THAILAND
Consolidating internal security state, complaisant judiciary

In its 2010 annual report, the Asian Human Rights Commission focused on the consolidation of the revived internal-security state in Thailand. Emergent after the 19 September 2006 coup, the revived internal-security state has been characterized by the persistent violation of human rights, using strategies both legal and extralegal. It has been accompanied by the use of a constellation of repressive mechanisms to prevent redress of rights violations, including the constriction of speech, the stifling of protest and blocking of access to justice. At the close of 2010, the human rights situation in Thailand was precarious, with the violent state crackdown on red-shirt protestors by the government of PM Abhisit Vejjajiva still reverberating amidst other long-standing injustices.

The first half of 2011 saw the start of the trial of independent news site webmaster Ms. Chiranuch Premchaiporn, a devastating appeal outcome foreclosing justice in the case of the disappearance of human rights lawyer Mr. Somchai Neelaphaijit, and difficulties faced by the Truth and Reconciliation Commission of Thailand (TRCT) in their attempt to investigate the political violence of April and May 2010. Politically, for many the central event of the year was the overwhelming victory of Yingluck Shinawatra and the Pheu Thai Party in the 3 July 2011 elections. While it is too early to definitively assess the Pheu Thai Party's progress on human rights, early signs are not positive, with continued arrests and prosecutions for alleged lèse majesté, slow progress towards accountability for the violence of April-May 2010, and a continued failure to protect the rights of victims and survivors of torture and other forms of state violence.

Yet, in the assessment of the AHRC, the initial failure of the Yingluck government to make meaningful changes in the status of human rights in Thailand is less about the individual government's policies and instead reflective of a deep-seated, ingrained culture of impunity that spans the state security forces, judiciary, and civil service, all of which operate with tacit approval from many quarters of the civilian population. This impunity, and the methods by which the internal-security state has been consolidated outside and through the judiciary, are particularly reflected in the violation of rights of victims of torture to seek redress, continuing persecution of human rights defenders, the expansion of charges and prosecutions under article 112 (the provision of the Criminal Code dealing with the alleged crime of lese majesty), and a series of failures by the courts and other institutions to act to secure justice.

The criminalization of victimhood

Documented instances of the use of torture by the Thai state security forces, including the army, police, and Internal Security Operations Command (ISOC) date to the period

of 1970s Cold War counterinsurgency in Thailand. Torture has been used both during formal conflict and as part of routine law enforcement. Within the last decade, as the Asian Human Rights Commission has repeatedly noted, since the declaration of martial law in the three provinces of Yala, Pattani, and Narathiwat in southern Thailand in January 2004, there has been a sharp resurgence and expansion of the use of torture. The terms of martial law, which permits pre-charge detention for seven days, as well as the Emergency Decree, which went into force in the three southern provinces in July 2005 and permits an additional 30 days of pre-charge detention, create windows of unaccountability for state security forces who choose to use torture as a tool of investigation or arbitrary punishment. During the 37 days of pre-charge detention, detainees can be detained in non-standard places of detention, are not required to have access to a lawyer, and have no rights to habeas corpus.

Amidst this expansion of the use of torture, on 2 October 2007 Thailand became a state party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Since becoming a state party, over the past four years the Thai government has failed to pass a national law criminalizing torture and is therefore currently not in compliance with its obligations under the treaty. In the absence of a national law, citizens have attempted to use existing Criminal Procedure Code and Constitutional measures to hold state security forces accountable. Yet these attempts have failed to compel state responsibility and there has instead been a consolidation of impunity in the years since Thailand acceded to the CAT.

Of even greater concern, during 2011 the prosecution and conviction of a torture victim who spoke out against his torturers indicates an increasingly proactive approach to the production of impunity across the state security forces and the judiciary in response to allegations of gross human rights violations. On 10 August 2011, the Criminal Court in Bangkok sentenced Mr. Suderueman Malae to two years in prison for having spoken out against his alleged torturers. In Black Case No. 2161/2552, Police Major General Chakthip Chaijinda brought a criminal complaint against Mr. Suderueman Malae, one of the clients of forcibly abducted and disappeared human rights lawyer Mr. Somchai Neelaphaijit. Mr. Suderueman, along with four others, was accused of stealing guns from the Pileng Army Camp in Narathiwat province on 4 January 2004, detained under the terms of martial law, and initially charged with "attempt to kill." While they were under detention, they were tortured and pressured to confess. Mr. Suderueman and the other four men were the clients of Mr. Somchai Neelaphaijit. In

Mr. Somchai Neelaphaijit

addition to preparing their defense, Mr. Somchai prepared a complaint detailing their torture, which he submitted to the Department of Special Investigation (DSI) on 11 March 2004. On 12 March 2004, Mr. Somchai Neelaphaijit was disappeared. In the intervening seven years, the initial charges of "attempt to kill" against Mr. Suderueman have been dropped and the perpetrators of Mr. Somchai's disappearance have not been held to account.

On 28 March 2005, during the trial of the officers of the Royal Thai Police who were accused of abducting and presumably killing Mr. Somchai Neelaphaijit, Mr. Suderueman and other victims of torture whom Mr. Somchai represented testified under oath that they had been tortured. The manner of torture included electrocution, urination on the head and face, smacking on the base of the ears, and assault on the body. The testimony of Mr. Suderueman and the other victims were consistent not only with one another but also with the accounts of other victims of torture in the south of Thailand.

Within the Thai legal framework, and particularly under martial law, there are few options to make a formal complaint of wrongdoing by state security officials. In this particular case, the DSI took up the formal investigation of the torture of Mr. Suderueman and the other four men with whom he was detained. At the completion of their investigation, the DSI submitted their report to the Office of the National Anti-Corruption Commission (NACC), whose mandate includes investigating all illegal wrongdoing committed by civil servants, since no specialized agency exists for the investigation or prosecution of perpetrators of torture or other abuses in custody. The NACC then commenced investigation of Police Lieutenant General Bhanupong Singhara Na Ayuthaya and eighteen other police officers involved in the arrest and detention of Mr. Suderueman and the other four men.

On 22 December 2010, the NACC dismissed the complaint against Police Lieutenant General Bhanupong and the other police officers. The NACC claimed that the physical examination reports failed to establish if the torture really took place while the victims were held in official custody. Even without addressing the NACC's profound delay and mishandling of this case, it is pertinent to note that the vast majority of the cases with which they are concerned deal with strict examples of financial wrongdoing, rather than violence perpetrated against citizens by state officials, and therefore the NACC lacks the mandate, staff, resources and other basic necessities with which to conduct effectively inquiries of the sort required in this instance.

While the NACC dismissal of the case officially absolved all of the named police officers from any responsibility for the torture of Mr. Suderueman Malae and the other four men, two top police officers chose to bring legal charges of filing a false statement to the DSI and the NACC. Police Lieutenant General Bhanupong Singhara Na Ayuthaya and Police Major General Chakthip Chaijinda each brought separate cases against Mr. Suderueman in the Criminal Court in Bangkok.

The case brought by Police Lieutenant General Bhanupong was dismissed after examination by the court on 27 September 2009. The Criminal Court maintained that the defendant used his basic rights as a citizen to make a complaint to the DSI. Police Lieutenant General Bhanuphong appealed and at present, the case is still under examination by the Appeal Court.

Meanwhile, in the case brought by Police Major General Chakthip Chaijinda, the Criminal Court made a decision that runs counter to basic principles of the protection of victims of torture and other forms of state violence. On 10 August 2011, Mr. Suderueman was sentence to two years in prison for allegedly making a false statement to the authorities. The details of the allegations and the court decision speak to the ingrained lack of respect for victims of state violence and contempt for human rights in Thailand, which underwrites the project of the revived internal security state.

The statement of Mr. Suderueman's which Police Major General Chakthip alleged was false is the following: "During the daytime on 22 February 2004, Political Major General Chakthip and his colleagues assaulted Mr. Suderueman by slapping his ears and kicking his trunk many times. The assault was carried out over a period of ten minutes. It took place in a meeting room in Tan Yong Police Station." Police Major General Chakthip claimed that he was not present for these events, and that he had been injured by the testimony.

Police Major General Chakthip claimed that he was falsely implicated in the torture of Mr. Suderueman. The basis for his denial of involvement was in part that although he had been listed in the police records as heading up a unit responsible for the arrest and detention of Mr. Suderueman in February 2004, he had not actually been present at the time. In other words, he argued that the police records of the case were themselves at very least inaccurate, and possibly fabricated. Police Major General Chakthip argued that for this reason he could not be held to account for the torture of Mr. Suderueman.

The Criminal Court found, in part on the basis of the NACC's investigation, that there was no evidence to support the complaint brought by Mr. Suderueman against Police Major General Chakthip. The court convicted Mr. Suderueman and sentenced him to two years in prison under sections 173 and 174 of the Criminal Code, for maliciously giving false information to inquiry officers. These sections of the code were cited, even though no evidence exists to show that the naming of Police Major General Chakthip was in any way malicious, and furthermore, even though the naming of the officer was done in a court of law and under oath on the examination of a lawyer.

At this time, Mr. Suderueman has been freed on bail while he files an appeal against the decision. He remains under witness protection by the DSI, who have protected him ever since the beginning of the case of the disappearance of Mr. Somchai Neelaphaijit, as he is a primary witness in that case.

The conviction of Mr. Suderueman by the Criminal Court in this case suggests a backpedaling of support for victims of torture in Thailand. Given that the NACC already absolved Police Major General Chakthip of any responsibility, this decision suggests a growing crisis in Thailand, and one that goes to the heart of the country's rights abuse-complaisant judicial system, since if a victim of torture or other gross abuse cannot even state what happened to them under oath and in a court of law, on the questioning of a legal professional, then what prospect exists for open debate or complaint about such widespread and deeply institutionalized abuses?

The prosecution and conviction of Mr. Suderueman represents a violation of the Government of Thailand's obligations under the CAT, to which Thailand has acceded, notably article 13, which mandates that,

> "Each state party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

The prosecution of Mr. Suderueman is a clear example of official intimidation as a consequence of making a complaint. Particularly given questions surrounding the efficacy of the NACC investigation, his prosecution raises troubling questions about the prospects of respect for human rights in Thailand, and speaks to the continued entrenchment of absolute impunity for gross abuses by senior personnel of the security forces, as well as for most of their subordinates.

The impunity for torture and other gross abuses of human rights that these men enjoy is guaranteed not only by assurances that they will not be held responsible, but also that arrangements exist to enable them to exact revenge upon those persons who have the temerity to complain. It requires both deliberate decisions not to do certain things that should have been done, and to do certain other things that should not have been done. These decisions involve people in all key agencies, and in particular, depend upon the role of the courts as guarantors of failed prosecution where prosecution must fail, and successful prosecution where it must succeed.

Impunity for the torturers of Suderueman required, to begin with, the thwarting of any effective investigation of both the abduction and presumed killing of his lawyer, Somchai Neelaphaijit, and the acquittal of the accused in that case. Since the case attracted huge domestic and international interest, to give the appearance of some sort of justice being done, the court reached a compromise ruling in which it acknowledged police involvement and convicted one of the five accused of a minor offence.

Impunity then required a process that included the mysterious disappearance of the one convicted policeman, and his subsequent acquittal in an appeal ruling. It also required the persistent and deliberate refusal to take any steps to address seriously the question of

"What happened to lawyer Somchai?" Indeed, in March 2011 the director of the AHRC, Wong Kai Shing, sent a letter to the justice minister of Thailand, Pirapan Salirathavibhaga, describing the handling of the Somchai case as a "travesty of justice". The letter read in part as follows, beginning with a summation of the findings of the Court of Appeal in the case in a 59-page verdict handed down on March 11, a day before the seventh anniversary of the human rights lawyer's abduction:

"1. The case against all defendants was dismissed. The one policeman of the five convicted in the Criminal Court, Pol. Maj. Ngern, had his conviction overturned. Thus, there is now no longer even a single state officer who has been found guilty of an offence in this case, despite officials at the highest levels of government, including the former premier, Pol. Lt. Col. Thaksin Shinawatra, stating publicly that they knew that state officers were responsible, and despite the court of first instance also having indicated the same.

2. The Court of Appeal based its ruling on a lack of evidence against the accused. This is not because evidence did not exist but because the court ruled that it was not admissible. Specifically, the telephone records of the five defendants, which showed clearly that they were in contact with one another in the days leading up to the abduction and in the vicinity of the scene of the crime were not admissible, because they were not original or certified copies of the records.

3. The Court of Appeal also removed the wife and children of the disappeared man from being co-plaintiffs in the case, which has serious implications on their rights and capacity to be able to represent the family's interests in any further legal actions. The reason that the court gave for removing them was that under section 5(2) of the Criminal Procedure Code, a co-plaintiff must only be of a deceased person or a person who is unable to act for him or herself. In this case the court ruled that the victim did not meet those criteria.

It is fair to say that the travesty of justice began in the Criminal Court and wrought upon the victim and his family has been further enlarged through the appeal court's ruling. The question remains as to what you and your ministry will do about it. In that regard, I put to you the following specific questions, in light of the above facts:

1. Why was it not possible for DSI investigators of your ministry to obtain original or certified copies of the telephone records that would prove the relationship between the accused and link them to the scene of the crime? Presumably, as these records are of electronically stored data, the data still exists somewhere and could be produced in court if found and if the telecommunications providers concerned could be legally obligated to produce it. As this is a case involving the abduction and presumed killing of a person, please explain to me, what is the legal or institutional failure preventing the collection and presentation to court of evidence that would satisfy its procedural requirements?

2. The removal of the family from the case as co-plaintiffs as per the Criminal Procedure Code raises the problem of a huge lacuna in the criminal law of Thailand, and that is, if someone or a group of persons is successfully able to abduct, kill and dispose of the body of a person without any remains being found, as in this case, then practically no type of effective criminal action can be taken against them. The family cannot be a party to the case, and furthermore, no criminal offence can even be shown to have been committed. This lacuna is

> underscored in the present case by the absurd character of the charges against the accused, for coercion--the act of bodily forcing the victim from his vehicle--and theft of his property, the vehicle itself, but not the act of presumed killing and disposal of the body. Under international law, this act is now recognized globally as enforced disappearance. At present, a new convention on enforced disappearances is being established with global effect. I ask you, when will Thailand sign this convention, and when will it introduce a law to criminalize enforced disappearance and make amendments to its criminal law accordingly?"

Once the case of Somchai was utterly perverted through the machinations of the police and other agencies, the way was opened for action against his family, his former clients and any other witnesses. This action included deliberate failure to protect the family effectively, which the AHRC director set out further in his letter:

> "1. CCTV equipment that was installed at the front of the family's house has been broken for some time. Despite repeated requests to have it fixed, so far it has somehow been beyond the resources of your ministry to do even this much. As such, at present if intruders come to the family's residence there will be no footage taken of what transpires.
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> 2. The family has been subject to threatening telephone calls. When they complained to the DSI about this and asked for some investigation, they were informed that if they wanted to know who was calling, they could contact the telecommunications firm to find out. In light of the recent ruling on inadmissibility of evidence in the case of Somchai, perhaps the personnel concerned were being ironic, or simply insensitive and disinterested. In either event, the DSI's response trivializes the family's genuine concern for their safety.
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> 3. A large bone, too big to be carried by a dog, was left on the doorstep of the family's premises recently, and this incident both the family and the AHRC have brought to the attention of the DSI; however, when AHRC staff met DSI personnel in Bangkok and raised this matter it was brushed aside as if the family were being paranoid and it was nothing to worry about at all. The unconcerned attitude of the DSI personnel surprised and disappointed our staff, given that the bone is just the latest in a string of incidents at the front of the family's residence, including a previous case where both cars belonging to the family were broken into by intruders who were apparently not interested in theft of items like CD players and other valuables. It is also alarming given that the AHRC knows from many years of work with human rights defenders and the families of victims of extrajudicial killings and torture in Thailand that violent attacks are usually preceded by a series of warnings of this sort: indeed, Somchai was himself the target of such threats, which he disregarded, right up to the moment of his abduction."

Even more seriously, one of the torture victims, Abdulloh Abukaree, was also abducted and forcibly disappeared on 11 December 2009. Another is in jail awaiting the outcome of an appeal on a conviction in another case unrelated to that over which the men were tortured and in which Pol. Maj. Gen. Chakthip was, on paper, involved. Finally, it required the use of state resources not to investigate the crimes of the police, but the crime of their victim: that is, the crime of impertinence for making a complaint against the police.

Thus, the human rights priorities of the state in Thailand are made patently clear: not to investigate alleged abuses of human rights but to investigate, prosecute and imprison persons who allege such abuses. Not to criminalize torture and imprison torturers, but the criminalize the complaint of torture and imprison the tortured. The message, which comes from the police but is broadcast through the courts as their mouthpiece is in its essence, "Don't try to stop us. All that will happen is that we will destroy your life. What we want to do, we can do."

This is a message that people in Thailand already know well. Consequently, the number of complainants of extrajudicial killing, enforced disappearance, torture and other gross abuses of human rights in Thailand remain few, not because the incidence of such abuses is low but because only the bravest persons, or those thrust into the spotlight like Suderueman, speak out. Most of those who do complain never complete the process of bringing a case to court, withdrawing under a combination of threats and offers of money to remain silent. Of those who do, some end up like Suderueman, prosecuted for their victimhood. Others end up in hiding, or dead. The case of Suderueman illustrates vividly, then, how much further the struggle against impunity in Thailand has to go. For the time being, at least, all the courts of Thailand have to offer the public for these efforts is contempt for basic human rights.

It should be noted that in highlighting this case, the AHRC is not suggesting that there is explicit collusion between state security forces and the judiciary to violate the rights of torture survivors. While this kind of collusion may well exist, securing evidence to prove it is not possible. Instead, what can be traced here is the existence of a willingness to prevent the securing of justice in multiple locations within the state, some of them more explicit and overt, others perhaps more habitual and less strategic in nature.

Persecution of Human Rights Defenders

The situation of human rights defenders (HRDs) in Thailand has long been precarious in Thailand. Speaking out against state or private interest leaves one vulnerable to a range of abuses, including assassination, which was particularly prevalent during the years of the government of ousted prime minister Thaksin Shinawatra. More recently, officials have increasingly turned to forms of legal and quasi-legal harassment of rights defenders, including criminal prosecution.

During 2011, the trial of Ms. Chiranuch Premchaiporn, web director of Prachatai.com, a news site that has provided alternative news and a platform for critical discussion and dissent since 2004, began. She has been accused of insulting the monarchy and is on trial under article 112 and the Computer Crimes Act of 2007 not for anything she wrote or said, but for allegedly not removing the comments of others quickly enough from the Prachatai.com webboard. At this time, the witness hearings in her trial are ongoing, and will continue into 2012. The Asian Human Rights Commission is deeply concerned that in light of recent political and legal developments in Thailand she will be convicted, in

which case she will face a potentially lengthy sentence for her work creating a space for others to discuss vital issues of national importance.

The prosecution of Ms. Chiranuch Premchaiporn is of concern within the broad frame of the ongoing constriction of freedom of speech in Thailand and increased prosecutions of citizens for allegedly committing the crime of lese majesty. Yet it is also deeply concerning within the context of prosecutions of other kinds of HRDs. These prosecutions can be seen as an attempt to criminalize dissent and prevent citizens from improving and changing their society.

Ms. Chiranuch Premchaiporn

In an exceptional example of this, in October 2011, Ms. Jintana Kaewkhao, an HRD in Prachuab Khiri Khan, was sentenced to four months in prison resulting from a Supreme Court decision in a case that has been in process since 2004. This decision, and the process by which it was reached over the past eight years, indicates that the very right of citizens to exercise their rights and freedoms to protest and defend their communities from harmful environmental consequences is under threat in Thailand. Like the case of the conviction of Mr. Suderueman for speaking out against his torturers, this conviction has foreclosed, rather than supported justice and the consolidation of human rights in Thailand.

For more than ten years, Ms. Jintana has fought against coal-fired power and other environmentally destructive development projects in Hin Krut and Bo Nok areas of the province. She and her colleagues in the Bo Nok-Hin Krut Nature and Environmental Conservation Group successfully prevented the construction of coal-fired power plants in their communities and have worked to develop clean and environmentally conscious forms of power in their communities.

The initial case against Ms. Jintana Kaewkhao was heard in the provincial court in Prachuab Khiri Khan province (Black case no. 1480/2545; Red case no. 3283/2546). The prosecutor alleged that the plaintiffs, who were the management of the office of Union Power Development in Prachuab Khiri Khan, were holding a party on the afternoon of 13 January 2004. While they were setting the table and otherwise preparing the room, a group of people burst into the room and threw rancid water on the table and in the ice buckets. Ms. Jintana Kaewkhao testified that she went to the offices of Union Power Development on the afternoon of 13 January 2004, but was instead there with other activists in order to present a petition to the company. When they arrived, they were met by a group of over 50 tough-looking men, and decided to return home instead. There was a clear discrepancy in the testimony of the plaintiff witnesses and that of Ms.

Jintana; further, while some plaintiff witnesses claimed that Ms. Jintana was the leader of the people who came into the dining room, others did not recognize her as among the group of trespassers. On the basis of this discrepancy, the provincial court dismissed the charges against Ms. Jintana Kaewkhao. The provincial court also made reference to the broader context of the opposition to the coal-fired power plant and the environmental, health and occupational reasons why Ms. Jintana and other community members and activists in Bo Nok and Hin Krut organized against the proposed plant.

The plaintiff appealed this decision and on 1 August 2005, the Court of Appeals for the 7th Region overturned the dismissal and convicted Ms. Jintana Kaewkhao of alleged violations of articles 362 and 365 (2) of the Criminal Code (Black case no. 3533/2546; Red case no. 2355/2548). Article 362 of the Criminal Code defines the crime and punishment of trespassing: "Whoever, entering into the immovable property belonging to the other person so as to take the possession of such property in whole or in any party or entering into such property to do any act disturbing the peaceful possession of such person, shall be imprisoned not out of one year or fined not out of two thousand Baht, or both." Article 365 (2) elaborates Article 362, and notes that if the trespassing is carried out "by a person carrying arms or by two persons upwards participating" then the punishment can increase to "imprisonment not exceeding five years or fined not exceeding ten thousand Baht, or both." The Court of Appeals overturned the decision of the Prachuab Khiri Khan provincial court on the basis that the evidence, including that provided by Ms. Jintana herself, indicated that she was present at the offices of the Union Power Development Company on the day in which the party was disrupted. While the court noted that there were discrepancies in the testimony of the plaintiff, they maintained that the defendant herself did not provide sufficient evidence to prove that she was not guilty of trespassing and leading others to throw dirty water on the dining tables. The Court of Appeals further noted that the discrepancies in the testimonies of the plaintiffs might have arisen because they were "afraid of the influence of the defendant, who was a leader of the group opposing the coal-fired power plant in Hin Krut". On this basis, the Court of Appeals sentenced Ms. Jintana Kaewkhao to six months in prison.

Ms. Jintana Kaewkhao

The defendant appealed the Court of Appeals verdict, and the Supreme Court upheld the decision and sentenced Ms. Jintana to four months in prison in a decision dated 20 December 2010 (Supreme Court case no. 13005/2553), which was read in the Prachuab Khiri Khan provincial court on 11 October 2011. The Supreme Court noted that in this case what is at stake

is whether or not the defendant was the leader of the people who trespassed and dumped dirty water on the party tables of the Union Power Development Company. It held that the inconsistencies in the testimony of the plaintiffs, and the failure of some plaintiff witnesses to identify Ms. Jintana Kaewkhao, did not diminish the weight of the testimony. The Supreme Court further argued that since there was no evidence to suggest that the plaintiff had a pre-existing conflict with the defendant, there was no reason to believe the bringing of charges was malicious. Since the defense was unable to provide conclusive evidence that Ms. Jintana was not the leader of the group who trespassed prior to the lunch party, the Supreme Court upheld the decision. The sentence was reduced to four months from six months, given that she cooperated with the process. She began serving her sentence in the Prachuab Khiri Khan provincial prison after the decision was read on 11 October 2011.

Of additional concern, the Court of Appeals indicated that the plaintiffs might have feared the influence of the defendant. The word "influence" has a particular meaning in Thailand, and is often used to refer to the confluence of private and state influences, which have access to and are not afraid to use extrajudicial means to secure their interests. For the Court of Appeals to use this language, and the Supreme Court not to challenge is not only incorrect but also cynical. Like HRDs throughout the country, those in Prachuab Khiri Khan have long faced intimidation and harassment by private capital and state officials who collude with them. But those who oppose human rights have also resorted to open violence. On 21 June 2004, Mr. Charoen Wat-aksorn, who was another leader against the coal-fired power plant and other environmental destruction in Prachuab Khiri Khan, was assassinated as he alighted from a bus after returning from testifying in front of the Senate in Bangkok.

Furthermore, earlier this year, on 31 January 2011, Mr. Pachern Ketkaew, another colleague of Ms. Jintana's, survived an assassination attempt. Mr. Pachern has worked against another proposed power generation project in Prachuab Khan, one that rather than using coal as raw material has a planned source material of trash. While the methods are different – legal sanction as opposed to extrajudicial violence – the cases of Ms. Jintana Kaewkhao, Mr. Charoen Wat-aksorn, and Mr. Pachern Ketkaew all indicate the risks for defending one's community, health and way of life against those who would destroy it in the service of profits in Thailand.

Article 112 and constriction of speech

Section 8 of the 2007 Constitution positions the King centrally within the Thai polity: "The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action." Article 112 of the Criminal Code then prescribes punishments for violations: "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years." The 2007 Computer Crimes Act stipulates additional punishments for alleged violations of national security, including insulting the

monarchy, which take place or are mediated online. The terms of the law are very broad and the AHRC has indicated in the past, and in light of how the law is being used continues to hold the view that it has been introduced to constrict further opportunities for people in Thailand to raise issues of vital importance to their society and country. On October 10, its position was reinforced by a statement from a UN human rights expert, the Special Rapporteur on freedom of expression, Frank La Rue, who issued a statement in which he called for the law to be amended and was quoted as saying that:

> "I urge Thailand to hold broad-based public consultations to amend section 112 of the penal code and the 2007 Computer Crimes Act so that they are in conformity with the country's international human rights obligations. The recent spike in lèse majesté cases pursued by the police and the courts shows the urgency to amend them.
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> "The threat of a long prison sentence and vagueness of what kinds of expression constitute defamation, insult, or threat to the monarchy, encourage self-censorship and stifle important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression. This is exacerbated by the fact that the charges can be brought by private individuals and trials are often closed to the public."

The Special Rapporteur highlighted that Thailand has been a party to the International Covenant on Civil and Political Rights since 1996, which contains legally binding human rights obligations, including the obligation to fully guarantee the right of all individuals to seek, receive and impart information and ideas of all kinds. He acknowledged that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason, under certain exceptional circumstances, the right may be limited, including to protect the reputation of individuals and to protect national security; however, that these circumstances had to be clearly stipulated and delimited, which was not the case in Thailand, he said:

> "The Thai penal code and the Computer Crimes Act do not meet these criteria. The laws are vague and overly broad, and the harsh criminal sanctions are neither necessary nor proportionate to protect the monarchy or national security."

The Special Rapporteur's calls come as in the years since the 19 September 2006 coup, there has been an exponential expansion in the use of Article 112 and the 2007 Computer Crimes Act to intimidate dissidents and constrict speech more generally. While the case of Ms. Chiranuch Premchaiporn is the case most widely followed internationally, in 2011 there have been a number of other significant sets of charges brought and prosecutions completed. In March 2011, Tanthawut Taweewarodomkul, was sentenced to 13 years in prison for allegedly violating both laws in material posted to Norporchorusa.com. In May 2011 Joe Gordon, a Thai-American man, was charged under both laws for allegedly posting a link to a Thai translation of the English-language book, The King Never Smiles, by Paul Handley, on his website. In late November 2011, the trial of Mr. Somyos Prueksakasemsuk, long-time labour rights activist and editor of Voice of Taksin and Red Power magazines, will begin. These are only several of many known, and perhaps many more unknown cases, of people charged under either article

112 and/or the Computer Crimes Act. In most article 112 and Computer Crimes Act cases, the court refuses to grant bail, and so those charged must also endure many months of pre-trial conviction.

The AHRC also was alarmed during the year at the blatant threats issued against outspoken human rights defenders by members of the army and establishment. For instance, at a press conference on April 24, Somsak Jeamteerasakul and several coalitions of academics, human rights activists, and journalists released statements calling for the protection of freedom of speech in Thailand. These statements were in response to a series of blatant threats made towards Somsak over comments that some people have considered amounted to criticism of the royalty. Among the threats, the most alarming was that from the commander of the army, General Chan-ocha, who directly criticized and derided Somsak in an interview on April 7, describing him as "a mentally ill academic" who "is intent on overthrowing the institution" of the monarchy. At the same time, Somsak was threatened extralegally. Unknown men had come on motorcycles to nearby his house, and he had been receiving harassing telephone calls.

With particular concern to how the courts have gone beyond their duty to become a proactive space of the restriction of rights, the Asian Human Rights Commission has also sought to highlight a recent Constitutional Court decision in the case or Ms. Daranee Charnchoengsilpakul. Ms. Daranee was arrested in July 2008, after making comments with alleged lese majesty content in them during rallies at Sanam Luang, in Bangkok. After being held in pre-charge detention for the longest period possible (84 days) under the Criminal Procedure Code, she was then charged with six counts of lese majesty. After close to nine months of pre-trial detention, Daranee was tried in a brief,

Ms. Daranee Charnchoengsilpakul (Photo source: New Mandala)

closed trial in June 2009. On 28 August 2009, she was sentenced to 18 years in prison for three alleged violations of article 112. For the entire duration of her case, Ms. Daranee's human rights have been systematically violated and her access to justice denied. She was repeatedly denied bail prior to her trial and repeatedly denied access to necessary medical case, despite serious health concerns. The Constitutional Court decision, like the Criminal Court decisions in the cases of Mr. Suderueman Malae and Ms. Jintana Kaewkhao, points to a deep willingness across the judiciary and state security forces to violate the human rights of citizens seen as dissident and foreclose access to justice.

Immediately following her conviction, Ms. Daranee appealed the decision on the basis that the closed trial, which the judge mandated for the vague reason of "national security", was unjust. While a closed trial is possible under the criminal law, the 2007 Constitution guarantees citizens a right to an open trial. In Ms. Daranee's case, when the prosecutor requested a closed trial and the judge approved this motion, she and her lawyer filed a motion to have the point examined by the Constitutional Court. However, the Criminal Court has discretion to determine whether or not a matter has a question of constitutionality, and it decided not to forward the motion and instead kept the trial closed. On 9 February 2011, the Appeal Court ruled that the original conviction by the Criminal Court was null.

The Appeal Court ruled that the closure of the initial trial was an improper action by the Criminal Court judge and finally sent the file to the Constitutional Court to examine whether or not the closure of Ms. Daranee's trial was a violation of the Constitution and her rights as a citizen under it. Despite her sentence being vacated, Ms. Daranee was not granted bail while her case was examined by the Constitutional Court.

The task of the Constitutional Court in this case was clear. There is an explicit tension between the Criminal Procedure Code, which allowed for trials in camera, and the 2007 Constitution, which has the scope to prohibit them, depending on the interpretation. Article 177 of the code reads:

> "The court has the power to order a secret trial when it is suitable either via the court's own authority or the request of either party in the case. It must be for the benefit of the peacefulness and order or good morals of the people, or to protect secret state information related to the safety of the country from being known by the people."

Section 29 of the 2007 Constitution reads:

> "The restriction of rights and liberties of a person as recognized by the Constitution shall not be imposed except by virtue of 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."

Part 2 of section 40 of the 2007 Constitution, which addresses the rights of citizens in a judicial process, notes that these rights:

> "shall consist at least of the right to public trial; right to be adequately informed of the facts and to inspect documents, right to present one's facts, defenses and evidence, right to object to judges, right to be considered by the full bench of judges, and right to be informed of the reasons for a ruling, judgment or order."

The tension between the procedural law and the constitution is unmistakable. What are the meanings of the words "necessity," "rights," and "liberties" in this phrase in section 29: "the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties"?

In its examination, the Constitutional Court did not shy away from the tension present. In fact, as it noted several times in the four-and-a-half pages of text ruling on the matter, the court had never before examined the constitutionality of article 177 of the Criminal Procedure Code. So, in those four-and-a-half pages, the Constitutional Court acted explicitly and swiftly to create a constitutional interpretation for the violation of citizens' human rights. The court noted:

> "Examination in secret does not mean that either side will not be treated fairly in the judicial process and does not in any way restrict the rights of the defendant in a criminal case. This is because in regards to examination in secret, Article 178 of the Criminal Procedure Code mandates that involved individuals have the right to be in the courtroom, such as the plaintiff and the plaintiff's lawyer, the defendant and the defendant's lawyer, the defendant's guards, witnesses, experts, interpreters, etc. This shows that Article 177 of the Criminal Procedure Code is an article in line with the basic rights for individuals in the justice system put in place by the Constitution even though it has some limiting effects on the rights and freedoms of individuals. But this is a limiting of individual rights and freedoms only to the extent that it is necessary. There are no significant repercussions on rights and freedoms." (AHRC translation)

By placing the emphasis on articles 177 and 178 of the Criminal Procedure Code, rather than the issue of what constitutes national security, the Constitutional Court ruled that trials held behind closed doors are absolutely fine. This is clear, deliberate and explicit step backwards for human rights and justice in Thailand. In the case of Ms. Daranee Charnchoengsilpakul, it is not only that the court has failed to be a site in which human rights can be secured, but it has become a site in which human rights are actively violated and justice is proactively foreclosed. As such, the ruling in this case signifies the larger condition of human rights for people in Thailand generally under the revitalized internal security state.

The Asian Human Rights Commission has for some time been warning the international human rights community that Thailand has been steadily regressing towards a new type of anti-human rights and anti-rule of law system in which the values associated with these concepts are advertised widely at home and abroad but in which state institutions are not only emptied of those values, but in fact are inverted to serve precisely the opposite ends from what they purport to serve. It is by now clear that the project towards this anti-human rights and anti-rule of law system in Thailand is well underway. The elections of

2011 do not appear to have brought an end to the progress of this project, although they have perhaps slowed it. Notwithstanding, if the creeping entrenchment of military-backed authoritarian forces in Thailand is not forcefully and openly addressed by all persons concerned for the future of human rights in that country, then it will add many years to the amount of time that it will already take for the country to dig itself out of the hole into which the 2006 coup put it.