-year imprisonment.¹⁴⁵ The Human Rights Committee has stressed that the deprivation of liberty as a means of punishing the legitimate exercise of a protected right is incompatible with the ICCPR.¹⁴⁶

In order to prevent, suppress, suspend, inhibit and solve or mitigate a security situation, regulations may be issued under section 18:

- 18(1) to have relevant government officials implement any action, or withhold the implementation of any action.

Echoing some of the powers of prohibition found in the Martial Law Order¹⁴⁷ and the 2005 Emergency Decree,¹⁴⁸ regulations may also be issued under:

- 18(2) to prohibit entry or exit to a locality, building or designated area in an operation period;
- 18(3) to prohibit exit from dwelling places within a designated time;
- 18(4) to prohibit carrying of weapons outside dwelling places;
- 18(5) to prohibit or restrict the use of communication routes or vehicles;
- 18(6) ordering persons to perform or not perform any action with tools or electronic equipment to guard against danger to life, body or property.

Breaches of regulations under section 18 are punishable by up to one-year imprisonment or a fine of 20,000 Thai Baht (approximately US\$600) or both.¹⁴⁹

Section 18 also provides that regulations “may” impose rules, prescribe time frames or specify conditions. The lack of specific criteria for the provision of rules, times and conditions accompanying the regulations, and the fact that regulations can equally be issued without time limits or other conditions, further enhances the scope of discretion that may be exercised by ISOC, whether at national, regional or local level. Under international law, on the other hand, restrictions on rights are only permitted for very specific purposes, such as those enumerated in the ICCPR. They must be limited in scope and duration, and must be strictly necessary and proportionate in the situation.

Where Part 2 of the ISA has been applied to date, Centre for Peace and Order (“CAPO”) Announcements, which set out specific restrictions pursuant to the section 18 regulations, have not been published in the Government Gazette until weeks after the use of Part 2 powers has lapsed.¹⁵⁰ In relation to the first use of Part 2 of the ISA in Phuket, the CAPO Announcements setting out specific restrictions have not been published in the Government Gazette to date.¹⁵¹ Without proper notice, individual members of the public will not be aware that the actions they undertake, including some in the exercise of protected rights, will violate ISA regulations. The failure to set out in advance, and with sufficient precision, the specific acts that will lead to criminal responsibility violates the prohibition on retroactivity in criminal law.¹⁵²

In practice, the regulations issued each time Part 2 of the ISA has been enforced have been nearly identical, and have repeated the language of section 18 almost verbatim.¹⁵³ The vague and general nature of the regulations inappropriately leaves the promulgation of any specific rules imposing criminal liability or restrictions on human rights in the hands of ISOC or special operations centres created under the Act. The authority to create legal rules criminalizing individual conduct is properly held by elected and

accountable representatives. The delegation of this authority to named and unnamed ISOC officials threatens to undermine fundamentally the rule of law and the inherent function of the legislature in a democratic society.

As discussed above, international law requires that limitations or restrictions on rights must be clearly provided by law and must be proportional to a legitimate objective, both in law and in application.¹⁵⁴ To date, the regulations under section 18 have not complied with international law in this respect. Although section 18 limits the application of the regulations by providing that any conditions “shall not impose disproportionate difficulties for the people”, in practice, the determination of what constitutes a disproportionate difficulty has been left to the discretion of the Director of ISOC, the Director of the special operations centre or their designates, thus increasing the risk of arbitrary or discriminatory application.¹⁵⁵ ISOC and individual officials should not have discretion to determine whether actions taken under Part 2 impose disproportionate difficulties, and the legality of regulations under section 18 should be subject to fulsome judicial review.

RECOMMENDATIONS:

The ICJ recommends that the provisions of the ISA be amended to require regulations, announcements, rules and other prescriptions to be set out in precise, unequivocal and unambiguous terms, in accordance with the principle of legality. The official version of all Cabinet announcements, regulations, special operations centre announcements, and all delegations of authority should be published in the Government Gazette prior to the entry into force of Part 2 of the ISA.

The ICJ recommends that section 18 be repealed or amended to make clear that, within designated regulatory areas, restrictions to rights must be in accordance with permissible limitations set out in the Thai Constitution and the ICCPR. Limitations on rights may only be enacted for the purpose of protecting those legitimate interests specifically listed in the ICCPR in relation to a particular right. These interests generally can include the protection of national security, public safety, order, health or morals, and the rights and freedoms of others. Limitations must be of a limited time and scope; must be strictly necessary to deal with the exigencies of the situation; and, they must be proportionate.

The ICJ recommends that an exception be incorporated into sections 18, 21 and 23 of the ISA, providing that any peaceful activity conducted in the exercise of an individual's rights under the ICCPR or the Universal Declaration on Human Rights will not be considered as a criminal offence. This exception should also be reflected in any announcements, declarations or regulations issued under the Act.

The ICJ recommends that the provisions of the ISA be repealed or amended to provide specified conditions and objective criteria for the issuance of ISA regulations, clearly

establishing the scope of permissible restrictions on rights in accordance with international law and standards.

The ICJ recommends that the promulgation of ISA Part 2 regulations should be subject to a consultative process. Wide-ranging public consultations should be held with all stake-holders. The public consultations should produce guidelines that would set out parameters for regulations issued under section 18 of the ISA.

5.2 FREEDOM OF MOVEMENT, ASSEMBLY AND ASSOCIATION

The right to freedom of movement, protected under Article 12 of the ICCPR, is a fundamental freedom, restriction of which affects the enjoyment of other civil and political rights, as well as economic, social and cultural rights, such as access to education, health services, housing and livelihoods. Freedom of association¹⁵⁶ and peaceful assembly,¹⁵⁷ which are essential to a person's effective participation in civil and political society, are also protected by the Covenant.

Under the ICCPR, the rights to freedom of movement, freedom of association and peaceful assembly can be restricted only in exceptional circumstances, if provided by law. The law itself must establish the conditions under which rights may be limited.¹⁵⁸ Restrictions must be necessary and proportionate in order to ensure the protection of national security, public order, public health or morals, and the rights and freedoms of others, and must be consistent with the other rights contained in the ICCPR.¹⁵⁹ International law imposes a heavy burden on States to justify limitations on freedom of movement, and the longer a restriction is in place the heavier the burden on the government to justify it. A prolonged or indefinite curfew could never be justified. As the Human Rights Committee has affirmed, laws authorising restrictions on freedom of movement should use "precise criteria and may not confer unfettered discretion on those charged with their execution".¹⁶⁰ There always should be effective ways to challenge decisions imposing such restrictions before independent bodies.

Under Part 2 of the ISA, regulations may be declared by Cabinet that allow ISOC to prohibit exit from dwelling places within a designated time,¹⁶¹ and to prohibit unauthorised entry or exit from a locality, building or designated area during its operating hours¹⁶². The powers are broad enough to allow for the imposition of curfews and could be used to prevent individuals from going to certain areas; coming within a certain distance of temples, government offices or schools; or, from leaving a specific village, town or city, without any requirement that these restrictions be the narrowest measures possible in both geographic and temporal terms. For example, the legislation does not set out any basis governing the discretion of ISOC officials to impose these restrictions on liberty, increasing the risk of arbitrary or discriminatory application.¹⁶³ The application of such measures to a specific individual could be contested in the Courts of Justice on the basis that it causes disproportionate difficulties, but the general application of the measures could not be cancelled by the judge (see discussion below on the right to a remedy in section 5.6).

Freedom of movement under the ISA is closely connected to freedom of peaceful assembly and freedom of association. In restricting freedom of assembly and association, States must draw a clear distinction between legitimate, peaceful assemblies and organisations, and those that could threaten national security, public order, public health or morals, or the rights or freedoms of others.

The ban on all peaceful protests in the entire province of Phuket during the July 2009 ASEAN Summit, presumably accomplished either under free-standing powers pursuant to section 16(1) of the ISA or through limiting the ability of individuals to enter any location under section 18 regulations, is an example of a disproportionate restriction on freedom of association.¹⁶⁴

“ Phuket must have no protests whatsoever. We will designate no areas for demonstrations. No road blockade, no submission of a protest letter, and not even a peaceful gathering is allowed. ”

– **Defence Minister General Prawit Wongsuwan (Ret.)**,
quoted in *The Nation* and the *Phuket Gazette*, 10 July 2009.¹⁶⁵

When Part 2 of the ISA was invoked in the Dusit District of Bangkok in August, September and October 2009 and around the resort town of Hua Hin in October 2009, Centres for the Administration of Peace and Order (“CAPO”) were given responsibility for security.¹⁶⁶ Deputy Prime Minister Suthep Thaugsuban, as Director of the CAPOs in Dusit District, Bangkok, and Defence Minister Gen. Prawit Wongsuwan (Ret.), as Director of the CAPO in and around Hua Hin, declared restrictions on entry or exit from specified areas and prohibited the use of specified roadways.¹⁶⁷ Under international human rights law, restrictions on access to certain locations or prohibitions preventing protestors from blocking major transport routes, depending on the existing circumstances, may be considered a necessary and proportionate means to maintain public security. However, the CAPO Announcements provide that the Director of ISOC, the Director of the special operations centre “(the CAPO)” and their designates who are commissioned officers or their equivalent, may prohibit entry into either the Dusit District of Bangkok or, in the case of the CAPO Announcement relating to the ASEAN summit in Hua Hin, entry into “areas with occurrences affecting the Kingdom’s internal security”¹⁶⁸ within the Districts where Part 2 was in force. This power may be exercised by authorised officials “as they consider appropriate”, to exclude “persons or groups of persons whose behaviour may cause unrest, destroy or damage life, body or public or private property, for example, sedition, agitation, or the creation of situations that cause violence or harm public peace and state security”. No criteria or limits are set out in the Announcements, and nowhere is the identity specified of the other designated commissioned officers or their equivalents having powers of prohibition. The Announcement gives ISOC officials discretion to determine which individuals may be prevented from entering an area and exercising their right to freedom of association, increasing the potential for the placement of arbitrary or disproportionate restrictions on protected rights.¹⁶⁹

RECOMMENDATIONS:

The ICJ recommends that the provisions of the ISA be repealed or amended to define clearly the objective grounds for the exercise of the power to impose curfews and other restrictions on freedom of movement and association, and to ensure that measures taken to apply or enforce these restrictions are in full conformity with the requirements of legality, necessity and proportionality as set out in Articles 12 and 21 of the ICCPR. Limitations on rights may only be enacted to protect those interests specifically listed in the ICCPR. These interests generally may include the protection of national security, public safety, order, health or morals, and the rights and freedoms of others. Limitations must be of a limited time and scope; must be strictly necessary to deal with the exigencies of the situation; they must be appropriate to achieve their protective function, be the least intrusive instrument amongst those which might achieve their protective function, and be proportionate to the interest protected.

The ICJ recommends that the promulgation of ISA Part 2 regulations affecting freedom of movement and association should be subject to a consultative process. Wide-ranging public consultations should be held with all stake-holders. The public consultations should produce guidelines that would set out parameters for regulations issued under section 18 of the ISA.

5.3 FREEDOM OF OPINION, EXPRESSION AND ACCESS TO INFORMATION

Freedom of expression rights are protected specifically in Article 45 of the 2007 Constitution and more generally, in relation to media freedom, in Articles 46-48 of the Constitution.¹⁷⁰ The drafting minutes of Article 45 indicate that it was intended to maintain protections for freedom of expression in the 1997 Constitution and to expand on the protections for freedom of expression by the mass media. While the ISA's Preamble refers to restrictions on the right to "liberty of communication by lawful means" (Thai Constitution Article 36), which primarily protects privacy rights (see section 5.4, below), the Preamble does not refer to restrictions on freedom of opinion and expression.¹⁷¹ Under Thai law, therefore, the application of the ISA should not limit right to freedom of expression.

Article 19(2) of the ICCPR provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Under international law,

freedom of expression may not be limited, except to protect national security, public order, public health or morals; or to protect the rights and reputations of others, provided these limitations do not jeopardise the right itself.¹⁷² The Human Rights Committee notes that , “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations [...]for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”.¹⁷³

Limitations must be provided by law and necessary to protect the specific interest in relation to which they are adopted.¹⁷⁴ There is no ‘margin of appreciation’ in the application of the necessity test. A State party must demonstrate in a specific way the precise nature of the threat to these interests that has caused it to restrict freedom of expression.¹⁷⁵ Both the law that frames the restriction and the application of the restriction by administrative and judicial officials must conform to the principle of proportionality: restrictions must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; and, they must be proportionate to the interest to be protected.¹⁷⁶ The principle of proportionality, therefore, must also take account of the form of expression in question: in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.¹⁷⁷

The fundamental importance of freedom of expression, including the right to seek, receive and impart information,¹⁷⁸ is one of the essential foundations of a democratic society.¹⁷⁹ Highlighting the connection between freedom of expression, democracy and human rights, the Human Rights Committee has held that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights; in this regard, the question of deciding which measures might meet the ‘necessity’ test in such situations do not arise.”¹⁸⁰

During the ASEAN Summit in Phuket in July 2009, Cabinet adopted regulations under section 18 of the ISA granting ISOC officials discretionary authority to prohibit “entry or exit out of areas, buildings or locations related to the operations of ISOC” to “any person” “except for those who [are] granted permission by a competent official or those exempted pursuant to such announcements” (section 18(2)); the power to prohibit the use of routes or vehicles or set conditions on the use of routes or vehicles (section 18(4)); and, the power to announce “actions” that “shall be taken or not taken in connection with electronic equipment of the types or within the areas in accordance with the announcement” (section 18(6)).¹⁸¹ Press statements by Thailand’s Defence Minister indicate that ISOC used its discretionary powers to ban all protests anywhere on the island of Phuket during the period that Part 2 of the ISA was in force (10–24 July 2009).¹⁸² A complete ban on all peaceful protests in all locations represents a disproportionate interference with freedom of expression because it is not the least restrictive measure available to protect the physical security and other human rights of visiting heads of state, which would be a protected interest under Article 19(3)(b) of the ICCPR.

ISA section 18(6) allows for the issuance of regulations giving ISOC the power to order persons to perform or not perform “any action” involving electronic equipment in order to protect against danger to life, limb or property. This power could be applied to allow prohibitions, or arbitrary or disproportionate restrictions,¹⁸³ on the use of the Internet and on other forms of communication. This risk is real.

Vague security concerns currently are being used to restrict freedom of expression in Thailand in situations of “normalcy” when Part 2 of the ISA is not in force. For example, a radio show host working for a public broadcaster was forced to resign after interviewing former Prime Minister Thaksin live on-air;¹⁸⁴ over 10,578 websites have been blocked for reasons of “security” in Thailand;¹⁸⁵ and members of the Royal Thai Government have in the past interfered with media freedom.¹⁸⁶ There are also serious concerns that there is a political dimension to the use of *lèse majesté* laws, which has a chilling effect on freedom of expression generally.¹⁸⁷ The ICJ is particularly concerned that military commanders have been instructed to monitor public rallies and the Internet in relation to any *lèse majesté* offences that may be committed.¹⁸⁸ Prime Minister Abhisit has acknowledged problems with the use of this law, stating: “the law was perhaps too liberally interpreted and often abused”.¹⁸⁹ In March 2009, for example, the offices of the outspoken independent web-site, Prachatai, were raided by police and its web-editor arrested.¹⁹⁰ The Royal Thai Government has announced plans to set up a special academic committee to help clarify the law’s parameters and to advise on its application.¹⁹¹

Under international law, freedom of expression may only be restricted where strictly necessary to protect legitimate security interests, and the least restrictive measures available must always be employed. The ICJ is concerned that the formal mandate given to ISOC to counter “threats to internal security” under the ISA is apparently being used to allow the military monitor political speech and the Internet. Such activity is likely to stifle public debate about important issues in Thailand. Based on past and current practice, there is a clear risk that the application of the ISA will impose restrictions on freedom of expression which will be disproportionately restrictive and may limit democratic expression, particularly in light of the broad notion of the “maintenance of internal security” found in the Act.

RECOMMENDATION:

The ICJ recommends that the provisions of the ISA be amended to disallow any restrictions on the right to freedom of expression and the right to seek, receive and impart information except in accordance with requirements of legality, necessity and proportionality as set out in Article 19 of the ICCPR.

5.4 RIGHT TO PRIVACY

The Preamble of the ISA allows for restrictions to Article 33 of the Thai Constitution, which protects dwelling places from unlawful entry or search, and Article 36 of the Constitution, which protects communications from unlawful censorship, detention or disclosure. The ISA's preamble does not, however, allow restrictions to Article 35 of the Constitution, which provides general protection for family rights, dignity, reputation and privacy.¹⁹² The legislative drafting history of Articles 35-36 indicates that they are intended to reflect Article 12 of the Universal Declaration of Human Rights, which provides that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”¹⁹³ The ICCPR has incorporated many of the principles in the Universal Declaration of Human Rights into a binding legal instrument. Thus, the privacy rights in the ICCPR should be considered as a highly persuasive source to aid the interpretation of privacy rights guaranteed in the Thai Constitution. Thailand, therefore, must not only observe these rights as part of its obligations under the ICCPR, but also should use them as persuasive authority to interpret its domestic constitutional obligations.

Article 17 of the ICCPR protects individuals from unlawful and arbitrary interferences with privacy. Therefore, clear and precise statutory language is necessary to authorise intrusive investigatory methods such as communications intercepts or other forms of search and seizure. Any law authorising interferences with privacy should be necessary in the particular circumstances and must comply with other human rights protections in the ICCPR. The UN Human Rights Committee has emphasised that individuals must be able to protect themselves against attacks on privacy and have an effective remedy against unlawful attacks.¹⁹⁴ Strict control and oversight of intrusive investigatory practices by independent, and preferably judicial, bodies are therefore required to ensure compliance with the standards of international human rights law.¹⁹⁵ The Human Rights Committee and other UN human rights mechanisms have also repeatedly expressed concern over the involvement of military officials in criminal investigations.¹⁹⁶

Data gathering, data sharing and covert surveillance measures, particularly those aimed at intelligence gathering rather than criminal evidence gathering, may interfere with the right to privacy and other rights protected under the ICCPR, including, for example, the principle of non-discrimination. The UN Special Rapporteur on the Promotion

and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism has stressed the importance of clarifying “threshold criteria” that might trigger human rights-intrusive actions by intelligence agencies. Data-mining, which is the investigation of large numbers of people, not based on the conduct of the individuals and without any prior suspicion of wrong-doing, through the use of linked computer databases, pattern analysis software and the creation of profiles, raises particular human rights concerns. Where data-mining is used, intrusions on privacy are made for the purposes of identifying suspects, rather than to investigate suspects who have already been identified or to strengthen existing suspicions. Data-mining by intelligence agencies¹⁹⁷ “blurs the boundary between permissible targeted surveillance and problematic mass surveillance which potentially amounts to arbitrary or unlawful interference with privacy.”¹⁹⁸ In this context, effective measures must be introduced to prevent the receipt, processing or use of data by unauthorised persons for purposes not specifically authorised by law.¹⁹⁹

At all times, Part 1 of the ISA gives ISOC the principal responsibility for maintaining internal security, including the power and duty to monitor, examine and evaluate situations that may give rise to a threat to internal security.²⁰⁰ The language of the Act fails to specify whether monitoring, examining and evaluating are duties of ISOC in respect of which other powers in the Act may be exercised; or, whether this language confers free-standing powers to monitor, evaluate or examine information, as ISOC considers necessary. Although ISOC itself is not authorised to use invasive investigative techniques under this section of the Act, investigative powers could be exercised by authorised government officials seconded to ISOC pursuant to existing legislation and the Criminal Procedure Code (“CPC”); by competent officials of agencies working within ISOC Coordination Centres; or by military personnel specifically authorised as competent officials under other legislation. ISOC officials not authorised to use investigatory powers may monitor and examine information gathered by these competent officials in order to analyse, evaluate and report to Cabinet on potential threats to internal security.

When Part 2 is in force, ISOC officials have been granted a significant range of powers that could be used for intelligence gathering in order to “prevent”, “resolve”, or “mitigate” threats to internal security. For example, in four districts of Songkhla province, ISOC officials will also have access to sensitive information regarding the identities and residences of individuals, in their capacity as competent officials under the Registration of Residential Inhabitant Act, B.E. 2534 (1991).²⁰¹ Powers under the Computer Crimes Act also have been delegated to ISOC officials when Part 2 of the ISA has been enforced, both in both Bangkok and in districts of Songkhla province.²⁰² The Computer Crimes Act, for example, includes powers for warrantless electronic searches and information gathering by competent officials. Suspicion that use of electronic devices such as computer equipment poses a threat to internal security as broadly conceived, may provide a basis for warrantless surveillance of private communications (see discussion in Section 4 above).²⁰³ Regulations under section 18(6) of the ISA could also be used to authorise wide-ranging data-mining or covert electronic surveillance activities, in the absence of controls on the use or distribution of any information gathered, which may amount to an arbitrary or unlawful interference with privacy.²⁰⁴

Crucially, no threshold criteria are set out in either Part 1 or Part 2 of the ISA that would trigger intrusive actions by ISOC, a deficiency which could serve to blur lines of accountability further, and risk the use of special powers in routine situations where there is no real security threat.²⁰⁵ Since much of the information gathered will be in the nature of intelligence rather than evidence, the lawfulness of any methods used to gather information are unlikely ever to be reviewed by a Court.²⁰⁶ In addition, the ISA fails to set out the purposes for which information gathered through intrusive techniques may be used under either Part of the Act. Nor does the Act explicitly require that prior judicial approval for intrusive search or surveillance measures be given in order for intelligence information to be used as evidence in Court.²⁰⁷ The ICJ is concerned, in this context, that the scope of ISOC's intelligence-monitoring powers has not been clearly defined or limited. In addition, there is no mechanism provided in the Act to ensure that unauthorised members of ISOC do not use intrusive powers of investigation regulated by the Criminal Procedure Code or other legislation

The broad regulatory powers provided in section 18(2) to prohibit entry or exit to localities, buildings or designated areas also could be used in ways that violate the right to privacy, including by means of searches and seizures conducted without prior judicial review or the provision of safeguards against arbitrary interference with privacy and home.

The ICJ considers that the vague language of the ISA fails to set out clear and precise purposes and circumstances in which intrusive investigatory methods may be used, in violation of Article 17 of the ICCPR.

RECOMMENDATIONS:

The ICJ recommends that the provisions of the ISA be repealed or amended to ensure that unauthorised ISOC officials do not exercise investigative powers in the course of their intelligence activities under the ISA.

The ICJ recommends that the provisions of the ISA be amended to include greater protections for personal privacy, particularly in relation to the creation and use of DNA data banks.

The ICJ recommends that the provisions of the ISA be repealed or amended to set out clear and precise circumstances under which intrusive investigatory methods may be used, to the extent strictly necessary. The use of such powers should always be subject to judicial control.

The ICJ recommends that the ISA be amended to set out a clear legal basis for the storage and use of data and other personal information by ISOC and other security agencies. The permissible use of this information must be foreseeable and subject to independent scrutiny.

5.5 ARREST, DETENTION AND DUE PROCESS

ISOC is given wide powers under Part 2 of the Act. In particular, sections 16, 18, 19 and 21 give or may be used to give officials designated by ISOC powers of arrest, detention, investigation, search and seizure. As a result, ISOC's actions have the potential to violate individuals' rights to liberty and security, their right to equality before courts of law, and their right to a fair trial. Violations of Cabinet regulations passed under section 18 of the ISA are punishable by up to one-year imprisonment or a fine of Baht 20,000 (approximately US \$600) or both.²⁰⁸ Criminal trials arising out of regulations, notifications, orders or actions under Part 2 will fall within the jurisdiction of the Courts of Justice (which include the regular criminal courts).²⁰⁹ Regulations under section 18 have included prohibitions on entry into certain buildings and prohibitions on the use of certain roadways, thus raising the possibility that potentially minor transgressions could attract criminal sanction.²¹⁰ For example, designated ISOC officials have had the power to exclude from Dusit District in Bangkok any person whose behaviour may, in the opinion of the official, cause unrest.²¹¹ It appears therefore that an excluded person who subsequently entered Dusit District could be criminally charged with a breach of a section 18 regulation, in the absence of any violent act or other wrongdoing.

The Director of ISOC and any competent officers designated by him have the powers of high-level police or interior officials when acting under Part 2.²¹² In addition, Cabinet has delegated law enforcement powers, including powers of investigation and arrest, to ISOC generally under another provision of the Act. To date,

such delegated powers have not excluded the enforcement of laws by the regular competent officials such as the police, who retain their usual responsibilities.²¹³

5.5.1 APPLICABLE INTERNATIONAL LEGAL STANDARDS

The Preamble of the ISA states that the Act restricts rights under Article 32 of the Thai Constitution, which prohibits torture or cruel, inhuman or degrading punishment, arrest and detention other than in accordance with law, and unlawful search and seizure. As discussed in Section 3.2, above, freedom from torture²¹⁴ is a non-derogable right and a peremptory norm (*jus cogens*) of international law, even during a properly declared state of emergency. Although international law permits strictly necessary derogations to certain aspects of the rights to freedom from arbitrary arrest and detention, search or seizure, and fair trial during properly declared states of emergency, Part 2 of the ISA is not designed to be used in actual emergency situations.²¹⁵ Therefore, any domestic legal limitations on arrest, detention, or fair trial rights must comply with the standards set out in the ICCPR.²¹⁶

International human rights law prohibits the arbitrary detention of any person. Under Article 9(1), ‘detention’ extends to all deprivations of liberty, whether or not in criminal cases, and includes detention for educational purposes,²¹⁷ like vocational and rehabilitative training. Therefore, the training that the Courts can order under section 21 of the Internal Security Act falls within the definition of detention under the ICCPR.

Article 9(2) of the ICCPR requires that individuals be informed of the reasons for arrest and any charges in a timely fashion. Article 9(3) protects the right of any detainee to be brought promptly before a judge. ICCPR Article 9(4) guarantees the right of an individual to have a court review the lawfulness of his or her detention. In this context, lawfulness refers to conformity with both national and international legal standards.²¹⁸ Judicial review of non-custodial measures that do not amount to a deprivation of liberty is also provided for under international standards, including, under the UN Standard Minimum Rules for Non-custodial Measures.²¹⁹

In addition, Article 14 of the ICCPR sets out basic guarantees designed to ensure basic procedural fairness before courts and tribunals. The first sentence of Article 14(1) guarantees equality before all courts and tribunals, regardless of the nature of the proceedings.²²⁰ The right to equality before courts and tribunals requires that all individuals have equal access to courts, guarantees equality of arms and ensures that parties to proceedings are not treated in a discriminatory manner.²²¹ The principle of equality of arms ensures that all parties to proceedings benefit from the same procedural rights; for example, each side must be given the opportunity to contest all the arguments and evidence adduced by the other party.²²² If criminal charges are brought against an individual, the full protection of Article 14 concerning the right to a fair trial must be guaranteed.

**The Right to
Equality Before
Courts and
Tribunals and
the Right to a
Fair Trial
Article 14 ICCPR**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as

- witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

5.5.2 INADEQUATE PROCEDURAL PROTECTIONS FOR INDIVIDUAL LIBERTY, SECURITY AND FAIR TRIAL

The UN Human Rights Committee has consistently expressed serious concern about measures to combat serious crime and terrorism that authorise armed forces to discharge judicial or police functions, and has recommended that States take action to ensure the police and other forces assuming police functions have appropriate training and are answerable to an independent judiciary²²³ (see Section 6 on the Role of ISOC, below). In the absence of clear, strong statutory language requiring robust judicial review of arrest, detention and other restrictions on liberty, the ICJ is concerned that ISOC personnel employing police powers delegated under the ISA,²²⁴ will not adhere scrupulously to Criminal Procedure Code safeguards, which include

seeking court warrants before carrying out searches, seizures or arrests; bringing suspects arrested before a court or judicial officer within 48 hours; and ensuring regular access to detainees by lawyers, family members and medical personnel. These violations already occur in the Deep South under the 2005 Emergency Decree.²²⁵ The 2005 Emergency Decree allows for detention of criminal suspects for up to seven days, renewable by a Court for up to a total of 30 days. The Decree states that the procedures for the issuance of a warrant under the Criminal Procedure Code shall apply *mutatis mutandis* (with the necessary changes being made). Therefore, the detention review at each renewal of the seven-day preventative detention period ought to be conducted in accordance with the procedures set out in the Criminal Procedure Code, which require that the detainee be brought before a judge, either in person or by video.²²⁶ However, ISOC Region 4 regulations stipulate that officers do not need to bring detainees before the Court when seeking a renewal of the Emergency Decree detention period.²²⁷ In practice, it appears that the Courts in the Deep South have usually extended periods of detention under the 2005 Emergency Decree without requiring the detainee to appear before the Court, and that most applications are approved, leaving the appearance that extension is almost an automatic process.²²⁸ ISOC regulations, therefore, have been allowed to trump a provision of the 2005 Emergency Decree that sets out safeguards for the rights of a detainee by reference to other legislation, rather than doing so explicitly.²²⁹ This practice highlights the need for the provisions of the ISA to be revised to include clear and explicit human rights protections.

Powers under Part 2 of the ISA could be used arbitrarily to detain individuals or groups of individuals for investigative purposes. Recently, following an ISOC cordon and search operation at the Sengham Islam Wittaya school in Bachao District, Narathiwat Province, 42 men were detained for questioning for some seven hours at Special Task Force 32. This operation took place in an area where Martial Law and the 2005 Emergency Decree are in force. However, similar operations potentially could be allowed under the vague section 18 Cabinet regulations in force in four districts of Songkhla province.²³⁰ ISOC officials could prohibit the exit of individuals from a location for a substantial period of time while they are being questioned, which would amount to a deprivation of liberty under international law.²³¹

Normally, the Criminal Procedure Code provides that a person may only be deprived of liberty in certain defined circumstances:

- pursuant to a warrant of detention²³² or arrest;²³³
- where a law enforcement official apprehends the individual in the course of committing the offence (flagrant offence);²³⁴
- in circumstances suitable to suspect that the person is likely to be a danger to other people or to property by being in possession of arms, materials or instruments for use in the commission of an offence;²³⁵

- where an arrest warrant could be issued but expeditious necessity requires arrest prior to the issuance of the warrant;²³⁶ or,
- where an accused or alleged offender who is free on provisional release has escaped or is likely to evade custody.²³⁷ Under the CPC, arrests in private places are not permitted unless a search warrant for the location has also been issued.²³⁸

Unlike the CPC, section 18 of the ISA fails to set out any criteria governing the use of powers of detention by ISOC officials, in violation of Article 9(1) of the ICCPR. To date, regulations issued under section 18 have also failed to establish any criteria that could justify detention for breach of the regulations.²³⁹ In the absence of clear standards governing the use of discretionary powers, there appears to be a real risk that ISOC personnel will detain individuals for the purposes of investigation or intelligence gathering, particularly in areas where personnel are accustomed to exercising such powers under Martial Law and the 2005 Emergency Decree.²⁴⁰

The ICJ considers that, in principle, intelligence agencies should not have detention powers. A basic premise of criminal justice is that arrest and interrogation should be carried out by law enforcement officials with a view to criminal prosecution before independent courts. Intelligence, on the other hand, traditionally is gathered to provide information and assist in building criminal investigations. In this respect, the roles of intelligence agencies and law enforcement agencies are fundamentally different and need to remain separate. In the absence of clear limits on the authority of intelligence agencies, there is a risk that intelligence agencies will use their broader powers to displace law enforcement agencies in the investigation of criminal offences related to security.²⁴¹ This consequence has been borne out by experience in other countries. The UN Special Rapporteur on Counter-Terrorism has emphasised that this shift can fundamentally undermine the rule of law, as the boundaries between the collection of intelligence and the collection of criminal evidence, which are subject to strict due process constraints, becomes increasingly blurred.²⁴² Detention for the sole purpose of gathering intelligence cannot be justified.²⁴³ Without clear legal parameters governing the exercise of these powers and strong accountability mechanisms, serious human rights violations are more likely to occur and go unpunished.²⁴⁴

The ICJ is also concerned about the adequacy and robustness of the application of due process safeguards in the course of criminal proceedings initiated under the ISA. Section 23 provides that any prosecution due to violation of Part 2 “regulations, notifications, orders or actions” falls under the jurisdiction of the Courts of Justice, and refers to the application of the CPC in relation to such cases. However, in the past, essential pre-trial due process rights, which should also serve to protect against the threat of torture or other ill-treatment during periods of custodial investigation, have not always been respected or strongly enforced where emergency laws are in force.²⁴⁵ In 2005, the Human Rights Committee, in its Concluding Observations on Thailand, expressed concern

“ at the persistent allegations of serious human rights violations, including widespread instances of extra-judicial killings and ill-treatment by the police and members of armed forces... investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity.

...

The Committee is also concerned about reports of the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials. The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention

...

The Committee is also concerned that the right of detainees of access to lawyers and members of the family is not always observed in practice. The Committee considers the duration of detention before a person is brought before a judge to be incompatible with the requirements of the Covenant.²⁴⁶

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After arrest and formal charge by the police or other competent law enforcement officials, the CPC requires that suspects be brought before a court within 48 hours,²⁴⁷ at which time the court may order successive periods of detention where required for investigative purposes, for up to a total of 84 days for the most serious offences.²⁴⁸ In practice, remand is routine in security cases in the Deep South, and the ICJ understands that bail is granted rarely.²⁴⁹ The ICJ also is concerned about reports that judges do not scrutinise robustly the sufficiency of the evidence supporting the criminal allegation when considering whether to keep a person in pre-trial detention.²⁵⁰

Under the ICCPR, pre-trial detention may only be resorted to if no less restrictive means is available.²⁵¹ Ordinarily, a person charged with a crime should be entitled to provisional pre-trial release, including through bail provisions. Denial of release on bail should be exceptional, for example where it is likely that an individual will flee and so fail to appear for trial, that the individual will tamper with evidence or that he or she will pose a danger to others.²⁵² The reported persistent denial of bail at certain provincial courts to defendants awaiting trial for charges related to the southern insurgency appears to violate article 9(3) of the ICCPR, which provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”.

Pre-trial detention that continues beyond the period for which a State Party can provide appropriate justification is also arbitrary and violates article 9(1) of the ICCPR.²⁵³

The right to trial within a reasonable time is based on the premise that deprivations of liberty must not last longer than necessary in the circumstances of a specific case. The Human Rights Committee has stressed that particularly where a Court denies bail to accused persons, they must be tried as expeditiously as possible.²⁵⁴ In Thailand, however, and particularly in security cases in the Deep South, the right of accused persons to trial within a reasonable time appears to have been violated persistently.²⁵⁵ Pre-trial delays and delays between trial and appeal lasting for years are not uncommon for accused persons held in pre-trial detention, irrespective of the complexity of the case. Absent exceptional circumstances related to the particular case,²⁵⁶ when an individual is held in custody, a multi-year delay between arrest and the completion of proceedings would violate that person's right to trial within a reasonable time under Article 14(3)(c) of the ICCPR, and the right to be tried within a reasonable time or released under Article 9(3) of the Covenant.²⁵⁷

The ICJ has also received reports that many criminal charges in security cases appear to proceed to trial regardless of the strength of the evidence in the case-file. Defence lawyers have suggested that if judges were to use their discretionary power to hold a preliminary hearing after the public prosecutor files charges with the Court, long periods of pre-trial custody in cases where the evidence is clearly insufficient could be avoided.²⁵⁸ Such preliminary hearings would ensure that a *prima facie* case against the accused is made out appropriately by the prosecution. However, such hearings are extremely rare in the case of public prosecutions.²⁵⁹ In a recent case, the Criminal Court in Nathawi District, Songkhla Province, denied a defence application for a preliminary hearing in a security case brought by the public prosecutor, on the basis that it was unnecessary to scrutinise the case.²⁶⁰

The apparent persistent denial of bail in security cases, the frequent, lengthy trial delays, and the reported weakness of the evidence in many cases, taken together raise the risk that criminal charges may be used to detain insurgent suspects on a preventative basis where there is no real prospect of conviction. The ICJ is concerned that section 18 of the ISA, which makes the violation of an ISOC regulation into a criminal offence, is worded vaguely enough that it could be used by military or other state officials to set out overbroad prohibitions designed to maximise ISOC's ability to arrest and detain, for as long as possible, any individuals suspected of insurgent activity. In the context of any new law providing exceptional powers, it is necessary to re-assert all existing human protections to ensure that the statute is not abused.

RECOMMENDATIONS:

The ICJ recommends that the provisions of the ISA be repealed or amended to include a specific requirement that any arrest, detention, investigation or prosecution carried out in the context of ISOC operations strictly comply with the absolute prohibition on torture or other ill-treatment as provided under international law, including in Articles 7 and 10 of the ICCPR. Any regulations issued under section 18 should also reflect these prohibitions.

The ICJ recommends that the provisions of the ISA be repealed or amended to specify with clarity and exactitude the circumstances under which individuals may be detained under powers delegated pursuant to sections 16 or 18 of the Act. Regulations under section 18 and the Announcements of Special Operations Centres (Centres for the Administration of Peace and Order) established under the Act should include detailed guidelines for the use of these powers.

The ICJ recommends that the provisions of the ISA be amended to specifically guarantee the right to counsel, the right to contact family members, the right to be brought before a judge within 48 hours, the right to challenge the lawfulness of one's detention before an independent court, the right to a fair trial within a reasonable time or release and the principle that pre-trial custody is the exception and release the rule. The full protections of the Criminal Procedure Code must be explicitly guaranteed to any person who is arrested, detained or subject to interrogation under the Act. Any regulations issued under section 18 of the Act should also guarantee explicitly these basic rights.

The ICJ recommends that the Supreme Court and/or the Provincial Courts in the Deep South issue a directive to judges providing that they must require detainees to be brought before the Court in person unless there are exceptional circumstances applicable in the specific case. The directive should require that judges take into account the strength of the prosecution case against alleged offenders and to carefully scrutinise the grounds for requesting continued detention, before remanding alleged offenders to investigative or pre-trial detention under the Criminal Procedure Code.

The ICJ recommends that the Royal Thai Government take such steps as are necessary to reduce pre-trial delays, especially for persons held in custody, in order to comply with its obligations under Article 14(3)(c) of the ICCPR.

5.5.3 ISA SECTION 21

Section 21 of the ISA creates a procedure where a Court may order individuals to be detained in ISOC-run training facilities for up to six months where certain conditions are met, which can be summarised as follows:

- a. Cabinet has passed a resolution under section 15 authorising ISOC to operate in a designated area; and,
- b. it appears that a person is alleged to have committed an offence against the internal security of the Kingdom as specified by Cabinet; and
- c. where:
 - i. the alleged offender changes his/her mind and submits himself/herself to the officers, or
 - ii. an investigating officer has concluded an investigation and it appears that the alleged offender has committed the offence by being misled or out of ignorance; and,
- d. that giving the alleged offender a chance will benefit the maintenance of the internal security of the Kingdom; and,
- e. the investigating officer submits a report to the Director of ISOC; and,
- f. the Director of ISOC agrees with the investigating officer.

Where the above conditions are met, a further procedure follows:

- g. the Director can submit the records and his opinion to the prosecutor; and,
- h. the prosecutor can then petition the Court for an order that the alleged offender submits to training; and,
- i. if the alleged offender agrees with the proposed training and other specified conditions, then:
 - i. the Court can order that the alleged offender submit to the Director of ISOC for training for a period of not more than six months, and comply with other specified conditions; and,

- ii. if the alleged offender attends the training and complies with the other conditions, the right to institute a criminal proceeding against him/her is extinguished.

The ICJ welcomes the insertion of judicial supervision into section 21 of the ISA and recognises that this change represents a significant improvement over the initial draft Bill.²⁶¹ Nevertheless, the ICJ considers that section 21 still fails to meet the strict standards for lawful detention under the ICCPR.

The exercise of the right to liberty is subject to lawful restrictions, for example, through a lawful arrest on suspicion of criminal conduct. However, any denial of liberty must be based on grounds and procedures established by law.²⁶² The permissible grounds for detention must be clearly stated and the law itself and the enforcement of the law must not be arbitrary. Detention is arbitrary if it is not authorised by law or if it contravenes domestic law, but also if it is unjust or lacking in predictability.²⁶³ Under of the ICCPR, detention is arbitrary if it is inappropriate, disproportionate, unreasonable or unnecessary in all the circumstances – for example, if the same end could be achieved by other means.²⁶⁴

As discussed above, Article 14(1) of the ICCPR guarantees the equality of all persons before any court or tribunal charged with a judicial task,²⁶⁵ which means that each side in a proceeding must be given the opportunity to contest all the arguments and evidence adduced by the other party.²⁶⁶ Article 14(1) also guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal. States must, therefore, protect the judiciary from any form of inappropriate influence in their decision-making, including influences from a political source. In addition, the functions of the executive and the judiciary must remain clearly distinguishable.²⁶⁷ Judges must not “be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.”²⁶⁸ Proceedings can be fair only

in the “the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.”²⁶⁹ Where a criminal charge is laid by the police or accepted for trial by the Court²⁷⁰, an individual also has the right to be presumed innocent, which means that guilt cannot be presumed until the charge has been proven pursuant to a conviction following a fair trial by an independent and impartial court. Such persons also have the right to be informed promptly and in detail, in a language they understand, of the charges against them.²⁷¹

The procedure under section 21 deprives an individual of liberty and/or restricts an individual’s liberty and freedom of movement for the purposes of rehabilitation, as a consequence of alleged criminal activity. Therefore, the judicial decision to order an individual to attend training effectively ascribes responsibility for conduct that has not been proven beyond a reasonable doubt in a court. The ICJ considers that the full range of due process safeguards provided by international law and

standards, including all of the rights under Article 14 of the ICCPR relating to the determination of criminal charges, must be guaranteed to those who are subject to training camp recommendations.²⁷²

In the determination of any criminal charge, Article 14 of the ICCPR guarantees to the defendant the right to counsel, including the right to consult with a lawyer in private and in confidence; the right to have adequate time and facilities for the preparation of a defence, which encompasses access to documents and evidence including all documents the prosecution intends to offer in Court or which are exculpatory; the right to trial in a reasonable time; the right to be present during the trial; the right to a defence through counsel of a person's own choosing and the right to have legal assistance provided if the defendant cannot afford a lawyer; the right to examine and have examined witnesses, both for and against the accused; the right to an interpreter; the right not to be compelled to testify against oneself or to confess guilt; and the right not to be tried or punished again for an offence for which he has already been finally convicted or acquitted.²⁷³ The right not to be compelled to incriminate oneself requires that no direct or indirect physical pressure or undue psychological pressure be placed on the individual by the investigating authorities in order to obtain a "confession" of guilt.

5.5.3.1 ABSENCE OF A CLEAR LEGAL STANDARD FOR DETENTION OR THE IMPOSITION OF OTHER CONDITIONS

The ICJ has several concerns about the content and potential effects of section 21, which provides for deprivation of liberty as a criminal sanction without trial or proof of criminal conduct.

First, the section fails to set out any clear standard that must be met in order for an ISOC official to recommend that an individual be sent to a training camp. Nor is there a clear standard of proof that would permit the Court to determine whether objectively, “it appears that the person is alleged to have committed an offence” affecting internal security that is included in a list set out by Cabinet, before making the Order.

The term “alleged offender” is defined in the Criminal Procedure Code as any person who is alleged to have committed a criminal offence but who has not been formally charged before the Court.²⁷⁴ Criminal suspects can become alleged offenders if the victim of a crime or another person makes an accusation against them.²⁷⁵ Persons who have been arrested with or without a warrant, or who are formally charged with an offence by police, are also considered to be alleged offenders.²⁷⁶ It is important here to note that a person may be designated as an “alleged offender” by police without judicial determination. The status of alleged offender confers certain rights on a criminal suspect in interactions with authorities, including the right to counsel and the right against self-incrimination.²⁷⁷

Under the provisions of the ISA or other legislation, there is no legal standard a Court could use to determine whether a person “appears” to be an alleged offender. Arrest by police or the mere appearance of criminal activity, without any judicial determination of legal status, may be sufficient to deprive a person of his or her right to liberty. In addition, since the language of the section states only that it need “appear” that the person in question is an alleged offender, the section does not explicitly confer this status, or the procedural safeguards associated it, on the individual subject to training.

The section also fails to prescribe with sufficient precision any criteria governing the discretion of the ISOC official making the recommendation, or of the Director in approving it. Without any legally binding and objectively verifiable criteria governing recommendations, the section is prone to unpredictable and inconsistent, and therefore arbitrary, use in respect of different individuals, contrary the requirements of the ICCPR. There is a serious risk of abuse of power where individual officials have been given such wide powers. The National Administrative Reform Council Order No. 22 of 1976 was repealed for precisely this reason.²⁷⁸ Order 22 authorised the detention, without Court supervision, of suspected communists in training camps for successive 30-day periods, following Thailand’s 1976 military coup. The explanatory note attached to the 1979 law nullifying Order 22 clearly sets out the dangers inherent in granting overbroad discretionary powers of detention to officials:

“

The reason for the promulgation of this Act is because the National Administrative Reform Council Order No. 22 dated 13 October B.E. 2519 provides to consider any person suspected of having some circumstances as a person who is a danger to society and assigns the power to administrative officials and police officials to investigate and detain such persons at a detention place for up to 30 days. In this case, such a person lacks freedom, is not able to work as usual and lacks income for his family, although that person may not have committed any wrongdoing before or may have been persecuted by administrative or police officials. In some cases, some acts do not meet the criteria of person endangering society as defined in Section 1(1)-(9) of the National Administrative Reform Council Order No. 22 dated 13 October B.E. 2519, but the administrative or police officials would find some other ways to determine such acts to be deemed as endangering society. In the case mentioned above, it is the excess of power assigned to some administrative or police officials that allows some administrative or police officials, by such power, to seek an unlawful benefit, which is a tremendous danger to society and to democracy; therefore, it is a necessity to enact this Act.²⁷⁹

”

To avoid the recurrence of such abuses of power, the judicial scrutiny of detention required under section 21 of the ISA must be robust. In the absence of a clear legal standard for detention, judges must review training recommendations, and the supporting admissible evidence, on the basis that the individual in question is presumed innocent. For judicial scrutiny to meet the standards of fairness, independence and impartiality required under international law, it is imperative that any internal approval process for training requests, and particularly consideration by high-level military or civilian officials, be conducted in a manner that does not intimidate, pressure, influence, prejudice or bias judicial decision-makers in any way. Thailand must ensure that all public authorities and officials comport themselves in accordance with these standards.

Under section 21, the range of offences for which an alleged offender may be ordered to attend training also remains undefined. The ISA specifies only that the individual must be alleged to have committed an “offence that impacts the internal security of the Kingdom as specified by Cabinet”.²⁸⁰ Insurgents in the Deep South in the past have committed serious crimes including murder, assault and arson, which impair the enjoyment of the human rights of others. It would be inappropriate for individuals suspected of grave crimes such as the murder of villagers, schoolteachers or monks to be exempted from criminal prosecution if they agree to attend a training camp.²⁸¹ On the other hand, it would be disproportionate to detain individuals who are suspected of minor criminal or regulatory offences that would not normally be punishable by a term of imprisonment, under section 21.

Taken as a whole, section 21 fails to set out any clear legal standards defining the circumstances under which detention is permissible. As a result, the section does not meet the requirement of the ICCPR that detention be provided for by law.

5.5.3.2 ABSENCE OF A CLEAR PROCEDURE FOR ENSURING VOLUNTARINESS AND MAKING TRAINING ORDERS

5.5.3.2.1 Voluntariness

There is no clear procedure set out in section 21 for the Court to follow in issuing an Order, again contrary to the ICCPR.²⁸² The safeguards required for a fair trial in Article 14 of the ICCPR must be clearly set out in the ISA. While the ISOC official requesting approval for a training Order from the Director of ISOC must submit an investigation file, the public prosecutor, by contrast, is only required to file a petition to the Court requesting the Order. Domestic law would likely give judges the discretionary power to review the legality of detention,²⁸³ and to reject training requests on the basis that there is insufficient evidence to show that the criteria in section 21 have been met,²⁸⁴ if the individual makes such a request. However, there is no explicit requirement in the Act that the complete inquiry file be placed before the Court, nor is the judge required before making an Order, in all cases, to examine the evidence on which the request is based in order to review the substantive justification for the detention and to ensure that it is appropriate and necessary in all the circumstances.

Ensuring that consent is voluntary is particularly important because the liberty of the trainee will be restricted in a process that lacks the safeguards of a full criminal trial. Consent must be truly voluntary; indirect pressure to consent must be avoided, and refusal to consent must not have any adverse impact on the individual.²⁸⁵ The issue of voluntariness is of particular concern to the ICJ since it is not clear whether there would be a fair process in determining the issue of voluntariness, and because it is reported that the military currently target villagers in the Deep South for training without adequate evidence of their involvement in criminal insurgent activities.²⁸⁶ Some detainees who have been “invited” to attend other training camps run by the military in the Deep South have indicated that they did not believe they had any choice but to attend, or they feared adverse consequences if they did not.²⁸⁷ In interviews with the ICJ, villagers in Pattani province who had been invited by their village headman or District officials to attend certain military-run training camps, indicated that they did not feel able to refuse an invitation extended by these important and powerful individuals.²⁸⁸ In the Deep South, given the length of pre-trial delays, the unlikelihood of bail, and the probability that even the weakest cases will be prosecuted, individuals also could be pressured into agreeing to attend training camps under section 21 in order to avoid the possibility of being formally charged with a crime and spending months or years in pre-trial detention.

The ICJ is particularly concerned that voluntariness cannot be ensured in any circumstance where detainees give “consent” to attend training while in police or military custody, where they are more vulnerable to intimidation, or other coercive tactics. At the time of writing, Martial Law was still in force in Songkhla province.²⁸⁹ Martial Law allows military personnel to detain an individual for questioning “or for the purposes of the military” for up to seven days if they “have sufficient reason to suspect any individual of being an enemy or of being in opposition to the contents of this Act [the Martial Law] or to the orders issued by military personnel”.²⁹⁰ The ICJ considers that Martial Law is insufficiently specific to provide a legal basis for detention as required by Article 9(1) of the ICCPR. In addition, Martial Law detainees may be held for seven days and are not brought before a judge, in flagrant violation of Thailand’s international obligations under Article 9(3) of the ICCPR.

Another Thai Courts have made findings that individuals detained under Martial Law have been subjected to serious ill-treatment in the Deep South. Reports of such incidents have been cited as a matter of concern to the UN Human Rights Committee²⁹¹ and have been documented with disturbing frequency by human rights groups.²⁹² However, in the past, Thai Courts have considered only whether detention is authorised by a provision of law and have declined to review the compliance of domestic provisions authorising detention or the detention itself for compliance with international or constitutional standards.²⁹³

In these circumstances, the ICJ is concerned that individuals may consent to detention in training camps in order to avoid detention and interrogation in military custody under Martial Law, or in order to secure release from a military detention facility. In addition, the ICJ is concerned that information may be elicited from individuals in Martial Law detention and used as a basis for a training camp request.

5.5.3.2.2 Procedures for Issuing Training Recommendations and Judicial Review

Section 21 of the ISA is also silent as to the process that will be used to determine whether to recommend that individuals attend training camps. Alleged offenders are presumed to be innocent under the Thai Constitution,²⁹⁴ as are all persons accused of criminal acts under international law.²⁹⁵ Therefore, it is critical that any internal screening process, conducted before the Director of ISOC agrees to a training request, respect this presumption. Any screening process must give real consideration to the possibility of turning down the recommendation on the basis that there would be insufficient evidence to bring the individual to trial on a criminal charge, or on the basis that the individual in question has been physically or unduly psychologically pressured into incriminating himself or herself. Any inculpatory information obtained by recourse to torture or other ill-treatment must be excluded from any screening process consideration.²⁹⁶ Additional safeguards must be included in the section in order to ensure that any internal approvals process does not usurp or undermine the role of the judge in deciding to order attendance at a training camp.

Judges cannot simply assume, as is often suggested or implied by Thai authorities in relation to the detainees at existing training camps, that individuals subject to training requests are insurgents in order to justify detention. For detention with the purpose of rehabilitation to be lawful, there must be evidence that a recognizable crime has been committed. Detention for the purpose of “political or cultural rehabilitation” through “self-criticism” is inherently arbitrary.²⁹⁷ A judge, therefore, must have access to the inquiry file to properly scrutinise the grounds for detention in order to ensure that they meet a clear legal standard; that detention is necessary in all the circumstances of the individual case; and, that detention does not violate any other rights under the ICCPR such as the prohibition on discrimination.²⁹⁸ In addition, a proper record of detention orders must be kept by the Courts to ensure that individuals are not ordered to attend training more than once in relation to the same offence.

“Alleged offenders” under the Thai Criminal Procedure Code have a right to counsel.²⁹⁹ International law also recognises that a person’s ability to participate in a meaningful way in judicial proceedings, guaranteed under Article 14(1) of the ICCPR, is often contingent on the availability of legal assistance.³⁰⁰ Anyone involved in criminal legal proceedings also has a right to a lawyer.³⁰¹ Since section 21 of the ISA uses similar language, individuals subject to training recommendations also ought to have a right to legal representation. However, given that ISOC regulations have been allowed to displace Criminal Procedure Code protections under the 2005 Emergency Decree,³⁰² the right to counsel, including a right to consult privately and confidentially with a lawyer prior to consenting to training, should be included explicitly in section 21.³⁰³ Furthermore, it is unclear whether the alleged offender must always be brought before the Court when a training order is made, as Articles 9(3) and 14(3)(d) of the ICCPR require.³⁰⁴ Individuals must have the right to appear before a judge upon detention and at the time of any challenge to the legality of detention. The capacity to appear in person is an essential safeguard against torture or other ill-treatment, extrajudicial execution and enforced disappearance and must be guaranteed explicitly in the text of the ISA and in any accompanying regulations.

There is a risk that individuals who are asked to consent to attend training programmes, and their counsel, will not have the opportunity to assess the strength of ISOC’s evidence that an offence has been committed prior to giving consent to attend the training. This lack of information will hamper counsel’s ability to give the best advice to their clients. All persons in Thailand involved in judicial proceedings have a constitutional right to receive factual information relating to the proceedings, have the right to a sufficient opportunity to examine documents, and to present facts, witnesses and evidence.³⁰⁵ Under international law, similarly, individuals must be informed in sufficient detail of any allegations against them in a judicial proceeding. An individual or his counsel must be able to contest effectively the arguments and evidence of the prosecution, and to make submissions to the Court.³⁰⁶ Therefore, any restrictions on access to the case file in a proceeding under section 21 must not

infringe on the ability of the alleged offender to challenge the legality of detention, a right that is absolute and cannot be derogated from, even in a state of emergency.³⁰⁷

As discussed above, the ICJ considers that the process under section 21 is analogous to the determination of a criminal charge. In this respect, prior to a judicial hearing regarding a training request, individuals and their legal counsel must be guaranteed the right to access to documents and evidence, including all documents the prosecution intends to offer in Court or which are exculpatory.³⁰⁸ Proceedings must also generally be held in public unless there are exceptional reasons compel the closure of proceedings. Finally, any person ordered to attend a training camp must be guaranteed a meaningful right to appeal,³⁰⁹ which means that the appeal must be heard before the period of training has been completed.

5.5.3.1 POTENTIAL INCONSISTENCY WITH THE ROLE OF THE PROSECUTOR

Prosecutors play an important role in the administration of justice. Respect for human rights and the rule of law presupposes a strong prosecutorial authority in charge of investigating and prosecuting criminal offences with independence and impartiality. The ICJ is concerned that the training camp process set out in section 21 could be inconsistent with the proper role of the prosecutor.

International standards require that prosecutors “perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.”³¹⁰ Prosecutors also must fulfil their duties in an independent, impartial and objective manner, avoiding discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³¹¹ Furthermore, where a charge is shown to be unfounded after an impartial investigation, prosecutors must not initiate or continue prosecution.

Section 21 of the ISA appears to give discretion to the investigating officer and to the Director of ISOC or designate to recommend that an individual attend a training camp. Section 21, however, does not appear to give the prosecutor any independent role in reviewing the legality or appropriateness of this decision, or the strength of the evidence on which it is based. This omission ought to be corrected. International standards prohibit prosecutorial involvement in the submission of any training request to the Court that is arbitrary, discriminatory or which otherwise violates the internationally or domestically protected rights of the individual concerned.

5.5.3.2 FAILURE TO SET OUT PARAMETERS FOR CONDUCT OF TRAINING

The ICJ considers that training camp orders under section 21 of the ISA as currently formulated authorise a form of administrative detention. The term “administrative detention” applies to a range of situations where individuals are held in some form of custody in the absence of a formal criminal charge or trial, often on the basis of suspicion or inadmissible evidence. The term applies to limitations and restrictions on a person’s movement that amount to a *de facto* loss of liberty.

Section 21 does not contain any details about the content or purpose of the training. The Thai military has indicated that its training is intended to serve mixed purposes – vocational, rehabilitative, and intelligence gathering.³¹² The stated purposes are a cause of concern for the ICJ, particularly since they may be entirely de-linked from any evidence that the detainee has committed a criminal offence.

The use of administrative detention is prohibited under international law unless the person concerned constitutes a clear and serious threat to society that cannot be contained in any other manner.³¹³ Administrative detention regimes may not be used as a matter of routine. Since administrative detention procedures have the potential to sideline the criminal law and its attendant safeguards in security matters, the ICJ considers that administrative detention should only be used in exceptional circumstances pursuant to a properly declared state of emergency under Article 4 of the ICCPR – a criterion which section 21 of the ISA does not meet.³¹⁴

International standards provide that in respect of persons detained without charge, “no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence”.³¹⁵ International law also prohibits the detention of persons solely for the purpose of intelligence gathering.³¹⁶

As apparent “alleged offenders” under Thai law, detainees should only be interrogated at training camps regarding criminal offences they are suspected of having committed if they benefit from the safeguards found in the Criminal Procedure Code that normally apply to alleged offenders; that is, detainees should be brought before a judge to periodically review detention,³¹⁷ they should be informed of any allegations against them in relation to which they are being interrogated,³¹⁸ they should be warned about self-incrimination,³¹⁹ and they should have the right to have a lawyer present during questioning,³²⁰ which should include the opportunity to receive advice from a lawyer in private.³²¹ The right to have a lawyer present includes an informational component: the detainee must be told of the right and provided with a real opportunity to exercise it.³²² Information gathered in violation of these safeguards is normally inadmissible as criminal evidence under Thai law.

The ICJ is concerned that section 21 does not require that training camps be held in officially recognised locations. Nor does section 21 require that records on each detainee be kept in an accessible location. International detention standards require that accurate, up-to-date registers be kept containing the names of detainees, their places of detention, the names of persons responsible for their detention, the reasons for detention, as well as the day and hour of each individual’s detention and release. The time and location that detainees were arrested, if applicable, and the details of detainees’ appearances before judicial authorities must also be recorded in a detention register.³²³ Such registers are indispensable for ensuring the effective protection of detained persons from torture or cruel, inhuman or degrading treatment or punishment.³²⁴ The need for such registers is particularly critical in the Deep South of Thailand, where allegations of torture and ill-treatment have been well-documented.³²⁵

International human rights law also requires that all detainees be allowed regular access to lawyers and family members,³²⁶ and that they have the opportunity to challenge the legality of their detention if they so choose.³²⁷ In addition, detainees must always be treated with dignity and respect and must not be subjected to torture or cruel, inhuman or degrading treatment or punishment.³²⁸ Finally, international standards require that upon arrest or detention, and after each transfer to a new place of detention, individuals are entitled promptly to inform their family members or have their family informed by a competent authority.³²⁹

To guard against torture and ill-treatment, extrajudicial execution, and enforced disappearance, the conformity of conditions of detention, including the maintenance of accurate and up-to-date registers of detainees, and the parameters of training should be monitored by an independent and impartial body with the ability to conduct unannounced visits and compel the production of statements, documents and evidence.

5.5.3.3 FAILURE TO SET OUT ANY PARAMETERS FOR THE IMPOSITION OF OTHER RESTRICTIONS

When a public prosecutor makes an application under section 21, the Court “may specify other conditions for the alleged person to comply with”. Therefore, the section provides for the imposition of restrictions on legal rights falling short of detention. The ICJ is concerned that section 21 gives the Court unfettered discretion to place any other restrictions on the individual in question, provided that he or she consents. The law does not set out the types of conditions or restrictions that may be imposed on an individual or any maximum duration. The lack of any legal parameters for the imposition of restrictions on liberty is inconsistent with international standards. Non-custodial measures must accord with the principle of legality, which means that their “introduction, definition and application ... shall be prescribed by law”.³³⁰

The application of non-custodial measures must also be based on an assessment of established legal criteria relating to the nature and gravity of the offence; the personality and background of the individual; the purposes of imposing the measures; and, the rights of victims.³³¹ In addition, any non-custodial measures must be proportionate to the gravity of the alleged offence in each case.³³² Guidelines regarding the imposition of different measures improve consistency and promote fairness and justice.³³³ Persons subject to such measures must also be able to challenge the legality and proportionality of the way in which any measures are actually imposed and applied, before an independent authority.³³⁴ To ensure that conditions are within the bounds of the law and to facilitate review of their implementation, any conditions imposed on the trainee must be set out clearly in the Order itself.

Non-custodial measures must be applied in a non-discriminatory manner,³³⁵ and should take into account religious beliefs and moral precepts of the group to which the individual belongs.³³⁶ Finally, the use and effectiveness of other restrictions on liberty under the ISA ought to be closely monitored and systematically evaluated by civilian branches of the Royal Thai Government.³³⁷

RECOMMENDATIONS:

The ICJ recommends that section 21 of the ISA be repealed or amended in the following respects:

- Only persons who have been charged in court with the commission of an offence and are considered to be “accused” persons under the Criminal Procedure Code may be recommended for attendance at training camps.
- No person may be ordered to attend a training camp on the basis of actions taken in the peaceful exercise of their internationally and domestically guaranteed human rights.
- All rights guaranteed to criminally accused persons under Thai and international law should be explicitly guaranteed, including:
 - the right to be presumed innocent;
 - the right to counsel before consenting to attend training and during detention at the training facility;
 - the right to adequate time and facilities to prepare a defence (including access to all materials that the public prosecutor plans to offer in court against the individual or that are exculpatory) and to communicate with counsel of their own choosing;
 - the right to defend themselves through counsel or in person, to be informed of this right and to have legal assistance assigned without payment for persons who cannot afford a lawyer;
 - the right to examine or have examined witnesses both against them and on their behalf, as well as the assistance of an interpreter if required;
 - the right not to be compelled to testify or to confess guilt.
- Individuals subject to training camp requests must appear in person before the Court.

- Public prosecutors must have an independent and impartial role in reviewing and approving ISOC training requests prior to their submission to the Court, in order to ensure that such requests are based on sufficient admissible evidence, are not discriminatory, arbitrary or otherwise in violation of the human rights of the individual concerned under domestic or international law.
- An individual may not be ordered to attend training for a period longer than the maximum sentence of imprisonment for the relevant offence and must have the opportunity to make submissions regarding the length of training imposed in accordance with all rights under Article 14 of the ICCPR.
- The procedure the Court should follow in reviewing training camp applications must be clearly set out. The section should provide for mandatory judicial scrutiny of the sufficiency of the investigation file in every case and of the voluntariness of the trainee's consent.
- Any Order confining a person to a training camp must specify the identity of the individual, the location of the training camp and the duration for which the individual may be detained.
- A specific and limited list of purposes for which training may be conducted should be specified.
- An accurate and up-to-date register must be kept, in a location accessible to both lawyers and the families of detainees, containing, in respect of each detainee:
 - name;
 - the time and location of arrest (if applicable);
 - the location of the training camp where detained;
 - the names of the persons responsible for detention;
 - the reasons for the detention;
 - the day and hour of detention and release; and,
 - the details of all appearances before judicial authorities.
- The types of other conditions that may be imposed on an individual under section 21 and the purposes for which conditions may be imposed should be specified. Judges should be directed to consider the proportionality of the measure as well as established legal criteria relating to the nature and gravity of the offence; the personality and background of the individual; the purposes of imposing the measures; and, the rights of victims.

- Individuals suspected of having committed crimes that involve serious violations of the human rights of others, such as murder, torture or other ill-treatment, must not be subject to training camp recommendations in lieu of criminal prosecution.

The ICJ recommends that the Supreme Court and/or the Provincial Courts issue regulations or other guidance to judges to promote consistency in the review and imposition of training Orders and Orders relating to other non-custodial measures.

The ICJ recommends that the Royal Thai Government take such steps as are necessary to ensure that any internal screening process operates in accordance with the presumption of innocence, does not usurp judicial functions and cannot be used to directly or indirectly pressure, intimidate, or influence judicial decisions. These safeguards should be made explicit in the ISA and any regulations relating to the use of section 21.

The ICJ recommends that detailed regulations be established governing the implementation of section 21 by the Director of ISOC, with the consent of Cabinet, after consultation with advisory boards established under the ISA and civil society organisations. These regulations should explicitly guarantee the procedural safeguards set out above. In addition, they should specify the following:

- Detention at a training facility may not be recommended for the purposes of gathering intelligence;
- The specific purposes of different training programs, which must respect an individual's rights to freedom of opinion, religion, peaceful expression, privacy and inherent dignity. Specific training curricula and procedures should be established in consultation with civilian government agencies, and after discussion with civil society organisations.
- Individuals subject to training orders have the right to challenge the legality of their detention while at the training camp, as well as the legality of the imposition or mode of application of any conditions.
- A formal record of all training Orders and conditions must be kept.
- An accurate, up-to-date and accessible register of all detainees must be established.

The ICJ recommends that an independent body be designated or established in order to monitor and report publicly on the implementation and use of training camp orders, the purposes of training and the curriculum used at camps, and the treatment of detainees. This body must be financially and institutionally independent of the military, ISOC and the Royal Thai Government, and must be given sufficient resources and powers of investigation to carry out its mandate.

5.6 JUDICIAL SUPERVISION AND THE RIGHT TO A REMEDY

Under international human rights law, every person, without distinction, has a right to an effective remedy before an independent authority in the event that his or her rights have been violated, in order to obtain relief and redress, including full reparation.³³⁸ Thailand, as a State party to the ICCPR, has undertaken “[t]o ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”³³⁹ The right to an effective remedy entails an obligation for Thailand to investigate allegations of violations “promptly, thoroughly and effectively through independent and impartial bodies”.³⁴⁰

While the responsibility of the state is always engaged in respect of any human rights violation under the ICCPR, for serious violations, including crimes under international law, it is also essential that individual responsibility be ascribed so as to ensure accountability for violations. In order to ascribe individual responsibility, identifying the perpetrators must be one of the central purposes of an investigation into violations.³⁴¹ Human rights violations may have been committed by State agents, by persons acting with the authorisation, acquiesce or complicity of the State, or by non-state actors. Where conduct that impairs the enjoyment of human rights is not imputable to the State,³⁴² the State’s obligation to investigate arises from the State’s legal duty to protect all individuals under its jurisdiction from acts that may impede the enjoyment of their human rights.³⁴³ To be effective, investigations must also be capable of leading to the punishment of perpetrators, particularly if the violation constitutes a crime under international law.

Investigations into serious human rights violations must document all relevant evidence.³⁴⁴ Investigative authorities, therefore, must have the powers and resources necessary to carry out effective investigations, including, where serious human rights violations are alleged, and the power to compel testimony from all those involved.³⁴⁵ Witnesses, victims and their families also need to be protected from threats and intimidation.³⁴⁶ In connection with this requirement, officials suspected of involvement in serious human rights violations should be suspended during the course of the investigation, in accordance with international legal standards. Critically, international standards³⁴⁷ require that the proceedings of investigations into serious human rights violations must be made public to the greatest possible extent. Investigations also must be accessible to victims and their families.³⁴⁸ The methods and findings of the investigation must be made public promptly upon its conclusion.³⁴⁹

Remedies must be practical and effective, and not illusory;³⁵⁰ they must provide meaningful access to justice, as well as being prompt and accessible.³⁵¹ The right to an effective remedy encompasses the cessation of the violation and the right to reparation, including monetary or other material compensation; restitution; rehabilitation; and measures of satisfaction, and bringing perpetrators to justice.³⁵² Remedies also include the cessation of the violation and the provision of guarantees of non-repetition.³⁵³ The

Human Rights Committee has insisted that judicial remedies must be provided for “violations recognised as criminal under either domestic or international law”,³⁵⁴ often referred to as “serious” or “gross” violations, stating that

“ purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3, of the Covenant, in the event of particularly serious violations of human rights, especially when violation of the right to life is alleged.³⁵⁵

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The lack of a proper investigation into human rights violations and punishment of all those responsible is itself a violation of a State’s obligations under the ICCPR.³⁵⁶

Forms Of Reparation

COMPENSATION

Financial compensation should be paid to individual victims for both material and moral damages, including for any physical and mental harm suffered, lost opportunities, lost earning potential, lost wages, legal fees, medical fees, cost of psychological and social services, as well as for pain, suffering, and mental anguish. Compensation given should be proportionate to harm suffered and token or payments without acknowledgement of liability are not sufficient. In addition, collective compensation payments may be appropriate in certain circumstances.

RESTITUTION

Restitution includes acts aimed at putting victims back in situation they were in before the violation; for example, restitution can include re-opening criminal proceedings, the restoration of liberty or employment and the return of property.

REHABILITATION

Rehabilitation is aimed at promoting physical and psychological recovery and social reintegration of the victims of human rights violations. Where appropriate, it may include medical, legal and social rehabilitation.

MEASURES OF SATISFACTION

Measures of satisfaction are non-financial forms of redress for physical or mental suffering, distress, or harm to a person's reputation or dignity. Measures of satisfaction include such things as guarantees of non-repetition and changes in relevant laws and practices; official declarations or judicial decisions restoring the rights, dignity and reputations of victims; public apologies and memorials; verification of the facts of human rights violations and full public disclosure of those facts (as long as disclosure would not harm victim); the search for those killed or disappeared and their re-burial if requested; and human rights training for institutions involved.

PROSECUTION

The criminal prosecution and punishment of the perpetrators of human rights violations recognised as criminal under either domestic or international law is both a right of victims and an independent obligation of the State.

While Thailand has an obligation to provide an effective remedy to the victims of all violations of rights guaranteed under the ICCPR, it also has a separate and independent obligation to prosecute the perpetrators of serious human rights violations; that is, violations recognised as criminal under either domestic or international law.³⁵⁷ These violations include, for example, summary and arbitrary killing (Article 6), torture or cruel, inhuman and degrading treatment or punishment (Article 7), and enforced disappearance (Articles 7 and 9 and often 6).³⁵⁸ In addition to criminal prosecution and punishment, those found guilty of serious human rights violations should be dismissed from public service.³⁵⁹ The United Nations General Assembly has emphasised the importance of holding to account individual perpetrators of grave human rights violations, stating that it is “one of the central elements of any effective remedy for victims of human rights violations and a key factor in ensuring a fair and equitable justice system and, ultimately, reconciliation and stability within a State.”³⁶⁰

A failure by a State to bring the perpetrators of serious human rights violations before the Courts, or a decision to prosecute only some, but not all, of the persons responsible constitutes a violation of international human rights law.³⁶¹ A situation of *de facto* impunity exists where the right to justice is denied to the victims of human rights violations, their access to the courts is restricted, or investigations and trials are not conducted in accordance with the international due process standards. Situations of *de facto* impunity, as well as the provision of formal amnesties for perpetrators of serious human rights violations, are incompatible with a State's obligations under the ICCPR and violate victims' right to a remedy.³⁶²

Even in situations that may threaten national or internal security, the authorities must ensure that extraordinary powers do not lead to arbitrary exercise of power or weakening of accountability.³⁶³ By ratifying the ICCPR Thailand has reaffirmed that it will deal with security threats without abandoning basic notions of the rule of law. People whose rights are limited or impaired because of the Internal Security Act should always be able to challenge the legality of measures taken against them; for example, if they are prohibited from entering certain areas to hold or attend public gatherings (Section 18(2)), prohibited from leaving home (Section 18(3)), prohibited from travelling (Section 18(5)), or subject to electronic searches or seizures (Section 18(6)).

5.6.1 ADMINISTRATIVE INSTITUTIONS WITH INVESTIGATIVE AND REMEDIAL POWERS

As discussed above, investigations of alleged human rights violations must be prompt, thorough, effective, independent and impartial. Although internal military disciplinary proceedings are an important means of ensuring compliance by soldiers with international human rights law and standards (as well as with international humanitarian law), internal military discipline proceedings by definition are not independent. Therefore, such proceedings cannot be the sole means by which a State provides a remedy for human rights violations. The use of military courts to try alleged perpetrators of gross human rights violations is discussed further below.

The independence of any investigation is a critical concern where Part 2 of the ISA is in force. Section 16(3) of the ISA gives ISOC powers to oversee the activities of all government agencies in relation to the implementation of a plan to prevent, suppress, eradicate and overcome or mitigate occurrences that affect internal security. In addition, ISOC has the power to order the exclusion of any state official, whose behaviour is a threat to internal security or an obstruction to the maintenance of internal security, from a designated area.³⁶⁴ Therefore, although several investigative bodies exist under Thai law that are formally independent from ISOC and the military, the extraordinary powers under section 16 of the ISA could be used to obstruct an impartial and independent investigation into alleged human rights violations when and where Part 2 of the ISA is in force.

5.6.1.1 THE DEPARTMENT OF SPECIAL INVESTIGATIONS

The Department of Special Investigations (“DSI”) – a department within the Ministry of Justice – is a criminal investigatory body with police powers that is separate from the regular police force.³⁶⁵ The DSI normally has jurisdiction over specified crimes that fall into one of the following categories: particularly complex cases; cases involving transnational or organised crime; criminal activities where an “influential person” is alleged to be the principal offender, a supporter or an instigator; cases in which there is “reasonable evidence” to suspect that a Senior Administrative Official or a Senior Police Officer is the alleged offender or where such a person is formally a criminal defendant; and, cases that affect public morals or public order, national security, international relations or the country’s economy and finance.³⁶⁶ Both the police and the Department of Special Investigations are officially under the control of ISOC when Part 2 of the ISA is in force.³⁶⁷

In addition, the full range of powers under the DSI's enabling legislation has been delegated to ISOC each time the ISA has been brought into force to date.³⁶⁸

5.6.1.2 THE NATIONAL ANTI-CORRUPTION COMMISSION

The National Anti-Corruption Commission ("NACC") is a constitutionally independent body³⁶⁹ that has jurisdiction to remove high-office holders; conduct criminal inquiries and prepare opinions in connection with criminal prosecutions of persons holding political positions; conduct criminal investigations into high-ranking officials who have become unusually wealthy or have committed an offence of corruption, malfeasance in office or malfeasance in judicial office; and to conduct investigations into actions of lower ranking officials accused of having committed certain offences as specified in the NACC's enabling legislation.³⁷⁰ In particular, the NACC is empowered to investigate any allegations of crimes of malfeasance in office by officials.³⁷¹

A section of the Criminal Code is devoted to offences of malfeasance in office,³⁷² which includes an offence of wrongfully or dishonestly exercising or failing to exercise official functions to the injury of any person.³⁷³ The ICJ understands that this provision has been interpreted to give the NACC jurisdiction over allegations of unlawful killing, torture and other ill-treatment by state officials in the Deep South.³⁷⁴ In relation to its areas of competence, the NACC has the power to inquire into the facts and gather evidence in order to prove criminal offences, and to ensure that the offender is prosecuted and punished. The NACC has powers to compel compliance from officials in other government agencies and to apply for a warrant from a Court to conduct searches, seizures and arrests.³⁷⁵

The NACC remains independent of ISOC, even when Part 2 of the ISA is in force,³⁷⁶ and could take jurisdiction over the investigation of some alleged human rights violations, particularly those that fall within the scope of Criminal Code article 157. The ICJ is concerned however, as to whether the NACC maintains the necessary political will and capacity to investigate human rights violations, which are in addition to its heavy load of politically charged corruption cases. For example, the ICJ understands that the investigation into the beating and killing of Imam Yapa Kaseng in 2008, by the military personnel holding him in Martial Law detention in Narathiwat province, has been under the jurisdiction of the NACC for close to one year (since the completion of the post-mortem inquest). To date, however, there has been no publicly available information on the progress of the official investigation, even though the family has launched a private criminal prosecution and filed a civil claim for compensation.

RECOMMENDATION:

The ICJ recommends that the Royal Thai Government reconsider whether the NACC is the most appropriate venue for the investigation of serious human rights violations. Should the Royal Thai Government decide that these investigations ought to remain within the jurisdiction of the NACC, it should provide sufficient resources for investigations and ensure that investigations are completed and criminal prosecutions instituted, where appropriate, with expeditiousness. The investigations should be undertaken with the full and visible support of the Royal Thai Government.

5.6.1.3 THE OMBUDSMEN

Complaints regarding official actions taken under the ISA may also be made to the Office of the Ombudsmen. The Office of the Ombudsmen³⁷⁷ is comprised of three independent Ombudsmen, and, like the NACC, is also an independent constitutional organ that is not subject to the authority, control or direction of ISOC, even when Part 2 of the ISA is in force.³⁷⁸ The Ombudsmen have the power to investigate complaints regarding:

- the unlawful performance of duties by officials or complaints that officials exercised their powers in a manner that was *ultra vires*;
- lawful or unlawful actions by state officials, state agencies or enterprises that unjustly cause injury to the complainant or the public;
- negligent or unlawful performance of duties by other constitutional organs or organs in the administration of justice (except for trial or court adjudication); and,
- certain actions in connection with the ethics of political office holders.³⁷⁹

The Ombudsmen are also empowered to monitor, evaluate and make recommendations regarding compliance with the Constitution.³⁸⁰

In the conduct of investigations, the Office of the Ombudsmen has the power to demand statements, documents and evidence from relevant state bodies, agencies, enterprises and local governments and their agents, as well as to demand testimony from any individual, including government officials, to request relevant evidence from the Court, and to enter any premises provided the owner has been given prior notice.³⁸¹ Criminal activity and breaches of government rules or regulations are referred by the Ombudsmen to the relevant agency and the individual's superior for investigation.³⁸² The Office of the Ombudsmen's may also refer matters to the Constitutional or Supreme Administrative Courts where certain conditions are met.³⁸³ In addition, if the Ombudsmen consider that an action of a State agent is lawful, but that the by-law, rule, regulation or resolution of the Cabinet under which the action was taken is discriminatory, out of date,

or “induces unfairness or inequality before the law”, the Ombudsmen may recommend revision of the relevant by-law, rule, regulation or resolution to the relevant agency or to the Council of Cabinet.³⁸⁴

The powers of the Office of the Ombudsmen potentially could allow it to make independent recommendations regarding the use and implementation of the ISA. While the ICJ recognises the potential value of this contribution at an institutional and systemic level, in practice, the Ombudsmen may not be able to provide an effective remedy to individual victims of human rights violations in matters relating to internal or national security. In exercising their investigatory powers, the Ombudsmen must have regard to impact on “the security of the State, public safety or international relations”.³⁸⁵

The Ombudsmen also have the power to refuse to investigate a complaint in several situations, including where the investigation would not be in the public interest because the complainant is not an interested person; if the complainant has already received an appropriate remedy; or, if the complainant fails to give an oral statement, present evidence, or fails to do any act as requested in writing by the Ombudsmen within a specified period and without reasonable grounds.³⁸⁶ Since ISOC has the power to grant compensation for injuries suffered by persons in good faith under section 20 of the ISA, it is possible that the Ombudsmen may decline to review complaints from individuals who have received such compensation, even if the complaint raises broader questions regarding the lawfulness of Cabinet resolutions, regulations or actions taken under the ISA. In addition, the Ombudsmen may reject complaints relating to official actions that fall within the jurisdiction of the National Anti-Corruption Commission, which, as discussed above, could include serious human rights violations.³⁸⁷

In general, the Office of the Ombudsman has the power to issue reports on the outcome of its investigations to the relevant government agencies, to the Cabinet and/or to the Parliament, along with recommendations for remedial action.³⁸⁸ By law, the Ombudsmen must now also issue an annual public report.³⁸⁹ However, there is a requirement that all of the Ombudsmen’s reports to concerned agencies, the Cabinet, the House of Representatives, the Senate and the public, “shall be in summary form and shall not divulge unnecessarily any confidential information concerning individuals or agencies.”³⁹⁰

Critically, the Ombudsmen’s new enabling legislation contains a provision making it an offence punishable by up to six months imprisonment or a fine of 10,000 Baht (approximately US \$300), or both, for any person who discloses any fact, statement or information that has been obtained through the implementation of the Act, with certain exceptions. The exceptions apply, for example, to individuals acting or reporting in the performance of official duties, acting in accordance with the provisions of the Act, or if revealing the information would be beneficial to an examination or inquiry.³⁹¹ This provision could be used to penalise public disclosure of information derived from an Ombudsman’s investigation by complainants, officials, journalists, human rights workers and others if a court did not consider that the disclosure fell within one of the above exceptions. The application of this provision in respect of investigations into

alleged human rights violations would contravene the international legal requirement that the methods and results of such investigations be public. This lack of transparency diminishes the potential of the Ombudsmen to provide an effective remedy for human rights violations in accordance with international standards.

5.6.1.1 NATIONAL HUMAN RIGHTS COMMISSION

The mandate of Thailand's National Human Rights Commission ("NHRC") is enshrined in the 2007 Constitution.³⁹² Its members are appointed by the King with the advice of the Senate, but are selected by a committee comprised of seven members, namely the President of the Supreme Court of Justice, the President of Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, and the Opposition Leader in the House of Representatives, a person nominated at a general meeting of the Supreme Court of Justice, and a person nominated at a general meeting of the Supreme Administrative Court.³⁹³ There is no civil society representation on the selection committee, and no requirement that any member of the selection committee have specific expertise in the field of human rights protection.

The Commission's mandate includes conducting investigations into alleged human rights violations that are not being litigated before the courts or in relation to which the Courts have not issued a final judgement,³⁹⁴ as well as making policy recommendations to the government on human rights issues and promoting human rights education.³⁹⁵ The NHRC does not have powers to compel compliance with its recommendations from other agencies. However, if its recommendations are not followed, the NHRC shall "report to the Prime Minister to order an implementation of the remedial measures within 60 days".³⁹⁶ If the relevant agency or the Prime Minister still does not take remedial measures, the NHRC must report to the Parliament for further proceedings.³⁹⁷ Where appropriate and in the public interest, the NHRC may also refer complaints, along with its own legal opinion, to the Constitutional Court³⁹⁸ or Supreme Administrative Court,³⁹⁹ or litigate on behalf of individual complainants in the Courts of Justice.⁴⁰⁰ In the conduct of its investigations, the NHRC has the power to demand documents or evidence from any person and to summon individuals to give statements of facts.⁴⁰¹

To effectively protect human rights, international standards, expressed in the *Paris Principles* adopted by the United Nations General Assembly, require that the staff of national human rights bodies be institutionally independent.⁴⁰² Such institutions must have the power to make independent decisions regarding the cases that they will take up, as well as to publicise their opinions, recommendations, and proposals.⁴⁰³ To meet international standards, national human rights institutions must also be able to "hear any person and obtain any information and any documents necessary for assessing situations falling within its competence" and consult with other relevant bodies and develop relations with NGOs working to promote human rights.⁴⁰⁴

While Commissioners of the NHRC have been able to express their disapproval of the government's recent use of the ISA freely,⁴⁰⁵ it is unclear whether the NHRC and its staff will in practice be able to retain their independence when Part 2 of the ISA is in

force.⁴⁰⁶ ISOC has the power to exclude NHRC staff from an area where Part 2 of the ISA is in force.⁴⁰⁷ The 2007 Constitution guarantees that the Office of the National Human Rights Commission “shall have autonomy in personnel administration, budgeting and other activities” only insofar as provided by law.⁴⁰⁸ However, the NHRC’s enabling legislation does guarantee a level of independence, requiring that all members shall perform their duties with “independence and impartiality”.⁴⁰⁹ On the other hand, this independence is subject to the constitutional requirement that the NHRC “have regard to the general interests of the country and the public” in the performance of its duties.⁴¹⁰ ISOC officials could interpret this qualification to prevent sensitive investigations into alleged human rights violations. Placing the NHRC under the control of ISOC when Part 2 of the ISA is in force would be contrary to international human rights standards, which seek to protect at all times the independence and impartiality of national human rights institutions.⁴¹¹

A draft of the new enabling legislation for the NHRC, revised by the Council of State, would make it a criminal offence for any Commissioner, sub-committee member or NHRC official to reveal any information acquired in the performance of their duties, except through the results of cases approved by the Commission or information given in criminal prosecutions.⁴¹² While this provision is not as draconian as the confidentiality requirements in the Organic Act on Ombudsmen, such tight restrictions on the public dissemination of information would make it difficult for Commissioners, sub-committee members and NHRC staff to speak publicly about their work on human rights issues. Therefore, the draft provision likely would reduce the effectiveness of informal or public advocacy efforts by the Commission. In addition, the restrictions in the new Council of State draft may also prevent NGO and civil society representatives from agreeing to participate on NHRC sub-committees. Confidentiality requirements that are not closely linked to the need to protect the integrity of on-going criminal investigations or court proceedings, or to legitimate national security, public order or individual privacy interests, are disproportionate. The ICJ therefore considers that the new draft provision is contrary to international human rights standards, which require the process of investigations into human rights violations and the results of such investigations to be public to the greatest possible extent.

In conclusion, given the potential for the ISA to undermine the practical and legal independence of the NHRC, the ICJ considers that its institutional independence must be strengthened through explicit guarantees in both the ISA and in any new enabling legislation. In addition, the NHRC, and its appointment process, will need to be strengthened in order to ensure that its Commissioners and staff are representative of various “social forces (of civilian society) involved in the protection and promotion of human rights”, as required by the *Paris Principles*.⁴¹³ It is also imperative that the NHRC Commissioners and sub-committee members retain the power to determine how to publicly disseminate information regarding their investigations, opinions and conclusions in relation to alleged human rights violations.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to exclude the National Human Rights Commission from the definition of a “government agency” under section 3 of the Act.

The ICJ recommends that the any new enabling legislation for the National Human Rights Commission explicitly guarantee the independence of the Commissioners and their staff from ISOC when Part 2 of the ISA is in force.

The ICJ recommends that the draft provisions making it an offence to reveal information other than the results of cases approved by the NHRC or information provided in criminal proceedings should be dropped from the draft of the NHRC’s new enabling legislation.

The ICJ recommends that the NHRC be empowered to recruit staff from outside the regular civil service; that it be specifically mandated to recruit staff members with a specialised knowledge of human rights; and that any new enabling legislation guarantee the independence of NHRC staff from the Royal Thai Government and the rest of the civil service.

The ICJ recommends that any new enabling legislation require the selection committee for NHRC Commissioners to include representatives from NGOs and civil society organisations.

5.6.1.2 THE SOUTHERN BORDER PROVINCES ADMINISTRATION CENTRE

The Southern Border Provinces Administration Centre (“SBPAC”) has played a part in the governance of the southern border provinces of Satun, Songkhla, Pattani, Yala and Narathiwat since 1981, principally by improving communications with Malay Muslims and by addressing complaints about corruption and abuse of power by officials.⁴¹⁴ The Centre was shut down in 2002 by Prime Minister Thaksin,⁴¹⁵ but was re-established following the 2006 coup by Order of Prime Minister Surayud.⁴¹⁶ Currently, SBPAC’s primary role is to improve government performance in the five provinces by improving the fairness, justice and cultural sensitivity of operations, which includes taking complaints about officials operating in the area and proposing remedies.⁴¹⁷ SBPAC can direct complaints to be investigated by the superior of the official in question, it can refer cases to the Department of Special Investigations and it can investigate complaints itself. Since 2006, at least one official has been removed from his post for wrongdoing following the investigation of a complaint made to SBPAC.⁴¹⁸

SBPAC currently operates under ISOC authority. ISOC approves all SBAC projects and distributes its budget.⁴¹⁹ The ISA has transformed SBPAC into a special operations centre, still under the authority of ISOC.⁴²⁰ A draft bill to remove SBPAC from the authority of ISOC and to provide it with an independent budget for development activities is currently being considered by a parliamentary committee. The draft Government Bill before the committee would give SBPAC responsibilities for promoting peace and development

in the Satun, Songkhla, Pattani, Yala and Narathiwat,⁴²¹ including the power to propose and coordinate the plans of different agencies and to oversee, follow-up and expedite the activities civilian officials.⁴²² SBPAC would also have the power to protect human rights by receiving and investigating complaints about the behaviour of government officials, including the power to exclude civilian officials from the five provinces.⁴²³

To date, the military has resisted any form of institutional or budgetary independence for SBPAC, which would remove significant financial resources from military control in the region.⁴²⁴ As a result, and given the strength of the provisions giving ISOC control over other government agencies where Part 2 of the ISA is in force, the ICJ is concerned about the ability of SBPAC to serve as an independent check on abuses of power and as a locus for the effective investigation of human rights abuses.

The ICJ welcomes the recent legislative initiative to strengthen SBPAC, which should be given adequate budget and powers to independently investigate allegations of any official misconduct in the southern border provinces, with a specific focus on complaints from Pattani, Yala, and Narathiwat provinces where Martial Law and the 2005 Emergency Decree are currently in force, as well as on the districts of Songkhla province where Part 2 of the ISA and/or Martial Law are in force. In order to provide effective and independent administrative remedies for human rights violations when Part 2 of the ISA is in force, SBPAC will need to have a strong investigative mandate with powers to compel statements and evidence similar to the powers of the NHRC or the Ombudsmen. In addition, in order for remedies to be effective and accessible, the investigative process and any findings or recommendations must be made public to the greatest extent possible. SBPAC should be empowered to take binding disciplinary action against civilian officials where appropriate, and to make recommendations to the military chain of command regarding the commencement of military disciplinary proceedings or the transfer of personnel out of the southern border provinces. Military commanders, in turn, should be required to provide public, written responses explaining corrective actions taken or justifying the basis for any disagreement with the disciplinary recommendations of SBPAC.

RECOMMENDATIONS:

The ICJ Recommends that SBPAC's new enabling legislation should specifically empower it to:

- **independently investigate allegations of human rights violations by both civilian and military officials;**
- **provide sufficient investigatory powers, including the power to compel statements and gather evidence and information;**

- take proportionate disciplinary or other administrative measures to punish civilian officials found to have acted wrongfully and to make recommendations for the commencement disciplinary proceedings or the transfer of personnel to the military chain of command;
- publicise information gathered during investigations and make public the results and recommendations;
- follow-up through referral to appropriate judicial authorities and to the executive and political branches of government where recommended corrective action is not taken; and,
- refer complaints against civilian and military officials for criminal investigation or prosecution where appropriate.

The ICJ recommends that section 26 of the ISA be amended to remove the reference to the SBPAC as a special centre of operations or agency under section 17 of the ISA.

The ICJ recommends that where the commencement of disciplinary proceedings or the transfer of military personnel is recommended by SBPAC, the relevant military commander should be required to provide a public, written explanation of any corrective actions taken or a reasoned statement justifying any disagreement with SBPAC's recommendations.

5.6.2 JUDICIAL REMEDIES

Internationally protected human rights must be secured by procedural guarantees, including judicial guarantees. Section 23 of the ISA provides that any criminal prosecution or civil action relating to regulations, notifications, orders or actions issued under Part 2 of the Act falls under the exclusive jurisdiction of the Courts of Justice.⁴²⁵ The ICJ welcomes this amendment of the previous Bill to guarantee that official actions will not escape judicial scrutiny. However, the ICJ remains concerned that in practice, it may be difficult or impossible for individuals whose rights have been violated to obtain an effective remedy in a timely fashion.

5.6.2.1 MILITARY COURTS

Section 23 of the ISA should be interpreted to exclude the jurisdiction of military courts over both military and civilian personnel in relation to regulations, notifications, orders or actions issued under Part 2 of the ISA. International experience has shown that military jurisdiction is often used as a means of circumventing the control of the civilian authorities and of consolidating the military as a power within society. The Human Rights Committee has stressed that States must take steps to ensure that military forces are subject to civilian authority.⁴²⁶

In various States, the adjudication by military tribunals of cases involving serious human rights violations has frequently led to impunity for those violations; denial of the right to an effective remedy, including in the form of accountability for those responsible; and the denial of reparation to victims. Contemporary international legal authority recognises that where human rights violations amounting to crimes under either domestic or international law are alleged (and judicial remedies, therefore, are required) all defendants, including military personnel, should be tried in civilian courts.⁴²⁷ The UN Commission on Human Rights, the predecessor body of the UN Human Rights Council, recommended that where civil defence forces are deployed, States ensure that any members accused of criminal offences that involve human rights violations be tried in civilian courts.⁴²⁸ The ICJ considers that military jurisdiction should be restricted only to military personnel for specifically military offences.⁴²⁹

Judicial panels in Thai military courts are composed of a combination of commissioned officers and one or more members of the Judge Advocate General's Department.⁴³⁰ Since judges are appointed by their superior officers or the Minister of Defence and do not have security of tenure,⁴³¹ these courts lack the necessary independence and institutional impartiality necessary to meet international standards.⁴³² Trials of alleged serious violations of human rights in tribunals that lack institutional independence and impartiality do not satisfy Thailand's international obligation provide an adequate or effective remedy to victims, and may result in *de facto* or *de jure* impunity for perpetrators, which would represent a further violation of international human rights law.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended specifically to exclude the jurisdiction of the military courts in relation to criminal offences that also amount to violations of internationally or domestically protected human rights.

The ICJ recommends that all trials of members of the military, paramilitary or civil defence forces accused of human rights violations amounting to criminal offences be held in public in the civilian courts of ordinary jurisdiction.

5.6.2.2 HABEAS CORPUS

The ICCPR provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁴³³ The right to be promptly brought before an independent and impartial judge in order to challenge the legality of detention is a vital safeguard against arbitrary detention or ill-treatment in custody.⁴³⁴ The United Nations General Assembly has recognised the critical importance of such judicial remedies, which not only serve to protect people from arbitrary and unlawful detention, but can also be used to effect the release of people who have been detained because of

their political views or convictions, to clarify the whereabouts and fate of missing and disappeared persons, and to prevent torture and ill-treatment.⁴³⁵

The ICJ considers that in order for judicial review of the legality of detention to provide an effective remedy, the Court must be empowered not only to ensure that the detention of the individual is properly authorised by a provision of domestic law, but also to review the merits of the decision to detain any person.⁴³⁶ Courts also must have access to sufficient information to allow a judge to test the reasons for detention and to decide, by reference to clear legal criteria, whether detention is justified. Where detention is not justified, the judge must be empowered to order immediate release. In addition, judges must ensure that the last known custodian of a person adequately accounts for the individual's whereabouts, including through the production of detention records.

In the Deep South of Thailand, however, judicial review of the lawfulness of detention appears to be insufficiently robust to meet international law and standards. For example, Imam Yapa Kaseng was detained under Martial Law in a police truck at the camp of Taskforce 39 in Narathiwat, along with two of his sons and four other individuals on 19 March 2008. Imam Yapa died on 21 March 2008 of injuries sustained while in detention. A subsequent post-mortem inquest found that Imam Yapa's death was caused by beatings he sustained while in custody.⁴³⁷

Following Imam Yapa's death, a relative of two other detainees brought an application for judicial review of the legality of their detention, alleging that the two men had been tortured in custody by military officials. The Court dismissed the application on the basis that their detention was authorised under a provision of the 2005 Emergency Decree,⁴³⁸ without addressing the allegation of ill-treatment raised by the petitioners, or referring to Article 32 of the Constitution, on which the application was partially based.⁴³⁹ Article 32 of the Constitution protects the right to liberty and prohibits torture and other ill-treatment, as well as providing an individual right to seek a court Order halting such acts and the award of appropriate remedies. The Court's failure to consider whether the detention complied with the rights guaranteed under the Thai Constitution and the ICCPR, including the right to life, the right to be free from torture or other ill-treatment, and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, violated the petitioner's right to an effective remedy under the ICCPR and the Convention Against Torture.⁴⁴⁰ As a result, the ICJ is concerned that judicial review of the legality of detention will be insufficient to safeguard internationally and domestically protected human rights when Part 2 of the ISA is in force.

RECOMMENDATIONS:

The ICJ recommends that article 90 of the Criminal Procedure Code be amended to require expressly that judges consider whether all circumstances of an individual's detention are lawful in accordance with the requirements of Articles 2 and 9 of the ICCPR, including the individual's treatment in detention, as well as the constitutionality of the provision of law authorising detention.

The ICJ recommends that the Supreme Court and the Provincial Courts of Justice issue a directive to judges to the same effect.

5.6.2.3 OUSTER OF ADMINISTRATIVE COURT SCRUTINY

Section 23 of the ISA provides that court proceedings regarding any regulation, notification, order or action under Part 2 of the Act falls within the jurisdiction of the Courts of Justice, which include the Criminal and Civil Courts. Consequently, the Administrative Courts are stripped of their normal jurisdiction over disputes between an individual and a state agency.⁴⁴¹

Moreover, it remains unclear to what extent the Courts of Justice will be able, in law and in practice, to ameliorate the removal of the Administrative Courts' jurisdiction and provide an effective remedy for any persons whose human rights are violated by the application of the ISA. While the Administrative Courts can review the legality and proportionality of official actions at any time,⁴⁴² the Courts of Justice only have jurisdiction over a case after a person has suffered some form of harm. In fact, the Administrative Courts are the only courts that have the power to revoke unlawful administrative acts, including regulations issued under Part 2 of the ISA. They also function on an inquisitorial basis and have the power to conduct their own investigations into state activities, including discretionary powers to subpoena evidence of their own motion.⁴⁴³ The Courts of Justice, on the other hand, function on a purely adversarial basis, meaning that the judge decides cases based only on the evidence presented by the parties. In addition, only the Administrative Courts have the jurisdiction to revoke the general application of an official regulation, policy or by-law for illegality.⁴⁴⁴ The Courts of Justice have only the power to annul illegal by-laws and regulations in respect of the individual complainant(s) before the Court.⁴⁴⁵ The Administrative Courts are the only courts that have jurisdiction to judicially review the legality, necessity and proportionality of measures taken under Part 2, as generally applied.

Overall, the jurisdiction of the Courts of Justice, including the Civil Courts, is narrower than that of the Administrative Courts, which will restrict the ability of victims of human rights violations to seek redress. Temporary measures of protection, which can include temporary injunctions to halt official activities, may be obtained from the Civil Courts under section 23 of the ISA.⁴⁴⁶ However, unlike the Administrative Courts, which can review the legality, necessity, and proportionality of a measure before it is implemented and enjoy

official actions in advance, the Civil Courts only have jurisdiction after an individual is proven to have suffered harm.⁴⁴⁷ Thus, it appears that a declaration enforcing Part 2 of the Act or regulations under section 18 could not be challenged or enjoined in advance.⁴⁴⁸ Since ISOC does not have legal personality, litigants wishing to launch civil complaints against ISOC would have to bring their claims against the Prime Minister's Office. The Director of ISOC has the legal power to commence or defend legal actions relating to ISOC activities on behalf of the Prime Minister's Office.⁴⁴⁹

The right to remedy is also weakened by the exclusion of regulations, notifications, orders and actions under Part 2 from the scope of the Act on Administrative Procedures. Under the ISA, the existing internal administrative mechanisms that allow individuals to challenge or appeal administrative orders are unavailable.⁴⁵⁰ In addition, the requirement that administrative decision-makers be unbiased and the right of a litigant to be heard are contained in the Act on Administrative Procedures.⁴⁵¹ Although these principles are also contained in the 2007 Constitution,⁴⁵² experience in Thailand demonstrates that constitutional rights can be difficult to enforce where they are not also made explicit in ordinary legislation.

Although the ISA does not remove the right to a remedy completely, it severely limits timely access to effective remedies and reparations by excluding the application of the Act on Administrative Procedures and the jurisdiction of the Administrative Courts. The ICJ is particularly concerned that no court currently has the power to cancel illegal official actions of general application that result in human rights violations. Where gross violations of international human rights law have occurred, victims are entitled not only to compensation and other restitution for the harm that they have suffered, but also to guarantees of non-repetition and effective measures aimed at the cessation of any continuing violations.⁴⁵³

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to ensure that an independent and impartial civilian court has the power to review the legality of all regulations, announcements, notifications, orders or actions taken under the Act and to cancel or revoke all regulations, notifications, orders or actions that are unlawful. This power of revocation must apply to all regulations, announcements, notifications, orders or actions generally, and must not be restricted to the outcome of individual cases.

The ICJ recommends that the ISA be amended to provide explicitly that in any proceeding alleging or relating to an alleged violation of domestically or internationally protected human rights, the complainant is entitled to the opportunity to be heard before an objective and impartial decision-maker.

5.6.3 COMPENSATION BY ISOC

The ISA provides for the creation of an administrative compensation regime for loss or damage caused by actions taken by ISOC in order to prevent, suppress or mitigate internal security threats under Part 2 of the ISA. Section 20 provides that persons acting in good faith who are harmed by such actions shall receive “appropriate” compensation as arranged by ISOC according to principles and conditions prescribed by the Cabinet.

The ICJ welcomes the reference in the Act to compensation, but is concerned at the apparent intent to limit the award of such compensation to persons who are acting in good faith. It is unclear precisely which individuals will be considered to act “in good faith” under section 20. Under existing schemes set up to compensate “innocent” criminal defendants, the ICJ understands that compensation has been denied to persons who have been acquitted on the basis that a reasonable doubt existed with respect to their guilt. A positive finding that the defendant did not commit the crime apparently has been required.⁴⁵⁴ It is likely that this administrative compensation mechanism will only be available to those who are considered not to have provoked or participated in provocation that resulted in the measures for which compensation is sought.⁴⁵⁵ It seems then, that persons who suffer harm because they negligently or intentionally violate the provisions of the ISA, or whose actions constitute an offence under other legislation, would be ineligible for compensation under section 20 of the ISA. This language may also disentitle a broader range of individuals, such as those acquitted of a breach of section 18 regulations because the prosecution has not met its burden of proof, from access to the compensation scheme. As a result, although the ISOC compensation scheme may provide remedies for some human rights violations, this scheme alone is insufficient to meet Thailand’s international obligations.

The ICCPR, and other human rights instruments, require that the right to a remedy be guaranteed to all victims of human rights violations, regardless of whether they sustained damage as a result good faith or bad faith, or factual guilt or innocence. Although victims of human rights violations can still have recourse to the Courts of Justice to seek a remedy, the ICJ is concerned that some victims of human rights violations may not have access to the administrative compensation regime, which potentially may provide a measure of immediate financial relief at a low cost to the victim.

The ICJ is concerned also that ISOC has the power to determine eligibility for compensation based only on the vague notion of “good faith” and principles and conditions prescribed by Cabinet. As such, section 20 fails to provide clear criteria for eligibility or a credible and impartial decision-making process, leaving room for arbitrary or discriminatory decisions regarding compensation.

In addition, the language of section 20 does not specify the types of losses that would be compensable under the scheme. To comply with international human rights principles, regulations under section 20 should provide compensation for economically assessable damage in a manner that is appropriate and proportional to the gravity of the violation and the circumstances of each case. Compensation should be available for physical or mental harm, lost employment, education and other benefits, material damages and loss of earnings, moral damages and legal and medical costs.⁴⁵⁶

It is unclear to what extent compensation arranged by ISOC may encroach on the right of plaintiffs to seek damages for losses in the civil courts, where the alleged violation of a person's rights could be adjudicated independently and a finding of wrongdoing reached. Any administrative compensation scheme that prevented a person whose rights under the ICCPR had allegedly been violated from seeking a judicial investigation of the complaint, would be in violation of Thailand's obligations under Article 2 of the Covenant.

RECOMMENDATION:

The ICJ recommends that section 20 of the ISA be amended to ensure that the final determination of compensation claims is made by an independent body and not by ISOC.

The ICJ recommends that clear and binding regulations be issued by Cabinet prescribing eligibility, heads of compensable damages and guidance for establishing quantum for compensation under section 20.

The ICJ recommends that the Royal Thai Government ensure, through legislation and regulations, that full reparations are made available for all serious human rights violations.

The ICJ recommends that at all times, individuals alleging human rights violations resulting from actions taken pursuant to ISA powers must have the right challenge the legality of official decisions, acts and regulations and seek effective non-discriminatory remedies before an impartial civilian court or tribunal.

6. THE ROLE OF ISOC

6.1 BROAD OPERATIONAL ACTIVITIES

At all times, ISOC is tasked with the responsibility to maintain internal security in Thailand, including internal security planning. ISOC is also given the power to monitor, coordinate and support the implementation of such plans by other government agencies.⁴⁵⁷ In addition to planning and coordinating government responses to internal security threats, ISOC may also undertake an undefined range of "other operations", according to legislation or as assigned by Cabinet or the Prime Minister.⁴⁵⁸

Under section 25 of the ISA, the activities, personnel, property and budget of ISOC (as established prior to the ISA⁴⁵⁹) are transferred to the newly codified and empowered ISOC.⁴⁶⁰ Concerns over how military personnel will interpret the lack of definition of security "situations" requiring ISOC action and any regulations passed under section 18 are further aggravated by the pre-existing purposes and organisational structure of ISOC. The current organisation of ISOC includes co-ordination teams covering the following six operational subjects or areas: Narcotics; Aliens and

Illegal Migration; Terrorism and Transnational Crime; Special Security; Security in Specific Areas; and Royal Socio-economic Development Projects.⁴⁶¹

The scope of activities falling under the above subjects, which may be interpreted by ISOC military personnel as constituting a security “situation” is potentially very wide, creating the possibility that the maintenance of internal security will be connected, for example, to the treatment of refugee and asylum seekers or to suspected drug users. Indeed, the subject areas themselves are open to wide definition. For example, in March 2009 Cabinet announced that a special budgetary allocation of 1 billion Baht (approximately US \$30 million) would be set aside for use by ISOC to promote and apply military efficiency to the development of Royal and other rural socio-economic projects, training programmes and civilian affairs operations. Reasons given for the expenditure included alleviating the effects of the global economic crisis and countering the effects of an anti-government mass campaign by supporters of former Prime Minister Thaksin.⁴⁶²

The past activities and practices of ISOC and the Thai military in enforcement operations connected to security raise serious human rights concerns. For example, following a military coup in 1992, the Royal Thai Army led a violent crackdown against pro-democracy protestors.⁴⁶¹ The United Nations Working Group on Enforced and Involuntary Disappearances received reports of thirty-one cases of persons alleged to have been subjected to enforced disappearance by the Army in 1992,⁴⁶³ and the fate of all but three of these individuals remains unknown.⁴⁶⁴ Therefore, the crime of enforced disappearance is still on-going.

More recently, ISOC and the Royal Thai Army have used Martial Law and the 2005 Emergency Decree to detain insurgent suspects in the Deep South for interrogation in irregular places of detention, without bringing detainees before a judge as would normally be required under the Criminal Procedure Code, and without allowing detainees access to counsel.⁴⁶⁵ Where the special laws apply, *habeas corpus* remedies have not been applied robustly by the judiciary to consider whether the laws authorising detention are consistent with internationally and domestically protected human rights or to ensure that detainees are not subject to ill-treatment (see discussion above). In the absence of these internationally required guarantees, credible allegations of extrajudicial killings, torture or other ill-treatment in military custody⁴⁶⁶ and a number of enforced or involuntary disappearances of Muslims in the Deep South have been reliably reported.⁴⁶⁷ The ICJ has documented convincing allegations of individuals being arbitrarily detained in the Deep South, even when measured by the overly broad standards of the 2005 Emergency Decree.⁴⁶⁸ Human rights violations by the police in the context of narcotics enforcement operations have also been widely documented, but prosecutions are rare.⁴⁶⁹ In late 2008 and early 2009, ISOC was accused of putting out to sea hundreds of Rohingya fleeing alleged persecution and human rights violations in Burma with no food, water or engines on their rafts, following entry into Thailand or Thai territorial waters. Hundreds of Rohingya are suspected to have died as a result of this policy.⁴⁷⁰ In four districts of Songkhla province, ISOC has been delegated the full range of powers under both the Deportation Act and the Immigration Act. For these reasons, the ICJ is concerned that

ISOC officials do not have the proper training or competency to enforce the full range of laws under which they now have authority.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to clearly define a restricted scope of activities in which ISOC may be involved under the rubric of the maintenance of internal security.

The ICJ recommends that ISOC officials not be assigned responsibilities outside the scope of their competency and training, including in the fields of immigration, criminal law enforcement, and civil administration.

6.2 OVERBROAD ENFORCEMENT POWERS UNDER PART 2

When Part 2 is invoked, under section 16(1), Cabinet can give ISOC the responsibility and the power to “prevent, suppress, suspend, inhibit and solve or mitigate” the security situation in question.⁴⁷¹ Such broad and undefined terms as “suppress”, “solve” or “inhibit” create a real risk of arbitrary and inconsistent interpretation and application. The word “inhibit” also implies that section 16(1) powers may be used preventatively.

In the execution of powers under section 16(1), any competent official designated by the Director of ISOC or his delegate shall be deemed a high-level administrative official or a high-level police officer,⁴⁷² and also an investigating officer under the Criminal Procedure Code.⁴⁷³ The Director of ISOC, his delegates and a range of ISOC officials not specified in the legislation are, therefore, given the entire range of police and investigative powers, including powers to issue summonses to appear,⁴⁷⁴ to interrogate witnesses and suspects,⁴⁷⁵ and gather other evidence.⁴⁷⁶ In order to implement operations according to the powers and duties under section 16(1), a Cabinet Declaration also may transfer the powers, duties and responsibilities held by non-ISOC officials under other legislation in whole or in part to ISOC.⁴⁷⁷ In practice, such powers have been given to ISOC each time Part 2 has been invoked to date.⁴⁷⁸

Section 16(1) gives very broad discretion to ISOC in the use of force. As a result, there is a heightened risk of violations of a number of rights, including extrajudicial executions in violation of the right to life (ICCPR Article 6), the right to be free from torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7), the right to security of the person (ICCPR Article 9), and freedom of peaceful assembly (ICCPR Article 21). To protect these rights, international standards limit the use of force by authorities in response to both peaceful and non-peaceful situations. Lethal force may never be used save “when strictly unavoidable to protect life.”⁴⁷⁹ Law enforcement officials must use force only as a last resort and in proportion to the threat posed,

which means that the lowest possible level of force must be used to achieve the objective. Force, including force used in crowd control, must also be used in a way that minimises damage or injury.⁴⁸⁰ Firearms should only be used “when strictly unavoidable to protect life.”⁴⁸¹ The Special Rapporteur on Extrajudicial Executions has stated that

“ [t]he fundamental question is of proportionality between the objectively anticipatable likelihood that the use of force will result in death and the comparable anticipatable likelihood that failing to incapacitate the individual would result in the deaths of others.”⁴⁸² ”

In fact, thousands of troops have been deployed in Phuket, Bangkok and around Hua Hin to control protestors at times when Cabinet has declared Part 2 of the ISA in force.⁴⁸³ Fortunately, there have been no reports that protestors or state authorities have used force when Part 2 of the ISA has been enforced to date. For example, Royal Thai Government statements indicate that where security forces were deployed in the Dusit District of Bangkok between 18–22 September 2009, “officers operating outside government offices ... [were permitted to] ... carry only shields, batons and crowd-control equipment, with no other weapons.”⁴⁸⁴ The ICJ commends these types of restraints on the use of force. In this respect, it is not only the types of weapons carried but also the ways in which these weapons may be used and the rules of engagement applicable to forces controlling crowds. The ICJ also welcomes Royal Thai Government statements indicating that “security officials have been instructed to act in accordance with internationally accepted practices, with due respect to human rights principles”.⁴⁸⁵

Key International Standards on the Use of Force

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Principle 8. “Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

Principle 9. “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

UN Code of Conduct for Law Enforcement Officials

Article 3. "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

Recently, Cabinet reportedly approved large budget requests for the procurement of riot control equipment for the military, including 5,200 tear-gas canisters, 260 tear-gas launchers and 487,500 rubber bullets.⁴⁸⁶ An Army spokesman is reported to have stated that this equipment was needed to properly equip soldiers who support the police in keeping order when Part 2 of the ISA is in force.⁴⁸⁷ In April 2009, troops reportedly fired live ammunition to disperse protestors while the 2005 Emergency Decree was in force in Bangkok in April 2009.⁴⁸⁸ There are conflicting accounts as to whether live ammunition was fired into the air to disperse protestors, and directly at violent protestors directly threatening the lives of soldiers in self-defence (some protestors reportedly tried to drive buses into troops), as claimed by the security forces; or, whether live ammunition may have been fired directly into crowds of protestors who did not pose an immediate threat to life, when security forces were trying to clear them out of roadways in Bangkok. The use of live ammunition to disperse crowds of individuals who do not pose an immediate threat to life represents a disproportionate response not in line with international standards and may also violate the right to life.⁴⁸⁹ Military forces also fired live ammunition to disperse protestors who did not pose an imminent threat to life during a large protest in the town of Tak Bai, Narathiwat Province, in October 2004, killing at least seven people, five of whom were shot in the head.⁴⁹⁰

The ICJ is concerned that the overbroad language in section 16 fails to set any clear legal limits on the use of force by ISOC or officials under its command. Wide discretion given to state authorities to use force is incompatible with international standards, and has been a subject of concern to the Human Rights Committee.⁴⁹¹ Legal ambiguity creates a serious risk that excessive force may be employed in order to suppress, solve or inhibit situations deemed to threaten internal security under Part 2 of the Act. The potential for excessive use of force under the ISA is particularly important in the context of the Deep South, where there are plans to replace Martial Law with Part 2 of the ISA in four districts of Songkhla province.⁴⁹² The ill-defined and overbroad powers in the Martial Law and the 2005 Emergency Decree have contributed to serious human rights abuses in this region the past,⁴⁹³ including the massively excessive use of force by authorities in dispersing a large protest at the Tak Bai police station in 2004.⁴⁹⁴ These violations undermine the faith of local people in the administration of justice and create a significant impediment to attempts at peace and reconciliation.

RECOMMENDATIONS:

The ICJ recommends that the provisions of the ISA be repealed or amended to provide clear and specific investigatory powers that may be used to monitor threats to internal security. The ICJ recommends that the use of these powers be restricted to trained, civilian police personnel and members of the Department of Special Investigations. However, should the Thai government consider that investigatory powers should be provided to ISOC, even during normal times, the ICJ recommends that strong, additional checks and balances be added to the Act.

The ICJ recommends that the ISA be amended to include a requirement that the protections under the Criminal Procedure Code, including judicial warrants for searches and seizures, apply to all investigative activities under the ISA.

The ICJ recommends that security forces apply rules of engagement and procedures that specifically incorporate relevant international standards, including particularly Principles 8 and 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Article 3 of the Code of Conduct for Law Enforcement Officials.

6.3 ISOC involvement in criminal investigations

The UN Human Rights Committee generally has emphasised the need for the primacy of the civil and political authorities over military and other security forces in its response to responding to patterns of gross human rights violations and persistent impunity in the context of military involvement in domestic law enforcement, including in relation to civil unrest, anti-insurgency or anti-terrorism.⁴⁹⁵ However, the ICJ recognises that the Thai military has a long history of involvement in governance, and that this history may prompt Thailand to choose to give the military a greater law-enforcement role than may be considered appropriate in other countries. The use of the military to exercise these functions is always a matter of concern. These concerns are exacerbated by the fact that a junta-appointed legislature provided these powers to the military following a military coup.⁴⁹⁶

Section 19 of the ISA provides that ISOC officials, including military personnel and others who are designated by the Director of ISOC to carry out duties under the Act, when acting in fulfilment of their responsibilities to “prevent, suppress, suspend, inhibit and overcome or mitigate” internal security situations, shall assume the role and legal status of a superior administrative or police official.⁴⁹⁷ Superior administrative or police officials have the power to summon an individual to give a statement without a warrant. The full range of regular police powers contained in the Criminal Procedure Code, including investigative powers, have been given to ISOC under section 16(4), which provides that Cabinet may give ISOC officials the powers of government departments and agencies, or may empower ISOC to act in place of a government department or agency.⁴⁹⁸

Cabinet resolutions have also provided ISOC officials with law enforcement powers under a variety of other pieces of legislation, including the Criminal Code; the Criminal Procedure Code provisions on the exercise of investigative powers, the powers of administrative officials or the police; the Special Case Investigation Act, B.E. 2547 (2004) (which provides jurisdiction to the Department of Special Investigations in particularly complex cases); the Act for Controlling Weapons, B.E. 2530 (1987); and, in some cases, the Computer Crimes Act.⁴⁹⁹ In Songkhla Province, ISOC officials also have law enforcement powers under a wide variety of legislation,⁵⁰⁰ including: the Deportation Act,⁵⁰¹ the Immigration Act (which allows for detention of suspected illegal aliens without judicial review for up to seven days⁵⁰²), the Narcotics Control Act and other related narcotics legislation,⁵⁰³ the Highway Act,⁵⁰⁴ the Penitentiary Act, B.E. 2479 (1936),⁵⁰⁵ and the Anti–Money Laundering Act, B.E. 2542 (1999).⁵⁰⁶

International law and standards recognise the essential role of law enforcement officials in fulfilling the State's obligation to maintain the rule of law and a secure, peaceful social order in which rights and freedoms can be protected and enjoyed.⁵⁰⁷ Within the context of ensuring “social order”, the effective deployment of law enforcement agencies in a manner that respects human rights is a critical means by which States fulfil their international obligations and their obligations to their own citizens. The UN Code of Conduct for Law Enforcement Officials provides in Article 2 that “[i]n the performance of their duty all law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.” The General Assembly Resolution under which the Code was adopted requires that “every law enforcement agency should be representative of and responsive and accountable to the community as a whole.”⁵⁰⁸

Powers given to law enforcement officials to fulfil the core functions of policing, that is the prevention and detection of crime, the maintenance of public order and the provision of assistance to those in need, must be subject to robust oversight to ensure respect for human rights. The need for accountability is particularly important because law enforcement officials apply a degree of discretion in the exercise their powers in the course of police work within their communities. International standards developed to ensure the protection of human rights during arrest and detention,⁵⁰⁹ criminal investigation⁵¹⁰ and public order policing⁵¹¹ need to be reflected in police operational procedures and training, and through effective oversight and accountability mechanisms, including independent courts, external complaints bodies and internal disciplinary procedures and tribunals.

The ICJ is particularly concerned about the possibility that law enforcement or other exceptional powers under Part 2 of the ISA may be granted to members of the Rangers (*Thahan Phran*) paramilitary force, or the Territorial Defence Volunteers (*Or Sor*), a civilian militia. The Rangers make up a significant proportion of the security forces in the Deep South.⁵¹² The ICJ has received reports from local people that they are particularly concerned about harassment and intimidation from members

of this group.⁵¹³ There are over 5,000 *Or Sor* in the Deep South, tasked with protecting administrative offices, high-ranking officials, and some teachers. The *Or Sor* is organised under the Ministry of Interior,⁵¹⁴ but is under the command of ISOC Region 4 Forward Command in the Deep South.⁵¹⁵ The ICJ considers that both groups lack sufficient training or institutional discipline to carry out such critical responsibilities.⁵¹⁶

In practice, impunity for security officials in Thailand remains the norm: amnesties were granted to military officials involved in the 1973, 1976 and 1992 massacres of protestors in Bangkok and five years after the events at Tak Bai, no prosecution has been instituted. Similarly, almost a year after a Court concluded that the death in military custody of Imam Yapa Kaseng was caused by severe beatings by military personnel, the public criminal investigation languishes at the National Anti-Corruption Commission. No criminal investigation appears to have been undertaken in relation to the military's push-back policy regarding Rohingya fleeing Burma, discussed above.

Additional safeguards must be added to the ISA to ensure that all personal exercising law-enforcement powers respect international human right law and standards.

RECOMMENDATIONS :

The ICJ recommends that when ISOC military or other personnel are deployed in a law enforcement capacity, they conform to the international standards on the use of force applicable to the police, the prohibition and prevention of torture and other ill-treatment, and judicial oversight of arrest and detention. These standards include the Code of Conduct for Law Enforcement Officials and the UN Principles on the Use of Force by Law Enforcement Officials.

The ICJ recommends that military personnel deployed in a law enforcement capacity are brought under the same accountability mechanisms as police, and that these mechanism should be independent and effective.

The ICJ recommends that an independent and impartial civilian body capable of providing an effective and accessible remedy to victims should investigate all allegations of human rights violations committed against civilians by ISOC personnel or those acting under ISOC authority.

The ICJ recommends that if there is reason to believe that a crime under international or domestic law, including torture and ill-treatment, extrajudicial execution or enforced disappearance, has been committed by ISOC personnel, criminal prosecution should be undertaken within the civilian justice system.

6.4 CIVILIAN AUTHORITY SUPERSEDED

The ICJ is concerned that the powers given to ISOC threaten to undermine a core element of the rule of law: the relationship between the civilian and military authorities. UN bodies, such as the General Assembly, have consistently called on states to strengthen the rule of law by ensuring that the military remains accountable to a democratically elected civilian government.⁵¹⁷ The UN Human Rights Committee has also urged states to ensure the primacy of civil and political authority.⁵¹⁸

The ISA provides the military with broad authority and command over civilian agencies. In exercising its enforcement powers, the military is specifically authorised to remove any government official it considers a threat or obstacle to the maintenance of public security.⁵¹⁹ ISOC is positioned within the Prime Minister's Office and the Prime Minister is its designated Director. However the ICJ is concerned that powers exercised by the military through ISOC may not, in practice, be subject to effective oversight or control by the civilian administration.

6.4.1 THE ROLE OF ADVISORY BOARDS

Under Section 10, the Internal Security Operations Board can appoint an Advisory Board to ISOC, made up of qualified representatives of various academic disciplines and sectors, including political science and administration, science and technology, national security, mass media and the "protection of the rights and liberties of the people". The Board is charged with the duty of recommending solutions or preventive steps to security threats.

Similarly, at the regional level, a RISOC Director can appoint an advisory board of up to 50 persons "accepted and trusted" by the people to propose solutions and preventive steps, while at the provincial level a PISOC Director can appoint such a Board not exceeding 30 persons.

Given the appointment process, the ICJ is concerned that the advisory boards will not have sufficient independence to effectively exercise their advisory functions. In addition, the ICJ considers that the boards are insufficiently representative of the different stakeholders in Thai society. To be truly representative, the advisory boards should include trade union and civil society representation, particularly from groups representing women, refugees, immigrants and stateless persons, ethnic minorities and local villagers. These problems are compounded by the vaguely defined consultative role of the advisory boards. Furthermore, there is no provision requiring their advice to be accepted or acted on by ISOC Directors and no means of recourse if advice is not followed.

Part of problem of entrusting the armed forces with primary responsibility for internal security issues, including countering terrorism, is that this often leads to the privileging of purely military concerns at the expense of seeking alternative options. When military forces are entrusted with responsibility for "defeating" security threats, this often delays pursuit of other political, social or economic remedies.⁵²⁰

The establishment of advisory boards, though welcome, are likely to provide only a limited counter-balance to military doctrine and thinking in planning security responses. Certainly the Advisory Boards are not a substitute for genuine participation and a robust scrutiny role properly exercised by Parliament.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to ensure that a broad range of stakeholders are represented on the advisory boards at all levels, including representatives from trade unions and civil society groups.

The ICJ recommends that the ISA be amended to provide an appointment process for members of the advisory boards who serve in an unofficial capacity, which aims to ensure their independence from the government, ISOC, the military, and other officials.

6.4.2 FRAGILITY OF CIVILIAN CONTROL

In times of political uncertainty, it is possible that a politically weak executive could give “semi-automatic” delegation of ISOC authority from the Prime Minister to the Commander-in-Chief of the Royal Thai Army, during both periods of ‘normalcy’ (exercise of Part 1 powers to monitor, investigate and co-ordinate preventive planning with government agencies) and periods of ‘enforcement’ (exercise of Part 2 powers to prevent, suppress and solve security threats). For example, in 2008, then Prime Minister Samak Sundaravej reportedly delegated his powers as Director of ISOC to Army Commander-in-Chief General Anupong Paochinda.⁵²¹

This likelihood is grounded in the experience of modern Thai political history, which has been marked by repeated periods of military government, or military-influenced civilian governments.⁵²² As noted above, the ousting of the democratically elected government of Thaksin Shinawatra, the tenth military coup since the absolute monarchy was abolished in 1932, suggests the political and institutional foundations of civilian authority over the military are not firmly rooted.⁵²³

The ICJ is concerned that, as drafted, the Act would allow ISOC to have exceptional legal powers to restrict or otherwise interfere in fundamental constitutional rights and to take nationwide command over the civilian administrative authorities. Under Part 2, ISOC is empowered to take “any action” deemed necessary to prevent or suppress real or perceived threats – in vaguely defined security situations that do not amount to a genuine emergency recognised under international law.

RECOMMENDATION:

The ICJ recommends that the ISA be amended to prevent the Prime Minister from delegating his powers as Director of ISOC to active-service members of the military. Cabinet must retain effective powers of control over ISOC and have adequate information about its activities.

6.5 THE NEED FOR DEMOCRATIC OVERSIGHT AND INDEPENDENT REVIEW

Part 1 of the ISA gives ISOC broad powers to monitor, examine and evaluate information relevant to national security. Part 2 of the ISA, when in force, gives a wide range of ISOC officials the full complement of coercive police powers, including powers to use both lethal and non-lethal force, including firearms, to arrest and detain individuals, conduct searches with and without a warrant, enter onto premises overtly and covertly, and lay criminal charges. The nature of the ISA as a quasi-emergency law highlights the need for robust democratic accountability and effective checks and balances on the exercise of ISOC powers.

Under Part 1 of the ISA, ISOC monitors and evaluates situations that may give rise to a threat to internal security, and reports to Cabinet.⁵²⁴ The Prime Minister is not required to inform Parliament of the objective justification for Cabinet's triggering of Part 2 powers, nor must he or she afford parliamentary representatives the opportunity to examine and question the necessity, proportionality and duration of any measures taken.⁵²⁵

In this context, it is inappropriate and contrary to the principle of prescription by law, that criminal penalties and measures infringing or restricting human rights are enacted as part of regulations or administrative announcements that are not subject to ordinary parliamentary procedures, including scrutiny for compatibility with national and international human rights obligations.⁵²⁶ The ICJ is concerned at the use of Cabinet declarations, and particularly at the use of special operations centre announcements which curtail the possibility for the Parliament to discuss transparently and with due consideration important questions relating to security and political dissent, thereby threatening to undermine the principle of separation of powers between the legislative and executive branches.

The use of these types of police powers in investigations related to intelligence gathering for security purposes raises risks to human rights above those encountered in traditional police investigations. The use of these powers by authorities is likely to be less transparent and may not be known to the people affected. For example, individuals may never become aware of information compiled about them and held in ISOC databases. In addition, the ISA gives ISOC and its officials broad discretion in determining the target and the manner of exercising its investigative powers, particularly since there is no requirement that an individual be suspected of committing a criminal offence before the person may become the subject of an investigation. If no charges are laid or a non-prosecution order is made, the use of these

powers will be subject to limited or no judicial scrutiny.⁵²⁷ The use of training camps to hold individuals in administrative detention under section 21 is likely to be far more common than criminal prosecutions under the ISA. Information forming the basis for detention under section 21 also will be subject to a far lower degree of judicial scrutiny than evidence presented in a criminal trial.

Part 2 of the ISA requires that the Prime Minister promptly report the outcome of the use of exceptional powers to Parliament.⁵²⁸ The advisory boards established under Part 1 of the Act may also review ISOC activities to some degree.⁵²⁹ Based on the particular human rights risks posed by the use of the exceptional powers included in the ISA, particularly in the context of security investigations; the Thai security forces' past record of human rights abuses; and, the vague provisions of the Act and the overbroad scope for the exercise of discretionary ISOC authority, the ICJ is concerned that these mechanisms are insufficiently robust to effectively and independently scrutinize the lawfulness of ISOC's use of coercive powers and their impact on human rights. A strong, independent review mechanism should be established to systematically review all aspects of ISOC's activities under the ISA.

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to expressly provide that Cabinet authorisation of Part 2 powers is subject to prior parliamentary scrutiny, and that any regulations, announcements, rules and other actions subsequently issued are also subject to parliamentary oversight at regular intervals.

The ICJ recommends that the ISA be amended to prevent the Prime Minister from delegating his powers as Director of ISOC to active-service members of the military. Cabinet must retain effective powers of control over ISOC and have adequate information about its activities.

The ICJ recommends that the Royal Thai Government consider establishing a form of independent, civilian review of the activities of ISOC relative to the maintenance of internal security under both Part 1 and Part 2, in order to improve transparency in relation to ISOC activities and to ensure that the human rights protected in the Thai Constitution and under international law are respected and enforced. This independent body should have far-reaching investigative powers and sufficient access to information and documents in order to fulfil its oversight function.

7. Interaction with Other Emergency Legislation in Thailand

The Thai Cabinet has announced twice that it intends to rescind Martial Law in four districts of Songkhla province, replacing it with Part 2 of the ISA.⁵³⁰ The Emergency Decree is not currently in force in these four districts. However, due to military opposition to this plan, no Royal Decree revoking Martial Law had been promulgated at the time of writing. The ICJ understands that the ISA is not yet being actively implemented in the four districts of Songkhla province. Therefore, it appears that Cabinet does not intend to actively implement the ISA in conjunction with Martial Law.

However, the extent to which Part 2 of the ISA legally may be implemented in conjunction with Martial Law is unclear. implemented in conjunction with Martial Law by Royal Decree “when a situation arises that makes it necessary to maintain law and order to defend against the danger of attack, either from abroad or from within the Kingdom.”⁵³¹ A military commander with the minimum force of one battalion at his disposal, or the military commander of any fortified post or military stronghold, may declare Martial Law in the area under his control “when there is an outbreak of war or unrest at any location”.⁵³² Like the definition of “maintenance of internal security” in the ISA (see section 4, above), the elements of these definitions, including “necessary to maintain law and order”, “attack”, and “unrest” are not defined, leaving wide scope for discretion in the application of Martial Law. If Martial Law and Part 2 of the ISA apply concurrently, the Royal Thai military would have Martial Law authority to command the entire civilian administration and the power to detain suspects on suspicion and without charge for seven days (including prior to recommending that an individual attend a training camp – see section 5.5 above), as well as powers under the ISA to monitor all internal security threats and to act as implementing officials under a variety of civilian legislation (through ISOC). As discussed in section 5.5, the ICJ would be gravely concerned if Martial Law and the training camps scheme under section 21 were to be applied concurrently.

In January 2010, Cabinet also extended the 2005 Emergency Decree for an additional three months throughout the three southernmost provinces of Pattani, Yala and Narathiwat.⁵³³ Martial Law also remains in force in these three provinces, but Part 2 of the ISA is not presently in force. Under the provisions of the Act, Part 2 of the ISA cannot be used when and where the 2005 Emergency Decree is in force.⁵³⁴

7.1 COMPARISON OF POWERS

Compared to Martial Law⁵³⁵ and the 2005 Emergency Decree,⁵³⁶ Part 2 of the ISA provides a more restricted range of exceptional powers.⁵³⁷ Important improvements include:

- the removal of exceptional detention powers on suspicion of wrongdoing;
- the application of Criminal Procedure Code standards to criminal investigations, detentions and arrests in most circumstances;
- the removal of civil and criminal immunities for officials (as provided under the Emergency Decree);⁵³⁸
- the removal of civil immunities for individual soldiers (as provided under Martial Law);⁵³⁹
- the absence of any provision authorising military occupation, use or appropriation of private or public property (as provided under Martial Law);
- civilian court (Courts of Justice) scrutiny of actions taken under Part 2 of the Act; and
- greater civilian involvement in decision-making, including by means of designating the Prime Minister as the Director of ISOC and requiring Cabinet approval for the use of extraordinary powers under Part 2.

In spite of these positive elements, the ICJ remains concerned that the ISA fails to provide sufficient protection for internationally protected human rights, particularly the right to liberty and security of the person, privacy rights, rights to freedom of opinion, expression, association and movement, and the right to a remedy and reparation for violations. The ISA contains broad powers of prohibition that can be invoked by Cabinet without the political consequences of declaring a formal state of emergency, or requesting the invocation of Martial Law. The overbroad and undefined language of the Act and the accompanying regulations issued to date fail to set out specific restrictions, prohibitions or powers that may be used to protect security in situations where Part 2 is enforced. The vagueness and overbreadth of the provisions of Part 2 of the ISA have the potential, effectively, to diminish many of the differences between the powers granted under the three special laws. The ICJ is particularly concerned about the administrative detention powers in section 21 of the ISA (detention in training camps) and the failure of the Act to distinguish and separate law enforcement and intelligence gathering functions.

POWERS OF PROHIBITION

POWER	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
	SECTION	SECTION	SECTION
1. Curfew	11 (6)	9 (1)	18 (3)
2. Prohibition of specified transport routes and vehicles	11 (4)	9 (4)	18 (5)
3. Prohibition of use of buildings or declaration of exclusion areas	11 (7) <i>(Including prohibition on residing in certain areas)</i>	9 (5)	18 (2)
4. Prohibition of use of communication devices	11 (5)	11 (5)	18 (6)
5. Order to vacate designated areas	11 (7)	9 (6)	18 (2)
6. Prohibition on carrying firearms outside home	11 (5)	11 (9)	18 (4)
7. <i>Assembly:</i> Prohibitions in any location	11 (1)	9 (2)	None (<i>But power to prohibit entry/exit from locations and use of transport routes – s. 18(2), (5)</i>)
8. <i>Expression:</i> Prohibition of distribution, dissemination, publicising news, entertainment, telecommunications or radio broadcasts or printed matter.	11 (2), (3)	9 (3)	None explicit (<i>But, power to monitor, investigate and evaluate situations that may give rise to a threat to internal security – s. 7(1); to encourage people to be aware of their duty in upholding nation, religion, and King; build love and unity among people in the nation; as well as promote popular participation in preventing and overcoming various problems which affect internal security and the peace and order of</i>

POWER	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
	SECTION	SECTION	SECTION
9. Occupation, alteration or demolition of Locations and Buildings for military purposes	8, 13, 14	11(4) (Search, removal, withdrawal or demolition), 11(6) (Notification not to perform any act or to perform any act)	<p><i>society – s. 7(4); and to undertake other operations according to legislation or as assigned by the Cabinet, National Security Council or Prime Minister – s. 7(5). Also, power to perform or suspend any act in connection with electronic equipment – s. 18(6); Delegated powers under other acts such as Computer Crimes Act, s. 16 paragraph 4).</i></p> <p>None explicit (But, power to oversee, follow up and expedite relevant government agencies and state officials to implement plan for maintenance of internal security – s. 16(1); power to order exclusion of any state official deemed to be threat to internal security – s. 16(4); transfer of powers and duties of government agencies to ISOC – s. 16 paragraph 4.)</p>

POWERS OF SEARCH, SEIZURE, ARREST AND DETENTION

POWER	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
	SECTION	SECTION	SECTION
10. Search / Inspection	8 (<i>Military personnel have complete powers to search and inspect any building or location.</i>) 9 (<i>Power to search and inspect individuals, objects, locations; mail, correspondence and communications; books or other written matter.</i>)	11 (4), (5) (<i>Competent officials have power to issue warrants to search locations and Communications</i>)	16 paragraph 4, 19 (<i>Court Order / CPC / Other legislation, e.g. Computer Crimes Act</i>) 18(6) (<i>Electronic devices</i>) – ISOC regulations
11. Arrest and Detention	15 bis (<i>Warrantless arrest and detention for interrogation not more than 7 days, when "suspect any individual of being an enemy or in opposition ... to Act or [military] orders ... detain for questioning or purposes of military."</i>)	12 (<i>Court Order – not more than 7 days, with extensions of 7 days each, up to maximum of 30 days as a preventive measure. CPC applies if further detention required after 30 days.</i>)	16 paragraph 4, 19 (<i>Court Order / CPC / Other legislation, e.g. Narcotics legislation, Immigration Act</i>) 21 (<i>Detention in training camp for up to six months or imposition of any other conditions with Court approval.</i>)

7.2 COMPARISON OF CIVILIAN CONTROL AND ACCOUNTABILITY MECHANISMS

In comparison to the 2005 Emergency Decree and Martial Law, the ISA contains stronger accountability mechanisms. Notably, the jurisdiction of the civilian Courts of Justice over any matter arising under Part 2 of the Act is explicit. In addition, an administrative compensation mechanism for persons in good faith who suffer losses as a result of ISOC activity and mechanisms allowing for varying degrees of executive, bureaucratic and community input are included. Compared to Martial Law, the authority of the civilian government is much stronger. Compared to the 2005 Emergency Decree, the powers of Cabinet to act as a check on the Prime Minister have been strengthened somewhat; however, the powers of ISOC have been increased relative to those of the Prime Minister. While the Prime Minister is officially the Director of ISOC, he or she may delegate these powers to the Commander-in-Chief of the Army. Thus, the ISA can be seen as something of a compromise between strong military authority under Martial Law and the strong Prime Ministerial authority found in the 2005 Emergency Decree.

As discussed in sections 5.6 and 6, above, the ICJ considers that the civilian control and accountability mechanisms in the ISA remain weak. In order to ensure that victims of any future human rights violations have an enforceable and effective right to a remedy, civilian judicial scrutiny and the independence of existing administrative compensation mechanisms must be strengthened. Civilian control and independent, civilian oversight of ISOC actions under the ISA must be guaranteed strongly.

	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
Civilian Control	<p>Section 4 – In force by Royal Decree or by a Military Commander with a minimum force of one battalion at his disposal.</p> <p>Section 5 – Revocation only by Royal Decree.</p> <p>Section 6 – Military personnel have authority over civilian officials. Civilians must obey military orders.</p>	<p>Section 5 – Declared in force by the Prime Minister with the approval of Cabinet. If approval of Cabinet cannot be obtained in a timely manner, Prime Minister may unilaterally declare a state of emergency and seek approval of Cabinet within three days.</p> <p>Section 7 – Powers of a Minister or Ministries may be temporarily transferred to the Prime Minister where state of emergency in force.</p> <p>Sections 7, 10, 11 – Prime Minister may appoint competent officials to perform duties under the Act. Military personnel may also be used to assist civilian personnel and will have powers of competent officials under the Act.</p> <p>Sections 9, 11 – Powers of prohibition, search, seizure, arrest and detention made by Prime Ministerial Order.</p> <p>Section 15 – Prime Minister may delegate to competent officials the powers of a competent</p>	<p>Section 7 – ISOC has responsibility for internal security at all times.</p> <p>Section 15 – Cabinet resolution required to bring into force the exceptional powers under Part 2 to deal with threats to internal security.</p> <p>Section 16(3) – ISOC has power to oversee, follow up, and expedite relevant government agencies and officials in relation to implementation of ISOC to suppress situations threatening internal security.</p> <p>Section 16(4) – ISOC may exclude any state official from a designated area if it deems the official's behaviour a threat to internal security.</p> <p>Section 16 paragraph 4 – Cabinet may delegate powers of government agencies to ISOC in whole or in part; Cabinet may transfer the powers of a government agency to ISOC.</p> <p>Section 18 – Powers of prohibition contained in</p>

	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
Civilian Control		<p>official under the Criminal Code and Criminal Procedure Code.</p> <p>Section 6 – Government Administration in States of Emergency Committee, composed of Cabinet Ministers, high-ranking bureaucrats and military officials.</p> <p>Section 8 – Prime Minister may appoint a group of persons or a person to act as advisors.</p>	<p>regulations issued by Cabinet.</p> <p>Section 19 – Director of ISOC may delegate police powers to competent officers.</p> <p>Section 5, 8 – Director of ISOC (the Prime Minister) may assign his responsibilities to the Deputy Director (the Commander-in-Chief of the Army) or to the Director of a Regional ISOC (the Regional Army Commander), the Director of a Provincial ISOC (the Provincial Governor) or to the Director of a Centre or Agency otherwise named.</p> <p>Sections 10, 12, 14 – Creation of ISOC board composed of ministers, high-ranking bureaucrats and military officials; appointment of advisory boards by Regional or Provincial ISOCs.</p>
Accountability	<p>Section 7 and Annex – Broad scope of military court jurisdiction, which may be used to exclude the possibility of trying military personnel in civilian courts. Also, military courts are given jurisdiction over civilians in criminal cases in specified circumstances, or by order of a military commander where the criminal case relates</p>	<p>Section 17 – Competent officials not subject to civil, criminal, disciplinary liabilities for acts in good faith, that are non-discriminatory and not unreasonable.</p> <p>Section 16 – Jurisdiction of Administrative Court removed. Silent on jurisdiction of Courts of Justice and Military Courts. Law on</p>	<p>Immunities in draft Act removed.</p> <p>Section 20 – ISOC Compensation mechanism where ISOC enforcement action results in loss to a “person in good faith”. Appropriate compensation to be provided according to Cabinet provided principles/ conditions.</p>

	MARTIAL LAW	2005 EMERGENCY DECREE	INTERNAL SECURITY ACT
Accountability	<p>specifically to issues of national security or the maintenance of public law and order.</p> <p>Section 16 – No compensation claims permitted against individual officials.</p>	Administrative Procedures does not apply.	<p>Section 23 paragraph 2 – Jurisdiction of Courts of Justice over any actions under Part 2 of ISA. Jurisdiction of Administrative and Military Courts apparently removed.</p> <p>Section 23 paragraph 1 – Application of Civil Procedure Code and Criminal Procedure Code to court cases related to enforcement actions under Part 2, but inapplicability of Law on Administrative Procedures.</p>

RECOMMENDATIONS:

The ICJ recommends that the ISA be amended to clearly prevent Martial Law and Part 2 of the ISA from being enforced in the same geographical area at the same time.

The ICJ recommends that Martial Law be rescinded before Part 2 of the ISA is actively enforced in the four districts of Songkhla province where it now applies.

8. CONCLUSIONS AND RECOMMENDATIONS

Whilst there were significant amendments to the draft of the ISA published in June 2007, the ICJ considers that the ISA is flawed and does not represent an acceptable “alternative” to existing emergency legislation. Critically, the ISA places emergency-style powers in the hands of Cabinet and ISOC, without having to take the momentous political decision of enforcing Martial Law or declaring an official state of emergency, and facing the intense domestic and international scrutiny that such a step would entail. The Act’s vaguely worded definitions and exceptional powers, as well as the assertion of military command over civilian agencies

during periods which do not amount to a genuine emergency, engender a grave risk that military officers will interpret the ambiguities of the Act's provisions in a manner that undermines the rule of law and violates human rights.

The ISA gives ISOC primary responsibility for monitoring and suppressing threats to internal security, thereby affording to it both intelligence gathering and law enforcement responsibilities. The lack of a clear definition of "internal security" in the Act gives ISOC discretion to determine the limits of its own jurisdictional competence, as well as the authority to decide which activities will be monitored or suppressed under the Act. Since it is not clear which actions may constitute a threat to internal security that can be suppressed by ISOC under the ISA, it becomes virtually impossible for individuals to know in advance what actions are legal or illegal. In the context of ISOC's broad powers to monitor any internal security threats, the legal uncertainty created by the ISA is likely to have a chilling effect on freedom of association and expression and to negatively impact on privacy rights and rights to freedom of movement. All of these problems are compounded by the ISA's failure to clearly separate intelligence gathering and law enforcement functions.

Existing weaknesses in the criminal justice system in the Deep South demonstrate the need for strong and explicit human rights guarantees in Part 2 of ISA and related legislation, where exceptional enforcement powers are provided to ISOC. The ICJ is particularly concerned by the inclusion of an administrative detention regime in Part 2 of the Act. Information forming the basis for detention under section 21 will be subject to a far lower degree of judicial scrutiny than evidence presented in a criminal trial. The ICJ therefore stresses the need for robust judicial scrutiny of the entire process. The full range of fair trial rights must also be accorded to the potential trainee, including the presumption of innocence, the right to counsel, the right to be present in court, the right to make submissions to the Court and the right to have access to incriminating evidence. Where the military requests an individual to participate in such training, the concept of consent is problematic: an implicit element of coercion will often be present. Therefore, it is particularly important for judges to ensure the voluntariness of an individual's consent to undergo training. Finally, the ICJ is concerned that no criteria are set out regarding the content of training programs, which will be administered by the military.

While the ISA strengthens judicial scrutiny of official actions relative to Martial Law and the 2005 Emergency Decree, gaps in accountability remain. In order to meet its international obligation to afford an effective remedy for human rights violations, the Royal Thai Government should strengthen powers of judicial review under the Act, as well as reinforcing the powers of existing institutions that provide administrative remedies such as the National Human Rights Commission. It is critical that the independence of judges, prosecutors and the National Human Rights Commission be explicitly guaranteed in the ISA and practically safeguarded from formal or informal interference or influence by ISOC.

Under Part 2 of the ISA, to date, military personnel have been delegated authority for the implementation of a wide-range of legislation normally administered by civilian authorities, including civilian policing and law enforcement functions. The ICJ considers that the military is not an appropriate institution to be exercising such powers outside of a properly declared state of emergency under international law. Outside of such extraordinary situations, properly-trained civilian personnel should exercise these powers. Under no circumstances should non-specialised forces be given such authority. Internationally, the involvement of military forces in law enforcement activities has often led to human rights abuses and military intervention in the political sphere.

The risks to human rights posed by military involvement in law enforcement activities are compounded by the lack of any explicit criteria for the use of force in either the Act itself or in the Cabinet regulations issued to date, particularly in relation to crowd control and dispersal. International standards relating to the use of force should be incorporated into the Act, and should be explicit in the declarations and regulations issued by Cabinet under Part 2 of the ISA. The ICJ considers that affording to ISOC such a wide range of powers normally exercised by the civilian administration undermines the essential functions of Parliament and the primacy of civilian authority in Thailand, which are fundamental to the maintenance of the rule of law and the protection of human rights.

Since the permissible scope of ISOC activity is unclear, and no specific level of violence or proximate threat of violence is required in connection with internal security threats, the ISA risks blurring the line between security threats and legitimate political dissent. At a time of political conflict when the space for public dialogue should be extended, it is instead being restricted, leading to a climate of self-censorship.

Louise Arbour, former UN High Commissioner for Human Rights, captured the inextricable link between the requirements of justice and the maintenance of a peaceful society in a 2005 speech where she remarked,

“ The abandonment – even the postponement – of the process of justice is an affront to those who rely on the law for their protection; it is a call for the use of force in revenge and, therefore, a bankruptcy of peace.⁵³⁸ ”

The undermining of the rule of law and human rights in favour of expedient action to address real or perceived threats has in the past, and will continue in the future, to hamper the achievement of justice and democratic reconciliation in Thai society. The International Commission of Jurists, therefore, makes the recommendations that follow.

8.1 LIST OF RECOMMENDATIONS

Thailand does not appear to be invoking a state of emergency under international law in relation to the use of powers under either Part 1 or Part 2 of the Internal Security Act (“ISA”) Should Thailand consider that a state of emergency, which threatens the life of the nation, justifies derogations from protected human rights, it must:

- publicly declare the state of emergency, the geographical scope and duration of which must be strictly proportional to the actual threat;
- notify officially the other States Parties to the International Covenant on Civil and Political Rights (“ICCPR”) through the UN Secretary General of the existence of the state of emergency, as well as the rights derogated from and reasons for those derogations;
- strictly fulfil its obligation to observe rights not subject to derogation in their full scope, and to observe the essence of those rights subject to derogation;
- ensure that any derogating measure is strictly necessary and proportional to the specific threat to the life of the nation;
- ensure that emergency measures do not discriminate on the grounds of race, colour, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status;
- ensure the right to challenge the legality of emergency measures taken is respected.

The Preamble to the ISA should make clear that non-derogable rights, such as the prohibition against torture and other cruel, inhuman and degrading treatment or punishment, and minimum fair trial guarantees, cannot be restricted or derogated from under any circumstances, and, therefore cannot be restricted or derogated from by powers under the ISA.

The Preamble to the ISA should be amended to specify precisely which rights protected under the Constitution are subject to restrictions or limitations, and the specific provisions and powers under the Act intended to limit each particular right.

The restrictions on constitutional rights in the Preamble to the ISA should be amended to specify explicitly that all restrictions and limitations on rights, and their application, must be clearly defined and must not be arbitrary. Such measures must be strictly necessary in the situation to protect national security, public order, and the rights and freedoms of others. They also must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they

must be the least intrusive instrument amongst those which might achieve the necessary objective; and they must be proportionate to the interest to be protected.

Cabinet should ensure that only those rights listed in the Preamble of the ISA are restricted in the regulations issued under Part 2 of the ISA, or in the application of powers under section 16(1).

The ISA should be amended to include a clear definition of the concepts of internal security and threats to internal security. A clear minimum threshold of property damage, the proximity of the threat of injury, and disruption of public order should be required before a situation may constitute a threat to internal security.

The ISA should be amended to require explicitly that Cabinet provide a report to the House of Representatives and the Senate justifying the basis on which any prospective application of the ISA was made. Both Houses should have the opportunity to debate thereport and to make recommendations to Cabinet regarding the past and future implementation of Part 2 of the ISA.

The ISA should be amended to provide either the Administrative Courts or the Courts of Justice with explicit jurisdiction to review the legality of Cabinet declarations enforcing Part 2 of the ISA.

The provisions of the ISA should be repealed or amended to require regulations, announcements, rules and other prescriptions to be set out in precise, unequivocal and unambiguous terms, in accordance with the principle of legality. The official version of all Cabinet announcements, regulations, special operations centre announcements, and all delegations of authority should be published in the Government Gazette prior to the entry into force of Part 2 of the ISA.

Section 18 of the ISA should be repealed or amended to make clear that, within designated regulatory areas, restrictions to rights must be in accordance with permissible limitations set out in the Thai Constitution and the ICCPR. Limitations on rights may only be enacted for the purpose of protecting those legitimate interests specifically listed in the ICCPR in relation to a particular right. These interests generally can include the protection of national security, public safety, order, health or morals, and the rights and freedoms of others. Limitations must be of a limited time and scope; must be strictly necessary to deal with the exigencies of the situation; and, they must be proportionate.

An exception should be incorporated into sections 18, 21 and 23 of the ISA, providing that any peaceful activity conducted in the exercise of an individual's rights under the ICCPR or the Universal Declaration on Human Rights will not be considered as a criminal offence. This exception should also be reflected in any announcements, declarations or regulations issued under the Act.

The provisions of the ISA should be repealed or amended to provide specified conditions and objective criteria for the issuance of ISA regulations and announcements, clearly establishing the scope of permissible restrictions on rights in accordance with international law and standards.

ISA Part 2 regulations should be subject to a consultative process. Wide-ranging public consultations should be held with all stake-holders. The public consultations should produce guidelines that would set out parameters for regulations issued under section 18 of the ISA.

The provisions of the ISA should be repealed or amended to define clearly the objective grounds for the exercise of the power to impose curfews and other restrictions on freedom of movement and association, and to ensure that measures taken to apply or enforce these restrictions are in full conformity with the requirements of legality, necessity and proportionality as set out in Articles 12 and 21 of the ICCPR. Limitations on rights may only be enacted to protect those interests specifically listed in the ICCPR. These interests generally may include the protection of national security, public safety, order, health or morals, and the rights and freedoms of others. Limitations must be of a limited time and scope; must be strictly necessary to deal with the exigencies of the situation; they must be appropriate to achieve their protective function, be the least intrusive instrument amongst those which might achieve their protective function, and be proportionate to the interest protected.

The provisions of the ISA should be repealed or amended to disallow any restrictions on the right to freedom of expression and the right to seek, receive and impart information except in accordance with requirements of legality, necessity and proportionality as set out in Article 19 of the ICCPR.

The provisions of the ISA should be repealed or amended to ensure that unauthorised ISOC officials do not exercise investigative powers in the course of their intelligence activities under the ISA.

The ISA should be amended to include greater protections for personal privacy, particularly in relation to the creation and use of DNA data banks.

The ISA should be amended to set out clear and precise circumstances under which intrusive investigatory methods may be used, to the extent strictly necessary. The use of such powers should always be subject to judicial control.

The ISA should be amended to set out a clear legal basis for the storage and use of data and other personal information by the Internal Security Operations Command (“ISOC”) and other security agencies. The permissible use of this information must be foreseeable and subject to independent scrutiny.

The provisions of the ISA should be repealed or amended to include a specific requirement that any arrest, detention, investigation or prosecution carried out in the context of ISOC operations strictly comply with the absolute prohibition on torture or other ill-treatment as provided under international law, including in Articles 7 and 10 of the ICCPR. Any regulations issued under section 18 should also reflect these prohibitions.

The provisions of the ISA should be repealed or amended to specify with clarity and exactitude the circumstances under which individuals may be detained under powers delegated pursuant to sections 16 or 18 of the Act. Regulations under section 18 and the Announcements of (Centres for the Administration of Peace and Order) established under the Act should include detailed guidelines for the use of these powers.

The provisions of the ISA should be amended to specifically guarantee the right to counsel, the right to contact family members, the right to be brought before a judge within 48 hours, the right to challenge the lawfulness of one’s detention before an independent court, the right to a fair trial within a reasonable time or release and the principle that pre-trial custody is the exception and release the rule. The full protections of the Criminal Procedure Code should be explicitly guaranteed to any person who is arrested, detained or subject to interrogation under the Act. Any regulations issued under section 18 of the Act should also guarantee explicitly these basic rights.

The Supreme Court and/or the Provincial Courts in the Deep South should issue a directive to judges providing that they must require detainees to be brought before the Court in person unless there are exceptional circumstances applicable in the specific case. The directive should require that judges take into account the strength of the prosecution case against alleged offenders and to carefully scrutinise the grounds for requesting continued detention, before remanding alleged offenders to investigative or pre-trial detention under the Criminal Procedure Code.

The Royal Thai Government should take such steps as are necessary to reduce pre-trial delays, especially for persons held in custody, in order to comply with its obligations under Article 14(3)(c) of the ICCPR.

Section 21 of the ISA should be repealed or amended in the following respects:

- Only persons who have been charged in court with the commission of an offence and are considered to be “accused” persons under the Criminal Procedure Code may be recommended for attendance at training camps.

- No person may be ordered to attend a training camp on the basis of actions taken in the peaceful exercise of their internationally and domestically guaranteed human rights.
- All rights guaranteed to criminally accused persons under Thai and international law should be explicitly guaranteed, including:
 - the right to be presumed innocent;
 - the right to counsel before consenting to attend training and during detention at the training facility;
 - the right to adequate time and facilities to prepare a defence (including access to all materials that the prosecutor plans to offer in court against the accused or that are exculpatory) and to communicate with counsel of their own choosing;
 - the right to defend themselves through counsel or in person, to be informed of this right and to have legal assistance assigned without payment for persons who cannot afford a lawyer;
 - the right to examine or have examined witnesses both against them and on their behalf, as well as the assistance of an interpreter if required;
 - the right not to be compelled to testify or to confess guilt.
- Individuals subject to training camp requests must appear in person before the Court.
- Public prosecutors must have an independent and impartial role in reviewing and approving ISOC training requests prior to their submission to the Court, in order to ensure that such requests are based on sufficient admissible evidence, are not discriminatory, arbitrary or otherwise in violation of the human rights of the individual concerned under domestic or international law.
- An individual may not be ordered to attend training for a period longer than the maximum sentence of imprisonment for the relevant offence and must have the opportunity to make submissions regarding the length of training imposed in accordance with all rights under Article 14 of the ICCPR.

- The procedure the Court should follow in reviewing training camp applications must be clearly set out. The section should provide for mandatory judicial scrutiny of the sufficiency of the investigation file in every case and of the voluntariness of the trainee's consent.
- Any Order confining a person to a training camp must specify the identity of the individual, the location of the training camp and the duration for which the individual may be detained.
- A specific and limited list of purposes for which training may be conducted should be specified.
- An accurate and up-to-date register must be kept, in a location accessible to both lawyers and the families of detainees, containing, in respect of each detainee:
 - name;
 - the time and location of arrest (if applicable);
 - the location of the training camp where detained;
 - the names of the persons responsible for detention;
 - the reasons for the detention;
 - the day and hour of detention and release; and,
 - the details of all appearances before judicial authorities.
- The types of other conditions that may be imposed on an individual under section 21 and the purposes for which conditions may be imposed should be specified. Judges should be directed to consider the proportionality of the measure as well as established legal criteria relating to the nature and gravity of the offence; the personality and background of the individual; the purposes of imposing the measures; and, the rights of victims.
- Individuals suspected of having committed crimes that involve serious violations of the human rights of others, such as murder, torture or other ill-treatment, must not be subject to training camp recommendations in lieu of criminal prosecution.

The Supreme Court and/or the Provincial Courts should issue regulations or other guidance to judges to promote consistency in the review and imposition of training Orders and Orders relating to other non-custodial measures.

The Royal Thai Government should take such steps as are necessary to ensure that any internal screening process operates in accordance with the presumption of innocence, does not usurp judicial functions and cannot be used to directly or indirectly pressure, intimidate, or influence judicial decisions. These safeguards should be made explicit in the ISA and any regulations relating to the use of section 21.

The Director of ISOC, with the consent of Cabinet, should establish detailed regulations governing the implementation of section 21 after consultation with advisory boards established under the ISA and civil society organisations. These regulations should explicitly guarantee the procedural safeguards set out above. In addition, they should specify the following:

- Detention at a training facility may not be recommended for the purposes of gathering intelligence;
- The specific purposes of different training programs, which must respect an individual's rights to freedom of opinion, religion, peaceful expression, privacy and inherent dignity. Specific training curricula and procedures should be established in consultation with civilian government agencies, and after discussion with civil society organisations.
- Individuals subject to training orders have the right to challenge the legality of their detention while at the training camp, as well as the legality of the imposition or mode of application of any conditions.
- A formal record of all training Orders and conditions must be kept.
- An accurate, up-to-date and accessible register of all detainees must be established.

An independent body should be designated or established in order to monitor and report publicly on the implementation and use of training camp orders, the purposes of training and the curriculum used at camps, and the treatment of detainees. This body must be financially and institutionally independent of the military, ISOC and the Royal Thai Government, and be given sufficient resources and powers of investigation to carry out its mandate.

The Royal Thai Government should reconsider whether the National Anti-Corruption Commission ("NACC") is the most appropriate venue for the investigation of serious human rights violations. Should the Royal Thai Government decide that these investigations ought to remain within the jurisdiction of the NACC, it should provide sufficient resources for investigations and ensure that investigations are completed and criminal prosecutions instituted, where appropriate, with expeditiousness. The investigations should be undertaken with the full and visible support of the Royal Thai Government.

The ISA should be amended to exclude the National Human Rights Commission (“NHRC”) the definition of a “government agency” under section 3 of the Act.

Any new enabling legislation for the NHRC should explicitly guarantee the independence of the Commissioners and their staff from ISOC when Part 2 of the ISA is in force.

The draft provisions making it an offence to reveal information, other than the results of cases approved by the NHRC or information provided in criminal proceedings, should be dropped from the draft of the NHRC’s new enabling legislation.

The NHRC should be empowered to recruit staff from outside the regular civil service; it should be specifically mandated to recruit staff members with a specialised knowledge of human rights; and, any new enabling legislation guarantee the independence of NHRC staff from the government and the rest of the civil service.

Any new enabling legislation should require the selection committee for NHRC Commissioners to include representatives from NGOs and civil society organisations.

Southern Border Provinces Administration Centre’s (“SBPAC”) new enabling legislation should specifically empower it to:

- independently investigate allegations of human rights violations by both civilian and military officials;
- provide sufficient investigatory powers, including the power to compel statements and gather evidence and information;
- take proportionate disciplinary or other administrative measures to punish civilian officials found to have acted wrongfully and to make recommendations for the commencement disciplinary proceedings or the transfer of personnel to the military chain-of-command;
- publicise information gathered during investigations and make public the results and recommendations;
- follow-up through referral to appropriate judicial authorities and to the executive and political branches of government where recommended corrective action is not taken; and,
- refer complaints against civilian and military officials for criminal investigation or prosecution where appropriate.

Section 26 of the ISA should be amended to remove the reference to the SBPAC as a special centre of operations or agency under section 17 of the ISA.

Where the commencement of disciplinary proceedings or the transfer of military personnel is recommended by SBPAC, the relevant military commander should be required to provide a public, written explanation of any corrective actions taken or a reasoned statement justifying any disagreement with SBPAC's recommendations.

The ISA should be amended specifically to exclude the jurisdiction of the military courts in relation to criminal offences that also amount to violations of internationally or domestically protected human rights.

The trials of members of the military, paramilitary or civil defence forces accused of human rights violations amounting to criminal offences should be held in public in the civilian courts of ordinary jurisdiction.

Article 90 of the Criminal Procedure Code should be amended to require expressly that judges consider whether all circumstances of an individual's detention are lawful in accordance with the requirements of Articles 2 and 9 of the ICCPR, including the individual's treatment in detention, as well as the constitutionality of the provision of law authorising detention.

The Supreme Court and/or the Provincial Courts of Justice should issue a directive to judges requiring expressly that judges consider whether all circumstances of an individual's detention are lawful in accordance with the requirements of Articles 2 and 9 of the ICCPR, including the individual's treatment in detention, as well as the constitutionality of the provision of law authorising detention.

The ISA should be amended to ensure that an independent and impartial civilian court has the power to review the legality of all regulations, announcements, notifications, orders or actions taken under the Act and to cancel or revoke all regulations, announcements, notifications, orders or actions that are unlawful. This power of revocation must apply to all regulations, notifications, orders or actions generally, and must not be restricted to the outcome of individual cases.

The ISA should be amended to provide explicitly that in any proceeding alleging or relating to alleged violations of domestically or internationally protected human rights, the complainant is entitled to the opportunity to be heard before an objective and impartial decision-maker.

Section 20 of the ISA should be amended to ensure that the final determination of compensation claims is made by an independent body and not by ISOC.

Clear and binding regulations should be issued by Cabinet prescribing eligibility, heads of compensable damages and guidance for establishing quantum for compensation under section 20.

The Royal Thai Government should ensure, through legislation and regulations, that full reparations are made available for all serious human rights violations.

At all times, individuals alleging human rights violations resulting from actions taken pursuant to ISA powers should have the right challenge the legality of official decisions, acts, announcements and regulations and the right to seek effective non-discriminatory remedies before an impartial civilian court or tribunal.

The ISA should be amended to clearly define a restricted scope of activities in which ISOC may be involved under the rubric of the maintenance of internal security.

ISOC officials should not be assigned responsibilities outside the scope of their competency and training, including in the fields of immigration, criminal law enforcement, and civil administration.

The provisions of the ISA should be repealed or amended to provide clear and specific investigatory powers that may be used to monitor threats to internal security. The use of these powers should be restricted to trained, civilian police personnel and members of the Department of Special Investigations. However, should the Royal Thai Government consider that investigatory powers should be provided to ISOC, even during normal times, strong, additional checks and balances need to be added to the Act.

The ISA should be amended to include a requirement that the protections under the Criminal Procedure Code, including judicial warrants for searches and seizures, apply to all investigative activities under the ISA.

Security forces should apply rules of engagement and procedures that specifically incorporate relevant international standards, including particularly Principles 8 and 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Article 3 of the Code of Conduct for Law Enforcement Officials.

When ISOC military or other personnel are deployed in a law enforcement capacity, they should conform to the international standards on the use of force applicable to the police, the prohibition and prevention of torture and other ill-treatment, and judicial oversight of arrest and detention. These standards include the Code of Conduct for Law Enforcement Officials and the UN Principles on the Use of Force by Law Enforcement Officials.

Military personnel deployed in a law enforcement capacity should be brought under the same accountability mechanisms as the police, and these mechanisms should be independent and effective.

An independent and impartial civilian body capable of providing an effective and accessible remedy to victims should investigate all allegations of human rights violations committed against civilians by ISOC personnel or those acting under ISOC authority.

If there is reason to believe that ISOC personnel have committed a crime under international or domestic law, including torture and ill-treatment, extrajudicial

execution or enforced disappearance, criminal prosecution should be undertaken within the civilian justice system.

The ISA should be amended to ensure that a broad range of stakeholders are represented on the ISOC advisory boards at all levels, including representatives from trade unions and civil society groups.

The ISA should be amended to provide an appointment process for members of the ISOC advisory boards who serve in an unofficial capacity, which aims to ensure their independence from the government, ISOC, the military, and other officials.

The ISA should be amended to prevent the Prime Minister from delegating his powers as Director of ISOC to active-service members of the military. Cabinet must retain effective powers of control over ISOC and have adequate information about its activities.

The ISA should be amended to expressly provide that Cabinet authorisation of Part 2 powers is subject to prior parliamentary scrutiny, and that any regulations, announcements, rules and other actions subsequently issued are also subject to parliamentary oversight at regular intervals.

The Royal Thai Government should consider establishing a form of independent, civilian review of the activities of ISOC relative to the maintenance of internal security under both Part 1 and Part 2, in order to improve transparency in relation to ISOC activities and to ensure that the human rights protected in the Thai Constitution and under international law are respected and enforced. This independent body should have far-reaching investigative sufficient powers and sufficient access to information and documents in order to fulfil its oversight function.

The ISA should be amended to clearly prevent Martial Law and Part 2 of the ISA from being enforced in the same geographical area at the same time.

Martial Law should be rescinded before Part 2 of the ISA is actively enforced in the four districts of Songkhla Province where it now applies.

9. ENDNOTES

NOTES TO EXECUTIVE SUMMARY

¹ Order 205/2006 of 30 October 2006.

² Patani is the name of an historic sultanate that once ruled the region. It is spelled with one “t” in English to differentiate it from the modern Thai province of Pattani.

³ Thailand is party to several major international human rights treaties: International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3, entered into force Jan. 3, 1976; International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, entered into force 23 March 1976 (“ICCPR”); International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, entered into force 4 January 1969; Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, entered into force 3 September 1981; Optional Protocol to the Convention on the Elimination of Discrimination against Women, 6 October 1999, 2131 U.N.T.S. 83, entered into force 22 December 2000; Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, entered into force 2 September 1990 (“CRC”); Convention Against Torture, 10 December 1984, 1465 U.N.T.S. 85, entered into force 26 June 1987 (“CAT”); International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 13 December 2006, entered into force 3 May 2008.

⁴ See: International Commission of Jurists, *Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, Geneva, 2009.

⁵ “Draft Act on Security in Kingdom B.E. ...”, sections 24, 25, 26 (in Thai).

⁶ “Draft Act on Security in Kingdom B.E. ...”, sections 36, 37 (in Thai).

⁷ Only Martial Law is in force in the areas of Songkhla province affected by the insurgency, although Cabinet has twice announced its intention to rescind it. Part 2 of the ISA is currently in force in four districts of Songkhla province.

⁸ *The Emergency Decree on Government Administration in States of Emergency*, B.E. 2548 (2005), section 17.

⁹ Martial Law Order, B.E. 2457 (1914), section 16.

¹⁰ International Commission of Jurists, *More Power, Less Accountability: Thailand’s New Emergency Decree*, August 2005.

¹¹ Reported in *The Nation* and the *Phuket Gazette*, 10 July 2009.

¹² *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2 076 (LXII) of 13 May 1977, Principle 95.

¹³ Prime Minister and Minister of Defence, Samak Sundaravej, following a Cabinet meeting on March 25, 2008, is reported to have stated that he assigned General. Anupong Paochinda responsibility to execute the power on under the ISA on behalf of the Director of ISOC: ISRA News, “*สอภ. มอบ - อัญมณี - ปฏิบัติหน้าที่ ออ.สอภ.*”, 25 March 2008, online: http://www.isranews.org/cms/index.php?option=com_content&task=view&id=3330&Itemid=47.

NOTES TO SECTION 1 - BACKGROUND

¹ All references to the ISA in this report are based on an unofficial translation. References to all of the declarations and announcements promulgated under the ISA are also based on unofficial translations, as are all references to legislation, draft bills, Prime Minister’s Office Orders, ISOC regulations, court judgments, court testimony and other official documents, unless otherwise indicated. References to the 2007 Constitution of the Kingdom of Thailand and to the Criminal Code and Criminal Procedure Code are based on official translations.

² The “Deep South” refers to Pattani, Narathiwat and Yala provinces, as well as parts of Songkhla province, where approximately 80 per cent of an estimated population of 1.7 million are ethnic Malay Muslims. Levels of secessionist rebellion and insurgency, which had fluctuated over decades, intensified from early 2004. Over the following six years, at least 3,800 persons have been killed. A substantial number of attacks have been perpetrated by ethno-nationalist insurgents, including attacks against government officials and civilian residents of the region. The ICJ has also received reliable reports of extrajudicial executions, enforced disappearances and frequent use of torture and other ill-treatment by security forces. At least 60,000 security personnel are reported to be operating in the area, including members of the police, the military and paramilitary forces. A civil state of emergency and Martial Law are in force in Pattani, Yala and Narathiwat.

³ ISOC’s predecessor, CSOC was involved in the unlawful killing of scores, and possibly hundreds or thousands of suspected communists in Phatthalung province in the mid-South of Thailand in 1972. The military killed large numbers of people in October 1973 and October 1976, when it cracked down on student demonstrators at Thammasat University; and, again in 1992, when it killed pro-democracy demonstrators in Bangkok. No one has ever been held accountable for these killings, and some of the relevant military commanders remain active and powerful figures in Thai political life. A video of the 1976 crackdown is available on You Tube: <http://www.youtube.com/watch?v=siO2u9aRzns>. See: Tyrell Haberkorn, “Making Massacre Possible: Impunity and Denial in Phatthalung, 1972-1976”, draft paper presented at “State Violence and Political Transition in East Asia” workshop, 9-11 December 2009, Hong Kong, on file with ICJ; Tyrell Haberkorn, “A Danger to Society: Arbitrary Detention and Re-education in Chiang Mai After 6 October 1976”, draft paper on-file with ICJ; Tyrell Haberkorn, “Dispossessing Law: Arbitrary Detention in Thailand since 1958”, draft paper on-file with ICJ; Thongchai Winichakul, “Remembering/Silencing the Traumatic Past: The Ambivalent Memories of the October 1976 Massacre in Bangkok”, in Shigeharu Tanabe and Charles F. Keyes (eds.), *Cultural Crisis and Social Memory, Modernity and Identity in Thailand and Laos*, London: Routledge Curzon, 2002, page 243-283; Human Rights Watch and Physicians for Human Rights, *Bloody May: The Excessive Use of Lethal Force in Bangkok - the Events of May 17-20, 1992*, 23 September 1992, online: <http://www.hrw.org/en/reports/1992/10/01/bloody-may>; Vitit Muntarbhorn, *Human Rights and Human Development*, Human Development Report 2000 Background Paper, page 13; Supreme Court Decision No. 2015-2016/2542 (22 April 1999) (in Thai), acknowledging that many people died during a clash between demonstrators and government officials in May 1992, without making any findings of responsibility. The Court refused to hear the case on the basis that it had no jurisdiction because a valid Amnesty Decree existed.

⁴ See Prime Minister’s Office Order Nos. 123/2545 of 30 April 2002 and 158/2545 of 2 July 2002 (in Thai).

⁵ Prime Minister's Office Order No. 205/2006 of 30 October 2006 (in Thai).

⁶ See discussion below and "Sweeping Security Law Set", *The Nation*, 20 June 2007.

⁷ "Draft Act on Security in Kingdom B.E. ...", sections 24, 25, 26 (in Thai).

⁸ "Draft Act on Security in Kingdom B.E. ...", section 36, 37 (in Thai).

⁹ See International Commission of Jurists (ICJ), *Thailand: Comments on the Draft Internal Security Act*, July 2007; Human Rights First, *Thailand's Draft Security Law "A Recipe for Rights Violations"*, 26 June 2007; International Federation for Human Rights (FIDH), *Open Letter to General Surayud Chulamongt, Interim Prime Minister of Thailand*, 10 July 2007; Asian Institute for Human Rights, Campaign Committee for Human Rights, Working Group on Justice for Peace, Thai Coalition for the Protection of Human Rights Defenders, Young People for Democracy Movement, Thailand, YPSEA-Thailand, Cross Cultural Foundation, Union for Civil Liberty - Thailand, The Third Way People Network, *Statement: Maintenance of National Security Act is for Ensuring the Powers of the Military and Not the Security of the People*, 3 July 2007; Prawit Rojanaphruk and Subhtra Bhumpirabhas, "Internal Security Bill Outrages Academics", *The Nation*, 7 July 2007, online: www.nationmultimedia.com; Avudh Panananda, "Army Sees ISOC Bill as Way to Guard the Country", *The Nation*, 13 July 2007, online: www.nationmultimedia.com; Panya Thiewsangwan and Prapasri Osathanon, "ISOC Softens Stance on Bill", *The Nation*, 17 July 2007, online: www.nationmultimedia.com.

¹⁰ The Report from the Secretary of the National Legislative Assembly office records the number of the members of the NLA who attended and casted a vote during session three of the Assembly meeting where the ISA was passed into law. One hundred and five members voted in favour of the Bill; eight members voted against the Bill; two members had no opinion; and no members abstained. Thus, only 115 of the total 240 members of the NLA voted on the passage of the Bill, and quorum was not obtained. Passing a Bill in this manner is contrary to article 126 of the 2007 Constitution, which the Constitutional Court has interpreted to apply to the deliberations of the NLA. This constitutional provision allows any law not yet in force to be revoked by the Constitutional Court. The Constitutional Court has revoked at least five Bills passed by the NLA on the basis that they were enacted in a manner inconsistent with section 126 of the 2007 Constitution, because the NLA lacked quorum to pass the law: Constitutional Court Decision Nos. 2/2551, 3/2551, 4/2551, 16/2551 and 17/2551, available at <http://www.constitutionalcourt.or.th/> (in Thai).

¹¹ See Constitutional Court Decision Nos. 2/2551, 3/2551, 4/2551, 16/2551 and 17/2551, available at <http://www.constitutionalcourt.or.th/> (in Thai).

¹² "Announcement on the Area with Occurrences Affecting Internal Security", declared on 9 July 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 9 July 2009, Vol. 126, Special Part, 97 d, pages 74-75. See also "Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law", declared 9 July 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 9 July 2009 Vol. 126, Special Part, 97 d, pages 76-77; "Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551", declared 9 July 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 9 July 2009, Vol. 126, Special Part, 97 d, pages 78-79; "ISOC Order No. 205/2552 on Establishing a Centre for the Administration of Peace and Order" ("CAPO"), declared on 9 July 2009 by Prime Minister Abhisit Vejjajiva as Director of ISOC, published in the Government Gazette Vol. 126, Special Part, 99d, pages 20-21, 15 July 2009; "Announcement on the Lapse of Power of ISOC as Assigned to Respond for Operating in the Area with Occurrences Affecting Internal Security", declared 25 July 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 10 August 2009, Vol. 126, Special Part, 11 d, page 1. [Cited subsequently as: Announcement on Areas with Occurrences Affecting Internal Security, declared 9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 9 July 2009, published 9 July 2009; Regulations under Section 18 of the ISA, declared 9 July 2009, published 9 July 2009; ISOC Order no. 205/2552 establishing CAPO, declared 9 July 2009, published 15 July 2009; Lapse Announcement, declared 25 July 2009, published 10 August 2009] (unofficial translations). Examples of ISA Announcements, Regulations and CAPO Announcements are annexed to this report.

¹³ "Announcement on the Area with Occurrences Affecting Internal Security", declared on 25 August 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 25 August 2009, Vol. 126, Special Part, 121 d, pages 1-2; "Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law", declared 25 August 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 25 August 2009, Vol. 126, Special Part, 121 d, pages 3-4; "Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551", declared 25 August 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 25 August 2009, Vol. 126, Special Part, 121 d, pages 5-6; "ISOC Order no. 251/2552 on Establishing a Centre for the Administration of Peace and Order" ("CAPO"), declared on 28 August 2009 by Prime Minister Abhisit Vejjajiva as Director of ISOC, published in the Government Gazette on 21 September 2009, Vol. 126, Special Part, 137 d, pages 87-88; "Announcement on Prohibiting the Use of Routes or Vehicles", declared on 29 August 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of the Centre for the Administration of Peace and Order CAPO, published in the Government Gazette on 18 September 2009, Vol. 126, Special Part 136 d, pages 105-106; "Announcement Prohibiting Persons whose Behaviour Is or May be a Threat to Internal Security - Exclusion from or prohibition on entry into specific areas buildings or places", declared on 29 August 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of CAPO, published in the Government Gazette on 18 September 2009, Vol. 126, Special Part 136 d, page 107; "Announcement on the Lapse of Power of ISOC as Assigned to Respond for Operating in the Area with Occurrences Affecting Internal Security", declared 1 September 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 16 October 2009, Vol. 126, Special Part, 154 d, page 25. [Cited Subsequently as: Announcement on Areas with Occurrences Affecting Internal Security, declared 28 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Regulations under Section 18 of the ISA, declared 25 August 2009, published 25 August 2009; ISOC Order No. 251/2552 establishing CAPO, declared on 28 August 2009, published 21 September 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009; Lapse Announcement, declared 1 September 2009, published 16 October 2009] (unofficial translations).

¹⁴ "Announcement on the Area with Occurrences Affecting Internal Security", declared on 15 September 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 15 September 2009, Vol. 126, Special Part, 134 d, pages 1-2; "Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law", declared 15 September 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 15 September 2009, Vol. 126, Special Part, 134 d, pages 3-4; "Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551", declared 15 September 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 15 September 2009, Vol. 126, Special Part, 134 d, pages 115-116; "ISOC Order no. 283/2552 on Establishing a Centre for the Administration of Peace and Order" ("CAPO"), declared on 17 September 2009 by Prime Minister Abhisit Vejjajiva as Director of ISOC, published in the Government Gazette on 26 October 2009, Vol. 126, Special Part, 157 d, pages 113-114; "Announcement on Prohibiting the Use of Routes or Vehicles", declared on 18 September 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of the Centre for the Administration of Peace and Order CAPO, published in the Government Gazette on 21 October 2009, Vol. 126, Special Part 156 d, pages 72-73; "Announcement Prohibiting Persons whose Behaviour Is or May be a Threat to Internal Security - Exclusion from or prohibition on entry into specific areas buildings or places", declared on 18 September 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of CAPO, published in the Government Gazette on 26 October 2009, Vol. 126, Special Part 156 d, pages 74-75; "Announcement on the Lapse of Power of ISOC as Assigned to Respond for Operating in the Area with Occurrences Affecting Internal Security", declared 22 September 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 21 October 2009, Vol. 126, Special Part, 156 d, page 10. [Cited Subsequently as: Announcement on Areas with Occurrences Affecting Internal Security, declared 15 September 2009, published

15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; ISOC Order no. 283/2552 establishing CAPO, declared on 17 September 2009, published 26 October 2009; ISOC Order no. 283/2552 establishing CAPO, declared on 17 September 2009, published 26 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009 (unofficial translations).

See also: Order of the Supreme Administrative Court, Red Case No. Phor. 39/2552, Black Case No. Phor 54/2552, refusing to consider the legality of the Announcement under section 15 of the ISA for lack of jurisdiction under the Act on the Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) [“Administrative Court Act”] (in Thai).

¹⁵ “Announcement on the Area with Occurrences Affecting Internal Security”, declared on 14 October 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 14 October 2009, Vol. 126, Special Part, 152 d, pages 7-8; “Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law”, declared 14 October 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 14 October 2009, Vol. 126, Special Part, 152 d, pages 9-10; “Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551”, declared 14 October 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 14 October 2009, Vol. 126, Special Part, 152 d, pages 75-76; “ISOC Order No. 308/2552 on Establishing a Centre for the Administration of Peace and Order” (“CAPO”), declared on 14 October 2009 by Prime Minister Abhisit Vejjajiva as Director of ISOC, published in the Government Gazette on 21 December 2009, Vol. 126, Special Part, 182 d, pages 89-90; “Announcement on Prohibiting the Use of Routes or Vehicles”, declared on 15 October 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of the Centre for the Administration of Peace and Order (“CAPO”), published in the Government Gazette on 9 November 2009, Vol. 126, Special Part, 163 d, pages 70-71; “Announcement Prohibiting Persons whose Behaviour Is or May be a Threat to Internal Security - Exclusion From or prohibition on entry into specific areas buildings or places”, declared on 15 October 2009, by Deputy Prime Minister Suthep Thaugsuban as Director of CAPO, published in the Government Gazette on 9 November 2009, Vol. 126, Special Part, 163 d, pages 72-73 [Cited subsequently as: Announcement on Areas with Occurrences Affecting Internal Security, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009; Regulations under Section 18 of the ISA, declared 14 October 2009, published 14 October 2009; ISOC Order No. 308/2552 establishing CAPO, declared on 14 October 2009, published 21 December 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 15 October 2009, published 9 November 2009; Lapse Announcement, declared 1 December 2009] (unofficial translations).

¹⁶ ISA Part 2 was enforced in Cha-um district, Petchaburi province and Hua-Hin district, Prachuab Khiri Khan province between 12-27 October 2009. “Announcement on the Area with Occurrences Affecting Internal Security”, declared on 7 October 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 7 October 2009, Vol. 126, Special Part, 148 d, pages 1-2; “Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law”, declared 7 October 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 7 October 2009, Vol. 126, Special Part, 148 d, pages 3-4; “Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551”, declared 7 October 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 7 October 2009, Vol. 126, Special Part, 148 d, pages 5-6; “Announcement on the Lapse of Power of ISOC as Assigned to Respond for Operating in the Area with Occurrences Affecting Internal Security”, declared 19 November 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 22 December 2009, Vol. 126, Special Part, 183 d, page 26; “Announcement on Prohibiting the Use of Routes or Vehicles”, declared on 21 October 2009, by Minister of Defence Gen. Prawit Wongsuwan (Ret.) as Director of the Centre for the Administration of Peace and Order (“CAPO”), online: <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; “Announcement Prohibiting Persons Whose Behaviour Is or May be a Threat to Internal Security - Exclusion from or prohibition on entry into specific areas buildings or places”, declared on 21 October 2009, by Minister of Defence Gen. Prawit Wongsuwan (Ret.) as Director of CAPO, online <http://www.rtarf.mi.th/aseansummit/pdf/person.pdf>. At the time of writing, the ISOC Order establishing a Centre for the Administration of Peace and Order (“CAPO”) and any CAPO Announcements restricting the use of routes or vehicles or prohibiting entry into certain areas have not been published in the Government Gazette. [Cited subsequently as Announcement on Areas with Occurrences Affecting Internal Security, declared 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Regulations under Section 18 of the ISA, declared 7 October 2009, published 7 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security; Lapse Announcement, declared 19 November 2009, published 22 December 2009] (unofficial translations)

¹⁷ See: “Announcement on the Area with Occurrences Affecting Internal Security”, declared on 26 November 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, pages 5-6; “Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law”, declared 26 November 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, pages 8-9; “Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551”, declared 26 November 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, pages 29-30; The Cabinet meeting on 1 December 2009 approved the termination of the “Announcement Area with Occurrences Affecting Internal Security” in the Bangkok Area as of 1 December 2009, available online on <http://www.thaigov.go.th/eng/>, but not published in the Government Gazette at the time of writing. [Cited subsequently as: Announcement on Areas with Occurrences Affecting Internal Security, declared 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009; Lapse Announcement, declared 1 December 2009, online <http://www.thaigov.go.th/eng/>] (unofficial translations)

¹⁸ Part 2 of the ISA is in force in Chana District, Nathawi District, Thepa District and Sabayoi District, which have been under Martial Law since September 2006. Cabinet has twice announced its intention to rescind Martial Law in these districts, but at the time of writing, no Royal Decree had been issued to this effect: Unofficial Summary of Cabinet Meeting of 13 October 2009, available in Thai at <http://www.thaigov.go.th>; Unofficial Summary of Cabinet Meeting of 15 December 2009, available in English at <http://media.thaigov.go.th/pageconfig/viewcontent/viewcontentle.asp?pageid=472&directory=1943&contents=39978>. Part 2 of the ISA has not been declared in force in Sadao District, which is the only other District of Songkhla Province that is also under Martial Law. “Announcement on the Area with Occurrences Affecting Internal Security”, declared on 26 November 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, page 7; “Announcement on the Appointment of Officials Operating under the Internal Security Act, B.E. 2551 as Government Officials or Competent Officials under the Law”, declared 26 November 2009 by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, pages 10-12; “Regulation pursuant to Section 18 of the Internal Security Act B.E. 2551”, declared 26 November 2009, by Prime Minister Abhisit Vejjajiva, published in the Government Gazette on 26 November 2009, Vol. 126, Special Part, 172 d, pages 31-32. [Cited subsequently as Announcement on Areas with Occurrences Affecting Internal Security, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009] (unofficial translations).

¹⁹ See e.g. International Commission of Jurists, *States of Emergency, Their Impact on Human Rights*, Geneva, 1983; Paul Sieghart, *Sri Lanka, A Mounting Tragedy of Errors, Report of a Mission to Sri Lanka in January 1984 on behalf of the International Commission of Jurists and its British Section*, JUSTICE, International Commission of Jurists, London, 1984; Rodney Madgwick, et al., *The Independence of Judges and Lawyers in the Republic of Turkey: Report*

of a Mission (14-25 November 1999), ICJ Centre for the Independence of Judges and Lawyers, Geneva, 1999, pages 289 ff; International Commission of Jurists, *Assessing Damage, Urging Action, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, Geneva, 2009 ["EJP Report"].

NOTES TO SECTION 2 – THE ISA: OBJECTIVES, MECHANISMS AND POWERS

²⁰ The interpretive Note to the ISA gives the following reasons for the Law's enactment: "At present there are security problems caused by various people or groups of people. These problems are violent, and may quickly expand to a point they have broad and complex impact that may affect the independence and integrity of the realm, give rise to disorder within country, and threaten the peace and contentment of the people. In order to protect against such threats and to resolve them promptly and completely, it is appropriate to designate a principal agency with responsibility for internal security, including integrating and co-ordinating actions among all government offices, and promoting participation by people in preserving security and strengthening their own localities. It is necessary to enact this Law in order to guard against threats which may arise in times of normalcy and when a security threat has arisen in any particular area, and to lay down measures and mechanisms for the use of power in particular according to the level of seriousness of the situation, so that the situation may be resolved efficiently and with unity" (unofficial translation).

²¹ ISOC Workshop Presentation, *Internal Security Act and Southern Unrest Solutions*, 18 December 2008, Mandarin Hotel, Bangkok.

²² See, e.g., Ministry of Foreign Affairs of Thailand: "Government Invokes ISA as Precaution Ahead of 19 September Rally", Press Release, 18 September 2009; Ministry of Foreign Affairs of Thailand, "Precautionary Measures Taken Ahead of ASEAN Summit", Press Release, 15 October 2009. Both press releases available on-line at: <http://www.mfa.go.th/web/2654.php?id=22203>.

²³ See, *The Nation*, "Sweeping Security Law Set", 20 June 2007; Pradit Ruangdit Anucha Charoenpo, "Cabinet Gives Nod to Revised security Bill", *Bangkok Post*, 17 October 2007.

²⁴ *The Emergency Decree on Government Administration in States of Emergency*, B.E. 2548 (2005) ["2005 Emergency Decree"] (unofficial translation). The 2005 Emergency Decree has been continually renewed in Pattani, Yala and Narathiwat provinces since 2005 and remains in force at the time of writing.

²⁵ *Martial Law Order*, B.E. 2457 (1914) ["Martial Law"] (unofficial translation). In relation to the Deep South, the Act was invoked for all Narathiwat, Pattani and Yala provinces and five districts of Songkhla province in January 2004. Temporarily suspended in the Deep South after the issuance of the Emergency Decree in 2005, Martial Law was re-invoked and extended to the entire country after the September 2006 military coup. By 2009 Martial Law remained in force in Pattani, Yala and Narathiwat provinces, and in a number of border districts. Cabinet has announced its intention to rescind Martial Law in four districts of Songkhla province, but at the time of writing, no Royal Decree to this effect had been issued: Unofficial Summary of Cabinet Meeting of 15 December 2009, available in English at <http://media.thaigo.gov.th/pageconfig/viewcontent/viewcontent1.asp?pageid=472&directory=1943&contents=39978>.

²⁶ See, e.g.: UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand* (2005) UN Doc. CCRP/CO/84/THA, paragraphs 10, 13, 15, 24. The Concluding Observations also express concern over reported attacks on human rights defenders and community leaders, including "intimidation and verbal and physical attacks, enforced disappearances and extrajudicial killings" at paragraph 19. See also: Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, 18 January 2002, UN Doc. E/CN.4/2002/79, paragraphs 304-307; *Report of the Working Group on Enforced or Involuntary Disappearances*, 10 January 2008, UN Doc. A/HRC/7/2, paragraph 370, referencing 12 new reported cases of disappearances that took place between 2004 and 2005 in Yala and Pattani provinces and *Report of the Working Group on Enforced or Involuntary Disappearances*, 6 February 2009, UN Doc. A/HRC/10/9, paragraph 391, referring to seven reported disappearances that occurred between 2004 and 2007, five of which reportedly occurred in Yala province, one in Narathiwat province and one in Songkhla province. The UN Working Group also expressed its concern about the growing number of cases of enforced disappearance in Thailand in a press release issued 29 August 2008. Well-known cases of extrajudicial killings include the Tak Bai and Krue Se Mosque incidents. See: National Human Rights Commission fact-finding Sub-Committee on Violence in the South, *Fact-Finding report on the Violent Incident in Front of Tak Bai District Police Office, Narathiwat Province*, B.E. 2548 (2005), paragraphs 9.11 - 9.3.2 ["NHRC Tak Bai Report"] (unofficial translation); Independent Commission, "Report of Independent Commission of Enquiry into Facts about the Incident at Krue Se Mosque," 26 July 2004, available online at: http://www.prachatai.com/sites/default/files/special/report_gresae.pdf (in Thai); Philip Alston, *Report of the Special Rapporteur, Philip Alston, on Extrajudicial, Summary or Arbitrary Executions*, 11 February 2005, UN Doc. E/CN.4/2005/7, paragraph 26(g) and Addendum, UN Doc. E/CN.4/2005/7/Add.1, pages 268-274; Philip Alston, *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Philip Alston*, 27 March 2006, UN Doc. No. E/CN.4/2006/53/Add.1, pages 242-247. On torture and cruel, inhuman or degrading treatment and punishment, see the post mortem inquest in relation to the death of Imam Yapa Kaseng, Order of 25 December 2008, Narathiwat Provincial Court, Black Case No. Or Chor 9/2551, Red Case No. Or Chor 19/2551 (unofficial translation). Royal Thai Government Lawyers argued in a civil suit brought by the family of Imam Yapa that the claims ought to have been brought against ISOC: ICJ Trial Observation, Bangkok Civil Court, 28 August 2009. Khunying Pornpit Rojanasunan M.D., a forensic pathologist, testified at the post-mortem inquest into the death of Yakareeya Paoh-manee that some of the injuries sustained by the deceased in military custody could be consistent with pre-mortem torture and that an investigation ought to be undertaken, although these injuries were not the cause of his death (he was killed by gun-shots). The Khunying also testified to military and police alterations to the crime scene prior to her arrival and to a lack of cooperation that she received from authorities during the course of her investigation: ICJ Observation of Post-Mortem Inquest into the death of Yakareeya Paoh-manee, Testimony of Khunying Pornpit Rojanasunan M.D., Yala Provincial Court, 7 April 2009 (unofficial translation); Post mortem inquest in relation to the death of Yakareeya Paoh-manee, Order of 12 April 2009, Yala Provincial Court, Black Case No. Chor 1/2551, Red Case No. Chor 4/2552, pages 8-9 (unofficial translation). See also: ICJ, *More Power, Less Accountability: Thailand's New Emergency Decree, August 2005*; ICJ, *The Implementation of Thailand's Emergency Decree, July 2007*; ICJ, *Thailand: Legal Memorandum - Vocational Training Camps and Applicable International Standards, October 2007*; International Commission of Jurists, *Thailand: Report on the Criminal Trial and Investigation of the Enforced Disappearance of Somchai Neelapachit, March 2009*; Human Rights Watch, "It Was Like my Son No Longer Existed" - *Enforced Disappearances in Thailand's Southern Border Provinces*, March 2007; Asian Legal Resource Centre, A Joint Oral Statement to the 7th Session of the UN Human Rights Council by the Asian Legal Resource Centre (ALRC), Lawyers Rights Watch Canada, the Asian Forum for Human Rights and Development (FORUM-ASIA), INHID, and Pax Romana-ICMICA/MIIC, 13 March 2008, Human Rights Council, General Debate: Coalition to Stop Child Soldiers, *Briefing Paper: Child Recruitment and Use in Southern Thailand*, December 2008, pages 19-25; Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, London, Amnesty International, 2009; Muslim Attorney's Centre and Cross-Cultural Foundation, "Enhancing the Administration of Justice in the Border Provinces of Southern Thailand", Presented at a seminar on "The Roles of Judges and Public Prosecutors in the Restive Southern Border Provinces of Thailand", JB Hotel, Hat Yai, Songkhla, 12 June 2009; Cross-Cultural Foundation, "Call for Independent Committee to clean up all killing cases in the South - Bring back transparency of Thai Judicial system for trust building", 1 February 2009; Cross-Cultural Foundation, Working Group on Justice for Peace, Human Rights and Development Foundation, Young Muslim Association of Thailand, Muslim Attorney Centre, Campaign Committee for Human Rights, Union for Civil Liberties, "Issues in the Justice Process and Attempts to Solve Unrest in the Southern Border Provinces - Stop Torture, Enforce the Laws and Abide by Rule of Law", 18 February 2008.

²⁷ See: Avudh Panananda, "Thailand's Department of Homeland Security", *The Nation*, 12 December 2006, online: www.nationmultimedia.com. United States legislation may be cited as: *USA Patriot Act: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001, PL 107-56, 115 Stat. 272 (2001); *USA PATRIOT Improvement and Re-authorization Act* of 2005, Public Law 109-177, 120 Stat. 192 (2006); *Homeland Security Act*, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002). The Homeland Security Department includes twenty-two executive branch agencies, amongst them the Customs Service, the Coast Guard, the Secret Service and the Immigration and Naturalization Service.

²⁸ See: EJP Report, page 160; Statement of US Senator Russ Feingold on the Anti-Terrorism Bill, from the Senate Floor, 25 October 2001, online: <http://feingold.senate.gov/statements/01/10/102501at.html>; American Libraries Association, "Resolution on the USA PATRIOT Act and Related Measures That Infringe on the Rights of Library Users", adopted at 2003 ALA mid-winter meeting, 29 January 2003; Amnesty International USA, "USA PATRIOT: Raising Local Awareness, Working for National Reform, Activist Toolkit", 4 May 2004; American Civil Liberties Union, "Surveillance Under the USA Patriot Act", 23 October 2001, online: <http://www.aclu.org/technology-and-liberty/surveillance-under-usapatriot-act>; American Civil Liberties Union, "Letter to the Senate Urging Rejection of the USA Patriot Act" and "Letter to the House Urging Rejection of the USA Patriot Act", 23 October 2001, online: <http://www.aclu.org/national-security/usa-patriot-act-legislative-items>; Electronic Frontier Foundation, "EFF Analysis of the Provisions of the USA PATRIOT Act", 27 October 2003; American Civil Liberties Union, *Reclaiming Patriotism, A Call to Reconsider the PATRIOT Act*, March 2009, online: <http://www.reformthepatriotact.org/>; New York Times, "Editorial: Patriot Act Excesses", 8 October 2009; Ann Fagan Ginger, ed., *Challenging U.S. Human Rights Violations Since 9/11*, Meiklejohn Civil Liberties Institute, Berkeley, California, USA 2005; Susan Herman, "Op Ed: PATRIOT Games: Terrorism Law and Executive Power", *Jurist*, University of Pittsburgh School of Law, 26 January 2006, online: <http://jurist.law.pitt.edu/forumy/2006/01/patriot-games-terrorism-law-and.php>; Human Rights First, *Refugees Asylum Seekers and the New Department of Homeland Security: Initial Concerns and Preliminary Recommendations*, March 2003, online: <http://www.humanrightsfirst.org>; Human Rights Watch, "US Homeland Security Bill Lacks Rights Protections", 26 September 2002, online: <http://www.hrw.org/en/news/2002/09/26/us-homeland-security-bill-lacks-rights-protections>.

²⁹ See section 16 of the ISA. Cf. 18 USC §1385, providing that military personnel are prohibited from carrying out law enforcement functions in the United States, including arrests or searches and seizures, unless expressly authorised by Congress. While the PATRIOT Act broadened the permissible circumstances for the use of the military to assist law enforcement agencies in areas such as domestic national security preparedness and border and coastal defence, the US military does not lead or control domestic anti-terrorism activities: See e.g. 10 USC §§ 371-382, specifying the permissible scope of military support for civilian law enforcement agencies.

³⁰ Homeland Security Act, §§811-812; USA PATRIOT Act, §1001(3); USA PATRIOT Improvement and Reauthorization Act of 2005, § 106A, 119; Inspector General Act of 1978, 5 USC app. §§ 1-12. Note that the Central Intelligence Agency is also subject to review by an independent Inspector General (50 USC §403q) and to Congressional oversight by the Senate Select Committee on Intelligence. Inspector General and Congressional investigations have been conducted into the misuse of powers under the Patriot Act: Senate Judiciary Committee, Hearings: "Misuse of Patriot Act Powers: The Inspector General's Findings of Improper Use of the National Security Letters by the FBI", 21 March 2007, summary online at: http://dpc.senate.gov/dpcdoc.cfm?doc_name=or-110-1-49#link10; US Department of Justice Office of the Inspector General, "A Review of the Federal Bureau of Investigation's Use of National Security Letters," March 2007. Semi-annual Reports are made by the Inspector General of the US Department of Justice regarding claims of civil rights violations under the PATRIOT Act. See most recently: US Department of Justice, Office of the Inspector General, "Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act," August 2009. The most controversial provisions of the PATRIOT Act, which provide expanded covert search and seizure powers, are subject to a sunset clause that required renewal in 2005 and again in 2009; See USA PATRIOT Act 2001, §224 (sections expiring: 201, 202, 203, 206b)(d), 207, 209, 212, 214, 215, 217, 218, 220, 223); USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109-177, 120 Stat. 192 (2006), repealing certain surveillance powers under the 2001 Act and specifying provisions that will sunset on 31 December 2009 (See §§102, 103).

³¹ EJP Report, page 24.

³² EJP Report, page 161.

³³ EJP Report, page 161.

³⁴ EJP Report, pages 24, 160.

³⁵ ISA, section 18.

³⁶ ISA, section 10. The Board is composed of the Prime Minister or Deputy Prime Minister (Chair), Minister of Defence and Minister of Interior (Deputy Chairs), Minister of Justice, Minister of Information and Communications Technology, Permanent Secretary for Defence, Permanent Secretary for Foreign Affairs, Permanent Secretary for Interior, Attorney-General, Director-General National Security Council, Director National Intelligence Agency, Director Budget Bureau, Secretary Civil Service Commission, Secretary Public Sector Development Commission, Supreme Commander, Army, Navy and Air Force Commanders-in-Chief, Commissioner-General Royal Thai Police, Comptroller-General, Director Department Special Investigations, Secretary of ISOC (Army Chief-of-Staff) and up to two government servants within ISOC.

³⁷ ISA, section 11. The Internal Security Operations Board creates Regional ISOCs by resolution.

³⁸ ISA, section 15.

³⁹ *Thaipost*, "Use 'Security Law' to send troops to Phuket", 1 July 2009, online: <http://www.thaipost.net/news/010709/7110>.

⁴⁰ ISA, section 5.

⁴¹ ISA, section 3.

⁴² ISA, sections 3, 7(1).

⁴³ ISA, section 7(4).

⁴⁴ The duty to uphold nation, religion and King is also found in section 70 of the 2007 Constitution of the Kingdom of Thailand.

⁴⁵ See e.g. Wassana Nanuam, "ISOC to Tackle Political Conflict as a Security Threat", *Bangkok Post*, 13 December 2008, online: www.bangkokpost.com, reporting that "[t]he restructured Internal Security Operations Command (ISOC) has finally been given the teeth it needs to tackle the political conflict, which is now seen as a threat to national security and an insult to the monarchy."

⁴⁶ ISA, section 7(5).

⁴⁷ ISA, section 8.

⁴⁸ See ISOC web-site, online at: <http://www.isoc.thaigov.net/index-b.htm> (in Thai).

⁴⁹ ISA, section 26.

⁵⁰ A state of emergency is defined in Section 15 of the ISA as one declared under the *Act on Government Administration in a State of Emergency*. The 2005 Emergency Decree replaced and repealed the previous Act of B.E. 2495 (1952). The 2005 Decree, issued by Prime Minister Thaksin, was validated as an Act after a parliamentary vote, as required under the 1997 Constitution. For more information on the 2005 Emergency Decree, see: International Commission of Jurists (ICJ), *More Power, Less Accountability: Thailand's New Emergency Decree*, August 2005; ICJ Legal Memorandum, *The Implementation of Thailand's Emergency Decree*, July 2007.

- ⁵¹ ISA, section 15.
- ⁵² ISA, section 16(1).
- ⁵³ ISA, section 16(3), 16(4), 18(1).
- ⁵⁴ ISA, sections 16(1)-16(4).
- ⁵⁵ ISA, section 16(4).
- ⁵⁶ ISA, section 16(4).
- ⁵⁷ ISA, section 16(4).
- ⁵⁸ ISA, section 19.
- ⁵⁹ ISA, section 21.
- ⁶⁰ ISA, section 17: The Director specifies staffing, administration, duties, control and command at the Centres with consent of the Board. This information must be published in the Government Gazette.
- ⁶¹ ISOC Order no. 205/2552 establishing CAPO, declared 9 July 2009, published 15 July 2009; ISOC Order no. 251/2552 establishing CAPO, declared on 28 August 2009, published 21 September 2009; ISOC Order no. 283/2552 establishing CAPO, declared on 17 September 2009, published 26 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, <http://www.rtarf.mi.th/asean-summit/pdf/way.pdf>; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/person.pdf>. Note that it is unclear whether a Centre for the Administration of Peace and Order will be established in Songkhla Province; however, the existing Joint Civil-Police-Military Command and the Southern Border Provinces Administration Centre have been transformed into special operations centres under section 17 of the ISA.
- ⁶² Cabinet has recently approved a draft Bill that would create SBPAC as a separate government agency, no longer under ISOC oversight: "Draft Act on Administration in Southern Border Provinces B.E. Office of Prime Minister no. Nor Ror 0503/20477 on "Draft Act on Administration in Southern Border Provinces B.E. ...", P.M. Abhisit Vejajiva, 5 November 2009, available online http://library2.parliament.go.th/giventake/content_hr/d111152-02.pdf (in Thai).
- ⁶³ ISA, section 18.
- ⁶⁴ ISA, section 24.
- ⁶⁵ ISA, section 18.
- ⁶⁶ ISA, sections 20, 23.
- ⁶⁷ See: *Act on Establishment of Administrative Courts and Administrative Court Procedure*, B.E., 2542 (1999), sections 9 and 11 (in Thai).
- ⁶⁸ ISA, section 23.
- ⁶⁹ ISA, section 5.
- ⁷⁰ ISA, section 8.
- ⁷¹ ISA, section 8.
- ⁷² ISA, sections 9, 11, 13, 17.
- ⁷³ ISA, section 10.

NOTES TO SECTION 3 – INTERNATIONAL LEGAL FRAMEWORK

- ⁷⁴ Thailand is party to several major international human rights treaties: International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3, entered into force Jan. 3, 1976; International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, entered into force Mar. 23, 1976 ("ICCPR"); International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, entered into force Jan. 4, 1969; Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, entered into force Sept. 3, 1981; Optional Protocol to the Convention on the Elimination of Discrimination against Women, 6 October 1999, 2131 U.N.T.S. 83, entered into force Dec. 22, 2000; Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, entered into force Sept. 2, 1990 ("CRC"); Convention Against Torture, 10 December 1984, 1465 U.N.T.S. 85, entered into force June 26, 1987 ("CAT"); International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), 13 December 2006, entered into force May 3, 2008. The ICJ takes no position on whether the violence in the Deep South meets the threshold of an armed conflict under Common Article 3 of the Geneva Conventions of 1949. With respect to the international obligations of State actors, the ICJ considers that human rights law provides the most appropriate framework for resolving the conflict. The ICJ notes that many of the protective provisions of international human rights law and international humanitarian law overlap and provide for similar normative protection. In the area of international humanitarian law, Thailand is also party to the Four Geneva Conventions of 1949: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31, entered into force Oct. 21, 1950; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85, entered into force Oct. 21, 1950; Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, entered into force Oct. 21, 1950; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force Oct. 21, 1950. Thailand is not party to Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 U.N.T.S. 609, entered into force 7 December 1978 (known as Additional Protocol II).
- ⁷⁵ This general principle is reflected in the Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, in force 27 January 1980, article 27. Note that Thailand is not party to this treaty, but many of its provisions are considered to represent principles of customary international law.
- ⁷⁶ Adopted by General Assembly resolution 217A (III), 10 December 1948.
- ⁷⁷ Adopted by General Assembly resolution 47/133 of 18 December 1992.
- ⁷⁸ Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.
- ⁷⁹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁸⁰ Adopted by General Assembly resolution 43/173 of 9 December 1988.

⁸¹ Adopted by General Assembly resolution 34/169 of 17 December 1979.

⁸² Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁸³ In resolution 1989/65, paragraph 1, the Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions should be taken into account and respected by Governments within the framework of their national legislation and practices (*"UN Principles on Extra-Legal Executions"*).

⁸⁴ Recommended by General Assembly resolution 55/89 of 4 December 2000 (*"UN Principles on the Investigation of Torture"*).

⁸⁵ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005 (*"UN Basic Principles on the Right to a Remedy and Reparation"*).

⁸⁶ Adopted by General Assembly resolution 40/34 of 29 November 1985.

⁸⁷ UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, recommended by the Commission on Human Rights resolution 2005/81 of 21 April 2005 (*"UN Principles on Impunity"*).

⁸⁸ Adopted by General Assembly resolution 45/110 of 14 December 1990.

⁸⁹ Adopted by General Assembly resolution 45/95 of 14 December 1990.

⁹⁰ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁹¹ UN Doc. E/CN.4/2006/58 at 4 (2006) (*"Decaux Principles"*).

⁹² See *Nicaragua v United States of America, Case concerning Military and Paramilitary Activities in and Against Nicaragua*, Judgment of 27 June 1986, page 100 ff (International Court of Justice) and Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Question of the Human Rights of All Persons Subjected to any Form of Detention or Imprisonment*, 12 January 1993, UN Doc. E/CN.4/1993/24, paragraphs 24-28.

⁹³ *Barcelona Light and Traction*, Judgment (Merits) of 5 February 1970, ICJ Reports 1970, 3 at page 32 (International Court of Justice); Ian Brownlie, *Principles of Public International Law*, 6th Ed., Oxford University Press, Oxford, 2003, page 537; Theodor Meron, *Human Rights and Humanitarian Norms as Customary International Law*, Oxford, Oxford University Press, 1989.

⁹⁴ According to the American Law Institute's Restatement (Third) of Foreign Relations Law (sect. 702(n)). See also, *ICJ Legal Commentary to Berlin Declaration*, page 37.

⁹⁵ From the International Criminal Tribunal for the Former Yugoslavia (ICTY), see: *The Prosecutor v Anto Furundzija*, IT-95-17/1-T, Judgment, paragraph 154 (ICTY Trial Chamber); *The Prosecutor v Delalic and others*, IT-96-21-T, Judgment, 16 November 1998, paragraph 454 (ICTY Trial Chamber); *The Prosecutor v Kunarac*, IT-96-23-T and IT-96-23/1-T, Judgment, 22 February 2001, (ICTY Trial Chamber). See also, UN General Assembly Resolution A/RES/59/183; UN Commission on Human Rights Resolution E/CN.4/RES/2005/39; and the UN Special Rapporteur on Torture (UN document E/CN.4/1986/15, paragraph 3, 19 Feb. 1986). See also, *A and Others v Secretary of State for the Home Department*, [2005] UKHL 71, paragraphs 29-34 (United Kingdom, House of Lords).

⁹⁶ Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders (1980), *Resolution No. 5 on Extralegal Executions*, paragraphs 2 and 5, UN document A/CONF.87/14/Rev.1 (1981); Inter-American Court of Human Rights, Judgment of 14 March 2001, *Case of Barrios Altos (Chumbipuma Aguirre et al. v Peru)*; Inter-American Commission on Human Rights, Recommendation on Asylum and International Crimes, 20 October 2000; and Nigel Rodley, *The Treatment of Prisoners under International Law*, 2nd ed. Clarendon Press, Oxford, 1999, page 192.

⁹⁷ From the International Court of Justice, see: *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports, 1996, page 226 and page 257, paragraph 79; Corfu Channel Case, Judgment (Merits) of 9 April 1949; *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (United States v Nicaragua)* Judgment (Merits), 27 June 1986; *Vienna Convention on the Law of Treaties*, article 53; *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, (1986), article 53; Ian Brownlie, *Principles of Public International Law*, 6th Ed., Oxford University Press, Oxford, 2003, page 488. See also: Human Rights Committee, General Comment 29, *States of Emergency (Article 4)*, paragraph 11 [*"ICCPR General Comment 29"*]. For a complete discussion of *jus cogens* norms and obligations erga omnes under international law, see International Commission of Jurists, *Legal Commentary on the Berlin Declaration*, Geneva, 2008, pages 37-40, online: www.icj.org [*"ICJ Legal Commentary to Berlin Declaration"*].

⁹⁸ Human Rights Committee General Comment 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, paragraph 4 [*"ICCPR General Comment 31"*].

⁹⁹ See ICCPR General Comment 31, paragraph 4; Human Rights Committee General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, paragraph 12 [*"ICCPR General Comment 24"*]. See also, e.g., Human Rights Committee Conclusions and Observations on Peru, (1996) UN Doc. A/51/40 at paragraph 348; *Chile*, (1999) UN Doc. A/54/40 at paragraph 202; *Sri Lanka*, (2003) UN Doc. A/59/40 at paragraph 66(7). Cf. Interpretive Declarations of Thailand to the ICCPR, paragraphs 2-4.

¹⁰⁰ ICCPR article 2; ICCPR General Comment 31; United Nations Human Rights Committee: *William Eduardo Delgado Pérez v Colombia*, Communication No. 195/1985, UN Doc. CCRP/C/39/D/195/1985, 23 August 1990, paragraph 55; *Carlos Dias v Angola*, Communication No. 711/1996, UN Doc. CCRP/C/68/D/711/1996, 18 April 2000, paragraph 8.3; *Rodger Chongwe v Zambia*, Communication No. 821/1998, UN Doc. CCRP/C/70/D/821/1998, 9 November 2000, paragraph 5.3.

¹⁰¹ ICCPR, articles 28, 40, 41, 42, 45.

¹⁰² United Nations, Economic and Social Council, UN, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, Annex, UN Doc. E/CN.4/1984/4 (1984), Principle 39, referred to in ICCPR General Comment 29 paragraphs 2 and 3, note 6 [*"Siracusa Principles"*]. The Principles were developed by a conference of 31 international law experts in 1984 and are widely seen as a highly persuasive clarification of the international legal standards governing the permissibility of limitations and derogations of ICCPR rights.

¹⁰³ ICCPR General Comment 29, paragraphs 4-5.

¹⁰⁴ ICCPR, article 4, paragraph 1, requires that any suspension of rights be based on an official proclamation of a state of emergency. Article 4, paragraph 3, ICCPR, contains the additional procedural requirement to notify the Secretary General of the United Nations on the provisions from which a country has derogated and of the reasons justifying doing so; See also ICCPR General Comment 29 paragraphs 2 and 3. See generally, the *ICJ Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism*, 2004, adopted on 28 August 2004 by a gathering of 160 jurists from all regions of the world, convened by the ICJ at its Biennial Conference. Available at <http://www.icj.org> [*"ICJ Berlin Declaration"*] and the *ICJ Legal Commentary*

to Berlin Declaration, pages 31-33.

¹⁰⁵ ICCPR article 4; ICCPR General Comment 29, paragraphs 4, 6, 8 and 9. See also, the ICJ Berlin Declaration.

¹⁰⁶ ICCPR General Comment 29, paragraph 7.

¹⁰⁷ See General Comment 29, paragraphs 14 and 16; Human Rights Committee, *Concluding Observations on Albania* (2004) UN Doc. CCPR/CO/82/ALB paragraph 9; International Convention for the Protection of All Persons from Enforced Disappearance, article 17.2(f); *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 32; *Declaration on the Protection of All Persons from Enforced Disappearances*, article 9; Reports of the Working Group on Arbitrary Detention, E/CN.4/2004/3, 15 December 2003, paragraph 85, and E/CN.4/1994/27, 17 December 1993, paragraph 74. UN General Assembly Resolution 34/178 of 17 December 1979 on "The right of amparo, habeas corpus or other legal remedies to the same effect". See also ICJ *Legal Commentary* to Berlin Declaration, pages 51-55.

¹⁰⁸ ICCPR General Comment 29, paragraph 14. See also ICCPR General Comment 24, paragraph 11.

¹⁰⁹ Common Article 3(d) to the Geneva Conventions of 1949; Human Rights Committee, General Comment 31, paragraph 15.

¹¹⁰ See ICCPR General Comment 29, paragraphs 9 ff. Other international laws include, for example, other UN human rights treaties and the Geneva Conventions of 1949. States should also have reference to international efforts to identify fundamental rights applicable in all circumstances, including the reports of the Secretary-General to the Commission on Human Rights submitted under Human Rights Commission Resolutions 1998/29, 1996/65 and 2000/69 on minimum humanitarian standards, UN Docs. E/CN.4/1999/92, E/CN.4/2000/94 and E/CN.4/2001/91; the Paris Minimum Standards of Human Rights Norms in a State of Emergency, International Law Association, 1984; *the Siracusa Principles, op. cit.*, particularly paragraphs 66-70; Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, *Final Report of on human rights and states of emergency*, (1997) UN Doc. E/CN.4/Sub.2/1997/19 and Add.1, the Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, The Turku (Abo) Declaration of Minimum Humanitarian Standards, (1990) UN Doc. E/CN.4/1995/116, and the work of the International Committee of the Red Cross on the customary rules of international humanitarian law applicable in international and non-international armed conflicts, particularly: Jean-Marie Henckaerts and Louise Doswald-Beck, *International Committee of the Red Cross Customary International Humanitarian Law*, vols 1-2, Cambridge, Cambridge University Press, 2005.

¹¹¹ ICCPR General Comment 29, paragraph 13.

¹¹² ICCPR, article 4.

¹¹³ ICCPR General Comment 29, paragraphs 4-5. See Report of the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc. E/CN.4/2005, paragraph 12, stating that: "The jurisprudence of the Human Rights Committee and regional supervisory bodies indicates that derogations are always exceptional and temporary measures. Accordingly, such measures should be lifted as soon as the emergency that justified their imposition no longer exists or can be managed by less intrusive means under the relevant instrument. This jurisprudence also suggests that the underlying purpose of such measures is to permit States to protect democratic institutions, the rule of law and the enjoyment of basic freedoms, such measures cannot lawfully be undertaken to weaken or destroy them".

¹¹⁴ ICCPR General Comment 29, paragraph 6.

¹¹⁵ ICCPR, articles 4 and 26; Human Rights Committee, General Comment 28, *Equality of rights between men and women (article 3)* paragraph 9 ("ICCPR General Comment 28"); ICCPR General Comment 29, paragraph 8. See Report of the Independent Expert on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc. E/CN.4/2005, paragraph 12; ICJ Berlin Declaration, Principle 4.

¹¹⁶ ICCPR General Comment 29, paragraphs 14-17.

¹¹⁷ ICCPR General Comment 31, paragraph 6; ICCPR General Comment 29, paragraph 3; *Siracusa Principles*, paragraphs 35-37.

¹¹⁸ ICCPR General Comment 29, paragraph 3.

¹¹⁹ See e.g. ICCPR article 14(1), which permits the right to a public trial to be restricted for reasons of morals, public order or national security in a democratic society, where required in the interests of the privacy of the parties, or where strictly required in the interests of the administration of justice. See also the right to freedom of movement (ICCPR article 12); the right to manifest one's religion or beliefs (ICCPR article 18(3)); the right to freedom of expression (ICCPR article 19(2)-(3)); the right to peaceful assembly (ICCPR article 21); the right to freedom of association (ICCPR article 22(2)-(3)). See also, e.g., Convention on the Rights of the Child, article 13 (freedom of expression), article 14 (freedom of thought, conscience or religion), article 15 (freedom of association and assembly), article 37(c) (right to be detained separately from adults and maintain contact with family).

¹²⁰ These rights include the right to be free from torture (article 7 ICCPR); the right to be free from slavery or servitude (article 8 ICCPR); the right of prisoners to be treated with humanity (article 10 ICCPR); the right not to be imprisoned for failure to fulfil a contractual obligation (article 11 ICCPR); the right to a fair trial (article 14(2)-(7) ICCPR); the right not to be subject to retroactive criminal liability (article 15 ICCPR); the right to legal personality (article 16 ICCPR); the right to freedom of thought or religion (article 18(1)-(2) ICCPR); the right to marry and found a family (article 23 ICCPR); the right of a child to nationality (article 24 ICCPR); the right to equality before the law, the right to equal protection of the law and the right to be free from discrimination on prohibited grounds (article 26 ICCPR); rights of religious and cultural minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language (article 27 ICCPR). See also, e.g., Convention on the Rights of the Child, article 37(a), (c), (d) (freedom from torture or cruel, inhuman or degrading treatment or punishment; right to be treated with humanity and dignity; right to counsel or other assistance and right to challenge legality of detention), article 38 (application of international humanitarian law to children), article 39 (right to a remedy for, inter alia, torture, cruel, inhuman or degrading treatment or punishment), article 40 (fair trial rights).

¹²¹ See, among others, the Human Rights Committee: General Comment 10, *Freedom of expression (Article 19)*, paragraph 4 ("ICCPR General Comment 10"); General Comment 22, *The right to freedom of thought, conscience and religion (Article 18)*, paragraph 8 ("ICCPR General Comment 22"); General Comment 27, *Freedom of movement (Article 12)*, in particular, paragraphs 11 to 18 ("ICCPR General Comment 27"); ICCPR General Comment 29, paragraphs 4, 7 and 9; and ICCPR General Comment 31, paragraph 6.6. See also Human Rights Committee, *Concluding Observations on: the Syrian Arab Republic* (2005) UN Doc. CCPR/CO/84/SYR, paragraph 6; *Yemen*, (2005) CCPR/CO/84/YEM, paragraph 13.

¹²² Human Rights Committee, *Ballantyne Davidson and McIntyre v Canada*, (1993) Communication Nos. 359/1989 and 385/1989, paragraph 11.4. See also UN Human Rights Committee General Comment 27, paragraph 14; *Siracusa Principles*, paragraphs 7-9, 17-18.

¹²³ ICCPR, article 3(1); ICCPR General Comment 31, paragraph 6. See also, ICJ Berlin Declaration, Principle 1, stating: "All states have an obligation to respect and to ensure the fundamental rights and freedoms of persons within their jurisdiction, which includes any territory under their occupation or control. States must take measures to protect such persons, from acts of terrorism. To that end, counter-terrorism measures must themselves be taken with strict regard to the principles of legality, necessity, proportionality and non-discrimination."

¹²⁴ ICCPR, article 12(3). See, for example, ICCPR General Comment 10, paragraph 4 and ICCPR General Comment 27, paragraphs 11 - 18; *Siracusa Principles*, paragraphs 7-9, 17-18.

¹²⁵ 2007 Constitution of Thailand, article 29. See also article 31, providing public officials with the same rights as all other persons, unless those rights are restricted by laws or policies. Rules and regulations issued pursuant to a law that contains a restriction on constitutional rights are subject to the same conditions. Article 29 first appeared in the 1997 Constitution, and was inspired by a similar provision the German Constitution: See Minutes No. 22/2550, Monday 11 June 2007, The Constituent Assembly of Thailand; Grundgesetz, GG, article 19. Articles 29 and 31 of the Constitution of Thailand are reproduced in an Annex to this Report (official translations).

¹²⁶ The full text of these sections can be found in an Annex to this Report (official translations).

¹²⁷ There has been no suggestion that forced labour has been used at any time when Part 2 of the ISA has been invoked. This error was corrected in the unofficial English translations of the Orders provided on the Ministry of Foreign Affairs web-site. See Regulations relating to Use of Part 2 in Hua Hin and area, and Dusit District in October 2009 as well as Phuket and Dusit in August and September 2009.

¹²⁸ ISA, section 15.

¹²⁹ The Human Rights Committee has expressed concern about the possibility that rights which are non-derogable under article 4(2) of the ICCPR are either being derogated from or are at risk thereof as a result of "inadequacies in the legal regime of the state party": ICCPR General Comment 29, paragraph 4. See also the following comments and concluding observations of the Human Rights Committee: *Dominican Republic* (1993), CCPR/C/79/Add.18, paragraph 4; *Jordan* (1994), CCPR/C/79/Add.35, paragraph 6; *Nepal* (1994), CCPR/C/79/Add.42, paragraph 9; *Russian Federation* (1995), CCPR/C/79/Add.54, paragraph 27; *Zambia* (1996), CCPR/C/79/Add.62, paragraph 11; *Gabon* (1996), CCPR/C/79/Add.71, paragraph 10; *Colombia*, (1997) CCPR/C/79/Add.76, paragraph 25; *Israel* (1998), CCPR/C/79/Add.93, paragraph 11; *Iraq* (1997), CCPR/C/79/Add.84, paragraph 9; *Uruguay* (1998), CCPR/C/79/Add.90, paragraph 8; *Armenia* (1998), CCPR/C/79/Add.100, paragraph 7; *Mongolia* (2000), CCPR/C/79/Add.120, paragraph 14; *Kyrgyzstan* (2000), CCPR/CO/69/KGZ, paragraph 12.

¹³⁰ Human Rights Committee, *Ballantyne Davidson and McIntyre v Canada*, (1993) Communication Nos. 359/1989 and 385/1989, paragraph 11.4. See also UN Human Rights Committee General Comment 27, paragraph 14; *Siracusa Principles*, paragraphs 7-9, 17-18.

NOTES TO SECTION 4 – THE DEFINITION OF INTERNAL SECURITY AND THE SCOPE OF APPLICATION OF THE ISA

¹³¹ Interpretive Note at the end of the ISA.

¹³² Criminal Code of Thailand, sections 113-118.

¹³³ Criminal Code of Thailand, section 135/1.

¹³⁴ See ISA, section 3, providing that in order to maintain internal security, ISOC is given the power to conduct "operations to prevent, control, resolve and restore any situation which is or may be a threat ... in order to restore normalcy for the sake of peace and order of the people, or the security of the nation." More specific powers are granted to ISOC under sections 7, 8.

¹³⁵ ISA, section 15. A "State of Emergency" is defined in section 4 of the 2005 Emergency Decree:

"States of Emergency" means a situation, which affects or may affect public order or endangers the security of the State or may cause the country or any part of the country to fall into a state of acute difficulty or a situation resulting from an offence relating to terrorism under the Penal Code, armed conflict or war, pursuant to which it is necessary to enact emergency measures to preserve the monarchy, the democratic system of government under the constitutional monarchy, national independence and territorial integrity, the interests of the nation, compliance with the law, the safety of the people, the peaceful way of life of the people, the protection of rights, liberties and public order or public interest, or the aversion or provision of remedy for damages arising from urgent and severe public calamity.

This circular and vague definition of a state of emergency does little to illuminate the meaning of the clause in section 15 of the ISA covering, as it does any threat to public order that requires the use of emergency powers. The threshold for application of the Martial Law Order is somewhat different. It may be declared in force by Royal Decree "when a situation arises that makes it necessary to maintain law and order to defend against the danger of attack, either from abroad or from within the Kingdom": Martial Law, section 2. A military commander with the minimum force of one battalion at his disposal or the military commander of any fortified post or military stronghold may declare Martial Law in the area under his control "when there is an outbreak of war or unrest at any location": *Ibid*, section 4.

¹³⁶ See Section 7 below, comparing the Martial Law, the 2005 Emergency Decree and the ISA.

¹³⁷ Announcement on Areas with Occurrences Affecting Internal Security, declared 7 October 2009, published 7 October 2009.

¹³⁸ *The Nation*, "Ban on Protests in Phuket", 10 July 2009 and Phuket Gazette, "Internal Security Act Now in force in Phuket", 10 July 2009, both quoting Defence Minister Prawit Wongsuwan ("Phuket must have no protests whatsoever. We will designate no areas for demonstrations. No road blockade, no submission of a protest letter, and not even a peaceful gathering is allowed").

¹³⁹ Announcement on Areas with Occurrences Affecting Internal Security, declared 9 July 2009, published 9 July 2009; Announcement on Areas with Occurrences Affecting Internal Security, declared 7 October 2009, published 7 October 2009.

NOTES TO SECTION 5 – RIGHTS AT RISK

¹⁴⁰ See, for example, article 22 of the Rome Statute of the International Criminal Court and the reports of the International Law Commission to the UN General Assembly, Supplement No. 10 to UN Doc. A/48/10, 1993, page 81 and 1994, Supplement No. 10 to UN Doc. A/49/10, page 321. See also ICCPR, article 15, European Convention on Human Rights, article 7, African Charter on Human and Peoples' Rights, article 7.2, Arab Charter on Human Rights, article 15, and the American Convention on Human Rights, article 9; ICCPR General Comment 29, paragraph 7; the Concluding Observations of the Human Rights Committee on: *Democratic People's Republic of Korea* (2001), UN Doc. CCPR/CO/72/PRK, paragraph 14; *Belgium* (2004), UN Doc. CCPR/CO/81/BEL, paragraph 24; *Iceland* (2005), UN Doc. CCPR/CO/83/ISL, paragraph 10; *Estonia* (2003), UN Doc. CCPR/CO/77/EST, paragraph 8; *Canada* (2006), UN Doc. CCPR/C/CAN/CO/5, paragraph 12; and *Morocco* (2004), UN Doc. CCPR/CO/82/MAR, paragraph 20. See also: European Court of Human Rights: Judgment of (1993), *Kokkinakis v Greece*, Series A, N° 260-A, page 22, paragraph 52; and Judgment of 22 June 2000, *Coëme v Belgium*, paragraph 11; Inter-American Court of Human Rights: Judgment of 30 May 1999, Case of *Castillo Petruzzi et al v Peru*, paragraphs 119, 120 and 121; and Inter-American Commission on Human Rights, *Second report on the situation of human rights in Peru*, OEA/Ser.L/V/II.106,

doc. 59 rev., June 2, 2000, paragraph 80.

¹⁴¹ See, e.g., ICCPR General Comment 29, paragraph 7; Human Rights Committee, Concluding Observations on: *Belgium* (2004), UN Doc. CCPR/CO/81/BEL, paragraph 24, *Morocco* (2004), UN Doc. CCPR/CO/82/MAR, paragraph 20; and *Canada* (2006), UN Doc. CCPR/C/CAN/CO/5, paragraph 12.

¹⁴² Inter-American Court of Human Rights, Judgement of 30 May 1999, Case of *Castillo Petruzzi et al v Peru*, paragraph 121.

¹⁴³ See ICCPR, article 4(2); ICCPR General Comment 29, paragraph 7; Concluding Observations of the Human Rights Committee: *Estonia* (2003), UN Doc. CCPR/CO/77/EST, paragraph 8.

¹⁴⁴ ISA, section 21 and also ISA, section 18(2).

¹⁴⁵ ISA, section 24.

¹⁴⁶ See Human Rights Committee, *Albert Womah Mukong v Cameroon* (1994) Communication No. 458/1991, paragraph 9.7.

¹⁴⁷ Martial Law, section 11.

¹⁴⁸ 2005 Emergency Decree, sections 9, 11.

¹⁴⁹ ISA, section 24. No penalty is specified for breach of section 18(1), which authorises ISOC to have relevant state officials implement or suspend any action.

¹⁵⁰ CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/person.pdf>; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 15 October 2009, published 9 November 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 15 October 2009, published 9 November 2009.

¹⁵¹ No Special Operations Centre Announcements have been published in relation to the use of ISA Part 2 powers in Phuket, though a Centre was created under ISOC Order 205/2552, giving it authority to plan, manage and maintain security, including the power to prevent, restrain or deny of assembly or other unrest in the area of Phuket from 10 - 24 July 2009.

¹⁵² ICCPR, article 15. The principle of non-retroactivity in criminal law is non-derogable.

¹⁵³ Regulations under Section 18 of the ISA, declared 9 July 2009, published 9 July 2009; Regulations under Section 18 of the ISA, declared 25 August 2009, published 25 August 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 7 October 2009, published 7 October 2009; Regulations under Section 18 of the ISA, declared 14 October 2009, published 14 October 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009 (the Songkhla Regulations are different from previous regulations in that they permit, for the first time, exit from dwelling places within a designated time under section 18(3). However, the language of the regulations remains almost identical to that of section 18 and previously issued Regulations in all other respects.).

¹⁵⁴ See discussion in section 3.3. above. Only the protection of national security, public order, public health or morals, or the rights and freedoms of others are legitimate objectives.

¹⁵⁵ See, e.g.: CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 15 October 2009, published 9 November 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 15 October 2009, published 9 November 2009. No Special Operations Centre Announcements have been published in relation to the use of ISA Part 2 powers in Phuket, though a Centre was created under ISOC Order 205/2552, giving it authority to plan, manage and maintain security, including the power to prevent, restrain or deny any form of assembly or other unrest in the area of Phuket from 10 - 24 July 2009. See: CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 21 October 2009, <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>.

¹⁵⁶ Freedom of association has been described as a right that "permits persons formally to join together in groups to pursue common interests": Sarah Joseph, Jenny Schultz & Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials and Commentary*, 2nd ed., Oxford, Oxford University Press, 2005, page 575.

¹⁵⁷ Freedom of peaceful assembly has been described as the right of persons to gather temporarily and intentionally for a specific purpose, in particular where concerned with the discussion or proclamation of ideas: Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, N.P. Engel, Kehl, 1993, pages 373-374.

¹⁵⁸ ICCPR General Comment 27, paragraphs 12-13.

¹⁵⁹ ICCPR, articles 12(3), 21, 22(2). See also ICCPR General Comment 27, paragraphs 11 to 18, and *Siracusa Principles*, which indicate that all ICCPR limitations clauses should be interpreted in the same manner.

¹⁶⁰ General Comment 27, paragraph 13; Human Rights Committee, *Conclusions and Observations on Sudan* (1997) UN Doc. CCPR/C/79/Add.85, paragraph 14, expressing concern that authorities arbitrarily imposed restrictions on freedom of movement in the absence of any defined legal criteria.

¹⁶¹ ISA, section 18(3).

¹⁶² ISA, section 18(2).

¹⁶³ See Human Rights Committee, *Ackla v Togo*, (1996) Communication No. 505/1992, paragraph 10; Human Rights Committee, *Concluding Observations*

on the Islamic Republic of Iran, (1993) UN Doc. CCPR/C/79/Add.25, paragraph 14.

¹⁶⁴ No Special Operations Centre Announcements have been published in relation to the use of ISA Part 2 powers in Phuket, though a Centre was created under ISOC Order no. 205/2552, giving it authority to plan, manage and maintain security, including the power to prevent, restrain or deny assembly or other unrest in the area of Phuket from 10 - 24 July 2009.

¹⁶⁵ *The Nation*, "Ban on Protests in Phuket", 10 July 2009 and *Phuket Gazette*, "Internal Security Act Now in force in Phuket", 10 July 2009, both quoting Defence Minister Gen. Prawit Wongsuwan (Ret.).

¹⁶⁶ ISA, sections 8, 17. See: ISOC Order no. 205/2552 establishing CAPO, declared 9 July 2009, published 15 July 2009; ISOC Order no. 251/2552 establishing CAPO, declared on 28 August 2009, published 21 September 2009; ISOC Order no. 283/2552 establishing CAPO, declared on 17 September 2009, published 26 October 2009; ISOC Order no. 308/2552 establishing CAPO, declared on 14 October 2009, published 21 December 2009.

¹⁶⁷ These Centres for the Administration of Peace and Order were created by ISOC Order and under the authority of ISA, section 17. Section 8 of the ISA allows the Director of ISOC or his delegate to delegate the powers of the Director under the Act to the head of any named centre or agency.

¹⁶⁸ CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009. (unofficial translation)

¹⁶⁹ The Announcements were not published in the Government Gazette until weeks after Part 2 had lapsed: CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 21 October 2009, not published in the Government Gazette at the time of writing but available online at: <http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 21 October 2009, not published in the Government Gazette at time of writing, but available online at: <http://www.rtarf.mi.th/aseansummit/pdf/person.pdf>; CAPO Announcement Prohibiting Use of Routes or Vehicles, declared 15 October 2009, published 9 November 2009; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 15 October 2009, published 9 November 2009. At the time of writing, CAPO Announcements relating to the use of the ISA in Phuket from 10-24 July 2009 have not been published in the Government Gazette.

¹⁷⁰ The full text of articles 45-58 is appended to this Report.

¹⁷¹ Found in Constitution of Thailand 2007, article 45.

¹⁷² *The Nation*, "Ban on Protests in Phuket", 10 July 2009 and *Phuket Gazette*, "Internal Security Act Now in force in Phuket", 10 July 2009, both quoting Defence Minister Gen. Prawit Wongsuwan (Ret.).

¹⁷³ ICCPR General Comment 22, paragraph 8.

¹⁷⁴ ICCPR, article 19(3).

¹⁷⁵ Human Rights Committee, *Sohn v Republic of Korea*, (1995) Communication No. 518/1992, paragraph 10.4.

¹⁷⁶ Human Rights Committee, *Faurisson v France*, (1996) Communication No. 550/1993, sep. op. Mrs Evatt, Mrs Quiroga Medina and Mr. Klein, paragraph 8; sep. op. Mr. LaHlah, paragraph 13.

¹⁷⁷ Human Rights Committee, *Bodrozic v Serbia and Montenegro*, (2005) Communication No. 1180/2003, paragraph 7.2. See also *Aduayom et al v Togo*, Communication No. Communications Nos. 422/1990, 423/1990 and 424/1990, 12 July 1996, paragraph 7.4.

¹⁷⁸ ICCPR, article 19(2): "Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

¹⁷⁹ Human Rights Committee, *Aduayom et al v Togo*, (1996) Communication No. Communications Nos. 422/1990, 423/1990 and 424/1990, paragraph 7.4. See also, *Report of the Special Rapporteur, Ambeyi Ligabo, submitted in accordance with Commission on Human Rights resolution 2003/42, E/CN.4/2004/62*, 12 December 2003, paragraph 79.

¹⁸⁰ Human Rights Committee, *Mukong v Cameroon*, (1994) Communication No. 458/1991, paragraph 9.7.

¹⁸¹ Regulations under Section 18 of the ISA, declared 9 July 2009, published 9 July 2009; Regulations under Section 18 of the ISA, declared 25 August 2009, published 25 August 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 7 October 2009, published 7 October 2009; Regulations under Section 18 of the ISA, declared 14 October 2009, published 14 October 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009. (unofficial translations)

¹⁸² *The Nation*, "Ban on Protests in Phuket", 10 July 2009 and *Phuket Gazette*, "Internal Security Act Now in force in Phuket", 10 July 2009, both quoting Defence Minister Prawit Wongsuwan ("Phuket must have no protests whatsoever. We will designate no areas for demonstrations. No road blockade, no submission of a protest letter, and not even a peaceful gathering is allowed").

¹⁸³ Under international law, criminal penalties for defamation and similar speech crimes is nearly always considered to be disproportionate, though such penalties may be justified in the case of speech advocating violence or national, racial or religious hatred under article 20 of the ICCPR: ICCPR General Comment 11, paragraph 2; Mr. Ambeyi Ligabo, *The Right to Freedom of Expression: Report of the Special Rapporteur Mr. Ambeyi Ligabo, submitted in accordance with Commission resolution 2002/48*, UN Doc. E/CN.4/2003/67, 30 December 2002, paragraph 73. See also: International Criminal Tribunal for Rwanda, *Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*, Case No. ICTR-99-52-T, Appeals Judgement, 28 November 2007, paragraphs 691-715 (ICTR Appeals Chamber), discussing the crime of incitement to commit genocide and its relationship to and differences from hate speech.

¹⁸⁴ Reporters Without Borders, "Radio host forced to resign for interviewing exiled former premier", 15 September 2009, online: <http://www.rsf.org/Prachatai>; "Jom Petradab's Statement", 11 September 2009, online: <http://www.Prachatai.com/english>. Note that Thaksin appears without interference on privately-owned cable channels.

¹⁸⁵ Ministry of Information and Communication Technology, "ICT Curbs Rogue Websites to Solve Billion Baht Loss", 2 October 2009, citing Minister Ranongrak Suwanchawee, online: <http://www.mict.go.th/ew/news.php?nid=2561&filename=index> (in Thai).

also transferred to range of ISOC officials: Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

²⁰³ *Computer Crimes Act, B.E. 2550* (2007), sections 18(1)-(3). Search with a warrant may be conducted under section 19.

²⁰⁴ See Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, UN Doc. A/HRC/10/3, (2009), paragraphs 32-35. See also: the decisions of the German Constitutional Court in BVerfG 4 April 2006, 1 BvR 518/02 and BVerfG, 27 February 2008, NJW 2008, 822. For commentary on these cases in English, see: Raymond Youngs, "Germany: Shooting Down Aircraft and Analyzing Computer Data", *International Journal of Constitutional Law*, 2008 vol. 6(2), page 331 and Wiebke Abel and Burkhard Schafer, "The German Constitutional Court on the Right in Confidentiality and Integrity of Information Technology Systems - a Case Report on BVerfG, NJW 2008, 822", *SCRIPTed*, 2009, vol. 6(1)106.

²⁰⁵ See Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc. A/HRC/10/3, paragraph 31.

²⁰⁶ See discussion on this point in Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc. A/HRC/10/3 and in the EJP Report, pages 68, 78, 85-88.

²⁰⁷ Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc. A/HRC/10/3, paragraphs 29-30.

²⁰⁸ ISA, section 24.

²⁰⁹ ISA, section 23.

²¹⁰ Regulations under section 18 of the ISA, declared 9 July 2009, published 9 July 2009; Regulations under Section 18 of the ISA, declared 25 August 2009, published 25 August 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 7 October 2009, published 7 October 2009; Regulations under Section 18 of the ISA, declared 14 October 2009, published 14 October 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009.

²¹¹ CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 29 August 2009, published 18 September 2009, paragraph 1; CAPO Announcement Prohibiting Entry and Excluding Persons Who Are or Who May Be a Threat to Internal Security, declared 18 September 2009, published 21 October 2009, paragraph 1.

²¹² ISA, section 19.

²¹³ ISA, section 16(4) paragraph 4. Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

²¹⁴ ICCPR, article 7, Convention Against Torture, article 2, as well as articles 4-10, 16; Common Article 3 of the Geneva Conventions of 1949.

²¹⁵ ISA, section 15.

²¹⁶ Although the ICCPR allows rights in relation to arrest, detention and trial to be suspended to the extent strictly necessary during properly declared states of emergency, a core of non-derogable procedural rights remain, including the right to review of the lawfulness of any form of detention.

²¹⁷ Human Rights Committee, *General Comment 8: Right to Liberty and Security of Persons (Article 9)*, paragraph 1 ["ICCPR General Comment 8"].

²¹⁸ See Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum, Mission to China*, (2004) UN Doc. E/CN.4/2005/6/Add.4, paragraph 54. See also the Constitution of the Kingdom of Thailand 2007, article 32, providing in paragraph one that "[a] person shall enjoy the right and liberty in his or her life and person" and in paragraph five that "[i]n the case of the act affecting the right and liberty under paragraph one, an affected person, a public prosecutor, or another person acting on behalf of the affected person has the right to seek court action to stop or withdrawal such an action including to determine proper measure or remedy for the accrued damage." Thailand's CPC, article 90, which allows the Court to inquire into the lawfulness of the detention of any person, to require that the detained person be brought before the Court by his or her gaoler without delay, and to order the release of the detained person without delay if the detention cannot be shown to be lawful.

Article 32 of the Constitution also provides that "[t]he arrest and detention shall not be made without Court order, Court writ or other causes as prescribed by law. The search of person or act affecting the rights and liberty under paragraph one shall not be made except by the necessities as prescribed by law." The CPC clearly specifies situations in which an individual may be subject to arrest and detention in articles 77-90. In particular, articles 83 and 84 provide the right to be notified of any charges and of the right against self-incrimination upon arrest by an official; article 87 of the CPC provides that individuals subject to arrest must be brought before the Court within 48 hours. Article 7/1 provides any person subject to arrest or any alleged offender with a right to counsel and the right to inform family members of the arrest and the person's location, as well as the right to be informed of these rights in a timely manner.

²¹⁹ G.A. res. 45/110, annex, 45 UN. GAOR Supp. (No. 49A) at 197, UN. Doc. A/45/49 (1990) ("Tokyo Rules"), adopted without a vote.

²²⁰ Human Rights Committee, *General Comment 32, Right to equality before courts and tribunals and to a fair trial (Article 14)*, paragraphs 3, 7 ["ICCPR General Comment 32"].

²²¹ ICCPR General Comment 32, paragraph 8.

²²² ICCPR General Comment 32, paragraph 13; Human Rights Committee, *Jansen-Gielen v The Netherlands*, (2001) Communication No. 846/1999, paragraph 8.2 and *Äärelä and Näkkäläjärvi v Finland*, (2001) Communication No. 779/1997, paragraph 7.4.

223

See the Concluding Observations of the Human Rights Committee on: France, (1997) CCPR/C/79/Add.80, paragraph 16ff, Bolivia, (1997) CCPR/C/79/Add.74, paragraphs 17 and 34, and Colombia, (1997) CCPR/C/79/Add.76, paragraph 19. See also the Inter American Commission on Human Rights: *Report on the Situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, 24 September 1998, paragraph 35; *Report on the Situation of Human Rights in Brazil*, 1997, paragraph 86; *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, doc. 31, 12 March 1993, paragraph 24; *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, paragraph 210.

224

Police powers can be delegated generally to ISOC by Cabinet under section 16(4) paragraph 4, or delegated by the Director of ISOC to specific individuals under section 19. Section 19 permits delegation of a wider range of police powers.

225

See International Commission of Jurists, *More Power, Less Accountability: Thailand's New Emergency Decree*, August 2005 and International Commission of Jurists, *Legal Memorandum: The Implementation of Thailand's Emergency Decree*, July 2007; Amnesty International, Thailand: *Torture in the Southern Counter-Insurgency*, January 2009; Muslim Attorney Centre and Cross Cultural Foundation, *Enhancing the Administration of Justice in the Border Provinces of Southern Thailand*, presented at a seminar on "The Roles of Judges and Public Prosecutors in the Restive Southern Border Provinces of Thailand", JB Hotel, Hat Yai, Songkhla Province, 12 June 2009.

226

2005 Emergency Decree, section 12 paragraph 3; CPC, articles 87 and 87/1.

227

ISOC Region 4, *Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Official as per Section II Of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005)*, paragraph 3.7, paragraph 2 (unofficial translation).

228

ISOC Region 4, *Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Official as per Section II Of the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005)*, paragraph 3.7 (unofficial translation). Cf. Constitution of the Kingdom of Thailand, article 42, Criminal Procedure Code, article 87; 2005 Emergency Decree, section 12. Interviews conducted by ICJ researchers with lawyers of Muslim Attorney Centre, 6 November and 22 December 2009; ICJ, *Legal Memorandum: The Implementation of Thailand's Emergency Decree*, July 2007, pages 17-18; Amnesty International, Thailand: *Torture in the Southern Counter-Insurgency*, January 2009, page 26.

229

This despite the fact that under Thai law, regulations issued by organs of government are subordinate legislation and must not be contrary to the enabling legislation or to the Constitution: Constitutional Court Decision No. 27/2544 (in Thai).

230

Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009.

231

ISA, section 18(2).

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CPC, articles 71, 87, 88, providing that a detention warrant may be issued on the basis of "reasonable evidence" that a person may have committed an offence (i) punishable by more than three years imprisonment or (ii) if there is suitable cause to believe that the person may flee, tamper with evidence or pose a danger.

233

CPC, article 66, providing that an arrest warrant may be issued on the basis of "reasonable evidence" that a person may have committed an offence punishable by more than three years imprisonment or if there is suitable cause to believe that the person may flee, tamper with evidence or pose a danger. Under the CPC articles 69-70, a search warrant for the purposes of searching a location to find and arrest a person cannot be issued unless an arrest warrant for a person has also been issued.

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CPC articles 78(1), 80.

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CPC, article 78(2).

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CPC, article 78(3).

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CPC, article 78(4).

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CPC, article 81. This condition applies to arrests with and without a warrant.

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Regulations under Section 18 of the ISA, declared 9 July 2009, published 9 July 2009; Regulations under Section 18 of the ISA, declared 25 August 2009, published 25 August 2009; Regulations under Section 18 of the ISA, declared 15 September 2009, published 15 September 2009; Regulations under Section 18 of the ISA, declared 7 October 2009, published 7 October 2009; Regulations under Section 18 of the ISA, declared 14 October 2009, published 14 October 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009; Regulations under Section 18 of the ISA, declared 26 November 2009, published 26 November 2009.

240

In the Narathiwat, Yala and Pattani provinces, and in five districts of Songkhla province, Martial Law allows for preventive detention of up to 7 days without a court warrant, 19 September 2007: "Announcement of Council for Democratic Reform", published in the Government Gazette, 20 September 2007, vol. 123, Part 95 a, page 3. The 2005 Emergency Decree, which permits preventive detention of up to 30 days with a court warrant, has been in force since 20 July 2006 in Pattani, Yala and Narathiwat provinces: Announcement on emergency situation in areas of Narathiwat, Pattani and Yala provinces: published in the Government Gazette, 20 July 2006, vol. 122, Special Part 54 d, page 1. The two laws are used in combination to allow for detention without charge for up to 37 days in the three southernmost provinces.

241

See discussion on this point in Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc A/HRC/10/3, paragraph 37; EJP Report, pages 76-77.

242

Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009), UN Doc A/HRC/10/3, paragraph 37.

243

See Human Rights Committee, *David Alberto Cámpora Schweizer v Uruguay*, (1982) Communication No. 66/1980, paragraph 18.1, finding that "although administrative detention may not be objectionable in circumstances where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner, the Committee emphasizes that the guarantees enshrined in the following paragraphs of article 9 fully apply in such instances." See also: Human Rights Committee, *Hugo van Alphen v Netherlands*, (1990) Communication No. 305/1988, paragraph 5.8; Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc A/HRC/10/3; Jelena Pejic, "Procedural principles and safeguards for interment/administrative detention in armed conflict and other situations of violence", *International Review of the Red Cross*, 2005, vol. 87(858), page 380; EJP Report, page 59, concluding that detention for the purposes of public security, which could include some element of intelligence gathering, should not be permitted except under exceptional circumstances, and then only if strictly in accordance with the protections set out in article 9 of the ICCPR. The imperative for a connection to public security is clear even in circumstances of international armed conflict, where procedural guarantees afforded by international human rights law to detainees otherwise are attenuated: Geneva Convention IV, articles 42, 78.

244

Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc A/HRC/10/3, paragraph 39; EJP Report, pages 76-78.

- ²⁴⁵ See post mortem inquest in relation to the death of Imam Yapa Kaseng, Order of 25 December 2008, Narathiwat Provincial Court, Black Case No. Or Chor 9/2551, Red Case No. Or Chor.19/2551; ICJ Observation of Post-Mortem Inquest into the death of Yakareeya Paoh-manee, Testimony of Khunying Pomtip Rojanasunan M.D., Yala Provincial Court, 7 April 2009. Note that in a civil suit brought by the family of Imam Yapa, government lawyers argued (without admitting any wrongdoing) that claims ought to have been brought against ISOC; ICJ Trial Observation, 28 August 2009, Bangkok Civil Court. See also: NHRC Tak Bai Report, paragraphs 9.1.1 - 9.3.2.
- ²⁴⁶ *Concluding Observations of the UN Human Rights Committee on Thailand*, (2005) UN Doc. CCRP/CO/84/THA, paragraphs 10, 15-16. Cf. *Regulation of Internal Security Operations Command Region 4 Concerning Guidelines of Practice for Competent Officials as per Section 11 of the Emergency Decree on Government Administration in States of Emergency*, B.E. 2548 (2005), paragraph 3.4, providing that, during the arrest of a suspect, "[n]o 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" (unofficial translation); Title X of the Criminal Code, Offences Against Life and Body; Martial Law, Annex, listing crimes prosecutable in military courts.
- ²⁴⁷ CPC, article 87, paragraph 3. See also article 134.
- ²⁴⁸ CPC, article 87, paragraph 6. Remands must be made by the Court every 12 days. The individual is considered an alleged offender and has the right to a lawyer and to examine witnesses at the remand hearings: article 87, paragraph 8. Article 89/1 allows the prosecutor, penitentiary commander or other authority executing the detention warrant to request that the alleged offender or accused person be held in a place requested by the official, other than in a penitentiary. The Court may hold a hearing to allow the official or detainee to make submissions before making any order.
- ²⁴⁹ Muslim Attorney Centre and Cross Cultural Foundation, "Enhancing the Administration of Justice in the Border Provinces of Southern Thailand," presented at the seminar on the Roles of Judges and Public Prosecutors in the Restive Southern Border Provinces of Thailand," 12 June 2009, page 9; Interviews conducted by ICJ researchers with lawyers of Muslim Attorney Centre, 6 November and 22 December 2009; Interview with government employee, Narathiwat Province, May 2009. The likelihood of bail varies depending on the particular Province in question.
- ²⁵⁰ Muslim Attorney Centre and Cross Cultural Foundation, "Enhancing the Administration of Justice in the Border Provinces of Southern Thailand", page 9 presented at the seminar on the Roles of Judges and Public Prosecutors in the Restive Southern Border Provinces of Thailand", 12 June 2009. The strength of the evidence against a person is one mandatory factor, amongst several, for a judge to consider in an application for provisional release under the CPC, article 108.
- ²⁵¹ Human Rights Committee, *C v Australia*, (2002) Communication No. 900/1999, paragraph 8.2.
- ²⁵² CPC, article 108/1.
- ²⁵³ Human Rights Committee, *A v Australia*, (1997) Communication No. 560/93, paragraph 9.4; Human Rights Committee, *C v Australia*, (2002) Communication No. 900/1999, paragraph 8.2.
- ²⁵⁴ ICCPR General Comment 32, paragraph 35. See, e.g., Human Rights Committee, *Barroso v Panama*, (1995) Communication No. 473/1991, paragraph 8.5; Human Rights Committee, (1997) *Richards v Jamaica*, Communication No. 639/1995, paragraph 8.2; Human Rights Committee, *Lewis v Jamaica*, (1997) Communication No. 708/1996, paragraph 8.1.
- ²⁵⁵ ICCPR, article 14(3)(c); ICCPR General Comment 32, paragraph 35.
- ²⁵⁶ The guarantee of expeditiousness applies to all stages of proceedings, including the time between trial and appeal: ICCPR General Comment 32, paragraph 35; Human Rights Committee, *Pratt and Morgan v Jamaica*, (1989) Communications Nos. 210/1986 and 225/1987, paragraphs 13.3; Human Rights Committee, *Rouse v Philippines*, (2005) Communication No. 1089/2002, paragraph 7.4. Other contributing factors to the high acquittal rate may include inexperienced prosecutors who must handle very large case-loads, and poorly-prepared inquiry files provided to prosecutors very late in the investigative detention period: ICJ conclusions based on information provided in interview with official of the Ministry of the Attorney General, 18 March 2009.
- ²⁵⁷ See ICCPR General Comment 32, paragraph 35. See also *Tokyo Rules*, Rule 6.1 (pre-trial detention should only be used as a last resort). And see the following views of the Human Rights Committee, finding a violation of the ICCPR based on lengthy delays: *Barroso v Panama*, (1995) Communication 473/1991, paragraph 8.5; *Sextus v Trinidad and Tobago*, (2001) Communication No. 818/1998, paragraph 7.2; *Siewpersaud, Sukhrum and Persaud v Trinidad and Tobago*, (2004) Communication No. 938/2000, paragraphs 6.1 - 6.2. See as well the Human Rights Committee's *Concluding Observations on: Czech Republic*, (2001) UN Doc. A/56/40, paragraph 83; *Russian Federation*, (1995) UN Doc. A/50/40, paragraph 377; *Italy*, (1998) UN Doc. A/53/40, paragraph 343; *Poland*, (1999) UN Doc. A/54/40, paragraph 351. See Committee Against Torture, *Concluding Observations on Ukraine*, (1997)UN Doc. A/52/44 23, paragraph 147.
- ²⁵⁸ CPC, articles 162(2), 167.
- ²⁵⁹ Kanit Na Nakom, *Law on Criminal Procedure, vol. 7*, Bangkok: Winyuchon Publication House, 2006, page 524 (in Thai).
- ²⁶⁰ Decision on an application for a preliminary hearing of 29 September 2008, Nathawi Provincial Court, Black Case No. 1464/2551.
- ²⁶¹ See "Draft Internal Security Bill", June 2007, section 31 and ICJ *Legal Memorandum: Comments on the Draft Internal Security Act*, July 2007, page 9.
- ²⁶² ICCPR Articles 9 and 14; ICCPR General Comment 32, paragraph 61; ICCPR General Comment 8, paragraph 4.
- ²⁶³ Human Rights Committee, *Hugo van Alphen v Netherlands*, (1990) Communication No. 305/1988, paragraph 5.8.
- ²⁶⁴ Human Rights Committee: *A v Australia*, (1997) Communication No. 560/93; *C. v Australia*, (2002) Communication No. 900/1999; *Hugo van Alphen v Netherlands*, (1990) Communication No. 305/1988, paragraph 5.8; *Aage v Norway*, (1994) Communication No. 631/1995, paragraph 6.3; *Albert Womah Mukong v Cameroon*, (1997) Communication No. 458/1991, paragraph 9(8).
- ²⁶⁵ ICCPR General Comment 32, paragraph 7; Human Rights Committee, *Perterer v Austria*, (2004) Communication No. 1015/2001.
- ²⁶⁶ ICCPR General Comment 32, paragraph 13; Human Rights Committee: *Jansen-Gielen v The Netherlands*, (2001) Communication No. 846/1999, paragraph 8.2 and *Äärelä and Näkkäläjärvi v Finland*, (2001) Communication No. 779/1997, paragraph 7.4; Working Group on Arbitrary Detention, (2004) *Zhang Yinan v China*, Opinion No. 24/2004 (China), UN Doc. E/CN.4/2006/7/Add.1 at 13, paragraph 20. See also: Constitution of the Kingdom of Thailand, article 40(2), (3).
- ²⁶⁷ ICCPR General Comment 32, paragraph 19.
- ²⁶⁸ ICCPR General Comment 32, paragraph 21; *UN Basic Principles on the Independence of the Judiciary*, principles 1, 2, 4. See also: International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors - A Practitioners' Guide*, Geneva, 2004.

- ²⁶⁹ ICCPR General Comment 32, paragraph 25; *UN Basic Principles on the Independence of the Judiciary*, principles 1, 6. See also: *International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – A Practitioners' Guide*, Geneva, 2004.
- ²⁷⁰ ICCPR, article 14(2); ICCPR General Comment 32, paragraph 30. See also Constitution of the Kingdom of Thailand of 2007, article 39.
- ²⁷¹ Article 14(3)(a); ICCPR General Comment 32, paragraph 31.
- ²⁷² See ICCPR General Comment 32, paragraph 5; Working Group on Arbitrary Detention, *Zhang Yinan v China*, (2004) Opinion No. 24/2004 (China), UN Doc. E/CN.4/2006/Add.1 at 13, paragraphs 19-22; CPC, articles 162 and 176.
- ²⁷³ See also ICCPR General Comment 32, paragraphs 33-41 and Constitution of the Kingdom of Thailand 2007, articles 39, 40.
- ²⁷⁴ CPC, article 2(2).
- ²⁷⁵ Such an accusation could be made to the competent authority by a criminal victim or any person: CPC articles 2(7) and (8).
- ²⁷⁶ CPC articles 7/1, 134. See also articles 52-55 (providing that police can formally charge an offender who has submitted him or herself to police or has been summonsed), articles 62-68 (providing that a person who is arrested with a warrant or as a result of being caught in the commission of an offence. A warrant for arrest will only be issued where the police demonstrate that there is reasonable evidence (i) that a person may have committed a crime punishable by imprisonment for more than three years; or (ii) that there is reasonable evidence that the person may have committed a crime and it is reasonable to believe that the person will evade, tamper with evidence or cause another danger: CPC, article 66. In determining whether to charge an individual, the inquiry officer will determine whether the "reasonable evidence" standard has been satisfied on a case by case basis using common sense, experience and logic: Theesut Punrit, *Inquiry*, Bangkok, Winyuchon Publication House, 2007, page 283 (in Thai).
- ²⁷⁷ See e.g., CPC, articles 7/1, 134-134/5; Constitution of the Kingdom of Thailand 2007, articles 39, 40.
- ²⁷⁸ Government Gazette (special edition), 13 October 2519 (1976), Vol. 93, Special Part 128, page 1. ISOC has used "training camps" as a method to deal with suspected enemies of the state for many years. For example, in the early 1970s, suspected communists were "invited" by ISOC's predecessor, CSOC, to attend training camps in Phatthalung Province, in southern Thailand. Large numbers of people at the camps were tortured and murdered, but despite a Ministry of the Interior investigation, no officials have ever been prosecuted. The Ministry of the Interior report reasoned that punishing officials would deter them from their important work combating the insurgency; See Tyrell Haberkm, "Making Massacre Possible: Impunity and Denial in Phatthalung, 1972-1976, draft paper presented at "State Violence and Political Transition in East Asia" workshop, 9-11 December 2009, Hong Kong, on-file with ICJ. See also Haberkm's discussion of the historical use of arbitrary detention in Thailand in "Dispossessing Law: Arbitrary Detention in Thailand Since 1958", draft paper on-file with ICJ.
- ²⁷⁹ Government Gazette, 8 August 2522 (1979), Vol. 96, Special Part 135, pages 1-4 (unofficial translation).
- ²⁸⁰ ISA, section 21, paragraph 1.
- ²⁸¹ *UN Basic Principles on the Right to a Remedy and Reparation, Principles 3, 4, 11; Tokyo Rules*, Rule 5.1.
- ²⁸² ICCPR, Article 14; ICCPR General Comment Number 8, paragraph 4.
- ²⁸³ Supreme Court Ruling on National Administrative Reform Council Order No. 22, Decision No. 334/2522 (1979), holding that in the absence of a specific provision to the contrary, the Court had the power to review the legality of the detention under article 90 of the Criminal Procedure Code, including whether the criteria for detention set out in Order No. 22 were met in the particular case.
- ²⁸⁴ Supreme Court Ruling on National Administrative Reform Council Order No. 22, Decision No. 2131/2521 (1978), requiring more than pointless or dubious evidence that an individual was a "danger to society" in order for detention in a training camp to be legal.
- ²⁸⁵ Article 14(3)(g). *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN Doc. ST/CSDHA/22, page 12.
- ²⁸⁶ 'General Relents on 6 Month Ban', The Nation, 6 November 2007; Confidential briefing note on file with ICJ.
- ²⁸⁷ Information provided by Working Group on Justice for Peace, March 2009; Interview with Human Rights Defender, 24 September 2009; Interviews conducted by ICJ researchers in Pattani province, October 2009 and in Yala Province, December 2009.
- ²⁸⁸ Interview conducted by ICJ researchers in Pattani province, October 2009.
- ²⁸⁹ Cabinet has twice announced its intention to rescind Martial Law in these districts, but at the time of writing, no Royal Decree had been issued to this effect: Unofficial Summary of Cabinet Meeting of 13 October 2009, available in Thai at <http://www.thaigov.go.th>; Unofficial Summary of Cabinet Meeting of 15 December 2009, available in English at <http://media.thaigov.go.th/pageconfig/viewcontent/viewcontentile.asp?pageid=472&directory=1943&contents=39978>.
- ²⁹⁰ Martial Law, section 15. (Unofficial translation)
- ²⁹¹ UN Human Rights Committee, (2005) *Concluding Observations of the Human Rights Committee on Thailand*, UN Doc. CCPR/CO/84/THA, paragraphs 15, 16.
- ²⁹² ICJ Legal Memorandum, *The Implementation of Thailand's Emergency Decree, July 2007*; Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, London, Amnesty International, 2009; Human Rights Watch, *"It Was Like my Son No Longer Existed" – Enforced Disappearances in Thailand's Southern Border Provinces*, March 2007; Asian Legal Resource Centre, "A Joint Oral Statement to the 7th Session of the UN Human Rights Council by the Asian Legal Resource Centre (ALRC), Lawyers Rights Watch Canada, the Asian Forum for Human Rights and Development (FORUM-ASIA), INFID, and Pax Romana-ICMICA/MIIIC", 13 March 2008, Human Rights Council General Debate; Cross-Cultural Foundation, Working Group on Justice for Peace, Human Rights and Development Foundation, Young Muslim Association of Thailand, Muslim Attorney Centre, Campaign Committee for Human Rights, Union for Civil Liberties, "Issues in the Justice Process and Attempts to Solve Unrest in the Southern Border Provinces – Stop Torture, Enforce the Laws and Abide by Rule of Law", 18 February 2008; Cross Cultural Foundation and Muslim Attorney Centre, *Enhancing the Administration of Justice in the Border Provinces of Southern Thailand*, June 2009.
- ²⁹³ See e.g.: Order of 10 April 2008, Narathiwat Provincial Court, Black Case no. Chor Chor I77-182/2551. Cf.: ICCPR, Article 9(1) and (4); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 4 and 6.
- ²⁹⁴ Constitution of the Kingdom of Thailand, 2007, article 39.
- ²⁹⁵ ICCPR, article 14(2); ICCPR General Comment 32, paragraph 30; *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 36.

²⁹⁶ ICCPR, article 7; Convention Against Torture, article 15.

²⁹⁷ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, (1993) UN Doc. E/CN.4/1993/24, Deliberation No. 4. See also: Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention - Visit to the People's Republic of China*, (1998) UN Doc. E/CN.4/1998/44/Add.2, paragraphs 80-99 and 109; *UN Standard Minimum Rules for the Treatment of Prisoners*, Rule 95.

²⁹⁸ ICCPR, article 9(1); ICCPR General Comment 32, paragraphs 61, 65. See, the following Views and Observations of the Human Rights Committee: *Mansour Ahani v Canada*, (2004) Communication No. 1051/2002, paragraph 10.3; *Hugo van Alphen v The Netherlands*, (1990) Communication No. 305/1998, paragraph 5.8; *Aage v Norway*, (1994) Communication No. 631/1995, paragraph 6.3; *Albert Womah Mukong v Cameroon*, (1997) Communication No. 458/1991, paragraph 9(8); *Concluding Observations on Israel*, (1998) UN Doc. CCPR/C/79/Add.93, paragraph 21; *Concluding Observations on Columbia*, (2004) CCPR/CO/80/COL, paragraph 9. In Thailand, the Supreme Court has affirmed that the Court may review the sufficiency of evidence forming the basis for a training order in two judgments dating from the 1978 and 1978, relating to National Administrative Reform Council Order No. 22. Decision No. 2131/2521 and Decision No. 344/2522. The ICJ considers that a judicial review of the sufficiency of evidence is mandatory to comply with international standards.

²⁹⁹ CPC, articles 7/1, 134/1 - 134/4; Constitution of the Kingdom of Thailand, 2007, article 40(7).

³⁰⁰ ICCPR, article 14(1); ICCPR General Comment 32, paragraph 10.

³⁰¹ ICCPR, article 14(3)(b) and (d); ICCPR General Comment 32, paragraphs 10, 33-34, 37-38.

³⁰² In relation to the requirement that detainees under section 11(1) of the 2005 Emergency Decree appear before the Court at each successive remand, see discussion above.

³⁰³ See Human Rights Commission, *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*, (1964) UN Doc. E/CN.4/826/Rev.1, paragraphs 783-787.

³⁰⁴ See Human Rights Committee, *Concluding Observations on Jordan*, (1994) UN Doc. CCPR/C/79/Add.35 and A/49/40, paragraphs 234 and 241; *Morocco*, (1994) UN Doc. CCPR/C/79/Add.44, paragraph 21; *Vietnam*, (2002) UN Doc. CCPR/CO/75/VNM, paragraph 8; *Cameroon*, (1999) UN Doc. CCPR/C/79/Add.116, paragraph 19; Committee Against Torture, *Conclusions and Recommendations on Israel*, (2002) UN Doc. A/57/44, paragraphs 47-53.

³⁰⁵ Constitution of the Kingdom of Thailand, articles 40(2) and 40(7).

³⁰⁶ ICCPR article 14(1); ICCPR General Comment 32, paragraph 13. The United Kingdom House of Lords reached a similar conclusion in *Secretary of State for the Home Department v AF and anor.*, [2009] UKHL 28, paragraph 64 (speech of Lord Phillips of Worth Matravers) and paragraph 96 (speech of Lord Scott of Foscote), paragraph 101 (speech of Baroness Hale of Richmond) in relation to the imposition of onerous restrictions on liberty imposed on terrorist suspects under control orders, holding that in order for a hearing to be fair, the individuals subject to the orders had to be informed of the essence of the case against them; that is, the allegations had to be disclosed in sufficient detail to have a real opportunity for rebuttal.

³⁰⁷ ICCPR, article 9(4). The Working Group on Arbitrary Detention has commented: "the right to challenge the legality of detention is one of the most effective means of preventing and combating arbitrary detention. As such, it should be regarded not as a mere element in the right to a fair trial but, in a country governed by the rule of law, as a personal right which cannot be derogated from even in a state of emergency"; *Report of the Working Group on Arbitrary Detention*, (2003) UN Doc. E/CN.4/2004/3, paragraph 62. See also discussion in section 3.2.2 above. The US Supreme Court made this point in *Hamdi v Rumsfeld*, 542 U.S. 507 (2004), plurality opinion, pages 24 and 26, emphasizing that the risk of erroneous deprivation of liberty is very real where due process rights are not respected and stressing that, even in the context of national security cases, a citizen-detainee has a right to be notified of the factual basis for detention and to be given a fair opportunity to rebut the government's factual assertions (plurality opinion of Justice O'Connor).

³⁰⁸ ICCPR, article 14(3)(d); ICCPR General Comment 32, paragraph 33.

³⁰⁹ ICCPR, article 14(5).

³¹⁰ UN Guidelines on the Role of Prosecutors, Guideline 12.

³¹¹ UN Guidelines on the Role of Prosecutors, Guideline 13(a).

³¹² Based on information gathered during ICJ visit to Ingkhayuth Boriham Army Camp, 13 June 2009.

³¹³ See: Human Rights Committee: *David Alberto Cámpora Schweizer v Uruguay*, (1982) Communication No. 66/1980, paragraph 18.1; *Concluding Remarks on New Zealand*, (1995) UN Doc. CCPR/C/79/Add. 47, paragraph 14; Comments on Jordan, (1994) UN Doc. A/49/40, paragraph 241; ICCPR General Comment 8, paragraph 4.

³¹⁴ See EJP Report, pages 106-110. See: Human Rights Commission, *Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*, (1964) UN Doc. E/CN.4/826/Rev. 1, paragraphs 783-787; Human Rights Committee, *Concluding Observations on Norway*, (1999) UN Doc. CCPR/C/79/Add.112, paragraph 11; Human Rights Committee, *David Alberto Cámpora Schweizer v Uruguay*, (1982) Communication No. 66/1980, UN Doc. CCPR/C/17/D/66/1980, paragraph 18.1; International Commission of Jurists, *State of Emergency - Their Impact on Human Rights*, 1983, Geneva, pages 429, 461-463.

³¹⁵ *UN Standard Minimum Rules for the Treatment of Prisoners*, Rule 95.

³¹⁶ See Human Rights Committee, *David Alberto Cámpora Schweizer v Uruguay*, (1982) Communication No. 66/1980, paragraph 18.1. See also: Human Rights Committee, *Hugo van Alphen v Netherlands*, Communication No. 305/1988, 23 July 1990, paragraph 5.8; Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc. A/HRC/10/3; Jelena Pejic, "Procedural, principles and safeguards for internment/administrative detention in armed conflict and other situations of violence", *International Review of the Red Cross*, 2005, vol. 87(858), page 380; Doug Cassel, "Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law", *Journal of Criminal Law and Criminology*, 2008, vol. 98(3), page 101, online: <http://ssrn.com/abstract=1281050>; EJP Report, paragraph 38, concluding that detention for the purposes of public security, which could include some element of intelligence gathering, should not be permitted except under exceptional circumstances, and then only if strictly in accordance with the protections set out in article 9 of the ICCPR. The imperative for a connection to public security is clear even in circumstances of international armed conflict, where procedural guarantees afforded by international human rights law to detainees otherwise are attenuated: Geneva Convention IV, articles 42, 78.

³¹⁷ CPC, article 87.

³¹⁸ CPC, article 134.

³¹⁹ CPC, article 134/4.

³²⁰ CPC, articles 7/1(2) and 134/3.

³²¹ CPC, article 7/1(1).

³²² CPC, article 7/1 last paragraph. 134/1 and 134/4.

³²³ *UN Standard Minimum Rules for the Treatment of Prisoners, Rule 7; UN Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by General Assembly Resolution 45/113 of 14 December 1990, Rule 20; *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 12.

³²⁴ Convention Against Torture, article 2(1); Human Rights Committee, *General Comment 20: Concerning Prohibition of Torture and Cruel Treatment or Punishment (Article 7)*, paragraph 11 ("ICCPR General Comment 20"); Committee Against Torture, *General Comment No. 2, Implementation of Article 2 by States Parties*, paragraph 13.

³²⁵ See post mortem inquest in relation to the death of Imam Yapa Kaseng, Order of 25 December 2008, Narathiwat Provincial Court, Black Case No. Or Chor 9/2551, Red Case No. Or Chor.19/2551; Testimony of Dr. Pornthip cited in post mortem inquest into death of Yakareeya Paoh-manee, Order on 12 May 2009, Yala Provincial Court, Black Case No. Chor. 1/2551, Red Case no. Chor. 4/2552, pages 8-9; ICJ Observation of Post-Mortem Inquest into the death of Yakareeya Paoh-manee, Testimony of Khunying Pornthip Rojanasunan MD, Yala Provincial Court, 7 April 2009; NHRC Tak Bai Report. See also, Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, London, Amnesty International, 2009.

³²⁶ ICCPR, articles 7, 9, 10, 14(3)(b); General Comment 29, paragraph 13(b); General Comment 20, paragraphs 6, 11; Human Rights Committee Concluding Observations on: *Israel*, (2003) UN Doc. CCRP/CO/78/ISR, paragraph 13; *Chile*, (1999) UN Doc. A/54/40, paragraph 209; *Tanzania*, (1998) UN Doc. A/53/40, paragraph 393; Committee Against Torture Concluding Observations on: *Georgia*, (1997), UN Doc. A/52/44, paragraph 121 (d); *Ukraine* (1997), UN Doc. A/52/44, paragraph 146; *Spain* (1998), UN Doc. A/53/44, paragraph 135; *Libyan Arab Jamahiriya* (1998), UN Doc. A/53/44, paragraph 180. The Criminal Procedure Code of Thailand guarantees the right to counsel for alleged offenders in articles 7/1, 134, 134/3, 134/4.

³²⁷ ICCPR, article 9(4) and CPC, article 90. See: Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, (2003) UN Doc. E/CN.4/2004/3, paragraph 62 and discussion in section 3.2.2, above.

³²⁸ Articles 10 and 7 of the ICCPR, respectively. The prohibition on torture or inhuman, cruel or degrading treatment or punishment is also reflected in article 2 of the Convention Against Torture, Common Article 3 of the Geneva Conventions of 1949, and is a peremptory norm of customary international law (see discussion above in section 3.2).

³²⁹ *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 16. See also Principle 15: "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."

³³⁰ *Tokyo Rules*, Rule 3.1.

³³¹ *Tokyo Rules*, Rule 3.2.

³³² See *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN Doc. ST/CSDHA/22, page 2.

³³³ *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN Doc. ST/CSDHA/22, page 9.

³³⁴ *Tokyo Rules*, Rules 3.5, 3.6, 3.10; *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN Doc. ST/CSDHA/22, page 12.

³³⁵ *Tokyo Rules*, Rule 2.2.

³³⁶ *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN Doc. ST/CSDHA/22, page 9.

³³⁷ See *Tokyo Rules*, Rule 2.4.

³³⁸ ICCPR, article 2(3); ICCPR General Comment 31, paragraphs 15, 16, 18. The right to a remedy also is widely recognised in other international treaties to which Thailand is party: Convention on the Elimination of All Forms of Racial Discrimination, article 2; Convention on the Elimination of All Forms of Discrimination Against Women, article 2; Convention on the Rights of the Child, article 2; Convention Against Torture, articles 14, 16.

³³⁹ ICCPR, article 2(3)(a).

³⁴⁰ ICCPR General Comment 31, paragraph 15. For a complete discussion of the right to an effective investigation, see: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations, A Practitioners' Guide*, Geneva, 2006, pages 57-79.

³⁴¹ See, e.g., Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, (1993) UN Doc. E/CN.4/1994/26, paragraphs 45ff; *UN Principles on Extra-Legal Executions, Principle 9; UN Principles on the Investigation of Torture*, Principle 1(a).

³⁴² On the legal imputability of wrongful acts to a State under international law, see: International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries", 2001, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, Chapter II, "Attribution of Conduct to a State", articles 4-11.

³⁴³ ICCPR General Comment 31, paragraph 8.

³⁴⁴ Committee Against Torture, *Conclusions and Recommendations on Columbia*, (2004) CAT/C/CR/31/1, paragraph 10(f); *UN Principles on Extra-Legal Executions*, Principles 9-13; *UN Principles on the Investigation of Torture*, Principle 6; Special Rapporteur on Torture, *Report of the Special Rapporteur on Torture*, (2002) UN Doc. E/CN.4/2003/68, recommendation 26(k); Special Rapporteur on Torture, *Consolidated Recommendations of the Special Rapporteur on Torture*, (2001) UN Doc. A/56/156, paragraph 39(j).

³⁴⁵ *Declaration on the Protection of All Persons against Enforced Disappearance*, article 13(2); *UN Principles on Extra-Legal Executions*, Principle 10; *UN Principles on the Investigation of Torture*, Principle 3(a).

³⁴⁶ See, e.g., UN General Assembly Resolution 42/142 of 7 December 1987, paragraph 6, UN Doc. A/Res/42/142; UN General Assembly Resolution 43/159 of 8 December 1988, UN Doc. A/Res/43/159; UN General Assembly Resolution 47/132 of 18 December 1992, UN Doc. A/Res/47/132; UN General Assembly Resolution 55/103 of 4 December 2000, UN Doc. A/Res/55/103; UN General Assembly Resolution 57/215 of 18 December 2002, UN Doc. A/Res/57/215; *Declaration on the Protection of All Persons from Enforced Disappearance*, article 13(3); *UN Principles on Extra-Legal Executions, Principle 15; UN Principles on the Investigation of Torture*, Principle 3(b).

³⁴⁷ *Declaration on the Protection of All Persons from Enforced Disappearance*, article 16; *UN Principles on Extra-Legal Executions*, Principle 15; *UN Principles on the Investigation of Torture*, Principle 3(b); Human Rights Committee, Concluding Observations on: *Serbia and Montenegro*, (2004) UN Doc. CCRP/CO/81/SEMO, paragraph 9; *Brazil*, (1996) UN Doc. CCRP/C/79/Add.66, paragraph 20; *Colombia*, (1997) UN Doc. CCRP/C/79/Add.76, paragraphs 32, 34; Committee Against Torture, *Concluding Observations on Bolivia*, (2001) UN Doc. A/56/44, paragraphs 89-98; Special Rapporteur on Torture, *Recommendations of the Special Rapporteur on Torture*, (2002) UN Doc. E/CN.4/2003/68, Recommendation 26(k).

³⁴⁸ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Principles 4-7; UN Principles on Extra-Legal Executions, Principle 16; UN Principles on the Investigation of Torture, Principle 4; *Declaration on the Protection of All Persons from Enforced Disappearance*, article 13(4). See also: *UN Principles on Impunity*, Principle 10; *UN Basic Principles of Justice for Victims of Crime and Abuse of Power*, Principles 14-17.

³⁴⁹ See, e.g., *Declaration on the Protection of All Persons against Enforced Disappearance*, article 13(4); *UN Principles on Extra-Legal Executions*, Principle 17; *UN Principles on the Investigation of Torture*, Principle 5(b).

³⁵⁰ ICCPR General Comment 31, paragraph 15.

³⁵¹ See: *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Principles 4-7. For a detailed discussion, see: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners' Guide*, Geneva, 2006.

³⁵² ICCPR General Comment 31, paragraph 16; *UN Principles on the Right to a Remedy and Reparation*, principles 15-22; *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Principles 5, 8-17. With respect to the right to life and disappearances, see: Human Rights Committee, *General Comment 6, The Right to Life (Article 6)*, paragraph 3 [“ICCPR General Comment 6”]; Human Rights Committee (1984), *Baboeram et al v Suriname*, Communication Nos 146, 148-154/1983, paragraph 16; Human Rights Committee, *Miango Muiyo v Zaire*, (1990) Communication No. 194/1985, paragraph 11; Human Rights Committee, *Mojica v Dominican Republic*, (1994) Communication No. 449/1991, paragraph 6; Human Rights Committee, *Laureano v Peru*, (1996) Communication No. 540/1993, paragraph 10. With respect to torture or other cruel, inhuman or degrading treatment or punishment, see: Convention Against Torture, articles 12, 13; ICCPR, articles 2(3) and 7; Human Rights Committee General Comment 20 (1992), paragraph 14; Human Rights Committee, *Herrera Rubio v Colombia*, (1987) Communication No. 161/1983, paragraph 10.5; Committee Against Torture, *Blanco Abad v Spain*, (1998) Communication No. CAT 56/1996, paragraphs 8.2 -9. With respect to the right to security of the person, see: Human Rights Committee, *Jayawardene v Sri Lanka*, (2002) Communication No. 916/2000, paragraph 7.3. For a detailed discussion of the various forms of reparation, see: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations, A Practitioners' Guide*, Geneva, 2006, pages 109-172.

³⁵³ See e.g., ICCPR General Comment 31, paragraph 15; *UN Principles on the Right to a Remedy and Reparation*, Principles 23, 22(a); Human Rights Commission, Resolution E/CN.4/RES/2003/53 (extrajudicial, summary and arbitrary executions), 24 April 2003, paragraph 4; Human Rights Committee, *Bleier v Uruguay*, (1982) Communication No. R.7/30, paragraph 5. For a detailed discussion of the obligations of cessation and non-repetition as aspects of the right to a remedy, see: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations, A Practitioners' Guide*, Geneva, 2006, pages 95-107.

³⁵⁴ See e.g.: Human Rights Committee, *F. Birindwa ci Bithashwiwa, E. Tshisekedi wa Mulumba v Zaire*, (1989) Communication No. 241/1987 and 242/1987, paragraph 14; Human Rights Committee, *Nydia Erika Bautista v Colombia*, (1993) Communication No. No. 563/1993, paragraph 8.2.

³⁵⁵ Human Rights Committee, *José Vicente y Amado Villafañe Chaparro et al v Colombia*, (1997) Communication No. 612/1995, paragraph 8.2.

³⁵⁶ ICCPR article 2(3) and 9(5); ICCPR General Comment 31, paragraph 16. See also: Convention Against Torture, articles 13, 14, 16; Convention on the Elimination of All Forms of Racial Discrimination, article 6; Convention on the Rights of the Child, article 39; UN Impunity Principles, principle 18. For a discussion of the international legal concept of impunity and its prohibition, see International Commission of Jurists and Columbian Commission of Jurists, *Military Jurisdiction and International Law, vol. 1: Military Courts and Gross Human Rights Violations*, pages 51-56.

³⁵⁷ ICCPR General Comment 31, paragraph 18. See also, e.g., The Spanish Morocco Case, *Affaires des biens britanniques au Maroc Espagnol (Espagne c Royaume-Uni)*, Award of 1 May 1925, II Recueil de sentences arbitrales 615, page 645; The Janes Case, *Laura M.B. Janes et al (USA) v the United Mexican States*, award of 16 November 1925, IV Recueil de sentences arbitrales, page 82; Special Rapporteur on the Question of Impunity of Perpetrators of Human Rights Violations (civil and political), *Revised Final Report*, (1997) UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, Annex II, Section II; “Security Council Resolution on the question concerning Haiti”, UN Doc. S/Res/1529 (2004), 29 February 2004, paragraph 7; “Security Council Resolution on the situation in Cote d’Ivoire”, UN Doc. S/Res/1479, 13 May 2003, paragraph 8; General Assembly Resolution 57/228 on “Khmer Rouge Trials” of 18 December 2002, UN Doc. A/Res/57/228; Human Rights Committee, *Bleier v Uruguay*, (1982) Communication No. R.7/30, paragraph 11; UN Human Rights Committee, Concluding Observations on Argentina, (2000) UN Doc. CCRP/CO/70/ARG, paragraphs 9, 13.

³⁵⁸ ICCPR General Comment 31, paragraph 18.

³⁵⁹ Human Rights Committee, *Concluding Observations on Serbia and Montenegro*, (2004) UN Doc. CCRP/CO/81/SEMO, paragraph 9.

³⁶⁰ General Assembly Resolution 57/228 on “Khmer Rouge Trials” of 18 December 2002.

³⁶¹ See ICCPR, article 2(3); Convention Against Torture, articles 7, 13, 14, 16; Convention on the Elimination of All Forms of Racial Discrimination, article 6; Convention on the Rights of the Child, article 39.

³⁶² ICCPR General Comment 20, paragraph 15; *Declaration on the Protection of All Persons from Enforced Disappearance*, article 18(1); Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, June 1993, UN DPI/ DPI/1394-48164-October 1993-/M, Section II, paragraph 60; Human Rights Committee, Conclusions and Recommendations on: *Argentina*, (1995) UN Doc. A/50/40, paragraphs 153-155, 158-162 and (2000) UN Doc. CCRP/CO/70/ARG, paragraph 9; *Chile*, (1999) UN Doc. CCRP/C/79/Add.104, paragraph 7; *France*, (1997) UN Doc. CCRP/C/79/Add.80, paragraph 13; *Guatemala*, (1996) UN Doc. CCRP/C/79/Add.63, paragraph 25; *Lebanon*, (1997) UN Doc. CCRP/C/79/Add.78, paragraph 12; *El Salvador*, (1994) UN Doc. CCRP/C/79/Add.34, paragraph 7; *Haiti*, (1995) UN Doc. A/50/40, paragraphs 22 - 24; *Peru*, (1996) UN Doc. CCRP/C/79/Add.67, paragraphs 9, 10 and (2000) UN Doc. CCRP/CO/70/PER, paragraph 9; *Uruguay*, (1998) UN Doc. CCRP/C/79/Add.19, paragraphs 7, 11 and (1998) UN Doc. CCRP/C/79/Add.90, Part C; *Yemen*, (1995) UN Doc. A/50/40, paragraphs 242 - 265; and *Croatia*, (2001) UN Doc. CCRP/CO/71/HRV, paragraph 11.

³⁶³ See, e.g., ICCPR General Comment 29, paragraph 14, stressing that the right to a remedy is inherent in the obligations of the Covenant as a whole and cannot be subject to derogation even during a properly declared state of emergency.

³⁶⁴ ISA, section 16(4).

³⁶⁵ See *The Special Case Investigation Act*, B.E. 2547 (2004), sections 5, 10-12, 22, 23-29. The DSI is not institutionally independent of the Royal Thai Government: section 5.

³⁶⁶ *The Special Case Investigation Act*, section 21(1). In some situations, the jurisdiction of the DSI overlaps with that of the National Anti-Corruption Commission (“NACC”). Generally speaking, the enabling legislation of the DSI provides that the NACC may take over such an investigation in certain circumstances, or may leave the investigation with the DSI: see *Special Case Investigation Act*, sections 21/1, 22.

³⁶⁷ ISA, section 3.

³⁶⁸ ISOC has been given “the powers related to granting permission, instructing, commanding or supporting in the prevention, resolution, suppression, deterrence of the emergency situation, or rehabilitating or assisting people in the declared area during the period of the occurrences which affect internal security, in accordance with ... the Special Case Investigation Act, B.E. 2547 (2004)” and any subsequent amendments to this Act, in the following Cabinet Announcements: Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared

9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

³⁶⁹ Constitution of the Kingdom of Thailand 2007, articles 246-251.

³⁷⁰ Constitution of the Kingdom of Thailand 2007, article 250; *Organic Act on Counter Corruption*, B.E. 2542 (1999), section 19.

³⁷¹ *Organic Act on Counter Corruption*, sections 66, 84.

³⁷² Criminal Code of Thailand, Title II, Chapter 2, articles 147-166.

³⁷³ Criminal Code of Thailand, article 157: "Whoever, being an official, wrongfully exercises or does not exercise any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished with imprisonment of one to ten years or fined of (sic) two thousand to twenty thousand Baht or both."

³⁷⁴ The ICJ understands that the National Anti-Corruption Commission currently has carriage of the investigations into the beating and death in custody of Imam Yapa while in custody and the deaths of 77 men and one boy in the beds of military-controlled vehicles in transport following the break-up of the protest at Tak Bai in October 2004.

³⁷⁵ *Organic Act on Counter Corruption*, sections 25, 26. Additional conditions and powers of the NACC in conducting factual inquiries are set out in sections 43 - 56. Once a *prima facie* case is established that a criminal offence has been committed, the NACC investigation proceeds in accordance with sections 66-74 (for persons holding political positions under article 308 of the Constitution). Where persons holding lower official office are alleged to have committed offences of malfeasance in office, corruption or malfeasance in judicial office, the NACC will proceed in accordance with sections 84-99.

³⁷⁶ ISA, section 3; Constitution of the Kingdom of Thailand 2007, Chapter XI, Part 1, articles 246-251; *Organic Act on Counter Corruption*, sections 66, 84. Offences of malfeasance in public office are contained in the Criminal Code, articles 147 - 166. Article 157 would cover crimes of violence: "Whoever, being an official, wrongfully exercises or does not exercise any of his functions to the injury of any person, or dishonestly exercises or omits to exercise any of his functions, shall be punished with imprisonment of one to ten years or fined of (sic) two thousand to twenty thousand Baht, or both."

³⁷⁷ Constitution of the Kingdom of Thailand 2007, article 242; *Organic Act on Ombudsmen*, B.E. 2552 (2009), section 6.

³⁷⁸ Constitution of the Kingdom of Thailand 2007, articles 242-245; ISA, section 3.

³⁷⁹ Constitution of the Kingdom of Thailand 2007, article 244; *Organic Act on Ombudsmen*, B.E. 2552 (2009), sections 13, 28, 29, 35, 39. The Ombudsmen have the power to review the operations of constitutional and judicial organs: section 35.

³⁸⁰ Constitution of the Kingdom of Thailand 2007, article 244; *Organic Act on Ombudsmen*, B.E. 2552 (2009), sections 13, 28, 29, 35, 39. The Ombudsmen have the power to review the operations of constitutional and judicial organs: section 35.

³⁸¹ *Organic Act on Ombudsmen*, section 15. Failure to comply with requests for statements, documents or evidence or the obstruction of an examination of any place by the Ombudsmen can lead to fines or periods of imprisonment; *Organic Act on Ombudsmen*, sections 45, 46, respectively providing imprisonment for up to six months or a fine not exceeding 10,000 Baht (approximately US \$300) for breach of section 15(2), or imprisonment for up to one year or a fine not exceeding 20,000 Baht (approximately US \$600) for breach of section 15(4).

³⁸² *Organic Act on Ombudsmen*, section 34.

³⁸³ Constitution of the Kingdom of Thailand 2007, article 245. Provisions of law raising issues of constitutionality, along with the opinion of the Ombudsmen, shall be referred to the Constitutional Court, which has a duty to decide the issue without delay. By-laws or acts of other persons that fall within the constitutionally-defined jurisdiction of the Office of the Ombudsmen and that raise issues of constitutionality or legality shall be referred, along with the opinion of the Ombudsmen, to the Supreme Administrative Court for decision without delay. See also: *Organic Act on Ombudsmen*, section 14.

³⁸⁴ *Organic Act on Ombudsmen*, section 32 (unofficial translation).

³⁸⁵ *Organic Act on Ombudsmen*, section 16 (unofficial translation).

³⁸⁶ *Organic Act on Ombudsmen*, section 29(2), (4), (5). The Ombudsmen may also refuse to investigate complaints where the complainant has died without an heir; or where the complaint was brought two or more years after the complainant knew or ought to have known of the cause of the complaint.

³⁸⁷ *Organic Act on Ombudsmen*, sections 29(1). The threshold of gravity of the violation appears to be the determining factor. Section 37, paragraph 2, allows the Ombudsmen to deal with complaints regarding failures to comply with ethical standards, and gives the Ombudsman the power to refer conduct that is a "serious offence" to the National Anti-Corruption Commission for consideration.

³⁸⁸ *Organic Act on Ombudsmen*, sections 32, 33, 43.

³⁸⁹ *Organic Act on Ombudsmen*, section 13(4). The report must be published in the Government Gazette: section 43. The report must include information on the outcome of investigations and recommendations issued; compliance and non-compliance with investigatory requests and recommendations by government agencies; the results of monitoring, evaluation and recommendations in relation to constitutional implementation; and, hurdles faced by the Ombudsmen.

³⁹⁰ *Organic Act on Ombudsmen*, sections 17, 44.

³⁹¹ *Organic Act on Ombudsmen*, section 21.

³⁹² Constitution of the Kingdom of Thailand, articles 256, 243.

³⁹³ Constitution of the Kingdom of Thailand 2007, article 256, paragraph 5. The individuals nominated at the general meetings of the Supreme Court of Justice and the Supreme Administrative Court do not need to be judges.

³⁹⁴ Constitution of the Kingdom of Thailand 2007, article 257(1); *National Human Rights Commission Act*, B.E. 2542 (1999), section 22. At the time of writing, the NHRC's enabling legislation was being amended.

³⁹⁵ Constitution of the Kingdom of Thailand 2007, article 257; *National Human Rights Commission Act*, section 15.

³⁹⁶ *National Human Rights Commission Act*, section 30 (unofficial translation).

³⁹⁷ Constitution of the Kingdom of Thailand 2007, article 257(1); National Human Rights Commission Act, section 31.

³⁹⁸ Constitution of the Kingdom of Thailand 2007, article 257(2). Cases may be referred to the Constitutional Court only where a provision of law affects human rights and raises a question of constitutionality, in accordance with the *Organic Act on Procedure of the Constitutional Court*.

³⁹⁹ Constitution of the Kingdom of Thailand 2007, article 257(3). Cases may be referred to the Supreme Administrative Court only where a by-law, order or other administrative act affects human rights and raises a question of constitutionality or legality, in accordance with the Act on the Establishment of Administrative Courts and Administrative Court Procedure.

⁴⁰⁰ Constitution of the Kingdom of Thailand 2007, article 257(4). A lawsuit may be filed on behalf of an injured person only if a request is made by the injured person and it is deemed appropriate to find a solution to the violation of human rights for the general benefit of the public.

⁴⁰¹ Constitution of the Kingdom of Thailand 2007, article 257, paragraph 3; National Human Rights Commission Act, sections 26, 32.

⁴⁰² *Principles Relating to the Status of National Institutions (Paris Principles)*, UN General Assembly Resolution A/RES/48/134 Annex, 20 December 1993, Composition and guarantees of independence and pluralism, Principle 2 ("Paris Principles").

⁴⁰³ *Paris Principles*, Competence and Responsibilities, Principle 3(a) and Methods of Operation, Principles (a), (c), (f).

⁴⁰⁴ *Paris Principles*, Methods of Operation, Principles (b), (f), (g).

⁴⁰⁵ Letter from the Office of National Human Rights Commission No. Sor Mor 0003/136 on Announcement to Enforce the Internal Security Act B.E. 2551 to the Prime Minister, dated on 16 September 2009 (in Thai); National Human Rights Commission and Network, *Important Human Rights Situations in 2009* ["NHRC 2009 Annual Report"], 14 December 2009, page 7 (in Thai).

⁴⁰⁶ See ISA: section 3, which would include the NHRC in the definition of "government agency" and NHRC staff in the definition of "state officials"; section 16(4), giving ISOC power to "oversee, follow up, and expedite relevant government agencies and state officials"; and section 18(1), giving ISOC the power to "have relevant state officials implement any action, or suspend any action" under regulations issued by Cabinet.

⁴⁰⁷ See ISA, section 3.

⁴⁰⁸ Constitution of the Kingdom of Thailand 2007, article 256.

⁴⁰⁹ *National Human Rights Commission Act*, section 9. See also section 19.

⁴¹⁰ Constitution of the Kingdom of Thailand 2007, article 257.

⁴¹¹ *Principles Relating to the Status of National Institutions (Paris Principles)*, UN General Assembly Resolution 48/134 of 20 December 1993, UN Doc. A/RES/48/134 Annex, Principle 5 (Composition and guarantees of independence and pluralism) and Principles relating to methods of operation.

⁴¹² "Draft Act on National Human Rights Commission, B.E. ...", revised by the Council of State, section 43 (in Thai).

⁴¹³ *Paris Principles*, Composition and guarantees of independence and pluralism, Principle 1.

⁴¹⁴ Prime Minister's Office Order 8/2524 of 20 January 1981 No. 3, on Resolving the Problem of Administration in Southern Border Provinces (P.M. Gen. Prem Tinsulanonda, Ret.). The Director of SBPAC has the power to (1) Control, Direct, and Coordinate the performance of any agency in southern border provinces; (2) Command government officials and is responsible for the operation of the centre; (3) Consider whether to recommend to the Region Four Army Chief that government officials who perform their duties inappropriately be excluded from the areas of Southern border provinces; (4) Develop the effectiveness of government officials in all ministries and departments in the area; (5) Gather and scrutinize every plan and project, including cooperating, following up and evaluating; (6) Appoint appropriate advisors, some of whom must be Local Leaders; (7) Other duties designated by the Region Four Army Chief. (unofficial translation) See also discussion in: International Crisis Group, *Southern Thailand: Moving Toward Political Solutions*, 8 December 2009, page 7.

⁴¹⁵ Prime Minister's Office Order 123/2545 of 30 April 2002, Nos 1, 2 on Development of Administration in the Southern Border Provinces, (P.M. Thaksin Shinawatra).

⁴¹⁶ Prime Minister's Office Order 207/2006 of 30 October 2006, No. 3 (P.M. Gen. Surayud Chulanont, Ret.).

⁴¹⁷ SBPAC has the power to perform according to policy on promoting peace in the southern border provinces as follows: (1) to oversee and expedite civil servants' performance according to policy on promoting peace in the southern border provinces, especially in regards to the development of education, bringing justice, resolving trouble and creating understanding in the areas through cooperation with the joint Civil Political Military Command on protecting and resolving the unrest in the areas; (2) gathering, scrutinizing, integrating and making proposals in relation to planned projects, setting the budget of government agencies and ensuring performance of plans, and proposing budget increases to ISOC, all of which includes cooperating, following up and evaluating the effectiveness of performance; (3) directing and coordinating performance on the administration of justice and protecting rights and liberties, promoting justice by receiving complaints, providing remedies and developing justice processes for removing unjust conditions, including, investigating and resolving the problem of inappropriate behaviour by government officers; (4) Working with government agencies and civil servants in Southern border provinces to help them to perform their duties effectively and in accordance with the social, economic, cultural conditions and way of life in the area; (5) promoting the participation from every part on development and resolving the unrest in areas; (6) Appointing a commission to improve performance where appropriate; (7) Other duties which designated from ISOC Region 4 director. (unofficial translation)

⁴¹⁸ ICJ Interview with SBPAC official, March 2009.

⁴¹⁹ ICJ Interview with SBPAC official, March 2009.

⁴²⁰ ISA, sections 17, 26. SBPAC has received this designation despite the fact that the Part 2 of the ISA, which contains section 17, is not in force in Pattani, Narathiwat or Yala provinces.

⁴²¹ "Draft Act on Administration in Southern border provinces B.E. Office of Prime Minister No. Nor Ror 0503/20477 on Draft Act on Administration in Southern border provinces B.E. ...", P.M. Abhisit Vejjajiva, 5 November 2009, section 3, available online http://library2.parliament.go.th/giventake/content_hr/d111152-02.pdf (in Thai).

⁴²² "Draft Act on Administration in Southern border provinces B.E. Office of Prime Minister no. Nor Ror 0503/20477 on Draft Act on Administration in Southern border provinces B.E. ...", P.M. Abhisit Vejjajiva, 5 November 2009, section 9(6), available online http://library2.parliament.go.th/giventake/content_hr/d111152-02.pdf (in Thai).

⁴²³ "Draft Act on Administration in Southern border provinces B.E. Office of Prime Minister no. Nor Ror 0503/20477 on Draft Act on Administration in Southern border provinces B.E. ...", P.M. Abhisit Vejjajiva, 5 November 2009, section 11, available online http://library2.parliament.go.th/giventake/content_hr/d111152-02.pdf (in Thai).

⁴²⁴ See: "กระทรวงกลาโหมสนับสนุนศาล พ.อ.ฉ.เสนอคดีกรณีไม่ยึดธง: บอร์ดฯถาม" "โจวอาภาภาไท", *Matchon Online*, 4 November 2009, online: http://www.matchon.co.th/news_detail.php?newsid=1257324022&grid=00&catid=no (in Thai). For a discussion of the political history of this Bill and the military's opposition to it, see International Crisis Group, *Southern Thailand: Moving Toward Political Solutions*, 8 December 2009, page 8.

⁴²⁵ The Courts of Justice include the Supreme Court, the Court of Appeal (the Higher Courts) and the Municipal, Provincial, Civil and Criminal Courts (the Lower Courts).

⁴²⁶ Human Rights Committee, Conclusions and Observations on: *Romania*, (1999) UN Doc. CCRP/C/79/Add.111, paragraph 9; *Lesotho*, (1999) UN Doc. CCRP/C/79/Add.106, paragraph 14; *El Salvador*, (1994) UN Doc. CCRP/C/79/Add.34, paragraph 8.

⁴²⁷ See e.g., *Decaux Principles*, Principle 9; *UN Principles on Impunity*, Principle 29; Human Rights Committee, Concluding Observations on: *Columbia*, (1992) UN Doc CCRP/C/79/Add/2, paragraph 393; *Venezuela*, (1992) UN Doc. CCRP/C/79/Add.13, paragraphs 7, 10; *Croatia*, (1992) UN Doc. CCRP/C/79/Add.15 - A/48/40, paragraph 369. For a review of international legal authority on this point, see International Commission of Jurists and Colombian Commission of Jurists, *Military Jurisdiction and International Law*, vol. 1: *Military Courts and Gross Human Rights Violations*, Geneva, 2004, pages 61-110.

⁴²⁸ Commission on Human Rights, Resolution 1994/67, "Civil Defence Forces", recommendation 2(f). These forces and their commanders must be clearly accountable for their activities: recommendation 2(e).

⁴²⁹ See *UN Principles on Impunity*, Principle 29; *Decaux Principles*, Principle 4 and Commentary, paragraph 16. For a complete discussion of authorities on this point, see International Commission of Jurists and Colombian Commission of Jurists, *Military Jurisdiction and International Law - Military Courts and Gross Human Rights Violations*, vol. 1, Geneva, 2004.

⁴³⁰ Constitution of the Kingdom of Thailand of 2007, article 228; *The Act on the Organization of Military Courts*, B.E. 2498 (1955), sections 20, 25-29, 38, 44.

⁴³¹ Constitution of the Kingdom of Thailand of 2007, article 228; *The Act on the Organization of Military Courts*, sections 30-34, 38, 44.

⁴³² ICCPR, article 14(1); ICCPR General Comment 31, paragraph 15; ICCPR General Comment 32, paragraph 22; *UN Basic Principles on the Independence of the Judiciary*, Principles 1, 5, 11, 12, 14; *Decaux Principles*, Principles 12, 14; International Convention for the Protection of All Persons from Enforced Disappearance, article 11(3) (not yet in force). See also, UN General Assembly Resolution 46/120 of 17 December 1991 on "Human Rights in the Administration of Justice", UN Doc. A/Res/46/120.

⁴³³ ICCPR, article 9(1).

⁴³⁴ ICCPR, article 9(4). See also ICCPR General Comment 8, paragraph 4; ICCPR General Comment 29, paragraph 16, on the non-derogable nature of this right and Special Rapporteur on Torture, *Report of the Special Rapporteur*, (2002) UN Doc. A/57/173, paragraph 18. The Thai Constitution, article 32, also protects liberty and security of the person, including the right to be arrested or detained only according to Law. Under Thai Law, judges may review the legality of detention under article 90 of the CPC. This remedy is known as *habeas corpus* in common law systems, and as the remedy of *amparo* in some civil law systems.

⁴³⁵ UN General Assembly Resolution 34/178 of 17 December 1979 on "The right of amparo, habeas corpus or other legal remedies to the same effect", UN Doc. A/Res/34/178.

⁴³⁶ See e.g., Working Group on Arbitrary Detention, (2004) *Zhang Yinan v China*, Opinion No. 24/2004, UN Doc. E/CN.4/2006/7/Add.1 at 13, paragraph 18, holding that: "The Working Group noted, but is not convinced by, the arguments of the Government that the detention of Mr. Zhang is not arbitrary because in taking the decision to commit him to an RTL [Re-education Through Labour] facility, the relevant Laws have been respected."

⁴³⁷ Post mortem inquest in relation to the death of Imam Yapa Kaseng, Order of 25 December 2008, Narathiwat Provincial Court, Black Case No. Or Chor 9/2551, Red Case No. Or Chor.19/2551. Despite the findings of the Court in the post-mortem inquest, no official decision has been taken to prosecute those allegedly responsible for Imam Yapa's death. The ICJ understands that the case is currently with the National Anti-Corruption Commission.

⁴³⁸ Order of 10 April 2008, Narathiwat Provincial Court, Black Case no. Chor Chor 177-182/2551.

⁴³⁹ Petition against an illegal detention and torture, submitted to Narathiwat Provincial Court on 8 April 2008, Black case no. Chor Chor. 177-182/2551.

⁴⁴⁰ ICCPR, articles 2, 6, 7 and 10; Convention Against Torture, article 2. See also: ICCPR General Comment 29, paragraph 16; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child, article 39. For Thai authority, see Constitution of the Kingdom of Thailand, article 32.

⁴⁴¹ *Act on Establishment of Administrative Courts and Administrative Court Procedure*, B.E. 2542 (1999), sections 9, 11 ("*Administrative Courts Act*"); Supreme Administrative Court Order No. Phor. 39/2552.

⁴⁴² *Administrative Courts Act*, section 42.

⁴⁴³ *Administrative Courts Act*, sections 55 paragraph 3, and 61. See generally sections 55-57.

⁴⁴⁴ *Administrative Courts Act*, section 72.

⁴⁴⁵ Piyabutr Saengkanokkul, "Analysis of an Emergency Decree", 6 March 2006, www.pub-law.net/PublLaw/printPubLaw.asp?PubLawid=886 (in Thai).

⁴⁴⁶ See: Civil Procedure Code, articles 254, 255.

⁴⁴⁷ Civil Procedure Code, article 55.

⁴⁴⁸ See Civil Procedure Code, article 254; Supreme Court Judgement No. 900/2533.

⁴⁴⁹ ISA, section 5, paragraph 7. Unlike the Administrative Courts, which have jurisdiction over any disputes involving government agencies, the civil courts only have jurisdiction over "parties" to a dispute. In the past, the Supreme Court has interpreted the word "parties" to include only natural or legal persons (a natural person is a human being). ISOC does not have legal personality. However, legal action taken in relation to ISOC activities could be taken against the Prime Minister's Office, and the Director of ISOC has the power to commence or defend lawsuits. See: *Administrative Courts Act*, section 9(1); Civil Procedure Code, article 55; Supreme Court Judgement No. 642/2519 (in Thai); Supreme Court Judgement No. 495/2519 (in Thai); Supreme Court Judgement No. 3078/2522 (in Thai); Supreme Court Judgement No. 724/2493 (in Thai). See also Kamolchai Rattanasakalwong, "The Legal Problems from the Precedent Supreme Court Ruling on the Power to File Administrative Cases", *Dullapaha No. 3*, Year 40 (April-June B.E. 2536 (1990)), page 143 (in Thai); Banjerd Singkaneti, "Power to File Administrative Cases in the Thai Legal System", LL.M. Thesis (Public Law), Thammasat University, B.E. 2534 (1988), page 100 (in Thai).

⁴⁵⁰ *The Act on Administrative Procedures*, B.E. 2539 (1996) sets out rules, procedures and appeal mechanisms governing administrative orders ("*Act on Administrative Procedures*"). Administrative orders that affect the rights of an individual could, for example, be made pursuant to regulations under section 18 of the ISA. Note that Regulations, by-Laws, notifications and other actions would not be considered "administrative orders", which is defined in section 5 of the Act.

⁴⁵¹ *Act on Administrative Procedures*, sections 13-16 (bias) and section 30 (right to be heard).

⁴⁵² Constitution of the Kingdom of Thailand, article 40.

⁴⁵³ United Nations, *Basic Principles on the Right to a Remedy and Reparation*, Principles 18, 22(a). In relation to torture and cruel, inhuman or degrading treatment or punishment, these rights are implicit in article 14, and also in articles 2, 4, 13, 16. See ICCPR, article 2(3); ICCPR General Comment 29, paragraph 14; ICCPR General Comment 24, paragraph 11.

⁴⁵⁴ Muslim Attorney Centre and Cross-Cultural Foundation, "Enhancing the Administration of Justice in the Border Provinces of Southern Thailand", 12 June 2009, page 9.

⁴⁵⁵ See *Act on Administrative Procedures*, sections 51, 52, which use a similar notion of good faith to exclude persons who knew that an administrative act was illegal or who were negligent as to the act's illegality from receiving compensation if the act is revoked.

⁴⁵⁶ UN Principles on the Right to a Remedy and Reparation, Principle 9, paragraph 20.

NOTES TO SECTION 6 – THE ROLE OF ISOC

⁴⁵⁷ ISA, sections 7(1) and (2). See also the Note at the end of the ISA, describing the Act's purpose, which provides additional guidance on the key role of ISOC in the maintenance of internal security: "In order to protect against such threats and to resolve them promptly and completely, it is appropriate to designate a principal agency with responsibility for internal security, including integrating and coordinating actions among all government offices."

⁴⁵⁸ ISA, section 7(5).

⁴⁵⁹ As noted in the Introduction, following the October 2006 Coup, ISOC was re-empowered by an Order of the Prime Minister's Office 205/2006, dated 30 October 2006. The activities, resources, budget, debts, rights, government servants, employees and personnel of ISOC were transferred to ISOC in its new form as a full-fledged government agency under section 25 of the ISA.

⁴⁶⁰ Section 25 refers to the organization (including activities, property, personnel) of ISOC as formulated in the Order of the Prime Minister's Office 205/2006 of 30 October 2006.

⁴⁶¹ ISOC Workshop Presentation, "Internal Security Act and Southern Unrest Solutions", 18 December 2008, Mandarin Hotel, Bangkok; ISOC website, online at: www.isoc.thaigov.net/index-b.htm.

⁴⁶² *The Nation*, "Cabinet Resolution: Baht 1 billion for ISOC projects in rural areas", 25 March 2009.

⁴⁶³ These protests occurred following the appointment of General Suthinda Khraprayoon as Prime Minister on 7 April 1992. See: Human Rights Watch and Physicians for Human Rights, *Bloody May: The Excessive Use of Lethal Force in Bangkok – the Events of May 17-20, 1992*, 23 September 1992, online: <http://www.hrw.org/en/reports/1992/10/01/bloody-may>; Vitit Muntarbhom, *Human Rights and Human Development*, Human Development Report 2000 Background Paper, page 13; Deka (Supreme Court) Decision No. 2015-2016/2542 (22 April 1999) (In Thai), acknowledging that may people died during a clash between demonstrators and government officials, without making any findings of responsibility. The Court refused to hear the claim for compensation brought by victims against government officials, on the basis that it had no jurisdiction because a valid Amnesty Decree existed.

⁴⁶⁴ Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, (2002) UN Doc. E/CN.4/2002/79, paragraphs 304-307.

⁴⁶⁵ Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, (2009) UN Doc. A/HRC/10/9, paragraphs 390-403.

⁴⁶⁶ 2005 Emergency Decree, sections 11, 12; Martial Law, section 15(ii); ISOC Region 4 Regulations, Regulation 3.9.3; Order of 10 April 2008, Narathiwat Provincial Court, Black Case no. Chor Chor 177-182/2551. See ICJ Legal Memorandum, *The Implementation of Thailand's Emergency Decree*, July 2007.

⁴⁶⁷ See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand*, (2005) UN Doc. CCPR/CO/84/THA, paragraphs 10, 13, 15; NHRC Tak Bai Report, paragraphs 9.1.1 – 9.3.2; Independent Commission, "Report of Independent Commission of Enquiry into facts about the Incident at Krue Se Mosque," 26 July 2004, available online at: http://www.prachatai.com/sites/default/files/special/report_gresae.pdf (in Thai); Philip Alston, *Report of the Special Rapporteur, Philip Alston, on Extrajudicial, Summary or Arbitrary Executions*, 11 February 2005, UN Doc. E/CN.4/2005/7, paragraph 26(g) and Addendum. UN Doc. E/CN.4/2005/7/Add.1, pages 268-274; Philip Alston, *Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Philip Alston*, 27 March 2006, UN Doc. No. E/CN.4/2006/53/Add.1, pages 242-247; Post Mortem Inquest into the death of Imam Yapa Kaseng, Order of 25 December 2008, Narathiwat Provincial Court, Black Case No. Or Chor 9/2551, Red Case No. Or Chor 19/2551; ICJ Observation of Post-Mortem Inquest into the death of Yakareeya Paoh-manee, Testimony of Khunying Porntip Rojanasunan M.D., Yala Provincial Court, 7 April 2009; Post mortem inquest in relation to the death of Yakareeya Paoh-manee, Order of 12 April 2009, Yala Provincial Court, Black Case No. Chor 1/2551, Red Case No. Chor 4/2552, pages 8-9. See also: International Commission of Jurists, *More Power, Less Accountability: Thailand's New Emergency Decree*, August 2005; ICJ Legal Memorandum, *The Implementation of Thailand's Emergency Decree*, July 2007; Amnesty International, *Thailand: Torture in the Southern Counter-Insurgency*, London, Amnesty International, 2009; Muslim Attorney's Centre and Cross-Cultural Foundation, "Enhancing the Administration of Justice in the Border Provinces of Southern Thailand", Presented at a seminar on "The Roles of Judges and Public Prosecutors in the Restive Southern Border Provinces of Thailand", JB Hotel, Hat Yai, Songkhla, 12 June 2009; Cross-Cultural Foundation, "Call for Independent Committee to clean up all killing cases in the South - Bring back transparency of Thai Judicial system for trust building", 1 February 2009; Cross-Cultural Foundation, Working Group on Justice for Peace, Human Rights and Development Foundation, Young Muslim Association of Thailand, Muslim Attorney Centre, Campaign Committee for Human Rights, Union for Civil Liberties, "Issues in the Justice Process and Attempts to Solve Unrest in the Southern Border Provinces - Stop Torture, Enforce the Laws and Abide by Rule of Law", 18 February 2008.

⁴⁶⁸ Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, (2008) UN Doc. A/HRC/17/2, paragraph 370; Working Group on Enforced or Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, (2009) UN Doc. A/HRC/10/9, paragraph 391. See also, International Commission of Jurists, *Thailand: Report on the Criminal Trial and Investigation of the Enforced Disappearance of Somchai Neelapaitchit*, March 2009; Human Rights Watch, "It Was Like my Son No Longer Existed" – Enforced Disappearances in Thailand's Southern Border Provinces, March 2007.

⁴⁶⁹ Order of 30 August 2007, Suratthani Provincial Court, Red Case no. Ror. Por. 1/2550; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand*, (2005) UN Doc. CCPR/CO/84/THA, paragraph 13. See also: ICJ Legal Memorandum on the Implementation of the Emergency Decree, 2007, pages 10-13; International Commission of Jurists, *Thailand: Legal Memorandum – 'Vocational Training Camps' and Applicable International Standards*, 2007.

⁴⁷⁰ See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand*, (2005) UN Doc. CCPR/CO/84/THA, paragraphs 10, 15, 19, 24; UN Special Rapporteur on Extrajudicial Executions, "UN Expert on Extrajudicial Executions Expresses Concern

Over Recent Killings in Thailand", Press Release, 24 February 2003. See also Human Rights Watch, *Not Enough Graves: The War on Drugs, HIV/AIDS, and Violations of Human Rights*, July 2004; Human Rights Watch, *Thailand: Convictions of Police in Drug Campaign Abuse a 'First Step'*, Press Release, December 14, 2009. However, the Talingchan District Court in Bangkok recently convicted eight members of the 41st Border Patrol Police unit of assault with weapons, illegal detention and extortion and sentenced each defendant to five years imprisonment.

⁴⁷¹ See, e.g., UNHCR, "UNHCR seeks access to 126 Muslim Rohingya boat people in Thailand", available at <http://www.unhcr.org/4975f6362.html>; BBC News, "Thais leave boat people to die", 15 January 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7832947.stm; and BBC News, "Thais hold more migrants amid row", 16 January 2009, available at http://news.bbc.co.uk/2/hi/south_asia/7832905.stm. Thailand has a legal obligation under the Convention Against Torture not to expel or return any individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture: article 3. In relation to the treatment of persons fleeing persecution generally, see also: See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand*, 8 July 2005, UN Doc. CCPR/CO/84/THA, paragraph 17.

⁴⁷² ISA, section 16(1).

⁴⁷³ ISA, section 19. These terms are defined in article 2(17) of the Criminal Procedure Code and the powers that such officers may exercise are likewise regulated by the CPC.

⁴⁷⁴ ISA, section 19. An investigating officer (also translated as an "inquiry official") is defined in section 2(6) of the Criminal Procedure Code (CPC) an official to be vested by law with the power and duty to conduct an inquiry. The powers that such officers may exercise are likewise regulated by the CPC, particularly Division II "Inquiry", articles 120-156.

⁴⁷⁵ Criminal Procedure Code, article 53.

⁴⁷⁶ Criminal Procedure Code, articles 52, 132.

⁴⁷⁷ Criminal Procedure Code, articles 133-138.

⁴⁷⁸ Criminal Procedure Code, article 132.

⁴⁷⁹ ISA, section 16(4).

⁴⁸⁰ Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

⁴⁸¹ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 9. See also: ICCPR General Comment 6, paragraph 3; Human Rights Committee, *Suarez de Gervero v Columbia*, Communication No. 46/1979, 31 March 1982, esp. paragraph 13.2.

⁴⁸² *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principles 13 and 14; *Code of Conduct for Law Enforcement Officials*, article 3. The *Basic Principles on the Use of Force* were endorsed by the Human Rights Committee in *Concluding Observations on Cyprus*, 1995, UN Doc. CCPR/C/79/Add.39, paragraph 6; *United States of America* (1995), UN Doc. CCPR/C/79/Add.50, paragraph 32; *Portugal* (2003), UN Doc. CCPR/Co/78/PRT, paragraph 9; *Denmark* (1997), UN Doc. CCPR/C/79/Add.68, paragraphs 14, 21.

⁴⁸³ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 9.

⁴⁸⁴ Philip Alston, *Interim Report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions*, Submitted to the General Assembly in accordance with paragraph 20 of General Assembly resolution 59/197 of 5 September 2006, UN Doc. A/61/311, paragraph 44.

⁴⁸⁵ See Annex of ISOC Order 205/2552, 9 July 2009, establishing a Centre for the Administration of Peace and Order from 10-24 July 2009 in Phuket Province, Government Gazette 126, Special Part, 99d, pages 20-21, 15 July 2009; Annex of ISOC Order No. 251/2552, establishing a Centre for the Administration of Peace and Order from 29 August - 1 September 2009 in Dusit District, Bangkok, Government Gazette 126, Special Part, 137d, 21 September 2009, pages 87-88; Annex of ISOC Order No. 283/2552, establishing a Centre for the Administration of Peace and Order from 18 -22 September 2009 in Dusit District, Bangkok, published in the Government Gazette 126, Special Part, 157d, 26 October 2009, pages 113-114.

⁴⁸⁶ Centre for the Administration of Peace and Order (CAPO), Press Release, "Despite the ISA, assembly can be held within the Law; all sides urged to monitor for and prevent violence", 17 September 2009, online: <http://www.mfago.th/web/2654.php?id=22203>.

⁴⁸⁷ Royal Thai Government, Press Release, "Precautionary Security Measures Taken Ahead of ASEAN Summit", 15 October 2009, online: <http://www.mfago.th/web/2654.php?id=22203>.

⁴⁸⁸ Unofficial Summary of Cabinet Meeting of 5 January 2010, *The Royal Thai Government*, online: <http://media.thaigo.gov.th> (available in Thai).

⁴⁸⁹ "Govt outlays B177m on crowd control", 6 January 2010, *Bangkok Post*, online: <http://www.bangkokpost.com>.

⁴⁹⁰ See "Bangkok Protests Under Control", 13 April 2009, *BBC*, <http://news.bbc.co.uk/2/hi/asia-pacific/7996845.stm>; "Thai Army Moves to Quell Protests", 13 April 2009, *BBC*, <http://news.bbc.co.uk/2/hi/asia-pacific/7996241.stm>; Jurgen Kremb, "Bangkok Riots Over - For Now", Spiegel Online International, 14 April 2009, <http://www.spiegel.de/international/world/0,1518,618997,00.html>; Prawit Rojanaphruk, "Central Bangkok a War Zone", 14 April 2009, *The Nation*, <http://www.nationmultimedia.com>; *The Nation*, "Use of Live Rounds in Self Defence: Anupong", 24 April 2009, <http://www.nationmultimedia.com>; *Bangkok Post*, "PM Testifies at Songkran Riots Inquiry", 8 May 2009, <http://www.bangkokpost.com>.

⁴⁹¹ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 9; *Code of Conduct for Law Enforcement Officials*, article 3 and Commentary. See also: Philip Alston, *Interim Report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions*, Submitted to the General Assembly in accordance with paragraph 20 of General Assembly resolution 59/197, 5 September 2006, UN Doc. A/61/311, paragraphs 31, 35, 38-45.

⁴⁹² NHRC Tak Bai Report, paragraphs 9.1.1 - 9.3.2; Independent Commission, *Report of the Independent Fact-Finding Commission on the Fatal Incident in Tak Bai District, Narathiwat Province, Thailand on 25 October 2004*, 17 December 2004, Section 3, part 4.

⁴⁹³ Human Rights Committee, *Concluding Observations on Cyprus*, 1995, UN Doc. CCPR/C/79/Add.39, paragraph 6. See also Human Rights Committee *Concluding Observations on United States of America* (1995), UN Doc. CCPR/C/79/Add.50, paragraph 32 and *Portugal* (2003), UN Doc. CCPR/Co/78/PRT, paragraph 9.

⁴⁹⁴ Cabinet has twice announced its intention to rescind Martial Law in these districts, but at the time of writing, no Royal Decree had been issued to

this effect: Unofficial Summary of Cabinet Meeting of 13 October 2009, *The Royal Thai Government*, available at <http://www.thaigov.go.th> (in Thai); Unofficial Summary of Cabinet Meeting of 15 December 2009, *The Royal Thai Government*, available at <http://www.thaigov.go.th> (in Thai) and short summary available in English at: <http://media.thaigov.go.th/pageconfig/viewcontent/viewcontent1e.asp?pageid=472&directory=1943&contents=39978>.

⁴⁹⁵ See, for example: UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on Thailand*, (2005) UN Doc. CCPR/CO/84/THA, paragraphs 10, 13, 15, 24. See also: International Commission of Jurists, *More Power, Less Accountability: Thailand's New Emergency Decree*, August 2005; ICJ Legal Memorandum, *The Implementation of Thailand's Emergency Decree*, July 2007; Coalition to Stop Child Soldiers, *Briefing Paper: Child Recruitment and Use in Southern Thailand*, December 2008, pages 19-25; Diana Sarosi and Janjira Sombutpoonsiri, *Rule by the Gun: Armed Civilians and Firearms Proliferation in Southern Thailand*, Nonviolence International, May 2009; Cross-Cultural Foundation, 'Call for Independent Committee to clean up all killing cases in the south - Bring back transparency of Thai Judicial system for trust building', 1 February 2009; Cross-Cultural Foundation, Working Group on Justice for Peace, Human Rights and Development Foundation, Young Muslim Association of Thailand, Muslim Attorney Centre, Campaign Committee for Human Rights, Union for Civil Liberties, 'Issues in the Justice Process and Attempts to Solve Unrest in the Southern Border Provinces - Stop Torture, Enforce the Laws and Abide by Rule of Law', 18 February 2008.

⁴⁹⁶ At least seven protestors were killed when authorities fired live ammunition to disperse a large protest in the town of Tak Bai, Narathiwat Province, in October 2004. Another 77 men and one boy died during transportation from Tak Bai to an army base several hours away. Detainees were piled on top of one another in the back of trucks during transport, which caused the suffocation and death of protestors at the bottom of the pile.

⁴⁹⁷ See e.g., Human Rights Committee, *Concluding Observations on Romania*, (1999) UN Doc. CCPR/C/79/Add.111, paragraph 9; *Lesotho*, (1999) UN Doc. CCPR/C/79/Add. 106, paragraph 14; and *El Salvador*, (1994) UN Doc. CCPR/C/79/Add.34, paragraph 8; *France*, (1997) CCPR/C/79/Add.80, paragraph 16ff.; *Bolivia*, (1997) CCPR/C/79/Add. 74, paragraphs 17 and 34; and *Colombia*, (1997) CCPR/C/79/ Add.76, paragraph 19. See also, UN Impunity Principles, Principles 35(c) and 36(c).

⁴⁹⁸ The ISA was passed by the National Legislative Assembly, made up of members appointed by the October 2007 military coup-makers. Many of the members of the NLA were not present during the legislative session in December 2007 in which the ISA was passed, days prior to a national election. As a result, the NLA did not have quorum when the Bill was passed. Constitution of the Kingdom of Thailand, article 126. However, since the ISA was given Royal assent on 19 February 2008, it remains validly in force, despite its defective passage by the NLA: Constitutional Court Decision Nos. 2/2551, 3/2551, 4/2551, 16/2551 and 17/2551, available in Thai at <http://www.constitutionalcourt.or.th/>.

⁴⁹⁹ That is, administrative officials, high-ranking police officers and inquiry officers as defined under the Criminal Procedure Code (unofficial translation).

⁵⁰⁰ ISA, section 16(4) paragraph 4.

⁵⁰¹ This power of delegation is provided in section 16(1) of the ISA. See, e.g., Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 9 July 2009, published 9 July 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 25 August 2009, published 25 August 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 15 September 2009, published 15 September 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 7 October 2009, published 7 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 24 October 2009, published 14 October 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009; Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

⁵⁰² Announcement under ISA Appointing Government Officials or Competent Officials under the Law, declared 26 November 2009, published 26 November 2009.

⁵⁰³ Deportation Act, B.E. 2499 (1956). See sections 6, 9 *bis-quinque* and 11.

⁵⁰⁴ Immigration Act, B.E. 2522 (1979), sections 18-20.

⁵⁰⁵ Narcotics legislation delegated to ISOC includes: *the Narcotics Act*, B.E. 2522 (1979); *the Narcotics Addict Rehabilitation Act*, B.E. 2545 (2002), *the Measure for Suppression of Offences Relating to Narcotics Act*, B.E. 2534 (1991); and, *the Narcotics Control Act*, B.E. 2519 (1976).

⁵⁰⁶ Highway Act, B.E. 2535 (1992), section 23(3); See also: Part I (General Provision), Chapter 2 (Monitor, Inspect and Control of Highway and Highway Construction) and Part II (Control, Maintenance, Expansion and Reservation of Highway Areas) of the Act.

⁵⁰⁷ The Penitentiary Act, B.E. 2479 (1936), Chapter 2 (Admission of Prisoners), sections 8-10, Chapter 3 (Separation and transfer of prisoner), sections 11-12, Chapter 4, (Power and Duty of prison official), sections 13-21.

⁵⁰⁸ *The Anti-Money Laundering Act*, B.E. 2542 (1999), sections 38 and 46, also Chapter 1 (General Provisions), Chapter 4 (Transaction Committee), Chapter 5 (Office of the Money Laundering Control) and Chapter 6 (Property Proceeding). See: Background of the Anti-Money Laundering Office, online: http://www.amlo.go.th/amlo_new/template.php?lang=EN&id=367&nvarl_23=true.

⁵⁰⁹ Universal Declaration of Human Rights, article 28 and Preamble ICCPR.

⁵¹⁰ UN General Assembly resolution 34/169 of 17 December 1979, adopting the *UN Code of Conduct for Law Enforcement Officials*, UN Doc. A/Res/34/169.

⁵¹¹ See, e.g., *UN Body of Principles for the Protection of All Persons under Any Form of Detention and Imprisonment*; *UN Standard Minimum Rules for the Treatment of Prisoners*; *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

⁵¹² For example, *UN Principles on Extra-Legal Executions*; *UN Principles on the Investigation of Torture*.

⁵¹³ For example; *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; *UN Code of Conduct for Law Enforcement Officials*.

⁵¹⁴ There are approximately 60,000 security officials stationed in the Deep South, including rangers, police and soldiers: ISOC Order No.145/2552, declared by Prime Minister Abhisit Vejjajiva on 27 March 2009, published in Government Gazette, 21 October 2009, Vol. 126, Special Part, 156 d, pages 77-78, giving figures of 31,012 soldiers, 18,413 police and 10,667 rangers.

⁵¹⁵ ICJ interviews, Pattani province, October 2009. See also: International Crisis Group, *Southern Thailand: The Problem with Paramilitaries*, 23 October 2007.

⁵¹⁶ Territorial Defence Volunteer Act B.E. 2497 (1954); See Chapter 1 (Establishment of Territorial Defence Volunteer) and Chapter 2 (Duty of Territorial Defence Volunteer).

⁵¹⁷ See: ISOC Order 145/2552 of 27 March 2009.

⁵¹⁸ See Diana Sarosi and Janjira Sombutpoonsiri, *Rule by the Gun: Armed Civilians and Firearms Proliferation in Southern Thailand*, Nonviolence International, May 2009; International Crisis Group, *Southern Thailand: The Problem with Paramilitaries*, 23 October 2007; Des-

mond Ball and David Scott Mathieson, *Militia Redux: Or Sor and the Revival of Paramilitarism in Thailand*, Bangkok, White Lotus Press, 2007.

There are also other civilian militias operating in the Deep South, including the *Or Ror Bor* (Village Protection Volunteers), who are civilian village defence forces formed to respond to threats by insurgents to Buddhist villagers. The *Or Ror Bor* are composed primarily of Buddhist villagers and organised into military-style battalions and companies. The *Or Ror Bor* are a Royal Project under the patronage of Her Majesty Queen Sirikit of Thailand, implemented by the Royal Aide-de-Camp Department. Each member of the *Or Ror Bor* receives 15 days of initial training and two five-day follow-up trainings each year. As of mid-2009, there were just under 25,000 *Or Ror Bor* in the Deep South. The *Chor Ror Bor* (Development and Self-Defence Volunteers) are civilian village defence forces organised under the Ministry of the Interior, but are commanded by ISOC. Each village has a *Chor Ror Bor* unit, and the units are composed of both Buddhist and Muslim villagers. *Chor Ror Bor* receive three days of military training. As far as the ICJ has been able to determine, these two groups do not currently exercise Law enforcement powers where they operate under the Emergency Decree or Martial Law.

⁵¹⁹ See e.g. UN Commission on Human Rights Resolution 2000/47 of 25 April 2005 on "Promoting and consolidating democracy" paragraph 1; UN General Assembly Resolution 56/96 of 4 December 2000 on "Promoting and consolidating democracy", paragraph 1(c)(ix).

⁵²⁰ Human Rights Committee, *Concluding Observations on Lesotho*, (1999) UN Doc. CCPR/C/79/Add.106, paragraph 14: "The Committee is concerned about the continuing influence of the military in civilian matters and in particular about the climate of impunity for crimes and abuses of authority committed by members of the military. The Committee strongly urges that measures be taken by the State party to ensure the primacy of civil and political authority." See also Human Rights, *Committee Concluding Observations on Romania*, (1999) UN Doc. CCPR/C/79/Add.111, paragraph 9: "The Committee is concerned at the lack of a clear legal framework, defining and limiting the role of the security forces and providing for effective civilian control over them. The State party should promptly provide for such limitations and control by legislation and appropriate regulations."

⁵²¹ Section 16 also provides for any ISOC official, with Cabinet approval, to be appointed "officers" or "competent officers" under any Law governing the powers of particular government agencies. ISOC official can thus be granted the powers and responsibilities of a wide range of government agencies, or co-empowered to operate in conjunction with them, within the designated area and prescribed time frame. Section 23 makes the Act on Administrative Procedures, which sets out rules, procedures and appeal mechanisms for administrative orders that would change the rights and duties of civil servants, for example.

⁵²² EJP Report, page 31.

⁵²³ The 2006 military coup that ousted Prime Minister Thaksin's government was the tenth since the abolition of the absolute monarchy in 1932. There have been another 11 coup attempts since 1932.

⁵²⁴ See, for example, the interesting discussion of the military's role in governance by Colonel Sutat Jarumane, "Soft Power: An Answer to Military Intervention other than Coup", undated, available on the website of the Provincial Army ROTC Training Centre 33, online at: <http://www.rotc33.org/softpower.php>.

⁵²⁵ Prime Minister and Minister of Defence, Samak Sundaravej, following a Cabinet meeting on March 25, 2008, is reported to have stated that he assigned General Anupong Paochinda responsibility to execute the power on under the ISA on behalf of the Director of ISOC: ISRA News, "อาวุธรบแบบ อพยพ* ปฏิบัติหน้าที่ ผอ.สนบ.", 25 March 2008, online: http://www.isranews.org/cms/index.php?option=com_content&task=view&id=3330&Itemid=47.

⁵²⁶ ISA, section 7.

⁵²⁷ The only reference to the need to inform Parliament lies in Section 15, which provides that when a security situation subsides, or can be overcome by normal powers of government, the Prime Minister shall revoke ISOC Chapter 2 enforcement powers, and immediately report to the House of Representatives and Senate.

⁵²⁸ See: *Siracusa Principles*, Principle 55.

⁵²⁹ See: Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, (2009) UN Doc. A/HRC/10/3; Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities*, Public Works and Government Services Canada, 2006, pages 430-438; EJP Report, pages 73-78, 85-90.

⁵³⁰ ISA, section 15, paragraph 2.

⁵³¹ ISA, sections 10, 12, 14.

NOTES TO SECTION 7 – INTERACTION WITH OTHER EMERGENCY LEGISLATION IN THAILAND

⁵³² Unofficial Summaries of Cabinet Meetings of 13 October 2009 and 15 December 2009, available in Thai at <http://www.thaigo.gov.th>.

⁵³³ Martial Law, section 2 (unofficial translation).

⁵³⁴ Martial Law, section 4 (unofficial translation).

⁵³⁵ Government Gazette, 19 January 2010, Vol. 127, Special Part, 10 d, page 19. See also Martial Law, section 5.

⁵³⁶ ISA, section 15.

⁵³⁷ For example, under the Martial Law, the Minister of Defence during peace-time and the Supreme Commander during times of war or unrest, have the power to issue undefined "further measures of enforcement so that Martial Law may proceed": Martial Law, section 17 (unofficial translation). See also the Martial Law, sections 8-16.

⁵³⁸ 2005 Emergency Decree, sections 9 and 11, and especially section 11(6), allow a competent official to "issue a notification not to perform any act or to perform an act to the extent that it is necessary for maintaining the security of the state, the safety of the country or the safety of the people." (unofficial translation).

⁵³⁹ See esp. sections 16, 18 and 21.

⁵⁴⁰ 2005 Emergency Decree, section 17.

⁵⁴¹ Martial Law, section 16.

⁵⁴² *Statement by Ms Louise Arbour, UN High Commissioner for Human Rights, on the opening of the 61st session of the Commission on Human Rights*, 14 March 2005.

Annex I: Internal Security Act, B.E. 2551 (2008)

Act on Internal Security, 2008

Unofficial translation of the Act as published in the
Government Gazette, 125, 39 a, 27 February 2008, pp. 33–44.

BHUMIBOL ADULYADEJ, REX;

Given on the 19th Day of February 2008

Being the 63rd Year of the Present Reign

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have an Act on Internal Security

This Act contains provisions which impose restrictions on the rights and liberties of the people as allowable under section 29 and section 31 along with sections 32, 33, 34, 36, 41, and 43 of the Constitution of the Kingdom of Thailand by virtue of the provisions of the law.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly as follows.

Section 1 This Act is called the Act on Internal Security of 2008.

Section 2 This Act comes into force on the day following its announcement in the Government Gazette.

Section 3 In this Act

‘The maintenance of internal security’ means operations to prevent, control, resolve, and restore any situation which is or may be a threat arising from persons or groups of persons creating disorder, destruction, or loss of life, limb, or property of the people or the state, in order to restore normalcy for the sake of the peace and order of the people, or the security of the nation.

‘The Board’ means the Internal Security Operations Board

‘The Director’ means the Director of the Internal Security Operations Command

‘Government agency’ means an office of government, state enterprise, public organization, local government body, or other government body but excluding the courts and independent organizations under the Constitution.

‘State official’ means a government servant, officer, or employee of a government agency

‘Competent officer’ means a person appointed by the Director of Internal Security to carry out duties under this Act

‘Province’ includes Bangkok

‘Provincial governor’ includes the governor of Bangkok

Section 4 The Prime Minister shall have charge and control of the execution of this Act.

Chapter 1

The Internal Security Operations Command

Section 5 There shall be an Internal Security Operations Command, known in short as ISOC, within the Prime Minister’s Office with power and responsibility for the maintenance of internal security.

ISOC shall have the status of a special government agency under the direct command of the Prime Minister. The administration, management, structure and division of work, the powers of units, and manpower level shall be determined by the Cabinet.

The Prime Minister in his status as head of government shall be the Director of Internal Security, known in short as DISOC, with command over government servants, officers and employees in ISOC, and with responsibility for the official operations of ISOC. The Commander-in-Chief of the Army shall be Deputy Director of Internal Security.

The Director may appoint an Assistant Director from among government servants affiliated to ISOC or other state officials as appropriate with due regard to the structure and division of work within ISOC.

The Chief-of-Staff of the Army shall be the Secretary of ISOC with the duty to take responsibility for the direction and activity of ISOC.

The Deputy Director, Assistant Director, and Secretary of ISOC have power to command government servants, officers and employees in ISOC as deputies of the Director, and have other powers and duties as assigned by the Director.

The Director shall have power to undertake juristic acts, prosecute or defend lawsuits, and perform any actions in connection with lawsuits which are related to the duty of the Internal Security Operations Command, acting in the name of the Prime Minister's Office.

In execution of duty and exercise of power under this Act, the Director may assign his power in writing to the Deputy Director to execute the power on his behalf.

Section 6 ISOC shall be a government agency according to the law on budget procedures and the law on government finance.

Section 7 ISOC shall have powers and duties as follows:

- (1) to monitor, investigate, and evaluate situations which may give rise to a threat to internal security, and report to the Cabinet for consideration on further action;
- (2) to monitor the maintenance of internal security, pursuant to which ISOC shall have the power and duty to propose a plan and directions for operation and implementation for the Cabinet to consider and approve, and when the Cabinet has given approval, government agencies shall follow this plan and the directions;
- (3) to monitor, coordinate, and support the activity of government agencies in operations related to implementation under (2), pursuant to which the Cabinet may also assign ISOC the power to oversee implementation by government agencies as determined by Cabinet;
- (4) to encourage people to be aware of their duty in upholding nation, religion, and king; to build love and unity among people in the nation; as well as to promote popular participation in preventing and overcoming various problems which affect internal security and the peace and order of society;
- (5) to undertake other operations according to legislation or as assigned by the Cabinet, the National Security Council, or the Prime Minister.

Section 8 Besides the transfer of government duties under the Act on the Organization of State Administration, the Director may assign the powers and duties

of the Director under this Act to the Director of a Regional ISOC, the Director of a Provincial ISOC, or the Director of a centre or Head of an agency otherwise named.

Section 9 To facilitate operations within the power of ISOC under this Act, a government agency shall, at the request of the Director of ISOC, send state officials to serve at ISOC; and a central personnel organization or any other body which has powers and duties similar to that government agency shall provide the government agency that has sent state officials to serve at ISOC with replacement staff as required, but not exceeding the number sent.

Section 10 There shall be an Internal Security Operations Board composed of the Prime Minister or a Deputy Prime Minister assigned by the Prime Minister as Chairman; Minister of Defense and Minister of Interior as Deputy Chairmen; Minister of Justice, Minister of Information and Communications Technology, Permanent Secretary for Defense, Permanent Secretary for Foreign Affairs, Permanent Secretary for Interior, Attorney-General, Director-General of the National Security Council, Director of the National Intelligence Agency, Director of the Budget Bureau, Secretary of the Civil Service Commission, Secretary of the Public Sector Development Commission, Supreme Commander, Commander-in-Chief of the Royal Thai Army, Commander-in-Chief of the Royal Thai Navy, Commander-in-Chief of the Royal Thai Air Force, Commissioner-General of the Royal Thai Police, Comptroller-General, and Director of the Department of Special Investigations, as members; the Secretary of ISOC as member and secretary; and no more than two government servants within ISOC appointed by the Director as assistant secretaries.

The Board shall have the power to oversee, offer consultation, and make proposals to ISOC on operations within the power of ISOC, including the following powers and responsibilities:

- (1) to prescribe procedures for the direction and coordination of government agencies related to the maintenance of internal security;
- (2) to prescribe procedures for the activity of ISOC, Regional ISOCs, and Provincial ISOCs;
- (3) to issue regulations concerning budget, financing, properties, and the management of the assets of ISOC;
- (4) to appoint an ISOC advisory council with due regard to participation by various segments of the population, consisting at the minimum of people with expertise or experience in political science, public administration, jurisprudence, science and technology, maintenance of people's rights and freedoms, peaceful resolution of problems, maintenance of state security, and public

media, with the duty to propose solutions to problems or prevention of threats that arise and to give advice as sought by the Board;

- (5) to appoint committees or working groups to exercise duty as assigned;
- (6) to undertake other duties as laid down in this Act or other laws.

Section 11 When it is necessary for the sake of internal security within the territory of any army region, the Board, on the proposal of the Director, may pass a resolution for the Regional Army to establish a Regional Internal Security Operations Command, known in short as a Regional ISOC.

A Regional ISOC shall report directly to ISOC; the Commander of the Regional Army shall be the Regional Director of Internal Security with the duty and responsibility to support the maintenance of internal security within the territory of responsibility of the Regional Army, as the Director assigns.

To facilitate the work of a Regional ISOC, the Director has the power to appoint government servants, officers and employees of the Regional Army, together with government servants, officers and employees of government agencies within the territory, to work regularly or temporarily in a Regional ISOC, as proposed by the Director of a Regional ISOC.

The Director of a Regional ISOC shall have command over government servants, officers, and employees who have been ordered to work within the Regional ISOC, and shall take responsibility for the implementation of the work of the Regional ISOC.

The structure, division of work, staffing, and management of working units within a Regional ISOC shall be determined by the Director following proposals by the director of the Regional ISOC.

ISOC and the Regional Army shall study how to provide support consisting of personnel, budget, and resources for the operations of a Regional ISOC on the request of the Director of Regional Security, with the provisions of Section 9 applying to the Regional ISOC, *mutatis mutandis*.

Section 12 To facilitate participation in overcoming problems or protecting against threats that arise, the Director of a Regional ISOC may establish a Regional ISOC advisory board consisting of a chairman and no more than 50 members, appointed from among persons accepted and trusted by the people in all parts of the territory, with the duty to propose solutions for problems or for prevention of threats that arise, and to give consultation as requested by the Director of the Regional ISOC

Section 13 To facilitate the support, assistance, and execution of duties of the Director of a Regional ISOC under section 11, the Director of a Regional ISOC, with the approval of the Minister of Interior and the Director, may establish a Provincial Internal Security Operations Command, known in short as a Provincial ISOC, in any province within the territory of the Regional Army as a unit reporting directly to the Regional ISOC, with duties and responsibilities to support the maintenance of internal security in an area of responsibility within that province as assigned by the Director. The Provincial Governor shall be the Provincial Director of Internal Security, with power of command over government servants, officers and employees, and responsibility for the operations of the Provincial ISOC.

The structure, division of work, staffing, and administration of working units within a Provincial ISOC shall be as determined by the Director.

ISOC and the province shall study how to provide support consisting of personnel, budget, and resources for the operations of a Provincial ISOC on the request of the Director of a Provincial ISOC, with the provisions of section 9 applying to the Provincial ISOC, *mutatis mutandis*.

Section 14 To promote participation in overcoming problems or guarding against threats that arise, the director of a Provincial ISOC may establish an advisory board consisting of a chairman and no more than 30 members, appointed from among persons accepted and trusted by the population in all parts of the territory, with duty to propose solutions for problems or for prevention of threats that arise, and to give consultation as requested by the director of the Provincial ISOC.

Chapter 2

Duties of maintaining internal security

Section 15 In the event of an occurrence which affects internal security but which does not yet require the declaration of a State of Emergency under the *Act on Public Administration in an Emergency Situation*, in which the occurrence has a tendency to persist for a long time, and falls under the power and responsibility for solving problems of several government agencies, the Cabinet shall pass a resolution to have ISOC take responsibility for prevention, suppression, and eradication or mitigation of this occurrence which affects internal security, within an assigned area and time-period, and shall make a general announcement of this fact.

In the event that the occurrence in paragraph 1 subsides or can be overcome within the powers of the government agencies which have normal responsibility, the

Prime Minister shall declare that the powers of ISOC as assigned under paragraph 1 lapse, and the Prime Minister shall promptly report the outcome to the House of Representatives and Senate.

Section 16 In implementation under Section 15, ISOC shall also have powers and duties as follows:

- (1) to prevent, suppress, eradicate, and overcome or mitigate the occurrence that affects internal security as assigned under Section 15;
- (2) to draw up a plan of execution according to (1) to be proposed to the Board for approval;
- (3) to oversee, follow up, and expedite relevant government agencies and state officials to implement or coordinate implementation according to the plan in (2);
- (4) to order that any state official whose behavior is a threat to internal security or an obstruction to the maintenance of internal security, be excluded from a designated area.

In drawing up a plan under (2), ISOC shall meet to consult with the Office of the National Security Council and relevant government agencies, and pursuant to this shall draw up a plan to confront every situation that may arise.

In the event of an order under (4), ISOC shall inform the government agency to which the state official belongs along with the reason, and shall have the state official report to the government agency to which that state official is attached as soon as possible. The officials of the government agency to which that official is attached shall issue an order for that state official to be relieved of official duties or relieved from the implementation of official duties in the area as prescribed in the aforesaid order.

For the benefit of implementing operations according to the duties and powers under paragraph 1, if there is necessity for ISOC to use the powers and duties that according to law fall within the powers, duties or responsibilities of any government agency, the Cabinet shall have the power to appoint any officer within ISOC to be a government official or competent officer under law, or to pass a resolution for the government agency to transfer its powers, duties and responsibilities under law in the aforesaid matter to ISOC to operate in its stead, or to have power to operate within a specified area and time-period, and shall also prescribe the principles and conditions relating to that power.

Section 17 In the event of a need to overcome problems affecting internal security according to the powers and duties in Section 16 in any area, the Director with the approval of the Board shall have the power to establish one or more special operations centers or agencies otherwise named to carry out any duty or several duties as specified.

The structure, staffing, administration, duties, control and coordination or command of an operations center or agency otherwise named under paragraph 1 shall be as determined by the Director with the approval of the Board, and published in the Government Gazette. The provisions of section 9 shall apply to these operations centers and agencies, *mutatis mutandis*, and the power of the Director shall be the same as the power of the Director of the center or agency in this respect.

Section 18 To facilitate the prevention, suppression, eradication, and solution or mitigation of an occurrence under section 15, the Director with the approval of the Cabinet shall have the power to issue regulations as follows:

- (1) to have relevant state officials implement any action, or suspend any action;
- (2) to prohibit entry or exit at a locality, building, or designated area during its operating hours, except with the permission of a competent official or being an exempted person;
- (3) to prohibit exit from dwelling places within a designated time;
- (4) to prohibit the carrying of weapons outside dwelling places;
- (5) to prohibit the use of transportation routes or vehicles or to prescribe conditions on the use of transportation routes or vehicles;
- (6) to order persons to perform or suspend any action in connection with electronic equipment in order to guard against danger to life, limb, or property of the people.

Orders under paragraph 1 may prescribe principles, time period, or other conditions and the aforesaid prescriptions must not create disproportionate difficulties for the people.

Section 19 In the execution of powers under Section 16(1), the Director and any competent officer designated by the Director shall be deemed to be a high-level Interior official or police officer and also an investigating officer according to the Criminal Procedure Code.

Section 20 Should the execution of power by ISOC under Section 16(1) result in loss for any person in good faith, ISOC shall arrange for that person to receive compensation for the loss appropriate to the case according

to principles and conditions determined by the Cabinet.

Section 21 Within the designated area where the Cabinet has passed a resolution in authorizing the ISOC to operate under Section 15, if it appears that a person is alleged to have committed an offence which impacts against the internal security of the Kingdom as specified by the Cabinet, changes his/her mind and submits himself/herself to the officers, or if an investigation officer has investigated, and it appears that the person committed such offence by being misled or, due to lack of knowledge, and that giving a chance to him/her will benefit the maintenance of the internal security of the Kingdom, the investigation officer shall submit an investigation file of the alleged offender including his opinions to the Director.

In cases where the Director agrees with the investigation officer's opinion, the Director shall submit the file and the Director's opinion to the public prosecutor in order to file a petition to the Court. If the Court thinks fit, the Court may give an order to take the alleged offender to the Director for training at designated place for a period not exceeding six months, and, can specify other conditions for the alleged offender to comply with.

For operations under paragraph 2 abovementioned, the Court shall make an order when the alleged offender consents to attend such training and to comply with such specified conditions.

After the alleged offender has attended such training and complied with such conditions specified by the Court, the right to institute a criminal proceeding is extinguished.

Section 22 Officials exercising their duties within an area designated under Section 15 may receive special remuneration as designated by the Cabinet.

Any official under paragraph 1 who suffers injury, death, disability, or loss of body parts as a result of the execution of duty may receive other benefits apart from those provided by law in accordance with regulations decided by the Cabinet.

Section 23 Any regulation, notification, order, or action under this Chapter is not subject to the law on administrative procedures.

Any court case arising from a regulation, notification, order or action under this provision shall fall within the power of the Courts of Justice. Pursuant to this, in the event that the Court must consider providing measures of protection or temporary protection prior to a judgment under the Code of Civil Procedure or the Code of Criminal Procedure, according to the case, the court shall summon the state official or competent officer who issued the regulation, notification, order or action to explain the facts, report, or show reason, as part of the consideration of ordering the aforesaid measures of protection or temporary protection.

Chapter 3

Liability

Section 24 Any person who violates a regulation issued under sections 18 (2), (3), (4), (5), or (6) is liable to imprisonment not exceeding 1 year, or a fine not exceeding 20,000 baht, or both.

Special provisions

Section 25 The activities, resources, budget, debts, rights, government servants, employees, and personnel of the Internal Security Operations Command according to the Order of the Prime Minister's Office 205/2006 concerning the establishment of the Internal Security Operations Command, dated 30 October 2006, shall be transferred to the Internal Security Operations Command under this Act.

Section 26 The Southern Border Provinces Administration Center and the Joint Civilian-Police-Military Command established by the Order of the Prime Minister's Office 207/2006 concerning government administration in the southern border provinces, dated 30 October 2006, shall become centers of operations or agencies otherwise named established under section 17 of this Act.

Countersigned by

General Surayud Chulanont

Prime Minister

NOTE. The reasons for promulgating this Act are as follows. At present there are security problems caused by various people or groups of people. These problems are violent, and may quickly expand to a point they have a broad and complex impact that may affect the independence and integrity of the realm, give rise to disorder within the country, and threaten the peace and contentment of the people. In order to protect against such threats and to resolve them promptly and completely, it is appropriate to designate a principal agency with responsibility for internal security, including integrating and coordinating actions among all government offices, and promoting participation by people in preserving security and strengthening their own localities. It is necessary to enact this law in order to guard against threats which may arise in times of normalcy, and to lay down measures and mechanisms for use at times when a security threat has arisen in any area in order to regulate the use of power for the specific purpose, according to the level of seriousness of the situation, so that the situation may be resolved efficiently and with unity.

ANNEX II: CONSTITUTION OF THE KINGDOM OF THAILAND, B.E. 2550 (2007), SELECTED PROVISIONS (Official Translation)

CHAPTER III

Rights and Liberties of Thai People

Part 1 General Provisions

Section 26 In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.

Section 27 Rights and liberties recognised by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers [Cabinet], Courts, constitutional organs and State agencies in enacting, applying and interpreting laws.

Section 28 A person can invoke human dignity or exercise his or her rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to the Constitution or good morals. A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution for the purpose of exercising rights through the medium of the Court or defending himself or herself in the Court. A person may have a recourse to the Court for directly enforcing the State to comply with provisions in this Chapter. Where the exercise of any particular right or liberty as recognised by this Constitution is a subject-matter of the existing law, such right and liberty shall be exercisable as provided by law. A person shall have the right to receive from the State promotion, support and assistance as needed for the exercise of right in accordance with the provisions of this Chapter.

Section 29 The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties. The law under paragraph one shall be of general application and shall not

be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two shall also apply mutatis mutandis to by-laws issued by virtue of provisions of law.

Part 2

Equality

Section 30 All persons are equal before the law and shall enjoy equal protection under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacles to or to promote persons' ability to exercise their rights and liberties in the same manner as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 31 Members of the armed forces or the police force, Government officials, other State officials and officials or employees of State agencies shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law or by-law issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Part 3

Individual Rights and Liberties

Section 32 A person shall enjoy the right and liberty in his or her life and person.

A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted;

provided, however, that punishment in execution of a judgment of the Court or as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.

No arrest or detention of person shall be made except by an order or a warrant of the Court or upon other causes as provided by law.

A search of a person or an act affecting the right and liberty under paragraph one shall not be made unless upon such causes as provided by law.

In the case where there occurs an act affecting the right and liberty under paragraph one, the injured person, the Public Prosecutor or any other person, in the interest of the injured person, has the right to file an application to the Court for an order stopping or revoking such act, and, for this purpose, there may be determined appropriate means or remedies for injury sustained.

Section 33 A person shall enjoy the liberty of dwelling. A person is protected for his or her peaceful habitation in and for possession of his or her dwelling place. An entry into a dwelling place without consent of its possessor or a search of a dwelling place or a private place shall not be made except by an order or a warrant of the Court or upon other causes as provided by law.

Section 34 A person shall enjoy the liberty of travelling and the liberty of making the choice of his or her residence within the Kingdom. The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for the security of the State, public order, public welfare, town and country planning or welfare of the youth. No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

Section 35 A person's family rights, dignity, reputation and the right of privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public. A person shall have the right to be accorded protection against undue exploitation of personal data related to his or her individuality, as provided by law.

Section 36 A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communications between persons including any other act disclosing information in the communication between persons shall not be permitted except by virtue of the provisions of the law specifically enacted for maintaining the security of the State or maintaining public order or good morals.

Section 37 A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious principles or religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals. In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious principles or religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.

Section 38 Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

Part 4

Rights in Judicial Process

Section 39 No person shall be inflicted with a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence.

The suspect or the accused in a criminal case shall be presumed innocent.

Before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict.

Section 40 A person shall have the following rights in the administration of justice:

- (1) the right to have easy, expeditious, speedy and comprehensive access to justice;
- (2) the fundamental rights in legal proceedings, in respect of which fundamental assurances must be accorded as to the openness of trial, adequate opportunities to receive information and examine documents, the submission of facts, arguments and evidence, the challenge of judges, trial by judges of a duly constituted quorum and reasoned decisions, judgments or orders;

- (3) a person has the right to have his or her case tried in a correct, speedy and fair manner;
- (4) the injured person, the suspect, the plaintiff, the defendant, the party, the interested person or the witness has the right to proper treatment in the administration of justice, including the right to correct, speedy, fair inquiries and the right not to make statements incriminating himself or herself;
- (5) the injured person, the suspect, the accused and the witness in a criminal case has the right to receive necessary and appropriate protection and aids from the State, provided that necessary remuneration, compensation and expenses shall be as provided by law;
- (6) the children, the youth, women the elderly or the disabled or persons of infirmity have the right to be accorded protection with regard to appropriate trials and have the right to receive proper treatment in cases related to sexual violence;
- (7) in a criminal case, the suspect or the accused has the right to correct, speedy and fair inquiries or trials, adequate opportunities to defend himself or herself and to examine or be informed of evidence as necessary, legal assistance from an attorney and a provisional release;
- (8) in a civil case, a person has the right to receive appropriate legal aids from the State.

Part 5

Rights in Property

Section 41 The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law.

The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.

Section 42 The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for State affairs dedicated to public utilities, necessary national defence, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, conservation of ancient places and sources of historical value or other public interests, and fair compensation

shall be paid in due time to the owner thereof as well as to all persons having the rights thereto, who suffer loss by such expropriation, as provided by law.

The amount of compensation under paragraph one shall be fairly assessed with due regard to the normal market price, mode of acquisition, nature and location of the immovable property, losses suffered by the person whose property or right thereto is expropriated and benefits which the State and the person whose property or right thereto is expropriated obtain through the use of the expropriated immovable property.

The law on expropriation of immovable property shall specify the purpose of the expropriation and shall clearly determine the period of time to fulfil that purpose. If the immovable property is not used to fulfil such purpose within such period of time, it shall be returned to the original owner or his or her heir.

The return of immovable property to the original owner or his or her heir under paragraph three and the claim of compensation paid shall be in accordance with the provisions of the law.

Part 6

Right and Liberty of Engagement in Occupation

Section 43 A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Section 44 A person has the right to security in respect of safety and welfare at work, including security in the living both during the working life and upon leaving the state of employment.

Part 7

Liberty of Expression of Individuals and Media

Section 45 A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.

The restriction on the liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other persons, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a newspaper or other mass-media business in deprivation of the liberty under this section shall not be made.

The prohibition of a newspaper or other mass-media business from presenting information or expressing opinions in whole or in part or imposition of interference by any means in deprivation of the liberty under this section shall not be made except by virtue of the law enacted under paragraph two.

The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of the law enacted under paragraph two.

The owner of a newspaper or other mass-media business shall be a Thai national.

No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 46 Officials or employees of privately-owned newspaper, radio or television broadcasting or other mass-media businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without any mandate of any Government agency, State agency, State enterprise or the owner of such businesses provided that it is not contrary to their professional ethics, and have the right to establish organisations protecting rights, liberties and fairness and establish self-regulatory mechanisms within professional agencies.

Government officials, officials or employees of a Government agency, a State agency or a State enterprise engaging in a radio or television broadcasting business or any other mass media business shall enjoy the same liberties as those enjoyed by officials or employees of privately-owned businesses under paragraph one.

Any act of a person holding a political position, a State official or a business owner which, whether directly or indirectly done, impedes or interferes with the presentation of news or the expression of opinions on a public issue by persons under paragraph one or paragraph two shall be deemed as an intentionally undue exercise of powers and duties and shall be of no effect, unless done in compliance with the law or professional ethics.

Section 47 Transmission frequencies for radio or television broadcasting and telecommunication are national communication resources for public interests.

There shall be an independent regulatory agency having the duty to allocate the frequencies under paragraph one and exercise supervision over the operation of radio or television broadcasting businesses and telecommunication businesses as provided by law.

In carrying out the act under paragraph two, regard shall be had to optimal benefits of the people at national and local levels in education, culture, State security, other public interests and free and fair competition, provided that public participation in the operation of public mass media shall also be encouraged. In exercising supervision over the operation of businesses under paragraph two, there shall be measures for preventing any merger, cross right-holding or market dominance amongst mass media businesses or by any other person, which has the effect of impeding the liberty of the public in perceiving information or of obstructing public access to a diversity of information.

Section 48 A person holding a political position shall not own or hold shares in a newspaper, radio or television broadcasting or telecommunication business, whether in his or her own name or through his or her nominee or through other direct or indirect means enabling the management of such business in a way akin to owning or holding shares in such business.

Part 8

Rights and Liberties in Education

Section 49 A person shall enjoy an equal right to receive education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.

The indigent, the disabled, persons of infirmity or persons suffering a state of difficulty shall be accorded the right under paragraph one and entitled to such support

from the State as to enable them to receive education comparable to that received by other persons.

The provision of education by professional organisations or the private sector, alternative education by the people, self tuition and life-long learning shall be protected and promoted by the State as appropriate.

Section 50 A person shall enjoy an academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or good morals.

Part 9

Right to Receive Public Health and Welfare Services from the State

Section 51 A person shall enjoy an equal right to receive public health services which are appropriate and up to the quality, and the indigent shall have the right to receive free medical treatment from public health centres of the State.

A person has the right to receive public health services from the State, which shall be provided thoroughly and efficiently. A person has the right to be appropriately protected by the State against harmful contagious diseases, and to have such diseases eradicated, without charge and in a timely manner.

Section 52 Children and the youth have the right of survival and the right to receive physical, mental and intellectual development in accordance with their potential in a suitable environment, having prime regard to their participation. Children, the youth, women and family members shall have the right to be protected by the State against violence and unfair treatment and shall also have the right to receive rehabilitation in the event of such circumstances. Imposition of any interference with, and restriction on, rights of children, the youth or family members shall not be made except by virtue of the law specifically enacted for preserving and maintaining the status of the family or optimal benefits of such persons. Children and the youth with no guardian shall have the right to receive appropriate care and education from the State.

Section 53 A person who is over sixty years of age and has insufficient income for the living shall have the right to receive such welfare and public facilities as suitable for his or her dignity as well as appropriate aids to be provided by the State.

Section 54 The disabled or persons of infirmity shall have the right to have access to and use public welfare and conveniences as well as appropriate aids to be provided by the State. Persons of unsound mind shall be appropriately assisted by the State.

Section 55 Homeless persons with insufficient income for the living shall have the right to receive appropriate aids from the State.

Part 10

Right to Information and Complaints

Section 56 A person shall have the right to know and have access to public data or information in possession of a Government agency, a State agency, a State enterprise or a local government organisation, unless the disclosure of such data or information shall affect the security of the State, public safety or interests of other persons which shall be protected or purport to be personal data, as provided by law.

Section 57 A person shall have the right to receive data, explanations and reasons from a Government agency, a State agency, a State enterprise or a local government organisation prior to the approval or the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning such person or a local community and shall have the right to express his or her opinions to agencies concerned, for assisting further consideration of such matters. In planning social, economic, political and cultural development, or in undertaking expropriation, town and country planning, zoning and making by-laws likely to have impacts on essential interests of the public, the State shall cause to be held comprehensive public hearings prior thereto.

Section 58 A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties.

Section 59 A person shall have the right to present a petition and to be informed of the result of its consideration without delay.

Section 60 A person shall have the right to file a lawsuit against a Government agency, a State agency, a State enterprise, a local government organisation or other State authority which is a juristic person to be liable for an act or omission done by its Government official, official or employee.

Section 61 The right of a person as a consumer shall be protected in respect of the acquisition of rightful information and a person as such shall have the right to make a complaint for a remedy of loss suffered as well as the right to assemble in an endeavour to protect rights of consumers.

There shall be an organisation for the protection of consumers, to be established as an entity independent from State agencies and consisting of representatives of consumers, which shall have the duties to give opinions for assisting considerations of State agencies in connection with the making and enforcement of laws and by-laws, give opinions in connection with the determination of measures for consumer protection and examine as well as report the performance or omission of acts protecting consumers. In this connection, the State shall also provide budgetary support to the operation of such independent organisation.

Section 62 A person shall have the right to monitor and make a request for an examination of the performance of duties of persons holding political positions, State agencies and State officials.

The person who bona fide provides to an agency responsible for the scrutiny of the exercise of State powers or to a State agency information in connection with the performance of duties of persons holding political positions, State agencies or State officials shall be protected.

Part 11

Liberty to Assemblage and Association

Section 63 A person shall enjoy the liberty to assemble peacefully and without arms. The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the case of public assembling and for securing public convenience in the use of public places or for maintaining public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Section 64 A person shall enjoy the liberty to unite and form an association, a union, a league, a co-operative, a farmers' group, a private organisation, a private development organisation or any other group. Government officials and State officials shall have the liberty to assemble like other people provided that their assembly shall not affect the efficiency of public administration and the continuity of the provision of public services, as provided by law.

The restriction on such liberty under paragraph one and paragraph two shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

Section 65 A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of the State as provided in this Constitution.

The internal organisation, management and regulations of a political party shall be consistent with fundamental principles of the democratic regime of government with the King as Head of the State.

Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number prescribed by the Organic Act on Political Parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, have the right to refer it to the Constitutional Court for decision thereon.

In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, such resolution or regulation shall lapse.

Part 12

Community Right

Section 66 Persons so assembling as to be a community, a local community or a traditional community shall have the right to conserve or restore their customs, local knowledge, good arts and culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources, the environment and the biological diversity in a balanced and sustainable fashion.

Section 67 The right of a person to give to the State and communities participation in the conservation, preservation and exploitation of natural resources and biological diversities and in the protection, promotion and preservation of the quality of the environment for regular and continued livelihood in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected as appropriate.

Any project or activity which may seriously affect the community with respect to the quality of the environment, natural resources and health shall not be permitted, unless, prior to the operation thereof, its impacts on the quality of the environment and on public health have been studied and assessed and a public hearing process has been conducted for consulting the public as well as interested persons and there have been obtained opinions of an independent organisation, consisting of representatives from private organisations in the field of the environment and health and from higher education institutions providing studies in the field of the environment, natural resources or health.

The right of a community to bring a lawsuit against a Government agency, a State agency, a State enterprise, a local government organisation or other State authority which is a juristic person for the performance of duties under this provision shall be protected.

Part 13

Right to Protection of Constitution

Section 68 No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person.

In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court issues an order dissolving the political party under paragraph three, the right to vote of the dissolved political party's leader and executive committee members at the time of the commission of the offence under paragraph one shall be suspended for the period of five years as from the date of such order of the Constitutional Court.

Section 69 A person shall have the right to resist peacefully any act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in this Constitution.

Part IV

Duties of the Thai People

Section 70 Every person shall have a duty to protect and uphold the Nation, religions, the King and the democratic regime of government with the King as Head of the State under this Constitution.

Section 71 Every person shall have a duty to defend the country, safeguard national interests and obey the law.

Section 72 Every person shall have a duty to exercise his or her right to vote at an election. The person who attends an election for voting or fails to attend an election for voting without notifying a reasonable cause of such failure shall acquire or lose such rights as provided by law. The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.

Section 73 Every person shall have a duty to serve in armed forces, render assistance in the prevention and alleviation of public hazards, pay taxes and duties, render assistance to the official service, receive education and training, safeguard, protect and pass on national arts, culture and local knowledge and conserve natural resources and the environment, as provided by law.

Section 74 A Government official, official or employee of a Government agency, a State agency, a State enterprise or other State official shall have a duty to act in compliance with the law in order to protect public interests, and provide convenience and services to the public in accordance with the good governance principle. In performing the duty and other acts relating to the public, the persons under paragraph one shall be politically impartial. In the case where the persons under paragraph one neglect or fail to perform the duties under paragraph one or paragraph two, the interested person shall have the right to request the persons under paragraph one or their superiors to give explanations and reasons and request them to act in compliance with the provisions of paragraph one or paragraph two.

**ANNEX III:
EXAMPLES OF CABINET DECLARATIONS,
REGULATIONS AND SPECIAL OPERATIONS
CENTRE (CAPO) ANNOUNCEMENTS ISSUED
UNDER PART 2 OF THE ISA
(Unofficial Translations)**

**ANNOUNCEMENT
ON THE AREA WITH
OCCURRENCES AFFECTING INTERNAL SECURITY**

Whereas Thailand is due to host the 15th ASEAN Summit and Related Summits from 21 to 25 October 2009 in Cha-am District, Phetchaburi Province and Hua Hin District, Prachuap Khiri Khan Province, in which Heads of State/Government of 10 ASEAN countries and 6 dialogue partners will attend;

Recalling that the protest to obstruct the convening of the 14th ASEAN Summit and Related Summits scheduled for 10-12 April 2009 at the Royal Cliff Beach Resort in Pattaya, Chonburi Province, had escalated into unrest, which violated the provisions of the law and the Constitution of the Kingdom of Thailand, and led to the cancellation of the Summits, thereby affecting the country's image and reputation in the international community as well as confidence in the country's system for the administration of the State; and that subsequently, when Thailand was entrusted to host the ASEAN Foreign Ministers Meeting and Related Meetings from 17 to 23 July 2009 in Phuket Province, the Cabinet approved the announcement designating the area where the Meetings were held as an area where events occurred that affected internal security, which enabled effective implementation of security measures, thereby contributing to the smooth and successful convening of the Meetings and enhancing confidence in the security among other countries;

In view that for the upcoming Summits, there appear to be attempts to instigate obstruction or disorder or sabotage with a view to causing disruptions in the area where the Summits will be held, similar to the incidents in Pattaya, and given that this area is a major tourist destination and attempts may be made by perpetrators from both inside and outside the country to instigate incidents during the Summits in a view to causing damage to Thailand's tourism and economic image;

In this connection, in order to ensure that the maintenance of security and safety during the Summits by the various agencies concerned be carried out in a unified manner, it is imperative that measures be drawn up to prevent and resolve situations that may

impede the successful convening of the Summits, or should a situation arise, to enable public officials to put an early end to the problem without affecting internal security.

By the power vested under section 15 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet therefore adopted the following resolution on 6 October 2009:

- (1) To declare Cha-am, Don Khun Huay, Khao Yai, Sam Phraya and Rai Mai Phattana Sub-districts of Cha-am District, Phetchaburi Province, and Hua Hin, Hin Lek Fai, Thap Tai and Nong Kae Sub-districts of Hua Hin District, Prachuap Khiri Khan Province, except the ground of the Klai Kangwol Palace, as an area where events occur that affect internal security;
- (2) To assign the Internal Security Operations Command as the agency responsible for the prevention, suppression, deterrence and resolution or mitigation of occurrences that affect internal security, and to draw up a plan of operation to integrate, supervise, monitor and expedite the work of agencies and public officials concerned with regard to the implementation of such action plan, as well as to set up an operations centre or a unit otherwise named to specifically carry out the mission of maintaining security and safety during the Summits.

To be effective from 12 to 27 October 2009.

Announced on 7 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

Published in Government Gazette, 7 October 2009, Vol.126, Special Part,148d , pages 1-2.

ANNOUNCEMENT

ON THE APPOINTMENT OF OFFICIALS OPERATING UNDER THE INTERNAL SECURITY ACT B.E. 2551 (2008) AS GOVERNMENT OFFICIALS OR COMPETENT OFFICIALS UNDER THE LAW

Pursuant to the Announcement on the Area with Occurrences Affecting Internal Security in Cha-am, Don Khun Huay, Khao Yai, Sam Phraya and Rai Mai Phattana Sub-districts of Cha-am District, Phetchaburi Province, and Hua Hin, Hin Lek Fai, Thap Tai and Nong Kae Sub-districts of Hua Hin District, Prachuap Khiri Khan Province, except the ground of the Klai Kangwol Palace, from 12 to 27 October 2009, and the designation of the Internal Security Operations Command (ISOC) as the responsible agency;

By the power vested under section 16 paragraph four of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet thereby passed the resolution on 6 October 2009 to give the ISOC the powers related to granting permission, instructing, commanding or supporting in the prevention, resolution, suppression, deterrence of the emergency situation, or rehabilitating or assisting people in the declared area during the period of the occurrences which affect internal security, in accordance with the following:

- (1) The Ministry of Defence Act, B.E. 2551 (2008);
- (2) The Special Investigation Act B.E. 2547 (2004);
- (3) The Immigration Act B.E. 2522 (1979);
- (4) The Arms Control Act B.E. 2530 (1987);
- (5) The Disaster Prevention and Mitigation Act B.E. 2550 (2007);
- (6) The Public Advertisement by Sound Amplifier Control Act B.E. 2493 (1950);
- (7) The Land Traffic Act B.E. 2522 (1979);
- (8) The Motor Vehicle Act B.E. 2522 (1979);

- (9) The Hazardous Substance Act B.E. 2535 (1992);
- (10) The Firearms Act B.E. 2490 (1947);
- (11) The Navigation in Thai Waters Act B.E. 2456 (1913);
- (12) The Hotel Act B.E. 2547 (2004);
- (13) The Civil Registration Act B.E. 2534 (1991);
- (14) The Computer Crime Act B.E. 2550 (2007);
- (15) The Civil Code, only with regard to the provisions concerning foundations and associations;
- (16) The Criminal Code;
- (17) The Criminal Procedure Code, only with regard to the provisions concerning the exercise of investigative and interrogative powers, and the exercise of powers of administrative officials or the police.

The amendments to the aforementioned laws shall also be included.

The officials operating under the Internal Security Act B.E. 2551 (2008) shall be government officials or competent officials under the afore-mentioned laws and shall have the powers to act as such government officials or competent officials. The use of such laws shall be as necessary and shall not impose disproportionate difficulties to the public. The operations under these laws do not exclude the enforcement of the laws by the regular competent officials, who still have the same duties.

To be effective from 12 to 27 October 2009.

Announced on 7 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

Published in Government Gazette, 7 October 2009, Vol.126, Special Part, 148d, page 3-4.

REGULATION

PURSUANT TO SECTION 18 OF THE INTERNAL SECURITY ACT B.E. 2551 (2008)

Pursuant to the Announcement on the Area with Occurrences Affecting Internal Security in Cha-am, Don Khun Huay, Khao Yai, Sam Phraya and Rai Mai Phattana Sub-districts of Cha-am District, Phetchaburi Province, and Hua Hin, Hin Lek Fai, Thap Tai and Nong Kae Sub-districts of Hua Hin District, Prachuap Khiri Khan Province, except the ground of the Klai Kangwol Palace, from 12 to 27 October 2009, and the designation of the Internal Security Operations Command (ISOC) as the responsible agency;

With a view to preventing, controlling and resolving the situation in the area with occurrences affecting internal security in an orderly and effective manner, by the power vested under section 18 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 38, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Director of Internal Security, with the approval of the Cabinet on 6 October 2009, issues the following Regulations:

- (1) Relevant state officials shall take action or refrain from taking action in order to assist or support the discharge of powers and duties of the ISOC and its officials in accordance with the orders issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, or as part of the operations under the plan of operation to prevent, suppress, deter and resolve or mitigate the situation which affects internal security.
- (2) Entry into or exit out of areas, buildings or locations related to the operations of the ISOC and during the period of such operations shall be prohibited to any person in accordance with announcements issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, except for those who granted permission by a competent official or those exempted pursuant to such announcements.
- (3) Carrying of weapons outside dwelling places shall be prohibited.
- (4) Use of transportation routes or vehicles shall be prohibited, or conditions set on the use of transportation routes or vehicles shall be complied with,

- (5) in accordance with announcements issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre.
- (6) Actions shall be taken or not taken in connection with electronic equipment of the types or within the areas in accordance with announcement issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, with a view to guarding against any danger to life, limb or property of the people.

In this connection, the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, as they deem appropriate, will set a timeframe for the compliance of this Regulation or conditions for the carrying out of operations by the competent officials, so that no operations shall impose disproportionate difficulties to the public

To be effective from 12 to 27 October 2009.

Announced on 7 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

**ANNOUNCEMENT
OF THE CENTRE FOR THE ADMINISTRATION
OF PEACE AND ORDER
PROHIBITING THE USE OF TRANSPORTATION
ROUTES OR VEHICLES**

Pursuant to the Announcement on the Areas with Occurrences Affecting the Kingdom's Internal Security in Cha-am Sub-district, Don Kun Huay Sub-district, Kaoyai Sub-district, Samphraya Sub-district, Raimaipattana Sub-district of Cha-am District, Petchaburi Province; Hua Hin Sub-district, Hinlekhai Sub-district, Tubtai Sub-district, Nong Kae Sub-district of Hua Hin District, Prachuap Khiri Khan Province; and the territorial sea of Cha-am Sub-district, Cha-am District, Petchaburi Province and Hua Hin Sub-district in Hua Hin District, Prachuap Khiri Khan Province, excluding the Royal Court of Klaikangwon Palace, during the period from 12 to 27 October 2009 and the Regulation Pursuant to section 18 of the Internal Security Act B.E. 2551 (2008) in which Regulation 4 prohibits the use of transportation routes or vehicles, or conditions set on the use of transportation routes of transportation or vehicles shall be complied with, in accordance with the announcement issued by the Director of the Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of Internal Security Operations Command or the Director of the Administration Centre. In this regard, a specific timeframe for the implementation of the Regulation or conditions for the operations by competent officials, as deemed appropriate, will be designated so that no operations shall impose disproportionate difficulties to the public.

In order to ensure that the operations to prevent, control and resolve the situation in the areas with occurrences affecting the Kingdom's internal security are carried out in an orderly and effective manner,

By the power designated in Regulation 4 and the last paragraph of the Regulation pursuant to section 18 of the Internal Security Act B.E. 2551 (2008), the Director of the Centre for the Administration of Peace and Order thereby announces the following regulations:

The use of transportation routes or vehicles is prohibited unless with permission from competent officials and conforming to the conditions for the use of transportation routes or vehicles as instructed by competent officials in the following areas:

- (1) The rightmost lanes of both sides of Petchkasem Road from the 208 Kilometer Post (in front of Cha-am Park) to the 235 kilometres post (at the overpass of Nong Kae intersection).
- (2) The roads leading to and on the beaches near Dusit Thani Hua Hin Hotel, Sheraton Hua Hin Resort and Spa Hotel, Anantra Resort Hua Hin Hotel, Hyatt Regency Hua Hin Hotel, Hilton Hua Hin Resort and Spa Hotel, Courtyard Marriott Cha-am Hotel, Grand Pacific Sovereign Resort and Spa Hotel, Springfield at Sea Resort and Spa Hotel, Holiday Inn Resort and Regent Beach Cha-am Hotel, and Sofitel Centara Grand Resort and Villa Hotel in Cha-am District, Petchaburi Province and Hua Hin District, Prachuap Khiri Khan Province from the left-most and right-most edges of the hotels' entrances extending 500 metres from both sides in the hotels' areas.
- (3) Naresdamri Road in front of Sofitel Centara Grand Resort and Villa Hotel and Hilton Hua Hin Resort and Spa Hotel.

The aforementioned regulation is effective immediately.

Announced on 21 October 2009

Gen. Prawit Wongsuwan

Minister of Defence/
Director of Centre for the Administration of Peace and Order

Not yet published in Government Gazette at time of writing, but available at:
<http://www.rtarf.mi.th/aseansummit/pdf/way.pdf>.

**ANNOUNCEMENT
OF THE CENTRE FOR THE ADMINISTRATION
OF PEACE AND ORDER PROHIBITING PERSONS
WHOSE BEHAVIOUR IS OR MAY BE A THREAT TO
INTERNAL SECURITY – EXCLUSION FROM OR PROHIBITION
ON ENTRY INTO SPECIFIC AREAS, BUILDINGS OR PLACES**

Pursuant to the Announcement on the Areas with Occurrences Affecting the Kingdom's Internal Security in Cha-am Sub-district, Don Kun Huay Sub-district, Kao Yai Sub-district, Samphraya Sub-district, Raimaipattana Sub-district of Cha-am District, Petchaburi Province; Hua Hin Sub-district, Hinlekkhai Sub-district, Tubtai Sub-district, Nong Kae Sub-district of Hua Hin District, Prachuap Khiri Khan Province; and the territorial sea of Cha-am Sub-district, Cha-am District, Petchaburi Province and Hua Hin Sub-district in Hua Hin District, Prachuap Khiri Khan Province; excluding the Royal Court of Klai Kangwon Palace, for the period from 12 to 27 October 2009, and the Regulations pursuant to section 18 of the Internal Security Act B.E. 2551 (2008) in which Regulation 2 prohibits any person from entering into or exiting from the areas, buildings, or places related to the operations of the Internal Security Operations Command during its operational period. This is in accordance with the announcement issued by the Director of the Internal Security Operations Command, or the Director of the Administration Centre, or those designated by the Director of Internal Security Operations Command or the Director of the Administration Centre, except for a person who is granted permission from a competent official or is exempted by such announcement. In this regard, a specific timeframe for the implementation of the Regulation or conditions for the operations by competent officials, as deemed appropriate, will be designated so that no operations shall impose disproportionate difficulties to the public.

In order to ensure that the operations to prevent, control and resolve the situation in the areas with occurrences affecting the Kingdom's internal security are carried out in an orderly and effective manner,

By the power designated in Regulation 2 and the last paragraph of the Regulations pursuant to section 18 of the Internal Security Act B.E. 2551 (2008), the Director of the Centre for the Administration of Peace and Order thereby announces the following regulations:

- (1) An individual or groups of individuals whose acts may cause a situation of unrest, destroy or damage lives, bodies, property of the people or state such as: sedition, agitation, or the creation of situations that cause violence or harm public peace and state security, shall be prohibited from entering or staying in the aforementioned areas with occurrences affecting the Kingdom's internal security

- (2) The areas within Dusit Thani Hua Hin Hotel, Sheraton Hua Hin Resort and Spa Hotel, Anantra Resort Hua Hin Hotel, Hyatt Regency Hua Hin Hotel, Hilton Hua Hin Resort and Spa Hotel, Courtyard Marriott Cha-am Hotel, Grand Pacific Sovereign Resort and Spa Hotel, Springfield at Sea Resort and Spa Hotel, Holiday Inn Resort and Regent Beach Cha-am Hotel, and Sofitel Centara Grand Resort and Villa Hotel are restricted areas and no individual or groups of individuals can enter into or exit from these areas without permission from competent officials.
- (3) The vicinity of Hua Hin Airport Terminal Building and its surrounding areas extending 2000 metres from the boundary fences are restricted areas. No individual or groups of individuals can enter into or exit from these areas without permission from competent officials.
- (4) The areas extending 12 nautical miles from the coast of Cha-am Sub-district, Cha-am District, Petchaburi Province and Hua Hin Sub-district, Nong Kae District, Prachuap Khiri Khan Province, excluding the Royal Court of Klai Kangwon Palace, are restricted areas. No individual, groups of individuals or any kind of vessels can enter into this area without permission from competent officials.

The aforementioned regulation is effective immediately.

Announced on 21 October 2009

Gen. Prawit Wongsuwan

Minister of Defence/
Director of Centre for the Administration of Peace and Order

Not yet published in Government Gazette at time of writing, but available at:
<http://www.rtarf.mi.th/aseansummit/pdf/person.pdf>.

ANNOUNCEMENT ON THE AREA WITH OCCURRENCES AFFECTING INTERNAL SECURITY

Whereas it appears that the political situation from 11 October 2009 onwards has a tendency to cause political disturbances due to the declared intention of certain groups of persons to incite the public to join protests with a view to making demands in accordance with the approach and interests of such groups, and to move to besiege the Government House and surrounding government offices, as well as to prolong their demonstrations if their demands are not met; and given that there are ill-intentioned persons planning to instigate incidents during the said demonstrations with a view to escalating the situation towards violence, which would have direct impact on the administration of the State and the peace and order within the country and affect the confidence of foreign leaders scheduled to attend the ASEAN Summit and Related Summits to be held from 23 to 25 October 2009 – both before and during the Summits – leading to the possibility of the situation escalating into incidents of unrest, thereby affecting the Kingdom's internal security;

In order to ensure that the maintenance of peace and safety be carried out in a unified manner, it is imperative that measures be drawn up to prevent and resolve situations so that they would not escalate into incidents of unrest, or should a situation arise, to enable public officials to put an early end to the problem without affecting internal security.

By the power vested under section 15 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet therefore adopted the following resolution on 13 October 2009:

- (1) To declare Dusit District of Bangkok as an area where events occur that affect internal security;
- (2) To assign the Internal Security Operations Command as the agency responsible for prevention, suppression, deterrence and resolution or mitigation of occurrences that affect internal security, and to draw up a plan of operations to integrate supervision of, monitor, and expedite the agencies and public officials concerned with regard to the implementation of such action plan, as well as set up an operations centre or a unit otherwise named to carry out the mission as specified.

To be effective from 15 October 2009 to 25 October 2009.

Announced on 14 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

**ANNOUNCEMENT
ON THE APPOINTMENT OF OFFICIALS
OPERATING UNDER THE INTERNAL SECURITY ACT
B.E. 2551 (2008) AS GOVERNMENT OFFICIALS
OR COMPETENT OFFICIALS UNDER THE LAW**

Pursuant to the Announcement on the Area with Occurrences Affecting Internal Security in the area of Dusit District, Bangkok from 15 to 25 October 2009, and the designation of the Internal Security Operations Command (ISOC) as the responsible agency;

By the power vested under section 16 paragraph four of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet thereby passed the resolution on 13 October 2009 to give the ISOC the powers related to granting permission, instructing, commanding or supporting in the prevention, resolution, suppression, deterrence of the emergency situation, or rehabilitating or assisting people in the declared area during the period of the occurrences which affect internal security, in accordance with the following:

- (1) The Ministry of Defence Act, B.E. 2551 (2008);
- (2) The Special Investigation Act B.E. 2547 (2004);
- (3) The Immigration Act B.E. 2522 (1979);
- (4) The Arms Control Act B.E. 2530 (1987);
- (5) The Disaster Prevention and Mitigation Act B.E. 2550 (2007);
- (6) The Public Advertisement by Sound Amplifier Control Act B.E. 2493 (1950);
- (7) The Land Traffic Act B.E. 2522 (1979);
- (8) The Motor Vehicle Act B.E. 2522 (1979);
- (9) The Hazardous Substance Act B.E. 2535 (1992);

- (10) The Firearms Act B.E. 2490 (1947);
- (11) The Computer Crime Act B.E. 2550 (2007);
- (12) The Civil Code, only with regard to the provisions concerning foundations and associations;
- (13) The Criminal Code;
- (14) The Criminal Procedure Code, only with regard to the provisions concerning the exercise of investigative and interrogative powers, and the exercise of powers of administrative officials or the police.

The amendments to the aforementioned laws shall also be included.

The officials operating under the Internal Security Act B.E. 2551 (2008) shall be government officials or competent officials under the aforementioned laws and shall have the powers to act as such government officials or competent officials. The use of such laws shall be as necessary and shall not impose disproportionate difficulties to the public. The operations under these laws do not exclude the enforcement of the laws by the regular competent officials, who still have the same duties.

To be effective from 15 to 25 October 2009.

Announced on 14 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

**REGULATION
PURSUANT TO SECTION 18
OF THE INTERNAL SECURITY ACT B.E. 2551 (2008)**

Pursuant to the Announcement on the Area with Occurrences Affecting Internal Security in the area of Dusit District, Bangkok from 15 to 25 October 2009, and the designation of the Internal Security Operations Command (ISOC) as the responsible agency;

With a view to preventing, controlling and resolving the situation in the area with occurrences affecting internal security in an orderly and effective manner, by the power vested under section 18 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and freedoms, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 38, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Director of Internal Security, with the approval of the Cabinet on 13 October 2009, issues the following regulations:

- (1) Relevant state officials shall take action or refrain from taking action in order to assist or support the discharge of powers and duties of the ISOC and its officials in accordance with the orders issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, or as part of the operations under the plan of operation to prevent, suppress, deter and resolve or mitigate the situation which affects internal security.
- (2) Entry into or exit out of areas, buildings or locations related to the operations of the ISOC and during the period of such operations shall be prohibited to any person in accordance with announcements issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, except for those who granted permission by a competent official or those exempted pursuant to such announcements.
- (3) Carrying of weapons outside dwelling places shall be prohibited.
- (4) Use of transportation routes or vehicles shall be prohibited, or conditions set on the use of transportation routes or vehicles shall be complied with, in accordance with announcements issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre.

- (5) Actions shall be taken or not taken in connection with electronic equipment of the types or within the areas in accordance with announcement issued by the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, with a view to guarding against any danger to life, limb or property of the people.
- (6) In this connection, the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, as they deem appropriate, will set a timeframe for the compliance of this Regulation or conditions for the carrying out of operations by the competent officials, so that no operations shall impose disproportionate difficulties to the public.

To be effective from 15 to 25 October 2009.

Issued on 14 October B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

**ANNOUNCEMENT
OF THE CENTRE FOR THE ADMINISTRATION OF PEACE
AND ORDER PROHIBITING
THE USE OF TRANSPORTATION ROUTES OR VEHICLES**

Pursuant to the Announcement dated 14 October 2009 declaring the area of Dusit District, Bangkok, as an area with occurrences affecting the Kingdom's internal security, and the Regulations Pursuant to section 18 of the Internal Security Act B.E. 2551 (2008) dated 14 October 2009, authorizing the Director of the Internal Security Operations Command, or the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre, to designate a specific timeframe for the implementation of the Regulations or conditions for the operations by competent officials, as they deem appropriate;

In order to prevent, suppress, deter, and resolve or mitigate the situation in Dusit District, Bangkok in an orderly and effective manner with a view to preventing the blockade of the Government House, government agencies and important places as well as the obstruction of the Prime Minister, the Cabinet and government officials to perform their duties,

By the power designated in regulation 4 and the last paragraph of the Regulation Pursuant to section 18 of the Internal Security Act B.E. 2551 (2008), the following regulations are announced:

- (1) The use of transportation routes or vehicles is prohibited, without permission from competent officials, on the following routes:
 - (a) Nakorn Pathom Road from Thevakamrungrak Intersection to Shamaimarushade Bridge;
 - (b) Lukluang Road (behind the Government House) from Thevakamrungrak Intersection to Makkawan Rungsarn Intersection;
 - (c) The frontage road of the Ratchadamnern Nok Avenue besides the Government House from Makkawan Rungsarn Intersection to Suan Missakawan Intersection;
 - (d) The frontage road of Sri Ayutthaya Road beside the Army Club from Seesao Deves Intersection to the Thai Army Auditorium Intersection;

- (e) Soi Samsen 12 from the entrance at Samsen Road to the exit at Ratchasima Road, including the intersecting road leading to Outhong Nok Road.
- (2) The Director of the Internal Security Operations Command, the Director of the Centre for the Administration of Peace and Order, or designated persons who are commissioned officers or the equivalent shall enforce the regulations in this announcement.
- (3) The regulations shall be effective hereafter.

Announced on 15 October 2009

Suthep Thaugsuban

Deputy Prime Minister /
Director of Centre for the Administration of Peace and Order

**ANNOUNCEMENT
OF THE CENTRE FOR THE ADMINISTRATION OF PEACE
AND ORDER PROHIBITING PERSONS WHOSE BEHAVIOUR
IS OR MAY BE A THREAT TO INTERNAL SECURITY –
EXCLUSION FROM OR PROHIBITION ON ENTRY
INTO SPECIFIC AREAS, BUILDINGS OR PLACES**

Pursuant to the announcement dated 14 October 2009 declaring the area of Dusit District, Bangkok, as the area with occurrences affecting the Kingdom's internal security and the Regulations Pursuant to section 18 of the Internal Security Act B.E. 2551 (2008), dated 14 October 2009 authorizing the Director of the Internal Security Operations Command, or the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre to designate a specific timeframe for the implementation of the Regulation or conditions for the operations by competent officials as they deem appropriate;

In order to prevent, suppress, deter, and resolve or mitigate the situation in Dusit District, Bangkok in an orderly and effective manner with a view to preventing the blockade of the Government House, government agencies and important places as well as the obstruction of the Prime Minister, the Cabinet and government officials to perform their duties,

By the power designated in Regulation 2 and the last paragraph of the Regulation Pursuant to section 18 of the Internal Security Act B.E. 2551 (2008), the following regulations are announced:

- (1) An individual or groups of individuals whose acts may cause an situation of unrest, destroy or damage lives, bodies, property of the people or state such as; sedition, agitation, or the creation of situations that cause violence or harm public peace and state security, shall be prohibited from entering or staying in the area of Dusit District, Bangkok.
- (2) The Government House, the Office of the National Counter Corruption Commission, the Office of the Council of State 2, Phradabos School, Seesao Deves Residence, the Thai Army Club, the Thai Army Auditorium, and The Army's Military Research and Development Office are absolute restricted areas. Any individual or groups of individuals shall be prohibited from entering into or exiting from the aforementioned areas or buildings without permission from competent officials.

- (3) The Director of the Internal Security Operations Command, the Director of the Centre for the Administration of Peace and Order, or the designated persons who are commissioned officers or the equivalent shall enforce the regulations in this Announcement.
- (4) The regulations shall be effective hereafter.

Announced on 15 October 2009

Suthep Thaugsuban

Deputy Prime Minister /
Director of Centre for the Administration of Peace and Order

ANNOUNCEMENT ON THE AREAS WITH OCCURRENCES AFFECTING THE KINGDOM'S INTERNAL SECURITY

As it appears that violent incidents in the southern border provinces have continued since B.E. 2547 (2004), with a tendency to remain unchanged over a long period and to fall under the authority and responsibility of several government agencies to find solutions to the problems, such occurrences will have direct impact on the administration of the State and the peace and order within the country.

In order to ensure that the maintenance of peace and safety is carried out in a unified manner and with utmost effectiveness, it is imperative that precautionary measures be adopted to prevent the intensification of the situation or, should violence arise, to enable public officials to put an early end to it without affecting the Kingdom's internal security.

By the power designated in section 15 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and liberties, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet thereby adopted the following resolutions on 24 November 2009:

- (1) To declare Chana District, Nathawee District, Thepa District and Sabayoi District of Songkhla Province as areas, with occurrences that affect the Kingdom's internal security;
- (2) To assign the Internal Security Operations Command or the internal unit designated by the Internal Security Operations Command as the Operations Center responsible for prevention, suppression, deterrence and resolution or mitigation of occurrences affecting the Kingdom's internal security, and to draw up an operational plan to integrate supervision, monitoring, and expedition of the concerned agencies and public officials in regard to the implementation of such plan.

The resolutions shall be effective from 1 December 2009 to 30 November 2010.

Announced on 26 November B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva
Prime Minister

ANNOUNCEMENT
ON THE APPOINTMENT OF OFFICIALS OPERATING
UNDER THE INTERNAL SECURITY ACT B.E. 2551 (2008)
AS OFFICIALS OR COMPETENT OFFICIALS UNDER THE LAW

Pursuant to the Announcement on the Areas with Occurrences Affecting the Kingdom's Internal Security in Chana District, Nathawee District, Thepa District and Sabayoi District of Songkhla Province, covering the period from 1 December 2009 to 30 November 2010, which designates the Internal Security Operations Command as the responsible agency;

By the power designated in section 16 paragraph four of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and liberties, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Cabinet thereby adopted a resolution on 24 November 2009, designating powers to the Internal Security Operations Command to grant permission, instruct, command or support the prevention, resolution, suppression and deterrence of the emergency situation; or to rehabilitate or assist people in the declared areas during the period of the occurrences that affect the Kingdom's internal security, in accordance with the following laws:

- (1) The Ministry of Defense Act, B.E. 2551 (2008);
- (2) The Special Investigation Act B.E. 2547 (2004);
- (3) The Deportation Act B.E. 2499 (1956);
- (4) The Alien Registration Act B.E. 2493 (1950);
- (5) The Immigration Act B.E. 2522 (1979);
- (6) The Arms Control Act B.E. 2530 (1987);
- (7) The Commodities Control Act B.E. 2495 (1952);
- (8) The Narcotics Control Act B.E. 2519 (1976);
- (9) The Measure for Suppression of Offences Relating to Narcotic Act B.E. 2534 (1991);

- (6) The Narcotics Act B.E.2522 (1979);
- (7) The Narcotics Addict Rehabilitation Act B.E.2545 (2002);
- (8) The Disaster Prevention and Mitigation Act B.E. 2550 (2007);
- (9) The Public Advertisement by Sound Amplifier Control Act B.E. 2493 (1950);
- (10) The Private School Act B.E.2550 (2007);
- (11) The Private Tertiary Education Act B.E.2546 (2003);
- (12) The Ministry of Education Administration Act B.E.2546 (2003);
- (13) The Teacher and Education person Service Act B.E.2547 (2004);
- (14) The National Culture Act B.E.2485 (1942);
- (15) The Hazardous Substance Act B.E. 2535 (1992);
- (16) The Firearms Act B.E. 2490 (1947);
- (17) The Land Traffic Act B.E. 2522 (1979);
- (18) The Highway Act B.E.2535 (1992);
- (19) The Correction Act B.E.2479 (1936);
- (20) The Motor Vehicle Act B.E. 2522 (1979);
- (21) The Navigation in Thai Water Act B.E.2456 (1913);
- (22) The Hotel Act B.E.2547 (2004);
- (23) The Registration of Residential Inhabitant Act B.E.2534 (1991);
- (24) The Computer Crime Act B.E. 2550 (2007);
- (25) The Money Laundering Control Act B.E.2542 (1999);
- (26) The Civil Code, only with regard to the provisions concerning foundations and associations;
- (27) The Criminal Code;

- (28) The Criminal Procedure Code, only with regard to the provisions concerning the exercise of investigative and interrogative powers, and the exercise of powers of administrative officials or the police.
- (29) The amendments to the afore-mentioned laws shall be included.

The officials operating under the Internal Security Act B.E. 2551 (2008) shall be appointed as officials or competent officials under the aforementioned laws with the powers as of officials or competent officials under such laws. The authorized enforcement of the laws shall be carried out where deemed necessary and so that they do not impose disproportionate difficulties to the public. The operations under the laws shall not exclude the enforcement of the laws by regular competent officials whose duties remain.

The resolution shall be effective from 1 December 2009 to 30 November 2010.

Announced on 26 November B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva
Prime Minister

REGULATIONS PURSUANT TO SECTION 18 OF THE INTERNAL SECURITY ACT B.E. 2551 (2008)

Pursuant to the Announcement on the Areas with Occurrences Affecting the Kingdom's Internal Security in Chana District, Nathawee District, Thepa District and Sabayoi District of Songkhla Province from 1 December 2009 to 30 November 2010, including the designation of the Internal Security Operations Command as the responsible agency;

With the aim to prevent, control and resolve the situation in the areas with occurrences affecting the Kingdom's internal security in an orderly and effective manner, by the power designated in section 18 of the Internal Security Act B.E. 2551 (2008), a law which contains certain provisions relating to the restriction of individual rights and liberties, permissible under sections 29 and 31 in conjunction with sections 32, 33, 34, 36, 41 and 43 of the Constitution of the Kingdom of Thailand to act in accordance with the law, the Director of the Internal Security Operations Command, with the approval of the Cabinet on 24 November 2009, issues the following regulations:

- (1) Relevant state officials shall take actions or refrain from taking actions in order to assist or support the discharge of powers and duties of the Internal Security Operations Command and its officials in accordance with the orders issued by the Director of the Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre, or as part of the operations under the operational plan to prevent, suppress, deter and resolve or mitigate the occurrences which affect the Kingdom's internal security.
- (2) Entry or stay in the areas, buildings or places related to the operations of the Internal Security Operations Command and during the period of such operations shall be prohibited to any person in accordance with the announcement issued by the Director of the Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre, except for a person who is granted permission by a competent official or is exempted by such announcement.
- (3) Exit from dwellings within a designated time shall be prohibited to any person in accordance with the announcement issued by the Director of the Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre, except for a person who is granted permission by a competent official or is exempted by such announcement.

- (4) Carrying of weapons outside dwellings shall be prohibited.
- (5) Use of transportation routes or vehicles shall be prohibited, or conditions set on the use of transportation routes or vehicles shall be complied with, in accordance with the announcement issued by the Director of the Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of Internal Security Operations Command or the Director of the Administration Centre.
- (6) Actions shall be taken or refrained from in connection with electronic devices or equipment of the types or within the areas in accordance with the announcement issued by the Director of Internal Security Operations Command, the Director of the Administration Centre, or those designated by the Director of the Internal Security Operations Command or the Director of the Administration Centre, with a view to safeguarding lives, bodies or property of the people.

In this connection, the Director of Internal Security, the Director of the Administrative Centre, or those designated by the Director of Internal Security or by the Director of the Administrative Centre, as deemed appropriate, will set a timeframe for the compliance of this Regulation or conditions for the carrying out of operations by the competent officials, so that no operations shall impose disproportionate difficulties to the public.

The regulations shall be effective from 1 December 2009 to 30 November 2010.

Announced on 26 November B.E. 2552 (2009)

(signed)

Abhisit Vejjajiva

Prime Minister

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Prof. Alfredo ETCHEBERRY, Chile
Mr. Desmond FERNANDO, Sri Lanka
Lord William GOODHART, United Kingdom
Justice Lennart GROLL, Sweden
Mr. Louis JOINET, France
Prof. P.J.G. KAPTEYN, Netherlands
Justice Michael D. KIRBY, AC, CMG, Australia

Prof. Kofi KUMADO, Ghana
Prof. Jean Flavien LALIVE, Switzerland
Justice Claire L'HEUREUX-DUBÉ, Canada
Dr. Rudolf MACHACEK, Austria
Prof. Daniel H. MARCHAND, France
Mr. J.R.W.S. MAWALLA, Tanzania
Mr. François-Xavier MBOUYOM, Cameroon
Mr. Fali S. NARIMAN, India
Sir Shridath S. RAMPHAL, Guyana
Mr. Bertrand RAMCHARAN, Guyana
Prof. Christian TOMUSCHAT, Germany
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