

Enforced Disappearances and the Application of International Humanitarian Law to the Conflict in the Southern Border Provinces of Thailand

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This paper finds that Thailand has failed to uphold its positive obligations to prevent enforced disappearance and torture and argued that international humanitarian law (IHL) could be applied in southern border provinces (SBPs). However, this argument was countered by the Royal Thai Government's (RTG) refusal to acknowledge that the situation in SBPs could be recognized as a non-international armed conflict. Thus, this paper found that it is not appropriate to utilise jus in bello and the specific provisions in IHL that prohibit enforced disappearance. It is argued that enforced disappearance could in some cases amount to a form of torture as the victim's next of kin is subjected to mental torture. The RTG has failed to take legislative steps to ensure adequate redress and restitution for the next of kin. Additionally, the RTG has neither criminalised torture nor included enforced disappearance as an offence in its penal code, as required by the international human rights instrument it has ratified. It is concluded that the immunity

clauses in the special security laws in the SBPs exacerbate the risk of enforced disappearance and potentially mental torture of the next of kin. Thailand has disproportionately derogated from its obligations under international human rights law and should place a 'strict proportionality test' before re-imposing special security laws. Thailand is therefore currently not upholding international human rights standards.

I. Introduction

The purpose of this paper is to research how the Royal Thai Government is upholding international human rights standards, in regards to enforced disappearance, particularly in the Southern Border Provinces. This paper will draw upon the link between enforced disappearance and torture, to establish that there is a connection between the two acts and that enforced disappearance could constitute a form of torture. This will be done to crystallise the nature of Thailand's non-derogable obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹. The right to liberty and security, as guaranteed under the multilateral International

¹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984.

Covenant on Civil and Political Rights (ICCPR)² will be discussed in relation to enforced disappearance. The RTG has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CPED)³ and this paper will therefore instead draw on the state's obligations under the above-mentioned international human rights instrument.

It will further be argued that the situation in SBPs could amount to a non-international armed conflict and therefore international humanitarian law (IHL) could be applied. Thailand has not ratified the Rome Statute, but it is a party to the four Geneva Conventions. Common Article 3 of the 1949 Geneva Conventions and Article 4.2 of the 1977 Additional Protocol II,⁴ which expressly prohibit the commitment of acts that result in a person's disappearance, will thus be utilised in this paper to argue that RTG has a positive obligation under IHL to prevent enforced disappearance and torture. This paper argues that the RTG should amend its Criminal Procedure Code (CPC) and 2007 Constitution to include the crimes of enforced disappearance and torture. The failure of the RTG to establish these crimes as offence undermines its commitment to uphold international human rights standards and advocate accountability that would counter impunity, particularly in the SBPs. The three special security laws in the

² International Covenant on Civil and Political Rights (ICCPR), UNGA Res 2200A (XXI) 21 GAOR Supp 16, 52, UN Doc A/6316 (1966), 999 UNTS 171 (entered into force March 23, 1976).

³ International Convention for the Protection of All Persons from Enforced Disappearance 2006.

⁴ Geneva Conventions (12 August 1949) Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I, 8 June 1977).

SBPs will be examined to discuss the RTG's compliance with the international human rights mechanisms it has ratified.

It is vital to examine human rights violations in Thailand, such as enforced disappearance and torture, to distinguish how the RTG has failed to comply with international human rights standards. A specific focus has been given to the SBPs and enforced disappearance due to the fact that enforced disappearance is arguably one of the most inhumane crimes a state can commit. This paper will argue that the arbitrary deprivation of liberty by a state should be considered as a *jus cogens* norm as it leads to the torture of the indirect victim, the bereaved next of kin.

This paper will also argue that the position of the bereaved should be legally strengthened and there should be no legal obstacle to challenge the legality of the detention and file an effective writ of *habeus corpus*. Further, the rule of law and proper due process should be respected to pledge an unwavering commitment to protect rights, as stipulated in the ICCPR. This paper will begin with examining Thai Domestic Law and the applicable provisions in the CPC.

II. Methodology

This chapter will discuss how the research objective has been achieved and its methodological considerations.

Secondary research has been the principal recourse; one of the key tools in the production of this paper was the use of shadow reports from civil society organizations (CSOs) and INGOs, such as Amnesty International (AI), for Thailand's state review of the by the Committee against Torture (CAT) in April 2014. This paper also utilizes existing reports published by the National Human Rights Commission

(NHRC), the International Commission of Jurists (ICJ) as well as the Justice for Peace Foundation (JPF).

In relation to a theoretical aspect, primary law analysis is implemented to understand the interaction between Thai domestic law and international human rights law. A critical approach is taken to some extent to deconstruct and scrutinize the wording of international human rights instruments, CPC and the three special security laws in the SBPs. The critical approach in conjunction with the primary law analysis, allows the identification of vague legal jargon within the relevant provisions of the Thai domestic framework as detrimental. Broad wording also perpetuates impunity for perpetrators of enforced disappearance and torture in Thailand, in particular the SBPs. Thai domestic law, related to the research question, is thus carefully examined. The wording of international human rights instruments of enforced disappearance and torture is also reviewed.

Substantively, textual analysis has been utilised as this paper analyses legislations and international treaties. A few emblematic cases of enforced disappearance are shortly introduced, but due to spatial restrictions and time constraints, this paper does not adopt a case study approach. The textual analysis partially includes the ruling of specific cases, which could be indirectly and directly attributed to the research question of this paper.

There is arguably a lack of academic sources available on the impact the alarming phenomena of enforced disappearance in Thailand and SBPs has had on Thailand's human rights record. The parameters of the argument of this paper have been constrained by international human rights treaties on the topic. To conclude, this chapter has strived to describe the

theoretical and substantive tools in the context of legal methodologies employed by this paper.

III. The Southern Border Conflict

3.1 The South – a Non-International Armed Conflict

The unrest, which is waged between separatist insurgents mainly comprising of ethnic Malay Muslims and Thai government forces, has claimed the lives of over 5000 people and injured over 10,201, as of June 2013.⁵ The Internal Security Operations Command (ISOC), a Thai military unit that is devoted to issues of national security, operates in the SBPs. The conflict arguably emanates from attempts by the Thai authorities to arbitrarily assimilate the Malay Muslims, irrespective of distinctive differences in language, culture, and religion between the two groups. The marginalisation of the Malay Muslims, who seek autonomy for the region, has led to violent insurgency movements such as the Barisan Revolusi Nasional (BRN) and Pattani United Liberation Organization (PULO), which target public figures, such as teachers, that symbolise the control of the RTG within the separatist region. According to a 2011 Amnesty report 'insurgent groups are typically organized into cells, with leadership that is decentralized, loosely coordinated, and largely anonymous...BRN is likely the strongest and best organized of the many groups fighting since 2004.'⁶

⁵ Human Rights Watch World Report, 'Thailand: Events of 2012' (2013) <<https://www.hrw.org/world-report/2013/country-chapters/thailand>> accessed 31 May 2018.

⁶ Amnesty International, 'They took nothing but his life – Unlawful Killings in Thailand's Southern Insurgency' (AI Index: ASA 39/002/2011).

According to the People's Empowerment Foundation, from January 2004 to October 2011, 8000 cases were related to national security in the region. Furthermore, only 16% of those detained were charged. Despite the government's implementation of the Strategic Plan for Development of Justice Process in the SBPs of Thailand 2010–2014, the violence continues to escalate.

This paper will argue that the situation in the SBPs could be classified as a non-international armed conflict and therefore IHL could indeed be applied, as suggested by a 2012 HRW report.⁷ This view is not shared by the RTG, which endorses a rhetoric that refers to the situation in the Southern Thailand as 'insurgence' and 'organized crime'.⁸ In a response to the 2011 report by AI, the Thai Ministry of Foreign Affairs claimed, 'the issue of the SBPs remains in the realm of Thailand's domestic affairs and all criminal elements will be subjected to domestic criminal law.'⁹

Common Article 3 and Article 1 of 1977 Additional Protocol II to the 1949 Geneva Conventions¹⁰ apply when conflicts take place within the territory of a single state, thus, to non-international armed conflicts. Common Article 3, which is binding on all parties involved in internal armed conflicts, provides that certain acts against 'persons taking no active part in the hostilities ... are and shall remain prohibited at

⁷ Human Rights Watch World Report (n 5).

⁸ Benjamin Zawacki, 'Politically Inconvenient, Legally Correct: A Non-International Armed Conflict in Southern Thailand' [2013] 18(1) *Journal of Conflict and Security Law* 151.

⁹ Amnesty International Report (n 6).

¹⁰ Geneva Conventions Additional Protocol (n 4).

any time and in any place whatsoever...'¹¹ According to Jelena Pejic: 'despite the lack of a legal definition, it is widely accepted that non-international armed conflicts governed by Common Article 3 are those waged between state armed forces and non-state armed groups or between such groups themselves'.¹²

Despite the fact that there is no agreed upon definition of 'armed conflict' in international law, according to the International Criminal Tribunal for the Former Yugoslavia (ICTY)¹³, two conditions must be met for an eruption of violence inside a state to ascend to constitute a non-international armed conflict; non-state armed groups must be organised and carry out hostilities in a prolonged manner. The duration of the conflict and organisational structure of insurgents in SBPs discredit the view that the situation would amount to an internal disturbance, rather than a non-international armed conflict. Following this rationale, this section argues that instead of being governed by domestic

¹¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *The International Committee of the Red Cross, Customary International Humanitarian Law*, Volume 1 Rule 2 (Cambridge University Press, 2005) 8-11; see also Rome Statute of the International Criminal Court, adopted on 17 July 1998. (A/CONF.183/9), entered into force 1 July 2002, art 8(2)(e) and 8(2)(c)(i).

¹² Jelena Pejic, 'Selected Article on International Humanitarian Law - The protective scope of Common Article 3: More Than Meets the Wye' [2011] 93(881) *International Review of the Red Cross* 191.

¹³ *Prosecutor v Dusko Tadic (Appeal Judgement)*, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (15 July 1999)
<<http://www.refworld.org/cases,ICTY,40277f504.html>> accessed 26 August 2018.

law and regulated by international human rights law, the situation in the SBPs could be in fact governed by binding international humanitarian law.

A similar argument is echoed in AI's call for 'insurgents to immediately cease attacks deliberately targeting civilians, indiscriminate attacks, and other violations of international humanitarian law, many of which constitute war crimes.'¹⁴ The report further states 'targeting persons taking no active part in hostilities violates one of the key rules of international humanitarian law, as it pertains to armed conflicts such as the one in southern Thailand, which is an internal or 'non-international' conflict.'¹⁵

3.2 Special Security Laws in SBPs

The combination of the 1914 Martial Law Act, the 2005 Emergency Decree and the 2008 Internal Security Act, has allowed a noticeable weakening of legal and procedural safeguards. Under these three laws, legal guarantees are substantially reduced and additional powers are granted to state officials, particularly under the Emergency Decree and Martial Law. The CPC enshrines rights aimed at protecting alleged offenders. For instance, Section 107-119 guarantees the right to be released on bail, Section 134/1 secures the right to have legal counsel and Sections 78, 87 and 91 contain provisions in regards to right related to arrest, detention and search. Furthermore, Section 90 grants the right to request *habeus corpus*.¹⁶

¹⁴Amnesty International Report (n 6) 6.

¹⁵ Ibid 5.

¹⁶ Criminal Procedure Code of Thailand, BE2477 as Amended by BE 2551, 2008.

Despite the lack of regulation prohibiting access to lawyers, according to Amnesty International, lawyers are in practice not allowed to see detainees that are being held under the Emergency Decree or Martial Law.¹⁷ Lack of regular access to lawyers and medical personnel seriously undermines the fundamental rights of the detainee. Amnesty further argues that:

[...] torture and other ill-treatment have become systematic, in significant part due to provisions of Martial Law and the Emergency Decree in effect in SBPs. These provisions effectively facilitate the practice of torture by creating circumstances under which it can go virtually undetected by superior officers in the short term, and by codifying immunity from prosecution for officials who perpetrate, permit, or refuse to punish human rights violations, including torture and other ill-treatment.¹⁸

Between mid-2007 and mid-2008, 'reports of torture and other ill-treatment by individuals and their families in the south increased significantly'¹⁹. In 2005, Thailand was informed by the HRC; 'detention without external safeguards beyond 48 hours should be prohibited'.²⁰ This paper will also argue that the special laws are a direct violation of Article 9

¹⁷ Amnesty International (Thailand), 'Time to end human rights violations', Submission to the UN Universal Periodic Review (October 2011) 8.

¹⁸ Amnesty International (Thailand), 'Torture in the southern counter-insurgency' (AI Index ASA 39/001/2009) 23.

¹⁹ *Ibid* 5.

²⁰ UN Human Rights Committee, 'Report of Human Rights Committee' UN Doc (60th Session, Supplement 40, 2004-5) A/60/40 Volume I, para 95(13) 85.

of ICCPR.²¹ The RTG has addressed the allegations of the 2011 AI report and claims that there is a 'gradual discontinuation of the special security laws' and 'decrease in ISOC personnel.'²²

i) Martial Law Act 1914

RTG invoked the Martial Law in January 2004, and re-imposed it via a coup d'état in September 2006, after a 14-month period during which it was not in effect. Martial Law was invoked for Narathiwat, Pattani, and Yala provinces, and for four districts of Songkhla province. Concerns have been expressed in relation to Section 15 *bis* of the Martial Law, which states that on the ground of suspicion, a person can be detained for interrogation for seven days without charge.²³

The application of the Act²⁴ grants greater powers to Thai security forces in the region. For instance, Section 6 gives supreme power to the military over civil authority operating in the region and Section 8 grants the military full power of eviction, prohibition and compulsory requisition. Furthermore, the Act enables the prohibition of any types of political gatherings, and allows for the arbitrary arrest and detention of individuals without charge, which is a clear violation of procedural fairness, particularly without the possibility of judicial review of the arrest warrant. It was recommended by the 2011 UPR Working Group that Thailand 'abolish provisions in the Martial Law Act...which

²¹ ICCPR (n 2) Art 9.

²² Amnesty International Report (n 6) 53.

²³ Martial Law BE 2457 (1914), Section 15 *bis* 'On the ground of suspicion, a person can be detained for interrogation for seven days without charge'.

²⁴ *Ibid.*

grant immunity for criminal and civil prosecution to State officials' and 'consider reviewing security laws to ensure their conformity with international human rights standards' by the 2011 UPR Working Group.²⁵

ii) Emergency Decree on Public Administration in Emergency 2005

The Emergency Decree was issued on 19 July 2005, initially applicable to Narathiwat, Pattani, and Yala and with the purpose to temporarily replace Martial Law. Both laws however remain in effect. As previously mentioned, Section 17 limits accountability and provides legal immunity.

Section 17. 22

*A competent official and a person...shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act if such act was performed in good faith...*²⁶

Section 17 arguably contradicts General Comment 2 of CAT, which states that,

States parties are obligated to adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging,

²⁵ UN Human Rights Council, '19th Session Agenda Item UPR Report of the Working Group on the Universal Periodic Review' (Thailand, 8 December 2011) UN Doc A/HRC/19/8 <<http://www.refworld.org/docid/4f269ba72.html>> accessed 31 May 2018, 20.

²⁶ Emergency Decree on Public Administration in Emergency BE 2548 (2005) Section 17.

acquiescing and in otherwise participating or being complicit in acts of torture defines in the Convention.²⁷

Section 12 grants state, police, and military officers, referred to as 'competent officials', the authority to detain and arrest individuals for up to 30 days in the name of national security, and with no specific requirement to produce a detainee before a judge. ISOC Region 4 Regulation reaffirms that it is not necessary to bring a detainee before a judge, unless requested so by a court. The preventative measure, in combination with the Martial Law, allows for the lawful detention of a person for up to 37 days. Further, it also was recommended that Thailand repeal 'Section 17 of the Emergency Decree' by the 2011 UPR Working Group.²⁸

iii) The Act on Internal Security (ISA) 2008

ISA was passed on 20 December 2007 and came into force in February 2008²⁹. AI has expressed concern with regards to 'the prospect of the ISA being substantively applied to ISOC's counter-insurgency efforts in the south, for its language is sufficiently broad and vague as to potentially permit torture or other ill-treatment: '... ISOC shall have the following powers and duties: (1) to prevent, suppress, suspend, inhibit, and overcome or mitigate the situation.'³⁰

²⁷ UN Committee against Torture (CAT), 'General Comment 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2/CRP. 1/Rev.4, para 13.

²⁸ UN Human Rights Council (n 25) 20.

²⁹ Internal Security Act BE 2551 (2008).

³⁰ *Ibid* Section 16(1).

Further, the ISA preamble explicitly contains restrictions on various sections of the 2007 Constitution that provide the rights and liberties of persons, including Section 32, which prohibits the use of torture.³¹ One could also question whether ISA is necessary and applicable in the containment of insurgency in the SBPs as Section 15, which states,

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 of Public Administration in an Emergency Situation...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.³²

This emphasises the fact the 2005 imposition of the Emergency Decree has been neglected in the imposition of ISA in 2008.

Domestic Law and Human Rights

4.1 Persisting Human Rights Violations and Issues

This chapter will examine persisting human rights violations and issues in Thailand, a constitutional monarchy. The structural, judicial, and political challenges faced by Thailand

³¹ Ibid; Preamble, 'This Act contains provisions which impose restrictions on the right and liberties of the people as allowable under Section 29 and Section 31 with Section 32, 33, 34, 36, 41 and 34 of the Constitution of the Kingdom of Thailand by virtue of the provision of the law.'

³² Ibid Section 15.

will be examined to identify how torture and the arbitrary deprivation of liberty by the state have manifested and how they are addressed by the state. Issues relating to the criminalisation of torture, the reduction of rights, and procedural safeguards in SBPs will be contemplated.

The Constitution of the Kingdom of Thailand of 2007³³ incorporates equality without discrimination, human dignity as well as the liberties and rights of persons as stipulated in the Universal Declaration of Human Rights (UDHR). The provisions on Rights and Liberties in the Constitution can be directly invoked in case of human rights violations. Section 197 of the 2007 Constitution provides for an independent judiciary. Thailand has also developed multiple mechanisms for the protection of human rights³⁴, including independent bodies and decentralised mechanisms established under the administrative, judicial and legislative branches. Notable mechanisms include: the NHRC; the Ministry of Justice, the Rights and Liberties Protection Department and the Parliamentary Committee on Justice and Human Rights. Furthermore, Thailand was among the first 48 countries to endorse the UDHR on 10 December 1948.³⁵ The country is also party to 7 core international human rights instruments, including ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and CAT. The RTG has also stated 'the Government had been working to include a definition of torture in domestic law.'³⁶

³³ Constitution of the Kingdom of Thailand (2007), Chapter III, Rights and Liberties of Thai People, Section 26, 27 and 28.

³⁴ Human Rights Council, Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5* (30 September 2011).

³⁵ *Ibid.*

³⁶ UN Human Rights Council (n 25) 9.

Despite Thailand's relatively strong level of commitment to international human rights instruments, particularly in the Southeast Asian region, the question remains as to what extent the implementation successfully formulates on an executive, legislative, and judicial level. It is also vital to discuss the shortcomings that inhibit the full implementation of CAT. Thailand has not ratified CPED, despite signing it on 9 January 2012.

This chapter will partially draw from the Concluding Observations from CAT, in order to argue that Thailand is not upholding its obligations under CAT. CAT will be utilised to demonstrate that enforced disappearance and torture are interwoven phenomena and enforced disappearance could be considered as a form of torture. This will be discussed in more detail in a later chapter in this paper.

4.2 Torture

An in-depth review of the reports and the Observations of CAT revealed that torture remains a prevalent issue in Thailand. Between 2007 and 2013, the NHRC received a total of 134 complaints of torture, including 14 complaints in 2013.³⁷ Over 75% of all torture complaints received by NHRC during that period originated from the SBPs, of which 71% concerned the practice of torture by the army.

³⁷ Amnesty International, Submission to the UN Committee on Torture (Submission to the Committee against Torture CAT, April 2014) 6.

In three different legal instruments, the Constitution of Thailand,³⁸ the Criminal Procedure Code (CPC)³⁹ and the Criminal Code,⁴⁰ the term 'torture' is included. Furthermore, victims of torture have the right to seek compensation and redress under civil and criminal law, including the Damage for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act of 2001.⁴¹ The use of evidence obtained through unlawful means is expressly prohibited in Section 226/1 of the CPC. Torture itself however is not considered a criminal offense in Thai domestic law. The lack of criminalisation of torture poses grave challenges, especially in regards to the liability of the state for torture committed by agents of the state and adequate prosecution. This paper argues that it is insufficient to try a perpetrator under an offence that is similar to torture. The act of torture must be clearly stipulated and defined so that the gravity of the offence can be addressed.

A draft law that would address torture as a distinctive crime and would be separate from the CPC and the Criminal Code, was proposed by CSOs in 2010.⁴² Despite efforts to create a separate legal instrument, the Law, Justice and Human Rights Committee instead proposed an Act to amend the CPC. Article 166/1 of the proposed act would however restrain the definition of torture to Section 297 and 276 of the

³⁸ Constitution of the Kingdom of Thailand (n 33) Section 32(2).

³⁹ Criminal Code B.E 2499, Sections 296, 298, 289(5), 313(2), 340(4), 340 bis (5).

⁴⁰ Criminal Procedure Code BE 2478, Section 135.

⁴¹ The Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act BE 2544 (2001).

⁴² The Draft of the Act of on Amendments of the Penal Code (No) BE and a Draft of the Act on Amendments of the Criminal Procedure Code (No) BE

Criminal Code, and subsequently would not be in line Article 1 of CAT.⁴³

Section 297. Whoever, commits bodily harm, and thereby causing the victim to receive grievous bodily harm, shall be punished with imprisonment of six months to ten years. Grievous bodily harms are as follows:

1. *Deprivation of the sight, deprivation of the hearing, cutting of the tongue or loss of the sense of smelling;*
2. *Loss of genital organs or reproductive ability;*
3. *Loss of an arm, leg, hand, foot, finger or any other organ;*
4. *Permanent disfiguration of face;*
5. *Abortion;*
6. *Permanent insanity;*
7. *Infirmity or chronic illness which may last throughout life;*⁴⁴

Furthermore, in General Comment 2, CAT interpreted that ‘discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity...’⁴⁵ The proposed Act could also be deemed inadequate and insufficient as it limits the definition of the perpetrator⁴⁶ and the possible purposes of torture⁴⁷ and does not appear to adhere to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

⁴³ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (26 June 1987), Art 1.

⁴⁴ Criminal Code (n 39) S297.

⁴⁵ CAT General Comment 2 (n 27).

⁴⁶ Proposed Act to Amend the Criminal Procedure Code (n 42) Draft Art 166/1 para 1.

⁴⁷ Ibid para 2.

known as the Istanbul Protocol.⁴⁸ To ensure its conformity with international human rights standards, Thailand should incorporate a clear definition of torture in its domestic legislation, which would be aligned with the Convention and affirm the non-derogable nature of the prohibition of torture.

In its observations the Committee indeed stated:

[W]hile noting that Section 32, paragraph 2 of the Constitution of Thailand prohibits acts of torture, the Committee is concerned about the absence of a definition of torture and the absence of an offence of torture in accordance with the Convention in the State party's legal system...the Committee is concerned that the draft penal code provision on torture (a) does not reflect the non-exhaustive list of purposes for which torture may be inflicted nor does it include discrimination as a purpose.⁴⁹

Torture usually takes place during detention and it is therefore vital to discuss the legality of detention in the SBPs. Article 2, 11 and 16 of Section 7/1 of the CPC provide for legal and procedural safeguards. Section 7/1 of CPC is however severely undermined by ISA and Section 17 of the Emergency Decree. Thus, evidence points that counter-insurgency measures and the special laws in SBPs facilitate the violation of legal safeguards, and increase the risk of torture and enforced disappearances.

⁴⁸ UNHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004) Professional Training Series No 8/Rev.1.

⁴⁹ United Nations Committee against Torture (CAT), 'Concluding observations on the initial report of Thailand' (20 June 2014) UN Doc CAT/C/SR.1239, para 9.

4.3 Enforced Disappearances

Torture and enforced disappearances are most prevalent in SBPs in Thailand, where the state has struggled to contain the conflict and promote the rule of law and reconciliation. The National Reconciliation Commission in 2005 was informed of 23 cases of enforced disappearances in the conflict area between 2003 and 2005. 17 families received limited compensation and the Commission was later inexplicably dissolved.⁵⁰

However, JPF recorded more than 90 cases throughout the country between 1991 and 2010.⁵¹ The Committee on the Elimination of Racial Discrimination (CERD), in its Observations on 15 November 2012, stated that the 'Committee remains seriously concerned at the discriminatory impact of the application of the special laws in force in the southern border provinces...as well as reports of torture and enforced disappearance of Malayu Thais...' CERD recommended that Thailand should 'review the special laws with a view to meeting international human rights standards, particularly those in regard to the prevention of torture.'⁵²

⁵⁰ Pratubjit, Neelapaijit *We Need the Truth: Enforced Disappearances in Democratic Countries: Enforced or involuntary disappearances in Thailand – Challenges and Hopes* (Equipo de Estudios Comunitarios y Accion Pisosocial - ECAP 2009) 66.

⁵¹ Ibid 55.

⁵² UN Human Rights Council, 'Non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of over-incarceration and overcrowding' (36th Session, 11-29 September 2017) UN Doc C/THA/CO/1-3, para 21.

With regards to legal remedies for the bereaved of the victims of enforced disappearance, according to Section 5(2) of the CPC:

*The following persons may act on behalf of the injured person: The ascendant of descendant, the husband or wife... in which the injured person is so injured that he died or is unable to act by himself.*⁵³

The families of victims of enforced disappearance in Thailand can therefore not exercise their legal rights, in cases where the body of the disappeared has not been located and the death cannot be established. 'The right of families to know the fate of their [disappeared] relative' is established in Article 32 of the Protocol I to the Geneva Conventions.⁵⁴

Additionally, close family members are presumed to be victims of torture or ill treatment where there is enforced disappearance in international law. The rationale for this is in the severe suffering caused to the family member of the disappeared. The ECtHR, in its judgment *Kurt v. Turkey*⁵⁵ of 25 May 1998, stated '*...having regard to the fact that the complainant was the mother of the victim of a human rights violation*', the Court found that she was '*herself the victim of the authorities' complacency in the face of her anguish and distress...*' and that the State was in breach of article 3 of ECHR.⁵⁶ It could therefore be argued that Section 5(2) of CPC perpetuates the torture and mental anguish subjected to by the family of the disappeared.

⁵³ Criminal Procedure Code (n 39).

⁵⁴ Geneva Conventions Additional Protocol (n 4) Art 32.

⁵⁵ *Kurt v. Turkey*, App No 24276/94 (ECHR, 25 May 1998).

⁵⁶ European Convention on Human Rights, Art 3.

Thailand should also strengthen the position of the next of kin, the indirect victim, particularly in terms of *habeus corpus* proceedings on the victim's behalf. *Habeus corpus* proceedings could prove to be an effective remedy for the indirect victim of enforced disappearance, if the position is indeed strengthened. This paper will now proceed to discuss the practice of enforced disappearances and deprivation of liberty by the state in international law.

IV. International Law

5.1 Relevant legal framework

The key international instrument that explicitly prohibits enforced disappearances is CPED, the first universally binding instrument regarding enforced disappearances. The Convention entered into force on 23 December 2010.⁵⁷ To date, 93 states have signed CPED and 42 states have ratified the Convention. Lisa Ott notes that 'within the UN system, enforced disappearance was first formally addressed in 1978, when the General Assembly adopted a specific resolution on 'Disappeared Persons.'⁵⁸ The UN Commission on Human Rights in 1980 established the Working Group on Enforced Disappearances (WGEID). Applicable instruments, in the international context, are the Inter-American Convention on Forces Disappearances of Persons, the first legally binding instrument on enforces disappearances,⁵⁹ and the UN Declaration for the Protection of all Persons from Enforces

⁵⁷ Lisa Ott, *Enforced Disappearances in International Law* (Intersentia 2011) 90.

⁵⁸ *Ibid* 7 See also: UNGA Res 33/173 (1978)

⁵⁹ *Ibid* 12.

Disappearances.⁶⁰ Both instruments however are of limited significance as the Inter-American Convention's scope is restricted to the jurisdiction of the Inter-American Court of Human Rights and the Inter-American Commission of Human Rights⁶¹ and the Declaration is a General Assembly Resolution and not an international treaty.

This paper draws mainly from CAT and ICCPR, as Thailand has not ratified CPED. Article 7 of ICCPR states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...' CERD also clearly stipulates a duty to uphold the 'right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution'.⁶² The prohibition of torture and enforced disappearance are inherently linked and therefore the applicability of ICCPR and CAT in regards to enforced disappearances is in line with the narrative and argument of this paper.

5.2 Practice of Enforced Disappearance – Deprivation of Liberty by State

This chapter will discuss the deprivation of liberty by the state – enforced or involuntary disappearance. By 2010 the WGEID had received 53,778 complaints of enforced

⁶⁰ Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1992) GAOR Supp 49, 207, UN Doc A/47/49.

⁶¹ Inter-American Convention on Forced Disappearances of Persons, (1994), Art XIII.

⁶² International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (entered into force 1969), Art 5(b).

disappearances.⁶³ An enforced disappearance takes place when a person is arbitrarily detained, abducted, or arrested or deprived of their liberty by the acquiescence of the state, whether directly or indirectly through the use of law enforcement officials. Lisa Ott argues that 'in international law, the conception of enforced disappearance as a human rights violation and a crime committed directly or indirectly by State agents is agreed upon in principle.'⁶⁴ Most commonly, a refusal by the state to disclose the fate or location of the person deprived of their liberty will follow. The state will also most certainly refuse to acknowledge the deprivation of liberty, which subsequently places the disappeared outside the protection of the law.⁶⁵ Typically, there will be no judicial procedure, no arrest warrant and the victim might be a target for political reasons.⁶⁶

As a consequence, the victim will not have access to legal remedies nor protection from other dire human rights violations. Enforced disappearance therefore amount to multiple violations, such as the right to be free from arbitrary detention, the right to humane conditions of detention, the

⁶³ UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances' (2 March 2012) UN Doc A/HRC/19/58/Rev.1, para 7.

⁶⁴ Lisa Ott (n 57) 26.

⁶⁵ To be placed outside the protection of the law means 'the deprivation of liberty or detention of the person (is) not covered by the rules relating to deprivation of liberty or detention, or that those rules were not in accordance with applicable international law.'

⁶⁶ See also: UN Commission on Human Rights, 'Report of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance' (2 February 2006) UN Doc E/CN.4/2006/57, para 92.

right to family life, the right to fair trial, the right to life, the right to security and dignity of a person, and the right not to be subjected to torture.⁶⁷ In *Velasquez Rodriguez v. Honduras*, the court noted that the 'forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obliged to respect and guarantee'.⁶⁸ Therefore, states must adhere to their positive obligation to effectively respond and prevent such violations.⁶⁹ It should be noted that Thailand has not ratified CPED.

According to article 1 of CPED:

Article 1:

1. *No one shall be subjected to enforced disappearance.*
2. *No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability*

⁶⁷ International Convention for the Protection of All Persons from Enforced Disappearance (CPED) (entered into force 2006), Art 2.

⁶⁸ *Velásquez Rodríguez v. Honduras* (1988) Inter-American Court of Human Rights, para 155. On enforced disappearances as a continuous crime, see also UN Human Rights Council, General Comment on Enforced Disappearances as a Continuous Crime (26 January 2011) UN Doc. A/HRC/16/48, 10-12; UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances: General Comment on the Right to the Truth in Relation to Enforced Disappearances' (26 January 2011) UN Doc A/HRC/16/48; *Ibid.*, 12-17.

⁶⁹ *Kurt v. Turkey* (n 55) paragraph 124; *Velásquez Rodríguez Case* no (Inter-American Court of Human Rights (Ser. C), 26 June 1987) paragraphs 166, 176, 177; *Juan Humberto Sanches v. Honduras*, no 99 (Inter-American Court of Human Rights (Ser. C), 7 June 2003), Ser. C, para 184.

*or any other public emergency, may be invoked as a justification for enforced disappearance.*⁷⁰

5.3 Enforced Disappearances as a form of torture

CPED however does not explicitly establish the principle universal jurisdiction, nor does it validate the notion that the prohibition of enforced disappearance could be considered as a *jus cogens* norm and an *erga omnes* obligation. Oette argues that the ‘practice of torture persist in many countries despite its absolute prohibition under international law’.⁷¹ One could however question whether an enforced disappearance constitutes a violation to the right to life, right to liberty and security and could therefore be considered as a form of torture in its own right.

There is a clear overlap in the dehumanising act of torture and enforced disappearance. As mentioned in the previous chapter, in the case of an enforced disappearance, torture is inflicted on the next of kin as a form of ‘severe mental suffering’, as it is on the victim. According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power the term ‘victim’ also includes, where appropriate, the immediate family or dependents of the direct victim.’⁷² Furthermore, in the case of *Maria del Carmen Almeida de Quinteros v. Uruguay*, the HRC viewed that the mother’s right

⁷⁰ CPED (n 67) Art 1.

⁷¹ Lutz Oette and Ilias Bantekas, *International Human Rights Law and Practice* (CUP 2013) 326.

⁷² The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Annex 2 Victims of Crime (29 November 1985).

had also been violated, namely under article 7;⁷³ 'the Committee understands the anguish and stress caused to the mother by the disappearance of her daughter... these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, article 7'. Further, WGEID in a General Comment has emphasised that a State 'cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives.'⁷⁴

It is useful to note that torture of the victim of the disappearance cannot on most occasions be proven due to the physical absence of the person. Moreover, public authorities and law enforcement agents are often the perpetrators of both of these crimes and subsequently legal and procedural safeguards are not respected. According to the WGEID 'the very fact of being detained as a disappeared person, isolated from one's family for a long period is certainly a violation of the right to humane conditions of detention and has been represented to the Group as torture.'⁷⁵ The acknowledgment by WGEID that enforced disappearance itself constitutes

⁷³ Human Rights Committee, *María del Carmen Almeida de Quinteros et al v Uruguay* (21 July 1983) UN Doc CCPR/C/19/D/107/1981 (Communication No 107/1981; See also: Art 7 ICCPR, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

⁷⁴ UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances: General Comment on the Right to the Truth in Relation to Enforced Disappearances' (26 January 2011) UN Doc A/HRC/16/48, para 39.

⁷⁵ UN Economic and Social Council, 'Report on the Working Group on Enforced or Involuntary Disappearances' (21 January 1983) UN Doc E/CN.4/1983/14, para 131.

torture and other prohibited ill treatment is crucial to the argument of this paper.

In the case of *El-Megreisi v. Libyan Arab Jamahiriya*, the CAT found that ‘...Mr. Mohammed Bashir El-Megreisi, by being subjected to prolonged incommunicado detention in an unknown location, is the victim of torture and cruel and inhuman treatment, in violation of Articles 7 and 10, paragraph 1, of the Covenant.’⁷⁶ In the above-mentioned case, the Committee described a case of disappearance as torture. According to a report by the Special Rapporteur of the Commission on Human Rights, ‘the working definition of ‘disappearance’ refers also to the refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty’.⁷⁷

5.4 Jus in Bello - International humanitarian law

This paper will attempt to argue that IHL could be applied to some extent to the SBPs, where the emergency laws are imposed. HRW argues ‘under the laws of armed conflict, which are applicable in the fighting between the insurgents and Thai government forces in southern Thailand, deliberate attacks on civilians are war crimes.’⁷⁸

As previously mentioned, enforced disappearance is a crime under international law. When committed as part of a widespread or systematic attack on a civilian population, the act amounts to a crime against humanity, as stipulated by

⁷⁶ CPED (n 67).

⁷⁷ Ibid 2.

⁷⁸ Human Rights Watch, ‘Thailand: Separatists Targeting Teachers in South’ (Human Rights Watch 2014) <<https://www.hrw.org/news/2014/03/30/thailand-separatists-targeting-teachers-south>> accessed 31 May 2018.

article 7(i) of the Rome Statute of the International Criminal Court (ICC)⁷⁹.

Article 7:

For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (i) *Enforced disappearance of persons*

Furthermore, Thailand has not acceded to the Rome Statute⁸⁰. According to Lisa Oette 'it must be underlined that under the Convention, also isolated or few cases of enforced disappearances shall be subject to punishment. Thus, states have the duty to introduce liability for the act of enforced disappearances committed outside of a widespread or systematic practice.'⁸¹

The act of enforced disappearance violates *Rule 98* of the International Committee of the Red Cross Rules of Customary International Humanitarian Law, though international humanitarian law treaties do not explicitly refer to the term 'enforced disappearance'.⁸² Further, the Inter-American Convention on the Forced Disappearance of Persons requires state parties to define forced disappearance of persons as a crime in their domestic law, to impose an appropriate punishment and prohibits the act itself.

⁷⁹ Rome Statute of the International Criminal Court, (adopted on 17 July 1998, entered into force 1 July 2002) A/CONF.183/9.

⁸⁰ *Ibid.*

⁸¹ Lisa Ott (n 57) 204.

⁸² Jean-Marie Henckaerts and Louise Doswald-Beck, *The International Committee of the Red Cross, Customary International Humanitarian Law*, Vol. 1: Rule 2 (Cambridge University Press, 2005) 207.

According to the 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 Law of 16 December 2005, the right to remedy is guaranteed in IHL in, for instance, articles 68 and 75 of the Rome Statute, Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

With regards to IHL, the RTG has ratified all four Geneva Conventions to which it acceded on 29 December 1954. However, it could be noted that Peru's Constitutional Court stated in the case of *Gabriel Orlando Vera Navarrete* case,

[B]oth Common Article 3 and Article 4.2 of [the 1977] Additional Protocol II expressly prohibit the commitment of acts that result in a person's disappearance. Moreover, common Article 3 prohibits any attempt on the life and personal integrity of a person, particularly murder of all kinds, mutilations, cruel treatment, and torture. Depriving a person of legal remedies and guarantees and ordering or carrying out acts aimed at making a person disappear shall be considered a grave breach of IHL that the state must punish.⁸³

5.5 State of Emergency

Article 4 of 1CCPR allows the derogation of obligations at time of 'public emergency'. However, the measures taken

⁸³ Peru, Constitutional Court, *Gabriel Orlando Vera Navarrete*, Case No. 2798-04-HC/TC, Judgment of 9 December 2004, §16.

must be consistent with international law. In the 2005 Observations of the HRC, the Committee noted that it

[...] is concerned that the Emergency Decree...and on the basis of which a state of emergency was declared in three southern provinces, does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant...It is especially concerned that the Decree provides for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity.⁸⁴

It should be noted that Article 17 of the ACHR and Article 15 of the ECHR contain similar provisions as concerning Article 4 of ICCPR⁸⁵. However, in General Comment 29 of the HRC on Article 4, the Committee states 'Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment...)'⁸⁶ The Committee further stated that:

[...] measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature. Before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency, which threatens

⁸⁴ UN Human Rights Committee, 'Concluding Observations on the UN Human Rights Committee: Thailand' (8 July 2005) UN Doc CCPR/CO/84/THA, para 13.

⁸⁵ ICCPR (n 2) Art 4.

⁸⁶ Human Rights Committee, General Comment 29: States of Emergency (2001) UN Doc CCPR/C/21/Rev.1/Add.11, Art 7.

the life of the nation, and the State party must have officially proclaimed a state of emergency.⁸⁷

One could also question the necessity of the state of emergency in the SBPs, as the prolonged over-use of the special laws could arguably permit the derogation of non-derogable rights that are guaranteed by ICCPR. Moreover, certain aspects of the right to liberty and security, such as the right to *habeas corpus*,⁸⁸ are considered non-derogable at any time and permissible derogations subject to a strict proportionality test.⁸⁹

Thus, this paper will side with the argument that the special laws in SBPs should be subject to a 'strict proportionality test', before their renewal, as the special laws limit the full enjoyment of rights and availability of domestic remedies. 'Furthermore, the right to have recourse to domestic remedies such as the writ of *habeas corpus* may be suspended, so that, for instance, victims of arbitrary arrest and detention are left without legal protection, with devastating results.'⁹⁰ The test should be administered to determine whether the situation in the south constitutes as a 'threat to the life of the

⁸⁷ Ibid Art 2.

⁸⁸ Human Rights Committee, General Comment 29 (n 86), para 4. See also American Convention on Human Rights, *Habeas Corpus in Emergency Situations* (30 January 1987) OC-8/87, Arts 27(2) and 7(6) paras 11-13; and American Convention on Human Rights, *Judicial Guarantees in States of Emergency* (6 October 1987) C-9/87, paras 20-30 and 36-40.

⁸⁹ Lutz Oette and Ilias Bantekas (n 71) 339.

⁹⁰ United Nations Office of the High Commissioner for Human Rights, 'Human Rights in the Administration of Justice: A Facilitator's Guide on Human Rights for Judges, Prosecutors and Lawyer: The Administration of Justice during States of Emergency' (New York and Geneva, 2011), Chapter 17, 813.

nation', as required by Article 4, and does not leave an individual without adequate legal protection. Thus, Thailand should recall its obligations and rights protected under article 4(2) on ICCPR.

In *Aksoy v Turkey*, Aksoy questioned 'whether the situation...necessitated the holding of suspects for fourteen days or more without judicial supervision.'⁹¹ The ECHR was of the view, that although 'the investigation of terrorist offences undoubtedly presents the authorities with special problems, it cannot accept that it is necessary to hold a suspect for fourteen days without judicial intervention...' Aksoy further 'pointed out that long periods of unsupervised detention, together with the lack of safeguards provided for the protection of prisoners, facilitated the practice of torture...' It could be argued that the Thai legal system also offers insufficient safeguards to detainees and the exigencies of the situation in the SBPs do not necessitate the re-imposition of special laws, as they blatantly violate legal safeguards. ECHR concluded, 'there has been a violation of Article 5 paragraph 3 of the Convention.'⁹²

It should also be noted that the RTG has failed to inform the Human Rights Committee (HRC) about measures taken in the SBPs, in respect to Article 4 of ICCPR. In 2005, the HRC stated:

[T]he State party should ensure that all the requirements of Article 4 of the Covenant are complied with...including the prohibition of derogation from the rights listed in its paragraph 2...the Committee draws the attention of the State party to its General Comment No. 29 and the

⁹¹ *Aksoy v Turkey* (1996) ECtHr 100/1995/606/694, para 74.

⁹² *Ibid* para 87.

obligations imposed upon the State party to inform other States parties, as required by its paragraph 3.⁹³

This paper therefore argues that measures taken against the threat of insurgency in the SBPs should not include the imposition of special laws, the invocation of Article 4 of ICCPR and the subsequent violation of safeguards.

This paper also draws from the jurisprudence of *Landinelli Silva v Uruguay*⁹⁴. Uruguay invoked article 4 of the Covenant on 10 July 1980. The HRC saw that the requirements stipulated in article 4 (1) of the Covenant had not been met. Further, HRC saw that 'no attempt was made to indicate the nature and the scope of the derogations actually resorted to with regard to the rights guaranteed by the Covenant, or to show that such derogations were strictly necessary...' and therefore, the Committee was of the opinion that 'a State, by merely invoking the existence of exceptional circumstances, cannot evade the obligations which it has undertaken by ratifying the Covenant'. The Committee concluded 'if the respondent Government does not furnish the required justification itself, as it is required to do under article 4 (2) of the Optional Protocol and article 4 (3) of the Covenant, the HRC cannot conclude that valid reasons exist to legitimise a departure from the normal legal regime prescribed by the Covenant'.⁹⁵ One could argue that Thailand has also not addressed the nature and scope of derogations, in the SBPs

⁹³ UN Human Rights Committee, 'Report of Human Rights Committee' UN Doc (60th Session, Supplement 40, 2004-5) A/60/40 Volume I, para 95(13), 2.

⁹⁴ *Jorge Landinelli Silva v. Uruguay* (1981) UN Doc Supp 40(A/36/40), Communication No R.8/34, at 130.

⁹⁵ *Ibid.*

and its departure from the normal legal regime cannot therefore be legitimised.

5.6 Regional Framework

It is also important to note that in the regional context, the role of the Association of Southeast Asian Nations (ASEAN) should be taken into account. ASEAN and its ten member states abide by a strict principle of non-interference as outlined in the 1967 Bangkok Declaration and can therefore not interfere in the internal matters of member states. However, one could argue that the principle of non-interference has been violated on numerous occasions, such as in the case of open critique of Myanmar, and by the accession to international conventions by member states of the ASEAN.⁹⁶ By doing so, member states have opened themselves to critique in various forms, for instance, in the form of the UPR and the observations of respective Committees of treaties.

In 2009, ASEAN established the ASEAN Intergovernmental Commission on Human Rights (AICHR) to promote human rights. The Commission exists to protect and promote and protect human rights as well as regional co-operation on human rights, in the member states. The Commission drafted the ASEAN Human Rights Declaration in 2012, and it was adopted unanimously. The Declaration reaffirms the civil and political rights in UDHR. The Terms of Reference (TOR) of ASEAN are reviewed every five years and this paper

⁹⁶ Jurgen Haacke, 'The Myanmar imbroglio and ASEAN: heading towards the 2010 elections' [2010] 86(1) *International Affairs* 153; R Katanyuu, 'Beyond non-interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization' [2006] 46(6) *Asian Survey* 825.

argues that upon the next review, ASEAN should reconsider its principle of non-interference, particularly in regard allegations of torture and enforced disappearances even in cases that do not pose a threat to regional security, in order to adhere to international human rights standards. Indeed, Linjun Wu notes that 'since late 1997, voices in the region have requested modification of non-intervention policy.'⁹⁷ Member states should, instead of refraining criticism, direct harsh verbal scrutiny against member states, such as Thailand, that have special laws in place which undermine fundamental human rights and cases of enforced disappearances.

However, it should be noted that torture and enforced disappearances, in particular against human rights defenders, is a regional problem, which in turn exacerbates the resolution of the issue from a regional association, such as ASEAN. Despite the recent adoption of the ASEAN Human Rights Declaration on 18 November 2014, there is a clear lack of an effective regional human rights system in Southeast Asia. This paper advocates for the approach of the African Charter on Human and Peoples' Rights (ACHPR), which contains no derogation provisions. Indeed, in the view of the African Commission on Human and Peoples' Rights, the Charter 'does not allow for states parties to derogate from their treaty obligations during emergency situations.'⁹⁸

5.7 International Human Rights Law

⁹⁷ Linjun Wu, 'East Asia and the Principle of Non-Intervention: Policies and Practices' [2000] 5 Maryland Series in Contemporary Asian Studies, University of Maryland School of Law 11.

⁹⁸ UN Human Rights Committee (n 93) Chapter 17, 62.

Thailand is bound by international human rights law and ICCPR, to which Thailand acceded to on 29 October 1996.⁹⁹ Furthermore, the right to liberty and security, directly violated by an enforced disappearance, is guaranteed under Article 9 of UDHR, Article 9 of ICCPR and Article 14 CRPD, all of which Thailand has ratified. Article 17(2)(f) of CPED, which is awaiting ratification, further states:

Article 17

2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

(f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.

The wording of the article, and in particular the phrase, 'any persons with a legitimate interest', contradicts Section 5(2) of CPC, as demonstrated in the previous chapter. International legal instruments and relevant provisions such as Article 7 of the ACHR, Article 7 of the ACHPR and Article 5 of the ECHR, discuss the right to liberty and security, which further validates the paramount importance of the right in the global sphere. Furthermore, failure to bring to justice perpetrators

⁹⁹ ICCPR (n 2) Art 1(1), 6(5), 9(3) and 20.

and conduct a fair investigation of a grave human rights violation constitutes as a violation of ICCPR.¹⁰⁰

The Special Rapporteur of the Commission on Human Rights further recommended, 'provisions should give all detained persons the ability to challenge the lawfulness of the detention - e.g., through *habeas corpus* or *amparo*. Such procedures should function expeditiously.¹⁰¹ The right to challenge the lawfulness of the detention and file a writ of *habeas corpus* in Thailand is enshrined in Section 90 of the CPC. Section 90 of the CPC and Section 32 of the Constitution apply when allegations are tortured are reported in detention. Section 32 also stipulates that remedies for the damage incurred by the victim could be determined by the court, similarly to the stipulation of General Comment 8 by the HRC.¹⁰²

However, according to the MACF, no remedy has even been successfully granted and public officials often release a detainee prior to a hearing, when a petition under Section 90 is filed. Lack of the existence of the offence of an 'enforced disappearance' and 'torture' in Thai national legislation, as required by CPED and CAT, therefore greatly hampers the successful petition of a *habeas corpus* and challenge to the lawfulness of one's detention.

¹⁰⁰ UN Human Rights Committee, 'General Comment 31: The Nature of the General Obligations Imposed on State Parties to the Covenant' (26 May 2004) CCPR/C21/Rev.1/Add.13.

¹⁰¹ UN Economic and Social Council, 'Report on the Working Group on Enforced or Involuntary Disappearances' (21 January 1983) UN Doc E/CN.4/1983/14, Recommendation 39(h).

¹⁰² UN Human Rights Committee, General Comment No 8: Article 9 Right to liberty and security of persons (30 June 1982).

V. Conclusion

Using evidence, this paper has attempted to consistently point out the discrepancies that exist in Thailand's human rights record. This has been evident through the use of Observation from Committees such as CAT and CERD. Despite Thailand's ratification of treaties, it is evident that the state has been unable to fulfill its obligations, namely under CAT. This paper has also attempted to pinpoint the strong link that exists between enforced disappearance and torture. This has been done partially through jurisprudence, General Comments and case law, which have highlighted how the family is also subjected to torture and *ergo* becomes an indirect victim. As enforced disappearances can amount to a form of torture, it could therefore be argued that Thailand is obligated under CAT and customary international law to assure that torture is not permitted, directly or indirectly. As a *jus cogens* norm, from which there can be no derogation, Thailand should take legislative steps to assure that torture does not occur. Therefore, Thailand should incorporate the definition of enforced disappearance and torture in its domestic legislation, as required by CAT and CPED. The lack of effective remedy needs to be addressed, and the family should be given the right to an effective remedy as stipulated in Article 2 of ICCPR.

In regards to SBPs, this paper will side with the argument that the situation in SBPs could be considered as a non-international armed conflict and therefore IHL applies and Thailand is obligated under IHL to adhere to specific standards and provisions, that prohibit torture and enforced disappearance, such as the Geneva Conventions. Thailand has imposed three special security laws, and by doing so has invoked Article 4 of ICCPR. The constant renewal of the laws in the SBPs is based on the very fact that the situation fills the

criteria of necessity and proportionality and allows for the re-imposition of the laws. However, the state of emergency and special laws grant a *de facto* state of impunity, which in turn facilitates the lack of accountability, due process, and the rule of law.

Furthermore, the derogation has not satisfied the criteria as stipulated in Article 4(2). Thailand should therefore not be able to deviate from ICCPR in any manner, particularly as the special security laws have been imposed since 2004. The Cabinet, which reviews the Emergency Decree every three months, should therefore take into account the obligations of the RTG under ICCPR.

Due to research constraints, this paper has not investigated claims of enforced disappearance in the north of Thailand nor central Thailand. The focus has been on the SBPs due to the implementation of special laws, which arguably, advocate a culture of impunity. This paper will conclude that Thailand is not upholding international human rights standards, particularly in regards to enforced disappearance. It could not be said that a state is upholding international human rights standards, if it is clear that the state is unable, and potentially unwilling, to seriously address issues such as torture and enforced disappearance. This is further evident from the fact that the offence of torture has not been incorporated into domestic legislation and the state has not ratified CPED. The above-mentioned reasons in this chapter are a testimonial of Thailand's inadequate performance and full implementation of international human rights instruments, such as CAT and ICCPR.

It could be noted that there is a serious risk that ISOC personnel, delegated under ISA, will not comply with the safeguards guaranteed under CPC. Thailand should

therefore also comply with Article 9 of ICCPR, which applies to preventative and administrative detention.¹⁰³ The requirement that a detainee should appear in a physical manner before a court, under international law, provides the detainee the opportunity to complain about having been potentially subjected to torture and provides the judge the opportunity to observe the physical condition of the detainee. The absence of a guarantee of that requirement increases the risk of enforced disappearance and thus, a form of torture. This paper also proposes that a stronger ASEAN human rights mechanism, that would not pertain a strict principle of non-interference, should therefore be formulated as strong regional pressure could directly impact on the amendment of the special security laws.

Bibliography

Primary Sources

Statutes and Statutory Instruments

Aksoy v Turkey (1996) ECtHr 100/1995/606/694

American Convention on Human Rights (ACHR) (adopted 22 November 1969, entered into force 18 July 1978)

American Convention on Human Rights, Habeus Corpus in Emergency Situations (30 January 1987) OC-8/87

American Convention on Human Rights, Judicial Guarantees in States of Emergency (6 October 1987) C-9/87

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 law UNGA Res 60/147 (16 December 2005) UN Doc A/RES/60/147

Constitution of the Kingdom of Thailand BE (2007)

Criminal Code BE 2499 (1956)

Criminal Procedure Code of Thailand, BE 2477 as Amended by BE 2551, 2008

Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, BE 2544

Declaration on the Protection of All Persons from Enforced Disappearances, UNGA Res 47/133 (1992) GAOR Supp 49, 207, UN Doc A/47/49

Declaration on the Protection of All Persons from Enforced Disappearance, UNGA Res 47/133 (18 December 1992) UN Doc A/Res./47/133

El-Megreisi v. Libyan Arab Jamahiriya (24 March 1994) UN Doc CCPR/C/50/D/440/1990

Emergency Decree on Public Administration in Emergency BE 2548 (2005)

European Convention on Human Rights (ECHR) (Adopted in 1950, entered into force 3 September 1953)

Geneva Conventions (12 August 1949) Additional Protocol relating to the Protection of Victims of International Armed Conflicts (Protocol I, 8 June 1977)

Héctor Marcial Garay Hermosilla y otros v Chile in 'Annual report of the Inter-American Commission on Human Rights' (Inter-American Commission on Human Rights, 1996) Case No 10,843

Inter-American Commission on Human Rights, Annual Report (OEA/Ser.L/V/II.83, 12 March 1993)

Inter-American Convention on Forced Disappearances of Persons (1994)

Inter-American Court of Human Rights, Advisory Opinion - Habeas Corpus in Emergency Situation 11 (1989) EHRR 33 (9 (1988) HRLJ 94)

Internal Security Act BE 2551 (2008)

International Committee of the Red Cross Rules of Customary International Humanitarian Law (2009)

International Convention for the Protection of All Persons from Enforced Disappearance (CPPED) (entered into force 2010)

International Convention for the Protection of All Persons from Enforced Disappearance (CPED) (entered in to force 2006)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (entered into force 1969)

International Covenant on Civil and Political Rights (ICCPR), UNGA Res 2200A (XXI) 21 GAOR Supp 16, 52, UN Doc A/6316 (1966), 999 UNTS 171 (entered into force March 23, 1976)

Jorge Landinelli Silva v. Uruguay (1981) UN Doc Supp 40(A/36/40), Communication No R.8/34

Jos Vicente and Amado Villafane Chaparro, Luis Napoleon Torres Crespo, Angel Maria Torres Arroyo and Antonio Hugues Chaparro Torres v. Columbia, (29 July 1997), UN Doc CCPR/C/60/D/612/1995 (Communication No 612/1995)

Martial Law Act BE 2457 (1914)

Nydia Erika Bautista v. Colombia (13 November 1995) UN Doc CCPR/C/55/D/563/1993 (Communication No 563/1993)

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), UNGA 57th Session Res A/RES/57/199

(Adopted on 18 December 2002, entered into force on 22 June 2006)

Prosecutor v Dusko Tadic (Appeal Judgement), IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (15 July 1999)
<<http://www.refworld.org/cases,ICTY,40277f504.html>> accessed 26 August 2018

Report of the independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms ... (E/CN.4/1999/65)

Rome Statute of the International Criminal Court, (adopted on 17 July 1998, entered into force 1 July 2002) A/CONF.183/9

The African Charter on Human and Peoples' Rights, also known as Banjul Charter (entered into force in October 1986)
The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Annex 2 Victims of Crime (29 November 1985)

The Draft of the Act of on Amendments of the Penal Code (No.) BE and a Draft of the Act on Amendments of the Criminal Procedure Code (No) BE

UN Committee against Torture (CAT), 'Concluding observations on the initial report of Thailand' (20 June 2014)
UN Doc CAT/C/SR.1239

UN Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment (CAT) (entry into force 26 June 1987)

UN Human Rights Committee, 'General Comment 31: The Nature of the General Obligations Imposed on State Parties to the Covenant' (26 May 2004) CCPR/C21/Rev.1/Add.13

UN Human Rights Committee, General Comment 29: States of Emergency (2001) UN Doc CCPR/C/21/Rev.1/Add.11

UN Human Rights Committee, General Comment No 29: States of Emergency (31 August 2001) UN Doc CCPR/C/21/Rev.1/Add.11

UN Human Rights Committee, General Comment No 8: Article 9 Right to liberty and security of persons (30 June 1982)

UN Human Rights Committee, General Comments 6 (1982) and 14 (1984)

UN Human Rights Committee, *María del Carmen Almeida de Quinteros et al v Uruguay* (21 July 1983) UN Doc CCPR/C/19/D/107/1981 (Communication No 107/1981)

UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Thailand' (8 December 2011) UN Doc A/HRC/19/8

UN Human Rights Council, 'General Comment on Enforced Disappearances as a Continuous Crime' (26 January 2011) UN Doc. A/HRC/16/48

UN Special Rapporteur on Torture, 'General Recommendations of the Special Rapporteur on Torture' (17 December 2002) UN Doc E/CN.4/2003/68

UNGA Res 33/173 (20 December 1978)

UNGA Res 47/133 (18 December 1992)

UNHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004) Professional Training Series No 8/Rev.1

Universal Declaration of Human Rights (UDHR) (adopted on December 10, 1948)

Velásquez Rodríguez v. Honduras (1988) Inter-American Court of Human Rights

European Court of Human Rights

Gäfgen v. Germany App no 22978/05 (ECHR, 30 June 2008)

Kurt v. Turkey, App no 24276/94 (ECHR, 25 May 1998)

Aksoy v Turkey, App no 21987/93 (ECHR, 18 December 1996)

Additional Documents

Gabriel Orlando Vera Navarrete Case no 2798-04-HC/TC. Lima (Constitutional Tribunal of Peru, 9 December 2004)

Velásquez Rodríguez Case no (Inter-American Court of Human Rights (Ser. C), 26 June 1987)

Jorge Landinelli Silva v. Uruguay, Communication no R.8/34 UN Doc Supp No. 40 (A/36/40) at 130 (1981)

Secondary Sources

Books

Henckaerts JM and Doswald-Beck L, *The International Committee of the Red Cross, Customary International Humanitarian Law*, Volume 1 Rule 2 (Cambridge University Press, 2005)

Moir L, *The Law of Internal Armed Conflict* (Cambridge University Press 2002)

Oette L and Bantekas I, *International Human Rights Law and Practice* (CUP 2013)

Ott L, *Enforced Disappearances in International Law* (Intersentia 2011)

Peerenboom R, Petersen CJ and H.Y. A, Chen *Human rights in Asia* (Routledge 2006)

Rodley N and Pollard M, *The Treatment of Prisoners under International Law*, (3rd edn, OUP 2011)

Shelton D, *Remedies in International Human Rights Law* (2nd edn, Oxford University Press, 2006)

Journal Articles

Desierto DA, 'Universalizing Core Human Rights in the New ASEAN: A Reassessment of Culture and Development Justifications against the Global Rejection of Impunity' [2009] 1(1) Goettingen Journal of International Law 77

Egeland J, 'Political Disappearances - A Challenge for Humanitarian Law' [1982] 51(3-4) *Nordic Journal of International Law* 189

Fitzpatrick J, 'Protection against Abuse of the Concept of Emergency' [1994] 26 *Studies in Transnational Legal Policy* 203

Giorgou I, 'State Involvement in the Perpetration of Enforced Disappearance and the Rome Statute' [2013] 11(5) *Journal of International Criminal Justice* 1001

Goldman RK, 'History and action: The inter-American human rights system and the role of the Inter-American Commission on Human Rights' [2009] 31 *Human Rights Quarterly* 856

Haacke J, 'The Myanmar imbroglio and ASEAN: heading towards the 2010 elections' [2010] 86(1) *International Affairs* 153

Katanyuu R, 'Beyond non-interference in ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization' [2006] 46(6) *Asian Survey* 825

Kramer D and Weissbrodt D, 'The 1980 U.N. Commission on Human Rights and the Disappeared' [1981] 15 *Human Rights Quarterly* 18

Leviter L, 'The ASEAN Charter: ASEAN failure or member failure?' *International Law and Politics* [2010] 43(1) *New York University Journal of International Law and Politics* 159

Lin C. H., 'ASEAN Charter: Deeper Regional Integration Under International Law?' [2010] 9(4) *Chinese Journal of International Law* 821

Lippman M, 'Disappearances: Towards a Declaration on the Prevention and Punishment of the Crime of Enforced or Involuntary Disappearances' [1988] 4(1) Connecticut Journal of International Law 121

Lynch D, 'Democracy, security and regionalism in Asia' [2010] 10 Asia Policy 189

McCrorry S, 'International Convention for the Protection of All Persons from Enforced Disappearances' [2007] 7(3) Human Rights Law Review 545

Nair D, 'ASEAN's core norms in the context of the global financial crisis' [2011] 51(2) Asian Survey 245

Narine S, 'Forty years of ASEAN: A Historical Review' 2008 21(4) The Pacific Review 411

Pejic J, 'Selected Article on International Humanitarian Law - The protective scope of Common Article 3: More Than Meets the Wye' [2011] 93(881) International Review of the Red Cross 189

Pratubjit N, *We Need the Truth: Enforced Disappearances in Democratic Countries: Enforced or involuntary disappearances in Thailand – Challenges and Hopes* (Equipo de Estudios Comunitarios y Accion Piscosocial - ECAP 2009)

Rüland J, 'Southeast Asian regionalism and global governance: "multilateral utility" or "hedging utility"?' [2011] 33(1) Contemporary Southeast Asia 83

Sarkin J, 'Why the Prohibition of Enforced Disappearance Has Attained Jus Cogens Status in International Law' [2012] 81(4) Nordic Journal of International Law 537

Tan SS, 'Is Asia-Pacific Regionalism Outgrowing ASEAN?' [2011] 156(1) *The RUSI Journal* 58

Trindade AAC, 'Enforced disappearances of persons as a violation of jus cogens: the contribution of the jurisprudence of the Inter-American Court of Human Rights' [2012] 81(4) *Nordic Journal of International Law* 81

Wu L, 'East Asia and the Principle of Non-Intervention: Policies and Practices' [2000] 5 *Maryland Series in Contemporary Asian Studies*, University of Maryland School of Law 1

Zawacki B, 'Politically Inconvenient, Legally Correct: A Non-International Armed Conflict in Southern Thailand' [2013] 18(1) *Journal of Conflict and Security Law* 151

Reports

Amnesty International, 'Enforced Disappearances and Political Killings: Human Rights Crises in the 1990s: A Manual for Action' (AI Index: ACT 33/01/94)

Amnesty International, 'They took nothing but his life – Unlawful Killings in Thailand's Southern Insurgency' (AI Index: ASA 39/002/2011)

Amnesty International, Submission to the UN Committee on Torture (Submission to the Committee against Torture CAT, April 2014)

Amnesty International (Thailand), 'Torture in the southern counter-insurgency' (AI Index ASA 39/001/2009)

Amnesty International (Thailand), 'Time to end human rights violations', Submission to the UN Universal Periodic Review (October 2011)

Appleyard S, 'Report: Enforced Disappearances in Thailand' (Justice for Peace Foundation, May 2012)

Asian Human Rights Commission (AHRC), 'Report on the State of Human Rights in Thailand' (2008) AHRC-SPR-018-2008

Asian Legal Resource Centre Commission on Human Rights, 'Forensic Science Under Threat in Thailand and its Implications for Human Rights' (62nd Session, Item 11(d) of Provisional Agenda, ALRC 2006)

Hayashi K and others, 'Reports of police beating and associated harms among people who inject drugs in Bangkok, Thailand: a serial cross-sectional study' (13(733) BMC Public Health 2013)

Neelapaijit A, 'Reading Between the Lines' (Working Group on Justice for Peace Report, 2009)

UN Committee against Torture (CAT), 'Conclusions and Recommendations of the Committee against Torture' (Peru, 16 November 1999) UN Doc A/55/44

UN Committee against Torture (CAT), 'Consideration of Reports Submitted by States Parties Under Article 19 of the Convention' and 'Initial Reports of States Parties due in 2008' (Thailand, 26 February 2013) UN Doc CAT/C/THA/1

UN Committee against Torture (CAT), 'Concluding Observations of the Committee against Torture' (Colombia, 9 July 1996) UN Doc A/51/44

UN Committee against Torture (CAT), 'Concluding Observations of the Committee against Torture' (Venezuela, 5 May 1999) UN Doc A/54/44

UN Committee against Torture (CAT), 'Conclusions and recommendations of the Committee against Torture' (United States of America, 25 July 2006) UN Doc CA T/C/USA/CO/2

UN Committee against Torture (CAT), 'General Comment 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2/CRP. 1/Rev.4

UN Committee against Torture (CAT), 'Concluding Observations on Colombia' (4 May 2010) UN Doc CAT/C/COL/CO/4

UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the First to Third Periodic Reports of Thailand, Adopted by the Human Rights Committee at its 81st Session' (15 November 2012) UN Doc CERD/C/THA/CO/1-3

UN Commission on Human Rights, 'Report of the Special Rapporteur, Mr. Nigel S Rodley, submitted pursuant to Commission on Human Rights Resolution 1997/38 (Mexico)' (24 December 1997) UN Doc E/CN.4/1998/38/Add.2

UN Commission on Human Rights, 'Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2000/43' (25 January 2001) UN Doc E/CN.4/2001/66/Add.2

UN Commission on Human Rights, 'Question of the impunity of perpetrators of human rights violations (civil and political)' (2 October 1997) E/CN.4/Sub.2/1997/20/Rev.1

UN Commission on Human Rights, 'Report of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance' (2 February 2006) UN Doc E/CN.4/2006/57

UN Economic and Social Council, 'Report on the Working Group on Enforced or Involuntary Disappearances' (21 January 1983) UN Doc E/CN.4/1983/14

UN Human Rights Committee, 'Concluding Observations by the Human Rights Committee: Colombia' (25 September 1992) UN Doc CCPR/C/79/Add.2

UN Human Rights Committee, 'Concluding Observations by the Human Rights Committee: Bolivia' (5 May 1997) UN Doc CCPR/C/79/Add.74

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Brazil' (24 July 1996) UN Doc CCPR/C/79/Add.66

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Chile' (30 March 1999) UN Doc CCPR/C/79/Add.104

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Colombia' (3 May 1997) UN Doc CCPR/C/79/Add.76

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Croatia' (28 December 1992)
UN Doc CCPR/C/79/Add.15-A/48/40

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Ecuador' (18 August 1998)
UN Doc CCPR/C/79/Add.92

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: El Salvador' (18 April 1994)
UN Doc CCPR/C/79/Add.34

UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Lebanon' (1 April 1997) UN Doc CCPR/C/79/Add.78

UN Human Rights Committee, 'Concluding Observations of the UN Human Rights Committee: Peru' (25 September 1992)
UN Doc CCPR/C/79/Add.8

UN Human Rights Committee, 'Concluding Observations on the UN Human Rights Committee: Guatemala' (27 August 2001) UN Doc CCPR/CO/72/GTM
UN Human Rights Committee, 'Concluding Observations on the UN Human Rights Committee: Thailand' (8 July 2005)
UN Doc CCPR/CO/84/THA

Human Rights Watch, 'Report: "It Was Like Suddenly My Son No Longer Existed" Enforced Disappearances in Thailand's Southern Border Provinces' (Human Rights Watch 2007)

Human Rights Watch, 'World Report 2013: Thailand' (Human Rights Watch 2013)

Human Rights Watch, 'Report: Descent into Chaos, Thailand's 2010 Red Shirt Protests and the Government Crackdown' (Human Rights Watch 3 May 2011)

UN Human Rights Council, '19th Session Agenda Item UPR Report of the Working Group on the Universal Periodic Review' (Thailand, 8 December 2011) UN Doc A/HRC/19/8 <<http://www.refworld.org/docid/4f269ba72.html>> accessed 31 May 2018, 20

UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances: General Comment on the Right to the Truth in Relation to Enforced Disappearances' (26 January 2011) UN Doc A/HRC/16/48

UN Human Rights Council, 'Non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of overincarceration and overcrowding' (36th Session, 11-29 September 2017) UN Doc C/THA/CO/1-3

Human Rights Watch, 'Thailand: Separatists Targeting Teachers in South' (Human Rights Watch 2014) <<https://www.hrw.org/news/2014/03/30/thailand-separatists-targeting-teachers-south>> accessed 31 May 2018

International Committee of the Red Cross (ICRC), 'Report: ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law' (90(872) International Review of the Red Cross 2008)

International Commission of Jurists, 'Submission of the International Commission of Jurists (ICJ) to the UN Committee against Torture in view of the Committee's

examination of Thailand's Initial Report under Article 19 of the Convention against Torture and other cruel, inhuman or degrading treatment of punishment' (International Commission of Jurists, 11 April 2014)

Inter-American Commission on Human Rights, Annual Report (OEA/Ser.L/V/II.83, 12 March 1993)

Justice for Peace Foundation, 'The Intersection of Enforced Disappearance and Torture in Thailand Parallel Report, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' (Justice for Peace Foundation, 12 March 2014)

National Human Rights Commission, 'Rights in Judicial Process in Case of Examination on Complaints that there are Torture and other Inhumane Treatments or Punishments in the Southern Border Provinces' (National Human Rights Commission, 15 September 2010) Investigation Report No 275-304/2553

UN Commission on Human Rights, 'Report of the intersessional open-ended working group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance' (23 February 2004) UN Doc.E/CN.4/2004/59

UN Human Rights Committee, 'Report of Human Rights Committee' UN Doc (60th Session, Supplement 40, 2004-5) A/60/40 Volume I

UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances' (2 March 2012) UN Doc A/HRC/19/58/Rev.1

UN Committee against Torture (CAT), 'Shadow Report on Thailand's Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (52nd Session, 10 April 2014)

United Nations Office of the High Commissioner for Human Rights, 'Human Rights in the Administration of Justice: A Facilitator's Guide on Human Rights for Judges, Prosecutors and Lawyer: The Administration of Justice during States of Emergency' (New York and Geneva, 2011)

Universal Periodic Review (UPR), '25th Session of UPR Working Group Thailand' (October 2011)

US Department of State Bureau of Democracy, 'Human Rights and Labor, Human Rights Country Reports' (Amnesty International, April 2014) Index: ASA 39/003/2014

News Articles

Amnesty International, 'Thailand: Government fails to provide justice for the victims of Tak Bai killings' (1 August 2013) <<http://www.refworld.org/docid/51fb673c4.html>> accessed 4 September 2014

An Announcement of the International Commission of Jurists (ICJ) and Justice for Peace Foundation (JPF) in Thailand forwarded by the Asian Human Rights Commission Public Seminar on 10th Anniversary of Somchai Neelapaijit's Enforced Disappearance (1 March 2014) <<http://www.humanrights.asia/news/ahrc-news/AHRC-ANM-011-2014>> accessed 1 August 2014

Asian Human Rights Commission (AHRC), 'If not Somchai's bones, whose bones' (4 December 2006)

<<http://www.humanrights.asia/news/ahrc-news/AS-299-2006>> accessed 1 July 2014

Clarification by the Royal Thai Government regarding the allegations of torture resulting in the death of Private Wichean Puaksom (4 March 2014)
<[https://spdb.ohchr.org/hrdb/23rd/Thailand_04.03.13_\(11.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/Thailand_04.03.13_(11.2012).pdf)> accessed 3 June 2014

Iliopoulos K, 'Crimes of War Thailand: Political Violence Leads to Human Rights Abuses'
<<http://www.crimesofwar.org/commentary/thailand-political-violence-leads-to-human-rights-abuses/>>, accessed 3 May 2014

International Commission of Jurists (ICJ) Open Letter "Thailand: don't drop investigation into Somchai's disappearance" (February 6, 2014)
<<http://www.icj.org/thailand-dont-drop-investigation-into-somchais-disappearance/>>, accessed 24 June 2014

Nation Multimedia Open letter to PM Yingluck: Review emergency decree now (30 September 2011)
<<http://www.nationmultimedia.com/opinion/Open-letter-to-PM-Yingluck-Review-emergency-decree-30165639.html>> accessed 6 July 2014

Nation Multimedia Govt urged to amend criminal code (28 June 2012)
<<http://www.nationmultimedia.com/national/Govt-urged-to-amend-criminal-code-30185061.html>> accessed 25 August 2014