

# Justice in Thailand's South?



A study of four  
capital punishment  
cases from  
Thailand's southern  
border provinces

Presented by  
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# **CHAPTER ONE: An Introduction**

## **1. Crimes of Murder**

The right to life is the foundation of all other human rights. If this right is not established in a country, no other human right is secure; whatever rights may be assured, all are lost with an imposed death penalty. Thailand, whatever its formal commitment to human rights in UN International Conventions may be, has a record of serious infringements of basic liberties, and despite a declared gradual approach to de facto abolition of the death penalty, still imposes death penalties at a rate among the highest in the world.

In recent years death penalty sentences in Thailand's turbulent southern border provinces form the majority of Thailand's death penalties and reveal a continued adherence to capital punishment.

The Union for Civil Liberty is a Civil Society Organization dedicated to the protection of civil liberties of all residents in Thailand. Thailand is listed among countries guilty of horrendous human rights violations such as slavery, human trafficking, and torture. In addition, we are rightly concerned by the refusal of Thailand to progress beyond a mere diminution of the number of executions to abolition. The most severe human rights abuses of Thailand occur in the southern border Muslim provinces where an age long hostile administration has led to a

predictable insurgent reaction. The problem is now inflamed and entrenched. Unfortunately, there is neither an understanding of the genesis of the problem, nor any inkling of how to solve it among Thai security forces, police and military, who are burdened with a responsibility that is political and national in scope but abdicated by all recent governments.

**Some 15,192 violent incidents have been reported in the 10 years since the resurgence of conflict in Southern Thailand. According to the Internal Security Operations Command, as of 2 January 2014, 5,926 people have died and another 10,593 were injured.**

The forward command of the ISOC Region 4 recorded the 15,192 incidents between January 4, 2004 and December 31 2013.

Of the deaths, 3,461 were Muslims and 2,431 Buddhists. The rest practiced other religions, the report from the forward command stated. Of the injured, 3,761 are Muslims, 6,694 Buddhists and 138 others practice other religions.

The casualties included 811 slain police and military officers and 3,588 injured police and military officers.

The insurgency flared up after Muslim insurgents robbed an Army development corps' base for guns.

*The Nation, Yala, January 2, 2014*

The Union for Civil Liberties has long been aware of the magnitude of the Southern problem and has engaged in an education project on democratic administration amongst local Muslim leaders. But the problems are beyond our resources and we are forced to turn attention to focus on the main problem: the failure of the justice system in the administration of criminal justice where the state uses its heaviest punishment, the death penalty, to counter what it labels 'terrorism'. The result is a clash of power, the government, in an effort to quell rebellion, invoking the death penalty, and powerless people, who feel threatened by police brutality and government power, turning to terrorism.

We have studied application of the death sentence in the southern border provinces, as it is a critical factor in the deadly conflict. If injustices in legal process leading to death sentences can be identified some progress in mitigating the levels of violence may begin to appear.

We are studying legal cases involving the use of deadly violence by those opposing government with an outcome implying death for those who are alleged to perpetrate the violence.

Is this an appropriate response from the state? We believe not.

The case for rejection of the death penalty goes far beyond the concerns of this study. We refer to the position that international law is close to declaring a complete rejection of the death penalty. In the interim we

hold to the thrice repeated vote of the United Nations General Assembly that there must be a worldwide suspension of the death penalty until every country in the world comes to the conclusion that life is an inalienable right of all mankind for which there are NO exceptions.

Thailand still refuses to accept this position and we are driven to question, within Thailand's legal system and Constitutional guarantees to the individual, the legitimacy of legal process in the death sentences handed down by courts in the southern border provinces of Thailand, most of which rely on charges of terrorism to soften strict requirements of international legal standards.

The history of the death penalty stretches back beyond the first recorded laws and chronicles. It began as an expression of blind rage and vengeance by the family of the victims against the perpetrator and his family, the beginning of family and tribal feuds which could far exceed the magnitude of the original crime. The very oldest system of laws known, the Code of Hammurabi, legislated a limit on revenge, "an eye for an eye, a tooth for a tooth", neither more nor less. This primitive response is deeply embedded in human consciousness, making the death penalty appear an appropriate response to murder. The penalty of death has been applied to serious crimes throughout history, has been extended to lesser crimes, and once, under the dictator Draco of Greece, to every crime.

Over time three reactions followed, firstly the realization that vengeance itself was an evil response, which multiplied the levels of suffering of more people. Secondly vengeance, while appearing to offer relief to victims, rather increases the distortion of human behaviour. Finally, it was realized that capital punishment was not a deterrent to crime. Religions – including Buddhism, Christianity and Islam – taught that forgiveness and reform of the wrong doer offered a solution to a cycle of violence. Humanism insisted on the unique value of all human life and rehabilitation as the only humane response to violence.

In countries still adhering to the death penalty as a deterrent to crime it is necessary to propose the three stages through which countries that have abolished the death penalty have already passed. In choosing four legal cases resulting in sentence of death in the southern border provinces we are offering matter for reflection on the failure of capital punishment and proposing that abolition is the way to escape the mire of anger and counter a violence which is enmeshing society.

## **1.1 Legal Framework in Southern Border Provinces**

In Thailand the legal system consists of legal codes and a code of legal procedure. While the codes are far from perfect, and the apparatus of enforcement is flawed, there is, nevertheless, a rational basis for the application of law. In the southern border provinces there now exists a complex combination of laws, which favour the forces of enforcement but which leave the defendant at grave disadvantage. Apart from the



code of criminal law and its enforcement, there are systems of martial law, emergency legislation, and an Internal Security Act, which is little understood by the population. The combination of legislations provides the enforcers of law with a range of measures of wide definition and harsh application that distort an acceptable justice system.

The worst aspects of these additional powers are their use in the period of arrest, interrogation, and preparation of evidence. In brief, the ordinary criminal laws require warrants of arrest and search under which a prisoner must be brought before a judge within 48 hours of arrest. The suspect has the right that a lawyer or trusted person be present during interrogation, and that he be notified that his responses may be used as evidence. However, under martial law arrest and search may be made without warrant, interrogation may be carried out without witness or with a lawyer chosen by the authorities over a period of seven days. At the end of seven days the arrest may continue under emergency legislation up to a period of 30 days and, finally, be extended to a total period of 84 days by invoking the Internal Security Act in areas where this law is in force. The arrested person may also be held in detention centres not under the control of the Department of Corrections. The detention and questioning of the suspect may be identified as a stage of enquiry without the evidence of wrong doing that must precede arrest in ordinary application of legal procedure.

The operation of these laws is well documented in a publication, “Thailand: A Compilation of Reports. Recommendations to the Judiciary in the Security Related Cases in the Southern Border Provinces”<sup>1</sup>. The publication provides texts of the laws, details of their enforcement, and recommendations to the judiciary on countering consequent abuses of the legal system and of the legal rights of citizens of the southern border provinces. Our concern in the present study is to observe court process in cases leading to death penalties, especially the unsatisfactory legal process, which results from the application of special laws in pretrial procedure that impede the strict requirements of justice in capital cases.

## **2. Terrorism**

The cases we consider all took place in an environment of “terrorism”. This presumption is made by prosecutors in set formulae which are repeated in introducing the cases, quoted like a Greek chorus in the presentation of evidence, and recalled in the final demand for sentencing. The formula is always the same, repeated no doubt from documents that describe the situation of the region.

Typically: *The accused conspired together to use force to endanger life. The objective was to cause unrest and the force of arms, accumulate resources and train in terrorism. To achieve their aim they planned to assemble an armed gang to carry out assassinations. They obtained*

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<sup>1</sup> Cross Cultural Foundation, Muslim Attorney Centre, Bangkok 2010

*explosive materials, the possession of which is illegal for bomb making with lethal effect to life and property. Their ultimate aim is to divide the Kingdom, and to seize power in the provinces of Pattani, Yala, Naratiwat, and parts of Songkhla, in order to establish an independent nation. For this end they planned to assassinate government officials and ordinary people to provoke government reaction.*

The description is generally embroidered with details such as meetings held after midnight, and include swearing-in ceremonies accompanied by readings in Arabic of the Quran. Such details are revealed to officials by persons arrested who also name the conspirators, and who escape charges themselves or were granted reduced culpability for their cooperation with investigators. The testimony is not delivered by the person who provided the details, but rather by their interrogators. Hence the source cannot be questioned by defence lawyers and is related under a pseudonym to protect his identity. Such evidence is hearsay and subject to severe reservation unless supported by other evidence. Members of such terrorist groups are of course known to their associates by a nom de guerre, and identification is made from photographs outside any safeguard of identification procedure. This is the weak core of terrorist trials. Dubious identification of culprits and the nature of signed confessions cannot be verified by the courts. Besides, there is no attempt to connect details of “terrorism”, such as those quoted above, with individual defendants, who may be many.

### **3. Four Cases**

Four cases were chosen for us by the Muslim Attorney Centre as being cases of interest in which they had provided legal defence. The cases introduce a wide range of activity typical of terrorism: an assassination of an individual, an attack on policemen on patrol, an indiscriminate bomb placed in a busy market place and a large scale attack on a military barracks.

#### **3.1 Similarity and Diversity of the Cases**

Motivation varies from the assassination of a believer in another religion, an attack on a police pair on duty patrol, the installation of fear in a non Muslim population, to a carefully planned attack against a military objective to seize a cache of weapons. Our main sources of information about the actions are the court documents of the trial of those accused. Much of police action in Thailand is covert and hidden. There are also trials of cases deemed too sensitive to be public. But details of terrorist cases are designedly open and transparent, in the belief that the horror of terrorist activity will be revealed, thus winning the hearts and minds of the population to the government side. Despite this perception of transparency in the actual court proceedings, the process of arrest and interrogation can contaminate the exercise of justice. Two of the cases include the completed legal process of the Court of First Instance, appeal court, and Supreme Court hearings, and so may be subject to comment and criticism. The other cases where

hearings are incomplete are presented as they were recorded. No doubt, readers will be able to recognize defects in procedure already pointed out.

In addition to the court proceedings we also submit a summary of interviews with prisoners and their close relatives. This summary helps to provide individual background of the persons involved. Given the complexity of the cases, the willingness of relatives to be interviewed and the resources available for this research, problems of language, and distance apart of researchers and those interviewed we have not been able to provide a complete set of interviews in every case. However, the interviews conducted appear typical and the summary should allow the formation of an overall viewpoint.

### **3.2 Presentation of the cases**

The original court documents are long, dense, and repetitive, replete with ‘legalese’, making them difficult for the ordinary reader. To present the material in a form easier to understand we have organized it under headings where related parts may be linked together. It has not been possible to organize every case under the same template as court procedures, or the court records, take a different path for each case. It was especially difficult to organize a case where there were 13 defendants. To simplify this case we followed closely only the elements relating to two defendants who were condemned to death, retaining other details only to provide continuity of event and also to illustrate

sometimes puzzling disparities in the severity of sentencing for those involved in a single attack.

Every effort was made to retain all the essential points in each record. There may be inevitable shortcomings but not a distortion of the original.

#### **4. Invitation to reader**

The cases are presented to the reader primarily as a human document describing complex human actions. The history of the southern border provinces, the ethnological makeup of the population, the diversity of religious belief, and especially the decades of misrule of the area by an insensitive and distant government have all contributed to the growth of “terrorism” and a violence which cannot be condoned. The aspirations of the people of these provinces, as for all mankind, is aptly described in the Preamble to the Universal Declaration of Human Rights:

*...the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.*

If these rights are denied the Declaration foresees, in the most sober and disputed words of its composition

*... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.*

**The result is what we now refer to as “terrorism”, and the solution is indicated in the Declaration: human rights protected by the rule of law. If this viewpoint replaces a reaction of anger against the people of the southern border provinces, and influences our Government to look to the law as a protection of rights and not as a tool of unjust control and suppression, we will have entered a path to a solution of the problem of the southern border provinces.**

# CHAPTER TWO: Four Cases

## Case Study 1

*This case provides an example of the use of forensic evidence in prosecuting terrorism and related offences in the South of Thailand. Forensic evidence was crucial to the prosecution of the defendant in this case. Although other men were suspected of the crime the police had no other means by which to place them at the scene. It could therefore be said that the conviction was based heavily on the recovered forensic evidence. Scrutiny of the accuracy of forensic testing should therefore play an important role in the conduct of such cases, given the severity of the sentence imposed.*

### **BACKGROUND**

#### **Defendant profile**

Mr. Fhat-hee Samae, 25, is Thai Muslim. He is a resident of Mai Kaen, Pattani. Until the time of his arrest he was employed as a hired labourer.

#### **Event**

On 11 February 2008, at around 7pm, the victim, who was returning from shopping, was shot at the base of his right ear while riding his



motorcycle on Bann Kob-Nibong Road. His motorcycle lost balance and fell. His attackers then poured gasoline over and set fire to his body.

## **Police investigation**

After receiving a report of the incident from a witness, two investigating police officers attended the crime scene, accompanied by the village headman and military personnel, at about 8pm. They had difficulty accessing the crime scene as nails had been scattered on the road and the electricity went off. Upon arriving at the scene by foot they discovered the body of the victim, gasoline stains on the road, and the victim's motorcycle.

The police found and confiscated the following material evidence:

- A piece of paper with the message: "If a Muslim person is shot again, a Buddhist will be killed."
- A 'Sasi' aerated water bottle that smelled of gasoline
- A used match
- Nails

On 12 February 2008, a police officer collected samples from the blood stains for DNA testing, and recorded fingerprints from the aerated water bottle and the box of matches. This information was stored at Mai Kaen police station. The fingerprint was sent to a forensic expert in mid-June 2008.

Investigating officers conducted interviews with a witness to the crime, the victim's wife, and other witnesses. From their statements it appeared that the victim had a business conflict relating to a car investment with Mr JehtaeKitae, another suspect in the case.

Additional suspects included MrYalaludingReemani, MrSakkiSamaae, M JehtaeKitae, Mr Sati Sueman, and MrNusrudinUeni. Fingerprints were collected from these people and compared to the fingerprint found on the aerated water bottle. According to the test, only the defendant's fingerprint matched the one on the bottle.

Police officers also suspected the defendant to be the leader of a terrorist group, which operated in the Mai Kaen area. The group aimed to establish an independent state in the southern border provinces of Thailand: Pattani, Yala, Narathiwat, and parts of Songkhla. They were suspected of collecting weapons and forces for this purpose, and of committing various offences from an unknown date in 2006 until 11 February 2008. The defendant and his associates were suspected of going to Baan KokNibongRoad, after midnight with firearms and ammunition. The plaintiff stated that the place where the crime took place is a public place, where no private individual could legitimately bear arms.

## **Arrest information**

The defendant was interviewed on 7 May 2008. He denied being part of a terrorist group. On 25 May 2008 police officers arrested the defendant with a warrant while he was imprisoned on charges relating to a different case.

## **Charges**

At the time of his arrest and subsequent interview, police officers informed the defendant that he was charged with the following:

- Terrorism
- Premeditated murder
- Violating the Firearms, Ammunition, Explosives, Fireworks and Imitation of Firearms Act. B.E. 2490 (1947) by having an unlicensed firearm and ammunition, and for carrying a firearm in a public place without necessity or justification.

The defendant denied the charges and refused to sign his name to the charges and documents.

## **EVIDENCE**

### **Evidence obtained through investigation for Prosecution**

The prosecution produced material evidence (as set out under ‘Police Investigation’ heading) at the trial. It also relied on the testimony of the following:

- A witness to the crime who had heard the gunshot and motorcycle accident from his home 30-40 metres away. He looked out his window and saw something on fire and two men fleeing the crime scene on a motorcycle. He had not seen the men’s faces. After reporting the incident to police he attended the crime scene and identified the victim as someone who lived close-by and was known to him.
- Three investigating police officers who provided the details of their investigation process, which is summarised above.
- A forensic expert from the police who provided evidence that in mid-June 2008 he had conducted fingerprint comparisons between the fingerprint collected and the fingerprints of the defendant, and five of his suspected allies. He stated that the fingerprint matched the right forefinger of the defendant. He also gave evidence that the fingerprints of a person do not change from birth until death and no two individuals have the same fingerprints. He concluded that the fingerprint found on

the bottle was that of the defendant. He also stated that the fingerprint was different from both thumbs of Mr YalundingRimani, so concluded it did not belong to him.

- Another investigating officer who interviewed a Mr BudlunKasoh in March 2008. He stated that Mr Budlun admitted to persuading the defendant to be part of a terrorist group and provided further details of the defendant's involvement in terrorist activities. The officer provided evidence that he also interviewed the defendant, who denied he was part of a terrorist organisation, but admitted he had distributed leaflets with Mr Budlun.

## **Evidence for the Defence**

The defendant presented an alibi that he was at his aunt's house on the day of the crime – roughly 500 meters away from the crime scene.

The defendant's friend stated that the defendant was with him at DarunAshikee Mosque from 6pm (time of evening prayer) until 8pm (time of night prayer). And that after 8pm, both remained at the mosque to teach Quran to children.

## **COURT DETERMINATION**

The court accepted, on the basis of statements made by witnesses for the prosecution, that the defendant was one of the men who committed the crime. The court also accepted the expert testimony relating to the

fingerprint evidence, and noted that the defendant did not contest that the fingerprints belonged to him, but only gave an alibi that he was at his aunt's house. The court found that his aunt's house, being close to the crime scene, meant he would have been able to commit the crime and escape in a short time. The court also found that it could not accept the alibi provided by the defendant's friend because it was not credible, as the friend might only want to help the defendant. The court also noted this alibi was provided after the investigation.

The court determined the defendant murdered the victim with guns before pouring gasoline on the victim's body and burning it. The court concluded that the killing method was cruel. The court concluded the defendant and his allies committed the crime only to create turmoil which caused terror among innocent citizens in the area. This determination was made on the basis of police testimony that the defendant was part of a terrorist group and committed several other offences related to terrorism with other members, according to Mr Budlun. The defendant was also found guilty of committing an offence in respect of terrorism. The court gave the defendant the benefit of the doubt in respect of the charges of having an unlicensed firearm, as it noted that there was no firearm or ammunition presented in evidence. It concluded that the defendant used the firearm of another person that was registered for legal ownership and use, but noted the defendant had no such licence.

## **Sentence**

The defendant was sentenced to death for the offences relating to terrorism and murder. In the case of having a registered firearm without a license that belonged to another person, the defendant received one year imprisonment. For carrying the firearm in a public place without necessity or emergency appropriate to the circumstance, the defendant received six months imprisonment. However, since the death penalty is the severest punishment the court could inflict. It takes priority over the others.

## **APPEALS**

The defendant submitted an appeal to the Appeal Court, which is still pending.

## **OBSERVATIONS**

Upon reflection of the judgment in this case, researchers make the following observations:

## **Investigation**

The investigation process the court accepted came from police, as there was no alternate evidence provided. It appears from the accounts of police witnesses that the DNA evidence and fingerprinting was done carefully. There is a question of timeliness, as fingerprint analysis did not take place until five months after the crime.

## **Warrant of Arrest**

Limited information is available about this. The judgment says a warrant was obtained from the court for the defendant's arrest, and that he was arrested while detained in prison for an unrelated offence. It would be interesting to find out what the defendant was being detained for prior to his arrest for this offence.

## **Legal Representation**

There is limited information available at present about the point at which the defendant had access to legal representation. It does not appear that the representation called any witnesses to question the reliability of the fingerprint testing, which would have been crucial to a successful defence. More information will need to be obtained regarding the type of representation relied upon (was it provided by the state or privately retained) and the level of satisfaction the defendant had with lawyers.

## **Analysis of admitted evidence, witnesses and judicial reasoning**

In its reasons the judiciary gives preference to the prosecution's evidence over that of the defence. The only substantial piece of evidence placing the defendant at the scene was that of the matched fingerprint. It does not appear that this piece of evidence was challenged by the defence except to the extent that an alibi was



provided. It does not appear to have been raised by the defence that the forensic evidence could be imprecise, could have been tampered with, or, alternatively, the fact that one fingerprint on the bottle did not place him at the crime scene. Presumably, to pour gasoline over the victim the bottle would need to have been held with a whole hand, and thus one would expect to find more than one fingerprint. The fact that no further DNA evidence, or any evidence for that matter, placed him at the crime scene, along with his alibi, should have cast doubt on the fingerprint evidence. Especially considering the evidence of the witness to the crime, that the attackers immediately fled the scene. This suggests that had no time to clear the crime scene of any other forensic evidence (i.e. footprints and DNA).

It surprised researchers that alibi evidence was discounted due to the alibi being provided by a friend, who the court found would lie for the defendant. The alibi has been disregarded purely on this basis and for no other findings in relation to the character or credibility of the witness.

The court also accepted the evidence of an officer, who interviewed another terrorist member, Mr. Budlun, who gave evidence that the defendant was a member of the terrorist group. This is hearsay evidence, which is generally inadmissible. The court also appears to have given no consideration to the fact that the evidence may have been coerced or forced out of the witness. Of this we are not sure, as the

witness did not testify in court – hence, his evidence could not be tested (a good reason for generally not allowing hearsay evidence). As Mr Budlun was also a member of a terrorist organisation there is the possibility that he gave this evidence as part of a bargain with police, and therefore the credibility of his evidence is a factor that should be considered.

### **Length of trial**

More information is required about the trial length. At this stage, appeals are still pending. We comment that the crime occurred four years ago and only the hearing at first instance has been heard.

## Case Study 2

*This case raises questions about the police investigation process and reliability of evidence. Allegations were made by the defendants that torture was used to obtain their admissions of guilt. Two of the three defendants were condemned to death by the Court of First Instance, but had their sentences reduced to life in prison because, the court said their admissions of guilt made the investigation process easier for the authorities. However, the Court of Appeal and Supreme Court were concerned about the defendants' admissions, and found that the only evidence that linked the defendants to the crime was hearsay evidence from informants and was not admissible. In these cases the sentences were dismissed against all the defendants. Interestingly, even though the Appeal Court dismissed the case against the defendants they were detained until the Supreme Court appeal was determined.*

*For clarity purposes, this study will use the shorthand reference D1, D2 and D3 to identify the respective defendants.*

## **BACKGROUND**

### **Defendants' profiles**

**D1** - MrLuding AKA Ding or Pao Su Hama, 32, is a Muslim Thai national. He speaks Malayu and resides in Thepa District in Songkhla. He completed education up to junior high school and until his arrest was employed as a rubber tapper. He also taught religion. Until this arrest he had no criminal history.

**D2** – Mr Jehhem AKA Lee or LeemongJehmudo

**D3** – Mr Suriya AKA Dolah Sa-ii

### **Event**

On 28 May 2007 an Improvised Explosive Device (IED) was placed in the front basket of a motorcycle and was detonated remotely via mobile phone in front of the SabaYoi Fresh Market inSongkhla. The explosion occurred during a busy period, killing two adults and two children, and injuring 24 others. The motorcycle carrying the bomb was destroyed as well as 11 other motorcycles, two automobiles and a house.

The defendants were also accused of being members of a separatist group (which involved five other associates) and carrying out numerous offences from an unknown date in 2005 until 28 May 2007. These offences relate to the threatening of local communities, the murder of state officers and authorities, as well as robbery and property damage, all in the name of “dividing the Kingdom” or “establishing an

independent state”. It was alleged by the prosecution that the defendants trained other members in the use of guns, in committing terrorist acts, and in threatening local communities – and collected money for these purposes. It was also alleged that they stored, hid and moved an unknown quantity of handmade IEDs.

## **Police Investigation**

Police located eight items at the crime scene that were believed to have been part of the IED. This evidence was presented at trial.

The investigation was initiated by the arrest of “known” members of terrorist groups, including the group in question. Testimonies from some of these individuals led to the arrest of other members (newly identified) as well as the seizure of weapons, tools and documents relating to other crimes. This occurred in the months following the attack. Eventually Mr Bung (a pseudonym equivalent to ‘Mr X’) was arrested. Mr Bung admitted to being one of the attackers and implicated the three defendants in exchange for police protection and immunity from prosecution.

## **Arrest Information**

At the time of the incident an Emergency Decree was imposed in four districts of Songkhla, including SabaYoi. D1 was arrested on 16 October 2007; D2 was arrested on 23 October 2007; and D3 was arrested on 17 October 2007.

## **Charges**

The defendants were charged with the following offences:

- Terrorism
- Criminal Association
- Bombing
- Murder
- Violations of the *Firearms, Ammunition, Explosives, Fireworks and Imitation of Firearms Act B.E. 2490 (1947)*.

The defendants admitted the charges but at trial attested that their admissions were obtained through torture.

## **EVIDENCE**

### **Evidence obtained through investigation for the Prosecution**

In addition to the material evidence tendered (set out under the heading ‘Police Investigation’) the prosecution provided a great deal of evidence from police witnesses in order to show firstly that terrorist groups were operating in the southernmost provinces of Thailand, and secondly to

show that the defendants were members of such a group and committed the crime. This witness evidence is summarised as follows:

- Four police officers provided evidence in support of the notion that Malay Muslim separatist groups exist in the southernmost provinces. These testimonies remarked on details about why such groups exist, how they operate and how they recruit members, and the timeline of separatist violence beginning with incidents in 2004.
- Two police officers provided evidence about information attained through the questioning of known members of terrorist groups implicating the defendants in the attack. For example, a police officer gave evidence about an interview with Mr Bung, who had stated that he had attended a meeting with D1, D2 and seven others to plot the attack. The officer also stated that Mr Bung had stated that he had identified a suitable location for the attack with the D2 and another. Another officer gave evidence obtained from a police informer who had stated that the defendants had attended meetings with the terrorist group to plot the attack.
- Three police officers provided evidence regarding interviews with the defendants. The officers said the defendants admitted to being members of a terrorist group and to attending numerous meetings plotting the attack. D1 and D2 admitted to finding a

location for the attack, carrying out the attack, while D3 only admitted to discussing the attack and not participating in it.

## **Evidence for Defence**

There is limited information in the court judgment regarding evidence for the defence. However, we note that the defendants said their admissions were obtained through torture. We know that defence witness examination occurred over three days. Only one witness, Ms.Sitimariyae Hama, was referred to in the judgment. She had visited D1 when he was detained and presented signs of having been tortured to support this claim.

We assume that the defendants were unable to produce evidence in relation to the first issue the court addressed – that is, whether terrorist groups existed in the southern border provinces.

## **COURT DETERMINATION**

The court considered there were two issues it needed to determine:

- 1) *Are there any terrorist groups in the area of the three southernmost provinces and the four districts of Songkhla?*
- 2) *Were the defendant part of such a terrorist group and did they commit the crime?*



## *Issue 1*

In the court's opinion, the prosecution's evidence could be considered credible because police officers were able to provide detailed accounts of several other cases of terrorism. In addition, they arrested many other members of the terrorist organisation, and further investigations turned up weapons and tools. The court considered terrorism offences are usually conducted in secret and sometimes a witnesses' identity must be concealed for their security. The court found "police officers were able to find the truth from all their investigations. The three defendants did not provide evidence for the court to think otherwise".

The court concluded that the explosion affected many people in a public place for the purposes of destroying lives and property, and wasn't carried out with intended targets or personal retribution in mind. The objective was to create turmoil and distrust of state power, and the act, comparable to other terrorism offences described by police witnesses, were "heinous". The court considered some police witnesses did not appear in court, the court considers their testimony credible because the defendants did not testify against their statements.

## *Issue 2*

Lawyers for D1 and D3 objected to the information provided by witnesses which was obtained through interviews with the informant in exchange for his immunity. The court, however, believed it was valid

for the police to obtain this information for the purposes of identifying terrorists. The court said the credibility of this “informant” evidence was supported by the admissions of D1 and D2 of their involvement in meetings to plot the attack. Therefore, the court determined the testimonies of police witnesses were credible because they had “factual basis”.

The court considered the admissions of the defendants to be credible because they were offered twice; the sequences of events related to joining and committing violent acts seem to match up, which, the court believed, would have made it difficult for others to fabricate stories. Furthermore, the court gave weight to the fact that the defendants had the right to refuse the charges against them, but failed to do so. The court considered it insufficient that none of the defendants were able to provide alibis to support their denial of the offence.

The court ruled the written statement of D3 incriminating himself but void of his signature was admissible because D3 admitted involvement and provided details in interviews.

In response to the defendants’ claims that they were tortured to admit guilt, the court considered whether they were “literally” tortured. It said the defendants’ had their lawyers present during inquiry, at which point they should have refused the charges and informed the lawyers that they had been tortured. D1 stated that he admitted guilt because he was

afraid of being tortured, but the court determined this statement was inadmissible because it was based on personal belief rather than fact. D1 also stated that Ms Sitimariyae Hama went to the National Human Rights Commission (NHRC) where she stated, that during her visit to the national operation centre where D1 was detained, that his eyes were swollen, he looked tense, and showed signs of physical abuse. The court considered that MsSitimariyae did not approach the NHRC directly but wrote to the Muslim Attorney Centre instead – this meant there was no record of the NHRC receiving the letter, or working on the issue, and as a result there was no evidence of the submission. Furthermore, D1 did not allow authorities to examine his body making it difficult for the court to determine whether a physical assault took place. The court considered the witness – Ms Sitimariyae – and the evidence weak.

## **Sentence**

The court was asked to sentence the defendants' according to specific sections of the *Firearms, Ammunition, Explosives, Fireworks and Imitation of Firearms Act. B.E. 2490 (1947)* and sections of the Penal Code.

D1 and D2 were both found guilty of several offences, including collecting funds for criminal intent, being part of a terrorist organisation, as well as offences listed in Section 224 (causing death) and Section 289 (4) (premeditated murder) of the Penal Code – both of

which are punishable by death. The court condemned both defendants to death however, because their “admissions” of guilt had made the investigation process easier for authorities, their sentences were lessened to life imprisonment. They have also been ordered to pay compensation totaling more than 1.1 million Thai baht to several complainants.

D3 was found guilty of two offences relating to the collection of funds for criminal purposes, and being a member of an organisation whose “proceedings are secret and aims are unlawful”. He was sentenced to six years in prison.

## **APPEAL PROCESS**

### **Appeal Court**

On 30 July 2010 the Appeal Court dismissed the charges against the defendants and also refused the requests of all five complainants regarding remuneration from D1 and D2. The Appeal Court was concerned that there was no physical evidence linking the defendants to the crime, and only the oral statements from witnesses for prosecution, which was also hearsay evidence that the defence had no opportunity to cross examine. The evidence was inadmissible in accordance with the Criminal Procedure Code’s section 227/1 2nd paragraph. The court was also concerned with claims made by the defendants that they had been physically abused and pleaded guilty by signing documents without

reading them, because they feared for their lives. The court decided that all three defendants should be detained while awaiting the Supreme Court's decision.

## **Supreme Court**

On 30 November 2011 the Supreme Court upheld the decision of the Appeal Court. It held that the evidence presented by the prosecution was based on hearsay, contained many flaws, and was therefore doubtful. The court found that the prosecutor failed to present corroborating evidence from independent sources in support of its case. In addition to the hearsay evidence the court had concerns about the credibility of the admissions of the defendants. For these reasons the three defendants were given the benefit of the doubt, and the judgment of the court of appeal was upheld.

## **OBSERVATIONS**

### **Investigation**

Regarding the crime scene investigation, little mention is made of the methods employed by police or the material/physical evidence collected. To the researchers' knowledge there was no DNA or forensic evidence (such as footprints). What was collected were pieces of debris, which were analysed and deemed to be part of an IED.

It is unclear what means were used to get information from other witnesses/informants by police which led them to the defendants as suspects. Certainly the informant was offered immunity, which affects the credibility of his own evidence. It also raises the question of whether the evidence of other witnesses, namely Mr Bung, was also obtained through bribery or torture.

## **Warrant of Arrest**

At the times of the arrest there was an Emergency Decree in place in the southern border provinces and four districts of Songkhla. Whether the defendants were arrested using provisions of this Decree, or with a more conventional court-issued warrant, is unclear.

## **Detainment**

The length of detainment for each defendant is unknown at this stage. The court mentioned that lawyers were allowed to visit each defendant at various stages. The locations of detention and inquiry (at a police station and military facility) are also mentioned in the transcript. It is unknown whether family members were given access to the accused. We also note that the defendants' remained in detention while awaiting the Supreme Court appeal decision – despite an overturned conviction by the Appeal Court.

## **Torture**

As the researchers understand the case, each defendant has contested their admission of guilt on the grounds that these admissions were obtained through the use of torture. Further information about who might have tortured the defendants while in custody is not given.

The Court of First Instance commented that the defendants, during visits from their lawyers, could have denied the charges and made known their allegations of torture or forced confessions. However, we do not know if any inquiry officials were present during the meetings with lawyers – which would have affected their ability to speak openly. In the researchers' opinion, the Supreme Court rightly identified problems with the credibility of the admission. However, this finding was framed on the length of time that the defendants had been detained rather than explicitly finding the admission was the result of torture.

One of the witnesses for the Defence attested to the fact that when she visited D1 in custody he had swollen eyes, was tense, and appeared to have suffered physical abuse. She noted this in a letter that was intended for the NHRC but was given on first instance to the Muslim Attorney Centre. She did not lodge a formal complaint with the police. The Court of First Instance considered that the letter was inadmissible because there was no evidence to document the submission. In addition, the court discredited the evidence because D1 would not allow authorities

to examine his body. In the opinion of the researchers, it would not be unreasonable for a victim of torture to resist an examination (or any further contact, for that matter) with authorities he/she feared – or to raise the matter officially with those authorities for fear of reprisals. The issue of the letter, and its admissibility, does not appear to have been dealt with by the Appeal Court or the Supreme Court.

One final point on the issue of torture relates to how it was considered by the courts. The Court of First Instance said they were interested in whether the defendants were “literally” tortured. What this means is unclear. With regards to D1, who said he admitted guilt because he was scared of torture, the court found that because this was a “personal opinion” rather than a statement of fact it could not invalidate his admission. In many legal systems, burden of proof for the crime of assault is not determined by evidence of a physical act, but the belief by the victim that a threat of force is real and imminent. As noted, the later courts overturned the decision on the basis of problems with the prosecution’s hearsay evidence and do not make any explicit finding on whether the defendants were tortured or mistreated while detained. Thus, it is unclear what a court will accept as demonstrative of an admission made under torture.



## **Legal representation**

It was remarked by the court that each defendant had access to a lawyer during pre-trial detainment. It is unclear whether those lawyers were appointed or privately retained, when they commenced work on the trial, and the extent of their experience. For a case involving capital punishment, we the researchers feel that it's reasonable for there to be a standard of minimum experience for defence councils. At present, we are unaware of the defendants' satisfaction with their representation.

## **Analysis of evidence and witnesses**

In the court papers that have been provided to us, there was a lot of information about the prosecution's witnesses and evidence, and very little about who was called for the defence. With regards to the prosecution, there seems to be a heavy reliance on police witnesses, including officers involved in the inquiry, and testimony from others who failed to appear in court. A lot of this information (especially as it pertained to the existence of terrorist groups in the South) was obtained through investigations and testimonies of arrested parties. Of course, there is also an element of "public knowledge" of their existence that was not mentioned in the case.

The Court of First Instance was critical of the defendants for not providing alibis or denying the charges against them. It also refuted the

validity of observations made pertaining to signs of abuse and torture, and did not accept “fear of torture” as reasonably unlawful when it came to the admission of D1. In addition, it allowed into evidence the unsigned testimony of D3.

The researchers’ assessment of the first instance decision is that there appears to be an inherent leniency toward evidence submitted by the prosecution, and disconnect between both sides regarding the threshold of what is considered admissible evidence. For example, the court seemed very concerned with procedure having been followed in terms of the NRHC report and admissibility of that evidence however it was unconcerned that a formal admission of guilt had not been signed by D3 which also was an important procedural step. Although we are ill-equipped to pass judgment on the credibility of the defence witnesses, as we have minimal information about their role and character, we find it surprising that signs of torture outlined by what was presumably a third-party observer were disregarded so readily. The lack of DNA and physical forensic evidence obtained from the crime scene also do little to support the safety of these convictions.

These issues were identified as problematic in the reasoning of the Appeal and Supreme Courts. However, we note that the court did not go so far as to say that the defendants were innocent despite the fact that there was no evidence linking them to the crime. Rather it was stated,

the defendants were given the benefit of the doubt. This will have implications on obtaining any compensation for the defendants.

## **Analysis of judicial reasoning**

The Court of First Instance outlined two main issues it needed to consider in the case: whether terrorist groups did in fact exist in the south and whether the accused parties committed the crime in question. By setting these out in plain view, it appears the court considered these two issues equally relevant. A concern that arises here is that, if the former is proven (which it was), does this inform, in any way, the court's attitude toward the latter. We, the researchers, feel that the first issue does not significantly relate to the second issue, which should have been the main issue. We are therefore concerned that by giving them what appears to be, equal (or at least some) weight in their reasoning, the court may have inadvertently hindered the defendants' right to the presumption of innocence. This is speculation, but of some importance to consider, especially given the seriousness of the crime and punishment. Although the existence of terrorism may be necessary to understand the motivation or *mens rea* for a crime, we note the evidence led in respect of the first issue may have coloured the court's consideration of the second issue. In considering this issue the court noted that terrorism crimes were often heinous and that the police had a great deal of experience in investigating such offence. In our view, it may have been that because of the court's approval of the police

investigation and level of knowledge in respect of the first issue, it accepted the police investigation was adequate in terms of the second issue. The fact that terrorism exists in the south was easily proved by the prosecution, and in many respects, would have been near-public knowledge at the time of the trial. There would have been no way for the defendants or their lawyers to refute this fact.

The reasoning of the Appeal and Supreme Courts appears to be more sound, and does not focus on this first issue in as much depth. Rather it concerns itself with the quality of the evidence presented by the prosecution, and whether it linked the defendants to the crime. In the researchers' opinion, this was really the critical and central issue for determination.

## Case study 3

*This case study is an example of the appeal process in cases where the death penalty is involved. The fact that the Appeal Court overturned the death sentence imposed on this defendant, as it was unconvinced of the credibility of the evidence, demonstrates the problem of relying solely on one witness' testimony. The fact that the victims in this case were police officers also seems to be a factor in the way that the Court of First Instance and also the Supreme Court dealt with evidence. That is, it appears to have been rather uncritically accepted. The researchers feel this demonstrates there is no unity in the approach for weighing and accepting testimony within the judiciary.*

*For clarity purposes we will refer to the deceased police officer as the victim and the second police officer (a main witness) after first references as FDP (short for first damaged party. The victim's wife will be referred to as SDP (short for second damaged party).*

### **BACKGROUND**

#### **Defendant's profile**

Mr. Abdullah Satae, 34, is a Muslim Thai. He is a resident of Yarang District in Pattani. He attended school until grade four. Until the time of

his arrest he was employed in rubber tapping and construction. He has a wife and two children and previously had no criminal record.

## **Event**

On 31 August 2005 a group of at about seven or eight men carried and used illegal weapons to attack a police highway box. One police officer was shot dead(victim), and another officer was ‘damaged’ (first damaged party or **FDP**). The victim’s wife, who was present in a dormitory room attached to the police box during the attack, is also a complainant (second damaged party or **SDP**). Both the victim and the FDP were performing their duties at the time of the attack. The victim was fatally hit in the face and torso with bullets during the attack. The FDP and SDP were not hit by bullets. The attackers stole weapons from the victim and the FDP and set fire at the crime scene causing damage to the parking lot, a state vehicle and a vehicle belonging to the victim.

## **Police investigation**

After the incident, inquiry officers showed the FDP a diagram of members of the insurgent movement prepared by police officers, together with photos of the suspects who were members of an insurgent group. The FDP pointed to the photo of the defendant and confirmed that he was one of the perpetrators.

After the incident, the inquiry officers seized weapons and ammunition from the crime scene and kept them as evidence, which was later presented at trial. They also searched the houses of several suspects, including the defendant.

## **Arrest information**

The defendant was arrested on the 23 July 2008. He was denied bail and first brought to court exactly one year after his initial arrest. When arrested the defendant denied the charges and gave an alibi. After the arrest the FDP confirmed the defendant was one of the perpetrators.

## **Charges**

The defendant was charged with the following offences:

- Murder
- Robbery
- Arson
- Manslaughter
- Violation of *Firearms Act* for illegal possession of weapons, and carrying these weapons in a public place.

## **EVIDENCE**

### **Evidence obtained through investigation for the Prosecution**

The prosecution produced material evidence (as set out under ‘Police Investigation’ heading) at trial. It also relied on testimony of the FDP, in which the defendant was identified as a person involved in the attack. The FDP also provided further details of the attack, including how he tried to shoot back at the attackers but his bullets jammed, and that he had radioed for reinforcements.

Two officers who investigated the crime scene provided evidence that they discovered footprints 200 metres away and this evidence was then submitted for forensic testing. One of the officers also examined the bullets found at the scene of the crime, and the prosecution presented a forensic science report setting out the findings.

Evidence from two injured officers was also put forward. They said that the arresting officer told them the defendant was arrested according to the warrant issued against him and he was still denying the charges.

### **Evidence for the Defence**

The evidence provided by the Defence was alibi evidence of his friends and family.



## **COURT DETERMINATION**

The Court of First Instance accepted the eye witness account of the FDP. It noted that the FDP had been alert enough to use the victim's pistol to shoot back at the attackers and also to radio for help, which the court noted was consistent with accounts given by other police witnesses. The court deduced that the FDP remained calm and alert during the attack, and thus accepted he would have been able to memorise details relating to the perpetrator. The court accepted that the FDP could view the defendant because, even though it was night time, the room was illuminated by street lights, and also because the bunker was not large or high. It was noted that the FDP did not give the inquiry officers information about remembering the face of the defendant straight away, but rather seven days later. The court concluded this was not suspicious as he had neither known nor had conflict with the defendant before. The court also commented there was no reason to suspect that the FDP might want to falsify his testimony to convict the defendant.

The court found the defendant's alibi lacked credibility and was not sufficient to rebut the prosecution's evidence, as it was likely his alibi witnesses would testify in his favour to help him avoid conviction.

It concluded without doubt that, at the date and time the incident happened, the defendant and others used firearms to shoot the deceased

and the two damaged parties, without any justifiable reason. The defendant was held liable of complicity in the murder of the victim, and also in attempted murder of the FDP and SDP.

The court gave the defendant the benefit of the doubt in respect to the charges relating to having an unlicensed firearm, as it noted that there was no firearm or ammunition presented in evidence. It concluded that the defendant used the firearm of another person that was registered for legal ownership and use. It noted the defendant had no licence to use a firearm.

## **Sentence**

The defendant was found guilty for the use of firearms to kill a state official, based on a premeditated act. This act had the severest penalty – the death penalty. He was also convicted to life imprisonment for conspiring to possess unlicensable firearms and ammunition, and using the firearms in a premeditated attempt to kill a state official who was performing his duties; life imprisonment for conspiring to set fire to a public building; six months imprisonment for conspiring to illegally possess firearms and ammunitions registered in someone's else's name, and one year imprisonment for carrying firearms without permission. Since he has to serve the death penalty for the offence on the first count, the other imprisonment terms could not be applied. The

defendant was also ordered to provide compensation for the weapons stolen from the victim and FDP.

## **APPEAL PROCESS**

### **Appeal Court**

An appeal was heard by the Appeals Court of Region 9. The Appeal Court had concerns about the evidence of the FDP for the following reasons:

- The attack occurred in the evening, and while there was light from outside, any view the FDP had would not have been as clear as if it was daytime
- Any view the FDP had would have been at best a brief glimpse from three metres
- The incident was chaotic with around seven attackers and it was unlikely he remembered one of the attackers' faces.
- The description given of the attacker was not distinctive enough and could have been used to identify any number of people (i.e. the FDP said the attacker was 25-30 years old, male, skinny and tall, brown skin, black hair). It was not credible the FDP would have remembered the defendant seven days after the attack, when he first identified him. It was also not credible the FDP remembered the appearance of the attacker three years later when the identification procedure took place. As a result, the

court placed no weight on the suspect identification report and the pictures showing the identification procedure tendered by the prosecution. The Court noted that the signature on the identification report appeared to be different to that accompanying his written testimony.

Accordingly, the Appeal Court found the testimony of the FDP was not credible or supported by other evidence. Thus, the Appeal Court found the evidence presented by the prosecution did not carry enough weight to prove the defendant was a perpetrator and that he committed the offence.

On 23 December 2011 the Appeal Court reversed the order of the Lower Court and dismissed the case against the defendant, but ordered that the defendant be held in custody during the Supreme Court procedure.

## **Supreme Court**

The decision of the Appeals Court was appealed to the Supreme Court, which accepted the evidence of the FDP on the basis of the following:

- The FDP would have been able to see the defendant as there was a spotlight providing a light source, and because the FDP was hiding in a dark spot and would be able to more clearly see a person in a lit area.

- The testimony of the FDP about the sequence of events was consistent with other evidence given by police witnesses.
- As the FDP was a police officer he had good observation skills, thus it was credible he would have seen and recognized the defendant. This was demonstrated by his ability, five days after the event, to verify the defendant when shown a photograph of the defendant.
- Evidence provided by the defendant's older brother Mr MayatengSatae, who said he knew the defendant had committed the offence and was on the run.

The Supreme Court found this evidence solidly proved the defendant was one of the perpetrators who committed the crime.

On 11 September 2012 the Supreme Court reversed the order of the Appeal Court, and found the defendant guilty of a number of distinct offences. It found he shall be punished by death for premeditated murder of a government official who was performing his duties, the act which carried the most severe punishment under Penal Code Section 90. In addition, he shall be imprisoned for six months for being in possession of firearms and ammunition registered in someone else's name, one year imprisonment for carrying firearms in a city, village or public place without permission. In combination of all counts, the defendant was ordered to be punished by death.

## **OBSERVATIONS**

Upon reflection of the judgment in this case, researchers make the following observations:

### **Investigation**

The description of the investigation is somewhat brief from the information provided in the Court documents. It appears that between five to seven days after the incident the inquiry officials provided the FDP with photographs, which he used to identify the defendant as a perpetrator. The Court of Appeal expressed some concern that a suspect identification report tendered by the prosecution, purported to be signed by the FDP recorded a signature, different in appearance to that recorded on the signed testimony of the FDP. This difference in signature does not appear to have been addressed by the Supreme Court in its decision, which is of some concern as it suggests that some level of fraud may have occurred in the investigation process by which the defendant was identified.

It is the researchers' understanding that this report was signed three years after the event. So even if the signature is that of the FDP it raises an important question about the accuracy of memory over a prolonged period, and also begs the question: what was being done in this three year period? No additional evidence appears to have been adduced in this period, which could suggest that any ongoing investigations failed to turn up additional evidence linking the defendant to the crime.

## **Warrant of Arrest**

Limited information is available about the circumstances of arrest. It is unclear if the defendant was arrested under Emergency Decree.

## **Legal Representation**

There is limited information available at present about when the defendant had access to legal representation. It is known that the defendant had access to a lawyer while being remanded in prison and during trial. The defendant said talks with his attorney were not very private, and said the lawyer was reviewing much of the evidence for the first time, upon its presentation to the court by the prosecution. It is also known that the defendant's relatives sought help from the Muslim Attorney Centre(MAC), though their role, or the level of intervention, is unclear. From the judgment of the Court of First Instance it appears that the defence sought to undermine the credibility of the eye-witness testimony of the FDP in cross examination and poked holes in this evidence. Therefore, from the limited information available, it appears the defendant's representation sought to challenge the prosecution's case.

## **Issues with detention**

Although the defendant was informed of his rights during inquiry, relatives were not given an opportunity to be present during interrogations, most of which took place without legal counsel. It is

known that relatives were allowed to visit according to prison guidelines and that the defendant was restrained using handcuffs. There is mention from interview notes that an interpreter, while in custody, might have helped the defendant to better understand the nature of the charges against him.

## **Analysis of admitted evidence, witnesses and judicial reasoning**

Both the Court of First Instance and Supreme Court accepted the evidence of the prosecution, which was heavily reliant on the FDP's testimony. The reasons for doing so appear to have been based on the belief that the FDP was able to clearly recount events, and that these were consistent with accounts given by fellow officers. However, the courts did not appear to consider the fact that fellow officers may have had incentives for providing accounts that supported those of the FDP (however, it does give consideration of ulterior motives for alibi witnesses).

The Supreme Court also appears to engage in circular reasoning when accepting the testimony of the FDP. It accepts that he would have had a good ability to remember the defendant because he is a police officer, and part of his job is to note behaviour patterns. It then goes on to say that his good attention to detail is demonstrated by his ability to identify the defendant when looking at photographs. Thus, it appears that it



accepts the FDP was able to identify the defendant because he had the ability to do so when presented with photographs. The Supreme Court judgment does not deal with the difficulties or issues highlighted by the Appeal Court regarding what appeared to be a fraudulent identification report, nor its comment that the description provided by the FDP was rather generic and not overly descriptive.

We also note that the Supreme Court judgment cites evidence from the defendant's brother to support the FDP's identification. The evidence was that the defendant's brother knew the defendant was guilty and had fled. Again, the Court has not considered upon what basis the brother reached this conclusion, nor has it considered that the brother may have ulterior motives.

The judgment of the Appeal Court appears to deal with the evidence in a more measured way and does not give weight to the FDP's testimony simply because of his status as a police officer. Instead, it appears to recognize that human memory is fallible and needs to be strongly supported by other evidence, which in the researchers' view, is lacking in this case.

It is worth noting that it was recorded in the judgment of first instance that there were footprints located outside the police highway box and a forensic science report was tendered. This is cited nowhere else in the judgment, nor in further judgments. This suggests that there was no forensic evidence linking the defendant to the scene of the crime. One

may have expected such evidence given that the attack was described as ‘chaotic’.

## **Length of trial**

It was more than seven years from the date of the crime to the decision of the Supreme Court. It also appears that the investigation process was roughly three years.

## Case Study 4

*This case exemplifies the inherent complexities of prosecuting terrorism cases in the southern border provinces of Thailand, particularly cases where multiple defendants are tried simultaneously. Some of the incriminating evidence in this trial was the testimonies provided to officials by co-accused parties during inquiries. The truthfulness of these testimonies, or whether they were obtained lawfully, was a point of contention during hearings. As such, this has raised questions about the legitimacy of the convictions. In this particular study, we have chosen to focus on the two defendants who received the harshest sentences of those convicted – life imprisonment and the death penalty, respectively. Our rationale for organising the study in this way was to make the facts and analysis of the case more digestible for readers, and to maintain the focus on capital punishment in Thailand’s south.*

*There are instances in the following study where we will need to refer to the other defendants. For clarity purposes, we will do this using the shorthand reference D1, D2, D3, and so on. Mentions of D4 and D7 (the two defendants of interest) will be marked in bold.*

## **BACKGROUND**

### **Event**

On 19 January 2011 a group of approximately 40 armed men attacked the R. 15121 military base, located in MarueboTok, Ra-ngae District, Narathiwat. These men were armed with 7.62 mm Russian machine guns, 5.56 mm machine guns, an unknown quantity of 7.62 mm NATO rifles, an unknown quantity of M79 grenade launchers, and an unknown quantity of improvised explosive devices (IEDs). Some men raided the armoury and stole firearms to the value of 3,113,304 baht, and set fire to buildings at the base. While this occurred, other members of the group burned tyres, cut down trees, scattered nails on the road and shot at a phone booth in the surrounding area to block access for reinforcements attempting to reach the military base (**restrictive activities**). Four Royal Thai Army officers were killed in the attack and 11 others were seriously injured.

### **Arrest Information**

Fifteen men were charged in relation to the event. **D7** was a military official on duty at the time of the attack, as were **D5**, **D6** and **D11**. It is alleged that he was a spy for the terrorist organisation, instructed other military personnel not to thwart their attack, and was involved in the assault. **D4** was alleged to have been involved in activities aimed at preventing access to the military base at the time of the attack, along

with D1 and D3. (There were seven other men alleged to have been involved in this activity who have not been arrested).

## Charges

The defendants were charged with the following offences:

- Terrorism
- Assault
- Criminal Association<sup>2</sup>
- Causing Fire
- Bombing
- Murder
- Robbery
- Violation of the *Firearms, Ammunition, Explosives, Fireworks, and the Equivalent of Firearms Act B.E. 2490* (1947)

All men denied the charges. **D4** provided an alibi, and **D7** testified that he was on duty during the time of the attack but was not involved in the crime.

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<sup>2</sup> The defendants were accused of criminal association by being members of a terrorist group, KabuankanKoochart Rut Pattani, a group aiming to establish Pattani, Yala, Narathiwat and other districts of Songkla as an independent state.

## EVIDENCE

### **Evidence relating to D4**

#### *Evidence obtained through investigation for the Prosecution*

The prosecution relied on the testimonial evidence of two witnesses, Mr Musharudfi and Mr Anwan, who stated they had joined D1, D3, and **D4** in restricted activities. They said D1 and **D4** carried guns during this exercise. Evidence was taken from both men on 6 March 2011 – Mr Musharudfi gave evidence in the presence of the village headman and his aunt, while Mr Anwan gave evidence alone on this occasion. On 18 March 2011, Mr Anwan confirmed his testimony of 6 March 2011 in the presence of his parents. The information given by both men was recorded by an inquiry official, and it has been stated for the record, by investigators, that both men understood the recording was being made.

However, at the court hearing both “witnesses” denied they ever gave the information, and stated that the inquiry official had made them sign the statement without reading it to them. Mr Anwan stated they had been made to memorise the content of the information contained in the statement.

D1 and D3 admitted they had been involved in the restricted activities in the presence of their wives and lawyers. D1 stated **D4** had joined them in committing the crime.

The evidence of these respective testimonies matched the testimony of responding police officers, who said they were unable to reach the crime scene.

### *Defence evidence for D4*

**D4** submitted an alibi during the court hearing; the alibi was supported by a person known to **D4** and was not provided at the time of his first arrest or interview with police. (Note: we do not know whether, at the time of arrest, **D4** was aware of the charges against him, or was asked to produce an alibi. The presumption is that, under the normal course of investigation, this would have been requested).

**D4** denied he had committed a crime, and only admitted D1 was his relative.

## **Evidence relating to D7**

### *Evidence obtained through investigation for the Prosecution*

**D7**, as well as D5, D6 and D11, were all military officers on duty at the time of the event. Each of the men gave evidence, recorded by an inquiry official, in which they admitted they were members of a terrorist group, and blamed each other for the crime. D5, D6 and D11 all gave evidence implicating **D7** in planning the attack. D5 claimed he had heard **D7** talking on the phone with another man involved in the

attack. D6 stated that during the attack he saw **D7** change out of uniform and join the terrorists.

### *Defence evidence for D7*

**D7** gave evidence that he was at Baan Nok Dao at the time of the incident, and other military officers were present in the building at the time. He stated that when he heard the attack (gunfire and bomb blasts) he went into hiding. (Note: It is unclear whether investigations sought to corroborate this story with other military personnel or whether there was CCTV footage of the base to confirm his movements).

### **Evidence relating to other defendants**

See Figure 1 for summary of evidence relating to other defendants.

## **COURT DETERMINATION**

### *Consideration of charges against D4*

The court considered that the alibi evidence provided by **D4** (and also D1 and D3) was not strong enough to refute the prosecution's case. The reasons given were: there was no supporting evidence; they had not given the alibis when first arrested and interrogated; and because the alibis involved, and could only be confirmed by, people known to them (indicating, in the court's opinion, they could be fabricated). The court did not accept the claims by D1 and D3 that they had been forced to



sign statements without understanding the content – in which they implicated **D4** and themselves - because they had been signed in the presence of their wives and lawyers. It was determined that this would have made misconduct or forgery by the inquiry officials difficult. The court considered the evidence proved **D4** (and D1 and D3) were guilty of the following:

- criminal association
- trying to prevent State officers performing their duty
- supporting robbery and causing deaths of others
- supporting use by others of arms and explosives, without state permission, killing others and carrying out robbery
- supporting bombing
- supporting others to burn buildings for accommodation
- supporting intentional killing of state officers while they were on duty
- supporting more than three other persons to fight state officers with unauthorized firearms and explosives
- Being part of a terrorist group of more than five members

### *Sentencing of D4*

The court decided to include the above issues as one violation of many laws and regulations. As a result, the court imposed the punishment for the highest offence, which is supporting others to kill state officers

according to Penal Code section 90 appurtenant to section 52(1), and sentenced the defendants to life imprisonment. D1 and D3 had their sentences reduced to 36 years imprisonment, as they had provided information that made it easier for the court to make its determination. **D4** sentence remained life imprisonment.

### *Consideration of charges against D7*

The court considered the evidence in the recordings given by D5, D6, **D7** and D11 was trustworthy because, according to the records, the men appeared to state willingly what happened to them without force or torture. The court found that there was no evidence to support **D7's** account of events and accepted the testimonial evidence of D5, D6 and D11 on the grounds that they were military officers at the base and would not have forgotten the role **D7** played during the event. However, the court did not accept this testimonial evidence insofar as it incriminated D5, D6 and D11 because it had been obtained during a lengthy detainment (period unknown) and because it was uncertain about whether it was given willingly. Despite this acknowledged concern, the court gave weight to this evidence as it implicated **D7**, and suggested he was a spy who joined the terrorists to commit the crime.

The court did not accept that the other defendants were innocent parties. In light of the ease and speed with which the attackers were able to commit the crime and access the target, the court thought that there must have been multiple parties working at the military base who

supported the terrorists. Ultimately, however, the court gave the benefit of the doubt to D5, D6 and D11, none of whom were convicted. (NOTE: these men have been ordered detained until an appeal).

The court found **D7** guilty of the following:

- criminal association
- terrorism
- robbery and causing the death of others
- using unauthorized firearms and explosives to commit robbery and homicide
- burning accommodation buildings
- premeditated killing of state officers while they were on duty
- taking weapons to a public place without proper reason<sup>3</sup>

### *Sentencing of D7*

The court decided to include the above issues as one violation of many laws and regulations. As a result, the court imposed the punishment for the highest offence: premeditated killing of state officers while they were on duty. Section 90 of the Penal Code provides that the punishment for this offence is the death penalty. Concurrent sentences included: taking weapons to a public place without a proper reason;

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<sup>3</sup>Accordingly, **D7** was found guilty under the Penal Code section 135/1 (1) (3), 135/2 (2), 140 (3rd paragraph) appurtenant to section 138 (2nd paragraph), 209, 210 (2nd paragraph), 218, 221, 289 (2) (4), 340 (2nd and 5th paragraph), 371; Firearms, Ammunition, Explosives, Fireworks, and the Equivalent of Firearms Act B.E.2490 (1947)'s section 8 bis, 38, 72 bis (2nd paragraph), 74, 78 (1st and 3rd paragraph) appurtenant to the section 83 of the Penal Code)

using unauthorized firearms; and using unauthorized explosives, collectively these sentences accrued a 25 year prison term.

### *Sentencing of other defendants*

See Figure 1 for summary of sentences given to other defendants.

## **APPEAL PROCESS**

Until the present, there is uncertainty about the timing of any appeal hearings. The judgment at first instance makes reference to a pending appeal, and has ordered that all defendants – even those whose charges were dismissed – be detained pending the appeal.

**Figure 1: Summary of sentences for all 15 defendants**

DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
<b>D1</b>	<p>Testimonial evidence of two witnesses who were present with D1, D3 and <b>D4</b> for restricted activities.</p> <p>D1 admitted involvement in restricted activities in the presence of lawyer and wife.</p>	<p>Witnesses recanted statements in court, and said they had been forced to sign statements and memorise its content.</p> <p>Provided alibi.</p> <p>D1 claimed he had been forced to sign the statement in which he admitted guilt.</p>	<p>Court gave preference to prosecution evidence. Did not accept alibi evidence for same reasons as given for <b>D4</b> (see above).</p> <p>D1 was found guilty of criminal association, terrorism, trying to prevent state officers performing their duties, supporting robbery and causing deaths of others, supporting use by others of arms and explosives without state permission, killing others and carrying out robbery; supporting bombing; supporting others to burn buildings for accommodation; supporting intentional killing of state officers while they were on duty; supporting more than three other persons to fight state officers with unauthorised</p>

DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
			<p>firearms and explosives.</p> <p>Sentence reduced from life imprisonment to 36 years, as D1 had provided information making it easier for the court to reach a determination.</p>
<b>D2</b>	Video recorded witness testimony that D2 had participate in the attack.	<p>Witnesses recanted evidence at hearing.</p> <p>Became apparent that one of the witnesses had no direct knowledge of D2's involvement.</p>	<p>Court found that the witnesses might wish to protect D2 and found the recordings on the video device to be more reliable than their oral testimony in court. However, it found that based on the testimony there was doubt whether D2 had been involved in the attack.</p> <p>Court gave D2 benefit of the doubt in accordance with sect. 227 of the Criminal Procedure Code.</p>
<b>D3</b>	AS ABOVE FOR D1.		
<b>D5</b>	Own testimony in which he implicated himself and others.	D5's testimony had been obtained during a lengthy detainment.	Due to concerns with D5's testimony and the testimony of other officers implicating D5 the Court gave D5 the

DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
	Testimony from other military officers	Uncertainty regarding whether testimony was given willingly.	benefit of the doubt and found him not guilty.
<b>D6</b>	AS ABOVE FOR D5.		
<b>D8</b>	<p>Video recorded witness testimony that D8 arranged for food delivery to area near where attack took place</p> <p>DNA evidence of D8 on a straw found in vicinity of where attack took place, tools that could have been used in the attack were also found at this location.</p> <p>Possessed “Sparta Knives” which led the court to believe they had</p>	<p>Witness recanted evidence against D8 at the hearing</p> <p>Admission of D8 was given alone with no trusted person present.</p> <p>Alibi provided.</p>	<p>The court concluded that D8 had not produced sufficient evidence to dispute that produced by the plaintiff - that is, it did not accept his alibi as it came from his neighbour, nor did it accept that the statement had been falsified as it had been witnessed by his lawyer and wife. However, as D8 had not been present with a trusted person when making an admission the court considered the admission was not trustworthy. It found that the evidence simply supported that D8 had helped plan the attack, and there was no evidence that he actually took part in it.</p>

DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
	<p>been surveying the area.</p> <p>Admission from D8 that he had been involved in surveying the area for an attack, during an interrogation</p>		<p>D8 was found guilty of the same offences as D1 and D3 above, and his sentence was reduced from life imprisonment to 36 years.</p>
<b>D9</b>	<p>DNA sample belonging to D9 on a firearm stolen from the armoury, found at a location where a group of terrorists had battled with police in February 2011.</p>		<p>The court did not consider this proved D9 was involved in the attack on the military base. Gave D9 benefit of the doubt in accordance with s 227 of the Criminal Procedure Code.</p>
<b>D10</b>	<p>DNA sample belonging to D10 found at a location where a group of terrorists had battled with police in February 2011.</p>		<p>The court did not consider this proved D10 was involved in attack on the military base. Gave D10 benefit of the doubt in accordance with s 227 of the Criminal Procedure Code.</p>
<b>D11</b>	AS ABOVE FOR D5.		
<b>D12</b>	A document recording	Concerns about D12's	D12's admission was obtained while



DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
	<p>admission from D12 that he had been involved in the attack.</p> <p>Evidence from D8 implicating D12.</p> <p>Witness testimony that <b>D4</b> had told witness that D12 was involved in attack.</p> <p>A report which recorded biological sample matching the D12 had been found at the place.</p>	<p>willingness to make admission and also regarding whether he was informed of his rights once he became an alleged person.</p> <p>D8's testimony could not be used for reasons set out above</p> <p>Other evidence could not be used for reasons of specificity.</p>	<p>he was detained under the Emergency Decree. The court found that the document recording D12's admission could not be taken in evidence, by virtue of s135/4 (first and third paragraphs) of the Criminal Procedure Code, because at the time of making the document D12 became an alleged person, and should have been informed of the right to defend himself throughout the trial, given access to a lawyer or trusted person, and being informed that anything he said during the interview could be used against him later. However, the defendant was not informed about these rights.</p>
<b>D13</b>	<b>PASSED AWAY BEFORE HEARING.</b>		
<b>D14</b>	<p>DNA sample belonging to D10 found at a location where a group of terrorists had battled</p>		<p>The court did not consider this proved D14 was involved in the attack on the military base. Gave D14 benefit of the doubt in accordance</p>

DEFENDANT	EVIDENCE AGAINST DEFENDANT	DEFENCE EVIDENCE	COURT DETERMINATION AND SENTENCE
	with police in February 2011.		with s 227 of the Criminal Procedure Code.
<b>D15</b>	Gun stolen from military base's armoury found in a car once owned by D15.		The court found that there was no evidence to show D15 owned the car or the gun. Gave D15 benefit of the doubt in accordance with s 227 of the Criminal Procedure Code.

## **OBSERVATIONS**

Upon reflection of the judgment in this case, researchers make the following observations:

### **Investigation**

There is minimal reference to the procedures undertaken by police and other authorities during the investigation. It is worth noting that 40 or more men were suspected of being involved in this attack. It is unclear how 15 men came to be arrested. Also of note is that there was acknowledgment by the presiding judges that some of the witness statements may have been unwillingly obtained, particularly in instances where defendants were detained for lengthy periods. There were also complaints made by several defendants and witnesses about the content of their statements, and the methods by which these statements were obtained. The court considered the statements (of D1 and D3) trustworthy due to the fact that they were given in front of their wives and lawyers. (There is an important distinction to be made by a statement being witnessed by someone, and a statement being signed by someone after the fact. From the judgment translation it is unclear what actually transpired in each situation). We also note that the judges were willing to accept that some DNA evidence was carefully obtained. However, there is also acknowledgment that one article of DNA evidence lacked any detail regarding the location of its origin, rendering it inadmissible.

## **Warrant of Arrests**

Limited information is available about this. At least one defendant was detained under Emergency Decree.

## **Detainment**

Judicial comment is made about the length of three of the defendants' detainment. Although the exact length was not divulged, it led the presiding judges to exclude their statements (to an extent) from being admitted. Of note, is that these statements were still considered relevant in the implication of **D7**. Also of note, is that there seemed to be some discrepancy regarding what constituted a willing or unwilling statement.

Another important note is that all of the defendants – even those acquitted by the Court of First Instance – have been ordered to be detained until the pending appeal. This seems counterintuitive to the notion of the presumption of innocence, and appears to constitute unlawful detention. It is something we have seen in other case studies.

## **Issues with conditions of detainment**

The judges acknowledged that there was the possibility due to length of detainment at a “certain location” that some statements may have been obtained unwillingly. The court does not go so far as to suggest coercion, or unlawful force or torture.

## **Legal Representation**

There is limited information available at present about which defendants had legal representation, and at what point that representation came into effect. Although there is reference made to lawyers for D1 and D3 signing and witnessing their statements, this doesn't discount the possibility that statements may have been given unwillingly, prior to their arrival. The judiciary does not appear to have considered this in their reasons. More information will need to be obtained regarding the type of representation relied upon (was it state provided or private hire) and the level of satisfaction with this representation.

## **Analysis of admitted evidence, witnesses and judicial reasoning**

The two defendants who were the focus of this case study were sentenced primarily on the weight of the testimonies/statements given by their co-accused. In turn, these co-accused parties – in instances of conviction – were given lesser sentences for their cooperation. In the absence of any other supporting evidence, we the researchers feel that the prosecution's case is reliant on weak evidence. This is highlighted by two main points: the ulterior motives the witnesses might have had to implicate someone in order to help their own cause, and the fact that some of these testimonies were ruled inadmissible to the extent that

they incriminated the witnesses themselves. The truthfulness of these statements was brought into doubt, because it was determined that they might have been obtained unwillingly. What is also surprising to us is that certain alibi evidence was discounted due to the involvement of parties known or related to the accused. This was discounted due to a lack of supporting evidence. This was not a requirement for evidence submitted by the plaintiff. As such, it would appear there are inconsistencies regarding the standard of admissibility.

Another note on evidence relates to DNA and the general collection/labelling of physical evidence by investigators. The straw found in the vicinity of the crime scene and alleged to have DNA evidence of D8 was used as partial justification to place him at the scene. After admitting some involvement in surveillance activities it was concluded that he was part of the terrorist group. We feel the straw was given more weight than justified, given a) the seriousness of the charge and b) the fact that he didn't dispute delivering food and drink to the location, and therefore it wouldn't be unreasonable to assume that some of his DNA might have been recovered near the scene. In addition, a "biological substance" from D12 was found on a piece of evidence at the crime scene. However, because the location of retrieval had not been recorded this evidence could not be used. This casts doubt on the reliability of other physical or forensic evidence relied upon, and the methods of collection and inquiry.

## **Length of trial**

More information is required about the trial length. At this stage, appeals are still pending.

## **CHAPTER THREE: Perspectives of Justice - A summary of case study interviews**

Researchers have been able to meet with some of the defendants from case studies 1 –4, as well as some of their family members and lawyers. The purpose of doing so was to learn details relating to their case that have not been referenced in the judgments, but are pertinent when identifying areas which need reform to improve access to justice for those facing the death penalty in the southern border provinces of Thailand. We note that we have reviewed four case studies out of many which come before the courts in these provinces; these cases were selected as they provided real examples of certain failures in the system. For this reason the information below is by no means meant to provide a summary of sentiment in the south, but rather provide some more context, generate discussion, and identify general issues of concern which may be researched in greater depth.

### **Demographic information**

From interviews with the defendants we have seen that they were middle aged, Muslim men accused of terrorism-related activities. None of these men had a prior criminal record, and almost all of them had dependents relying on them as a source of income. These defendants generally worked as hired labourers. The men all spoke Malay, and most of them had some understanding, to varying degrees, of Thai. The



defendants' level of education varied, with only one of the men interviewed having attended high school.

## **Reflections of defendants**

### ***Access to legal representation and defendants' perception of justice and equality***

One unifying feature in the interviews conducted with defendants was that they felt they had not had adequate time to consult with their lawyers, and that their lawyers had not been able to properly prepare for their trials. A common complaint was that it was difficult to communicate with their lawyers, as meetings occurred in prison and, as such, communication was sometimes limited to note-passing between defendant, family members and lawyers. One defendant complained he had only met his lawyer twice before trial; another stated he had not been able to meet and appoint a lawyer personally as he had been detained at the time and was thus reliant on his family to select a lawyer. The defendants were also concerned that their lawyers did not appear to have access to the evidence; one believed his lawyer saw and heard of certain pieces of evidence for the first time at trial, while the other stated his lawyer had to make a meeting with police to inspect evidence.

## ***Physical treatment***

One defendant reported that he had been subject to a body search when detained; another reported that he had been shackled for the first month of his detention. There were a number of complaints of physical abuse, and an additional complaint that no medical treatment had been made available to treat the effects of this abuse.

Another defendant complained that while he was physically alright, his prolonged detention was starting to have an effect on his mental health.

One defendant also complained that he had been unable to properly perform his religious duties while detained, and he was concerned he had not been fed food prepared according to his religious requirements.

## **Reflections of lawyers**

### ***Bail applications***

In most of these case studies lawyers from the Muslim Attorney Centre (MAC) became involved at some point. Of concern to lawyers involved in these case studies, and involved in work in the southernmost provinces, was the low rate at which bail was granted. It was identified that when a defendant is facing a terrorism-related charge, or another serious offence, their chance of being granted bail is very unlikely. Often, lawyers told the researchers, the reason cited for not granting bail was that the defendant might ‘tamper with the evidence’. An issue

arising from the low-rate of granting bail is that it makes it very difficult for an accused to select and meet with a lawyer, meaning relatives were burdened with this task.

### ***Adequacy and resourcing of legal representation***

A further problem identified by lawyers working on these cases is that the number of Muslim lawyers is not proportionate to Muslim defendants. Furthermore, there are even fewer Muslim lawyers who have an understanding of human rights law. This makes it difficult for the defendants to communicate with their lawyers and obtain the best defence available.

### ***Acquittals***

Lawyers involved in these cases commented that defendants do not receive adequate compensation when they are acquitted of the charges. This is because the courts do not deem the defendants innocent; rather they cite ‘insufficient evidence’ as the reason for acquittal. This means compensation is not available and also has a big impact on a community’s perception of justice.

## **Reflection of family members**

### ***Interaction with police***

None of the family members interviewed were notified of the defendants' arrests by the police. Rather, they were made aware of the arrest by another family member or friend who saw the defendant being arrested. Family members reported they were unable to see defendants until three days had passed. In one case study, the wife of a defendant reported she had some dealing with the military after her husband's arrest. The officer had shown her 'no respect' because 'that is what they are like'. Another family member said 'the police told me nothing'. Some family members reported that their own homes had been searched after the defendants' arrests. These interviews made clear that from the early stages of investigation there was a lack of trust in the police by family members due to the lack of openness and transparency in police investigations and a belief that they and the defendants were being unlawfully and unfairly treated. The father of one of the defendants said: 'I do not trust the authorities can protect people and ensure public order'.

### ***Access to the defendants***

A wife of one defendant reported that since her husband had been moved to Ban Kwang prison in Bangkok she had been able to visit him only once, and that her next scheduled visit was not for another three

months. The interviews made clear that it is important for family members to be able to regularly have access to the defendants. This was often made difficult due to the location of the prison at which the defendant was housed, and also due to the work, household and financial commitments of family members.

### ***Involvement and understanding of the legal proceedings***

Most family members interviewed reported having played an active role in helping the defendant obtain legal representation. Some family members said they contacted MAC for help, as they could afford no other lawyer. All family members interviewed had attended the trials of the defendants, however, they had not understood what was happening, or the verdict, and had been very reliant on the lawyers to explain the process to them. This further exacerbated a feeling that the legal system did not apply fairly to their community.

### ***Financial and emotional impact***

All the defendants were breadwinners for their families, and had wives, children and sometimes parents relying on them for financial support. Family members reported that they lived in poverty, and that their situation was worsened following the arrest of the defendant. A wife of one defendant said she had to move in with her mother following her husband's arrest. Another wife said she had difficulty working since her husband's arrest, as she had previously relied on her husband to take

care of the children. The same woman said that a lot of the money she was able to earn had to be sent to her husband in detention. All family members interviewed reported that the detention had a detrimental emotional impact and reported heightened levels of stress and anxiety.

### ***Community***

One family member who was interviewed said his family had been ostracised by the community since the defendant's arrest. However, a father of one defendant reported great community support, stating that when he went to visit the defendant two trucks full of visitors also came as a show of support. This indicated to the researchers that the law enforcement measures taken in the south can be very divisive, and can lead to further community unrest.

## CHAPTER FOUR: Afterword

The death penalty cases which are the subject of this report are related to terrorist activities of insurgents in the Southern border provinces. Insurgency may be identified with the “rebellion against tyranny and oppression”, a “**last resort**” to which man is “**compelled to have recourse**”, in the language of the Preamble to the Universal Declaration of Human Rights. Terrorism is a tool of insurgency. The words of the Universal Declaration recognise the inevitability of insurgency if the appeal to a last resort is indeed valid. Terrorism is a perversion of insurgency which can never be justified. A counter terrorism which matches the inadmissible violence of terrorism is likewise never justified. The escalation of violence in the South consists of a cycle of violence and counter violence that is beyond any justifiable action by insurgent or government.

The epithet “terrorism” has become too loosely used in Thailand. Both political protest and protest control actions have been dubbed as terrorism when they are not so. There is now a general consensus worldwide on an identification of terrorism<sup>4</sup>:

*“Terrorism is illegal violence directed against human or nonhuman objectives with the following characteristics:*

1. undertaken to evoke fear and submission for some economic, political, ideological or other objective
2. secretive or clandestine
3. not to further the permanent defense of some area
4. not using the methods of conventional warfare
5. contributing to an objective by inculcating fear of violence other than immediate objectives and by publicizing a cause.”

Causes of terrorism are:

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<sup>4</sup> “Terrorism Studies: A Reader” , John Horgan and Kurt Braddock, ed., Routledge, Oxon, 2012

1. existence of concrete grievances, hopelessness may inspire sedition. High levels of repression generate high levels of insurgent violence. Repression may be counterproductive.
2. lack of opportunity to participate in political process
3. precipitating event: government use of unusual force in response to reform attempts or protest
4. provocative terrorism to bring about revolutionary conditions and mobilize mass support

The most reprehensible aspect of terrorism and its mirror image in counter-terrorism, can include the innocent, even women and children, in its victims.

The relevance of the meaning of terrorism and identification of causes is that courts easily identify the accused under a blanket label of terrorists. There are no distinctive qualities associated with a terrorist. But commonly terrorists are demonized; “terrorism is conducted by evil people whose intent is to destroy “our” way of life”. The charge of terrorism is used to justify extended legal practices which abuse legal rights, especially at the level of arrest and interrogation.

Governments respond to terrorism by what is called “counter terrorism”. This may take three forms:

1. A war model of counter terrorism considers terrorism as a state of war where the rules of war prevail. Counter terrorism becomes a mirror image of the tactics of terrorism, entailing the mobilization of elite military forces operating under cover. Such forces mimic the secretive tactics of terrorists, and eliminate terrorists without legal procedure. They try to instill fear in a population to deter popular support for terrorism. Torture and assassination of suspects is carried out with impunity.
2. A criminal justice model, where the rule of law is paramount. The preservation of democratic principles is the fundamental principle, even at the expense of reduced effectiveness of counter-terrorist measures. In the justice model, police exercise the state’s monopoly on the use of violence. The rules of engagement involve the use of



minimal force, which requires an exercise of judgment on the part of officers to overpower the enemy. Offences against the State must be subject to criminal law and the Courts function to impose punishment while providing suspects with all the protection and guarantees of legal procedure. But offenses against the law by state agents must also be subject to criminal law. This is the protection due to a civilian population. Injuries inflicted by state officials breaking the law must entail due compensation to those wronged.

3. A mixed model where it is believed that the war model is not politically acceptable, and that a criminal justice model is inadequate to deal with the severe threat of violence. While military support may be necessary to handle an insurrection which is partly a guerrilla activity and partly terrorist, ultimate authority and control must remain under government and civilian direction. Unfortunately, Thailand has adopted a version of the mixed model with ultimate control in the hands of the military. This model consists of a combination of criminal law, military law, a state of emergency, and a military centred internal security act.

**“It must be a cardinal principle of liberal democracy in dealing with the problems of terrorism, however serious they may be, never to be tempted to use methods which are incompatible with the liberal values of humanity, liberty and justice .... Another kind of betrayal is the deliberate suspension or limitation of civil liberty on grounds of expediency... The attempt to rule by emergency decree, abandonment of democratic processes and fundamental abridgements of a democratic constitution must be resisted.”<sup>5</sup>**

Consequences of such an approach are:

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<sup>5</sup> Terrorism versus Democracy: The liberal state response, Wilkinson, Paul, 3<sup>rd</sup> Edition, Routledge, Oxford 2011  
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1. The primary responsibility for the campaign against terrorism rests with civil government and its instrument of law, the police force. While support from military forces may be invoked in situations where insurgency approaches a level of guerrilla warfare, the role must be subordinate and of strictly limited duration which can only be extended under parliamentary authority.
2. All stages of arrest and interrogation of suspects must be the responsibility of police, not of the military.
3. All stages of anti-terrorism must be accountable; impunity of government officials in any form is a serious infringement of human rights.

Aspects of serious infringement of human rights by security forces have been well reported elsewhere. Our concern is with court decisions and the punishments imposed. There are ambiguities of interrogation and detention, some carried out by police and others by military. Persons detained in military camps appear especially vulnerable to abuse, torture, unacceptable interrogation practice, rights of access to those detained by their relatives and lawyers. Ambiguities of a double authority are beyond scrutiny and accountability.

## **Solutions**

There is a lack of responsibility by government in the governance of the Southern Border Provinces. Endless extensions of states of emergency are made without proper justification. Has there ever been a serious debate in parliament with presentation of alternative policies? Have there been government enquiries into abuses, failures or successes in the governance of the south? There appears to be no avenue of complaint or the presentation of viewpoint available to citizens of the southern border provinces.

Such initiatives are not in themselves solutions, but acceptable solutions will not emerge without them. The debate must be free

and open without preconditions or prejudice. Such a political debate should precede any secretive discussion with those who present themselves as the spokespersons of armed insurgent groups of shadowy provenance. Every extra day of insurgency and terrorism adds to the complexity and horror of the situation. Increasing reliance on force and counter insurgency has failed and offers no hope for solution in the future.

In all resolved insurgencies or situations of terrorism a neutral, informed, and sympathetic mediation has proved indispensable. It is time to find such mediation.

Meanwhile it would be a step forward to remove the death penalty from the Thai justice system. The theme of terrorism was often heard throughout the World Congress on Abolition of the death penalty held last year in Madrid, referring to crimes for which some states were most insistent on retaining the death penalty. While states which retain the death penalty are increasingly prepared to restrict its use, they insist on its retention as a supposed remedy for the worst of the worst of crimes, namely terrorism. Those who oppose the death penalty for all crimes, respond that terrorists do not fear death and allowing the death penalty for terrorism is rewarding the terrorist with martyrdom! The death penalty is neither a deterrent nor a solution to terrorism, indeed, it provokes even more violence.

**“It must be a cardinal principle of liberal democracy in dealing with the problems of terrorism, however serious they may be, never to be tempted to use methods which are incompatible with the liberal values of humanity, liberty and justice .... Another kind of betrayal is the deliberate suspension or limitation of civil liberty on grounds of expediency... The attempt to rule by emergency decree, abandonment of democratic processes and fundamental abridgements of a democratic constitution must be resisted.”<sup>1</sup>**

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<sup>1</sup> Terrorism versus Democracy: The liberal state response, Wilkinson, Paul, 3<sup>rd</sup> Edition, Routledge, Oxford 2011  
Chapter 6